WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Japan External Trade Organization

WTO AND REGIONAL TRADE AGREEMENTS

Monthly Report

March 2004

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

TABLE OF CONTENTS

SUMMARY OF REPORTS

Special Reports

2004 Democratic Candidates Propose Incentives for Domestic Manufacturers; Seek to Strengthen Enforcement of Trade Agreements

The top Democratic presidential candidates, Senator Kerry (D-Massachusetts) and Senator Edwards (D-North Carolina) have similar trade platforms. They propose incentives for manufacturers that maintain domestic operations, seek stronger labor and environmental protections in trade agreements and support a WTO case against China for currency manipulation.

Trade related campaign issues include: reviving the U.S. manufacturing sector; making U.S. workers more globally competitive; ending currency manipulation; ensuring trade partner compliance; and strengthening labor and environmental standards.

Democratic presidential candidates argue that the Bush administration's international trade policy has contributed to the loss of over two million jobs in the last two years. Most polls in the primary season ranked concerns over unemployment as the most important issues for voters.

Four Former USTRs Offer Their Perspectives on U.S. Trade Policy

The Center for Strategic and International Studies ("CSIS") on February 13, 2004, hosted its fourth annual seminar featuring former United States Trade Representatives ("USTRs"). Four USTRs who served under various Presidential administrations from 1971-2000, presented their perspectives on a wide range of U.S. trade objectives, as summarized below:

- ***Clayton Yeutter (Reagan)*** – Discussed the prospects for the successful completion of the Doha Round and the prospects of agriculture liberalization.

- ***Charlene Barshefsky (Clinton)*** – Discussed current trade tensions with China.

- ***William Eberle (Ford)*** – Discussed the prospects for the FTAA.

- ***Carla Hills (Bush Sr.)*** – Discussed the issues of "outsourcing" and job loss in the US.

The USTRs in general believe that the prospects for trade liberalization are decent despite the challenges at home and abroad. They stated, however, that the political climate in the United States regarding trade liberalization is far more complicated than in the past.

United States

USTR Zoellick Annual Testimony on the International Trade Agenda: Maintains that the US Will Continue Competitive Liberalization Strategy; Ensure WTO Compliance

United States Trade Representative (USTR) Robert Zoellick gave his annual testimony on the Bush Administration's (2004) international trade agenda before the Senate Finance Committee on March 9, and the House Ways and Means Committee on March 11, 2004. Zoellick stated that the Administration would:

- ***"Competitive liberalization"*** – Continue the strategy of pursuing multilateral, regional and bilateral trade liberalization.

- ***WTO compliance*** – Increase efforts to ensure that the United States and its trading partners, particularly China, live up to their commitments under the WTO.

At both hearings, Democrats underscored the negative effects of free trade on U.S. employment, including outsourcing. Zoellick countered that trade liberalization is necessary to create new jobs and to increase the nation's economic strength. Zoellick emphasized, rather, the need to invest in fundamental issues including education, training and innovation to help people who lose their jobs adjust.

Zoellick also insisted that the Administration would soon take action against trading partners that did not comply with their obligations, and namely China. Days after the hearing, USTR did indeed file the first-ever WTO dispute against China, concerning its value-added-taxation (VAT) policy.

Senator Grassley Defends JOBS Bill as EU Imposes Sanctions on US; Senate Takes Up Bill, Debating Outsourcing Amendments

On March 2, 2004, Senator Charles Grassley (R-Iowa) defended the provisions of the Jumpstart our Business Strength (JOBS) Act (S. 1637), which would repeal the Extraterritorial Income Exclusion (ETI) Act, before the National Association of Manufacturers (NAM). Grassley argued that the proposed cut on taxes for manufacturers in the JOBS Act is appropriate because 90% of the benefits under ETI go to manufacturers. Grassley also defended the revenue neutral quality of the JOBS Act, suggesting that the present fiscal situation demands prudence.

The Senate commenced debate on the JOBS Act on March 3, 2004. The first amendment debated concerned outsourcing and was offered by Senator Dodd (D-Connecticut). The Amendment was adopted on March 4, 2004, after it was modified.

More than 50 amendments to the bill have been filed already. Senate Majority Leader Bill Frist (R-Tennessee) reportedly will file a cloture motion on March 22 as the Senate restarts debate. A successful cloture vote would disallow any amendments to the bill that are not germane.

Senate Adopts Miscellaneous Trade and Tariff Bill

On March 4, 2004, the Senate adopted the Miscellaneous Trade and Technical Corrections Act of 2003 (S. 671). The Act reduces or suspends tariffs on a variety of products, largely chemicals. The Act also extends normal trade relations with Serbia and Montenegro.

ITC Invites Public Comments, Schedules Hearing of 2003 GSP Review; President Issues GSP Proclamation

On February 25, 2003, the International Trade Commission (ITC) announced that it would accept public comments and hold a hearing on the 2003 Generalized System of Preferences (GSP) review. The hearing will take place on March 31, 2004. Parties interested in appearing at the hearing were to notify the ITC by March 4, 2004. Pre-hearing written submissions were due by March 5, 2004. Post-hearing submissions are by April 2, 2004.

In a related development, the President on March 1, 2004 issued a proclamation amending the list of countries benefiting from duty-free treatment under GSP.

AFL/CIO Files 301 Petition Against China Over Labor Rights Violations

On March 16, 2004, the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) filed a petition at the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The petition calls on the President and USTR to (i) impose tariffs up to 77% on all Chinese exports to the United States, and to (ii) negotiate a binding agreement requiring China to comply with internationally recognized workers' rights.

The USTR now has 45 days to accept or reject the petition.

Byrd Amendment

Debate Intensifies on WTO Ruling and U.S. Policy Implications of the "Byrd Amendment"

On February 23, 2004, the American Enterprise Institute, a D.C. based think tank, hosted a roundtable discussion entitled, "The Byrd Amendment: Bad U.S. Policy, Worse WTO Decision." At the event, four participants spoke on two themes: (i) the pros and cons of the Byrd Amendment from a policy perspective; and (ii) the merits or flaws in the WTO ruling.

The speakers at the event included three D.C. based-lawyers and a think-tank policy analyst. They provided contrasting positions on both the policy options facing the US and the validity of the WTO decision. Argument persisted over whether funds allocated to domestic industries under the Byrd Amendment are compliant with the WTO disciplines on antidumping and subsidies, despite the WTO findings. The speakers also diverged in their evaluations of the policy implications on U.S. industry, and whether too much attention was being paid to "special interest groups."

The event took place at a critical juncture, as eight U.S. trading partners on January 24, 2004, have requested WTO authorization to impose sanctions against the US. Prospects for repeal of this politically sensitive law, however, are slim and especially so during an election year.

CBO Report Cites Economic Costs of Byrd Amendment; Capitol Hill Remains Divided

On March 2, 2004, the Congressional Budget Office ("CBO") released a report outlining the harmful effects of the Continued Dumping and Subsidy Offset Act ("Byrd Amendment" or "CDSOA") on the U.S. economy. Representative Bill Thomas (R-California), Chairman of the House Committee on Ways and Means, requested the study. The report criticized the Byrd Amendment for encouraging increased antidumping and countervailing duty cases, inefficient production, increasing transaction costs associated with these cases, and inviting retaliation by U.S. trade partners.

The Bush Administration has proposed repeal of the Byrd Amendment, reiterated by U.S. Trade Representative Robert Zoellick before the Senate Finance and House Ways and Means Committees. Legislation to repeal the Byrd Amendment has been introduced in both the House and Senate, however the prospects of repeal remain dim.

Free Trade Agreements

US Concludes FTAs with Morocco and Dominican Republic; Dominican Republic to Join CAFTA; President Notifies Congress of Intent to Enter Into FTAs

We want to alert you to the following developments:

- On March 2, 2004, the United States Trade Representative (USTR) announced that the United States and Morocco had concluded a Free Trade Agreement (FTA). The President notified Congress of the Administration's intent to enter into the agreement on March 8, 2004.

- On March 15, 2004, the USTR announced that the United States and the Dominican Republic had concluded an FTA. The FTA fully integrates the Dominican Republic into the U.S.-Central America Free Trade Agreement (CAFTA). The President notified Congress of the Administration's intent to enter into CAFTA on February 20, 2004.

USTR Releases Draft Text of US-Australia FTA; Transmits Trade Advisory Group Reports to Congress; ITC to Hold Hearing on Potential Economic Effects

We want to alert you to the following developments regarding the recently concluded US-Australia Free Trade Agreement (FTA):

- On March 3, 2004, the United States Trade Representative (USTR) released the draft text of the FTA.

- On March 8, 2004, the International Trade Commission (ITC) announced that it had instituted an investigation of the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors. On March 30, 2004 the ITC will also hold a public hearing on the investigation.

- On March 15, 2004, the USTR announced that it had transmitted reports from 32 advisory committees regarding the FTA to the President and to Congress. All the committees supported the agreement, with the exception of the Labor Advisory Committee (LAC).

Congressional Fate of CAFTA Unclear; CAFTA Benefits Extend Beyond Trade

In February 2004, trade officials, policy advisors and diplomats expressed their views on the prospects for US congressional approval of the US-Central America Free Trade Agreement (CAFTA) in various meetings in Washington, DC. Speakers concluded that CAFTA faces an uphill congressional battle due to the sensitive interest groups involved, among other things.

Speakers also discussed the effects of CAFTA on the Central American region and the US-Central America relationship. Speakers generally agreed that, if approved, CAFTA would help to consolidate the rule of law and democracy in Central America.

FTAA negations could suffer if the US Congress rejects CAFTA. The Bush administration touts CAFTA as a "building block" that will add momentum to the FTAA and WTO negotiations. Rejection of CAFTA could dampen enthusiasm among FTAA negotiating partners, since US congressional support for the FTAA is expected to be more difficult to secure than support for CAFTA.

Officials Discuss U.S. Trade Policy in Middle East; Say FTA With Bahrain Can Be Completed by June

At a March 10, 2004 hearing by the Senate Finance Committee on U.S. trade policy in the Middle East, Administration officials stated that the U.S. would pursue trade liberalization in the region through the Doha Development Agenda (DDA), the Middle East Free Trade Area (MEFTA), and the Middle East Partnership Initiative (MEPI). They indicated that a trade preference program, as proposed by Senators Max Baucus (D-Montana) and John McCain (R-Arizona), is not a necessary first step.

The officials named Tunisia, and Egypt as countries with a strong interest in a Free Trade Agreement (FTA) with the U.S. However, they indicated that Egypt would have to undertake further economic reforms before the U.S. would consider FTA negotiations.

The hearing also focused on ongoing FTAs, with officials stating negotiations with Bahrain could be concluded by June 2004. It was also announced that the U.S. would soon negotiate Trade and Investment Framework Agreements with the United Arab Emirates (UAE) (*Please see related report this edition*), Qatar, and Oman.

USTR Requests Comments, Schedules Hearings on US-Panama and US-Thailand FTAs; ITC Investigates Economic Effect Thailand FTA

We want to alert you to the following developments:

- On February 24, 2004 the US Trade Representative (USTR) announced that it would hold a public hearing and seek public comments on the US-Panama Free Trade Agreement (FTA). The hearing will take place on March 23, 2004. Written comments are due by April 5, 2004.

- On February 27, 2004, the USTR announced that it would hold a public hearing and seek public comments on the US-Thailand FTA. The hearing will take place on March 30, 2004, and will continue on subsequent days if necessary. Written comments are due by April 8, 2004.

- On March 9, 204, the International Trade Commission (ITC) announced that it has instituted an investigation regarding the probable economic effect of the US-Thailand FTA. The hearing will take place on April 20, 2004. Written comments are due by April 6, 2004. The ITC expects to submit its report to USTR by August 19, 2004.

US Signs TIFA With United Arab Emirates

On March 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with the United Arab Emirates (UAE). The TIFA is part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

Customs

CBP Announces Delay in Implementation of the "Shipper" Rule for Ocean Cargo Manifests; Issues Revised Implementation Schedule for Air AMS

We want to alert you to the following customs developments:

- On February 23, 2003 the Bureau of Customs and Border Protection (CBP) announced that it would delay requiring that electronic manifests contain shipper data for inbound ocean cargo, in order to develop a clear definition of the term shipper. The rule was scheduled to go into force on March 4, 2004.

- On March 4, 2004, CBP published a revised implementation schedule for the Air Automated Manifest System (AMS). CBP has revised the implementation schedule in order to accommodate technical needs and training requirements.

Petitions and Investigations

USTR Requests ITC Studies of Economic Impact US-Thailand and US-Morocco FTAs

The United States Trade Representative (USTR) recently requested ITC studies of the economic impact of the US-Thailand and the US-Morocco FTAs.

Multilateral

U.S. Files First-Ever WTO Dispute Case Against China; Alleges China's VAT Rebate Policy Discriminates Against Imports of Semiconductors and Other Goods

On March 18, 2004, the United States filed the first-ever dispute against China at the World Trade Organization (WTO) since China joined the WTO on December 11, 2001. The United

States' request for consultations claims that China's Value Added Tax (VAT) rebate policy discriminates in favor of domestic semiconductor producers, and other manufacturers. The U.S. decision to pursue formal dispute proceedings now comes despite earlier indications from USTR that it would wait until after high-level meetings with China scheduled in April. According to Assistant USTR Christopher Padilla, waiting until the April meeting was rendered pointless after China made clear that it was unwilling to modify its position anytime soon.

China's VAT policy, adopted in 2000, has been of long-standing concern to the U.S. semiconductor industry in particular. The policy is also part of a broader concern over China's treatment of the high-tech sector, including the promulgation of "China-only" technical standards. The request for consultations is the first step in the WTO dispute settlement process, and will result in the establishment of a dispute settlement panel if the parties are unable to resolve the dispute within 60 days.

WTO Panel Rules Against U.S. ITC Methodology in Canadian Softwood Lumber Dispute

A WTO Panel has ruled that the U.S. determination of "threat of injury" caused to the domestic industry by softwood lumber imports from Canada violated U.S. obligations under both the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel found that the threat of material injury determination made by the U.S. International Trade Commission (USITC) was not one that could have been reached by "an objective and unbiased investigating authority." The Panel also found that the United States consequently breached its obligation to determine a "causal relationship" between the dumped or subsidized imports and the injury to the domestic industry.

This decision in noteworthy, in that it is one of the very few WTO cases to have examined the requirements that apply when a WTO Member determines that there is a "threat of material injury" to its domestic industry as a result of dumped or subsidized imports.

REPORTS IN DETAIL

SPECIAL REPORTS

2004 Democratic Candidates Propose Incentives for Domestic Manufacturers; Seek to Strengthen Enforcement of Trade Agreements

SUMMARY

The top Democratic presidential candidates, Senator Kerry (D-Massachusetts) and Senator Edwards (D-North Carolina) have similar trade platforms. They propose incentives for manufacturers that maintain domestic operations, seek stronger labor and environmental protections in trade agreements and support a WTO case against China for currency manipulation.

Trade related campaign issues include: reviving the U.S. manufacturing sector; making U.S. workers more globally competitive; ending currency manipulation; ensuring trade partner compliance; and strengthening labor and environmental standards.

Democratic presidential candidates argue that the Bush administration's international trade policy has contributed to the loss of over two million jobs in the last two years. Most polls in the primary season ranked concerns over unemployment as the most important issues for voters.

ANALYSIS

Democratic presidential candidates have raised the profile of U.S. international trade policy by linking the Bush administration's trade policy to the loss of more than two million jobs over the last two years. Frontrunners **Senator John Kerry (D-Massachusetts)**, the most pro-trade Democratic candidate, and **Senator John Edwards (D-North Carolina)** have focused on flaws in the current Administration's trade policies and the need to secure American jobs.

Prior to their exit from the campaign, **Governor Howard Dean (D-Vermont)** focused on American middle class jobs, and **Representative Dick Gephardt (D-Missouri)** strongly opposed free trade.

Gephardt stood out as the most anti-free trade candidate. With a populist, pro-union trade agenda, Gephardt opposed NAFTA, fast track legislation, normal trade relations with China, and the Chile and Singapore free trade agreements. Gephardt described unfair trade as a "moral issue" and the U.S. trade deficit as a "global tragedy." He opposed corporate outsourcing and offshore production.

We review here the major trade positions of the two leading Democratic candidates:

Trade Related Campaign Issues	Senator John Kerry	Senator John Edwards

Trade Related Campaign Issues	Senator John Kerry	Senator John Edwards
Reviving the U.S. Manufacturing Sector	• Remove corporate tax incentives for U.S. companies to move offshore. • Support the Crane-Rangel-Hollings legislation, which offers a corporate tax rate reduction to manufacturers who produce goods in the U.S. • Pass a jobs tax credit for manufacturing companies who create jobs above their 12-month employment average. • 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.	• Remove corporate tax incentives for U.S. companies to move offshore. • Offer a 10 % tax cut for U.S. manufacturers who produce domestically and create jobs. • Oppose legislation that provides a "tax holiday" on foreign profits of multinational corporations. • Bring venture capital, small business loans, and business expertise to communities hurt by trade.
Making U.S. Workers Globally Competitive	• Offer Trade Adjustment Assistance for workers in transition, better secondary math and science instruction, and community-based grants to retrain workers. • Offer a "College Opportunity Tax Credit" and a tuition reimbursement program to ensure a college education for every American.	• Implement effective job creation, training, and retraining programs.

Trade Related Campaign Issues	Senator John Kerry	Senator John Edwards
Ending Currency Manipulation	• Punish countries (e.g. China and Japan) for keeping their currencies undervalued against the U.S. dollar. • The U.S. should file a formal complaint with the WTO against China's currency regime.	• End China's currency manipulation, which distorts trade patterns and gives China an unfair advantage in the world market. • The U.S. should file a formal complaint with the WTO against China's currency regime.
Reviewing Existing Trade Agreements and WTO Compliance	• Implement a 120-day "top-to-bottom" review of all existing free trade agreements. • Ensure that American workers and businesses profit from trade agreements. • Punish non-compliant WTO members, such as China and Japan, with WTO remedies. • Eliminate Japanese non-tariff barriers on U.S. automobile exports. • Use Section 301 of the Trade Act to demand the liberalization of key markets.	• Demand that foreign countries abide by international trade commitments. • Ensure that American workers and businesses profit from trade agreements. • Reverse Chinese biotechnology regulations that block U.S. soybean exports. • End Mexico's 20 percent tax on soft drinks that effectively bans U.S. corn syrup exports. • Use Section 301 of the Trade Act to demand the liberalization of key markets.

Trade Related Campaign Issues	Senator John Kerry	Senator John Edwards
Strengthening Labor and Environmental Standards in Trade Agreements	• Demand that existing and new free trade partners abide by strict labor and environmental commitments.	• Ensure that trade agreements incorporate ILO standards, including the right to collective bargaining, prohibition on slave labor, minimum age requirements, and minimum wage standards. • Include better labor and environmental standards in the CAFTA and FTAA agreements. • Overturn U.S. trade agreements that create a corporate "race to the bottom." • Prevent Chapter 11 of NAFTA, which allows foreign investors to challenge U.S. environmental, health, and safety laws in closed hearings, from inclusion in future agreements. • Implement "International Right to Know," in which companies must disclose their overseas labor and environmental practices and outsourced business.

During his tenure in the Senate, Senator Kerry supported NAFTA, PNTR for China and the passage of trade promotion authority (TPA) in 2002.

Senator Edwards supported TPA, but opposed trade agreements with Chile and Singapore.

OUTLOOK

Kerry and Edwards support open trade and a more "global economy." Their trade policies differ little, although Edwards aligns himself more closely with U.S. manufacturing interests.

Job growth remains one of the most important issues for Americans. Democratic candidates 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.

Democrats have linked the Bush administration's trade policies with job losses, but it is too early in the presidential campaign to determine if international trade issues will resonate with enough Americans to become a key campaign issue.

On March 2, 2004, (also known as "Super Tuesday") a quarter of the delegates to the national convention will be chosen. In order to win the nomination, a Democratic candidate must receive the support of 2,162 delegates, with delegates being apportioned by state roughly along population lines. Senator Kerry has already secured over a quarter of the delegates he needs. Senator Kerry remains the favorite in most polls, though Senator Edwards received a boost from his impressive performance in Wisconsin.

Four Former USTRs Offer Their Perspectives on U.S. Trade Policy

SUMMARY

The Center for Strategic and International Studies ("CSIS") on February 13, 2004, hosted its fourth annual seminar featuring former United States Trade Representatives ("USTRs"). Four USTRs who served under various Presidential administrations from 1971-2000, presented their perspectives on a wide range of U.S. trade objectives, as summarized below:

- ***Clayton Yeutter (Reagan)*** – Discussed the prospects for the successful completion of the Doha Round and the prospects of agriculture liberalization.
- ***Charlene Barshefsky (Clinton)*** – Discussed current trade tensions with China.
- ***William Eberle (Ford)*** – Discussed the prospects for the FTAA.
- ***Carla Hills (Bush Sr.)*** – Discussed the issues of "outsourcing" and job loss in the US.

The USTRs in general believe that the prospects for trade liberalization are decent despite the challenges at home and abroad. They stated, however, that the political climate in the United States regarding trade liberalization is far more complicated than in the past.

ANALYSIS

I. Clayton Yeutter Expresses Cautious Optimism on Prospects for the Doha Round and Agriculture Reform

Ambassador Clayton Yeutter, USTR during the Reagan Administration from 1985-1989, discussed the current developments in the Doha Round, in particular agriculture negotiations.

A. Applauds Recent USTR Initiative

Mr. Yeutter began by commenting on the recent initiative of current USTR Robert Zoellick, who sent out a letter (on January 11, 2004) to all WTO member countries encouraging commitment to the Doha Round. Ambassador Yeutter commended Zoellick on his "good and timely" letter. Mr. Yeutter stated that the letter was welcome during these difficult times. He stated that in the US, for example, there are signs of growing protectionist and mercantilist attitudes caused by the growing trade deficit, reminiscent of the mid-1980s.

Mr. Yeutter interpreted Mr. Zoellick's recent actions (letter, trip to Asia, Africa and elsewhere) as setting the groundwork for further negotiations. He also opined that the U.S. Administration is probably driven by the possible expiration of the trade promotion authority (TPA) in 2005, when the Congress might vote on whether to disapprove extension of TPA until 2007. According to Mr. Yeutter, unless the Administration can show some progress in WTO talks, Congress might be unwilling to extend TPA after 2005.

B. Doha Agenda Issues

Mr. Yeutter divided issues on the agenda during Doha round into four groups: (1) tariffs on manufactured goods, (2) agriculture, (3) services, and (4) the Singapore issues. He indicated that the issues of manufactured goods and services would be easier to deal with. Regarding manufactured goods, Mr. Yeutter opined that they are the easiest of all the issues discussed, as WTO members have been dealing with them since the creation of the GATT Agreement in 1947 and managed to achieve a lot of progress since then. Services would be more difficult, but Mr. Yeutter expressed cautioned optimism that members will be successful in settling their differences over services liberalization.

Addressing the Singapore issues, Mr. Yeutter singled out trade facilitation and competition policy as the two extremes – trade facilitation should be, according to Mr. Yeutter, on the Doha agenda and there should not be much controversy regarding its successful inclusion in the final agreement. On the other hand, competition policy should not be included in the WTO negotiations (not only Doha), as the issue is too controversial for the developing countries. Regarding the two remaining Singapore issues, transparency in government procurement and investment, Ambassador Yeutter said he supported the inclusion of both in the WTO Agreement. However, he said that due to the resistance from many countries, he would abandon the attempts to include them in the Doha Round, but suggested that WTO Members begin negotiations on them separately. He also pointed out that because investment protection is provided for in bilateral investment agreements, he thinks it should be easy to find common ground and forge a meaningful investment agreement within the WTO.

Addressing agriculture, Mr. Yeutter began with the analysis of the failure in Cancun. He pointed to the joint US-EU text as setting the stage for the failed negotiations. In his opinion, the joint "self-serving" proposal, which was perceived by as backtracking on earlier U.S. commitments to liberalize agricultural trade, elicited an angry reaction from the G-20 group of developing countries, a reaction that should not have been a surprise. Mr. Yeutter pointed out, however, that the US is now back to its original position, which he considers very ambitious. He cautioned, though, that the position taken by the US in recent FTA negotiations sends an unwelcome signal to the rest of the trade community – that the US remains protective of its sensitive sectors, e.g. diary, sugar. In his opinion, this situation might undermine U.S. credibility with its WTO partners.

Mr. Yeutter emphasized that other major players/distorters must also show a sense of commitment to the Round on agriculture. In this context, Mr. Yeutter cited the EU in particular, which "clearly needs a much more extended negotiating mandate", as well as Japan, Korea, Switzerland and Norway. He also implored the developing countries to "meaningfully" participate, which he found particularly important in agriculture negotiations. Addressing the substance of agricultural negotiations, Mr. Yeutter called for a complete elimination of tariff rate quotas and export subsidies. While he indicated that removal of domestic subsidies is also a desired end, he thought it was not likely to happen in the current Round. He urged countries to take the first step in tackling domestic subsidies by decoupling (e.g. ending the relationship between the subsidy and production).

C. WTO Institutional Reform

Mr. Yetter also commented on the proposed structural reforms of the WTO, in particular the role of the Director-General (he recalled the instructive role played by Director-General Dunkel during the Uruguay Round), and the role of the Secretariat. Nevertheless, he advised that Members leave the reform of the WTO for later, and instead to focus on the successful completion of the Doha Round. He also cautioned against holding another Ministerial Conference in Hong-Kong this year (contrary to Zoellick's suggestion), warning that the Doha Round might not survive another failed ministerial. Mr. Yeutter also opined that there was "no way" the Doha Round would be concluded by the end of 2005 and instead, predicated the Round would conclude by the end of the 2007 – when extended TPA expires.

II. Charlene Barshefsky Describes Context of US-China Relations; Recommends Areas to Seek Improvement

Ambassador Charlene Barshefsky, USTR during the Clinton Administration from 1997-2000, spoke on the challenges brought by China's "truly remarkable" emergence as a major trade power. She pointed out that China's rise has both short-term as well as long-term implications for the US. Short-term effects include the trade imbalance and its economic effects; the long-term effects could result in China's increased political and military strength in Asia, and as result, a weakening of the U.S. position in Asia.

A. Rise in Trade Tensions with the US; China Might Be Different than Japan in the 1980s

Ms. Barshefsky described the context for the rise of tensions with China. She pointed out that before the fall of the Berlin Wall in 1989, it was the Cold War that provided a backdrop for all U.S. policy towards China. After the fall of Communism, U.S. policy toward China lacked any central theme. After the US granted China permanent normal trade relations and China joined the WTO, US-China relations regained a new point of reference – international trade rules.

Ms. Barshefsky pointed out that U.S. economic slowdown and related factors have contributed to the rise in tensions with China: (1) weak economy in 2001 and 2002, and a weak and jobless recovery in 2003; (2) dramatic loss of jobs, including jobs in important sectors such as textiles (200,000) and semiconductors (70,000), with more job loss to come and few new jobs to replace those lost (she cited a study predicting that the US will lose about 8 million jobs due to outsourcing within the next 10 years); (3) "massive" current account deficits, affecting manufacturing the most, and reaching probably around five percent of U.S. GDP; and (4) drop in foreign direct investment (FDI) in the U.S., with China becoming the major destination for FDI.

Ms. Barshefsky also cited other factors attributing to China's dramatic growth. The telecom revolution has facilitated transport of data, which allows for outsourcing of data-based services such as customer service, and financial or health services. China's export performance has been astounding, accounting for almost one-third of all American imports and the largest trade surplus with the US. Chinese export s have also replaced Japanese exports to other Asian countries. China has become the fourth largest manufacturing exporter (for example, it accounted for 50 percent of world production of DVDs) and has the second

largest foreign currency reserves after Japan. According to Barshefsky, there is not a sector of production where China hasn't grown and its exports have been very diverse, including items like tableware or electronics. At the same time, China has been a huge importer of raw materials with strategic value, including iron ore, gas and oil. As such, China is exerting indirect influence in regions of strategic interest to the US.

Those factors, in Ambassador Barshefsky's opinion, have led to the rise in tensions between the US and China. Ms. Barshefsky pointed out that a similar rise of tensions took place in the past in U.S. relations with Japan in the 1980s. She warned that China might be different, however, since U.S. relations with Japan had a "safety net" – both countries' security interest in Asia, safeguarded by their cooperation in trade, political and military matters. Because of their various interlocking interests, Japan and the US could not allow trade tensions to spoil their overall relationship. In her opinion, that "security valve" is not present in the case of China. Ambassador Barshefsky therefore encouraged extreme caution when handling this important trade relationship.

B. Areas to Pursue Improvement in US-China Relations

Ambassador Barshefsky pointed to four areas crucial to the improvement of China's trade relationship with the US:

- ***WTO compliance***: Emphasized the need for China's full implementation of its WTO commitments;

- ***Currency exchange rate situation***: Opined that while full flotation of yuan is not desired due to the weakness of China's banking system, she indicated that China could improve the currency situation by strengthening its banking system, beginning with recapitalization;

- ***Export rebate system***: Pointed out that the current system of differential export rebates allows China to influence directly its trade patterns. She therefore encouraged China to "play" with its export rebates to lessen the tensions with the US. She also commented that while China recently reduced its export rebates, it cannot fully eliminate them due to budgetary concerns; and

- ***Use of foreign currency***: Suggested that China reform its security, banking and financial markets regulations to encourage a free use of foreign currency amassed in China (for example, allowing Chinese government funds to invest abroad).

Ms. Barshefsky also pointed out that Chinese officials view China in a different light than does the US. From the American perspective, China looms as a great threat to U.S. trade and economic growth. Chinese, however, generally believe that China remains vulnerable economically and socially, especially due to the reforms arising from WTO accession. She pointed out China's perceived weaknesses: "massive unemployment" and increasing job loss caused by restructuring and rationalization of formerly state owned enterprises; a great "floating" population, e.g. population migrating to the cities; serious labor unrest (wage arrears, strikes); corruption, a bureaucracy resistant to change, and a weak

banking system. All those factors, according to Ms. Barshefsky, contribute to the Chinese government's fear of instability and social unrest.

Finally, Ms. Barshefsky warned that China feels very limited in what it can do to appease the trade concerns of the US. She indicated, for example, that China needs to create approximately ten million new jobs per year just to keep up with the growing population. That, in her opinion, drives the Chinese leadership, which cannot afford to fail in the restructuring of their country's economy. Thus, US-China relations will be subject to considerable economic and political challenges in the near, and long-term.

III. William Eberle Discusses Prospects for the FTAA

Ambassador William Eberle, USTR during the Nixon and Ford Administrations from 1971-1975, discussed the prospects for the successful completion of the Free Trade Area of the Americas (FTAA). He cited the recent FTAs signed by the US, from which sensitive agricultural issues were removed (e.g., sugar in the Australia FTA), as examples of protectionism that might hurt trade liberalization in the long run. He urged the Administration to "rise above" pressures from domestic industries that seek to hinder liberalization and to impose trade barriers.

A. Warning that U.S. Protectionism Encourages Further Protectionism

Mr. Eberle pointed to several difficulties with the FTAA negotiations, which have reached a new and uncertain stage after the recent Miami Ministerial meeting. First, he mentioned the pressure put on USTR by various sensitive industries. As a result of USTR caving in to these pressures, the US refused to negotiate on certain issues of importance to its FTAA countries. That, in turn, caused some FTAA countries to refuse negotiations on several issues of interest to the US, including intellectual protection, investment and other issues, which might get shifted instead to WTO negotiations. Mr. Eberle cautioned against these developments, and warned that if this trend continues, "there might be nothing left to discuss."

B. New Spheres of Influence in the Western Hemisphere

Mr. Eberle believes that another issue influencing FTAA negotiations is the competition between various trade powers. On the one hand, the MERCOSUR countries and Brazil in particular, seek to slow down the negotiations to reinforce their leading position in South America. On the other hand, the US seeks to wean smaller countries (Andean and Central American) away from Brazil's influence by offering them bilateral free trade agreements. In addition, the EU seeks to weigh in by tempting MERCOSUR with privileged trade relations (MERCOSUR is currently negotiating an FTA with the EU), further complicating the alliances within the Western Hemisphere. Mr. Eberle identified another problem as the business community's apparent lack of serious interest in the success of the FTAA, especially after the Miami meeting.

In general, Mr. Eberle was cautiously optimistic about the prospects for a successful completion of FTAA negotiations. He said that while the FTAA would not happen in the "near term," it definitely would happen "sometime." He predicted that countries in the Western Hemisphere will continue to pursue and conclude smaller free trade agreements, but these should not replace the FTAA.

IV. Carla Hills Tackles Outsourcing Controversy

Ambassador Carla Hills, USTR during the George H. W. Bush Administration from 1989-1993, discussed the current trends and outlook for the contentious issue of outsourcing. She began by mentioning the recently published op-ed in the New York Times (January 6, 2004) in which the authors, Senator Charles Schumer and Paul Craig Roberts (former Treasury official in the Reagan Administration), pronounced that the main foundation of economic theory underlying trade liberalization, the theory of "comparative advantage," might not apply to the current global economic environment. According to the article, David Ricardo, who has been credited with devising the theory did not account for the freedom of movement of the so-called "factors of production" – e.g., land, climate, geography and even most workers. In the current digital age, these factors of production might be less relevant and manufacturers can easily move production from one country to the other due to advances in technology. The authors believe the flaws of Ricardo's theory supporting liberalization, coupled with recent job loss in the US but job growth elsewhere in India and Asia, should prompt U.S. officials to rethink their strategy on trade. Ambassador Hills commented that the article portrayed some of the serious challenges facing proponents of free trade, including in the current outsourcing debate.

A. Factors Leading to Outsourcing, Growth in Outsourcing Services Abroad

Ms. Hills next discussed the economic factors that led to the recent rise in outsourcing. First, she mentioned that multinational companies are very fragmented and not vertically integrated, and thus focused on narrow parts of manufacturing or services. As a result, U.S. companies tend to outsource particular, specific elements of their production and services. Second, she pointed out that the revolution in transportation and telecommunication has significantly facilitated trade in goods and services. Ambassador Hills also noted that the current trend for service providers to outsource some stages of service "production" would increase: according to one cited study, although service providers currently "produce" 90 percent of their work in-house (e.g. creating the service themselves), in a decade that number will drop to 60 percent, with 40 percent of all service providers outsourcing some part of their service. With that trend, Ms. Hills explained, foreign service producers will gain a significant part of the market.

In general, Ms. Hills opined that the trend to outsource services abroad would continue. According to one study prepared by Catherine Mann at the Institute for International Economics (IIE), 3.3 million jobs will have moved to developing countries by the end of 2015. However, Ms. Hills noted that according to the IIE study, outsourcing is good for the U.S. economy in the long run. As an example, she referred to the information technology industry – where trade liberalization led to a consistent decline in prices of computer equipment, which in turn led to significant savings for all U.S. businesses. Likewise, the boom in sale of IT products resulted in increased demand for highly-trained experts in computer sciences. Once technology filtered down to consumers and smaller businesses, the economy created many new highly-skilled jobs. The problem, however, is that economic restructuring cycles take time and the benefits are not readily apparent.

B. Addressing the Backlash Against Outsourcing and Free Trade

Ms. Hills discussed the current backlash against outsourcing and free trade, and in the context of an election year. She mentioned the repeated attacks against trade and outsourcing during the presidential campaign by virtually all Democratic candidates. She also noted the increased pressure at the state level, and cited an example in which the State of Indiana cancelled a public contract awarded to an Indian company, which bid $8 million cheaper than its nearest U.S. competitor.

In light of growing signs of protectionism, Ms. Hills said the responsible trade community needs to act to counter the backlash, including by: (1) helping those workers who have become displaced as a result of free trade; (2) focusing on education and skill building; and finally (3) launching an educational campaign which would explain to citizens and workers the benefits of free trade. In this context, Ms. Hills urged the big international corporations to teach their employees about the benefits of free trade and how their companies are more successful (e.g. they can sell more) due to trade liberalization.

V. Question and Answer Periods

During the two question and answer sessions, the following issues were raised:

A. Impact of U.S. Election Rhetoric on Future Trade Liberalization

A dominating issue recurring during the discussions was the trade-bashing climate of the Democratic primaries and the implications after the election year. The speakers noted that virtually all Democratic contenders have publicly criticized the free trade policies of President Bush and his predecessors and that this climate may make it virtually impossible for whoever is the President to continue trade liberalization for a significant period of time after the elections. Similarly, speakers noted that a number of prominent Republicans have adopted protectionist stances in their public statements.

- Responding to a question from Mr. Claude Barfield of the American Enterprise Institute (AEI), Ambassador Hills argued that while trade liberalization is an issue that divides Americans, it is not a partisan issue, e.g. that the division between free traders and protectionists is not separated along political party lines. She pointed out that the business community, traditionally interested in trade liberalization, has not adequately spoken out to promote the benefits of free trade. She urged companies to explain to their employees the benefits they derive from free trade. As an example of employees behaving irrationally, she mentioned that employees of Boeing, a major exporter of hi-value goods, protesting against trade liberalization in Seattle in 1999.

- Ambassador Yeutter commented that in his opinion, the election climate might improve towards the end of the year, when he hopes the so-far jobless recovery will result in a fuller recovery. Moreover, greater job creation should significantly improve the climate for further trade liberalization once the election is over.

B. Role of Cotton Subsidies in Cancun

- Responding to a question from the audience, Ambassador Yeutter said that in his opinion the issue of curbing cotton subsidies should have never been put on the agenda of the Ministerial Conference in Cancun. Mr. Yeutter commented that several factors, including its controversial nature and its "technical nature" made it too complex of an issue to be discussed by Ministerial-level delegates.

C. FTAs and Multilateralism

- Ambassadors Eberle and Hills commented on the issue of whether bilateral free trade agreements are beneficial, or detrimental to the cause of free trade. Mr. Eberle admitted, that there is some merit in criticism, but generally commended free trade agreements for putting pressure on countries and other countries in the region, to also liberalize and open their economies. He mentioned the experience of the European Union as demonstrating the effects trade liberalization has on neighboring countries.

- Ambassador Hills pointed to the beneficial effects that FTAs have on countries which are parties to it, as well as to the region in general: for example, greater transparency and the strengthening of intellectual property rights. She singled out Morocco as a very successful FTA in terms of setting an example for the rest of the region.

OUTLOOK

The former USTRs were candid in their remarks and expressed cautious optimism that trade liberalization in bilateral FTAs, the FTAA and the WTO would continue despite the challenges. Overall, the session provided a useful exchange of views among the former USTRs – many of whom remain active in the U.S. trade policy process (often on behalf of private clients). The former USTRs agreed that USTR Zoellick faces a more difficult political climate than they did during their terms, both at home and abroad.

On the domestic front, bipartisan support for trade in Congress has declined over the years, and Congress has become more hostile to the WTO due to negative disputes findings. As described by Ambassador Hills, the high-profile debate over outsourcing – coupled with the slow and jobless economic recovery in the US – is an indicator of growing public skepticism towards free trade. Ambassador Barshefsky also highlighted U.S. perceptions of the growing threat of China to the U.S. economy, which has become a major issue in this election year. Democratic presidential candidates have seized on the issues of outsourcing, China trade and free trade in general, to criticize the Bush Administration's policies. The rhetoric might not subside until after the election year (and with job growth); and future commitment to free trade remains uncertain.

Regarding commitment to free trade abroad, Ambassadors Yeutter and Eberle suggested that recent U.S. positions in the FTAA and FTAs on agriculture in particular, might damage negotiating credibility. They warned against this trend of excluding sensitive

sectors and industries. Ambassador Barshefsky highlighted Chinese perceptions of the country's vulnerability despite the phenomenal growth, and indicated that China might feel limited in its ability to respond to U.S. pressure on currency exchange rates, or other issues. In any event, the challenges for U.S. trade policy towards China, in the Western Hemisphere and on a multilateral level appear far more complex than in the past.

UNITED STATES

USTR Zoellick Annual Testimony on the International Trade Agenda: Maintains that the US Will Continue Competitive Liberalization Strategy; Ensure WTO Compliance

SUMMARY

United States Trade Representative (USTR) Robert Zoellick gave his annual testimony on the Bush Administration's (2004) international trade agenda before the Senate Finance Committee on March 9, and the House Ways and Means Committee on March 11, 2004. Zoellick stated that the Administration would:

- ***"Competitive liberalization"*** – Continue the strategy of pursuing multilateral, regional and bilateral trade liberalization.

- ***WTO compliance*** – Increase efforts to ensure that the United States and its trading partners, particularly China, live up to their commitments under the WTO.

At both hearings, Democrats underscored the negative effects of free trade on U.S. employment, including outsourcing. Zoellick countered that trade liberalization is necessary to create new jobs and to increase the nation's economic strength. Zoellick emphasized, rather, the need to invest in fundamental issues including education, training and innovation to help people who lose their jobs adjust.

Zoellick also insisted that the Administration would soon take action against trading partners that did not comply with their obligations, and namely China. Days after the hearing, USTR did indeed file the first-ever WTO dispute against China, concerning its value-added-taxation (VAT) policy.

ANALYSIS

I. Zoellick Addresses Trade Liberalization, WTO Compliance, Labor and Environmental Standards and Trade Capacity Building

On March 9, 2004, USTR Robert Zoellick testified before the Senate Finance Committee regarding the Bush Administration's 2004 international trade agenda. Zoellick gave a similar testimony before the House Ways and Means Committee on March 11, 2004.

Zoellick discussed the Administration's trade successes of last year, and thanked both Committees for their assistance in moving forward the Administration's agenda. He said that the Administration's priorities were to (i) continue to pursue global, regional and bilateral trade liberalization and (ii) increase its efforts to ensure that the United States and its trading partners, particularly China, live up to their commitments under the WTO. We highlight his comments below.

A. Reviving the WTO Doha Round

The Administration is committed to getting WTO negotiations of the "Doha Round" back on track. The WTO is regaining some momentum, he said, but to make progress by the summer WTO Members must:

- Concentrate on the draft agriculture text in order to agree on specific frameworks for reform;
- Similarly, secure movement on agriculture by agreeing to set a date for elimination of export subsidies, end State Trading Enterprise monopolies, and discipline food aid; and
- Reconcile the "Singapore issues" by agreeing to focus solely on trade facilitation;

B. Moving FTAA Negotiations Forward

Zoellick stated that the Administration remains committed to work with the other countries to move the negotiations of the Free Trade Area of the Americas (FTAA) forward, but admitted that the task will not be easy. The countries who are working with the United States through bilateral Free Trade Agreements (FTAs) are the "most likely to be ambitious" in the FTAA. However, several countries in the region are not keen to pursue the same level of ambition.

C. Continue Pursuit of Bilateral Free Trade Agreements

The Administration will move forward with the negotiation of FTAs. The Administration intends to:

- Conclude the FTA with the Dominican Republic (later concluded on March 15, 2004);
- Launch negotiations with Panama, Colombia, and possibly Ecuador and Peru in the spring;
- Sign Trade and Investment Framework Agreements (TIFAs) with Qatar and the United Arab Emirates (UAE), and conclude bilateral negotiations to bring Saudi Arabia into the WTO; and
- Work with Congress on legislation to extend the African Growth and Opportunity Act (AGOA).

D. Ensure U.S. and WTO Members' Compliance Efforts

The Administration plans to increase pressure on China and will not hesitate to use the tools available to enforce WTO compliance. Zoellick identified China's IPR protection and value-added tax (VAT) on semiconductors as fundamental issues and noted that he would discuss these issues with Chinese Vice Premier Wu Yi in April 2004 at the Joint

Commission on Commerce and Trade (JCCT). (Soon after, on March 17, USTR filed a formal dispute request against China regarding its VAT policy.)

Zoellick insisted that the United States also must comply with its WTO obligations. He urged Congress to repeal the FSC/ETI Act, and address other U.S. legislative measures that were found inconsistent with the WTO, such as the 1916 Act, Section 211 of the Omnibus Appropriations Act of 1998 concerning conditions that permit the banning of trademark enforcement, and the Byrd Amendment.

E. Enforcement of Labor and Environmental Standards

The Administration remains focused on ensuring the effective enforcement of labor and environmental laws overseas.

F. Expanding Trade Capacity Building

The Administration will continue to work with multilateral institutions and private sector donors to promote initiatives such as the FTAA's Hemispheric Cooperation Program, and the WTO Technical Assistance Plan and the Integrated Framework. The US will continue to assist trading partners in implementing their commitments and managing their transition to free trade, and work with countries to maximize the benefits of trade preference programs.

II. Senators Warn Against Isolationism; Urge Attention to Unemployment, Outsourcing and Trading Partners' Compliance Efforts

A. Grassley Warns Against Isolationism

Senate Finance Committee Chairman Charles Grassley (R-Iowa) praised Zoellick for the FTAs that the Administration has concluded since the renewal of Trade Promotion Authority (TPA) in August 2002. He noted that, because it is an election year, some presidential candidates are using trade as an "economic whipping boy." Grassley stated that although it is necessary to pay attention to concerns of U.S. workers, a retreat into isolationism would be "disastrous" economic policy. He urged the Administration to remain steadfast in its pursuit of trade liberalization.

B. Baucus Raises Unemployment and Outsourcing Concerns

Senate Finance Committee Ranking Member Max Baucus (D-Montana) stated that the Administration could not dismiss the legitimate concerns regarding unemployment and off-shore outsourcing. He believes that in order to create jobs, the Administration must:

- Re-examine its choice of FTA partners and reduce the influence of foreign policy considerations.
- Improve the enforcement of U.S. trade agreements. Baucus specifically complained about market access barriers and IPR violations in India.
- Level the playing field for U.S. companies.

C. Snowe Inquires about WTO Action on China Currency and VAT Policy

Senator Olympia Snowe (R-Maine) complained about the negative effects of China's currency policy on the U.S. manufacturing sector and urged Zoellick to pursue this issue in the WTO. Zoellick replied that the Administration prefers not to file a case. He said that Chinese officials realize that they would have to change to flexible exchange rates, but were trying to determine how to do this without disrupting the banking system.

Zoellick also reiterated that the Administration is considering filing a WTO case regarding China's VAT on semiconductors "soon" and would ensure China's overall WTO compliance efforts. (Soon after, on March 17, USTR filed a formal dispute request against China regarding its VAT policy.)

D. Grassley Inquires about Mexican Taxes on HFCS; Other Agriculture Barriers

When Grassley asked Zoellick about the efforts the Administration was taking regarding Mexico's tax on soft drinks containing high fructose corn syrup (HFCS) and other agricultural products, Zoellick replied that he expected the United States to bring a dispute settlement case "very soon." He did not specify whether the US would bring the case under the WTO or under NAFTA. (Soon after on March 16, USTR filed a dispute complaint on Mexican taxation of HFCS.)

Zoellick added that the US and Mexico are close to solving the barriers imposed on U.S. exports of apples and pork, but the Administration is not satisfied with the progress on rice.

E. Complaints on Indian Trade Barriers

Grassley and Baucus both complained that India, whose services sector had benefited from the outsourcing of U.S. jobs, still refuses to open further its market to U.S. goods and services. Zoellick replied that the US may restrict imports to make it clear to India that "trade is a two-way street." Zoellick also commented that India had no right to complain about recent government procurement restrictions on outsourcing because it was not party to the WTO Government Procurement Agreement.

Zoellick noted, nevertheless, that there were "some areas of change" and that India has recently been lowering its applied tariffs on imports.

F. Trade Preferences vs. Bilateral Agreements in the Middle East

Baucus asked Zoellick if he considered a trade preference program a good way to increase trade liberalization in the Middle East. Zoellick replied that he preferred to work with reciprocal TIFAs and bilateral FTAs instead of unilateral trade preferences. He also noted that countries with trade preferences might become more reluctant to make concessions in the WTO.

G. Concerns Over Outsourcing and U.S. Unemployment

Senators Grassley, Baucus, Bob Graham (D-Florida) and Blanche Lincoln (D-Arkansas) voiced concerns about outsourcing and the growing unemployment situation in the United States. Zoellick acknowledged that outsourcing is a serious problem that needed to be discussed, but added that economic isolationism was not the answer. Zoellick emphasized that it would be necessary to invest in fundamental factors to help unemployed workers adjust, including education, training and innovation.

III. House Representatives Complain About FTA Exclusions and Zoellick's Assertions

A. Thomas and Crane Complain about Special Treatment for Sugar in FTAs

House Ways and Means Committee Chairman Bill Thomas (R-California) thanked Zoellick for his efforts to reinvigorate the WTO negotiations and to negotiate FTAs. Thomas was disappointed however that the Administration had begun to exclude certain sectors, such as sugar, and the absence of an investor-state dispute settlement mechanism in the FTA with Australia. Thomas hopes that the Australia FTA would not set a precedent for future FTAs.

Trade Subcommittee Chairman Philip Crane (R-Illinois) applauded Zoellick's strategy of competitive liberalization, but also expressed concerns about the U.S. sugar policy. Crane said that the U.S. sugar program's import restrictions had resulted in the loss of a great number of jobs in the U.S. confectionary industry. He criticized the long phase-out periods for sugar products in the U.S.-Central America FTA (CAFTA), the exclusion of sugar from the U.S.-Australia FTA, and Mexico's discriminatory tax on high fructose corn syrup.

B. Rangel and Levin Reject Zoellick's "Isolationist" Rhetoric

House Ways and Means Committee Ranking Member Charles Rangel (D-New York) thanked Zoellick for his attempts to put the WTO back on track. He stated that he was "disturbed" by the fact that Democrats are being labeled as "anti-trade" and noted that Democrats are not against trade, but could only support trade liberalization if the Administration pays attention to labor and environmental standards.

Trade Subcommittee Ranking Member Sander Levin (D-Michigan) urged Zoellick to avoid the rhetoric about "isolationism" because it "mischaracterizes, polarizes, and demonizes." Levin noted that the Democrats simply want responses from the Administration regarding U.S. workers concerns about trade policy.

Levin also criticized the Administration for not using all the tools at their disposal to shape the rules of competition. He mentioned the Administration's failure to:

- Act against China's currency policy and its non-compliance with its WTO commitments;
- Take a leadership position to solve the EU's trade sanctions against the US; and

- Use FTAs to address critical terms of competition, especially regarding labor and environmental standards.

Levin also contended that the Administration's actions to help displaced workers are inconsistent with its rhetoric.

C. Efforts to Address U.S. WTO Compliance

Thomas, Rangel, Levin, and Representative Nancy L. Johnson (R-Connecticut) asked Zoellick to specify the Administration's position regarding the FSC/ETI Act and the EU retaliatory sanctions. Zoellick replied that the EU sanctions would certainly have a negative effect on U.S. workers and urged Congress to repeal the Act "in any way possible."

Regarding compliance in the Byrd Amendment dispute, Zoellick responded to a question from Representative Jim Ramstad (R-Minnesota), and said that the Administration supports a repeal of the Byrd amendment because of the threat of $150 million in retaliations by the EU, among other trading partners. Zoellick suggested as an alternative to repealing the amendment, Congress might want to divert the revenues collected from antidumping duties to U.S. workers (rather than companies that file cases).

D. Prospects for Free Trade Agreements

Representative Amo Houghton (R-New York) asked about the prospects for the US-Australia FTA. Zoellick replied that the Administration hopes to submit the implementing legislation to Congress by May, and obtain congressional approval before the end of the year.

Representative Wally Herger (R-California) asked what countries would be promising FTA partners. Zoellick responded that Colombia and Thailand are the "biggest ones" on the agenda. He noted that he would also be interested in FTAs with Korea and Japan, but that these countries did not want to negotiate. Zoellick also commented that in order for Taiwan to negotiate an FTA with the US, Taiwan first had to improve the implementation of its WTO commitments on IPR and agriculture.

E. Attention to Labor and Environmental Standards

Rangel and Levin asked why the Administration did not pay more attention to labor and environmental standards. Zoellick said that the Administration put significant efforts in trade capacity building to help trading partners develop and enforce their labor and environmental laws. He noted, nevertheless, that enforcement of laws by U.S. trading partners is the key problem.

F. Actions to Ensure China's WTO Compliance

Levin, Johnson, and Representative John Lewis (D-Georgia) voiced concerns about the Administration's failure to undertake action against China on WTO compliance. Levin asked why the Administration had failed three times to undertake action against China after an ITC investigation suggested it should file a case (in the special safeguards cases). Zoellick pointed out that the ITC also found that the costs of these actions would exceed the benefits.

OUTLOOK

Shortly after Zoellick's testimony to the Senate and House committees with authority over trade, the Administration acted on several agenda items outlined in its 2004 trade policy agenda:

- On March 15, USTR concluded an FTA that will integrate the Dominican Republic into the CAFTA and signed a TIFA with the UAE;
- On March 16 the U.S. filed a WTO case against Mexico's taxes on high fructose corn syrup;
- On March 17 the U.S. filed a WTO case against China's VAT on semi-conductors, the first ever against China by any WTO Member.

USTR will continue to work with Congress on approval of recently concluded FTAs and to negotiate FTAs with other countries. The challenges of passing recently concluded FTAs, however, is daunting. Although the Australia and Morocco FTAs might pass this year, there are strong signals from Congress that the CAFTA deal might have to wait until after the 2004 election cycle. At least, technical negotiations will soon move forward with recent FTA candidates including Thailand and the Andean countries.

Questions at the Senate Finance and House Ways and Means hearings featured high-profile issues such as unemployment and outsourcing concerns, in addition to traditional concerns on labor and environment standards. In the politicized atmosphere of the 2004 presidential race, these concerns – especially unemployment and outsourcing, could pressure the Administration to take a less ambitious, and possibly more protectionist stance on trade. As mentioned, the Administration is not expected to send CAFTA to Congress before the elections in part due to Democratic objections to the labor and environmental standards. The Administration was also quick to act against China, including by filing the first WTO dispute ever against China soon after the hearing. The USTR must now consider a far more severe measure, a Section 301 petition filed on March 15 by the AFL-CIO that could impose severe penalties on Chinese imports due to China's labor standards. The Administration has also been rather silent on the issue of outsourcing (since the recent controversy over Council of Economic Advisors Chairman Gregory Mankiw's comments that outsourcing is an evolution of international trade), and has not rallied against the proliferation of restrictions at the federal and sub-federal levels that would discourage companies from sourcing goods and services abroad.

Meanwhile, on the multilateral front – many Members of Congress and trading partners have welcomed USTR Zoellick's efforts during his world tour in February to rally support for reviving the WTO Doha Round. The US and other WTO Members aim to take the difficult decisions necessary by the summer in order to move the Round forward. But, U.S. leadership could be undermined if U.S. delays persist in WTO compliance efforts, and if the US imposes more restrictive trade barriers (*e.g.*, prevent outsourcing, penalize Chinese labor standards, etc.).

In an election year – not to mention the slow economic recovery, the danger of protectionism is often more prevalent.

Senator Grassley Defends JOBS Bill as EU Imposes Sanctions on US; Senate Takes Up Bill, Debating Outsourcing Amendments

SUMMARY

On March 2, 2004, Senator Charles Grassley (R-Iowa) defended the provisions of the Jumpstart our Business Strength (JOBS) Act (S. 1637), which would repeal the Extraterritorial Income Exclusion (ETI) Act, before the National Association of Manufacturers (NAM). Grassley argued that the proposed cut on taxes for manufacturers in the JOBS Act is appropriate because 90% of the benefits under ETI go to manufacturers. Grassley also defended the revenue neutral quality of the JOBS Act, suggesting that the present fiscal situation demands prudence.

The Senate commenced debate on the JOBS Act on March 3, 2004. The first amendment debated concerned outsourcing and was offered by Senator Dodd (D-Connecticut). The Amendment was adopted on March 4, 2004, after it was modified.

More than 50 amendments to the bill have been filed already. Senate Majority Leader Bill Frist (R-Tennessee) reportedly will file a cloture motion on March 22 as the Senate restarts debate. A successful cloture vote would disallow any amendments to the bill that are not germane.

ANALYSIS

I. Senator Grassley Defends JOBS Bill as EU Imposes Sanctions on US

On March 2, 2004, Senator Charles Grassley (R-Iowa) defended the provisions of the Jumpstart our Business Strength (JOBS) Act (S. 1637) before the National Association of Manufacturers (NAM). Among other things, the JOBS Act would repeal the Extraterritorial Income Exclusion (ETI) Act, which was found by the WTO to be non-compliant with international trade obligations. In his remarks, Senator Grassley argued that the proposed cut on taxes for manufacturers in the JOBS Act is appropriate because 90% of the benefits under ETI go to manufacturers. In addition, Grassley defended the revenue neutral quality of the JOBS Act, suggesting that the present fiscal situation demands prudence.

Senator Grassley's remarks come a day after the EU imposed retaliation on the US for failing to repeal the ETI. The retaliation involves a 5% tariff against certain US exports, with that tariff increasing 1% every month to a maximum of 17% in March 2005. A list of affected US exports can be found at: http://mkaccdb.eu.int/dsu/doc/ds108-26.doc.

The Senator took issue with those who suggested that immediate action of the ETI issue is not important. He argued that the weakening of the dollar might absorb some of the shock of sanctions, but that exchange rates were not a reliable way to buffer against retaliation. He also argued that delay could have negative affects on the manufacturing sector, which needs as much support as possible given the loss of three million jobs in the last two years.

Senator Grassley also addressed other trade related issues during question period. He stated:

- With respect to the Central American Free Trade Agreement (CAFTA), that the power of the sugar lobby, and the upcoming presidential elections make passage of CAFTA difficult.

- With respect to the US-Australia FTA, that continued divisions within the agricultural sector need to be overcome in order to ensure smooth passage of the agreement in 2004.

II. Senate Takes Up Bill; Debates Outsourcing Amendments

On March 3, 2004, the Senate commenced debate on the JOBS Act. The first amendment debated concerned outsourcing and was offered by Senator Dodd (D-Connecticut). Outsourcing has been gaining in importance both as an issue in Congress and in the presidential election. The Dodd Amendment was adopted on March 4, 2004, after it was modified.

The Dodd Amendment (S. Amdt. 2660 to S. 1637) makes permanent an existing one-year restriction contained in the FY2004 Consolidated Omnibus Appropriations Act prohibiting private companies from using offshore labor or other resources when bidding for government contract work. The Amendment as modified, previously introduced as a stand-alone bill (S. 2094), makes exceptions for national security interests, situations where property or services are not available in the US, or does not satisfy the need of the contracting agency or department, and requires that nothing in the Amendment violate U.S. bilateral free trade agreements or U.S. obligations under the WTO agreement on government procurement. State contracts financed with federal funds would also be subject to the same requirements, with each state required to make certifications to the Office of Management Budget (OMB) that the state is not using federal funds to purchase foreign goods or services.

OUTLOOK

Senate Majority Leader Bill Frist (R-Tennessee) reportedly will file a cloture motion on March 22 as the Senate restarts debate. A successful cloture vote, which would require at least 60 votes, would disallow any amendments to the bill that are not germane. If successful, the cloture petition would block Democratic efforts to offer several amendments to the bill, such as Senator Tom Harkin's amendment to overturn Labor Department regulations that redefine the rules for paying overtime workers.

More than 50 amendments to the bill have been filed already. Grassley is working to trim that number significantly.

Senate Adopts Miscellaneous Trade and Tariff Bill

SUMMARY

On March 4, 2004, the Senate adopted the Miscellaneous Trade and Technical Corrections Act of 2003 (S. 671). The Act reduces or suspends tariffs on a variety of products, largely chemicals. The Act also extends normal trade relations with Serbia and Montenegro.

ANALYSIS

On March 4, 2004, the Senate adopted the Miscellaneous Trade and Technical Corrections Act of 2003 (S. 671). The Act, which has been subject to repeated delays and holds in the Senate, reduces or suspends tariffs on a variety of products, largely chemicals. The Act also extends normal trade relations with Serbia and Montenegro.

The House adopted its version of the Act (H.R. 1047) in March of 2003. Senate Finance Committee staff suggest that Senate approval was the largest obstacle to completion of the Act.

OUTLOOK

Differences remain between the House and Senate versions of the Act, including repayment of alleged overcharges by the Customs service on certain imports during the 1990s. It is expected that the House and Senate will go to conference to resolve differences in the two versions.

ITC Invites Public Comments, Schedules Hearing of 2003 GSP Review; President Issues GSP Proclamation

SUMMARY

On February 25, 2003, the International Trade Commission (ITC) announced that it would accept public comments and hold a hearing on the 2003 Generalized System of Preferences (GSP) review. The hearing will take place on March 31, 2004. Parties interested in appearing at the hearing were to notify the ITC by March 4, 2004. Pre-hearing written submissions were due by March 5, 2004. Post-hearing submissions are by April 2, 2004.

In a related development, the President on March 1, 2004 issued a proclamation amending the list of countries benefiting from duty-free treatment under GSP.

ANALYSIS

I. ITC Invites Public Comments, Schedules Hearing of 2003 GSP Review

On February 25, 2003, the International Trade Commission (ITC), pursuant to a request made by the United States Trade Representative (USTR), announced in the Federal Register (69 FR 8680) that it would accept public comments and hold a hearing on the 2003 Generalized System of Preferences (GSP) review. These periodic reviews allow the USTR to obtain advice on the economic effects of altering certain preferences within the GSP.

The USTR request, made on February 13, 2004, seeks to determine the economic effect of the elimination of duties on certain vehicle parts (HTS 8708.92.50) and wheel rims (8714.92.10). USTR also requested the ITC to study the economic effects of eliminating preferences for certain leather products from Argentine (HTS 4107.11.80) and certain aluminum kitchen articles from Thailand (7615.19.30).

II. President Issues GSP Proclamation

On March 1, 2004, the President issued a proclamation in the Federal Register (69 FR 10131), amending the list of countries benefiting from duty-free treatment under GSP. Under the proclamation, those countries joining the European Union will no longer receive duty-free treatment. The proclamation designates Antigua and Barbuda, Bahrain, and Barbados as "high income" countries, making them ineligible for duty-free treatment under GSP, with their duty-free status set to expire on January 1, 2006. In addition, Algeria is designated as a developing country beneficiary under GSP.

OUTLOOK

The ITC has scheduled a public hearing on the USTR's request for March 31, 2004. Parties interested in appearing at the hearing were to notify the ITC by March 4, 2004. Prehearing written submissions were due by March 5, 2004, and post-hearing submissions by April 2, 2004.

AFL/CIO Files 301 Petition Against China Over Labor Rights Violations

SUMMARY

On March 16, 2004, the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) filed a petition at the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The petition calls on the President and USTR to (i) impose tariffs up to 77% on all Chinese exports to the United States, and to (ii) negotiate a binding agreement requiring China to comply with internationally recognized workers' rights.

The USTR now has 45 days to accept or reject the petition.

ANALYSIS

On March 16, 2004, the American Federation of Labor and Congress of Industrial Organizations (AFL/CIO) filed a petition at the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The petition calls on the President and USTR to (i) impose tariffs up to 77% on all Chinese exports to the United States, and to (ii) negotiate a binding agreement requiring China to comply with internationally recognized workers' rights.

The petition is, according to labor groups, a response to unfair trade practices by China, and specifically to its repressive labor rights regime. Sources indicate, however, that political motives relating to the Presidential elections are behind the petition.

OUTLOOK

The USTR now has 45 days to accept or reject the petition.

Byrd Amendment

Debate Intensifies on WTO Ruling and U.S. Policy Implications of the "Byrd Amendment"

SUMMARY

On February 23, 2004, the American Enterprise Institute, a D.C. based think tank, hosted a roundtable discussion entitled, "The Byrd Amendment: Bad U.S. Policy, Worse WTO Decision." At the event, four participants spoke on two themes: (i) the pros and cons of the Byrd Amendment from a policy perspective; and (ii) the merits or flaws in the WTO ruling.

The speakers at the event included three D.C. based-lawyers and a think-tank policy analyst. They provided contrasting positions on both the policy options facing the US and the validity of the WTO decision. Argument persisted over whether funds allocated to domestic industries under the Byrd Amendment are compliant with the WTO disciplines on antidumping and subsidies, despite the WTO findings. The speakers also diverged in their evaluations of the policy implications on U.S. industry, and whether too much attention was being paid to "special interest groups."

The event took place at a critical juncture, as eight U.S. trading partners on January 24, 2004, have requested WTO authorization to impose sanctions against the US. Prospects for repeal of this politically sensitive law, however, are slim and especially so during an election year.

ANALYSIS

The four roundtable participants at the AEI event on February 23, 2004, offered divergent opinions on the WTO decision on, and U.S. policy obligations arising from the Continued Dumping and Subsidy Offset Act of 2000 (often referred to as the "Byrd Amendment").

I. Petitioner Attorney Defends Byrd Amendment

Mr. Kevin Dempsey, Partner, of the law firm Dewey Ballantine in Washington DC (which often represents U.S. domestic petitioner industries in trade cases), presented unequivocal support for the Byrd Amendment. His main arguments follow:

- ***WTO "judicial activism"*** – The WTO rulings are "unfortunate examples of overreaching and judicial activism" including by the WTO Appellate Body.

- ***Not an improper subsidy*** – Subsidies available only to injured domestic industries are not illegal under WTO rules. The WTO Agreements only prohibit export subsidies and import substitution subsidies, to which the Byrd Amendment does not apply. The WTO rulings are thus incorrect in finding that funds appropriated under the Amendment are illegal subsidies.

- ***Not a financial burden*** – The Byrd Amendment does not create an additional financial burden on the foreign producer or the import good, except for the original anti-dumping and countervailing duties imposed, which are permitted.

- ***Policy justification*** – The policy justification for maintaining the legislation is strong; the amendment provides compensation to injured companies under WTO-sanctioned trade remedy laws.

II. Respondent Attorney Attacks Byrd Amendment

Mr. Matthew Nicely, Special Counsel, International Trade Department of the law firm of Willkie, Farr & Gallagher in Washington DC (which often represents foreign respondent industries in trade cases), criticized the Byrd Amendment as "bad policy" and "bad law" under the WTO. His arguments follow:

- ***Unjustified "corporate welfare"*** – The Byrd Amendment is not a market correction measure, but rather "money in the pockets of companies." Domestic industries are being entitled to "corporate welfare."

- ***Encourages protectionism*** – The Byrd Amendment causes money to funnel from importers to domestic industries, and the consequence is greater protectionism. Three main policy implications arise:

1. The legislation encourages dumping petitions; if companies sign a petition, they are eligible for reimbursement under the Byrd Amendment. Likewise, if they do not participate in the investigation, they are not eligible to receive funds later.

2. The amendment creates "double dipping"; companies receive protection from duties first, and are then reimbursed through the Byrd Amendment.

3. The strong support for the legislation suggests that companies prefer payments rather than protection through duties.

Nicely also asserted that the WTO ruling was "modest" and "reserved" in relation to the illegality of the legislation.

III. Policy Analyst Discusses Wider, and Negative Implications of Byrd Amendment

Mr. Dan Ikenson, Policy Analyst, Center for Trade Policy Studies at the Cato Institute (a libertarian, free-trade think tank), an opponent of the Byrd Amendment, discussed the wider trade policy implications of the measure, including for WTO dispute settlement and the future of the Doha Round. His main arguments follow:

- ***Unbalanced attention to "special interest" groups*** – The Byrd Amendment begs the question of whether the US is acting on behalf of the larger, national interest in free trade or narrow, "special interests."

- ***Wider WTO implications*** – U.S. actions to address this legislation will have implications for WTO dispute settlement and the success of the Doha Round. The US has lost the trust of many trade partners, due to this measure and other issues including the steel safeguard, FSC/ETI reform, and the Singapore Issues.

Ikenson emphasized that the US was the main proponent of securing inclusion of the dispute settlement procedures during the Uruguay Round, and should set an example through compliance with WTO decisions. Now, however, the US seems uncommitted to this WTO mechanism. He questioned whether the US still believes in the benefits of trade liberalization?

IV. Attorney Criticizes WTO Decision, But Insists on WTO Compliance

Mr. Steve Charnovitz, Counsel at the law firm of Wilmer, Cutler, & Pickering in Washington DC, denounced the WTO decision yet insisted on U.S. compliance with the ruling. He made the following points:

- ***Flawed decision*** – The WTO decision is flawed because the Byrd Amendment does not fall within WTO disciplines on antidumping or subsidies.

- ***Income distribution, not trade remedy*** – The Byrd Amendment is "simply an exercise in distributing income" and is not an illegal trade remedy measure. Moreover, antidumping duties against foreign companies that undercut market prices is a specific action – but compensating the "victims" is not.

- ***Compliance necessary*** – The U.S. is obliged to implement the WTO ruling, and should do so. The US can revise, rather than repeal the amendment in order to come into compliance.

OUTLOOK

The roundtable discussion reflects the strong, and divergent views on the Byrd Amendment within Congress and among trade policy circles. Opponents of the Byrd Amendment, including supporters of free trade, argue that the measure encourages protectionism and the filing of more antidumping cases. They also argue that U.S. lack of compliance with the measure sets a bad precedent for WTO dispute settlement, and undermines U.S. credibility in WTO negotiations. Supporters of the Byrd Amendment argue that the WTO decision is flawed, and that the measure is critical to support U.S. industries suffering from unfair trade practices.

At the multilateral level, the US is facing growing pressure to comply. On January 24, 2004, eight of the complaining countries requested WTO authorization to retaliate due to lack of U.S. compliance. The countries' requests are now subject to WTO arbitration, and a decision is expected later this month. As a result, countries might impose sanctions against the US as early as mid-2004.

Despite the international pressure, the prospects for U.S. compliance in the near future remain slim. Last year, seventy U.S. senators signed a letter demanding that the provisions of the Byrd Amendment be retained despite the Bush Administration's recommendation that the measure be repealed. Politically powerful sectors such as steel benefit from the Byrd Amendment, and will continue to insist that the measure remain in place. Needless to say, repeal of the Byrd Amendment during an election year is not expected.

CBO Report Cites Economic Costs of Byrd Amendment; Capitol Hill Remains Divided

SUMMARY

On March 2, 2004, the Congressional Budget Office ("CBO") released a report outlining the harmful effects of the Continued Dumping and Subsidy Offset Act ("Byrd Amendment" or "CDSOA") on the U.S. economy. Representative Bill Thomas (R-California), Chairman of the House Committee on Ways and Means, requested the study. The report criticized the Byrd Amendment for encouraging increased antidumping and countervailing duty cases, inefficient production, increasing transaction costs associated with these cases, and inviting retaliation by U.S. trade partners.

The Bush Administration has proposed repeal of the Byrd Amendment, reiterated by U.S. Trade Representative Robert Zoellick before the Senate Finance and House Ways and Means Committees. Legislation to repeal the Byrd Amendment has been introduced in both the House and Senate, however the prospects of repeal remain dim.

ANALYSIS

I. CBO Report Criticizes Economic Impact of Byrd Amendment

On March 2, 2004, the CBO released a report to the House Committee on Ways and Means on the economic impact of the Byrd Amendment. The report is critical of the Byrd Amendment, claiming that it:

- ***Encourages Increased Filing of Antidumping Cases:*** Under the Byrd Amendment, a company's support for a particular antidumping (AD) case is directly linked to its receipt of revenues from that case. This system creates an incentive for more firms to file or support antidumping cases. The increased imposition of duties has a negative effect on the economy

- ***Encourages Inefficient Use of the Economy's Resources:*** In order to receive the payments disbursed under the Byrd Amendment, firms must support the case *and* produce the good in question. If a firm reengages in production processes that it otherwise would have ceased, the firm will inefficiently employ capital, labor, land, and other resources. These resources could be used more productively in the production of other, often more highly valued, goods and services.

  The CBO report found that the Byrd Amendment effectively subsidizes domestic firms that are less efficient than other firms in their industries. Their subsidization creates excessive output, which puts downward pressure on prices. As a result, more efficient firms restrict output that would otherwise be worth the cost of production. U.S. gross domestic product and gross national income decline accordingly.

- ***Invites Retaliation Against the U.S.:*** The WTO ruled against the Byrd Amendment and recommended U.S. repeal or modification of the law. Eight U.S. trade partners have requested WTO authorization to impose sanctions; they will soon be able to impose retaliatory duties against the U.S., further harming the U.S. economy.

- ***Discourage Settlement of Cases by U.S. Firms:*** Because of financial incentives created by the Byrd Amendment, U.S. companies do not often opt for settlement of AD/CVD cases via suspension agreements with foreign exporters. In settlements, the foreign exporter usually maintains its presence in the U.S. market, which contributes to U.S. economic welfare. In contrast, antidumping duties usually force the foreign firms out of the U.S. market.

- ***Increased Transaction Costs:*** Pursuance of AD/CVD cases requires significant resources in the form of lawyers, economists, and lobbyists. The Byrd Amendment creates greater incentive for firms to pursue these cases, further raising the transaction costs.

II. Legislation Introduced in Congress Would Repeal the Byrd Amendment

In response to the WTO ruling against the Byrd Amendment and the CBO report findings, Representative Jim Ramstad (R-Minnesota), House Ways & Means, Subcommittee on Trade, introduced legislation on March 10, 2004 to repeal the CDSOA (HR 3933). House Ways and Means Trade Subcommittee Chairman Phil Crane (R-Illinois) is a co-sponsor of the bill.

In June 2003, Senator Olympia Snowe (R-Maine) introduced the "Trade Readjustment and Development Enhancement for America's Communities Act of 2003" (S.1299) to repeal the Byrd Amendment. In light of the strong Senate opposition to repeal, the bill has made little progress since its introduction last spring.

III. Industry and Senate Continue to Support Byrd Amendment

The CBO report found that the steel industry has been the biggest beneficiary of the Byrd Amendment. According to the report, there are currently 131 active antidumping cases related to iron and steel mill products, 30 related to iron and steel pipe products, and 30 related to other iron and steel products, including wire rod. The steel industry, thus, benefits most by payouts under the Byrd Amendment, and has been active in lobbying against its repeal.

Senate support has been partly motivated by strong steel constituencies and also by a notion that compliance with the ruling would subjugate U.S. sovereignty to the decisions of the WTO. Strong indication of support for the Byrd Amendment came in January 2003 when 70 senators signed a letter to the President demanding that the provisions of the Byrd Amendment be retained.

OUTLOOK

Multilateral pressure on the U.S. to comply with the WTO ruling against the Byrd Amendment is intensifying. On January 24, 2004, eight of the complaining countries requested WTO authorization to retaliate due to lack of U.S. compliance. A WTO arbitration proceeding is considering the level of sanctions that the countries can impose. Zoellick indicated that arbitration should be completed by June.

Prospects for repealing the Byrd Amendment during an election year remain slim. The issue is politically charged and the CDSOA retains strong bi-partisan and cross-sectoral support.

Free Trade Agreements

US Concludes FTAs with Morocco and Dominican Republic; Dominican Republic to Join CAFTA; President Notifies Congress of Intent to Enter Into FTAs

SUMMARY

We want to alert you to the following developments:

- On March 2, 2004, the United States Trade Representative (USTR) announced that the United States and Morocco had concluded a Free Trade Agreement (FTA). The President notified Congress of the Administration's intent to enter into the agreement on March 8, 2004.

- On March 15, 2004, the USTR announced that the United States and the Dominican Republic had concluded an FTA. The FTA fully integrates the Dominican Republic into the U.S.-Central America Free Trade Agreement (CAFTA). The President notified Congress of the Administration's intent to enter into CAFTA on February 20, 2004.

ANALYSIS

I. US Concludes FTA with Morocco; President Notifies Congress of Intent to Enter Into FTA

On March 2, 2004, the Office of the US Trade Representative (USTR) announced that it had concluded free trade talks with Morocco. The US-Morocco 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.

Some of the provisions in the agreement as outlined by USTR include:

- Tariff-free treatment for over 95% of consumer and industrial goods upon entry into force of the agreement. The remaining tariffs will be phased out over a nine-year period.

- Comprehensive coverage of all agricultural commodities, with cuts in tariffs for US corn and soybeans exports.

- Improved market access provisions for the service sector including banking, insurance, express delivery, and telecommunications.

- A legal framework for the resolution of investment disputes.

- Provisions related to the enforcement of domestic labor and environment laws.

On March 8, 2004 President Bush officially notified Congress of the Administration's intent to enter into the agreement. The notification is a required step in order to have to meet the requirements of the Trade Act of 2002 (Trade Promotion Authority).

II. US Concludes FTA With Dominican Republic; Dominican Republic to Join CAFTA; President Notifies Congress of Intent to Enter Into CAFTA

On March 15, 2004, the USTR announced that the United States and the Dominican Republic have concluded an FTA, after a third round of negotiations from March 8-12, 2004. The FTA fully integrates the Dominican Republic into the Central America Free Trade Agreement (CAFTA) that the United States concluded with El Salvador, Guatemala, Honduras, and Nicaragua, on December 17, 2003, and with Costa Rica, on January 25, 2004.

The CAFTA will:

- Streamline regional trade;
- Promote investment;
- Eliminate tariffs on goods;
- Remove barriers to trade in services;
- Increase IPR protection;
- Promote regulatory transparency;
- Strengthen labor and environmental standards; and
- Provide an effect dispute settlement mechanism.

President Bush notified Congress of the Administration's intent to enter into CAFTA on February 20, 2004, while negotiations with the Dominican Republic were still ongoing.

OUTLOOK

The Administration now has to submit legislation to implement the FTAs to Congress.

USTR hopes to submit the full CAFTA to Congress for approval by early July 2004. Sources indicate, however, that CAFTA awaits a difficult vote in Congress due to growing resistance to trade liberalization in Congress. Also, the CAFTA contains many contentious issues, including labor provisions, textiles quotas, agricultural market access, and other issues.

For the FTA with Morocco, no timeline has been offered. However, USTR is expected to submit the agreement in the near future since the FTA with Morocco is less controversial than CAFTA or the FTA with Australia.

USTR Releases Draft Text of US-Australia FTA; Transmits Trade Advisory Group Reports to Congress; ITC to Hold Hearing on Potential Economic Effects

SUMMARY

We want to alert you to the following developments regarding the recently concluded US-Australia Free Trade Agreement (FTA):

- On March 3, 2004, the United States Trade Representative (USTR) released the draft text of the FTA.
- On March 8, 2004, the International Trade Commission (ITC) announced that it had instituted an investigation of the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors. On March 30, 2004 the ITC will also hold a public hearing on the investigation.
- On March 15, 2004, the USTR announced that it had transmitted reports from 32 advisory committees regarding the FTA to the President and to Congress. All the committees supported the agreement, with the exception of the Labor Advisory Committee (LAC).

ANALYSIS

I. USTR Releases Draft Text of US-Australia FTA

On March 3, 2004, the United States Trade Representative (USTR) released the draft text of the U.S.-Australia Free Trade Agreement (FTA). The FTA was concluded on February 8, 2004, and provides that more than 99 percent of US manufactured goods will become duty-free immediately upon entry into force of the Agreement. This is the most significant reduction of industrial tariffs ever achieved in a US FTA, and could result in more than $ 2 billion per year in increased US exports of manufactured goods.

II. ITC Initiates Investigation of Potential Economywide and Selected Sectoral Effects of US-Australia FTA; Announces Hearing

On March 8, 2004, the International Trade Commission (ITC) announced in the Federal Register (69 FR 10755) that it had instituted investigation No. TA-2104-11, regarding the potential economywide and selected sectoral effects of the U.S.-Australia FTA. The investigation will assess the likely impact of the FTA on the U.S. economy as a whole and on specific industry sectors, including the impact on:

- The gross domestic product;
- Exports and imports;
- Aggregate employment and employment opportunities;
- The production, employment, and competitive positions of industries likely to be significantly affected by the agreement; and

- The interests of U.S. consumers.

The ITC will also hold a public hearing on the investigation.

III. USTR Transmits Trade Advisory Group Reports Regarding U.S.-Australia FTA to Congress

On March 15, 2004, the USTR announced that it had transmitted reports from 32 advisory committees regarding the U.S.-Australia FTA to the President and to Congress, as required by the Trade Act of 2002. All the committees supported the agreement, with the exception of the Labor Advisory Committee (LAC), which urged Congress to reject the FTA because Australia's labor laws are inadequate in a number of areas and because the Australian government unduly restricts fundamental workers' rights. The LAC also opposed the FTAs with Chile and Singapore.

The trade advisory system was established by the Trade Act of 1974, and revised in late 2003. It consists of 32 committees representing a diverse range of sectors and whose roles are to provide the Administration and Congress with advice and assistance on proposed and ongoing trade initiatives.

OUTLOOK

The public hearing on the potential economywide and selected sectoral effects of the FTA will take place on March 30, 2004. The Trade Act of 2002 requires that the ITC submit its report to the President and the Congress within 90 days after the President enters into the agreement, which he can do 90 days after notifying Congress of his intent to do so. The President notified Congress of this intent on February 13, 2004, and expects to enter into the agreement sometime after May 13, 2004.

The draft text of the FTA and the full advisory committee reports are available at www.ustr.gov.

Congressional Fate of CAFTA Unclear; CAFTA Benefits Extend Beyond Trade

SUMMARY

In February 2004, trade officials, policy advisors and diplomats expressed their views on the prospects for US congressional approval of the US-Central America Free Trade Agreement (CAFTA) in various meetings in Washington, DC. Speakers concluded that CAFTA faces an uphill congressional battle due to the sensitive interest groups involved, among other things.

Speakers also discussed the effects of CAFTA on the Central American region and the US-Central America relationship. Speakers generally agreed that, if approved, CAFTA would help to consolidate the rule of law and democracy in Central America.

FTAA negations could suffer if the US Congress rejects CAFTA. The Bush administration touts CAFTA as a "building block" that will add momentum to the FTAA and WTO negotiations. Rejection of CAFTA could dampen enthusiasm among FTAA negotiating partners, since US congressional support for the FTAA is expected to be more difficult to secure than support for CAFTA.

ANALYSIS

In February 2004, trade officials, policy advisors and diplomats expressed their views on the prospects for US congressional approval of the US-Central America Free Trade Agreement (CAFTA) in various meetings in Washington, DC.

Speakers at the events included:

- Andrea Gash Durkin – Director for Central America and the Caribbean, USTR.
- Shara L. Aranoff – International Trade Counsel, Senate Finance Committee, Democratic Staff.
- Salvador Statthagen – Ambassador of Nicaragua to the US.
- José M. Salazar – Director Trade Unit, OAS.
- María Benetton – Trade Official, Honduran Embassy to the US.

We highlight their comments below:

I. CAFTA Faces Uphill Battle in Congress

A. Congressional Staffer Underscores CAFTA Challenges

According to Shara Aranoff, CAFTA will face a difficult vote in Congress because:

- ***Congressional atmosphere:*** The prevailing mood in Congress is not favorable to FTAs.

- ***Elections:*** There are presidential elections in November 2004. Aranoff stated that if Congress does not approve CAFTA before the August recess, it would not pass this year.

- ***Sensitive industries:*** Lawmakers representing districts producing sugar and textiles likely will oppose the agreement. Even Republican Members of Congress from districts producing sugar and textiles may not approve CAFTA. Therefore, the Bush Administration will have to look for votes in the Democratic Party.

- ***Labor and environment:*** Democrats are lined up against CAFTA because of concerns about weak labor and environmental provisions. Representative Sander Levin (D-Michigan), Ranking Democrat on the House Ways and Means Trade Subcommittee, said that a "vast majority" of Democrats share the concern that CAFTA does not include "enforceable, internationally recognized, core labor standards". According to Levin, "as currently negotiated, and unless rectified during the statutory 90-day period prior to signing, it will be defeated in Congress".

B. Members of Congress Concerned about Labor and Environmental Provisions

The labor and environmental provisions in CAFTA are the same as the provisions in the FTAs with Chile and Singapore. However, many lawmakers and unions believe that what was good for Chile and Singapore may not be sufficient for CAFTA. They argue that Chile and Singapore have stable political systems and a good record of enforcement of labor laws, but CAFTA countries may not.

Some Members of Congress suggest a "Chile plus" proposal.

USTR has offered to increase capacity building support for enforcement of labor laws for CAFTA countries. USTR also emphasizes that there will be effective ways of monitoring compliance with labor standards.

Representatives from Central American countries insist their labor laws comply with all international standards, and that Governments are willing to enforce labor laws. However, they recognize that they have an enforcement problem due to lack of resources. The Nicaraguan Ambassador to the US stated that his country's Ministry of Labor has a ridiculously low budget that limits its ability to enforce the labor laws, especially in rural areas.

II. CAFTA Benefits Extend Beyond US-Central America Trade Relationship

Speakers agreed that CAFTA would affect more than just US-Central America trade. We highlight their comments below.

A. Democracy and the rule of law

- María Benetton predicts that CAFTA will foster economic development, and help to achieve stable growth and consolidate democracy and the rule of law.

- Salazar noted that CAFTA appears to be the next natural step towards economic development and political stability after the economic reforms made by Central American countries during the 1990s and their achievements in recovering from political turmoil.

- Benetton described a future without approval of CAFTA as very gloomy. The economic reforms, democracy and the rule of law are still fragile in Central America, so without the much-needed prosperity that CAFTA will hopefully bring, Central America is in danger. Destabilizing forces can create social and economic disruption.

B. Foreign policy

- Salvador Statthagen, Ambassador of Nicaragua to the US, considered that CAFTA is as important as a foreign policy tool as it is as a trade instrument.

- Jose Manuel Salazar called CAFTA "the most powerful sign of US foreign policy towards Central America".

C. Regional Benefits

- Andrea Gash Durkin described some of the effects that CAFTA may have in certain Central American nations:

➢ El Salvador: CAFTA will provide the necessary incentive to continue economic reform.

➢ Nicaragua: CAFTA will help the Administration in its fight against corruption by increasing the demand for transparency and participation.

➢ Honduras: CAFTA will provide incentives to diversify the economy, which is currently based mainly on textiles and apparel.

➢ Costa Rica: CAFTA will help to liberalize its archaic telecom and insurance monopoly industries.

- CAFTA signals to other Latin American countries that economic reforms and efforts to achieve sustainable growth lead to access to the biggest economy in the world.

- Speakers referred to the aid that the US would have to grant to Central American countries for the implementation of CAFTA. Central America has only 1/30 of the per capita income of the US, so some element of

trade capacity building is needed to implement the agreement successfully.

OUTLOOK

The Bush administration on February 20 sent Congress notice of its intent to sign CAFTA. The Administration must wait at least 90 days to sign the agreement, but a date has not been set.

Prospects for US congressional passage of CAFTA remain unclear. The Bush administration will face opposition from Democratic Members of Congress and powerful special interest groups, like the American Sugar Alliance. The Bush administration has not undertaken major congressional lobbying efforts to secure support for CAFTA, so it is too soon to determine how much political capital the Administration is willing to leverage.

US congressional rejection of CAFTA could have severe consequences in Central America and on the FTAA negotiation process. Rejection of CAFTA would harm the political and economic relationship between the US and Central America. In addition, rejection of CAFTA could dampen enthusiasm among FTAA negotiating partners, since US congressional support for the FTAA is expected to be more difficult to secure than support for CAFTA.

Officials Discuss U.S. Trade Policy in Middle East; Say FTA With Bahrain Can Be Completed by June

SUMMARY

At a March 10, 2004 hearing by the Senate Finance Committee on U.S. trade policy in the Middle East, Administration officials stated that the U.S. would pursue trade liberalization in the region through the Doha Development Agenda (DDA), the Middle East Free Trade Area (MEFTA), and the Middle East Partnership Initiative (MEPI). They indicated that a trade preference program, as proposed by Senators Max Baucus (D-Montana) and John McCain (R-Arizona), is not a necessary first step.

The officials named Tunisia, and Egypt as countries with a strong interest in a Free Trade Agreement (FTA) with the U.S. However, they indicated that Egypt would have to undertake further economic reforms before the U.S. would consider FTA negotiations.

The hearing also focused on ongoing FTAs, with officials stating negotiations with Bahrain could be concluded by June 2004. It was also announced that the U.S. would soon negotiate Trade and Investment Framework Agreements with the United Arab Emirates (UAE) *(Please see related report this edition)*, Qatar, and Oman.

ANALYSIS

On March 10, 2004, the Senate Finance Committee held a hearing on U.S. trade policy in the Middle East. The witnesses included:

- Senator John McCain (R-Arizona);
- Grant Aldonas, Under Secretary for International Trade, U.S. Department of Commerce;
- Alan Larson, Under Secretary for Economic, Business, and Agricultural Affairs, U.S. Department of State.

We highlight the comments that were made at the hearing below.

I. Grassley and Baucus Support MEFTA; Baucus Urges Trade Preference Program in the Short Term

Senate Finance Committee Chairman Charles Grassley (R-Iowa) urged the Administration to pursue stronger economic engagement with "like-minded nations" in the Middle East, and expressed strong support for the President's plan to establish a Middle East Free Trade Area ("MEFTA") by 2013. Grassley praised the recently concluded U.S.-Morocco Free Trade Agreement (FTA), which will include tariff-free treatment for corn and soybeans.

Senate Finance Committee Ranking Member Max Baucus (D-Montana) focused his comments on the Middle East Trade and Engagement Act of 2003 (S.1121) that he and Senator McCain introduced in the Senate on May 22, 2003. This bill, also called the "Baucus-McCain" or the "Silk Road Bill", would create a trade preference program for

Middle Eastern countries that meet certain conditions, such as supporting the war on terrorism and having a market-based economy, to export products to the United States duty-free.

Baucus pointed out at that his bill would:

- Help Middle Eastern countries in the short term;
- Offer economic help to the entire region at once instead of gradually, country by country;
- Prepare Middle Eastern countries to enter into a Free Trade Agreement (FTA).

Baucus emphasized that he supports the Administration's policy and that his bill complements the attempt to establish MEFTA. He referred to the success of similar programs such as the African Growth and Opportunity Act ("AGOA"), the Andean Trade Preference Act ("ATPA"), and the Caribbean Basin Initiative ("CBI").

II. Administration Will Pursue Trade Liberalization in Middle East Through WTO, MEFTA, and MEPI; Tunisia and Egypt Interested in FTA With U.S.

McCain said that free trade was essential for the spread of democracy in the Middle East, adding that this should be a strategic priority for the Administration. Regarding S.1121, he pointed out that the bill would send a clear signal to the Middle Eastern countries that the U.S. is serious about trade liberalization.

Aldonas stated that the Doha Development Agenda (DDA), MEFTA, and the Middle East Partnership Initiative (MEPI), an initiative to promote trade capacity building efforts in the region, offered the best opportunities to realize greater trade liberalization in the Middle East.

Larson stated that there exists strong support in the Middle East for trade liberalization, referring to FTA negotiations with Bahrain and Saudi Arabia's ongoing accession talks at the WTO. Larson also named the UAE, Tunisia and Egypt as countries with a strong interest in a FTA with the U.S.

III. Aldonas Thinks Trade Preference Program is Not A Necessary Step; Says Egypt Has to Further Reform for FTA With US

Responding to questions by Grassley and Baucus regarding the value of a trade preference program, Aldonas stated that trade preferences were a very useful but not a necessary first step. He added that since most Middle Eastern countries are already prepared to work under a TIFA or an FTA, there was "not a lot of juice" to get out of a trade preference program.

Grassley and Baucus also inquired about Egypt's progress with economic reforms it had to undertake to be able to negotiate an FTA with the United States. Aldonas replied that although there is a progressive trend, there continue to be "hiccups along the way" WTO inconsistent actions being taken by Egypt. When Grassley asked why Egypt did not support

the United States last year in launching a WTO case against the EU regarding the EU's moratorium on GMOs, Larson said that the EU applied "very, very strong pressure" on Egypt.

Grassley asked Aldonas and Larson if they thought that other Middle Eastern countries would follow Saudi Arabia's current implementation of mandatory labeling laws for Genetically Modified Organisms (GMOs). Both speakers replied that this was unlikely, with Aldonas adding that the Administration plans to express its concern to Saudi Arabia.

OUTLOOK

Aldonas and Larson said that they had made "excellent progress" in the FTA negotiations with Bahrain and were confident that these would be concluded "in short order", and possibly by June 2004.

Aldonas and Larson also announced that the United States would soon start negotiating TIFAs with the United Arab Emirates (UAE) *(Please see related report this edition)*, Qatar, and Oman.

USTR Requests Comments, Schedules Hearings on US-Panama and US-Thailand FTAs; ITC Investigates Economic Effect Thailand FTA

SUMMARY

We want to alert you to the following developments:

- On February 24, 2004 the US Trade Representative (USTR) announced that it would hold a public hearing and seek public comments on the US-Panama Free Trade Agreement (FTA). The hearing will take place on March 23, 2004. Written comments are due by April 5, 2004.

- On February 27, 2004, the USTR announced that it would hold a public hearing and seek public comments on the US-Thailand FTA. The hearing will take place on March 30, 2004, and will continue on subsequent days if necessary. Written comments are due by April 8, 2004.

- On March 9, 204, the International Trade Commission (ITC) announced that it has instituted an investigation regarding the probable economic effect of the US-Thailand FTA. The hearing will take place on April 20, 2004. Written comments are due by April 6, 2004. The ITC expects to submit its report to USTR by August 19, 2004.

ANALYSIS

I. USTR Requests Comments, Schedules Hearing on US-Panama FTA

On February 24, 2004 the US Trade Representative (USTR) published a notice in the Federal Register (69 FR 8518), announcing that it intends to initiate negotiations on a Free Trade Agreement (FTA) with Panama. USTR will also convene a public hearing and seek public comments to assist in formulating its negotiating objectives and to provide advice on how specific goods and services and other matters should be treated under the agreement.

The request for comments and public hearing are required under the Trade Act of 1974 and the Trade Promotion Authority Act of 2002. Written submissions and testimony must address some aspect of the upcoming negotiations with Panama, such as market access, non-tariffs barriers, or intellectual property protection.

II. USTR Requests Comments; Schedules Hearing on US-Thailand FTA

On February 27, 2004, the United States Trade Representative (USTR) published a notice in the Federal Register (69 FR 9419), announcing that it intends to initiate negotiations on a FTA with Thailand. USTR will also convene a public hearing and seek public comments to assist in formulating its negotiating objectives and to provide advice on how specific goods and services and other matters should be treated under the agreement.

III. ITC Investigates Probable of US-Thailand FTA; Announces Hearing

On March 9, 2004 the International Trade Commission (ITC) announced in the Federal Register (69 FR 11042) that it has instituted investigation Nos. TA-131-29 and TA-2104-12, regarding the probable economic effect of providing duty-free treatment for imports of products of Thailand (i) on industries in the United States producing like or directly competitive products and (ii) on consumers. The USTR requested that the ITC conduct these investigations on February 19, 2004 pursuant to section 131 of the Trade Act of 1974 and section 2104 (b) (2) of the Trade Act of 2002 (*Please see related report this edition*).

The ITC will hold a public hearing in connection with these investigations, and has invited written comments from the public.

OUTLOOK

The hearing on the US-Panama FTA will take place on March 23, 2004. Written comments are due by April 5, 2004.

The USTR hearing on the US-Thailand FTA will take place on March 30, 2004, and will continue on subsequent days if necessary. Written comments are due by April 8, 2004.

The ITC hearing on the US-Thailand FTA will take place on April 20, 2004. Written comments are due by April 6, 2004. The ITC expects to submit its report to USTR by August 19, 2004.

US Signs TIFA With United Arab Emirates

SUMMARY

On March 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with the United Arab Emirates (UAE). The TIFA is part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

ANALYSIS

On March 15, 2004, the United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with the United Arab Emirates (UAE). The TIFA creates a Joint Council on Trade and Investment, in which both parties will cooperate and coordinate to enhance and liberalize trade and investment at the bilateral, regional, and multilateral levels.

TIFAs deal primarily with trade facilitation, tackling administrative and regulatory problems that can be an irritant to trade and investment. They are often used as a first step toward the negotiation of a Free Trade Agreement (FTA).

The TIFA with the UAE is part of President Bush's initiative to advance economic reforms and transparency in the Middle East and to establish a Middle East Free Trade Area (MEFTA) by 2013.

OUTLOOK

President Bush announced the plan to establish a MEFTA on May 9, 2003. To accomplish this, the Administration envisions a "building blocks" approach of using the FTAs the US already has in place with Israel and Jordan and recently concluded with Morocco -- as anchors to negotiate FTAs with other Middle East countries. At some point before 2013, the US intends to consolidate these FTAs to form the MEFTA *(Please see related report this edition).*

Customs

CBP Announces Delay in Implementation of the "Shipper" Rule for Ocean Cargo Manifests; Issues Revised Implementation Schedule for Air AMS

SUMMARY

We want to alert you to the following customs developments:

- On February 23, 2003 the Bureau of Customs and Border Protection (CBP) announced that it would delay requiring that electronic manifests contain shipper data for inbound ocean cargo, in order to develop a clear definition of the term shipper. The rule was scheduled to go into force on March 4, 2004.

- On March 4, 2004, CBP published a revised implementation schedule for the Air Automated Manifest System (AMS). CBP has revised the implementation schedule in order to accommodate technical needs and training requirements.

ANALYSIS

I. CBP Announces Delay in Implementation of the "Shipper" Rule for Ocean Cargo Manifests

On February 23, 2003 the Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS), announced that it would delay requiring that electronic manifests contain shipper data for inbound ocean cargo. This rule, part of the regulations implementing the Trade Act of 2002 (19 CFR § 4.7a(c)(4)(viii), defines shipper as either a foreign vendor, supplier, manufacturer, or other similar party. Advocates for shipping industry have argued that implementation of the rule would interfere with well-established commercial practices. Some of the potential consequences under the rule include the need for multiple bills of lading for one shipment, and could place an affirmative obligation on ocean shippers to gather significant information about their customers and suppliers.

A consortium of trade groups, including the World Shipping Council and the Nations Customs Brokers and Forwarders Association of America requested that CBP delay implementing the rule, which was scheduled to go into force on March 4, 2004.

II. CBP Issues Revised Implementation Schedule for Air AMS

On March 4, 2004, CBP published in the Federal Register (69 FR 10151) a revised implementation schedule for the Air Automated Manifest System (AMS). The Air AMS is being implemented as part of the advanced manifest notification requirements of the Trade Act of 2002. In December 2003, CBP issued a regulation (68 FR 68139) requiring that manifests for inbound air cargo be filed four hours prior to arriving in the US, and for outbound air cargo be filed two hours prior to departure.

Under a regulation promulgated in December 2003 (68 FR 68140), the Air AMS was supposed to become operational on March 4, 2004. However, CBP has revised the implementation schedule in order to accommodate technical needs and training requirements. The updated implementation schedule is as follows:

AIR AMS IMPLEMENTATION SCHEDULE

Date:	Ports in the following locations:
August 13, 2004	Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.
October 13, 2004	Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin.
December 13, 2004	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington.

OUTLOOK

In announcing the delay of the rule regarding the ocean cargo manifests, CBP Commissioner Robert Bonner pledged to work closely with trade groups to develop a clear definition of the term shipper.

Petitions and Investigations

USTR Requests ITC Studies of Economic Impact US-Thailand and US-Morocco FTAs

SUMMARY

The United States Trade Representative (USTR) recently requested ITC studies of the economic impact of the US-Thailand and the US-Morocco FTAs.

ANALYSIS

I. USTR Requests ITC Study of Probable Economic Impact US-Thailand FTA

Docket No: 2354

Document Type: 2104 Request

Filed By: Robert B. Zoellick

Firm/Org: United States Trade Representative

Behalf Of: United States Trade Representative

Date Received: February 20, 2004

Confidential: No

Commodity: U.S.- Thailand Free Trade Agreement

Country: Thailand

Description: Letter to the Honorable Deanna Tanner Okun, Chairman, USITC; requesting that the Commission conduct an investigation under section 2104(b)(2) of the Trade Act of 2002 regarding the probable economic effect of eliminating tariffs on imports of those agricultural product of Thailand.

Status: Pending Institution

II. USTR Requests ITC Study of Likely Economic Impact US-Morocco FTA

Docket No: 2359

Document Type: 2104 Request

Filed By: Robert B. Zoellick

Firm/Org: United States Trade Representative

Behalf Of: United States Trade Representative

Date Received: March 9, 2004

Confidential: No

Commodity: U.S.- Morocco Free Trade Agreement

Country: Morocco

Description: Letter to the Honorable Deanna Tanner Okun, Chairman, USITC; requesting that the Commission prepare a report , as specified in section 2104(f)(2)-(3) of the Trade Act assessing the likely impact of an FTA with Morocco on the U.S. economy as a whole and on specific industry sectors and the interests of U.S. consumers.

Status: Pending Institution

MULTILATERAL

U.S. Files First-Ever WTO Dispute Case Against China; Alleges China's VAT Rebate Policy Discriminates Against Imports of Semiconductors and Other Goods

SUMMARY

On March 18, 2004, the United States filed the first-ever dispute against China at the World Trade Organization (WTO) since China joined the WTO on December 11, 2001. The United States' request for consultations claims that China's Value Added Tax (VAT) rebate policy discriminates in favor of domestic semiconductor producers, and other manufacturers. The U.S. decision to pursue formal dispute proceedings now comes despite earlier indications from USTR that it would wait until after high-level meetings with China scheduled in April. According to Assistant USTR Christopher Padilla, waiting until the April meeting was rendered pointless after China made clear that it was unwilling to modify its position anytime soon.

China's VAT policy, adopted in 2000, has been of long-standing concern to the U.S. semiconductor industry in particular. The policy is also part of a broader concern over China's treatment of the high-tech sector, including the promulgation of "China-only" technical standards. The request for consultations is the first step in the WTO dispute settlement process, and will result in the establishment of a dispute settlement panel if the parties are unable to resolve the dispute within 60 days.

ANALYSIS

We review here the evolution of the Chinese VAT rebate policy for semiconductors and other goods, including the political and legal dimensions.

I. Background on China's VAT Rebate Policy

China imposes a 17 percent VAT on the sale of most products manufactured domestically or imported into China. China's policy of rebating a portion of the VAT on semiconductors, for example, predates its membership in the WTO. In June 2000, the Chinese Government issued State Council Circular 18, which declared as a goal the ability to supply domestic semiconductor demand and develop a capacity to export integrated circuits (ICs) by 2010. To achieve the goal, China created incentives for domestic producers by offering to rebate the VAT on sales of domestically produced ICs in excess of 6 percent. Circular 18 also provides that qualifying IC design firms will be eligible for a rebate of the VAT in excess of 3 percent.

China's support for its domestic IC producers was reiterated in State Council Circular 51, which, while never formally adopted, justified the VAT rebate to domestic producers in terms of promoting research and development in the domestic IC sector. It is not clear, however, that China has yet granted such rebates to qualifying firms.

II. U.S. Government and Industry Concerns During the Second Year of China's WTO Membership

The United States early on has expressed concern over China's VAT rebate policy, including in the first report submitted by USTR (December 2002) to Congress outlining China's WTO compliance efforts.[1] While not mentioning the semiconductor industry specifically, USTR, in its report, noted that:

> Chinese producers are able to avoid payment of the VAT on their products, either as a result of poor collection procedures, special deals or even fraud, while the full VAT still must be paid on competing imports. In discussions with Chinese officials on this issue, the United States has complained about the discriminatory treatment accorded to foreign products.[2]

During the course of 2003 Congress expressed growing displeasure with China's VAT rebate policy. In March 2003, 32 members of the House of Representatives wrote to USTR Zoellick urging him to take action to confront an apparent case of discrimination against foreign producers of semiconductors. The Senate followed up with its own letter, signed by 21 Senators, in June 2003.

In reviewing China's WTO compliance efforts during its second year of membership, both government and industry leaders sharpened their attacks on the VAT rebate policy for semiconductors. In testimony before the October 2003 meeting of the Trade Policy Staff Committee (TPSC), the Semiconductor Industry Association (SIA) argued that a growing consensus was emerging that the VAT rebate for domestically produced semiconductors is WTO inconsistent. In its 2003 report on China's WTO compliance, USTR singled out the IC sector as an area of concern promising "WTO dispute resolution, if necessary."[3]

During 2004, Administration officials have continued to reiterate concern about China's VAT rebates for the IC sector. Testifying before the a February 2004 hearing of the US-China Economic and Security Review Commission (USCC), Deputy Assistant USTR Charles Freeman stated that the April 2004 meeting of the US-China Joint Commission on Commerce and Trade would be the last attempt by the U.S. to resolve the matter bilaterally. Based on this testimony, the USCC made the following recommendation:

> China's preferential value-added tax (VAT) treatment for domestically designed and produced semiconductors and other discriminatory policies are encouraging large foreign investments into semiconductor manufacturing facilities in

[1] The USTR is required by Congress to report annually on compliance efforts, pursuant to Section 421 of the U.S.-China Relations Act of 2000 (P.L. 106-286), 22 U.S.C. § 6951. USTR issued its first report to Congress on December 11, 2002. *See* USTR, Report to Congress on China's WTO Compliance, December 2002.

[2] USTR, Report to Congress on China's WTO Compliance, December 11, 2002, at 21. *Available at:* http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2002-12-11-China_WTO_compliance_report.pdf.

[3] USTR, Report to Congress on China's WTO Compliance, December 11, 2003, at 32. *Available at:* http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf.

> China, leading to a global overcapacity in that industry that threatens U.S. producers. The Commission commends ongoing USTR efforts to resolve the issue expeditiously through negotiations, but now recommends that the U.S. forthwith file a WTO case on the matter.[4]

SIA and other industry groups also urged the USTR to bring a complaint over the VAT rebate policy before the WTO.

At a March 18, 2004, briefing sponsored by the Global Business Dialogue Assistant USTR Christopher Padilla explained that the decision to file the request for consultations ahead of the April meeting with China was taken because it had become clear China is unwilling to modify its position with respect to its VAT rebate policy.

III. Legal Arguments Advanced In VAT Rebate Debate

As the political attacks against China's VAT rebate scheme have sharpened, so too have the legal arguments. U.S. administration officials and the industry representatives, led by the SIA, have asserted that the VAT rebates constitute discriminatory treatment in favor of domestic goods, and a violation of Article III:2 of the GATT. Article III of the GATT has been invoked in past cases to address differential tax treatment between domestic and "like" imported goods, as well as between domestic and "directly competitive" imported products.

China has maintained that the VAT rebate to the IC sector constitutes a permitted subsidy under Article III(8)(b) of the GATT. However, the United States and industry groups have countered that the effective reduction in VAT for domestic producers violates Article III, citing from the US-Malt Beverages Appellate Body Report "even if the proceeds from *non-discriminatory* product taxes may be used for subsequent subsidies, the domestic producer, like his foreign competitors, must pay the product taxes due." (Paragraph 5.9) (emphasis added). By linking the "subsidy" to the amount of tax collected, the United States and SIA allege that China is engaging in prohibited discrimination.

IV. "China-Only" Technical Standards Emerging Concern

The dispute against China's VAT policy is one indicator of growing concerns on China's policy towards the hi-tech sector in general. In May 2003, China issued mandatory standards for encryption over Wireless Local Area Networks (WLANs), applicable to both domestically and imported WLAN technologies. These standards favor Chinese companies, and were scheduled to take effect on December 1, 2003, but have been delayed until June 1, 2004. U.S. industry leaders, and USTR in its 2003 China report have observed that the information security portion of these standards, known commonly as WAPI, fail to comport with internationally accepted WAPI standards, and may constitute an unlawful technical barrier to trade. China maintains that the standards are defensible on national security grounds.

China plans to enforce these "China-only" standards by providing the WAPI algorithms only to Chinese companies; 24 have been selected. Foreign producers will be

[4] US-China Economic and Security Review Commission (USCC), February 5, 2004 *at* iv. *Available at:* http://www.uscc.gov/hearings/2004hearings/transcripts/04_02_05.pdf.

required to enter into co-production agreements with Chinese companies into order to gain access to the WLAN market. These requirements, which are alleged to be in violation WTO obligations, have also raised concern about intellectual property rights (IPR). U.S. companies, led by Intel, have expressed an unwillingness to enter into co-production agreements for fear that that their IPR will not be protected.

OUTLOOK

The upcoming U.S. election has placed mounting pressure on the Bush Administration and USTR to address concerns over China's alleged unfair trade practices. The recent USTR decision to file the first-ever WTO compliant against China comes soon after (coincidentally) a controversial Section 301 petition filed this week by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO). On March 16, filed a Section 301 petition with USTR, seeking the imposition of tariffs on China for their failure to enforce adequate labor standards. Manufacturing groups have also vowed to file a Section 301 petition over China's fixed exchange rate policy.

The request for consultations filed by the U.S. starts the dispute settlement process at the WTO. Sixty days following the request for consultations, the U.S. may request the appointment of a dispute panel if no resolution is reached. The final adoption of a panel report, including any appeals typically takes 12-18 months after the request for consultations. This would be the first time China has ever been the subject of the dispute settlement proceeding.

The WAPI standards issue may also lead USTR to file a separate compliant against China before the WTO. Intel and other WLAN producers have threatened to halt exports to China because of their inability to meet Chinese standards.

WTO Panel Rules Against U.S. ITC Methodology in Canada Softwood Lumber Dispute

SUMMARY

A WTO Panel has ruled that the U.S. determination of "threat of injury" caused to the domestic industry by softwood lumber imports from Canada violated U.S. obligations under both the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel found that the threat of material injury determination made by the U.S. International Trade Commission (USITC) was not one that could have been reached by "an objective and unbiased investigating authority."

The Panel also found that the United States consequently breached its obligation to determine a "causal relationship" between the dumped or subsidized imports and the injury to the domestic industry.

This decision in noteworthy, in that it is one of the very few WTO cases to have examined the requirements that apply when a WTO Member determines that there is a "threat of material injury" to its domestic industry as a result of dumped or subsidized imports.

ANALYSIS

I. Background: Determining "Injury"

In the United States, the conduct of anti-dumping and countervailing duty investigations are divided between the Department of Commerce (DOC) and the USITC. For dumping investigations, the DOC determines the existence and the margin of dumping. For countervailing duty investigations, the DOC similarly determines the existence of and the amount of the subsidy. For both dumping and countervailing duty cases, the USITC determines injury to the domestic industry caused by the dumped or the subsidized imports.

"Injury" is defined in both the Anti-Dumping Agreement and the SCM Agreement to mean: (i) material injury to a domestic industry; (ii) threat of material injury to a domestic industry; or (iii) material retardation of the establishment of such an industry.

Canada challenged the WTO-consistency of the USITC's injury determination in the context of both the anti-dumping and countervailing duty investigations of Canadian softwood lumber imports.[5]

II. Panel Findings

[5] The decision of the Panel in *United States - Investigation of the International Trade Commission in Softwood Lumber from Canada* (DS 277) was released on March 22, 2004.

A. Threat of injury: USITC's findings could not have been reached by "an objective and unbiased investigating authority" (Article 3.7 of the ADA and Article 15.7 of the SCM)

Article 3.7 of the Anti-Dumping Agreement provides that a determination of threat of material injury shall be "based on facts and not merely on allegation, conjecture or remove possibility." It adds that the "change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent." The provision also sets out a non-exhaustive list of factors that the authorities "should consider" in making a threat of injury determination, including a significant rate of increase of dumped/subsidized imports, sufficient disposable capacity or imminent substantial increase in capacity, price depression and suppression, and inventories. Article 15.7 of the SCM Agreement provides a parallel obligation for countervailing duty cases.

(i) "Change in circumstances": evaluating "how the future will be different from the immediate past"

The Panel complained that the text of Article 3.7 and 15.7 concerning "change of circumstances" was "not a model of clarity." However, the Panel rejected the argument that the change in circumstances "must be identified as a single or specific event." Instead, the Panel reasoned that "the change in circumstances that would give rise to a situation in which injury would occur encompasses a single event, or a series of events, or developments in a situation of the industry, and/or concerning the dumped or subsidized imports, which lead to the conclusion that injury which has not yet occurred can be predicted to occur imminently." The Panel stressed that it must be clear from the determination that the investigating authority "has evaluated how the future will be different from the immediate past, such that the situation of no present material injury will change in the imminent future to a situation of material injury, in the absence of measures."

(ii) Determining the threat of material injury: considering "the totality of factors"

As noted above, Article 3.7 of the Anti-Dumping Agreement and Article 15.7 of the SCM Agreement require the authorities to "consider" a number of factors in determining the threat of material injury.

The Panel stated that that in order to conclude that the investigating authorities had "considered" the listed factors, it had to be apparent from the determination that the authorities "have given attention to and taken into account" those factors. In the view of the Panel, this consideration "must go beyond a mere recitation of the facts in question, and put them into context." However, the authorities are not required to make an explicit 'finding' or 'determination' with respect to the factors considered.

The Panel noted that both provisions used the term "should consider", indicating that the examination of each of the factors was not mandatory. A failure to consider a particular factor would not necessarily demonstrate a violation. Instead, the Panel said that whether a violation existed would depend on "the totality of the factors considered and the explanations given."

(iii) Factors considered by USITC: no "rational explanation"

The Panel noted that the "fundamental basis" of the USITC's affirmative threat determination was the conclusion that dumped and subsidized imports from Canada would increase "substantially." However, in examining the evidence relied on by the United States to support this determination, the Panel said that it could not accept that such a conclusion "is one that could be reached by an objective and unbiased decision maker." In the view of the Panel, the evidence relied upon by the USITC could at most support a conclusion that imports of softwood lumber would continue at historical levels, and "might increase somewhat, in keeping with increased demand." However, it found "no rational explanation" for the USITC's determination that there would be "a substantial increase in imports imminently."

The Panel found that the USITC considered each of the non-exhaustive list of factors sets out in Articles 3.7 and 15.7. However, the other factors considered by the USITC, including the effects of the expiration of the bilateral Softwood Lumber Agreement, did not support the conclusion of an imminent substantial increase in imports.

Therefore, the Panel concluded that the USITC's determination violated both Article 3.7 of the Anti-Dumping Agreement and Article 15.7 of the SCM Agreement. The Panel concluded that the USITC's finding of a "likely imminent increase in imports" was not one that could have been reached by "an objective and unbiased investigating authority."

B. "Causation" requirement: need to "separate and distinguish" other factors causing injury (Art. 3.5 of the ADA and Art. 15.5 of the SCM)

Canada also argued that the USITC had failed to determine a "causal relationship" between the dumped or subsidized imports and the injury to the domestic industry, in violation of Article 3.5 of the Anti-Dumping Agreement and Article 15.5 of the SCM Agreement.

The Panel recalled that it had already ruled that the United States was in breach of the requirements of Articles 3.7 and 15.7 regarding the determination of threat of material injury. Therefore, according to the Panel, it followed that the causation analysis could not have been WTO-consistent. It found that "[t]he entire analysis of the USITC with respect to causation rests upon the likely effect of substantially increased imports in the near future. Having found that a fundamental element of the causal analysis is not consistent with the Agreements, it is clear to us that the causal analysis cannot be consistent with the Agreements."

The Panel also considered the so-called "non attribution" requirement, the obligation not to attribute to dumped or subsidized imports the injurious effects of other causal factors. This was the first time that a WTO Panel has considered "non attribution" in a countervailing duty case, and the Panel stated that the requirement was the same in both dumping and CVD cases.

The Panel recalled that the Appellate Body in the *U.S. Steel Safeguards* case (please see our report of November 12, 2003) stated that non-attribution requires "separation and

distinguishing of the effects of other causal factors from those of the dumped imports so that injuries caused by the dumped imports and those caused by other factors are not 'lumped together' and made 'indistinguishable'."

Having found that the USITC's causal analysis was WTO-inconsistent, the Panel considered that it could not "meaningfully evaluate" the question of non-attribution, and so it made no specific ruling on this issue. However, it nevertheless expressed its "serious concern" with the USITC's approach to non-attribution in a number of specific instances.

C. "Positive evidence" and an "objective examination": no consequential violation

Article 3.1 of the Anti-Dumping Agreement provides that a determination of injury shall be based on "positive evidence" and involve an "objective examination" of the volume of dumped imports and the effect of dumped imports on prices in the domestic market for like products, as well as consequent impact of these imports on domestic producers. Article 15.1 of the SCM Agreement sets out a parallel obligation with respect to subsidized imports.

Canada had argued that Article 3.1 and Article 15.1 contained "substantive, overarching obligations" that had to be observed by investigating authorities in making injury determinations. In Canada's view, the violations of other, more specific provisions of Article 3 of the Anti-Dumping Agreement or Article 15 of the SCM Agreement would demonstrate the violations of Article 3.1 and Article 15.1.

The Panel declined to make such a finding of consequential violation. The Panel said that if any aspect of the USITC determination were found to be inconsistent with Articles 3 or 15, "we can see no reason to conclude, in addition, that it also violates Article 3.1 of the AD Agreement and Article 15.1 of the SCM Agreement." The Panel said that "additional arguments" would be required to support a violation of those two provisions. No such additional arguments were made by Canada, and so the Panel declined to rule on Articles 3.1 or 15.1.

The Panel also found it unnecessary to make findings on Canada's claim that the USITC did not take "special care" in making its threat of injury determination. Therefore, the Panel similarly chose not to rule on Canada's claims under Article 3.8 of the Anti-Dumping Agreement or Article 15.8 of the SCM Agreement.

D. Other Canadian challenges rejected

Canada had argued that the USITC determination breached Articles 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement, which require an investigating authority to consider whether there has been a significant increase in the volume of the dumped or subsidized imports, whether there has been significant price undercutting by those imports, or whether the effect of such imports is to depress or suppress prices to a significant degree. Canada also alleged a breach of Article 3.4 of the Anti-Dumping Agreement and Article 15.4 of the SCM Agreement, which provide for the examination of the impact of dumped/subsidized imports on the domestic industry.

The Panel said that in every case in which threat of material injury is found, there must be an evaluation of the condition of the industry in light of the factors enumerated in such provisions, to establish the "background" against which the impact of future dumped or subsidized imports must be assessed. However, once such an analysis had been carried out, there was no need for what Canada referred to as a second, "predictive analysis" of these injury factors.

D. No Recommendation on Implementation

Canada had requested that the Panel recommend that the United States bring its measures into conformity with its WTO obligations by "revoking the final determination of threat of injury, ceasing to impose anti-dumping and countervailing duties and returning the cash deposits imposed" as a result of U.S. actions. However, the Panel declined to make any recommendation as to implementation, indicating that "the choice of means of implementation is decided, in the first instance, by the Member concerned." The Panel saw "no particular need to suggest a means of implementation."

E. Amicus briefs rejected

The Panel received an unsolicited *amicus curiae* ("friend of the court") brief from an environmental NGO. The Panel rejected it, in the light of "the absence of consensus among WTO Members on the question of how to treat *amicus* submissions."

OUTLOOK

This decision in noteworthy, in that it is one of the very few WTO cases to have examined the requirements that apply when a WTO Member determines that there is a "threat of material injury" to its domestic industry as a result of dumped or subsidized imports.

The "threat of injury" provisions of both the Anti-Dumping Agreement and the SCM Agreement, as drafted, impose stringent conditions. The determination of threat must be "based on facts and not merely on allegation, conjecture or remote possibility." Moreover, the "change of circumstances" referred to in the provision must be "clearly foreseen and imminent." However, until now, there has been very little guidance from Panels as to how this provision should be applied in practice.

The Panel emphasized that it must be clear from the determination that the investigating authority" has evaluated *how the future will be different from the immediate past, such that the situation of no present material injury will change in the imminent future to a situation of material injury*, in the absence of measures [emphasis added]." It will be difficult for investigating authorities to meet this rigorous test. At the same time, the exacting standard set out by the Panel is consistent with the strict language of the Agreements. The Panel's decision confirms that threat of injury determinations will not be easy to justify in practice.

Canada challenged U.S. law only "as applied" in this specific case, and so any implementation will not require any changes to U.S. law. The Panel also declined Canada's request to make a recommendation as to how the United States could implement. If the United States implements by asking the USITC to make a re-determination, and the Commission issues another injury determination, this could well generate new litigation.

This report is one of several recent Panel and Appellate Body cases on Softwood Lumber, many of which have handed down split decisions. As with previous cases, this new decision seems unlikely to move the two sides any closer to the settlement of this longstanding, multi-billion dollar trade dispute.