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WTO AND REGIONAL TRADE AGREEMENTS
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Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.

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SUMMARY OF REPORTS

Special Report

President Bush Signs Implementing Legislation U.S.-Australia FTA; Administration Continues Push For Competitive Liberalization

The Bush Administration is forging ahead with its competitive liberalization strategy by negotiating trade agreements at the bilateral, regional, and multilateral level. Since our last FTA update:

President Bush signed the implementing legislation for the United States-Australia Free Trade Agreement (FTA).

Congress approved the implementing legislation for the U.S.-Morocco FTA.

The Dominican Republic joined the new U.S.-Dominican Republic-Central America FTA (DR-CAFTA).

The Administration moved forward in ongoing negotiations with the Southern African Customs Union, the Andean countries, Panama, and Thailand.

In this report, we identify the steps that the Administration has to take under TPA and the status of the negotiations that the Administration has concluded, is conducting, or has announced. We also indicate prospects for other suggested FTAs.

United States

Kerry Administration's International Trade Policies Could Complicate U.S.-Latin America Trade Negotiations

Democratic presidential candidate John Kerry chose Senator John Edwards as his running mate during the first week in July. Members of the Democratic Party have characterized the Kerry/Edwards combination as a "dream ticket." Others have criticized Kerry for choosing a vice presidential candidate that has taken many protectionist positions in his tenure in the Senate.

At the moment, Senators Kerry and Edwards' positions on trade focus on keeping job growth in the US and including stricter labor and environmental standards in future free trade agreements (FTAs). Senator Kerry has introduced a vision for strengthening U.S. relations with Latin America and enhancing opportunities for Latinos in the US. How Senators Kerry and Edwards present trade-related issues on the Democratic platform will become clearer after the Democratic Convention in Boston, Massachusetts at the end of July.

United States Highlights

We want to alert you to the following trade development in the United States:

USTR Announces Hearing on China's WTO Compliance; Requests Comments.

Free Trade Agreements

CAFTA Countries Urge United States Congress to Consider FTA Implementing Legislation

At events held in San Salvador and Washington D.C., U.S. and Central American legislators and diplomats discussed some of the most contentious topics of the Central American Free Trade Agreement (CAFTA). Among these topics, participants at the events debated:

Urgency of implementing CAFTA;

Labor standards in Central America;

Potential effects of CAFTA on sensitive sectors such as such as sugar and textiles; and

Benefits that CAFTA would bring to the region and to the US.

Participants also commented on the prospects for congressional consideration of CAFTA, with all acknowledging that consideration is not likely before the end of the year.

Free Trade Agreement Highlights

We want to alert you to the following FTA developments:

ITC to Hold Hearing on Potential Economy-wide and Selected Sectoral Effects of US-Bahrain FTA

FTAA

Brazilian and U.S. Domestic Industries Create Challenges for FTAA Process

On June 29, 2004, the Inter-American Development Bank (IDB) hosted an event on the political economy of protection and the Free Trade Area of the Americas (FTAA). Marcelo de Paiva Abreu, Expert of Integration and Trade, Special Initiative on Trade and Integration, IDB, discussed domestic sensitivities in Mercosur and the US that hinder FTAA progress.

NAFTA

NAFTA Commission Approves Measures to Simplify Rules of Origin and Dispute Settlement Measures

The North American Free Trade Commission held its annual meeting in San Antonio, Texas. The Commission approved a set of initiatives aimed to simplify NAFTA's rules of origin (ROO) and dispute settlement measures (DSM).

Border Governors Agree to Strengthen Trade Ties and North American Integration

At the XXII Border Governors Conference, U.S. and Mexican Governors agreed to strengthen U.S.-Mexico trade and NAFTA institutions.

Border Governors recognized NAFTA's positive impact on trade, but also acknowledged that not all states have benefited equally from trade liberalization. In particular, Governors stressed the fact that NAFTA has done little to reduce illegal immigration from Mexico to the United States.

European Union

EU and MERCOSUR Suspend Second Consecutive FTA Negotiating Round; October 2004 Deadline in Jeopardy

During the week of August 9, 2004, MERCOSUR and EU negotiators met in Brasilia in an attempt to move forward with negotiations on a EU-MERCOSUR Free Trade Agreement (FTA). The negotiations were scheduled to conclude on August 13, but were suspended on August 12 as a result of MERCOSUR's dissatisfaction with the EU's offer regarding agricultural market access, and the EU's dissatisfaction with MERCOSUR's offer regarding investment, government procurement, and services.

This is the second consecutive negotiating round that the EU and MERCOSUR have suspended, after the last negotiating round in Brussels in late July, and it jeopardizes the original October 2004 deadline for concluding negotiations.

MERCOSUR negotiators are now insisting that negotiations can only proceed after the new European Commission takes office in October. EU officials, however, argue that negotiators can conclude a full agreement by the original deadline.

Multilateral

WTO Members Relaunch Doha Round with "July Package" of Framework Agreements

By their agreement on 31 July to adopt frameworks for further negotiations on agriculture, industrial products, services and trade facilitation, WTO Members have saved the Doha Round from a threatened collapse and the WTO itself from marginalization.

The subjects at issue were precisely the same as those which caused the *débat* of the Cancun Ministerial Conference in September 2003: the difference of the outcome reflects the intense diplomatic activity of recent months and a general recognition that the system could not afford and might not survive another such failure.

In themselves, the texts agreed on 31 July do not advance the liberalization of trade, nor do they guarantee eventual success; the real negotiation of binding commitments has yet to begin. But the objective was to avoid catastrophe and keep the negotiations alive, and that has been achieved. Though the meeting of the General Council was not convened at Ministerial level, some 25 Ministers in fact attended it and were heavily involved in the informal processes last week and into the weekend. An agreement would not have been achieved without their active involvement, even though all participants were anxious for a deal.

USTR Officials Pleased WTO Round is “Back on Track”; Stress that Much Work Lies Ahead

U.S. Trade Representative (USTR) officials at a public briefing expressed satisfaction towards the recent agreement by WTO Members on a “July package” of framework agreements. Members concluded the July package in a more positive environment than at last September’s Cancun Ministerial Conference. Ministers including USTR Robert Zoellick played a key role in Geneva the week prior, and also expended much effort in recent months to rally support for the “Doha Round.” Officials commented that while the recent agreement has been described as “historic” – much work will be necessary in order to realize the objectives in the framework agreements, and to conclude the Round.

WTO Issues Final Ruling Regarding Dumping Determination on Softwood Lumber from Canada

The WTO Appellate Body has ruled that the United States violated the WTO Anti-Dumping Agreement when it used the so-called "zeroing" methodology to determine dumping margins on Canadian softwood lumber.

There has been little doubt about the WTO-inconsistency of "zeroing" since the Appellate Body ruled against EC zeroing in the landmark 2001 *Bed Linen* case. Despite this, the United States has long argued that the *Bed Linen* decision did not apply to U.S. zeroing. Now, the Appellate Body has ruled definitively against U.S. zeroing as well.

Under the Anti-Dumping Agreement, a product is considered "dumped" when the home market price is lower than the export market price. This produces a so-called "positive dumping margin." However, when "zeroing" is used, investigating authorities do not give any credit for "negative dumping margins", i.e. when the home market price is higher than the export market price. Instead, the negative margins are considered to be zero. This means that a negative margin for one class of goods cannot be used to offset a positive margin for another class of goods.

As the Appellate Body stated in this case, zeroing "does not take into account the *entirety* of the *prices* of *some* export transactions" and "thus inflates the margin of dumping for the product as a whole." As a result, the importer must pay higher dumping duties than can be justified under the Agreement.

REPORTS IN DETAIL

SPECIAL REPORT

President Bush Signs Implementing Legislation U.S.-Australia FTA; Administration Continues Push For Competitive Liberalization

SUMMARY

The Bush Administration is forging ahead with its competitive liberalization strategy by negotiating trade agreements at the bilateral, regional, and multilateral level. Since our last FTA update:

President Bush signed the implementing legislation for the United States-Australia Free Trade Agreement (FTA).

Congress approved the implementing legislation for the U.S.-Morocco FTA.

The Dominican Republic joined the new U.S.-Dominican Republic-Central America FTA (DR-CAFTA).

The Administration moved forward in ongoing negotiations with the Southern African Customs Union, the Andean countries, Panama, and Thailand.

In this report, we identify the steps that the Administration has to take under TPA and the status of the negotiations that the Administration has concluded, is conducting, or has announced. We also indicate prospects for other suggested FTAs.

ANALYSIS

I. President Bush Signs Implementing Legislation U.S.-Australia FTA

On August 3, 2004, President George W. Bush signed the implementing legislation for the United States-Australia Free Trade Agreement (FTA) (H.R.4759). The signing came after the House and the Senate passed the implementing legislation on July 14 and 15, 2004, respectively, and was the last step before the implementation of the FTA, which will take effect starting January 1, 2005.

Concluded on February 8, 2004, the U.S.-Australia FTA will eliminate from the date of its enactment more than 99 percent of manufactured goods tariffs between both countries, which is the most significant reduction of industrial tariffs ever achieved in a U.S. FTA. The FTA will also introduce further liberalization in services and agricultural markets, among other areas.

After the FTAs with Chile and Singapore (both signed in 2003), the FTA with Australia is the third FTA to be signed under the renewed Trade Promotion Authority (TPA), which was passed with the Trade Act of 2002 on August 6, 2002. Prior to the renewal of TPA, the U.S. had already concluded FTAs with Israel (1985), Mexico (NAFTA: 1992) and Canada (1989, merged with NAFTA in 1994), and Jordan (2000).

According to TPA, the United States Trade Representative (USTR) must:

Notify Congress of its intention to negotiate at least 90 days before initiating FTA negotiations.

Conduct environmental reviews of future FTAs.

Conduct reviews of the impact of future FTAs on U.S. employment.

Submit a report regarding labor rights of the countries with which the U.S. is negotiating FTAs and describe the extent to which these countries have in effect laws governing exploitative child labor.

Request that the International Trade Commission (ITC) prepare a report assessing the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors. The request should be made at least 90 days before entering into the FTA. The ITC must submit this report to the USTR and to Congress no later than 90 days after entering into the FTA.

Notify Congress at least 90 days before entering into an FTA of its intention to enter into the FTA and promptly thereafter publish notice of such intention in the Federal Register.

Submit to Congress, within 60 days after entering into the agreement, a description of the changes to existing laws that would be required in order for the U.S. to be in compliance with the agreement.

Submit to Congress, after entering into an agreement, (i) a copy of the final text, (ii) a draft of an implementing bill, (iii) a statement of any administrative action proposed to implement the agreement and (iv) the supporting information. Then Congress votes up-or-down on the implementing bill. If Congress approves the implementing bill, it is enacted into law.

Congress will have a maximum of 90 legislative days from formal introduction to consider the implementing bill. Furthermore, USTR must consult regularly and upon their request with the Congressional Oversight Group (COG), as well as with the Senate Finance Committee, the House Ways and Means Committee, and other Committees that the President deems appropriate.

II. U.S. Congress Approves Implementing Legislation U.S.-Morocco FTA

On July 21, 2004, the U.S. Senate approved the implementing legislation for the U.S.-Morocco FTA (S.2677) by a vote of 83-13. On July 22, 2004, the U.S. House of Representatives approved its version of the implementing legislation (H.R.4842) by a vote of 85-13, effectively securing Congressional passage of the FTA.

The U.S.-Morocco FTA will eliminate from the date of its enactment tariffs on more than 95 percent of bilateral trade in consumer and industrial products, and phase out remaining tariffs over 9

years. President Bush is now expected to sign the FTA, after which the formal implementation starts on January 1, 2005.

The FTA with Morocco is viewed by the Bush Administration as part of a broader free trade strategy aimed at establishing the Middle East Free Trade Area (MEFTA) by 2013. As announced on May 9, 2003, this strategy contemplates a “building blocks” approach of using the FTA with Morocco, the FTAs the U.S. already has in place with Israel and Jordan, and the recently concluded FTA with Bahrain as anchors to negotiate FTAs with other Middle Eastern countries. At some point before 2013, the U.S. intends to consolidate these FTAs to form the MEFTA.

III. Dominican Republic Joins New US-Dominican Republic-Central America FTA

On August 5, 2004, the United States, the Dominican Republic, and Central American countries Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua signed the new United States-Dominican Republic Central American FTA (DR-CAFTA), as USTR Zoellick had announced on July 23, 2004. Zoellick signed on behalf of the U.S., Dominican Commerce and Industry Secretary Sonia Guzman signed on behalf of the Dominican Republic, and the respective trade ministers signed on behalf of the Central American countries. The signing added the Dominican Republic to CAFTA, which had been signed earlier on May 28, 2004.

The U.S. concluded negotiations with the Dominican Republic on March 15, 2004, after three negotiating rounds. Upon entry into force, the DR-CAFTA will eliminate tariffs on more than 80 percent of U.S. exports of consumer and industrial products, and phase out the remaining tariffs over 10 years.

We highlight below the TPA requirements as they apply to the agreements that we discussed above, as well as to the U.S. Bahrain FTA, which was concluded on May 27, 2004.

TPA Provision	<u>90-Day Notification Period of Intention to Initiate FTA Negotiations</u>	<u>Environmental Review</u>	<u>Employment Impact Review</u>	<u>Labor Rights Reports</u>	<u>ITC Reports on Economic Effects</u>
Countries					
<u>Australia</u>	-USTR notified Congress on November 13, 2002. (67 FR 76431)	-Initiated on March 13, 2003. (68 FR 12149)	-Initiated on May 8, 2003. (68 FR 24785)	-Initiated on July 18, 2003. (68 FR 42783)	-Initiated on December 20, 2002. (67 FR 79149) -Initiated on March 8, 2004. (69 FR 10755) -Released on May 26, 2004.
<u>Morocco</u>	-USTR notified Congress on October 1, 2002. (67 FR 63187)	-Initiated on November 22, 2002. (67 FR 70476)	-Initiated on February 7, 2003. (68 FR 6529)	-Initiated on April 21, 2003. (68 FR 19579)	-Initiated on September 13, 2002. (67 FR 59312) -Initiated on March 23, 2004. (69 FR 13583) -Released on June 25, 2004.
<u>DR-CAFTA</u>	-USTR notified Congress of intention to initiate FTA negotiations with Central America on October 1, 2002. (67 FR 63954) -USTR notified Congress of intention to initiate FTA negotiations with Dominican Republic on August 4, 2003. (68 FR 51823)	-Initiated on November 22, 2002 for Central America. (67 FR 70475) -Initiated on December 24, 2004 for Dominican Republic. (68 FR 74693)	- Initiated on March 19, 2003 for Central America. (68 FR 13358) -Initiated on September 4, 2003 for Dominican Republic. (68 FR 52623)	-Initiated on April 21, 2003 for Central America. (68 FR 19580) -Initiated on November 3, 2003 for Dominican Republic. (68 FR 62330)	-ITC initiated the review for Central America on September 16, 2002 (67 FR 59312) and on March 23, 2004 (69 FR 13582). -ITC initiated the review for the Dominican Republic on August 22, 2003 (68 FR 50808) and on March 23, 2004 (69 FR 13582).

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TPA Provision	<u>90-Day Notification Period of Intention to Initiate FTA Negotiations</u>	<u>Environmental Review</u>	<u>Employment Impact Review</u>	<u>Labor Rights Reports</u>	<u>ITC Reports on Economic Effects</u>
Countries					
<u>Bahrain</u>	-USTR notified Congress on August 4, 2003. (68 FR 51062)	-Initiated on September 30, 2003. (68 FR 56373)	-Initiated on September 4, 2003. (68 FR 52622)	-Initiated on November 3, 2003. (68 FR 62328)	-Initiated on August 26, 2003. (68 FR 51301) -Initiated on July 28, 2004. (69 FR 45077)

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TPA Provision	<u>90-Day Notification Period of Intention to Enter Into FTA</u>	<u>Publication Final Text</u>	<u>Congressional Approval</u>	<u>Signing</u>
Countries				
<u>Australia</u>	-President notified Congress on February 13, 2004. (69 FR 7675)	-USTR released the final text on May 18, 2004.	-On July 14, 2004, the U.S. House of Representatives approved the FTA (H.R.4759) by a vote of 314-109. -On July 15, 2004, the U.S. Senate approved the FTA (S.2610) by a vote of 80-16.	-Zoellick and Australian Trade Minister Mark Vaile signed the FTA on May 18, 2004. -President Bush signed the implementing bill of the FTA on August 3, 2004. -The FTA will enter into effect on January 1, 2005.
<u>Morocco</u>	-President notified Congress on March 8, 2004. (69 FR 11491)	-USTR released the final text on June 15, 2004.	-On July 22, the U.S. House of Representatives approved the FTA (H.R.4842) by a vote of 85-13. -On July 21, the U.S. Senate approved the FTA (S.2677) by a vote of 83-13.	-Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri signed the FTA on June 15, 2004. -President Bush now has to sign the FTA. No date has been set. -Once signed, the FTA will enter into effect on January 1, 2005.
<u>DR-CAFTA</u>	-President notified Congress of intention to enter into FTA with Central America on February 20, 2004. (69 FR 8541) -President notified Congress of intention to enter into FTA with Dominican Republic on March 24, 2004.	-USTR released the final text of the FTA with Central America on June 1, 2004. - USTR released the draft text of the FTA with the Dominican republic on April 9, 2004.	-USTR plans to submit a single legislative package to implement the DR-CAFTA to Congress for approval. -Senate Finance Committee Chairman Charles Grassley (R-Iowa) has indicated that he wants Congress to pass the agreement before the end of 2004. However, opposition from sensitive constituencies such as textile workers, sugar producers, and labor unions, coupled with election	-Zoellick and the respective trade ministers from the Central American countries signed CAFTA on May 28, 2004. -Zoellick, Dominican Commerce and Industry Secretary Sonia Guzman, and the respective trade ministers from the Central American countries signed the DR-CAFTA on August 5, 2004.

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TPA Provision	<u>90-Day Notification Period of Intention to Enter Into FTA</u>	<u>Publication Final Text</u>	<u>Congressional Approval</u>	<u>Signing</u>
Countries				
	(69 FR 16159)		year politics make passage prior to 2005 unlikely.	
<u>Bahrain</u>	-President notified Congress on June 15, 2004. (69 FR 34045)	-USTR released the draft text on June 21, 2004.	-U.S. and Bahrain government officials indicate that there are no real controversial issues.	--

IV. US Moves Forward in Negotiations With SACU, Andean Countries, Panama, and Thailand

Since the renewal of TPA, the Administration has also launched negotiations with the Southern African Customs Union (SACU: Botswana, Lesotho, Namibia, South Africa, Swaziland), the Andean countries (Bolivia, Colombia, Ecuador, and Peru), Panama, and Thailand.

The FTAs with the Andean countries and with Panama are attempts to move forward with trade liberalization in the Western Hemisphere in light of the stalled negotiations of the Free Trade Area of the Americas (FTAA).

The FTA with Thailand is a step towards the Enterprise for ASEAN Initiative (EAI), as announced by President Bush on October 26, 2002. The EAI aims to create a “network of FTAs” with the ASEAN countries, using the FTA with Singapore as a model. As precursors to such FTAs, the U.S. has pledged its support for ASEAN members acceding to the WTO. Other preliminary steps would include negotiating Trade and Investment Framework Agreements (TIFAs) or Bilateral Investment Treaties (BITs) with the U.S.

We highlight below the status of these ongoing and announced negotiations.

TPA Provision	<u>90-Day Notification Period of Intention to Initiate FTA Negotiations</u>	<u>Environmental Review</u>	<u>Employment Impact Review</u>	<u>Labor Rights Reports</u>	<u>ITC Reports on Economic Effects</u>
Countries					
<u>SACU</u>	-USTR notified Congress on November 4, 2002. (67 FR 69295)	-Initiated on March 13, 2003. (68 FR 12150)	-Initiated on May 7, 2003. (68 FR 24532)	-Initiated on June 23, 2004. (69 FR 35064)	-Initiated on November 20, 2002. (67 FR 70757)
<u>Andean Countries</u>	-USTR notified Congress on November 18, 2003. (69 FR 7532)	-Initiated on April 12, 2004. (69 FR 19261)	-Initiated on May 14, 2004. (69 FR 26917)	-Initiated on June 23, 2004. (69 FR 35063)	-Initiated on December 31, 2003. (68 FR 75629)
<u>Panama</u>	-USTR notified Congress on November 18, 2003. (69 FR 8518)	-Initiated on April 12, 2004. (69 FR 19262)	-Initiated on April 20, 2004. (69 FR 21177)	-Initiated on June 23, 2004. (69 FR 35060)	-Initiated on December 31, 2003. (68 FR 75630)
<u>Thailand</u>	-USTR notified Congress on February 12, 2003. (69 FR 9419)	-Initiated on April 12, 2004. (69 FR 19263)	-Initiated on April 20, 2004. (69 FR 21178)	-Initiated on June 23, 2004. (69 FR 35062)	-Initiated on March 9, 2004. (69 FR 11042)

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	<u>Next Steps</u>	<u>Negotiating Structure</u>	<u>Expected Challenges</u>
Countries			
<u>SACU</u>	<p>-SACU officials met with Deputy USTR Josette Shiner on July 21, 2004, in Paris.</p> <p>-Negotiations now focus on more controversial issues such as investment, services, government procurement, and IPR.</p> <p>-Three more negotiating rounds have been scheduled. The last negotiating round will take place in December 2004, in the U.S.</p>	<p>-A large plenary group leads the negotiations. Seven working groups discuss specific issues, including (i) market access for agricultural and non-agricultural products, (ii) technical barriers to trade (TBT), (iii) customs, (iv) labor rights, (v) environmental standards, (vi) SPS measures, (vii) investment, (viii) IPR, (ix) services, (x) e-commerce, (xi) and dispute settlement.</p> <p>-Negotiations are set to conclude by the end of 2004. SACU trade officials have expressed their optimism about reaching this deadline. US trade officials have indicated however that they will likely miss this deadline.</p> <p>-SACU is negotiating as a bloc.</p>	<p>-Special and differential treatment; IPR; e-commerce; government procurement; investment; market access for agricultural products; and services are challenging issues.</p> <p>-The different levels of economic development between the SACU countries further complicate the negotiations.</p>
<u>Andean Countries</u>	<p>-A third negotiating round took place with Colombia, Peru, and Ecuador from July 26-30, 2004, in Lima, Peru. USTR has indicated that Bolivia is not yet ready to negotiate.</p> <p>-The negotiators addressed mostly organizational issues, allowing officials to express their areas of interest and sensitivity. The US proposed model text in the areas of services, investment, IPR, and market access rules.</p> <p>-A fourth negotiating round will take place from September 13-17, 2004, in San Juan, Puerto Rico. Two additional rounds have been scheduled for 2004. The last negotiating round will take place in December 2004, in the US.</p>	<p>-USTR plans to negotiate separate FTAs with all four of the Andean countries. The FTAs will then be merged into a U.S.-Andean FTA.</p> <p>-USTR officials have indicated that they anticipate seven negotiating rounds.</p> <p>-Negotiations are set to conclude by the end of 2004. Trade officials have indicated however that they will likely miss this deadline. USTR hopes to conclude the negotiations by January or February 2005, in order to submit the FTA to the U.S. Congress before TPA expires in June 2005.</p>	<p>-So far, the response of the U.S. business sector has been positive. However, the U.S. sugar industry and labor groups have expressed their opposition against the FTA.</p> <p>-Market access for agricultural products, particularly sugar, and IPR, particularly pharmaceuticals, have been the most controversial issues so far.</p> <p>-Temporary entry for business persons; investment; and labor and environmental standards have also been named as possible challenges.</p>

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<p><u>Panama</u></p>	<p>-A fourth negotiating round took place from August 9-12, 2004, in the US.</p> <p>-Good progress has been made in the areas of market access for industrial goods and banking services. Also, technical rules have been established in the areas of customs administration, services, IPR, transparency, labor, environment, and dispute settlement.</p> <p>-A fifth negotiating round will take place from October 18-22, in Panama.</p>	<p>-The negotiators use the U.S.-Chile FTA as a model. The U.S.-Singapore FTA serves as a model for the service chapter.</p> <p>-USTR hopes to conclude the negotiations by January or February 2005, in order to submit the FTA to the U.S. Congress before TPA expires in June 2005. Ambassador Roberto Alfaro Estripeaut of Panama has indicated that the negotiations can be concluded as early as August 2004.</p> <p>-USTR Zoellick has indicated that he would like to include (or “dock”) the FTA into CAFTA. Ambassador Estripeaut has acknowledged that the FTA would probably be presented to the U.S. Congress in the “same package” with CAFTA and the Dominican Republic.</p>	<p>-Market access for agricultural products and labor and environmental standards will be challenging issues.</p> <p>-The U.S. sugar industry and labor groups have expressed their opposition against the FTA.</p>
<p><u>Thailand</u></p>	<p>-A first negotiating round took place from June 28-July 2, 2004, in Hawaii.</p> <p>-Both parties outlined their expectations for the negotiations and exchanged some initial positions.</p>	<p>-Both sides hope to conclude the negotiations in 2005.</p>	<p>-Agriculture, IPR, services, investment, customs, labor and environmental standards, and market access for industrial goods -especially automobiles- are likely to be challenging issues.</p> <p>-The U.S. sugar industry and labor groups have expressed their opposition against the FTA.</p>

V. U.S. Considers other FTAs

Numerous other countries have proposed FTAs with the U.S., especially after the collapse of the Cancun WTO talks. Below we highlight some of the countries and the prospects of a bilateral/regional FTA with the U.S.

Middle East

On July 7, 2004, the U.S. signed a TIFA with Oman. Both sides thereby agreed to use the TIFA as a basis to launch FTA negotiations later this year. Sources indicate that the U.S. also has had informal discussion on FTAs with Kuwait and Qatar and may launch negotiations before the end of the year. The FTAs would be part of an initiative to create one FTA with the countries of the Gulf Cooperation Council (GCC: Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates).

At a March 10, 2004 Senate Finance Committee hearing on U.S. trade policy in the Middle East, U.S. trade officials named the United Arab Emirates (UAE), Tunisia and Egypt as countries with a strong interest in an FTA with the U.S. On April 12, Egyptian President Mubarak reiterated his interest in an FTA with U.S. during a press conference with President Bush. However, Administration officials have indicated repeatedly that Egypt has to undertake further reforms, especially in the area of customs, before an FTA could be possible.

The FTAs with Middle Eastern countries are steps in the Administration's strategy to establish the MEFTA by 2013. U.S. officials have recently indicated that the Administration also considers the negotiation of an FTA with Libya as a part of this strategy, although it is not an immediate priority.

ASEAN (Association of South East Asian Nations: Burma, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Thailand, Vietnam, Singapore)

On May 10, 2004 the U.S. and Malaysia signed a TIFA. Shortly afterwards at an event in Washington, DC, Malaysian Trade Minister Aziz stated that the TIFA could lead to FTA negotiations with the U.S. in the longer term. Nevertheless, she noted that Malaysia would have to examine its sensitive issues and might seek exceptions in any FTA negotiations.

Members of Congress have also named the Philippines as a possible candidate for an FTA. Sources indicate that the Philippines are interested, but that the U.S. Administration has not yet decided whether to pursue an FTA.

Korea

On January 9, 2001, the ITC instituted an investigation of the likely economic impact of an FTA with Korea (66 FR 4859), but made no recommendations on whether to initiate negotiations.

At a March 11, 2004 hearing by the House Ways and Means Committee on the Administration's 2004 trade policy agenda, Zoellick stated that although he was interested, an FTA with Korea is not feasible because Korea is not prepared to negotiate agricultural market access.

New Zealand

On April 7, 2004, New Zealand Minister of Foreign Affairs and Trade Phil Goff stated at an event sponsored by the Asia Society that New Zealand remains interested in an FTA with the U.S. Goff added, however, that New Zealand would hold back requests for FTA negotiations until after the presidential elections in the U.S.

U.S. officials have indicated that they are having discussions with New Zealand, but that an FTA is unlikely in the short term.

Sri Lanka

Zoellick has named Sri Lanka as a developing country advanced enough to qualify for an FTA with the U.S., indicating that it would be "a footprint" for the U.S. in South Asia, where the U.S. does not have any FTAs. USTR officials visited Sri Lanka in October 2003 to discuss an FTA. However, the announcement of an FTA does not appear imminent.

Taiwan

On February 11, 2002, the ITC instituted an investigation of the likely economic impact of an FTA with Taiwan (67 FR 6276), but made no recommendations on whether to initiate negotiations.

Taiwan has indicated repeatedly that it would actively seek an FTA with the U.S., while several Congressmen, such as House Majority Leader Tom DeLay (R-texas) or Senate Finance Committee Ranking Member Max Baucus (D-Montana) have also expressed their interest in an FTA. Most recently, Taiwan's newly elected government indicated that it would give the highest priority to securing FTA negotiations with the U.S.

The Administration recently decided to resume talks with Taiwan under the existing TIFA, in order to resolve a number of outstanding issues. However, a U.S.-Taiwan FTA does not seem to be a current priority for the Administration, and U.S. officials have insisted repeatedly that Taiwan must first improve the implementation of its WTO commitments in the areas of (i) IPR, (ii) agriculture (rice exports), (iii) telecommunications services, and (iv) government procurement.

OUTLOOK

In the 2004 trade policy agenda, the Administration stated that it would continue the strategy of pursuing multilateral, regional and bilateral trade liberalization. In this view, the passage of the FTAs with Australia and Morocco, as well as the recent agreement within the

WTO on a “July package” to guide further negotiations for the Doha Development Agenda (DDA) are major victories for the Administration’s policy.

It will be more difficult, however, to secure congressional passage for the other recently concluded FTAs. In particular, Members of Congress have expressed concerns about labor and IPR violations of the Central American countries. Members of Congress and some people in the business community have also questioned the commercial significance of the FTA with Bahrain.

Although Senate Finance Committee Chairman Charles Grassley (R-Iowa) has indicated that he wants to obtain Congressional passage for the DR-CAFTA before the end of the year, there are strong signals from Congress that this agreement will likely have to wait until after the 2004 election cycle.

UNITED STATES

Kerry Administration's International Trade Policies Could Complicate U.S.-Latin America Trade Negotiations

SUMMARY

Democratic presidential candidate John Kerry chose Senator John Edwards as his running mate during the first week in July. Members of the Democratic Party have characterized the Kerry/Edwards combination as a "dream ticket." Others have criticized Kerry for choosing a vice presidential candidate that has taken many protectionist positions in his tenure in the Senate.

At the moment, Senators Kerry and Edwards' positions on trade focus on keeping job growth in the US and including stricter labor and environmental standards in future free trade agreements (FTAs). Senator Kerry has introduced a vision for strengthening U.S. relations with Latin America and enhancing opportunities for Latinos in the US. How Senators Kerry and Edwards present trade-related issues on the Democratic platform will become clearer during the Democratic Convention in Boston, Massachusetts at the end of July.

ANALYSIS

Kerry and Edwards have highlighted their positions on trade, and Kerry has articulated some Latin America specific trade policies he intends to pursue if elected President. In the following analysis, we review Edwards' position on trade as they relate to Latin America, much of which was revealed during his own presidential campaign for the Democratic nomination; we highlight recent reactions to Edwards' place on the democratic ticket; and we provide a brief comparison of Kerry and Edwards' positions on trade issues.

I. Senator Edwards Reveals Positions On Trade; Criticized for Anti-Free Trade Sentiment

Senator John Edwards (D-North Carolina) raised the profile of U.S. international trade policy in this years' campaign for the democratic nomination. Edward's message on trade includes several key points:

Stopping the Export of American Jobs: Edwards believes that current U.S. trade policies contribute to the export of American jobs: "Our trade policies have caused 1 million good paying jobs to be shipped overseas because our companies can find cheaper labor and lower standards in another country."

With regard to CAFTA in particular, Edwards argues: "This trade deal is just a bad deal for American workers. We've already lost more than 3 million private sector jobs under President Bush, and if this trade deal passes, we will lose even more...Congress should reject this deal, and I will work to make sure it does."

Opening Foreign Markets to U.S. Exports: Edwards demands that foreign countries abide by their international trade commitments so that American workers and businesses profit from trade agreements. Edwards highlights Mexico's 20 percent tax on soft drinks that has effectively banned U.S. corn syrup exports.

Establishing Labor and Environmental Standards in Trade Negotiations: Edwards criticizes both CAFTA and FTAA negotiations for not including labor and environmental standards in the proposed agreements. Rather, U.S. trade agreements have created a corporate "race to the bottom."

Edwards recommends that all trade agreements incorporate the core labor standards outlined by the International Labor Organization, including the right to collective bargaining, prohibition on slave labor, minimum age requirements, and minimum wage standards. Edwards also calls for the establishment of secure mechanisms to enforce these standards.

With regard to the environment, Edwards criticizes Chapter 11 of the NAFTA agreement, which allows foreign investors to challenge U.S. environmental, health, and safety laws in closed hearings. Edwards demands that Chapter 11 not be included in future agreements.

Securing an "International Right to Know" Policy: Edwards supports measures requiring companies to disclose their overseas practices with regard to labor and environmental practices and outsourced business. Edwards suggests that products contain labels with this information and that practices be highlighted on billing statements and websites.

In the case of Mexico, many American companies operating in Mexico already must adhere to the labor and environmental standards established in NAFTA. However, Mexican legislators and the Mexican private sector could see an attempt to modify the NAFTA provisions as a form of protectionism.

Brazil may oppose the "International Right to Know Policy" since it might be viewed as a form of protectionism. The Brazilian Foreign Affairs Ministry has opposed previous attempts from the US and other countries to create international labels with environmental and labor information on products. Since environmental and labor standards are often less ambitious in developing countries, Brazil fears that its exports could be harmed by the creation of international standards in those areas.

II. Senators Kerry and Edwards on Trade Issues

In the following chart, we review the positions and approaches of Senators Kerry and Edwards on several key trade-related issues.

Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
<p><i>Establishing a Vision for Latin America</i></p>	<ul style="list-style-type: none"> • Create a “Community of the Americas” in which he would: <ul style="list-style-type: none"> • Promote educational exchanges; • Reduce cost of remittances; • Create a social investment and development fund; • Create economic opportunities for the region’s poor; • Improve cross border transport; and • Form a “North American Security Perimeter”. • Promote initiatives to strengthen democracy, in which he would: <ul style="list-style-type: none"> • Establish a council for democracy; • Triple U.S. funds to the National Endowment for Democracy; • Maintain neutrality; • Support democratically elected leaders; • Support peaceful opposition; and • Work with U.S. allies. 	<ul style="list-style-type: none"> • Promote continued growth in the region by extending textile quotes in efforts to avoid the shift in trade from Central America and Mexico to China.
<p><i>Trade Negotiations and WTO Compliance</i></p>	<ul style="list-style-type: none"> • Enact a six-part plan to improve trade enforcement in the global economy and ensure a level playing field for U.S. businesses. The six parts would: <ul style="list-style-type: none"> • Use Section 301 of the 	<ul style="list-style-type: none"> • Demand that foreign countries abide by international trade commitments, such as those under the WTO, so that American workers and businesses profit from trade

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Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
	<p>Trade Act to demand the liberalization of key markets.</p> <ul style="list-style-type: none"> • Implement a 120-day “top-to-bottom” review of all existing free trade agreements. • Increase resources for trade enforcement and action at the WTO, by doubling the USTR’s trade enforcement budget. • Introduce structural reforms to enhance small business and high-tech trade enforcement capacity. • Take forceful efforts to stop illegal currency manipulation. • Strengthen workers’ rights and stamp out abusive child labor. • Ensure that American workers and businesses profit from trade agreements. • Eliminate Japanese non-tariff barriers on U.S. automobile exports. 	<p>agreements.</p> <ul style="list-style-type: none"> • Eliminate Chinese biotechnology regulations that have blocked U.S. soybean exports. • Demand that Mexico drop its 20 percent tax on soft drinks that has curtailed U.S. corn syrup exports.
<p><i>Strengthening Labor and Environmental Standards in Trade Agreements</i></p>	<ul style="list-style-type: none"> • Demand that existing and new free trade partners abide by strict labor and environmental commitments. • Investigate China’s repression of worker’s rights. • Review progress toward internationally recognized core labor rights. • Increase Funding for the Bureau of International Labor Affairs (ILAB) 	<ul style="list-style-type: none"> • Insist that all trade agreements incorporate the core labor standards outlined by the International Labor Organization, including the right to collective bargaining, prohibition on slave labor, minimum age requirements, and minimum wage standards. • Ensure the establishment of secure mechanisms to enforce

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Trade Related Campaign Issues	Senator John Kerry	Senator Edwards
	by 50 percent.	<p>these standards.</p> <ul style="list-style-type: none"> • Do not extend Chapter 11 of the NAFTA agreement to future trade agreements, in order to ensure that foreign investors cannot challenge U.S. environmental, health, and safety laws in closed hearings. • Increase the minimum wage. • Provide greater protection for unionization.

OUTLOOK

As Senators Kerry and Edwards strive to raise the profile of the Democratic ticket, they are expected to coordinate positions on several key issues, including international trade policy.

Kerry has focused his attention on labor and environment issues as core elements of his trade policy. These issues are of particular importance for trade agreements negotiated between the U.S. and its Latin American partners.

Many Latin American countries oppose strong labor and environmental provisions in trade agreements, arguing that trade negotiations are not the proper forum to deal with these issues. Many Latin American countries view US efforts to include stronger labor and environmental provisions as a way to protect U.S. domestic industries. Brazil and the rest of MERCOSUR have opposed the inclusion of strong labor and environmental provisions in the FTAA. Although Kerry and Edwards have taken hard stances on issues such as labor and environment, it is possible that they could moderate their positions if elected to office.

Though trade does not generally play a decisive role in U.S. presidential elections, greater emphasis has been placed on this issue during the 2004 campaign season, particularly as it relates to the U.S. economy and jobs. The outcome of the election, in turn, could have implications for how the administration negotiates pending trade agreements, such as CAFTA, and future trade agreements in the region.

United States Highlights

USTR Announces Hearing on China's WTO Compliance; Requests Comments

On July 29, 2004, the United States Trade Representative (USTR) announced in the Federal Register (69 FR 45369) that the Trade Policy Staff Committee (TPSC), an interagency body chaired by USTR, will hold a public hearing and seek comments to assist USTR in preparing its annual report to the U.S. Congress on China's compliance with its WTO commitments.

The hearing will take place on September 23, 2004. Comments are due by September 15, 2004.

Free Trade Agreements

CAFTA Countries Urge United States Congress to Consider FTA Implementing Legislation

SUMMARY

At events held in San Salvador and Washington D.C., U.S. and Central American legislators and diplomats discussed some of the most contentious topics of the Central American Free Trade Agreement (CAFTA). Among these topics, participants at the events debated:

Urgency of implementing CAFTA;

Labor standards in Central America;

Potential effects of CAFTA on sensitive sectors such as such as sugar and textiles;
and

Benefits that CAFTA would bring to the region and to the US.

Participants also commented on the prospects for congressional consideration of CAFTA, with all acknowledging that consideration is not likely before the end of the year.

ANALYSIS

On May 8, 2004, at an event sponsored by the Inter-American Dialogue and the Inter-American Development Bank in San Salvador, U.S. and Central American legislators met to discuss CAFTA. Participants included four U.S. Representatives, legislators from the region, business and labor leaders, trade negotiators and diplomats.

On July 20, 2004, the Cato Institute hosted another discussion on CAFTA, featuring Ambassadors Hugo Guiliani of the Dominican Republic, René León of El Salvador, Guillermo Castillo of Guatemala, and Mario Canahuati of Honduras.

CAFTA include Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. A separate Free Trade Agreement negotiated with the Dominican Republic will be attached to CAFTA for congressional consideration as a package.

At the abovementioned events discussion focused on the urgency of implementing CAFTA and on the labor debate. There was also concern among participants about other potential losers, such as sugar and textile interests.

I. CAFTA Officials Stress Importance of Implementing CAFTA Soon

Given the deadlock of FTAA negotiations, CAFTA is seen by Central American legislators and diplomats as the only alternative that the region has for expanding exports and

attracting more investment. Moreover, with the expiration of the Multifiber Agreement in 2005, Central American countries fear a big expansion of China's textile exports, which would pose a major threat to the region's textile and apparel sector.

CAFTA would provide preferential opportunities for Central American countries, that could help them weather competition from China. However, if CAFTA is not implemented soon, Central American authorities fear that many U.S. companies will direct their investments to China.

II. Labor Issues Pose Challenges to U.S. Congressional Approval

Labor standards within CAFTA have emerged as one of the most contentious aspects of the agreement. Many U.S. Members of Congress distrust the ability of Central American countries to comply with certain minimum labor standards, citing the region's inadequate labor laws and their poor enforcement. At the meeting in San Salvador, participants referred to a report issued by Human Rights Watch, dated December 2003, which found extensive labor abuses in El Salvador.

Many participants at the event in San Salvador criticized the current labor provisions of CAFTA, which only require countries to uphold their domestic labor laws. They contended that CAFTA should go beyond that, requiring countries to comply with the labor standards of the International Labor Organization (ILO).

At the Cato event, Central American officials defended the adequacy of their respective countries' labor laws, arguing that in certain aspects, such as maternity leave for example, they even go beyond the U.S. legislation. They argued that the region's labor laws comply with the ILO's core standards.

The Central American Ambassadors also advanced the argument that the development and prosperity that CAFTA would bring to the region would allow them to improve their institutional framework, promote labor reforms and improve the conditions and salaries of workers.

III. U.S. Sugar and Textile Industries Oppose CAFTA Provisions

Another central issue within CAFTA is concessions made by the U.S. that will likely result in greater sugar and textile imports from Central America. Producers from both sectors in the U.S. have argued that the US gave too much to the Central American countries. However, at both events, Central American leaders suggested that the concessions are minimal and pose no great threat to U.S. producers. Moreover, in the case of textiles and apparels, Central American leaders point to the fact that the region's industry is highly integrated. Nearly 90% of the inputs of the garments produced in Central America come from the United States.

IV. CAFTA Garners Broad U.S. Industry Support

Both events demonstrated general support among U.S. industries for quick adoption of CAFTA. El Salvador's President-elect, Antonio Saca, joined in supporting the agreement, touting the following potential benefits:

CAFTA will boost the region's economic output, allowing it to achieve greater political stability;

CAFTA will create economic opportunities in the region and in the United States. Saca cited a report by the American Farm Bureau Federation, which suggested that CAFTA has the potential to generate nearly USD 900 million annually in additional U.S. exports to the region.

At the Cato meeting, the region's ambassadors also highlighted the fact that, unlike the case of Asia, the products exported by Central American countries incorporate U.S. inputs. Therefore, they contend, an increase in Central American exports will also boost the U.S. economy.

OUTLOOK

Central American officials at both events acknowledged that congressional consideration of CAFTA is unlikely before the U.S. presidential election. Election year dynamics in the U.S. make consideration of the agreement politically difficult. The expected close contest between President Bush and Senator Kerry leave each party unwilling to expend much political capital for a free trade agreement.

Several Members of Congress, notably Representative Levin (D-Michigan) have suggested that without an improvement in CAFTA's labor provisions, the agreement will not gain congressional approval. Central American countries have recently suggested that they may consider strengthening their own national laws, but that enforcement provisions in CAFTA for labor issues would be unacceptable.

In contrast, Central American leaders have warned that any failure by the U.S. to approve the agreement prior to the end of 2005 would be viewed as a repudiation of U.S. efforts to bring stability and democratization to the region.

Free Trade Agreements Highlights

ITC to Hold Hearing on Potential Economy-wide and Selected Sectoral Effects of US-Bahrain FTA

On July 28, 2004, the International Trade Commission (ITC) announced in the Federal Register (69 FR 45077) that it had instituted investigation No. TA-2104-15, regarding the potential economywide and selected sectoral effects of the United States-Bahrain Free Trade Agreement (FTA). The investigation will assess the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors, including the impact on:

the gross domestic product;

exports and imports;

aggregate employment and employment opportunities;

the production, employment, and competitive positions of industries likely to be significantly affected by the agreement; and

the interests of U.S. consumers.

The ITC will also hold a public hearing on the investigation, that will take place on August 10, 2004.

The Trade Act of 2002 requires that the ITC submit its report to the President and the Congress within 90 days after the President enters into the agreement, which he can do 90 days after notifying Congress of his intent to do so. The President notified Congress of his intent on June 15, 2004, and expects to enter into the agreement sometime after September 15, 2004.

The US and Bahrain concluded the FTA on May 27, 2004. The FTA is viewed by the Bush Administration as part of a broader free trade strategy aimed at establishing the Middle East Free Trade Area (MEFTA) by 2013.

US-LATIN AMERICA

FTAA

Brazilian and U.S. Domestic Industries Create Challenges for FTAA Process

SUMMARY

On June 29, 2004, the Inter-American Development Bank (IDB) hosted an event on the political economy of protection and the Free Trade Area of the Americas (FTAA). Marcelo de Paiva Abreu, Expert of Integration and Trade, Special Initiative on Trade and Integration, IDB, discussed domestic sensitivities in Mercosur and the US that hinder FTAA progress.

ANALYSIS

Abreu underscored several obstacles to FTAA progress created by U.S. and Mercosur domestic industries. Although 34 countries participate in the FTAA negotiations, friction between the two “hemispheric heavyweights” (the US and Brazil) represents the greatest challenge to the FTAA process.

We highlight below Abreu’s comments on how Mercosur and U.S. domestic interests might create negotiating challenges for the FTAA.

Mercosur

The composition and economic behavior of Mercosur countries, especially Brazil, create inherent roadblocks to successful negotiations:

The Mercosur economies are relatively large compared to other Latin American economies. It is easier to negotiate with smaller economies.

Many countries have a tradition of high protectionism, especially in products such as coffee.

The economies are relatively closed, and resistant to further liberalization, which is especially true in Brazil. In comparison with other Latin American countries, Brazil underwent liberalization later than most of its counterparts. There is strong domestic resistance against further tariff reduction, especially in the context of the FTAA. Many people are suspicious of closer ties with the US.

The Mercosur countries have a smaller share of trade with the US compared to other Latin American countries, so the FTAA is not a key priority.

Protection in Mercosur is tariff-based, with a relatively high average tariff of 13 percent. The higher the tariff is, the more difficult it is to liberalize.

Mercosur is more efficient in agriculture compared to most of Latin America and the US. The region's efficiency in agriculture poses a threat to many U.S. agricultural sectors.

United States

The US also faces negotiating challenges due to special interests and its economic relationship with Mercosur.

Though the average U.S. tariff is low (less than five percent), many tariff "spikes" exist, some of which involve tariff rate quotas and specific duties on agricultural products (about 500 tariff lines).

Antidumping cases brought by the US have affected many Mercosur exports, such as steel.

U.S. agricultural support measures have directly and indirectly protected U.S. industry against significant Mercosur sectors, such as soybean and corn products.

The US has little experience negotiating with efficient agricultural producers; strong protectionist lobbies in the US will resist concessions.

OUTLOOK

Domestic pressures in both the US and Brazil complicate FTAA negotiations. FTAA negotiations would benefit from an agreement between the US and Brazil to negotiate certain sensitive issues within the WTO.

It will be difficult in this U.S. election year for the Bush administration to make significant concessions in agriculture, steel and other important issues for Mercosur in the FTAA negotiations. Powerful domestic lobbying groups would harshly criticize the Bush administration if it were to open the U.S. market to Brazilian and Argentine meats, poultry, steel, sugar, orange juice, etc.

Negotiators are not expected to begin serious negotiations until after the U.S. presidential election. Depending on which candidate assumes office, there could be some changes in U.S. trade policy and in the U.S. positions in the FTAA. (*Please see related report*).

Brazil also must grapple with protectionist sentiments and politically strong domestic constituencies. Brazil maintains relatively high import tariffs in certain areas, particularly on electronic goods (including computers) and other industrial goods.

Brazil is also very defensive in the services sector. Many, such as financial services and professional services, are protected under Brazilian law.

NAFTA

NAFTA Commission Approves Measures to Simplify Rules of Origin and Dispute Settlement Measures

SUMMARY

The North American Free Trade Commission held its annual meeting in San Antonio, Texas. The Commission approved a set of initiatives aimed to simplify NAFTA's rules of origin (ROO) and dispute settlement measures (DSM).

ANALYSIS

In July, the North American Free Trade Commission held its annual meeting in San Antonio Texas. The Commission approved a set of initiatives aimed to simplify NAFTA's rules of origin and the dispute settlement mechanism. Contrary to what analysts expected, neither Minister of Economy Fernando Canales nor Canadian Minister for International James Peterson was able to reach an agreement with Ambassador Robert Zoellick on pending trade disputes. The meeting focused only on reviewing the NAFTA Commission's achievements and its future challenges.

We highlight below the measures adopted by the NAFTA Commission:

I. Rules of Origin and MFN Tariffs

The trade Ministers agreed to:

- (i) Liberalize the rules of origin for a broad range of consumer and industrial products, affecting about US \$20 billion in trilateral trade. These changes are expected to enter into force on January 1, 2005, but still need Mexican Senate approval. The Commission also instructed the Working Group on Rules of Origin to continue its work to achieve liberalization of the rules of origin of several products, including: (i) motor vehicles and their parts; (ii) plastics and rubber; (iii) chemicals; (iv) copper, and (v) pharmaceuticals.
- (ii) Study most favored nation (MNF) tariffs to evaluate if harmonization could lead to lower transaction costs and more trade in the region.
- (iii) Instruct country officials to consult with their domestic industries to determine which products could benefit from reducing costs associated with rules of origin.

II. NAFTA Chapter 11

The trade Ministers agreed to simplify NAFTA's dispute settlement rules, including provisions covering disputes between investors and the three national governments. Mexico

agreed with Canada and the US to support open hearings for investor-state disputes. In addition, the three countries agreed to implement the same degree of disclosure of Chapter 11 to Chapter 20 dispute settlement provisions.

The Commission instructed country officials to continue reviewing the operation of the investment chapter.

III. Textile and Apparel Industry

The Commission discussed the anticipated liberalization of international textile and apparel trade in 2004. The Ministers agreed to increase trilateral cooperation and combat illegal shipments of textiles.

IV. Access to Medicines

The trade Ministers agreed to adopt new NAFTA provisions to improve access to medicines for poor and developing countries in compliance with the agreements reached at the World Trade Organization (WTO).

V. FTAA and the WTO

Trade Ministers reaffirmed their commitment to conclude the FTAA negotiations (without specifying a deadline) and to increase their efforts to support the WTO negotiations. The three countries made specific commitments to work with other WTO members to complete the frameworks on key issues, including agriculture, before the end of July.

OUTLOOK

The NAFTA Commission meeting comes at a moment of relatively low tension in the trilateral relationship. Even though several trade disputes between the United States and its two trading partners remain unresolved, there is a commitment to improve the agreement's rules in many areas.

Trade policy analysts conclude that Ministers are more focused on the future of the FTAA and the outcome of the WTO negotiations than trying to resolve the outstanding disputes. In addition, countries, in particular the United States, are diverting their attention towards national issues (i.e. U.S. presidential election) that require their full attention in the short term.

Border Governors Agree to Strengthen Trade Ties and North American Integration

SUMMARY

At the XXII Border Governors Conference, U.S. and Mexican Governors agreed to strengthen U.S.-Mexico trade and NAFTA institutions.

Border Governors recognized NAFTA's positive impact on trade, but also acknowledged that not all states have benefited equally from trade liberalization. In particular, Governors stressed the fact that NAFTA has done little to reduce illegal immigration from Mexico to the United States.

ANALYSIS

At the XXII Border Governors Conference, U.S. and Mexican Governors agreed to strengthen U.S.-Mexico trade and NAFTA institutions. The Border Governors Conference was originally launched in 1980 based on the premise that cooperation among U.S.-Mexico Border States was crucial to improve the border economy and resolve mutual problems.

The Border Governors discussed the benefits of the North American Free Trade Agreement (NAFTA) and its unfinished agenda in various areas. We summarize some of their conclusions below.

I. Governors Praise NAFTA; Note Failure to Eradicate Poverty and Immigration

U.S. and Mexican Governors provided a positive assessment of NAFTA's economic performance. Governors agreed that NAFTA has promoted export-led growth in the two North American economies. U.S. manufacturing output and U.S. employment soared dramatically after NAFTA entered into force. In addition, Mexican exports to the US have grown 242% in the past ten years and U.S. capital inflows into Mexico have reached an annual average of \$11 billion in the same period.

Nevertheless, NAFTA has failed to create a more balanced and integrated economy at the U.S.-Mexico border. According to Mexican and U.S. Governors, only the largest and richest Border States have benefited from NAFTA. In addition, the agreement has failed to spur economic development in Mexico's poorest regions, failing to curb Mexican immigration to the United States.

As a result, Border Governors agreed to strengthen NAFTA institutions to distribute more equally the benefits of the agreement in the U.S.-Mexico border region. In particular, they agreed to push for the inclusion of more border states within the North American Development Bank (NADB) scope in order to promote and finance further social and environmental projects along the border.

II. Governors Support Border Security and Demand Resolution of U.S.-Mexico Trade Disputes

U.S.-Mexico Border Governors agreed to strengthen their efforts to enhance trade and security at the U.S.-Mexico border. Their discussions focused on how to preserve the free flow of trade without endangering security, especially now with the full entry into force of the U.S. Bioterrorism Law.

Most Governors concluded that Mexico and the United States need to do a better job to resolve a number of pending bilateral trade issues (i.e. sugar and trucking) affecting them. U.S. Governors expressed their concern about Mexico's trade policies towards U.S. exports of meat and sugar, while Mexican Governors complained about the U.S. long list of requirements for Mexican trucks.

III. Governors Highlight Areas for Further North American Integration

U.S. and Mexican Border Governors agreed to increase North American integration in three main areas: energy resources, water management, and control of environmental damage. Most Governors expressed deep concerns regarding the lack of affordable energy projects and water resources.

In addition, Governors warned of possible negative effects on the border economies if countries do not act to stop the environmental damage along the U.S.-Mexico border.

OUTLOOK

The XXII Border Governors Conference evaluated NAFTA's ten-year performance, including the agreement's record on promoting trade, enhancing security, and reducing immigration. Through this initiative, Mexico and the United States expect to improve their strategic relationship and the prosperity of the border region.

Trade policy experts praised the conference for tackling key bilateral issues that need prompt resolution by the federal Governments.

A successful strategy to deepen NAFTA's integration into further areas will depend on the countries' ability to resolve current trade disputes in the short to medium term and to address other issues (i.e. illegal immigration to the United States) that will continue to affect the bilateral relationship. These issues tend to divert resources from initiatives intended to deepen integration. The resolution of trade disputes and immigration issues could free resources to focus on long-term integration initiatives.

EUROPEAN UNION

EU and MERCOSUR Suspend Second Consecutive FTA Negotiating Round; October 2004 Deadline in Jeopardy

SUMMARY

During the week of August 9, 2004, MERCOSUR and EU negotiators met in Brasilia in an attempt to move forward with negotiations on a EU-MERCOSUR Free Trade Agreement (FTA). The negotiations were scheduled to conclude on August 13, but were suspended on August 12 as a result of MERCOSUR's dissatisfaction with the EU's offer regarding agricultural market access, and the EU's dissatisfaction with MERCOSUR's offer regarding investment, government procurement, and services.

This is the second consecutive negotiating round that the EU and MERCOSUR have suspended, after the last negotiating round in Brussels in late July, and it jeopardizes the original October 2004 deadline for concluding negotiations.

MERCOSUR negotiators are now insisting that negotiations can only proceed after the new European Commission takes office in October. EU officials, however, argue that negotiators can conclude a full agreement by the original deadline.

ANALYSIS

I. MERCOSUR Wants More Ambitious EU Offer on Agricultural Market Access; Complains of EU's "Piecemeal Approach" to Negotiations

The most contentious issues in the negotiations concern agriculture.

After the meeting in Brasilia, MERCOSUR officials noted that the EU had offered to increase quotas for MERCOSUR beef exports. However, they stressed that the EU would have to make a broader proposal covering all agricultural products before MERCOSUR could present a better counter offer and move forward with the negotiations.

MERCOSUR officials also complained that the EU negotiators' lack of a clear methodology prevented the negotiating parties from reaching agreement on how to present the proposals to each other. In particular, they claimed EU officials are using "a piecemeal approach" and changing the structure of their offers at each meeting, which makes it difficult for MERCOSUR to evaluate the advantages and disadvantages of the proposed concessions.

Comments from the MERCOSUR negotiators suggest that the EU is not willing to present a "big picture" proposal. MERCOSUR officials argue that without knowing the EU offers for various products, it is impossible for MERCOSUR to make concessions in areas such as government procurement and services, for instance.

II. EU Disappointed with Suspension Of Negotiations; Regrets MERCOSUR Failed to Improve Government Procurement Offer

In previous negotiating rounds, the EU indicated that it was prepared to improve its offer regarding market access for agricultural products on the condition that MERCOSUR made further concessions on investment and government procurement and services. In services, the EU is particularly interested in MERCOSUR's telecommunications, financial, and maritime transportation services sectors.

After the negotiations in Brasilia were suspended, EU negotiators expressed disappointment. In particular, they regretted that MERCOSUR had not improved its offer regarding government procurement, despite claims by Brazil that it would do so.

EU officials also objected to MERCOSUR's complaint that the EU proposal was not broad enough, stating that MERCOSUR wanted to know "all the cards that the EU was holding", which was not the way to negotiate, in their view.

OUTLOOK

Prior to the meeting in Brasilia, parties had agreed to conclude the MERCOSUR-EU negotiations by October 2004.

The suspension of the negotiations in Brasilia jeopardizes the October deadline, as MERCOSUR negotiators noted for the first time that negotiations could be re-launched only **after** the new European Commission takes office.

The appointment of Peter Mandelson from the UK as new EU Trade Commissioner may have influenced MERCOSUR's decision to re-start negotiations only after the new Commission takes office. Mandelson has a reputation as a committed believer in free trade, particularly in the area of agriculture.¹

EU officials insist that the October deadline is still possible, even after the suspension of the Brasilia negotiations.

MERCOSUR and EU officials rejected suggestions by the press after the Brasilia meeting that the EU and MERCOSUR might only conclude a "lite FTAA", which would exclude controversial issues.

The next negotiating round will take place in September in Brussels.

¹ Mandelson was one of the key reform architects of the so-called "Third Way", which has also been described as "Thatcherism with A Human Face", and which recognizes the benefits of liberalization, free trade, free competition, and globalization, while trying to ensure that all citizens share in those benefits.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.

MULTILATERAL

WTO Members Relaunch Doha Round with “July Package” of Framework Agreements

SUMMARY

By their agreement on 31 July to adopt frameworks for further negotiations on agriculture, industrial products, services and trade facilitation, WTO Members have saved the Doha Round from a threatened collapse and the WTO itself from marginalization.

The subjects at issue were precisely the same as those which caused the *débat* of the Cancun Ministerial Conference in September 2003: the difference of the outcome reflects the intense diplomatic activity of recent months and a general recognition that the system could not afford and might not survive another such failure.

In themselves, the texts agreed on 31 July do not advance the liberalization of trade, nor do they guarantee eventual success; the real negotiation of binding commitments has yet to begin. But the objective was to avoid catastrophe and keep the negotiations alive, and that has been achieved. Though the meeting of the General Council was not convened at Ministerial level, some 25 Ministers in fact attended it and were heavily involved in the informal processes last week and into the weekend. An agreement would not have been achieved without their active involvement, even though all participants were anxious for a deal.

ANALYSIS

I. The General Council Decision

The outcome of the General Council meeting of 27 and 31 July was a Decision with four Annexes: Annex A on Agriculture; Annex B on Non-Agricultural Market Access; Annex C on Services; and Annex D on Trade Facilitation. The Decision itself is concerned mainly with development issues. But it also includes an agreement to prolong the negotiations beyond the original deadline of 1 January 2005, “leading to” the Sixth Ministerial Conference, which will take place in Hong Kong in December 2005. However, there is no suggestion that this is expected to be the conclusion of the Round, and it clearly will not be. The expiry of U.S. (trade promotion) negotiating authority in July 2007 remains the most likely deadline.

A. Development: Greater Emphasis on Technical Assistance and Flexibility For Small and Vulnerable Economies

The Decision largely reaffirms existing commitments to technical assistance and to the review of special and differential treatment provisions and of the implementation issues raised by developing countries. A reference to “the fuller integration of small, vulnerable economies into the multilateral trading system” which had been opposed by some developing countries as creating yet another category of claimants to preferential treatment, nevertheless survived into

the final text. It merely maintains a commitment in the Doha work programme and is therefore not new; but the controversy about it reflects the growing issue of “graduation” of the more advanced developing countries in the WTO system, where it is increasingly difficult to recognise or justify a monolithic group of developing countries. The “G-20” group of more advanced developing countries, for example, which negotiated very effectively on agriculture, is increasingly differentiated from the larger “G-90” group of smaller and poorer countries, and this seems likely to be a feature of WTO negotiations in future.

B. Cotton: Greater Attention, but Not on a Separate Track

The issue of the damaging effect on African producers of US and EU subsidies to cotton growers is also dealt with in the Decision, which confirms that it will be given priority, but not as a stand-alone issue, in the context of the agriculture negotiations. This represents a concession by the African countries which, with French support, had been pressing for a separate and early agreement on elimination of subsidies in the sector. Instead, the agriculture framework says that on cotton: “It will be addressed ambitiously, expeditiously, and specifically” in the context of agriculture negotiations. Members also agreed to set up a subcommittee on cotton that would report to the negotiating group on agriculture. The agreement incorporates a deal brokered between USTR Robert Zoellick and several West African countries days prior.

C. Services: Separate Paragraph and Date for Revised Offers Added

The Decision adopts the recommendations of the Services Council on the pursuit of the services negotiations (Annex C) but adds its own agreement that revised offers of commitments on services should be tabled by May 2005. The Services Council had been unable to agree on such a date and its recommendation had merely indicated that a date for the submission of revised offers “should be established as soon as feasible.” The change represents a small gain for those developed countries, in particular the EU, which are concerned at the lack of progress in the services negotiations. The US also played a role in gaining this concession as Ambassador Zoellick suggested the May date during high-level meetings in Geneva.

The need for progress in services talks was highlighted in a separate paragraph (“e”) of the Decision –a revision to the previous draft in which it was mentioned under “Other negotiating bodies.” A group of countries including developed and developing succeeded in their efforts to place greater attention to the issue.

D. Singapore Issues: All Dropped Except Trade Facilitation

Investment, Competition and Transparency in Government Procurement are dropped from the Doha work programme and in consequence “no work towards negotiations on any of those issues will take place within the WTO during the Doha Round.” This is less than the total exclusion of these subjects from the WTO itself which some developing countries had sought, but it is clear that no significant work on them will be done for many years. However, on Trade Facilitation, the fourth Singapore issue, the Council decided “by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D.”

E. Other Issues: Still Important, But Little Mention

The remainder of the Doha Agenda, which includes fundamentally important subjects such as antidumping and dispute settlement procedures (as well as certain intellectual property rights, environment, etc.), was not discussed at this meeting. The Decision simply reaffirms the existing mandates on them.

Members also agreed that the Decision and its Annexes may not be used in any dispute settlement proceedings or in interpreting the existing WTO Agreements.

II. The Agriculture Framework

As it has been since the start of the Round, agriculture was the critical issue at this meeting. Agreement on the agriculture framework in Annex A, which effectively guaranteed agreement overall, was achieved in protracted informal consultations at two levels.

First, Ministers Vaile of Australia, Amorim of Brazil, Lamy of the EU, Nath of India and Zoellick of the US, negotiating on the basis of the draft framework submitted by the Ambassador Groser of New Zealand, reached an agreement (last Thursday, July 29) providing sufficient political guidance to enable him to submit a revised text. (The contribution of Mr. Groser throughout the process has been crucially important.) The significance of this group, known as the Five Interested Parties, is that in addition to the two great powers it included representatives of the Group of 20 developing countries and of the Cairns Group of agricultural exporters. Their cooperation marked a striking diplomatic development from the acrimony of the Cancun Conference, where the emergence of the G20 was seen by the US and the EU as a divisive factor. Despite some resentment of the exclusive nature of the negotiations among the Five, notably on the part of Switzerland, Japan, and others of the Group of 10 countries with strong defensive interests which were not represented among the Five, it is clear that this process was an essential contribution, and that much of the credit for the success of the meeting must go to the Ministers involved.

Secondly, Mr. Groser's revised text was the subject of prolonged informal consultations among a much larger group in the "green room", which produced the final agreement.

We discuss below the most significant features of the agreement with regard to the "three pillars" of agriculture reform:

A. Export Competition: End Date on Subsidies, Disciplines on Other Programs

It is generally agreed that the framework achieves considerably more in the areas of export competition and domestic support than in promoting market access. The commitment to the elimination of all forms of export subsidies by a date to be agreed in the future is a major gain, made possible by the commitment of EU Commissioners Lamy and Fischler in the face of a strong rearguard action by France. In addition, the framework should secure big reductions in potentially trade-distorting programs including export credits, export credit guarantee and insurance programs and food aid, following concessions made by the US. There is also language

suggesting stronger disciplines on state trading enterprises (“STEs”), used by Canada and other countries. Only these concessions by the major powers made the deal possible.

B. Domestic Support: 20 Percent ‘Downpayment’ on Amber Box; Cap on Blue Box

1. Reduction in “Amber Box” Subsidies

The Decision provides for reduction of the overall level of trade-distorting domestic support based on a tiered formula. As part of the first installment of the overall reduction, Members have agreed to at least a 20 percent reduction in bound support limits falling under the “amber box” that will be applied in the first year and over the implementation period of the agreement. The amber box includes all domestic support measures, considered as distorting production and trade (with some exceptions) such as price support measures or subsidies directly linked to production quantities.

A recent WTO DSB ruling against U.S. cotton subsidies coupled with an expected WTO ruling against the EC’s sugar subsidies, should strengthen the negotiating leverage of the G-20 countries in further consolidating the language on subsidy reduction provided in the Decision.

2. New Definition for “Blue Box” Support

The US succeeded in obtaining the agreement of other WTO members to modify the definition of blue box support². This effort on the part of U.S. negotiators is seen as being geared towards allowing the inclusion within the blue box of counter-cyclical farm payments to U.S. farmers designed to compensate them in the event of a decline in international commodity prices. The Decision however, also provides that the criteria for defining blue box support will be subject to negotiation. This language survived in the text despite U.S. resistance, and at the insistence of Brazil and other countries. Consistent with US and EC positions, the Decision sets the ceiling for blue box support at 5 percent of a country’s average total value of agricultural production over a period to be established during negotiations. This level is similar to that suggested in the “Derbez texts” released in Cancun last September.

C. Market Access: Substantial Improvement in Tariff Reduction with Flexibility for Sensitive Products

The text is much less specific on steps towards the “substantial improvements” in market access called for by the Doha Declaration and seen by the US and others as the necessary counterpart to their own reforms. In particular, the framework provides for flexibility – meaning exemptions or smaller tariff reductions - in the treatment of an “appropriate number” of “sensitive products”, especially those of developing countries, but does not define them. Some fear that the exclusion of “sensitive” products like sugar, dairy, rice and cotton could greatly

² The blue box exempts countries from the general WTO rule that all agricultural subsidies linked to production must be reduced or kept within defined *de minimis* levels.

reduce the value of market access commitments and the willingness of developing countries to make their own contribution to liberalization.

The identification of Members' "sensitive" and "special" products and their treatment will be a major issue in the future negotiations, as will the terminal date for export subsidies and the precise formula for tariff reductions. Fulfillment of the promises on export subsidies and domestic support will only come as part of an acceptable overall agreement.

III. Non-Agricultural Market Access

A. Derbez Text Intact, But Much Left for Negotiation

Annex B, the "framework for establishing modalities" in NAMA, is the text produced at Cancun, known as the "Derbez" text, with the addition of a new first paragraph which lists the many issues on which additional negotiations will be needed before modalities can be agreed. It has been impossible since Cancun to develop or even negotiate on the Derbez text, with the result that the Chairman of the negotiating group, Ambassador Johanneson of Iceland, could only send forward the text as it stood, with a covering letter noting that it was not agreed and listing the major areas of disagreement. The result of the July Decision is that the essence of the Chairman's covering letter has been incorporated as the first paragraph of the text, which is now adopted as the framework for negotiations on tariffs and non-tariff barriers on industrial products.

The issues on which further negotiation is agreed to be necessary are the tariff-cutting formula, the treatment of unbound tariffs, flexibility for developing countries, whether all Members (meaning essentially the developing countries) should be expected to take part in sectoral negotiations aimed at tariff elimination, and preferences. These are very substantial issues covering most of the substance of the tariff negotiations, and it may be thought that the first paragraph therefore undermines most of the rest of the framework. But it was always obvious that these issues would have to be hammered out in further negotiations, and notwithstanding the first paragraph it is an important step forward to have adopted the framework.

B. Developing Country Flexibility; Tariff Erosion Concerns Persist

The text provides considerable flexibility for developed and least-developed countries. It is clear that for the least-developed little more will be required than additional tariff bindings at current levels; they will not be required to participate in the sectoral approach. The particular needs of countries which are dependent on preferences or on tariff revenues are also to be taken into consideration. (A number of countries, notably in the Caribbean, are more concerned about their potential loss of preferential margins, or "tariff erosion" than about new opportunities which may arise from liberalization.) The question arises whether so many special cases will leave scope for significant liberalization in those countries and sectors where tariffs are still a serious barrier to trade.

IV. Trade in Services

The recommendations of the Services Council on further negotiations in the sector, in Annex C, were disappointing in that they failed to establish dates for the next stages of the process – the submission of initial offers of commitments by countries which have not yet done so and for the subsequent submission of revised offers. Since the negotiation of improved schedules of commitments is a complex and time-consuming business, there is a danger of the services negotiations running out of time, even with the extended time-frame now available. For this reason the EU, US and others successfully pressed for agreement by the General Council on a date for submission of revised offers; the date of May 2005 was a compromise between the EU proposal of March 2005 and others who found it too early. (Reportedly, the US suggested the May 2005 date.)

It remains true that the recommendations on the services negotiations are full of exhortations and best efforts commitments, but short on substance. They cannot be made to move to the same rhythm as agriculture or NAMA negotiations if they are to produce worthwhile liberalization.

V. Trade Facilitation

The agreed modalities for negotiations on Trade Facilitation (Annex D) were adopted with minimal discussion in the Council or in the green room. The important elements of the text are the explicit commitment to negotiate, the maintenance of the subject within the single undertaking of the Doha Round and the avoidance of any implication that the results will not be subject to WTO dispute settlement procedures. Some developing countries had questioned whether trade facilitation rules should be legally-binding, but ultimately retracted their position. The next meeting of the Trade Negotiations Committee, probably in September, will establish a Negotiating Group, appoint its Chair and agree on a work plan.

On the other hand, the modalities provide very extensive flexibility for developing and least-developed countries. The extent and timing of their entering into commitments is to be related to their implementation capacities and least-developed countries will be required to undertake commitments only “to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.” It is also understood that developing and least-developed countries will not be required to implement commitments in cases where support and assistance for development of the necessary infrastructure is not forthcoming or where they continue to lack the necessary capacity.

These provisions, which were added to the final text at the insistence of several developing country groupings, imply a heavy commitment to technical and financial assistance. Moreover, they leave a great deal of room for subjective assessment of assistance rendered and of countries’ implementation capacity. The implication that trade facilitation is very burdensome is questionable. While it is true that effective customs and facilitation procedures entail costs, they should be measured against the much higher costs of inefficiency and delay in the movement of goods to market.

OUTLOOK

The success of this meeting is very largely due to the intensive consultations between Ministers in different groupings over the preceding months, and in Geneva the past week. Without the whole-hearted commitment of Commissioner Lamy and Ambassador Zoellick, and their collaboration with Ministers Amorim of Brazil and Nath of India, it is most unlikely that the agriculture framework could have been agreed. The contribution of the G-20 led by Mr. Amorim, which was so controversial in Cancun, was this time indispensable for agreement, and it symbolizes the arrival of a major and permanent new factor in WTO negotiations. Moreover, the re-emergence of the Cairns Group and active participation of Australia and Minister Vaile in Geneva also facilitated the outcome on agriculture.

Despite the general and justified satisfaction at the outcome, it has to be remembered that it brings the Round only to the mid-way stage which should have been reached at Cancun in September 2003. The “frameworks” for agriculture and NAMA have still to be converted into the more detailed “modalities” called for at Doha. It is to be hoped that governments will find a way to simplify or short-circuit the conversion process, now that they have demonstrated their common desire to bring the Round to a successful conclusion.

Reactions to the “historic” deal reached in Geneva, as Director-General Supachai calls it, has been positive among many countries and industries. Most WTO Members and their constituents realized months ago that without an agreement in July, the WTO as a negotiating forum and institution would have been marginalized. Soon afterwards, many applauded the deal and offered their commitment to getting the Doha Round “back on track.” Most also recognize that the task of translating the “frameworks” to binding agreements will be formidable, and much is at stake. At least, attention is now being refocused on the multilateral process – where liberalization really matters most, and to all nations.

* * *

USTR Officials Pleased WTO Round is “Back on Track”; Stress that Much Work Lies Ahead

SUMMARY

U.S. Trade Representative (USTR) officials at a public briefing expressed satisfaction towards the recent agreement by WTO Members on a “July package” of framework agreements. Members concluded the July package in a more positive environment than at last September’s Cancun Ministerial Conference. Ministers including USTR Robert Zoellick played a key role in Geneva the week prior, and also expended much effort in recent months to rally support for the “Doha Round.” Officials commented that while the recent agreement has been described as “historic” – much work will be necessary in order to realize the objectives in the framework agreements, and to conclude the Round.

ANALYSIS

I. Positive Change in Attitudes from Cancun

USTR officials at a public briefing on August 6 described the atmosphere in Geneva at the July General Council as far more cooperative than at the Cancun Ministerial Conference last September. Assistant USTR for WTO and Multilateral Affairs Dorothy Dwoskin commented that after the collapse of the Cancun meeting, the year started rather “glum” with little political will to move the Doha agenda forward. USTR Zoellick, however, did not want this year to be a lost one for the Round, which prompted him to send a letter in January to his colleagues and embark on a world tour in an effort to get the Round “back on track.” The US’s priority has been to refocus the agenda of the Round on market access for agriculture, goods and services, as well as rules on trade facilitation and development concerns.

With the restart of WTO negotiating bodies in late March, the Round has been helped along by momentum generated at key gatherings of ministers. Some of the more reticent WTO Members at Cancun, including the “G-20” led by Brazil and the African Caribbean Pacific (“ACP”) group of countries become more engaged and realized that their long-term interests lie in trade liberalization. She noted another difference from Cancun is that in Geneva, many more countries were participating at a “higher knowledge base” and with a greater “sense of ownership.” Members also appreciated US-EU leadership in recent months and their more flexible negotiating positions; especially the EU on the issue of agriculture (after an important letter sent in May).

Ambassador Zoellick and Commissioner Lamy, along with Ministers Vaile of Australia, Amorim of Brazil and Nath of India played key roles in the final stages of negotiations in Geneva in a grouping known as the “Five Interested Parties” (“FIPs”). Due to their efforts, they managed to reach the basis for a compromise on agriculture, among other issues, which helped pave the way for a final deal on July 31.

Dwoskin expressed some surprise over all the excitement generated by the “July package” since it basically represents an agreement to “return to the negotiating table” and would

require much work to realize the objectives. Nevertheless, she and other U.S. officials including Ambassador Zoellick have commented that the agreement is critical since a failure this time would have seriously set back the Round for quite some time, if not indefinitely.

II. July Framework Agreements “On Balance, A Good Package...”

USTR officials at the briefing including Assistant USTR for Industry, Market Access and Telecommunications Meredith Broadbent, Assistant USTR for Intergovernmental Affairs and Public Liaison Chris Padilla, Dwoskin and others described the July package of framework agreements as “on balance, a good package” to move the Round forward. They made the following comments:

Agriculture: Explained that the framework contains important commitments to eliminate or reduce overall levels of subsidies. The eventual elimination of export subsidies, reduction in the overall aggregate measure of support (“AMS”) levels and stronger disciplines on less-distorting “blue box” subsidies should benefit U.S. exports. As part of the exercise, negotiators have a better understanding of where their subsidy programs fit (*e.g.* in which colored box). The framework also accommodates sensitive products to some extent and will require substantial reductions in all import barriers.

Industrial market access/NAMA: Commented that Members accepted the “Derbez text” issued at Cancun, which should provide the basis for “robust” negotiations on tariff and non-tariff barriers (“NTBs”). Members will report progress on NTBs by the end of October.

Services: Remarked that more developing countries have been active in voicing support for liberalization. Some like India now recognize the importance of importance of the sector to their development, and supported greater attention to services talks. Members in the end agreed to a May 2005 date for revised market-access offers.

Trade facilitation/Singapore Issues: Expressed satisfaction with the launch of negotiations on trade facilitation. Noted that many developing countries also recognize that improving rules and procedures on customs would work to their benefit. Indicated, however, that it is unfortunate the work on transparency in government procurement will not proceed as part of the Doha work program; such work would have benefited many countries.

Ms. Dwoskin offered several lessons learned from the negotiations on the Round:

- (i) ***Education process*** – Need to continue reaching out to negotiating partners, and to ensure that countries understand the agreements and role of trade liberalization.

- (ii) **Large vs. smaller meetings** – Large Ministerial-level gatherings might not be as efficient or effective as smaller, more focused meetings like the July General Council. The recent Geneva meetings were positive and inclusive, including the participation of key Ministers (e.g. Rwanda representing the African Group; Tanzania the least-developed countries, et. al.)

In moving forward, USTR intends to solicit public comments for certain negotiations like trade facilitation. USTR also welcome industry support and input from the public as it defines its negotiating position.

III. Questions from Industry and NGO Participants

Several attendees asked questions about the Round, including on agriculture, industrial market access, environment, textiles and other issues. Officials provided the following responses:

Agriculture support levels lower? – Responded that although it appears total final bound AMS levels might be higher than before, all levels of support will be reduced. New limits and disciplines should be in place for blue box, product-specific subsidies, and other elements.

Conduct of environmental reviews? – Agreed that environmental assessment (of the effects on the Round) would be an important objective as negotiations proceed.

Role of FIPs/G20 groupings? – Noted that developing countries have become more unified and active in articulating their positions in the Round. Not sure if some groupings will become permanent; for example, FIPs was primarily constituted to reach a compromise on agriculture. Some like the Caribbean countries are engaged and seek to make their preference permanent, contrary to perception that they oppose liberalization due to preference erosion.

Improved textile market access? – Indicated that the US will encourage developing countries to lower barriers to textiles trade as part of NAMA negotiations.

Future work on industrial tariffs? – Explained that there is much work left to do to finalize the modalities (negotiating parameters) for NAMA negotiations. US favors a non-linear formula where high tariffs would be cut faster. USTR also seeks to advance work on rules of origin harmonization, and to minimize the list of sensitive products.

On a closing note, USTR responded to a question on next year's Congressional vote on whether the US should remain in the WTO (under Section 125 of the Uruguay Round

Agreements Act). Officials indicated it was far better to face the vote with the recent deal on the framework agreements, than not having them in place.

OUTLOOK

U.S. government and industry reactions to the conclusion of the July package have been positive, if not overly enthusiastic. Many industry associations have issued strong statements in support of the decision. Even at the briefing, no participant dismissed the frameworks or their importance. Nonetheless, many recognize that what was agreed in Geneva is rather modest, and therefore much work must be done by the next Ministerial Conference (in Hong Kong, December 2005) or more likely, beyond this date, in order to conclude the Round. Moreover, many are relieved that the Round has survived this critical test, and that the credibility of the WTO as an institution has not been damaged by yet another failure.

USTR officials underscored the change in attitudes among WTO Members since Cancun, and the more cooperative spirit evident during the Geneva meetings. Unlike at Cancun, there has been less questioning in recent months of the benefits of trade liberalization, and the role of the WTO in that process. It appears that many developing countries, from advanced economies like Brazil and India, to smaller and vulnerable economies in Africa and the Caribbean, now have a better understanding of the WTO process and realize the importance of liberalization to their development objectives. For instance, during the final week of negotiations, many were anxious about the possible opposition of the G-90 group of lesser-developed economies to a deal (given the G-90's concerns over lack of capacity and preference erosion). As a result, the final decision contains strong language on development concerns, including a deal reached with the US and West African countries on cotton, attention to technical cooperation on trade facilitation and other provisions.

Among the challenges facing the Round is the pending change in key personalities. Commissioner Lamy is scheduled to leave his position in October. Ambassador Zoellick might also face a transition, depending on various factors including the Presidential elections in November. US-EU leadership has been critical to the success of GATT/WTO negotiations, and was evident during the Zoellick-Lamy era, and especially in recent months. Whatever political events may arise, at least Zoellick and Lamy can depart with their legacies more intact, and on an upbeat note after their leading roles in recent months. It will be a challenge, to say the least, for all 147 Members to keep singing to the same tune and to finish the complex composition known as the Doha Development Agenda.

WTO Issues Final Ruling Regarding Dumping Determination on Softwood Lumber from Canada

SUMMARY

The WTO Appellate Body has ruled that the United States violated the WTO Anti-Dumping Agreement when it used the so-called "zeroing" methodology to determine dumping margins on Canadian softwood lumber.

There has been little doubt about the WTO-inconsistency of "zeroing" since the Appellate Body ruled against EC zeroing in the landmark 2001 *Bed Linen* case. Despite this, the United States has long argued that the *Bed Linen* decision did not apply to U.S. zeroing. Now, the Appellate Body has ruled definitively against U.S. zeroing as well.

Under the Anti-Dumping Agreement, a product is considered "dumped" when the home market price is lower than the export market price. This produces a so-called "positive dumping margin." However, when "zeroing" is used, investigating authorities do not give any credit for "negative dumping margins", i.e. when the home market price is higher than the export market price. Instead, the negative margins are considered to be zero. This means that a negative margin for one class of goods cannot be used to offset a positive margin for another class of goods.

As the Appellate Body stated in this case, zeroing "does not take into account the entirety of the prices of some export transactions" and "thus inflates the margin of dumping for the product as a whole." As a result, the importer must pay higher dumping duties than can be justified under the Agreement.

ANALYSIS

I. Background

This case - one of the myriad of WTO and NAFTA disputes over softwood lumber - arose from the imposition of anti-dumping duties on Canadian softwood lumber by the U.S. Department of Commerce in 2002. In this WTO case, Canada challenged a number of aspects of Commerce's determination, including the use of zeroing to determine the margin of dumping. In an April 2004 decision, a WTO Panel (albeit with one dissenting opinion) ruled in favor of Canada on the zeroing issue.

U.S. zeroing methodology: negative dumping margins fixed at zero

In the softwood lumber investigation, Commerce divided the product under investigation (i.e. lumber) into sub-groups of identical or similar product types, and calculated a weighted average normal value and a weighted average export price per unit. When the normal value per unit was greater than the export price, Commerce regarded the difference as the positive dumping margin. However, when the normal value was equal to or less than the export price, Commerce took the position that there was no dumping margin for that comparison.

Commerce then aggregated the results of those sub-group comparisons for which the normal value exceeded the export price. The results for the sub-groups in which the normal value was equal to or less than the export price were treated as zero for purposes of the aggregation. Commerce then divided the result of the aggregation by the value of *all* export transactions, including the value of export transactions in the sub-groups that were *excluded* from the aggregation, to establish an "overall margin of dumping."

II. Appellate Body decision

Establishing "comparable" export transactions

Article 2.4.2 of the Anti-Dumping Agreement provides that the existence of margins of dumping "shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions".

The United States argued that once "all comparable export transactions" had been taken into account at the sub-group level, the obligations of Article 2.4.2 were met, and that the requirement to consider "all comparable export transactions" did not extend to the aggregation stage. Similarly, the United States asserted that "margins of dumping" and "dumping" could be established at the sub-group level. The Appellate Body rejected the U.S. positions on these issues.

Dumping can exist only for the "product as a whole"

The Appellate Body reviewed the definition of "dumping" set out in the GATT and the Anti-Dumping Agreement, and stated that "dumping is defined in relation to a product as a whole", as defined by the investigating authority. It concluded that dumping "can therefore be found to exist only for the product under investigation as a whole, and cannot be found to exist only for a type, model, or category of that product."

The Appellate Body also affirmed its ruling *EC - Bed Linen* that dumping margins had to be established for the product under investigation as a whole. It reasoned that "[w]hile 'dumping' refers to the introduction of a product into the commerce of another country at less than its normal value, the term 'margin of dumping' refers to the magnitude of dumping. As with dumping, 'margins of dumping' can be found only for the product under investigation as a whole, and cannot be found to exist for a product type, model, or category of that product."

Zeroing "inflates the margin of dumping"

The Appellate Body recognized that an investigating authority could use multiple averaging to establish margins of dumping for a product under investigation. (Under "multiple averaging", an investigating authority divides the product under investigation into product types or models in order to calculate a normal value and an export price for transactions involving each such product type .) However, it stressed that the results of the multiple comparisons at the sub-group level were not the "margins of dumping" within the meaning of Article 2.4.2. Instead, such results reflected "only intermediate calculations made by an investigating authority in the

context of establishing margins of dumping for the product under investigation." It was only on the basis of aggregating *all* such intermediate values that an investigating authority could establish dumping margins for the product under investigation as a whole.

The Appellate Body made clear that its view that dumping and margins of dumping could only be established for the product as a whole was "in consonance with the need for consistent treatment of a product in an anti-dumping investigation." It said that once an investigating authority had defined the product under investigation, it had to treat that product as a whole for, among other things, the determination of the volume of dumped imports, the determination of injury, the causal link between the dumped imports and injury to the domestic industry, and calculation of the margin of dumping. The tribunal added that Article 2.4.2 contained no express language permitting an investigating authority to disregard the results of multiple comparisons at the aggregation stage.

The Appellate Body emphasized the following:

Zeroing means, *in effect*, that at least in the case of some export transactions, the export prices are treated as if they were less than what they actually are. Zeroing, therefore, does not take into account the *entirety* of the prices of *some* export transactions, namely, the prices of export transactions in those sub-groups in which the weighted average normal value is less than the weighted average export price. Zeroing thus inflates the margin of dumping for the product as a whole [original emphasis].

The Appellate Body rejected the U.S. position that the results of comparisons at the sub-group level constituted the margins of dumping. It also stated that the results of the comparisons in which the normal value was less than the export price could not be excluded in calculating a dumping margin for the product as a whole.

Therefore, the Appellate Body affirmed the Panel's finding that the use of zeroing violated U.S. obligations under Article 2.4.2 of the Agreement.

OUTLOOK

The WTO Appellate Body stated that it was not adjudicating the WTO-consistency of the U.S. zeroing methodology as such, but only as applied in the Canadian lumber investigation. The tribunal also indicated that Canada's challenge related only to the so-called "weighted-average-to-weighted-average" methodology (a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions), and so it did not consider the WTO-consistency of zeroing in the context of the other methodologies set out in the Agreement to determine dumping margins.

Although the WTO decision related only to U.S. zeroing as applied in the softwood lumber investigation, the report will have broad applicability, far beyond the particular facts of this case. Indeed, the Appellate Body's firm condemnation of zeroing will doubtless serve as a strong precedent in the ongoing EC challenge to U.S. zeroing both "as such" and as applied, and other potential challenges.