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Japan External Trade Organization  
**WTO AND REGIONAL TRADE AGREEMENTS**  
**Monthly Report**

*June 2004*



*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**

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#### **President Bush and Democratic Candidate John Kerry Address Trade Issues on the Campaign Trail**

Recent political rhetoric by the Democratic Party has linked the loss of more than 2 million U.S. jobs and current U.S. trade practices. Job creation and the health of the U.S. economy have occupied a prominent place in the campaign thus far, though detailed discussion of trade policy has been more limited.

Both President George W. Bush and Senator John Kerry (D-Massachusetts) face rising popular opposition to free trade and public outcry against the “export” of America. President Bush has maintained his public position in favor of free trade and the liberalization of markets around the world. Domestic pressures toward protectionist policies, however, challenge this agenda. Senator Kerry, who has previously supported trade agreements in the Senate, was critical of free trade policies during the Democratic primary as he faced the protectionist rhetoric of challenger Richard Gephardt (D-Missouri). Kerry has now focused his attention on labor and environment issues as core elements of his trade policy.

### **United States**

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#### **WTO Arbitration on Byrd Amendment Delayed; US Prepares to Award “Byrd” Money**

A World Trade Organization (WTO) arbitration panel has delayed its determination of the appropriate level of retaliation against the United States for failing to repeal the Continuing Dumping and Subsidies Offset Act (CDSOA) of 2000 (hereafter the “Byrd Amendment”). Expected on June 2, 2004, the panel decided to delay its findings and has instead posed additional questions to the parties. Responses and comments on the panel’s additional questions were due June 10. It remains unclear when the arbitrators will decide on the level of retaliation, if any.

Despite continued calls by the Bush Administration and a critical report issued by the Congressional Budget Office on the Byrd Amendment, the US Congress and particularly the Senate, remains committed to maintaining the Amendment.

Meanwhile, the United States is preparing to distribute funds collected under the Byrd Amendment for FY2004. The Bureau of Customs and Border Protection (CBP) has published a list of companies and trade groups eligible to collect money this year.

#### **House Approves FSC/ETI Repeal**

On June 17, 2004, the House of Representatives approved legislation that would repeal the Extraterritorial Income Act (ETI), and attempt to bring the US into compliance with a WTO ruling that declared ETI non-compliant with international trade law. The Senate approved its

version of the ETI repeal, the Jumpstart our Business Strength (JOBS) Act (S 1637) on May 11, 2004.

Differences between the House and Senate versions of the ETI repeal will now need to be resolved in a conference. Senator Grassley (R-Iowa), Chairman of the Senate Finance Committee, has predicted that the conference will prove difficult and could take until September to produce a compromise.

The full text of H.R. 4520 and other related materials are available at: <http://waysandmeans.house.gov/legis.asp?formmode=item&number=151>

## **US Highlights**

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We also want to alert you to the following developments:

- U.S. signs TIFA with Central Asian countries.
- USTR seeks comments on possible MRA with Norway, Iceland, and Liechtenstein.

## **Free Trade Agreements**

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### **USITC Hearing on US-Thailand FTA: Strong Support, But Some Industries Seek Exclusions**

On May 4, 2004, the US International Trade Commission (ITC) heard testimonies on the probable economic effects of a comprehensive free trade agreement (FTA) with Thailand. The ITC requested advice on the implications of eliminating U.S. tariffs for products from Thailand, including tariffs on certain agricultural products identified as import-sensitive in the Trade Promotion Authority (TPA) legislation. The ITC also considered testimonies by other industries including services and intellectual property.

While the majority of businesses associations and industry groups that testified advocated for a comprehensive FTA, representatives from the sugar and canned fruit industry sought exclusions from the U.S.-Thailand Free Trade Agreement. Some key issues raised during the testimony were regarding agriculture (e.g. sugar, beef, pork, dairy, oranges, canned fruit products, and asparagus), IPR, and services. The hearing will assist the ITC in determining the scope of the agreement and preparing its overall assessment of the FTAs, which is due within 90 days from the date the President signs the FTA.

### **Congressional Hearings Indicate Broad Support for Australia and Morocco FTAs**

On June 15 and 16, 2004, the Senate Finance and House Ways and Means committees respectively held hearings to examine the U.S.-Australia and U.S.-Morocco free trade agreements (FTAs). The hearings come as the Bush Administration prepares to submit to Congress implementing legislation for each agreement under the trade promotion authority provisions of the Trade Act of 2002.

Representatives from various trade groups and companies testifying at the hearings expressed support for the agreements, particularly with respect to the reduction in industrial tariffs. Some concerns over the agricultural aspects of the Australia agreement surfaced during the Senate hearing, while members of the Ways and Means committee focused on pharmaceutical issues, as well as labor standards. Members of Congress also asked questions about what precedents might be set for future agreements if the Australia and Morocco FTAs are ratified.

Leaders in both the House and Senate have expressed hope that Congress can complete work on the FTAs prior to summer recess scheduled to start in late July. Several committees have already scheduled "mock markups" of the Australia FTA for late June. The timing of the Morocco FTA is more uncertain, as the agreement was signed on June 15, 2004, leaving little time to draft and submit the implementing legislation.

### **US Signs FTAs With Central America and Morocco; Releases Final Texts**

We want to alert you to the following trade related developments:

- On May 28, 2004, United States Trade Representative (USTR) Robert Zoellick and Ministers of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua signed the U.S.-Central America Free Trade Agreement (CAFTA). USTR also released the final text of CAFTA, which is available at: <http://www.ustr.gov/new/fta/Cafta/final/index.htm>
- On June 15, 2004, USTR Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri signed the U.S.-Morocco FTA. USTR also released the final text of the FTA, which is available at: <http://www.ustr.gov/new/fta/Morocco/final/index.htm>

### **US Concludes FTA With Bahrain; President Notifies Congress of Administration's Intention to Enter into FTA**

On May 27, 2004 United States Trade Representative (USTR) Robert Zoellick and Bahraini Minister of Finance and National Economy Abdulla Hassan Saif announced that the United States and Bahrain had concluded negotiations on a U.S.-Bahrain Free Trade Agreement (FTA).

On June 15, 2004, President Bush officially notified Congress of the Administration's intent to enter into the agreement, and subsequently published that notice in the Federal Register on June 18, 2004 (69 FR 34045).

USTR now has to submit implementing legislation to Congress for approval. USTR has not yet indicated when it plans to do so.

### **Congressional Staff and Australian Embassy Official Offer Perspectives on Free Trade Agreement**

Women in International Trade (WIIT), a DC-based trade association, hosted on June 10, 2004 a panel discussion on the U.S.-Australia FTA featuring speakers from two congressional committees, and the Australian embassy. Speakers acknowledged concerns about the

agricultural provisions of the FTA, but spoke positively about the agreement and expressed optimism that Congress will pass the FTA.

## **Free Trade Agreements Highlights**

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We also want to alert you to the following developments:

- ITC releases report on potential economywide and selected sectoral effects U.S.-Australia FTA.
- U.S. and Panama conclude second round of FTA negotiations.
- USTR Zoellick visits Peru and Ecuador to discuss U.S.-Andean FTA negotiations.
- U.S.- Chile Free Trade Commission holds first meeting.

## **Customs**

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### **CBP Briefs COAC on Ongoing Programs as COAC Urges Development of Cost-Benefit Performance Measures**

The Department of Homeland Security's Advisory Committee on Commercial Operations (COAC) of the Bureau of Customs and Border Protection (CBP) met on June 18, 2004. The highlights of the meeting were:

- DHS Assistant Secretary Stewart Verdery opened the meeting by welcoming Joe McCallion Deputy Director, Division of Import Operations and Policy, Office of Regulatory Affairs with the Food and Drug Administration (FDA). At previous COAC meetings, members have requested the attendance of a high-level FDA representative to participate in discussions regarding the implementation of the Bioterrorism Act.
- COAC members repeated their call for CPB to quantify the effectiveness of Customs-Trade Partnership Against Terrorism (C-TPAT). COAC members suggested that CBP consider the cost to participants and the government, compared with security protections obtained from the program, and benefits for participating in the program. CBP responded by stating that they would provide an evaluation of the effectiveness of C-TPAT at the next COAC meeting.
- COAC members announced that the final COAC meeting of the year would take place on September 10, in Buffalo, NY. CBP officials may call an interim meeting in August to consider Member's comments on Maritime Transportation Security Act (MTSA) implementation issues.

The meeting also addressed other issues, such as (i) the effect of final elimination of textile quotas on CBP and the trade (ii) the International Trade Data System (ITDS), (iii) implementation of advance manifest reporting, and (iv) implementation of Maritime Transportation Security Act (MTSA) of 2002.

## **US-EU-Latin America**

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## **NAFTA**

### **Mexico and US Achieve Progress in Resolving Long-Standing Disputes on Telecoms, Trucking and Other Issues**

Earlier in June, the United States and Mexico made progress in resolving long-standing trade disputes involving telecommunications services, trucking, avocados and pork. After the release of a WTO Panel report in April that found Mexico as restricting access to its telecommunications market, Mexico decided not to appeal the decision and reached a settlement with the United States.

In addition, the U.S.- Supreme Court recently ruled in Mexico's favor on the NAFTA trucking dispute in deciding against the need for an environmental review. Progress in settlement of these two disputes and other trade irritants involving agriculture goods, has done much to decrease the tension in the bilateral relationship. Nevertheless, difficulties remain in the sweetener dispute (currently before the WTO) – and the trucking dispute remains problematic despite the Supreme Court ruling.

## **EU-Latin America Summit**

### **Countries Agree to Strengthen Economic Integration at Latin America and Caribbean-EU Summit; MERCOSUR and EU Exchange Offers and Reaffirm FTA Deadline**

We would like to alert you to the following trade developments that took place during the third Latin America and Caribbean-European Summit:

- The EU and Latin America agreed to deepen economic integration.
- MERCOSUR and the EU exchanged offers and confirmed the FTA deadline.
- The EU announced that it will require preliminary studies before launching FTA negotiations with Central America and the Andean countries.
- The EU reiterated its commitment to the EPA negotiations with the Caribbean countries.

## **Multilateral**

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### **Countries Agree to Third Round of Negotiations of the Global System of Trade Preferences (GSTP) at UNCTAD XI Conference, Experts Discuss Developing Countries' Positions at WTO**

From June 13 to 18, the United Nations Conference on Trade and Development (UNCTAD) XI meeting took place in São Paulo. The UNCTAD Conference meets every four years, with the aim to discuss trade issues including lowering barriers among developing countries, and their positions on WTO negotiations.



## REPORTS IN DETAIL

### SPECIAL REPORT

#### **President Bush and Democratic Candidate John Kerry Address Trade Issues on the Campaign Trail**

##### *SUMMARY*

Recent political rhetoric by the Democratic Party has linked the loss of more than 2 million U.S. jobs and current U.S. trade practices. Job creation and the health of the U.S. economy have occupied a prominent place in the campaign thus far, though detailed discussion of trade policy has been more limited.

Both President George W. Bush and Senator John Kerry (D-Massachusetts) face rising popular opposition to free trade and public outcry against the “export” of America. President Bush has maintained his public position in favor of free trade and the liberalization of markets around the world. Domestic pressures toward protectionist policies, however, challenge this agenda. Senator Kerry, who has previously supported trade agreements in the Senate, was critical of free trade policies during the Democratic primary as he faced the protectionist rhetoric of challenger Richard Gephardt (D-Missouri). Kerry has now focused his attention on labor and environment issues as core elements of his trade policy.

##### *ANALYSIS*

Though early in the campaign season, both President Bush and presumptive Democratic nominee Senator John Kerry have made trade and job creation focal points of speeches and campaign ads.

We review here the trade and trade-related policies articulated by the candidates thus far in the campaign:

<b>Trade Related Campaign Issues</b>	<b>Senator John Kerry</b>	<b>President George W. Bush</b>
<b><i>Reviving the U.S. Manufacturing Sector</i></b>	<ul style="list-style-type: none"> <li>• Remove corporate tax incentives for U.S. companies to move offshore.</li> <li>• Support the Crane-Rangel-Hollings legislation, which offers a corporate tax rate reduction to manufacturers who produce goods in the U.S.</li> <li>• Pass a jobs tax credit for manufacturing companies who create jobs above their 12-month employment average.</li> <li>• Oppose the Administration’s plan to cut the Manufacturing Extension Partnership (MEP) by 90 percent. Instead, double funding for the MEP and make it easier for small manufacturers to secure loans.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish an office of industry analysis to track to the impact of government policies on the manufacturing sector.</li> <li>• Organize an interagency Manufacturing Working Group, to implement recommendations of the National Association of Manufacturers (NAM) report on manufacturing.</li> <li>• Appoint an Assistant Secretary to focus on the needs of the manufacturing sector.</li> <li>• Extend funding to the Manufacturing Extension Partnership program (MEP). The administration announced that \$45.4 billion would be available in economic adjustment assistance from the Economic Development Administration (EDA) to the MEP program.</li> </ul>
<b><i>Increasing U.S. Global Competitiveness</i></b>	<ul style="list-style-type: none"> <li>• Offer Trade Adjustment Assistance for workers in transition, better secondary math and science instruction, and community-based grants to retrain workers.</li> <li>• Offer a “College Opportunity Tax Credit” and a tuition reimbursement program to ensure a college education for every American.</li> <li>• Implement a new economic agenda to create 10 million jobs in the first term as</li> </ul>	<ul style="list-style-type: none"> <li>• Expand Trade Adjustment Assistance to provide training and cash benefits for dislocated workers. Continue to include a health coverage tax credit of 65% in the program.</li> <li>• Strengthen skills through education. Extend the No Child Left Behind Act and encourage Americans to take advantage of the opportunities at U.S. community colleges.</li> </ul>

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	<p>president. The three-point agenda would:</p> <ul style="list-style-type: none"> <li>• Reform the international corporate tax code: A New Jobs Tax Credit would give companies that reinvest their earnings in America a one-year tax holiday.</li> <li>• Increase education and training for jobs in a changing economy.</li> <li>• Restore fiscal discipline and confidence in the American economy.</li> </ul>	<ul style="list-style-type: none"> <li>• Expand the Small Business Innovation Research Program, increase federal research and development grants to small manufacturers.</li> <li>• Commit \$23 billion for job training and employment assistance in 2005.</li> <li>• Allocate \$500 million for the “Jobs for the 21<sup>st</sup> Century” initiative to help prepare U.S. workers to take advantages of better skilled, higher-paying jobs in the future.</li> <li>• Open foreign markets to U.S. exports. Promote “Buy America.”</li> <li>• Encourage foreign-owned firms to set up operations in the U.S. to employ American workers.</li> <li>• Enact the “six-point-plan” to create jobs and eliminate obstacles to economic growth. The six points would: <ul style="list-style-type: none"> <li>• Make health care costs affordable.</li> <li>• Reduce the burden of torts legislation.</li> <li>• Ensure affordable and reliable supplies of energy.</li> <li>• Streamline regulations and reporting requirements.</li> <li>• Open markets for U.S. goods and services.</li> <li>• Make tax cuts permanent.</li> </ul> </li> </ul>
<p><b><i>China: The Value of the Yuan and WTO Obligations</i></b></p>	<ul style="list-style-type: none"> <li>• Punish countries, such as China, for keeping their currencies undervalued against the U.S. dollar.</li> </ul>	<ul style="list-style-type: none"> <li>• Pursue free and fair trade with China.</li> <li>• Enforce international trade</li> </ul>

	<p>the U.S. dollar.</p> <ul style="list-style-type: none"> <li>• The U.S. should file a formal complaint with the WTO against China’s currency regime.</li> <li>• Punish China for WTO non-compliance by using WTO remedies.</li> </ul>	<p>laws and eliminate unfair trade practices that are hurting U.S manufacturers, in particular China’s violation of intellectual property rights.</p>
<p><b><i>Trade Negotiations and WTO Compliance</i></b></p>	<ul style="list-style-type: none"> <li>• 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:</li> <li>• Use Section 301 of the Trade Act to demand the liberalization of key markets.</li> <li>• Implement a 120-day “top-to-bottom” review of all existing free trade agreements.</li> <li>• Increase resources for trade enforcement and action at the WTO, by doubling the USTR’s trade enforcement budget.</li> <li>• Introduce structural reforms to enhance small business and high-tech trade enforcement capacity.</li> <li>• Take forceful efforts to stop illegal currency manipulation.</li> <li>• Strengthen workers’ rights and stamp out abusive child labor.</li> <li>• Ensure that American workers and businesses profit from trade agreements.</li> <li>• Eliminate Japanese non-tariff barriers on U.S. automobile exports.</li> </ul>	<ul style="list-style-type: none"> <li>• Aggressively negotiate trade agreements that eliminate foreign tariffs and remove barriers that disadvantage American companies.</li> <li>• Build an Unfair Trade Task Force to analyze market trends and foreign government practices that hurt U.S. companies and U.S. job creation.</li> <li>• Launch the Trade Agreement Enforcement Unit in the Department of Commerce to track, identify, and target problems before American companies are injured.</li> <li>• Support trade promotion authority (fast track) for the president.</li> </ul>
<p><b><i>Strengthening Labor and Environmental Standards in Trade</i></b></p>	<ul style="list-style-type: none"> <li>• Demand that existing and new free trade partners abide by strict labor and environmental commitments.</li> </ul>	<ul style="list-style-type: none"> <li>• Link labor standards with future free trade agreements, such as CAFTA. Labor standards were included in</li> </ul>

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<i>Agreements</i>	commitments. <ul style="list-style-type: none"><li>• Investigate China’s repression of worker’s rights.</li><li>• Review progress toward internationally recognized core labor rights.</li><li>• Increase Funding for the Bureau of International Labor Affairs (ILAB) by 50 percent.</li></ul>	the U.S.-Jordan FTA.
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During his tenure in the Senate, Senator Kerry supported NAFTA, PNTR for China and the passage of trade promotion authority (TPA) in 2002.

***OUTLOOK***

Though President Bush and Senator Kerry diverge in their visions for spurring U.S. economic growth, both publicly support open trade and the “global economy.” Domestically-charged issues such as the decline of the manufacturing sector and the recent rise in outsourcing of services jobs will create challenges for Bush and Kerry as the campaign unfolds. Both must pay heed to special interests within their parties that harbor anti-trade tendencies.

Kerry will continue to highlight the loss of manufacturing jobs and the issue of outsourcing as examples of the Administration placing corporate and foreign policy interests above labor, environmental, and middle class interests. The Bush Administration will claim that external facets are responsible for the loss of U.S. competitiveness and insist that aggressive liberalization of markets will spur growth in the U.S. economy.

## **UNITED STATES**

### **WTO Arbitration on Byrd Amendment Delayed; US Prepares to Award “Byrd” Money**

#### *SUMMARY*

A World Trade Organization (WTO) arbitration panel has delayed its determination of the appropriate level of retaliation against the United States for failing to repeal the Continuing Dumping and Subsidies Offset Act (CDSOA) of 2000 (hereafter the “Byrd Amendment”). Expected on June 2, 2004, the panel decided to delay its findings and has instead posed additional questions to the parties. Responses and comments on the panel’s additional questions were due June 10. It remains unclear when the arbitrators will decide on the level of retaliation, if any.

Despite continued calls by the Bush Administration and a critical report issued by the Congressional Budget Office on the Byrd Amendment, the US Congress and particularly the Senate, remains committed to maintaining the Amendment.

Meanwhile, the United States is preparing to distribute funds collected under the Byrd Amendment for FY2004. The Bureau of Customs and Border Protection (CBP) has published a list of companies and trade groups eligible to collect money this year.

#### *ANALYSIS*

We review below current developments related to the Byrd Amendment at the WTO and in the United States:

#### **I. WTO Arbitration Panel Poses Additional Questions to Panel**

Originally scheduled to release its findings on June 2, 2004, the WTO arbitration panel considering the level of appropriate retaliation as a result of U.S. failure to repeal the Byrd Amendment has delayed issuing its ruling and instead issued additional questions to the parties. In January 2004, the European Union (EU), Japan, Brazil, Mexico, India, Chile and Canada requested the arbitration findings because of U.S. failure to repeal the Byrd Amendment, which was ruled illegal by the WTO Appellate Body in 2003.

The panel’s questions reveal its concern over methodologies for determining what harm, if any, the complaining countries have suffered as a result of the Byrd Amendment. Under CDSOA, the Bureau of Customs and Border Protection (CBP) is required to distribute duties collected from antidumping (AD) and countervailing (CVD) orders to the companies and groups bringing or supporting petitions for trade remedy actions. The complaining parties at the WTO are seeking to impose retaliation equal to the amount distributed by the CBP. The United States has argued that the distribution of monies collected from AD and CVD orders have no trade distorting effects and that the complaining parties are not entitled to impose any retaliation.

## **II. Congressional Budget Office Criticizes Byrd Amendment**

Responding to a request by Representative Bill Thomas (R-CA), Chairman of the House Ways and Means Committee, the Congressional Budget Office (CBO) issued a report on March 2, 2004, which was critical of the Byrd Amendment. The CBO report estimates that the Byrd Amendment will be expensive to maintain, at a cost of \$2.3 billion between 2005 and 2009, and an additional \$1.5 billion through 2014. The report is also critical of the Byrd Amendment because of the distortions it causes in the behavior of U.S. firms. The existence of the Byrd Amendment encourages U.S. firms to file AD and CVD cases because it could result in a financial benefit to the firm. This, according to CBO, results in inefficiencies in production because firms may be able to sustain uneconomic production because of the potential “subsidy” an AD or CVD order may provide.

Congressional reaction to the CBO report has been extremely sharp. Senators Mike Dewine (D-OH) and Robert Byrd (D-WVA) issued sharp rebukes, arguing that the CBO’s reports contained faulty assumptions and exaggerated the costs of the Byrd Amendment. On June 1, 2004, sixteen of the 29 members of the Senate Appropriations Committee sent a letter to the Chairman and ranking member of the Senate Subcommittee on Transportation/Treasury, warning against any attempt to repeal the Byrd Amendment in the FY2005 appropriations process. In his FY2005 budget (like in previous years), the President has called for a repeal of the Byrd Amendment – which has not gained much traction.

## **III. CBP Prepares to Distribute FY2004 AD and CVD Monies**

On June 2, 2004, CBP published in the Federal Register (FR) its annual notice regarding the Byrd Amendment (69 FR 31162). The notice lists the companies and trade groups that may be entitled to funds distributed by CBP from AD and CVD orders. The notice covers monies collected by CBP during the current (FY2004) fiscal year. Those groups claiming a disbursement under CDSOA must submit a written certification to CBP by August 2, 2004. CBP expects to distribute approximately \$700 million this year, up from \$550 billion in the past two years.

### ***OUTLOOK***

The WTO arbitration panel has yet to issue a new date for the release of its findings. Given that comments to the panel’s questions were due on June 10, 2004, it could be several weeks before the findings are released. Typically, an arbitration panel has 60-days to make a determination on retaliation. However, arbitration proceedings in this case, initiated on February 26, 2004, have already gone beyond 60-days provided in the Dispute Settlement Understanding (DSU). Once released, several complaining parties including the EU have threatened to pursue retaliation after they receive authorization.

There appears to be little prospect for the repeal of the Byrd Amendment in the near future. Senators have on two separate occasions this year issued letters expressing strong support for CDSOA. Far from considering its repeal, Congress has for the last two fiscal years included language in USTR’s appropriation bill that requires USTR to press for the recognition of the right to distribute AD and CVD monies without limitation. The United States made such a proposal in the WTO rules negotiating committee on April 27, 2004. Thus, the potential for

retaliation is strong given the imminent release of the findings this summer, and hostility in Congress towards the repeal of the measure anytime soon.



## House Approves FSC/ETI Repeal

### *SUMMARY*

On June 17, 2004, the House of Representatives approved legislation that would repeal the Extraterritorial Income Act (ETI), and attempt to bring the US into compliance with a WTO ruling that declared ETI non-compliant with international trade law. The Senate approved its version of the ETI repeal, the Jumpstart our Business Strength (JOBS) Act (S 1637) on May 11, 2004.

Differences between the House and Senate versions of the ETI repeal will now need to be resolved in a conference. Senator Grassley (R-Iowa), Chairman of the Senate Finance Committee, has predicted that the conference will prove difficult and could take until September to produce a compromise.

The full text of H.R. 4520 and other related materials are available at: <http://waysandmeans.house.gov/legis.asp?formmode=item&number=151>

### *ANALYSIS*

On June 17, 2004, the House of Representatives approved by 230-195 legislation that would repeal the Extraterritorial Income Exclusion Act (ETI), and attempt to bring the US into compliance with a WTO ruling that declared ETI non-compliant with international trade law. The American Job Creation Act (HR 4250) was rushed to the House floor after being approved by the Ways and Means Committee on June 14, 2004. The Senate approved its version of the ETI repeal, the Jumpstart our Business Strength (JOBS) Act (S 1637) on May 11, 2004.

Briefly summarized, H.R. 4250, the American Jobs Creation Act would:

- Amend the Internal Revenue Code to repeal the tax exclusion for extraterritorial income. Reduce corporate tax rates on domestic production activities income and on certain small businesses. Reform several international tax rules.
- Extend until 2008 provisions allowing expensing of small business assets and revises rules for the depreciation of certain leasehold improvements, restaurant property, aircraft, and bonus depreciation property.
- Revise tax rules for S corporations and rules relating to the foreign source income of U.S. businesses and individuals. Reduce the alternative minimum tax for certain corporations and farmers.
- Repeal excise tax reductions for certain alcohol fuel mixtures and allows the tax credit for alcohol products used as fuel to reduce excise tax liabilities. Add tax reporting requirements to regulate the payment of certain fuel excise taxes.
- Extend certain expiring tax credits (including the R&D tax credit) and deductions and authorities for the issuance of certain tax-exempt bonds.

- Set forth new restrictive rules relating to the tax treatment of expatriated individuals and inverted corporations. Add and increase penalties for abusive tax shelter activities. Revise tax rules for the treatment of certain transactions made primarily for the avoidance of U.S. taxation.
- Revise rules for the tax treatment of certain leases made with tax-exempt entities.
- Eliminate tobacco quota and price support programs and provide for transitional payments to tobacco quota holders and active producers of quota tobacco.

### ***OUTLOOK***

Differences between the House and Senate versions of the ETI repeal will now need to be resolved in a conference. Senator Grassley (R-Iowa), Chairman of the Senate Finance Committee, has predicted that the conference will prove difficult and could take until September to produce a compromise. Meanwhile, retaliatory tariffs imposed by the European Union continue to climb at a rate of 1% per month.

The full text of H.R. 4520 and other related materials are available at: <http://waysandmeans.house.gov/legis.asp?formmode=item&number=151>

## **U.S. Highlights**

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### **U.S. Signs TIFA With Central Asian Countries**

On June 1, 2004 the United States and the Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan signed a Trade and Investment Framework Agreement (TIFA). The TIFA creates a U.S.-Central Asia Council on Trade and Investment, which will facilitate cooperation and seek to enhance and liberalize trade and investment opportunities. The Council will consider a wide range of issues, including intellectual property, labor, environmental issues, and enhancing the participation of small- and medium-sized enterprises in trade and investment, among others.

TIFAs are bilateral agreements establishing a mechanism for consultations on trade and investment policy, thereby aiming to encourage the liberalization of trade and investment. They deal primarily with trade facilitation, tackling administrative and regulatory problems that can be an irritant to trade and investment. TIFAs are often used as a first step toward the negotiation of a Free Trade Agreement (FTA).

The U.S.-Central Asia TIFA complements ongoing efforts by Kazakhstan, Tajikistan, and Uzbekistan to join the WTO and enhance U.S. cooperation with Kyrgyzstan within the WTO.

### **USTR Seeks Comments on Possible MRA with Norway, Iceland, and Liechtenstein**

On June 16, 2004, the United States Trade Representative (USTR) published a notice in the Federal Register (69 FR 33691) announcing that the US is considering pursuing a mutual recognition agreement (MRA) on marine equipment with the European Free Trade Association (EFTA) countries that are a part of the European Economic Area (EEA)--i.e. Norway, Iceland, and Liechtenstein. The MRA would aim to (i) facilitate bilateral trade in marine equipment and (ii) promote closer regulatory cooperation between the US and the EEA EFTA states.

According to the FR notice, the agreement would parallel the MRA that the US and the European Union (EU) signed on February 27, 2004. Under the US-EU MRA, designated products that comply with US regulatory requirements may be sold in the EU without additional testing and visa versa. The US and the EU also agreed to cooperate on improving international regulations for marine equipment.

USTR is seeking comments on the desirability of MRA negotiations with the EEA EFTA states. Comments are due by July 16, 2004.

## Free Trade Agreements

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### USITC Hearing on US-Thailand FTA: Strong Support, But Some Industries Seek Exclusions

#### *SUMMARY*

On May 4, 2004, the US International Trade Commission (ITC) heard testimonies on the probable economic effects of a comprehensive free trade agreement (FTA) with Thailand. The ITC requested advice on the implications of eliminating U.S. tariffs for products from Thailand, including tariffs on certain agricultural products identified as import-sensitive in the Trade Promotion Authority (TPA) legislation. The ITC also considered testimonies by other industries including services and intellectual property.

While the majority of businesses associations and industry groups that testified advocated for a comprehensive FTA, representatives from the sugar and canned fruit industry sought exclusions from the U.S.-Thailand Free Trade Agreement. Some key issues raised during the testimony were regarding agriculture (e.g. sugar, beef, pork, dairy, oranges, canned fruit products, and asparagus), IPR, and services. The hearing will assist the ITC in determining the scope of the agreement and preparing its overall assessment of the FTAs, which is due within 90 days from the date the President signs the FTA.

#### *ANALYSIS*

We summarize below the testimony of key participants at the May 4 ITC hearing on the potential effects of the US-Thailand Free Trade Agreement.

#### **I. Proponents of a Comprehensive Free Trade Agreement**

##### **A. Business Associations Call for Comprehensive Agreement**

- US-ASEAN Business Council represents approximately 150 of America's 500 companies interested in doing business in the Association of Southeast Asian Nations (ASEAN). The organization supports a comprehensive, WTO consistent US-Thailand Free Trade Agreement that will sustain the current rules and regulations in the Treaty of Amity, and ensures that American citizens and companies can continue to enjoy the favorable investment environment currently in place in Thailand. An FTA can also expand on the Treaty of Amity by further liberalizing the sectors currently excluded from the Treaty such as agriculture, sugar, e-commerce, government procurement, IPR, pharmaceuticals, express delivery, and services.
- US-Thailand FTA Business Council was formed by the US business community to lobby for a comprehensive and meaningful agreement and to ensure that US business interests are well represented. The coalition, represented at the hearing by Federal Express, asserted that the negative effects of the reduction of U.S. tariffs on imports from Thailand would be negligible. The coalition emphasized the importance of including all sectors in the FTA, including sugar. It found the exclusion of sugar in the US-Australian FTA worrisome and endorses the

elimination of quotas on sugar and sugar containing products. The coalition identified possible benefits from the reduction of Thai tariffs in the agriculture, dairy, distilled spirits, and pork industries. They group also emphasized the importance of improving market access for services industries, and strengthening investment and intellectual property protection.

**B. Sweetener Users Concerned Over Implications of Excluding Sugar**

- Sweetener Users Association (SUA). SUA is an association of manufacturers of confectionery, grocery products, dairy foods, soft drinks and other products with caloric sweeteners, as well as trade associations that support a comprehensive FTA. Members believe that because Thailand's present share of the US TRQ appears inequitably small, the US should utilize transitional quotas that are substantially more liberal than CAFTA. Thomes Earley, representing SUA, discussed the benefits from enhanced sugar trade. He stated that agriculture, including sugar, is important to the Thai economy. Because Thailand maintains significant trade barriers in agriculture he encouraged the US to fully liberalize products in this sector. To exclude or minimize sugar, he argued, would be to encourage Thailand to maintain barriers to the detriment of other U.S. export commodities. Furthermore, Earley expressed the association's opinion that sugar protectionism has cost jobs since domestic prices are three times higher than the rest of the world thereby "hollowing out" the confectionary, beverage, and food industries.
- Grocery Manufacturers of America (GMA) GMA comprises of food, beverage, and consumer product companies that strongly support a comprehensive US-Thailand FTA. The group asserts that the FTA will lead to increased export opportunities, more choices for consumers, and improved cost savings for GMA's companies and consumers. According to Sarah Thorn, GMA's Senior Director for International Trade, an examination of the recently concluded Australia-Thailand agreement indicates that excluding sugar could have devastating consequences on key U.S. exports such as beef, pork, dairy, oranges, and asparagus. If the US were to exclude sugar, history suggests that the Thai negotiators would reciprocate by excluding one or more of these important categories or to limit commitments on other U.S. priorities such as intellectual property or investment protection, or service access. Thorn also addressed the U.S. sugar grower's concern regarding subsidies. She stated that U.S. sugar growers mistakenly assert that the import tariff is essentially their primary means of protection and therefore, should not be subject to negotiation in bilateral trade agreements. Thorn clarified by explaining that domestic support for sugar derives mostly from the price support loan program and the Administration has not proposed to make any changes in this loan program in any free trade agreements.

**C. Seafood Importer Calls for Tariff Reduction**

- Jana Brands: CEO and founder Jana Brands is the owner and operator of a U.S. importer of seafood products from Thailand. The company strongly supports a FTA that eliminates tariffs imposed on pouch tuna since it would benefit both countries through reduced costs to consumers and further export growth for the Thais. Brands testified that in recent months the disruption in the market caused by duty-free treatment on pouch tuna from Ecuador and other Andean countries authorized by the modifications made to the Andean Trade Partnership Act by the Trade Act of 2002 has given imports from these countries an unfair advantage against other countries like Thailand. Unless action is taken to level the competitive playing field by eliminating tariffs on pouch tuna, Brands warns that Thailand's share of the U.S. pouch tuna market will erode quickly as production continues to increase in Ecuador.

**D. Textiles, Apparel and Footwear Industry Calls for Tariff Reduction and Simplified Rules of Origin**

- United States Association of Importers and Textiles and Apparel (USITA) members include manufacturers, distributors, retailers, importers and related service providers, such as shipping lines and customs brokers. Member companies account for as much as \$100 billion in U.S. apparel sales annually and sourced from around the world. The group strongly supports a comprehensive and "worthwhile" agreement for companies. Since quotas are expected to be eliminated by the end of this year, there will be increased competition on a global scale. U.S. importing and retailing companies plan to make their sourcing decisions based on a number of criteria—including the price and ease of doing business. As a result, the group stressed the need for an FTA that offer tangible and relevant benefits such as 1) immediate elimination of tariffs on all consumer goods; 2) flexible rules of origin that are based upon commercial reality; 3) establishment of expedited and streamlined customs procedures and oversight that are not unduly burdensome; and 4) a single safeguard mechanism for all goods, rather than a separate and less transparent process for textiles and apparel.
- Footwear Distributors and Retailers of America (FDRA) accounts for about three-quarters of all footwear sold in the US. Members advocate for the elimination of all duties on all footwear without a phase-out period on the first day of implementation of a US-Thailand FTA. The group testified that eliminating duties on footwear imports in the US will not harm the tiny U.S. shoe manufacturing industry and will benefit consumers. In regards to rules of origin, the group opposes a value of domestic content rule and instead favors the more flexible "tariff shift" approach.

**II. Industries Seeking Exemptions in Negotiations**

**A. Sugar Producers Seek Another Exclusion in FTA Negotiations**

- American Sugar Alliance (ASA). ASA is an influential coalition of growers, processors, and refiners of sugar beets and sugarcane that opposes the inclusion of sugar in any bilateral or regional FTA. Spokesperson Jack Roney urged the government to protect American sugar producers by referring discussions on sugar

subsidies to the WTO. In addition, the coalition contends that an FTA that includes sugar would sharply depress prices in an already oversupplied domestic sugar market. Since Thailand produces more than twice as much sugar as CAFTA countries combined, and exports 2.5 times as much, the coalition fears that the FTA will destroy the domestic industry. As a result, the coalition urged that the government adopt the U.S.-Australia FTA framework, which excludes sugar—and not the approach taken in CAFTA, which includes minimal concessions on sugar.

**B. Peaches Seek Exclusion and More Strict Rules of Origin**

- California Cling Peach Board. The Board comprises of California peach growers and processors that seek an exemption from tariff reductions and the inclusion of a stricter rule of origin for canned fruit peaches. The group requested that in its report, the ITC recognize the U.S. cling peach industry's extreme sensitivity towards Thailand's peaches. The group explained that decades of competition from unfairly subsidized European Union (EU) canned peaches have caused serious injury to the domestic cling peach industry, leaving the industry highly vulnerable to imports from any source. The group recommended that U.S. duties on canned peaches, canned fruit mixtures, tropical fruit mixtures, and frozen peaches be exempt from tariff reductions. In addition, the group requested that the FTA agreement include a more specific rule of origin for canned fruit product. The group also contends that a majority of U.S. canned peach imports from Thailand are believed to be subsidized Greek canned peaches that are being exported to Thailand and repackaged for export to the United States.

***OUTLOOK***

Despite the clear support of major business group and industries at the hearing, the prospect for the conclusion of a comprehensive US-Thailand Free Trade Agreement remains uncertain. U.S. sugar producers in particular are effective organizers that carry tremendous political clout. The influence that the American Sugar Alliance wields in trade politics, including with both political parties, should not be underestimated. In the past, the ASA and its allies have been highly successful in making their complaints about the effects of imports heard and addressed than the sugar users and business associations, despite the imbalance in economic importance. Without a doubt, ASA will launch a major effort to exclude sugar from the FTA. As a result, other sectors might suffer as Thailand (like Australia) will exclude important sectors or issues in the course of negotiations.

Among other controversial issues in the FTA, Democrats in Congress are seeking stronger labor and environmental provisions, and exclusions for certain sectors including the light-truck industry (due to labor pressure). Moreover, if presidential candidate Senator John Kerry wins the election, he is expected to scrutinize trade negotiations more closely than the Bush Administration despite his pro-trade background.

## **Congressional Hearings Indicate Broad Support for Australia and Morocco FTAs**

### ***SUMMARY***

On June 15 and 16, 2004, the Senate Finance and House Ways and Means committees respectively held hearings to examine the U.S.-Australia and U.S.-Morocco free trade agreements (FTAs). The hearings come as the Bush Administration prepares to submit to Congress implementing legislation for each agreement under the trade promotion authority provisions of the Trade Act of 2002.

Representatives from various trade groups and companies testifying at the hearings expressed support for the agreements, particularly with respect to the reduction in industrial tariffs. Some concerns over the agricultural aspects of the Australia agreement surfaced during the Senate hearing, while members of the Ways and Means committee focused on pharmaceutical issues, as well as labor standards. Members of Congress also asked questions about what precedents might be set for future agreements if the Australia and Morocco FTAs are ratified.

Leaders in both the House and Senate have expressed hope that Congress can complete work on the FTAs prior to summer recess scheduled to start in late July. Several committees have already scheduled “mock markups” of the Australia FTA for late June. The timing of the Morocco FTA is more uncertain, as the agreement was signed on June 15, 2004, leaving little time to draft and submit the implementing legislation.

### ***ANALYSIS***

We review here the major issues and developments arising from the House and Senate hearings on the U.S.-Australia and U.S.-Morocco FTAs:

#### **I. USTR Witnesses Outline Australia and Morocco FTAs**

At both the Senate and House hearings, Ambassador Josette Sheeran Shiner, Deputy U.S. Trade Representative and Ambassador Allen Johnson, Chief Agricultural Negotiator, testified on the U.S.-Australia FTA. At the Senate hearing, Peter F. Allgeier, Deputy U.S. Trade Representative, offered comments on the U.S.-Morocco FTA.

##### **A. U.S.-Australia FTA**

Ambassador Shiner termed the U.S.-Australia agreement “historic” in that it furthers a partnership with one of the closest allies of the US and a country that shares many common values and principles with the US. Shiner highlighted the already strong trading relationship between the two countries, with good and services trade close to \$29 billion. She also identified what she viewed as the most important aspects of the agreement, including:

- increased market access for the U.S. manufacturing sector
- the elimination of duties on all U.S. farm exports;



- the establishment of a special committee to address sanitary and phytosanitary issues (SPS);
- increased market access for U.S. services industries;
- improved transparency and regulatory procedures in the pharmaceutical industry;
- state-of-the-art intellectual property protection;
- the opening of Australia's government procurement market; and
- high labor and environmental standards.

Ambassador Johnson echoed Ambassador Shiner's general comments and specifically addressed the agricultural provisions in the agreement. He highlighted the resolution of many SPS issues, which has improved market access for U.S. producers, particularly in the pork and grape industries. On beef and dairy, Ambassador Johnson stated that the USTR dealt sensitively with these industries' concerns and negotiated manageable phase-out periods and tariff-rate quotas.

## **B. U.S.-Morocco FTA**

Ambassador Allgeier emphasized the importance of the U.S.-Morocco FTA to the Administration's larger agenda in Africa and the Middle East. He suggested that trade liberalization and market reform embodied in trade agreements will help bring sustained economic growth to the region. Ambassador Allgeier highlighted the benefits that the U.S.-Morocco FTA will bestow on the US, including:

- a reduction of tariffs on U.S. products from their current average rate of 20 percent;
- increased market access in services sectors;
- improved intellectual property protection;
- increased transparency and equity in government procurement procedures;
- high labor and environmental standards, around which Morocco has already made significant improvements; and
- improved protections for U.S. investors.

## **II. Senator Baucus Expresses Support for Australia FTA**

Perhaps the most significant development arising from the June 15, 2004 Senate Finance hearing was Senator Baucus's (D-Montana) expression of support for the Australia FTA. Despite the sensitivity of the beef and cattle industry of his home state, Senator Baucus praised the beef safeguards contained in the Australia FTA, which during the first 18 years of

the agreement will allow the US to impose restrictions on beef imports in the event of a surge of exports from Australia. After the 18-year transitional period, the US will be able to rely on a priced-based safeguard to protect the beef industry.

In his prepared remarks, Senator Baucus stated that the Australia FTA would benefit the US, particularly the manufacturing sector, which stands to gain an additional \$2 billion in exports as a result of the agreement. Senator Baucus urged the US Trade Representative to continue to press for the inclusion of labor and environment provisions in other FTAs, and suggested that agricultural market access needs to be a top priority in both bilateral and multilateral trade talks.

### **III. Senators Focus on Agricultural Issues**

During the Senate Finance hearing, members primarily targeted the agricultural provisions negotiated in the agreements, particularly in the U.S.-Australia FTA. Though government witnesses argued that the negotiations made great strides in supporting U.S. dairy and beef interests through out-of-quota tariffs and tariff-rate quotas, members questioned the extent of this protection. Many expressed strong disappointment at the exclusion of sugar from tariff reductions.

In particular, Senator Olympia Snowe (R-Maine) raised concern over the long phase-out periods for tariffs on imported beef in the U.S.-Australia FTA. She also took issue with the phase out periods for lumber and wood products in the Morocco FTA, of particular concern in her home state of Maine. In addition, Senator Russ Feingold (D-Wisconsin) commented that the agreement does little to protect his state's dairy industry from Australian cheese and milk protein concentrate. He called the agreement "flawed."

### **VI. House Members Raise Pharmaceutical Issues, Labor Standards**

Though the exclusion of sugar also sparked sharp commentary from many House members, the more prominent targets of their questioning related to pharmaceutical issues and the language of labor laws included in the U.S.-Australia FTA.

With respect to pharmaceuticals, many Republican members, led by Representative Nancy Johnson (R-Connecticut), criticized Australia's pharmaceutical pricing system. She questioned whether the agreement includes provisions sufficient to protect the innovation of the U.S. pharmaceutical industry. Members expressed concern that countries such as Australia could reap the benefit of new medicines and drugs at the expense of U.S. companies that fund the research and development.

The labor provisions in the Australia FTA were the major point of contention for Democratic members. Most questions and comments reflected concern that the language of the labor provisions—which allows standards to be enforced according to national laws—sets a dangerous precedent for future negotiations. Though the language should not pose a particular problem with Australia, where standards are high, it could become an issue in negotiations with future partners, such as the Central American countries.

## **V. Private Sector Supports FTAs**

Both the Senate Finance and House Ways and Means committees heard testimony from a wide array of U.S. businesses. Support for the Australia FTA was overwhelming, with most companies predicting substantial gains from the agreement. Representatives from prominent associations such as the U.S. Chamber of Commerce, the Business Round Table (BRT) and the National Association of Manufacturers (NAM) testified.

Dr. David Sundin, President and CEO of DSI Fluids, in his testimony to the House Ways and Means Committee on behalf of the U.S. Chamber of Commerce, expects that in 2004, 5% of his company's gross sales will result from exports with Australia, a figure likely to increase with the elimination of tariffs.

Similarly, Harold McGraw II, President and CEO of The McGraw-Hill Companies and Chairman of the International Trade and Investment Task Force for the BRT, called the U.S.-Australia FTA a "solid win" for America.

The only business representative to refrain from offering public support was George Franklin of Kellogg Company, on behalf of the Grocery Manufacturers of America. Franklin did not oppose the agreement, but could not actively support the Australia FTA due to the sugar exclusion, which significantly increases production costs for many U.S. grocery manufacturers. By way of example, he explained how a Lifesaver plant recently moved operations from the US to Canada as a result of exorbitant sugar prices.

### ***OUTLOOK***

The Senate Finance and House Ways and Means hearings, as expected, reflected overwhelming support for the U.S.-Australia and U.S.-Morocco FTAs. Baucus announced his support for the Australia agreement during the Senate Finance hearing, which will strengthen chances of congressional passage.

Moving the FTAs forward requires the submission of implementing legislation to Congress. Though no formal schedule for the consideration of the legislation has been set, Senator Grassley has indicated that Australia FTA implementing legislation could be ready before the end of June. Following the informal submission of the legislation, the relevant Congressional committees will hold "mock markups" for the bills. Under the Trade Promotion Authority (TPA) provisions of the Trade Act of 2002, Congress is not permitted to amend FTA implementing legislation once it is formally submitted to Congress. These "mock markups" give members of Congress an informal opportunity to seek changes to FTA implementing legislation.

After these mock markups, the President can re-submit the legislation with changes for final consideration. Congress then has 90 days to consider the legislation and cannot amend it.

USTR has expressed its desire to have the U.S.-Australia and U.S.-Morocco FTA considered by Congress prior to the summer recess, which will begin in late July.

## **US Signs FTAs With Central America and Morocco; Releases Final Texts**

### *SUMMARY*

We want to alert you to the following trade related developments:

- On May 28, 2004, United States Trade Representative (USTR) Robert Zoellick and Ministers of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua signed the U.S.-Central America Free Trade Agreement (CAFTA). USTR also released the final text of CAFTA, which is available at: <http://www.ustr.gov/new/fta/Cafta/final/index.htm>
- On June 15, 2004, USTR Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri signed the U.S.-Morocco FTA. USTR also released the final text of the FTA, which is available at: <http://www.ustr.gov/new/fta/Morocco/final/index.htm>

### *ANALYSIS*

#### **I. U.S. and Central America Sign FTA**

On May 28, 2004, United States Trade Representative (USTR) Robert Zoellick and Ministers of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua signed the U.S.-Central America Free Trade Agreement (CAFTA) in Washington, DC. The Dominican Republic, which will be "docked" into CAFTA, was present as an observer at the signing ceremony.

The US concluded negotiations with El Salvador, Guatemala, Honduras, and Nicaragua on December 17, 2003, and with Costa Rica on January 25, 2004. Upon entry into force, the agreement will eliminate tariffs on more than 80 percent of US exports of consumer and industrial products, and phase out remaining tariffs over 10 years.

USTR also released the final text of the agreement. The full text is available at: <http://www.ustr.gov/new/fta/Cafta/final/index.htm>

#### **II. U.S. and Morocco Sign FTA**

On June 15, 2004, Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri signed the U.S.-Morocco FTA in Washington, DC. Upon entry into force, the FTA will eliminate tariffs on 95 percent of bilateral trade in consumer and industrial products, and phase out remaining tariffs over 9 years.

The United States and Morocco concluded the FTA on March 2, 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.

USTR also released the final text of the agreement. The full text is available at: <http://www.ustr.gov/new/fta/Morocco/final/index.htm>

## ***OUTLOOK***

USTR now has to submit implementing legislation for both FTAs to Congress for approval. Once submitted, Congress will have 90 days to approve or reject the agreements.

USTR has announced that it plans to submit a single legislative package for CAFTA and the Dominican Republic. The Administration has yet to announce a signing date for agreement with the Dominican Republic, and under the Trade Act of 2002 implementing legislation cannot be sent to Congress until an agreement is signed.

It is unlikely that CAFTA will be passed before the end of 2004. Sensitive constituencies, such as textile workers, sugar producers, and labor unions oppose the agreement. This coupled with election year politics has resulted in officials in the Administration and in Congress acknowledging that passage of CAFTA prior to 2005 is unlikely.

USTR has expressed a desire to have Congress consider the U.S.-Morocco FTA prior to the Congressional summer recess in August (Please see related report this edition).

## **US Concludes FTA With Bahrain; President Notifies Congress of Administration's Intention to Enter into FTA**

### ***SUMMARY***

On May 27, 2004 United States Trade Representative (USTR) Robert Zoellick and Bahraini Minister of Finance and National Economy Abdulla Hassan Saif announced that the United States and Bahrain had concluded negotiations on a U.S.-Bahrain Free Trade Agreement (FTA).

On June 15, 2004, President Bush officially notified Congress of the Administration's intent to enter into the agreement, and subsequently published that notice in the Federal Register on June 18, 2004 (69 FR 34045).

USTR now has to submit implementing legislation to Congress for approval. USTR has not yet indicated when it plans to do so.

### ***ANALYSIS***

#### **I. US Concludes FTA With Bahrain**

On May 27, 2004 United States Trade Representative (USTR) Robert Zoellick and Bahraini Minister of Finance and National Economy Abdulla Hassan Saif announced that the United States and Bahrain had concluded negotiations on a U.S.-Bahrain Free Trade Agreement (FTA). The US and Bahrain first announced their intention to negotiate an FTA on May 21, 2003, and launched negotiations on January 26, 2004.

After Israel (1985), Jordan (2000), and Morocco (2004), Bahrain is the fourth Middle Eastern country to have concluded an FTA with the U.S. 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.

The FTA contains the following important chapters, among others:

- Market access for U.S. consumer, industrial and agricultural products;
- Market access for services, in particular for the U.S. banks, insurance, securities and telecommunications services;
- E-commerce;
- Protection and enforcement of Intellectual Property Rights (IPR);
- Sanitary and Phytosanitary (SPS) measures;
- Government procurement;
- Customs procedures;
- Labor and environmental standards;

- Transparency.

## **II. President Notifies Congress of Administration's Intention to Enter into FTA**

On June 15, 2004, President Bush officially notified Congress of the Administration's intent to enter into a Free Trade Agreement (FTA) with Bahrain, and subsequently published that notice in the Federal Register on June 18, 2004 (69 FR 34045). The notification is required under the Trade Act of 2002 (Trade Promotion Authority).

### ***OUTLOOK***

USTR now has to submit implementing legislation to Congress for approval. USTR has not yet indicated when it plans to do so.

## Congressional Staff and Australian Embassy Official Offer Perspectives on Free Trade Agreement

### SUMMARY

Women in International Trade (WIIT), a DC-based trade association, hosted on June 10, 2004 a panel discussion on the U.S.-Australia FTA featuring speakers from two congressional committees, and the Australian embassy. Speakers acknowledged concerns about the agricultural provisions of the FTA, but spoke positively about the agreement and expressed optimism that Congress will pass the FTA.

### ANALYSIS

The U.S. House of Representatives Ways and Means Committee and the U.S. Senate Finance Committee are scheduled to hear testimony on the U.S.-Australia FTA on Tuesday, June 15 and Wednesday, June 16, 2004 respectively. In anticipation of these hearings, WIIT hosted a panel discussion to address issues arising from the FTA.

Panelists in the roundtable discussion included:

- Stephanie Lester, Professional Staff Member for the House of Representatives Ways and Means Committee;
- John Gilliland, Trade Counsel for the Minority Staff on the Senate Finance Committee; and
- Adam McCarthy, Commercial Counselor from the Embassy of Australia.

#### I. House Staffer Describes FTA as “High Water Mark for Trade”

**Stephanie Lester**, Professional Staff Member for the House of Representatives Ways and Means Committee, opened the roundtable discussion with a brief summary of the agreement, describing the negotiations in each sector. She also speculated on the possible timeline for passage through the House of Representatives.

Lester highlighted the main components of the agreement and implications for the respective sectors:

- **Manufacturing:** More than 99 percent of U.S. manufactured exports to Australia will become duty-free immediately upon entry into force of the agreement. The National Association of Manufacturers (NAM) estimates that the elimination of tariffs could result in \$2 billion per year in increased U.S. exports of manufactured goods.
- **Services and Investment:** Australia will accord significant market access across its services regime, particularly in the telecommunications, express delivery, auto visual, and computer related sectors. The Australian Foreign Investment Review Boards would exempt 90 percent of U.S. investments into Australia from screening.



- **Pharmaceuticals:** Negotiations in the pharmaceutical sector made strides to increase transparency in the sector and promote research and development. The agreement will not affect drug pricing.
- **Government Procurement:** U.S. suppliers gain non-discriminatory rights to bid on Australian government contracts.
- **Labor and Environment:** The agreement includes labor and environmental standards modeled after the Chile and Singapore agreements.

Lester concluded her remarks with a brief discussion of the timeline of the agreement in Congress. With bipartisan support, she expects that the agreement will pass through both houses. She commented that the U.S.-Australia FTA represents the “high water mark for trade.” In other words, if Congress cannot pass this agreement, it will have even greater difficulty passing others on the agenda.

## **II. Senate Counsel Discusses the U.S. Politics of the FTA**

**John Gilliland**, Trade Counsel for the Minority Staff on the Senate Finance Committee, discussed the politics of the agreement, particularly with respect to agriculture. Gilliland acknowledged that the exclusion of sugar from the tariff reductions was the result of the sector’s powerful lobby, and not favorable to a large majority of senators. Gilliland focused more closely on the U.S. beef industry.

**U.S. Beef Industry:** U.S. above-quota duties will be phased out over an 18-year period, and initial increased imports from Australia under the TRQ quota will amount to 0.17 percent of annual U.S. beef production, and 1.6 percent of annual U.S. beef imports. The agreement made a safeguard provision for this sector permanent, for the first time in an FTA.

Despite the relatively small opening of the market, a populist offshoot of the National Cattlemen’s Beef Association (NCBA) has expressed vehement opposition to the agreement. The leaders of the association are from three politically powerful states, Colorado, South Dakota, and Montana, home of Senator Max Baucus.

Though a faction of the U.S. dairy industry is opposed to the agreement, farmers are more dispersed, rendering the industry less politically powerful than the sugar and beef sectors.

Due to bipartisan support that also exists in the Senate, Gilliland is confident that the agreement will pass through this chamber with little difficulty.

## **III. Embassy Representative Presents Australian View on FTA**

**Adam McCarthy**, Commercial Counselor from the Embassy of Australia, discussed the overall importance of the U.S.-Australia trade relationship and commented on the agricultural issues from the Australian perspective. McCarthy also briefly explained the political process of passing the agreement through the Australian government.

McCarthy noted the important features of the U.S.-Australia relationship:

- Australia's economy is the 11<sup>th</sup> largest in the world and has been the fastest growing in the OECD over the last five years, representing a significant economic opportunity for the U.S.
- The GDP of Australia is larger than the GDP of most other U.S. FTA partners combined.
- The US runs a trade surplus with Australia, the largest of which is in manufactured goods.

McCarthy criticized the U.S. agricultural sector for failing to look at the far-reaching benefits of the FTA and concentrating only on their specific and immediate interests. In particular, he noted:

- The exclusion of sugar from the tariff reductions represents a "hand brake" on U.S. trade, and on U.S. commodities trade in particular.
- Though a faction of the U.S. beef industry strongly opposes the agreement, it is unclear whether any changes in the context would satisfy this group. In addition, the permanent safeguard that has been included in the agreement will prevent Australian beef from ever flooding the U.S. market.
- Access in dairy is extremely limited, with Australian imports representing only 0.025 percent of the total U.S. market. Over 18 years, this figure would rise to only 0.3 percent of the U.S. market, as compared with the 0.2 percent that economists predict would be the case without the FTA.

In terms of the political process in Australia, McCarthy explained that, much like the process in the US, the agreement must pass through the Australian House of Representatives and Senate. Though the government's ruling party holds majority in the House of Representatives, neither the government nor opposition control of the Senate, making voting patterns there difficult to predict. The vote will take place in August, when the chambers return from June and July recess. McCarthy is confident of a positive outcome.

### ***OUTLOOK***

Widespread support exists for the U.S.-Australia FTA among policymakers in both countries. Nonetheless, vocal opposition, particularly among politically powerful agricultural lobbies in the US, promises to complicate the process of passing the agreement through Congress. As this FTA has been negotiated between two developed countries with similar economies, many policymakers consider it a test of Congress's willingness to move forward in liberalizing trade.

The speakers expect that a non-markup of the agreement will take place in the U.S. House of Representatives and the Senate during the week of June 21, 2004. Under the Trade Act of 2002, Congress cannot alter implementing legislation submitted by the President on free trade agreements. Thus, in order to exchange views between the legislative and executive

branches, the relevant Congressional committees hold “mock” markups, at which time they can informally present their views on the implementing legislation to the President. After the “mock” markup, the President submits the formal text of the implementing legislation to Congress for approval.

## **Free Trade Agreements Highlights**

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### **ITC Releases Report on Potential Economywide and Selected Sectoral Effects US-Australia FTA.**

On May 26, 2004 the International Trade Commission (ITC) released a report entitled "*U.S.- Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*" (Investigation No. TA-2104-11, USITC Publication 3697). The Trade Act of 2002 requires the ITC to submit this report to Congress and the President within 90 days of an FTA being signed. Zoellick signed the US-Australian FTA on May 18, 2004.

The report assesses 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 report concludes that the US-Australia FTA will have little impact on overall US economic welfare, though it is likely to produce and increase trade between the two countries. In certain sensitive agricultural sectors the report states the agreement will have a "relatively small" effect because of the imposition of tariff-rate quotas

### **U.S. and Panama Conclude Second Round of FTA Negotiations**

On June 7-11, 2004, the United States and Panama held a second round of FTA negotiations. The parties announced that they made progress on the text of the FTA and that discussions had focused on the initial market access offers that had been exchanged during the first round of negotiations.

The next round of negotiations will take place on July 12-16, 2004, in Panama.

### **USTR Zoellick Visits Peru and Ecuador to Discuss U.S.-Andean FTA Negotiations**

On June 7-9, 2004, Zoellick visited Peru (on June 7-8) and Ecuador (on June 8-9) to discuss the U.S.-Andean FTA and other issues related to bilateral trade and investment. Zoellick met with President Alejandro Toledo of Peru and President Lucio Gutierrez of Ecuador, as well as with a number of legislators and opinion leaders.

Zoellick notified Congress of the Administration's intention to negotiate an FTA with Andean countries Bolivia, Colombia, Ecuador, and Peru on November 18, 2003. The United

States launched FTA negotiations with Colombia, Peru, and Ecuador on May 18, 2004. USTR has indicated that Bolivia is not yet ready to negotiate.

### **U.S.- Chile Free Trade Commission Holds First Meeting**

On June 3, 2004, Zoellick and Chilean Foreign Minister Soledad Alvear held the first meeting of the U.S.-Chile Free Trade Commission in Pucon, Chile. The U.S.-Chile FTA, which entered into force on January 1, 2004, requires this Commission to hold periodic meetings to oversee the implementation of the FTA.

In a joint statement, Zoellick and Alvear concluded that good progress has been made with (i) the technical aspects of the implementation, such as the establishment of a number of specialized committees to resolve problems, exchange information and promote trade; as well as with (ii) the implementation of cooperation programs relating to labor rights and environmental protection.

In particular, the agreement has had a positive impact on:

- Increased exports of a number of products, such as heavy machinery and automobiles from the U.S. and furniture, clothing and dairy exports from Chile;
- Stronger investor confidence; and

The promotion of trade liberalization in the Western Hemisphere, Asia, and within the WTO.

## **Customs**

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### **CBP Briefs COAC on Ongoing Programs as COAC Urges Development of Cost-Benefit Performance Measures**

#### ***SUMMARY***

The Department of Homeland Security's Advisory Committee on Commercial Operations (COAC) of the Bureau of Customs and Border Protection (CBP) met on June 18, 2004. The highlights of the meeting were:

- DHS Assistant Secretary Stewart Verdery opened the meeting by welcoming Joe McCallion Deputy Director, Division of Import Operations and Policy, Office of Regulatory Affairs with the Food and Drug Administration (FDA). At previous COAC meetings, members have requested the attendance of a high-level FDA representative to participate in discussions regarding the implementation of the Bioterrorism Act.
- COAC members repeated their call for CPB to quantify the effectiveness of Customs-Trade Partnership Against Terrorism (C-TPAT). COAC members suggested that CBP consider the cost to participants and the government, compared with security protections obtained from the program, and benefits for participating in the program. CBP responded by stating that they would provide an evaluation of the effectiveness of C-TPAT at the next COAC meeting.
- COAC members announced that the final COAC meeting of the year would take place on September 10, in Buffalo, NY. CBP officials may call an interim meeting in August to consider Member's comments on Maritime Transportation Security Act (MTSA) implementation issues.

The meeting also addressed other issues, such as (i) the effect of final elimination of textile quotas on CBP and the trade (ii) the International Trade Data System (ITDS), (iii) implementation of advance manifest reporting, and (iv) implementation of Maritime Transportation Security Act (MTSA) of 2002.

#### ***ANALYSIS***

During its third meeting of 2004, COAC received several briefings from CBP officials and then provided comments to CBP on behalf of their constituents. Below is an overview of the issues discussed.

#### **I. COAC Member Position Openings**

CBP officials announced that CBP will solicit applications for COAC member positions in early July. Members of COAC may only be reappointed once, and several current members have reached their term limit. Treasury and CBP make member selections jointly. New COAC members are expected to be appointed in the early Fall.

## **II. CBP Launches Web Page to Address Elimination of Textile Quotas**

COAC members and CBP officials reported on the launching of a new CBP web page that will provide information to CBP field personnel and the trade relating to the final phase of the textile and textile apparel quota integration. As a result of the Uruguay Round Agreement on Textiles and Clothing (ATC), a full integration of textile and textile apparel manufactured in countries that are WTO members will commence on 1 January 2005. The new CBP web page will include items such as Quota Bulletin Transmittals (QBT), Textile Bulletin Transmittals (TBT), and Federal Register notices related to the elimination of quotas. The page also will include a list of frequently asked questions. The new webpage can be found at [www.cbp.gov/xp/cgov/import/textiles—and—quotas/wto—quota.xml](http://www.cbp.gov/xp/cgov/import/textiles—and—quotas/wto—quota.xml).

## **III. Update On ITDS Participating Agencies and Continued Outreach**

Gene Rosengarden, Chairman of the International Trade Data System (ITDS) Board of Directors, reported on current agency participation, and continued outreach to encourage participation in ITDS. Only eight of the approximately 80 agencies involved in trade currently participate in the ITDS, with an additional 14 agencies expected to join in the near future.

COAC members also reported on their continued efforts to increase support for ITDS within government agencies and in Congress. At a June 17, 2004 House Committee on Ways and Means, Subcommittee on Trade hearing on the FY2005 CBP budget, COAC member Sandra Scott testified on the need to expand agency participation in the ITDS. Since the last COAC meeting, Members have sent a letter to President Bush seeking further support of the program, and have a draft letter ready to be sent to Secretary Evans, Department of Commerce, and Secretary Ridge, DHS, also seeking further support of ITDS.

Rosengarden also reported on the streamlining of the ITDS data process. ITDS has now developed a standard dataset that all participating agencies have agreed upon. As new agencies come into the process the dataset may be adjusted, but Rosegarden anticipates future changes will lessen.

## **VI. Advance Cargo Information Implementation Underway**

Elizabeth Durant, Executive Director, Trade Compliance and Facilitation, Office of Operations for CBP, reported on the status of implementation of the Advance Cargo Information (ACI) by mode of transportation: Sea, air, truck and rail. CBP issued the Final Rule for Required Electronic Presentation of Cargo Information in December 2003. Durant reported that to date, CBP is fully automated for vessels, and rail. For air, CBP will begin implementation on August 13, 2004 geographically by state, moving east to west. For trucks, CBP also intends to gradually phase-in implementation by geographical area. Durant stated that this will likely begin this Fall.

## **V. CBP Reports on C-TPAT Validations and Benefits to Participants; Members Ask For Report on Effectiveness of C-TPAT**

C-TPAT Program Manager Ed Moriarty stated that:

- To date, some 6565 companies are members of C-TPAT, of which 3873 are importers. The remainder of participants are carriers, brokers and freight forwarders, domestic manufacturers, and manufacturers located in Mexico.
- CBP has initiated more than 700 validations and completed more than 288 validations of members' security plans. This is an increase of 58 from the previous COAC meeting. Moriarty noted that CBP expects to complete 400 validations by 2005.
- Moriarty also stated that of the total applications received, only 16 percent did not satisfy the security profile and were rejected. CBP officials noted, however, that the process does not end with the refusal of the security plan, and CBP continues to work with prospective participants.
- Moriarty reported on performance measures, and stated that C-TPAT participants were 3 to 5 time less likely to be examined for trade compliance, and 5 to 8 time less likely to be examined for enforcement.

COAC members thanked CBP for the program benefits analysis, but urged CBP to conduct a cost-benefit-type analysis to measure the overall effectiveness of the program, including benefits of participation. Members requested some measurement of how participation has aided security. CBP officials agreed and although they stated it would be difficult to quantify risk analysis, they would report on their status of review at the next meeting.

## **VI. MTSA Implementing Subcommittee**

DHS Director of Cargo and Trade Policy Elaine Dezenski discussed container security standards. Dezenski noted that DHS is relying heavily on seals for security, and empty containers pose a security concern.

CBP officials proposed having an interim meeting in August to discuss on-going Maritime Transportation Security Act (MTSA) implementation issues, and to discuss Members' comments on the establishment of a subcommittee within CBP for implementation of MTSA.

## **VII. COAC Members Address Bioterrorism Act Implementation With FDA Representative**

The Director of Special Enforcement of the Office of field Operations (OFO), Cathy Saucedo discussed the initial outcome from full phase 3 implementation of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act or BTA) which went into effect June 4, 2004. Saucedo reported that there were only 830 failed Automated Broker Interface (ABI) entries; 591 non-ABI entries; 131 failed bonds; 96 shipments returned; and only 2 shipments abandoned. Full enforcement of the BTA will commence on August 13, 2004. Saucedo also reported that penalty mitigation guidelines for BTA violations will now be posted on CBP's webpage, and will be continuously updated.



Joe McCallion of FDA addressed COAC members' concerns about the implementation of Section 307 of the Act, which requires that the Food and Drug Administration (FDA) be notified in advance of any article of food that is imported or offered for import into the United States. Particularly, COAC members were concerned with meeting the advance notice requirements if the FDA's system was down. McCallion explained that FDA's Prior Notice System Interface (PNSI) was designed for small filers and individuals not working with a customs broker with access to ABI. McCallion suggested that the FDA PNSI system only be used when the ABI system is down.

Members urged both CBP and FDA to create contingency plans including the option to suspend the prior notice requirement when there are systems failures. In response to this request, CBP stated that suspending the prior notice requirement was not a viable option, but both McCallion and CBP officials agreed that a "more robust" contingency plan was necessary. Assistant Secretary, Verdery stated that systems failure contingencies should be slated for discussion at the next COAC meeting.

### ***OUTLOOK***

COAC members announced that the final COAC meeting of 2004 will take place on September 10, in Buffalo, NY. CBP officials noted that they may call for an interim meeting in August to discuss Members' MTSA comments.

## US-EU-LATIN AMERICA

### NAFTA

#### **Mexico and US Achieve Progress in Resolving Long-Standing Disputes on Telecoms, Trucking and Other Issues**

##### *SUMMARY*

Earlier in June, the United States and Mexico made progress in resolving long-standing trade disputes involving telecommunications services, trucking, avocados and pork. After the release of a WTO Panel report in April that found Mexico as restricting access to its telecommunications market, Mexico decided not to appeal the decision and reached a settlement with the United States.

In addition, the U.S.- Supreme Court recently ruled in Mexico's favor on the NAFTA trucking dispute in deciding against the need for an environmental review. Progress in settlement of these two disputes and other trade irritants involving agriculture goods, has done much to decrease the tension in the bilateral relationship. Nevertheless, difficulties remain in the sweetener dispute (currently before the WTO) – and the trucking dispute remains problematic despite the Supreme Court ruling.

##### *ANALYSIS*

#### **I. US and Mexico Make Progress in Resolving Major Trade Disputes**

Earlier this month, Mexico and the United States made significant progress on two long-standing trade disputes resulting from Mexican and U.S. commitments at the WTO and NAFTA, respectively. On June 1, Mexico and the United States reached a settlement on the long-standing dispute over telecommunications services at the WTO. Soon after, on June 7, the U.S. Supreme Court decided against the need to conduct an environmental review before allowing access to Mexican trucks into U.S. highways (a U.S. commitment under NAFTA). In other developments, the Ministry of Economy on May 31 announced that it has rejected the antidumping petition filed by Mexican pork producers against U.S. imports, but would consider a new petition on imports of pork legs and hams from the United States. In addition, the U.S. Department of Agriculture (USDA) recently proposed rules that would grant full access to Mexican avocados from the state of Michoacan to the U.S. market.

We summarize below the current status of U.S.-Mexico trade disputes.

#### **A. Mexico and US Reach Settlement on WTO Telecoms Dispute**

On June 1, 2004, Mexico and the United States reached a settlement on the dispute over access to Mexico's telecommunications market. Mexico decided at the final moment not to appeal the WTO panel report released on April 2 (*please see W&C April Report*). The agreement between the two parties establishes that:

- **Resale-based services** – Mexico will permit the establishment of resale-based international telecommunications services in Mexico in accordance to its domestic law.
- **Competitive practices** – Mexico will ensure competitive practices between all competing suppliers by eliminating provisions contained in its domestic law concerning the proportional return system. In addition, it will eliminate the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiates the settlement rate on behalf of all Mexican carriers for that country.
- **Leased lines/bypass** – The United States recognizes that Mexico will continue to prohibit U.S. carriers from using leased lines in Mexico to complete calls originating in the United States, a practice better known as “bypass.”

Both parties welcomed the agreement, and expect it to introduce greater competition to the market currently dominated by Telmex. It is expected that Mexico will modify its domestic legislation to be in compliance with the agreement by the end of the year.

#### **B. U.S. Supreme Court Rules in Favor of Mexican Trucking Access Under NAFTA**

On June 7, 2004 the U.S. Supreme Court ruled that the U.S. Government is not obliged to carry out an environmental impact assessment on the effects of allowing Mexican trucks to provide services in the United States. The Supreme Court overturned the decision of the U.S. Court of Appeals for the Ninth Circuit on the need for a review. The ruling, however, does not dismiss any of the safety compliance requirements applied to Mexican trucks by the US Department of Transportation in 2001.

In general, Mexico welcomed the recent ruling but insists that more needs to be done. Undersecretary Aaron Dychter of the Ministry of Communications and Transportation stated that despite the ruling, Mexican truckers do not have fair access to the U.S. market due to the strict operating regulations (required by the Department of Transportation). Dychter emphasized that the Ministry hopes that the Bush administration will relax these requirements, which according to Mexico are stricter than those applied to Canadian trucks.

Likewise, the National Chamber of Cargo Auto Transport welcomed the ruling but asserted that it does not address the real problem, which are the U.S. operating requirements. The Chamber indicated that the trucking industry is unable to enter the U.S. market until the regulations are modified.

#### **C. USDA Proposes Full Access for Mexican Avocados; Ministry of Economy Initiates Investigation on U.S. Pork Legs and Hams**

The Ministry of Economy on May 31 announced that it has rejected the antidumping petition filed by Mexican pork producers against U.S. imports, but would consider a new petition on imports of pork legs and hams from the United States. The new investigation covers the period January to December 2003. According to the Ministry, U.S. imports have increased considerably, over 65 percent between 2002 and 2003.

In other news, the USDA has proposed rules to allow full access of Mexican avocados from the state of Michoacan to the United States. The USDA is requesting public comments on the proposed rules by July 23, 2004. If the rules are enacted, Mexican avocado exports to the US could increase up to 40 percent. In addition, Mexican and U.S. agriculture officials met in late May to discuss pending issues including horticulture, meat and wheat. Both countries agreed to focus attention to these issues.

## **II. Bilateral Disputes Outstanding**

The two trading partners have yet to resolve all major disputes, including over the sensitive sweetener sector. Mexico and the United States are still trying to resolve their differences through bilateral consultations at the WTO. Reportedly, US Trade Representative (USTR) intends to request the establishment of a formal WTO panel on the high fructose corn syrup (HFCS) dispute. The dispute on HFCS is also linked to U.S. defense of its own protected sugar industry.

### ***OUTLOOK***

The recent progress on long-standing disputes on telecommunications and trucking has eased trade frictions between Mexico and the United States. Nevertheless, the trucking issue remains problematic and other trade disputes involving HFCS and agriculture products continue to be unresolved.

In the case of HFCS, the Mexican Government is under significant pressure from Mexican sugar producers to gain a larger U.S. sugar quota. Furthermore, the Mexican Congress refuses to repeal the 20 percent tax on HFCS until the US grants more access to Mexican sugar producers. As seen in recent U.S. FTA negotiations, the United States is not keen to provide greater access to its highly protected sugar market.

Regarding the trucking dispute, the prospects for solution are not optimistic. It is unlikely that the United States will modify any of the safety compliance and audit requirements issued by the Department of Transportation in 2001. Moreover, the trucking dispute is highly sensitive in the United States given the strong opposition of labor groups to the perceived threat of the Mexican trucking industry. Reportedly, many officials at the Mexican Ministry of Economy and the Ministry of Transportation are skeptical that the dispute can be resolved in the near term.

## **EU-Latin America Summit**

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### **Countries Agree to Strengthen Economic Integration at Latin America and Caribbean-EU Summit; MERCOSUR and EU Exchange Offers and Reaffirm FTA Deadline**

#### ***SUMMARY***

We would like to alert you to the following trade developments that took place during the third Latin America and Caribbean-European Summit:

- The EU and Latin America agreed to deepen economic integration.

- MERCOSUR and the EU exchanged offers and confirmed the FTA deadline.
- The EU announced that it will require preliminary studies before launching FTA negotiations with Central America and the Andean countries.
- The EU reiterated its commitment to the EPA negotiations with the Caribbean countries.

## **ANALYSIS**

### **I. EU and Latin America Agree to Deepen Economic Integration**

On May 28-29, 2004, nations from Latin America, the Caribbean, and the European Union (EU) held the Latin America and Caribbean-EU Summit in Guadalajara City, Mexico. In a joint Declaration issued after the meeting<sup>1</sup>, the parties agreed to consolidate a bi-regional strategic partnership<sup>2</sup> that would lead to further economic integration and less social exclusion.

The Summit did not focus on trade issues. Instead, it focused on broader issues, including the important role of multilateralism to face global challenges and the need to strengthen social cohesion. It was primarily a political Summit.

However, countries did recognize the importance of regional and economic integration to promote sustainable economic and social development. The Declaration of Guadalajara reaffirms the necessity to advance the Doha Development Agenda (DDA) to achieve the full integration of developing countries into the world economy. The declaration added that any future free trade agreements (FTAs) would be consistent with the outcome of the DDA.

EU Foreign Affairs Commissioner Chris Patten noted on May 27 in a press conference<sup>3</sup> that the EU is very keen to achieve further regional integration with Latin America, but using a different approach from the one adopted by the United States. He specified that the EU seeks to conclude “deeper” rather than “lighter” integration schemes through broader Association Agreements on a block-to-block basis. Patten also noted that these efforts in Latin America would not detract the EU from other trade priorities, including the development of the DDA.

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<sup>1</sup> The full text of the Declaration is available at:  
<http://register.consilium.eu.int/pdf/en/04/st09/st09662.en04.pdf>.

<sup>2</sup> The strategic partnership was agreed at the first EU-LAC Summit in Rio de Janeiro, Brazil, on June 28-29, 1999.

<sup>3</sup> The full text of Patten’s remarks is available at:  
<http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/04/271&format=HTML&aged=0&language=en&guiLanguage=en>

## **II. MERCOSUR and EU Exchange Offers and Confirm FTA Deadline**

At the Summit, the EU and MERCOSUR reiterated their commitment to concluding the negotiations by the target date of October 2004, and officials from both sides instructed negotiators to intensify their work to achieve concrete results by the deadline. The EU is requesting that MERCOSUR improve its offer regarding market access for goods and services, while MERCOSUR wants the EU to increase market access for agricultural products.

MERCOSUR and EU trade negotiators met in Buenos Aires the week of June 7 and have also been holding meetings in Sao Paulo, during the week of June 14, in parallel to the UNCTAD (United Nations Conference for Trade and Development) Conference. MERCOSUR and EU negotiators continue to discuss sensitive issues in the negotiations.

MERCOSUR and EU negotiators are expected to meet in Brussels in July for a new round of negotiations. The next negotiation round will include a full schedule to discuss in more detail a broad range of pending issues, including market access, agricultural products, and trade barriers.

## **III. EU Requires Preliminary Studies Before Launching FTA Negotiations with Central America and the Andean Countries**

The EU will start the negotiation of Association Agreements, which include FTAs, with the Central American and the Andean countries. EU officials said that the Central American and Andean Communities must first conclude a joint assessment of their respective integration processes. If successful, this assessment would eventually lead to the launching of negotiations.

EU officials emphasized that they would not negotiate bilateral deals with Central American and Andean countries individually, as they are interested in negotiating on a block-to block basis.

## **IV. EU Reiterates Commitment to Negotiation of EPA with Caribbean Countries**

The EU recognized the importance of an Economic Partnership Agreement (EPA) with the Caribbean countries, describing this as “an effective tool for sustainable development”.

As determined under the ACP-EU Cotonou Agreement, which was concluded on June 23, 2000, EPAs aim to establish a free trade area between the EU and relevant ACP countries and function as a complement to the ACP development cooperation. The free trade area should replace the current non-reciprocal preferential trade regime between the ACP and the EU.

The EU launched negotiations with the 15 countries of the Caribbean Forum of ACP States (Cariforum)<sup>4</sup> on April 16, 2004. In a first phase, negotiations will focus on setting priorities and detailing a schedule for the second phase, which will focus on Caribbean regional integration. The EU aims to complete the negotiations by January 1, 2008, at the latest.

### *OUTLOOK*

The Summit offered Latin American countries an excellent opportunity to strengthen bilateral ties with the EU. EU officials reaffirmed the importance of expected agreements in various sub-regions of the hemisphere, and the need to continue to increase bi-regional cooperation.

EU Trade Commissioner Pascal Lamy said that the most important aspect of the negotiations with Latin America, and more particularly with the Andean Community and Central America, is the stimulus to integrate the Latin American regions themselves. Lamy added that the EU business community would also benefit from access to regional Latin America markets instead of just individual countries. The EU intends to follow in future FTAs the models of the agreements negotiated with Mexico, Chile, and with economic blocs from Latin America, such as the Andean Community and Central America.

Progress on the MERCOSUR-EU talks could add momentum to other trade initiatives, including the FTAA. The US business community will not want their European competitors to have preferential access to the regional markets. However, MERCOSUR could become more emboldened in the FTAA negotiations if it secures preferential EU market access, which could further complicate FTAA negotiations. Analysts are monitoring closely the negotiations to determine what concessions each side will be willing to make in the sensitive sectors.

The next EU-Latin America Caribbean Summit will be held in Vienna, Austria, on May 12-13, 2006.

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<sup>4</sup> Cariforum consists of: Antigua and Barbuda; the Bahamas; Barbados; Belize; Dominica; the Dominican Republic; Grenada; Guyana; Haiti; Jamaica; St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines; Suriname; Trinidad and Tobago.

## MULTILATERAL

### **Countries Agree to Third Round of Negotiations of the Global System of Trade Preferences (GSTP) at UNCTAD XI Conference, Experts Discuss Developing Countries' Positions at WTO**

#### *SUMMARY*

From June 13 to 18, the United Nations Conference on Trade and Development (UNCTAD) XI meeting took place in São Paulo. The UNCTAD Conference meets every four years, with the aim to discuss trade issues including lowering barriers among developing countries, and their positions on WTO negotiations.

#### *ANALYSIS*

The UNCTAD was created by the United Nations in 1964 to develop trade policies to help integrate developing countries into the world economy. The Conference takes place every four years with the aim to set priorities and guidelines for the organization, and to provide an opportunity to debate key economic and development issues affecting developing countries. The UNCTAD Conference held in Sao Paulo focused on many trade issues at the multilateral level.

On June 15, a parallel seminar to the UNCTAD Conference was held in Sao Paulo, with the participation of numerous officials and trade experts. The World Bank and the University of Sao Paulo sponsored the event.

We highlight below comments from speakers at the seminar.

#### *WTO Negotiations Expected to Move*

- A World Bank representative, Carlos Braga, argued that the negotiating climate at the WTO is positive and countries seem to be committed to seeking common solutions (for an agreement in July). However, despite the positive environment, negotiations are difficult.
- For the first time, the EU seems to be willing to put the agricultural issues on the table. In fact, one of the main issues to be discussed this year in the WTO is how to reduce *distortive agricultural subsidies*.
- The issue of improving transportation must also be tackled at the WTO, especially in view of developing countries' interests. This is because the costs of transportation for developing countries may annul the gains from international trade.

#### *WTO Negotiations Encompass Many Developing Countries' Interests*

- Alberto Campeas, a Director at the WTO, explained that there are four issues WTO Members are focusing on at the moment: the development agenda; market



access; rules-related negotiations (Antidumping, etc.) and special and differential treatment.

- For developing countries in particular, the key issues include market access, TRIPS and public health, treatment of small economies and the participation of the least developed countries in the international trade system.
- African countries, for example, have been demanding reductions in agricultural subsidies, such as in the case of the cotton initiative.

*July is a Decisive Month at the WTO*

- Eduardo Perez Motta, Mexican Ambassador to the WTO, emphasized that the month of July is important to show the world that the WTO is moving. If WTO negotiations fail in July, he believes it might take years for the Round to be on track again.
- Motta stated that the (May 8) letter from Commissioners Lamy and Fischler regarding the EU's position on agricultural negotiations was a historic move in advancing WTO negotiations.
- Among other factors this year, many countries are holding elections. There were elections in India recently, and there will be elections in Canada, Australia, US, the EU Commission, South Africa, and others.

*Multilateralism is at Stake in View of Regional Agreements*

- Marcos Jank, professor at the University of Sao Paulo, pointed out that there are numerous trade agreements among countries and regions all over the world. After 1990, there have been more than 150 trade agreements signed globally. In the Americas alone, he believes there might be almost 100 preferential trade agreements. He expects a further proliferation of bilateral and regional agreements in the near future.
- He contended that the Doha Round has lost ambition in view of the U.S. and EU resistance to negotiate sensitive issues such as agricultural trade. The US and the EU have mostly lowered agricultural tariffs, but with extremely high tariff peaks for few products. Another problem is that non-tariff barriers often complicate agricultural trade with the US and the EU.
- The G-20 group since Cancun has been very active and demonstrates that developing countries have obtained more power in WTO negotiations. An agreement such as the Blair House accord (reached in the Uruguay Round on agriculture) is not likely nowadays.

*Brazil Wary of Binding Trade Facilitation Commitments*

- Ricardo Sennes, from Prospectiva Consulting Firm, explained that the issue of trade facilitation (TF) moves really slowly in Brazil, according to a research project that he has carried on. The issue is considered more of a domestic concern,

than an international priority in Brazil. For instance, his findings indicate that Brazilian exporters view the customs service as the main obstacle to Brazilian exports. Moreover, many in the private sector consider TF as an obligation of the State.

- In other forums like MERCOSUR, trade facilitation is not a priority issue for the government. In the MERCOSUR-EU and FTAA negotiations, however, trade facilitation is an important issue. For Brazil, the government is wary of making commitments on trade facilitation for fear of facing dispute settlement in international panels at the WTO, or possibly FTAA (as a result of obligations it would have to take). Instead, Brazil favors the creation of *guidelines* for trade facilitation rather than binding provisions in the WTO, FTAA, MERCOSUR-EU, etc. Brazil also views the trade facilitation issue as a bargain chip in the negotiations.

#### *Developing Countries Can Adopt Limited TF Provisions*

- Peter Faust, from UNCTAD, asserted that improving TF would result in better management of trade. As such, it is a powerful engine for trade-based development processes. For developing countries, TF may help them ameliorate procedures and technologies. He acknowledged that TF would require additional resources, which is a concern for developing countries.
- It is difficult to cover a wide scope on TF at the WTO-level, but it may be possible to include a limited set of obligations. UNCTAD work aims to reduce the overall cost of international trade transactions through the alignment of internationally-agreed trade and transport instruments and commercial best practices.

#### *TF is Gaining More Importance*

- Simon J. Evenett, from Oxford University, contended that TF rules are being made in many forums all over the world. There have been approximately 20 panels at the WTO that involve TF rules to some extent, which show how relevant those rules are. He also suggested that non-binding TF rules from other forums might be taken up at the WTO.

#### *Numerous Trading Agreements are Difficult to Manage*

- Richard Newfarmer, from the World Bank, suggested that it is very difficult to manage the numerous trade agreements all over the world, especially in the case of rules of origin. Moreover, the existence of many rules could result in corruption.
- He speculates that if there is a MERCOSUR-EU FTA, Brazil will soften its strategy in the G-20 group.

*Lula's Foreign Policy Gives More Attention to South-South Cooperation*

- Antonio Bessa, Director of FIESP (Federation of Industries of Sao Paulo) argued that the main objective of the WTO is not poverty or development. This explains why those issues are not taken into consideration very often at the WTO.
- During the Cardoso administration, the first priority in foreign policy was attributed to MERCOSUR. In second place came South American integration, then the WTO. The fourth priority was the FTAA and the MERCOSUR-EU negotiations.
- He believes the Lula administration has the same order of priorities in Brazilian foreign policy, but there is a new emphasis on South-South agreements (among developing countries). These include negotiations with China, India and South Africa.

*Developed Countries Want to Reduce the Ambition of the Doha Mandate*

- Luiz Seixas Correa, Brazilian Ambassador to the WTO, asserted that the future of the WTO is related to the future of the Doha Round. He explained that the Doha mandate was signed during a special moment when the world was facing negative economic prospects and a less stable political environment. He contends that if held today, developed countries would not have signed the Doha mandate. He also believes that WTO negotiators have been hesitant in negotiations and not keen to reach the end of the Doha Round. For example, in Cancun, it was clear to the Brazilian diplomacy that the US and the EU wanted to alter the Doha mandate, making it less ambition.
- Looking ahead, he believes that in July there will be some "framework" agreed among WTO negotiators. Developing countries will agree to it as long as it does not decrease significantly the Doha mandate. He questioned how deep this framework will become. At the moment, WTO Members are negotiating based on a proposal from the G-20, which demonstrates the increasing importance of coordination by developing countries.

**OUTLOOK**

Aside from the discussions on the WTO Doha Round, the UNCTAD agenda also focused on UNCTAD's role in expanding the Global System of Trade Preferences (GSTP) system of trade preferences among developing countries.

At the UNCTAD Conference, countries approved the start of the third Round of Negotiations of the GSTP. The GSTP aims to foster the trade among developing countries, the so-called "South-South Trade." Negotiations of the third Round of the Global System of Trade Preferences are expected to start in Geneva by November 2004, with the aim to conclude by 2006.

During the UNCTAD Conference, developing countries also discussed the impact of WTO rules on domestic public and economic policies, such as in the cases of TRIPs and public health programs and TRIMs.