WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Japan External Trade Organization

WTO AND REGIONAL TRADE AGREEMENTS MONTHLY REPORT

November 2005

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

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SUMMARY OF REPORTS

United States

U.S. Treasury Department Financial Attaché-China Discusses Financial Liberalization

On October 26, 2005, the Coalition of Service Industries (CSI) hosted a meeting with David Loevinger, Treasury Department's Financial Attaché in China to welcome him to his new position and discuss industry priorities in China's financial liberalization. Loevinger provided an **off-the record** analysis on Treasury Secretary Snow's recent trip to China and also discussed CSI Members' concerns on Chinese financial liberalization.

Senate Finance Committee Holds Hearing on Status of World Trade Organization Negotiations

On October 27, 2005, the Senate Finance Committee held a hearing to discuss the status of World Trade Organization (WTO) Doha Round negotiations. The hearing focused on the successes and failures of the negotiations, current problems with the World Trade Organization (WTO), and the goals for the December WTO ministerial conference in Hong Kong. The hearing included **on-the-record** testimony from panelists representing government and business interests. We review below this testimony and committee's questions to the hearing witnesses.

Full text of the witnesses' statements is available at the Finance Committee's website: http://finance.senate.gov/sitepages/hearing102705.htm.

House Agriculture Committee Holds Hearing to Review Status of WTO Agriculture Negotiations

On November 2, 2005, the U.S. House Committee on Agriculture held a hearing to review the status of World Trade Organization (WTO) negotiations on agriculture. Committee Chairman Rep. Bob Goodlatte (R-VA) presided over the hearing. It included **on the record** oral testimony from U.S. Government and business representatives, including United States Trade Representative (USTR) Rob Portman and U.S. Secretary of Agriculture Michael Johanns. Full text of the witnesses' statements is available at the House Committee on Agriculture website: http://agriculture.house.gov/. We review below these statements.

USTR Holds Public Hearing to Review the Generalized System of Preferences

On November 3, 2005, the Office of the United States Trade Representative (USTR) and the Trade Policy Staff Committee (TPSC) held a public hearing to review the status of the Generalized System of Preferences (GSP) program. The Office of the USTR chairs the Committee. The hearing included on the record oral testimony from foreign government and business representatives and focused on GSP renewal and any improvements to the program that

would make it more beneficial to developing countries. We review here the issues brought up during the hearing.

Global Business Dialogue Hosts Panel on the Byrd Amendment and the Search for Compliance

On November 4, 2005, the Global Business Dialogue hosted a panel of speakers on the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment." Panelists included government and private sector representatives who provided their **off-the-record** statements on the Byrd Amendment and compliance issues. We review the speakers' discussion points here.

USCC Releases Report to Congress on U.S.-China Economic, Trade Relationship

On November 9, 2005, the U.S.-China Economic and Security Review Commission (USCC) released its annual report to Congress as part of its mandate "to monitor and investigate and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China." The report includes recommendations to Congress on outstanding issues regarding U.S.-China trade and economics, bilateral high-tech competition, Chinese military power, diplomacy, and media and information controls. We review here the Commission's remarks on U.S.-China trade and economics and USCC's recommendations to Congress.

United States Highlights

We want to alert you to the following United States developments:

- House Passes Spending Cut Bill That Includes Byrd Amendment Repeal
- President Bush Nominates Richard Crowder as Chief Agriculture Negotiator
- Senators Push Back Vote Deadline for China Tariff Bill
- USTR Seeks Comments on Telecommunications Obligations, Commitments Under Various Agreements
- U.S. Trade Officials Urge China to Open Markets and to Become Active in WTO Talks
- United States and India Unveil Trade Forum; India Suggests Possible Retaliation Over Byrd Amendment
- During Asia Trip, President Bush will Urge China to Commit to Market Reforms
- President Bush Nominates Chief Textile Negotiator to be Asst. Secretary of Commerce
- Republican Senators Oppose Efforts to Repeal Byrd Amendment

- USTR Urges Japan to Ensure Postal Privatization
- House Introduces Bill to Create Special Trade Prosecutor, Baucus Promises Similar Bill
- Japan Food Safety Commission Adopts Report to End U.S. Beef Ban
- Senate Confirms Bhatia and Schwab as Deputy USTRs
- Senators Introduce Legislation to Sanction Japan Unless U.S. Beef Ban Lifted
- House Ways & Means Committee Approves Byrd Amendment Repeal in Final Budget Reconciliation Recommendations
- Portman Hopeful that Japan Will Lift Ban on U.S. Beef Imports

Free Trade Agreements

We want to alert you to the following FTA developments:

- Sen. Grassley Urges More Market Access in Andean FTA; House Democrats Gear Up for Fight
- House Ways & Means Chair Pushes for Committee Approval of U.S.-Bahrain FTA by Weekend; U.S. and Oman Expected to Sign FTA in January
- U.S. Representatives Concerned that IPR under Andean FTA Could Undermine Access to Affordable Medicine
- House Ways & Means Committee Conducts "Mock Markup" of Bahrain FTA Implementing Legislation
- U.S. Ambassador Pledges FTA Talks with New Zealand
- Senate Finance Approves U.S.-Bahrain FTA in Mock Markup
- United States, Uruguay Sign Investment Treaty
- ITC Report Finds CBERA Has Negligible Impact upon U.S. Economy
- President Bush Calls for Democrats to Support U.S.-Panama FTA
- United States and China Achieve Textile Agreement
- Senate Finance Committee to Conduct “Mock Markup” of Implementing Legislation in Bahrain FTA; House Ways & Means Democrats Withhold Their Support
- United States, EU, Japan, and Korea Agree on Zero Tariffs on Multi-Chip Circuits

- Portman: United States Wants to Begin FTA Talks with South Korea, but Issues Must be Resolved
- ITC To Investigate Economic Impact of U.S.-Oman FTA
- House Ways & Means Approves U.S.-Bahrain FTA in Mock Markup
- House Ways & Means Committee Conducts "Mock Markup" of Bahrain FTA Implementing Legislation
- U.S. and China Close to Textile Agreement

US-Latin America

President Bush's Visit to Brazil May Influence FTAA Negotiations

Deputy Secretary of State and former US Trade Representative, Robert Zoellick, visited Brazil in October to meet the Brazilian Minister of Foreign Affairs, Celso Amorim, and the Minister of Finance, Antonio Palocci.

The main purpose of the trip was to prepare for the upcoming visit of President George W. Bush, which is scheduled to occur on November 5-6. Zoellick also discussed the December WTO Ministerial in Hong Kong.

Prospects for Advancing Trade Integration in the Western Hemisphere Appear Gloomy

On November 4, 2005, the Washington International Trade Association (WITA) held a discussion with United States Trade Representative (USTR) for the Americas Regina Vargo and Jeffrey Schott from the Institute for International Economics (IIE). Speakers offered their views on the Free Trade Area of the Americas (FTAA) and ongoing U.S. bilateral trade negotiations with the Andean countries and Panama. Vargo and Schott also discussed the World Trade Organization (WTO) negotiations and the impact a successful completion of the Doha Round could have on bolstering the FTAA.

Western Hemisphere Leaders Divided Over Resumption of FTAA Talks

At the Fourth Summit of the Americas held on November 4-5, 2005, regional leaders agreed to increase efforts to strengthen democracy and eradicate poverty throughout the Western Hemisphere.

However, regional leaders failed to agree on a timeframe to resume the stalled Free Trade Area of the Americas (FTAA) negotiations. Stiff opposition from several Latin American countries to a U.S. proposal to include a paragraph in the Summit Declaration endorsing the FTAA underscored the lack of consensus with respect to regional integration. Not only did the Summit

Declaration lack a strong endorsement of the FTAA, but also the leaders were unable to agree to a specific date to resume the FTAA negotiations.

US-Latin America Highlights

We want to alert you to the following US-Latin America developments:

- Bush Admits That FTAA Has "Stalled" With U.S. Focus on Doha Negotiations
- Business Groups Urge Governments to Enhance Competitiveness through Trade Facilitation and the FTAA

Multilateral

EU Offers New Set of Proposals to Move WTO Negotiations Ahead

On October 28, 2005, the EU presented a new set of proposals on agriculture and other issues during a meeting of the Five Interested Parties (FIPS – United States, EU, Australia, Brazil and India) near London. EU Trade Commissioner Peter Mandelson stated that the new proposal's suggested cuts "go further the EU's original offer" but added that the EU proposals "are fully conditional on satisfactory movement in other areas of negotiation." Mandelson added that the proposal is meant to unlock the World Trade Organization (WTO) Doha Round negotiations to ensure the success of the WTO's December ministerial in Hong Kong. We review here the EU's new proposal.

Doha Round Agriculture Negotiations Move Forward; Significant Challenges Persist

As of early October the Doha Round agriculture negotiations have witnessed considerable activity with WTO Members including the European Union (EU), United States (U.S.), and the Group of 20 (G-20) countries having submitted offers pertaining to each of the "three pillars" of the negotiations. Despite the numerous offers and counter-offers however, wide divergences on key aspects of the negotiations continue to divide Members. The area of market access remains particularly fraught with contention over the levels of tariff reduction that developed and developing country Members should undertake and the appropriate flexibilities that they should be allowed in this regard. In principle negotiators are still aiming to reach agreement on full modalities for the agriculture talks by the Hong Kong Ministerial scheduled for 13-18 December 2005. The EU in its latest proposal has called for agreement amongst the Five Interested Parties[1] (FIPs) on the key aspects of the agriculture negotiations by November 7-8 at a high-level meeting in Geneva.

[1] U.S., EU, Brazil, India and Australia

Status Report on WTO Trade Facilitation Negotiations: Legal Drafting of Agreement to Start After Hong Kong Ministerial

WTO Members are entering a critical stage in the Doha Development Agenda ("Doha Round") as they attempt to bring it to a successful conclusion in 2006. In contrast to the general stalemate in the Doha Round, the negotiations on trade facilitation have shown significant progress. Although the trade facilitation talks started much later than negotiations in the other areas of the Doha Round, they are now the most advanced. These negotiations, however face the risk of being "taken hostage" as a form of pressure for progress elsewhere (for example agriculture, NAMA and services, among others).

A compilation of Members' proposals put forward by the WTO Secretariat provides an idea of the possible content of a WTO Agreement on Trade Facilitation. Moreover, a draft report of the Chair of the trade facilitation negotiating group circulated in late October calls for the initiation of negotiations on actual trade facilitation text in early 2006 on the basis of a "list of elements" drawn from the Secretariat's compilation. This list provides an even clearer indication of the "elements" that could be included in an eventual Trade Facilitation Agreement.

WTO Panel Issues Ruling on United States-"*Zeroing*"

A WTO Panel has ruled that the United States violated its obligations under the Anti-Dumping Agreement by using the practice of "*zeroing*" in original dumping investigations. (Under "*zeroing*", the investigating authority does not average positive and negative dumping margins together. Instead, it considers all negative dumping margins to be zero. This has the effect of inflating the overall average dumping margin, and can lead to the imposition of anti-dumping duties which may not otherwise not apply at all.)

The Panel split on the issue of whether "*zeroing*" was similarly prohibited during administrative reviews, the annual procedure under which the U.S. Department of Commerce (DOC) determines final anti-dumping duty liability during the preceding year. The majority of the Panel ruled that "*zeroing*" could be used during administrative reviews. It reasoned that the relevant provision of the Agreement applied only during "the investigation phase", which the Panel interpreted to mean only during original investigations. However, one dissenting member of the Panel argued that "*zeroing*" is WTO-inconsistent during administrative reviews as well. The strong dissenting opinion in this Panel report virtually guarantees an appeal.

WTO Panel Partially Upholds Challenge to Korean Anti-dumping Investigation on Paper Imports

A WTO Panel has partially upheld a challenge by Indonesia to a Korean anti-dumping investigation on imports of paper. The Panel found, among other things, that Korea failed to use "special circumspection" in basing its findings on information from secondary sources. In an unprecedented move, the Panel reversed itself on a major substantive issue between the interim and the final report.

Cato Institute Hosts Panel on U.S. Farm Trade Policies, WTO Negotiations

On November 9, 2005, the Cato Institute hosted a panel of speakers on U.S. farm trade policies and the current status of World Trade Organization (WTO) agriculture negotiations. Representatives from the government and the private sector gave their **on-the-record** assessments of current U.S. farm trade policies and whether the December WTO ministerial in Hong Kong would achieve any outcomes. We review here those assessments.

Multilateral Highlights

We also want to alert you to the following Multilateral developments:

- Ecuador Requests WTO Dispute Proceedings Against United States Over Shrimp Duty
- Portman and Johanns Offer Assessments on WTO Negotiations Status
- WTO Services Chair Releases New Draft of WTO Services Text
- USTR and WTO Director-General Urge Agreement, Outline Costs of Failure
- NAMA Chair Expresses Concern Over "Wide Gaps" in Negotiations
- Portman, Congressional Members Sound Off on Latest EU Agriculture Proposal
- TO Services Chair Circulates First Draft of Text
- United States Initiates Formal WTO Inquiry on China IP Enforcement

REPORTS IN DETAIL

UNITED STATES

U.S. Treasury Department Financial Attaché-China Discusses Financial Liberalization

SUMMARY

On October 26, 2005, the Coalition of Service Industries (CSI) hosted a meeting with David Loevinger, Treasury Department's Financial Attaché in China to welcome him to his new position and discuss industry priorities in China's financial liberalization. Loevinger provided an **off-the record** analysis on Treasury Secretary Snow's recent trip to China and also discussed CSI Members' concerns on Chinese financial liberalization.

ANALYSIS

On October 26, 2005, CSI hosted a meeting with David Loevinger, Treasury's Financial Attaché in China to welcome him to his new position and discuss industry priorities in China's financial liberalization. Loevinger discussed Treasury Secretary Snow's recent trip to China and also discussed CSI Members' concerns on Chinese financial liberalization.

Loevinger stated that Secretary Snow's meetings with Chinese Government officials were "successful," and that the United States was able to "make its message clear." Loevinger outlined the U.S. approach to China, stating that the United States was able to inform officials that issues between the two countries would need to be resolved during the current "calm political environment." Unless Treasury can demonstrate to the U.S. Congress that the Administration's "quiet and firm diplomacy" is spurring change in China, the Congress would likely be unable to resist enacting "anti-China" legislation. Loevinger also noted that the dialogue between both countries had broadened and had included discussions on exchange rate policy, financial service reform, liberalization, and modernization. He stated that China focused its discussions on "balanced growth" and China's desire to avoid increased income disparities or a trade misbalance. Loevinger added that Chinese officials were receptive to the U.S. delegation and "understand that foreign firms can bring innovation and top management to China." According to Loevinger, the Chinese Government is "more nervous now" on interest rate increases and exchange rate appreciation, and the Treasury delegation had left a financial action plan with Chinese officials detailing U.S. suggestions. Both countries will discuss the plan at a later date. Loevinger added that CSI Members would be able to help spur Chinese liberalization by applying best practices when opening businesses in China.

Following his analysis, Loevinger opened the floor to CSI Members who expressed their concerns and priorities on China's financial liberalization. The **Council of Life Insurers** (CLI) noted that the Chinese government discriminated against U.S. firms in China – especially insurance companies – and hindered U.S. firms' ability to compete in China. The CLI

representative added that China needed better transparency and rule of law. The **Investment Companies Institute** participant sought China's provision of a better licensing system for foreign institutional investors and an increase in the Chinese limit on foreign-owned ventures and joint ventures. **New York Life Insurers**, **AIG Insurance**, and **Fidelity** added that better market access, a more flexible exchange rate and decreasing domestic monopolies would hasten China's financial liberalization and help U.S. firms and businesses be more competitive. In closing, **CSI** noted that "China needs to be more aggressive and should play a leadership role, not just a bridging role, at the WTO negotiations." Loevinger agreed and suggested that all CSI Members constantly update him on their concerns and periodically meet to discuss Chinese developments.

OUTLOOK

Loevinger's comments indicate that Treasury's policy of "quiet diplomacy" with China has been a moderate success. According to Loevinger, the Treasury officials stressed to the Chinese Government that less financial liberalization leads to less diversification and more risk assumed by Chinese consumers. To offset this risk, Chinese consumers will increase their savings, thereby decreasing consumption. Financial liberalization provides Chinese consumers the opportunity to diversify their holdings and minimize risk while simultaneously opening their market to foreign businesses. Treasury's approach intrigued the Chinese officials, according to Loevinger, and made them receptive to U.S. suggestions.

U.S. industry and Government representatives agree that China still must address a number of issues related to financial liberalization, most notably transparency and the rule of law. Currency manipulation also remains a contentious issue that China must address soon to avoid a buildup of anti-China sentiment in a U.S. Congress facing an election year. It is unclear whether the Administration's policy of "quiet diplomacy" will be able to effectuate these necessary changes. Indeed, it appears that the United States' confidence in that policy might be waning, as the Office of the United States Trade Representative (USTR) recently filed a formal request with China under Article 63.3 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to determine if China is complying with obligations under the Agreement. Although this request should provide the United States with an indication of Chinese compliance with IPR and other transparency issues, it is a more aggressive approach than the "quieter" modes of persuasion that Loevinger discussed.

Senate Finance Committee Holds Hearing on Status of World Trade Organization Negotiations

SUMMARY

On October 27, 2005, the Senate Finance Committee held a hearing to discuss the status of World Trade Organization (WTO) Doha Round negotiations. The hearing focused on the successes and failures of the negotiations, current problems with the World Trade Organization (WTO), and the goals for the December WTO ministerial conference in Hong Kong. The hearing included **on-the-record** testimony from panelists representing government and business interests. We review below this testimony and committee's questions to the hearing witnesses.

Full text of the witnesses' statements is available at the Finance Committee's website: http://finance.senate.gov/sitepages/hearing102705.htm.

ANALYSIS

On October 27, 2005, the Senate Finance Committee held a hearing to discuss the current state of WTO negotiations. Senators Craig Thomas (R-WY), Jeff Bingaman (D-NM) and Charles Grassley, (R-IA) presided over the hearing. The hearing focused on: (i) the direction of the EU – U.S. agriculture negotiations; (ii) the interests of the manufacturing, agriculture, and services sectors; and (iii) the current state of WTO negotiations:

- **Peter Allgeier, Deputy United States Trade Representative (USTR)** focused on the state of multilateral negotiations, noting that they are "not as advanced as they should be." He indicated that agriculture was the most important aspect of the negotiations and outlined the U.S. proposal to reduce its domestic subsidies in return for substantially increased market access. Allgeier stated that "with economic equality, the U.S. [trade] deficit could be reduced" but added that "unless the EU agrees to the [U.S.] agriculture proposal, there will be no further negotiations."

- **Jim Jarrett, Vice President - Worldwide Government Affairs, Intel Corporation** discussed the interests of the manufacturing sector in the Doha Round negotiations and stated that that the Doha Round would be a great opportunity for all interested parties. He also noted that agriculture is the most important aspect of the negotiations, but manufacturing is also important because it accounts for 80 percent of U.S. goods exports. Jarrett stated his belief that "governments must agree on a tariff -cutting formula," and put an end to harmful non-tariff barriers.

- **Craig Lang, President, Iowa Farm Bureau Corporation** discussed the goals that farmers hope to achieve through the WTO negotiations and stated that "the WTO is the best opportunity for farmers as long as there is fair, unrestricted market access outside of the United States." Lang stated that agriculture negotiations should be substantial, ambitious and quantifiable,

and added that the best outcome would be market harmonization. Lang noted that "farmers are preparing themselves for less federal support" but argued that this would be unfortunate and would harm U.S. farmers.

- **Jeffrey Shafer, Vice Chairman, Global Banking, Citigroup** discussed the interests of the services sector for the Doha Round and agreed that agriculture is the key to the negotiations. Shafer noted, however, that "services help farmers domestically by modernizing and liberalizing other countries abroad," while increasing transparency. He argued that strong U.S. leadership would motivate other countries' trade liberalization efforts, adding that "without [strong leadership], developing countries will never understand how [trade] liberalization can help [them]." Shafer also noted that all parties involved will have to make certain concessions to move negotiations forward and stated that "Congress needs to send clear signals" about its trade stance.

OUTLOOK

With time running out before the December ministerial in Hong Kong, much of the testimony focused on the EU and whether they would table a new set of agriculture proposals that matched the "ambitious" U.S. proposal. The witnesses agreed that agriculture was the most important – and contentious – issue, and its success or failure would dictate progress in other negotiating areas, such as services and non-agriculture market access (NAMA). Key Congressional Members have stated that the United States will not agree to further concessions until the EU presents changes that mirror those of the United States. These statements, combined with the EC's recalcitrance on agricultural market access, have cast doubt upon whether WTO Members can reach an agreement on full modalities in time for Hong Kong. Such a failure would greatly reduce the utility of the Hong Kong ministerial, as the four-day meeting will present little opportunity for trade ministers to make significant substantive gains. The EU's failure to present an ambitious agriculture proposal in the coming week might ensure such a limited result.

House Agriculture Committee Holds Hearing to Review Status of WTO Agriculture Negotiations

SUMMARY

On November 2, 2005, the U.S. House Committee on Agriculture held a hearing to review the status of World Trade Organization (WTO) negotiations on agriculture. Committee Chairman Rep. Bob Goodlatte (R-VA) presided over the hearing. It included **on the record** oral testimony from U.S. Government and business representatives, including United States Trade Representative (USTR) Rob Portman and U.S. Secretary of Agriculture Michael Johanns. Full text of the witnesses' statements is available at the House Committee on Agriculture website: http://agriculture.house.gov/. We review below these statements.

ANALYSIS

On November 2, 2005, the U.S. House Committee on Agriculture held a hearing to review the status of World Trade Organization (WTO) agriculture negotiations. With the December's WTO Hong Kong ministerial meeting several weeks away, Chairman Goodlatte stated that the recent EU proposals were inadequate. Goodlatte noted that Congress was interested in the assessment of USTR Rob Portman and Agriculture Secretary Mike Johanns as to whether the December WTO ministerial conference in Hong Kong will be a success, noting that WTO Members must make tentative agreements in agriculture, services, and non-agriculture market access (NAMA) by mid-November for there to be any significant developments in Hong Kong:

- **United States Trade Representative (USTR) Robert Portman** re-asserted U.S. objectives for the December WTO ministerial conference including: (i) an agreement on modalities for negotiations in agriculture and non-agricultural market access (NAMA); (ii) an effective negotiating framework for a significant result in services; (iii) directives to ensure that WTO rules remain effective or are strengthened; and (iv) the outlines of an agreement on Trade Facilitation. Portman stated that "the fate of the [Doha Development Agenda] DDA hangs in the balance because of the lack of progress in agriculture, where much of the responsibility for this lies with the EU." He added that the EU's proposal on October 28 was "disappointing to [the United States] and other Members seeking an ambitious result in the Doha Round," and that "much more needs to be done." Portman specifically referred to the EU tariff reduction proposal's lack of ambition relative to the U.S. or Group of 20 (G-20) offers. He also stated that the EU will have to present new proposals by the week of November 7-9 when the Five Interested Parties (FIPs) – the United States, the EU, Australia, Brazil, and India – meet in London to discuss the progress of negotiations.

When asked what would happen if the EU did not table new proposals, Portman responded that he "hope[d] it doesn't come down to that" and stated that the United States would continue to "push Europe" to make changes to its proposals. Portman assured Committee members that the United States was not "so overly eager" to move negotiations forward that it would use agriculture as a "swapping tool" to achieve agreements in other issues but added that the expiration of Presidential Trade Promotion Authority in 2007 was the deadline for legislation on any Doha agreements. Portman also stated that he was "disappointed with the G-20 proposal" and felt that many of its elements, including tariff cuts for developing nations, "need to be fleshed out more." Asked why the Office of the USTR was focused on U.S. exports as opposed to imports, Portman stated that the United States' main objective in its trade relations is to "open new markets to U.S. goods and obtain cheaper prices on other goods." Responding to a question on why the EU should be accorded an advantage in agriculture negotiations, Portman noted that an EU agreement to reduce domestic support levels to lower the ratio of EU support to the U.S. support from 4.5:1 to 2:1 was "better than the status quo." Portman also indicated that the Office of the USTR was very close to filling its position for Chief Agriculture Negotiator.

- **U.S. Secretary of Agriculture Michael Johanns** stated that "a new global pact is in jeopardy unless Europe shows still more flexibility," noting that "it is not acceptable for Europe to have four times the allowable support we have when our agricultural economies are of equivalent size." Johanns stated that WTO Members have made good progress on the export competition pillar "with the EU's agreement to eliminate all export subsidies" and added that the United States had proposed 2010 as the year by which all subsidies would be eliminated. He also stated that the U.S. preference "is to achieve [free and fair trade] through a successful conclusion to the Doha Round that brings us additional real market access commensurate with [the United States'] bold proposal on domestic support."

- **Wyeth Willey, National Cattlemen's Beef Association,** stated that the U.S. beef industry also "had a stake in the outcome of the current negotiations" and added that a successful outcome "mandates a significant reduction in Japan's 50 percent bound tariff rate and South Korea's 40 percent bound tariff rate on beef imports." Willey stated the inability to reduce these tariffs through agriculture negotiations would mean failure and "huge losses for the U.S. beef industry."

- **Christopher Shaffer, National Association of Wheat Growers,** stated that U.S. wheat growers "rely heavily on [U.S.] domestic support programs and are extremely concerned that other subsidy-users are disciplined." Shaffer also stated that the U.S. wheat industry was "surprised" by the U.S. proposal to cut 60 percent of domestic support and cut 2.5 percent from the Blue Box cap. He added that "there is a need for access to safety net programs that keep the [wheat] industry viable."

- **Don Phillips, American Sugar Alliance,** stated that the U.S. sugar industry is concerned with the "pervasive emphasis on special and differential treatment for developing countries" which Phillips opined has led to developing nations to do "little or nothing [that] should be asked of them in the negotiations." Phillips also stated that sugar must be placed in the list of U.S. sensitive products under the U.S. proposal "as the prospects for true reform of the world sugar market recede."

OUTLOOK

Although the Hong Kong ministerial is less than six weeks away, Portman and Johann's comments do not provide for much optimism. The consensus among all those at the hearing was that the EU proposal was "disappointing" and lacked the same ambition of the U.S. and G-20 proposals. Moreover, the congressional Members' comments indicate that the EU must offer deeper cuts on agricultural tariffs before Congress will back the U.S. proposal on domestic support. The FIPs will conduct a meeting in London during the week of November 7 – 10, and Portman stated that WTO Members are expecting another set of EU proposals. Should the EU not table new proposals that match the demands of the United States and other key WTO Members, the Hong Kong ministerial will present far fewer tangible results than expected. Many WTO Members, including the United States, have stated that successful negotiations in other areas, such as services and NAMA, are dependent on the success of agriculture negotiations. With multilateral agricultural negotiations proving to be so contentious, all WTO negotiating areas are in danger of stalling at Hong Kong.

USTR Holds Public Hearing to Review the Generalized System of Preferences

SUMMARY

On November 3, 2005, the Office of the United States Trade Representative (USTR) and the Trade Policy Staff Committee (TPSC) held a public hearing to review the status of the Generalized System of Preferences (GSP) program. The Office of the USTR chairs the Committee. The hearing included **on the record** oral testimony from foreign government and business representatives and focused on GSP renewal and any improvements to the program that would make it more beneficial to developing countries. We review here the issues brought up during the hearing.

ANALYSIS

On November 3, 2005, the Office of the USTR and the TPSC held a public hearing to review the status of the Generalized System of Preferences (GSP) program. The TPSC is composed of representatives from U.S. government agencies and departments including USTR, Agriculture, Commerce, Labor, State, Treasury, and the International Trade Commission (ITC). The Office of the USTR chairs the Committee. The hearing focused on GSP renewal and any improvements to the program that would make it more beneficial to developing countries. The U.S Government created the GSP program on January 1, 1976 as part of the Trade Act of 1974. Under the program, beneficiary countries – usually made up of developing or least-developed economies – receive duty-free treatment on products they export to the United States. The U.S. Government reauthorized the GSP program in August 2002; it is set to expire on December 31, 2006. Congress has usually reauthorized the program in 5-year increments. Several foreign government officials and business representatives were present at the hearing to present their views on GSP renewal and improvement:

- **Commercial Minister Chaveevarn Chandanabhumma, Royal Thai Embassy** stated that the United States is the largest and most important market for Thai exports and that Thailand benefits greatly as a GSP beneficiary. She noted that the December 2004 tsunami affected the entire Thai economy, and that Thailand's exports will drive the recovery. Minister Chandanabhumma added that the effects of the world economic depression and the oil crisis make it imperative that Thailand remain under the GSP program so that Thai goods can access the U.S. market. She noted that the GSP program allows: (i) Thai products to be more competitive; (ii) Thai producers to improve production; and (iii) Thai exports to reach important markets. When asked what factors made Thailand a beneficiary under the GSP, Minister Chandanabhumma responded that Thailand's "small businesses" and high production costs made it hard for Thai producers to keep up with global production costs; the GSP program provides Thai producers in certain sectors – notably in industrial goods and ceramic tiles – relief from high costs. When asked if bilateral agreements supercede multilateral agreements as part of the World Trade Organization (WTO)

trade negotiations, Minister Chandanabhumma opined that bilateral and multilateral agreements are parallel to one another and both are necessary for developing countries. She added that it would be "unwise" for the GSP program to graduate Thailand as Thailand benefited from the duty-free treatment as part of its post-tsunami recovery.

- **Commercial Minister V.S. Seshadri, Embassy of India** stated that the "predominance of small-scale [businesses] among the export community of India" and the "lack of adequate infrastructure, higher energy costs, higher interest rates, and higher transaction costs" harm India's competitiveness and make India's GSP benefits necessary. He noted that the Indian economy has witnessed a high growth rate but that GSP benefits were still necessary "to give developing countries' exporters an edge to access developed country markets." Dr. Seshadri added that India's current 7 percent growth rate would not be possible without the GSP program.

- **Laura Baughman, Coalition for the GSP** stated that her coalition's work on GSP renewal through the years has taught the group four important lessons: (i) GSP matters to American farmers, consumers, and manufacturers; (ii) long-term GSP renewals are crucial to American and foreign users of the program; (iii) GSP provides an alternative to sourcing from China; and (iv) amending current GSP practices could mean a delay in its renewal. Baughman added that the Administration should focus on the GSP program's long-term renewal and address changes to the program only after it has been renewed. When asked what she meant by "long-term," Baughman responded that the U.S. Government would have to renew the GSP program at a minimum of five years, adding that "predictability is key to American sourcing." When asked whether a country's violation of intellectual property rights protections should lead to its graduation from the program, Baughman responded that the GSP program follows a defined process for dealing with countries that have violated GSP regulations, and that the process should be observed strictly.

- **Robert Zane, United States Association of Importers of Textile and Apparel** stated that the U.S. Government can modify the GSP program into a "single uniform program," and that the program should make textiles and apparel eligible for duty-free benefits. Zane noted that including textile and apparel products under GSP eligibility would accompany "protection of internationally recognized worker rights, adequate and effective protection of intellectual property rights, and elimination of barriers to trade in services and in investment."

The Trade Policy Staff Committee will send all witnesses any questions they have regarding their testimonies. Witnesses have until November 14 to respond and add any post-hearing written briefs or statements.

OUTLOOK

With the GSP program set to expire on December 31, 2006, many beneficiaries are starting to petition for renewal to ensure that their products continue to receive duty-free treatment. Sources note that the TPSC is considering whether it should graduate Brazil and India from the program, a prospect evident at the hearing. The committee's questions to the Indian Commercial Minister were far more specific than any of the questions posed to the Thai Commercial Minister or other witnesses. The Committee also focused on improvements to the GSP program, repeatedly asking witnesses their thoughts on how to enhance the program. The consensus among all witnesses was longer-term renewal of the GSP program. Based on past Congressional renewals of GSP, the program does not appear to be in jeopardy of expiring. However, as Baughman noted in her testimony, any changes that the TPSC proposes will most likely derail and lengthen the renewal process, making the introduction of those changes after renewal a wiser decision.

Global Business Dialogue Hosts Panel on the Byrd Amendment and the Search for Compliance

SUMMARY

On November 4, 2005, the Global Business Dialogue hosted a panel of speakers on the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment." Panelists included government and private sector representatives who provided their **off-the-record** statements on the Byrd Amendment and compliance issues. We review the speakers' discussion points here.

ANALYSIS

On November 4, 2005, the Global Business Dialogue hosted a panel on the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment," and its potential repeal. Panelists included government and private sector representatives who provided their **off-the-record** statements:

- **Angela Ellard, Trade Subcommittee, U.S. House Ways and Means Committee** stated that there were two reasons why repeal of the Byrd Amendment is "currently relevant": (i) the House of Representatives is seeking to cut spending and the Byrd Amendment is an "easy" way to eliminate government spending; and (ii) the Government Accountability Office (GAO) published a report in October detailing the inefficiencies of the Byrd Amendment. Ellard referred to the report's findings that only five U.S. companies receive 46 percent of all benefits under CDSOA, with three of those companies related. She also stated that expanding the program so that there are more CDSOA beneficiaries "does not solve the [World Trade Organization] WTO violation."[2] Ellard noted no process exists to verify how beneficiaries spend CDSOA disbursements, and that disbursements can create a competitive misbalance: "competitive companies receive the benefits making other companies who do not receive CDSOA disbursements less competitive." She added that the Committee has "overcome substantial hurdles in getting close to CDSOA repeal."

- **Claude Carriere, Embassy of Canada** stated that the Byrd Amendment repeal is "very important to Canada" and that Canada will remove the retaliatory measures resulting from the WTO rulings adverse to the Byrd Amendment once the United States repeals the law. He added that "changing the WTO to make the Byrd Amendment legal is not the way to

[2] In March 2005, a WTO Appellate Body ruled that the Byrd Amendment violates multilateral trading rules and allowed Canada, the EU, Japan and other WTO Member states to impose retaliatory tariffs of nearly $134 million on U.S. products. The Bush Administration has repeatedly called for the CDSOA's repeal in light of mounting trade retaliation and international pressure to comply with global trading rules.

go" and stated that if the U.S. Congress does not repeal the Byrd Amendment in 2005, "[Canada] will continue the fight [to have it repealed]."

- **James Hecht, Skadden Arps** provided a supportive view of the Byrd Amendment and stated that "when the [CDSOA] program is viewed in the context of the law, it makes sense." Hecht added that the majority of the Byrd Amendment loopholes and flaws were in duty absorption, and that negotiations to "suspend some concessions of CDSOA" were more agreeable than eliminating the provision altogether. He added that an effective dispute-settlement mechanism is needed to ensure proper compliance with the law.

- **Andrew Kentz, Dewey Ballantine** echoed Hecht's presentation and stated that "CDSOA should be preserved" because "its benefits really help companies harmed by dumping." He also cited a WTO report that stated that the effects of CDSOA payments to U.S. companies are miniscule in harming other nations and disagreed with the popular view that the Byrd Amendment has created "spurious" trade cases.

- **Lewis Leibowitz, Hogan & Hartson** stated that CDSOA is "a stark piece of special interest legislation" and added that recipients of CDSOA benefits receive their benefits based on their size and wealth, not by their need. According to Leibowitz, the Byrd Amendment is "bad policy" because: (i) CDSOA violates WTO trading rules; (ii) many U.S. companies do not receive CDSOA benefits and are made less competitive in light of those that do receive benefits; (iii) CDSOA payments do not reflect the extent of the dumping injury; and (iv) there is no oversight on CDSOA disbursements and how they are spent by the interested companies. Leibowitz added that the Byrd Amendment is "antithetical to antidumping practices."

OUTLOOK

Ellard's assessment signals that many in Congress – particularly Republicans – wish to repeal on the Byrd Amendment because of the problems it has created. As Carriere noted, Canada and other WTO Members would remove their retaliatory measures if the United States repealed the CDSOA. Despite the unbalanced distribution of Byrd monies – a clear indication that the law is "special interest legislation" – the Byrd amendment still enjoys broad support in both chambers of Congress because Byrd beneficiaries have a tremendous incentive – millions of dollars annually – to lobby against repeal. On the other hand, the law's diffused costs limit a coordinated lobbying campaign for repeal. Thus, CDSOA's demise as part of the budget reconciliation is still far from certain.

USCC Releases Report to Congress on U.S.-China Economic, Trade Relationship

SUMMARY

On November 9, 2005, the U.S.-China Economic and Security Review Commission (USCC) released its annual report to Congress as part of its mandate "to monitor and investigate and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China." The report includes recommendations to Congress on outstanding issues regarding U.S.-China trade and economics, bilateral high-tech competition, Chinese military power, diplomacy, and media and information controls. We review here the Commission's remarks on U.S.-China trade and economics and USCC's recommendations to Congress.

ANALYSIS

On November 9, 2005, the USCC released its annual report to Congress. The report discussed U.S.-China trade and economics, bilateral high-tech competition, Chinese military power, diplomacy, and media and information controls. It also included recommendations to Congress on how to best solve the United States' problems with Chinese trade relations. USCC Chairman Richard D'Amato noted that "there has been little in the way of solutions to the problems which [the United States] has identified in [its] economic relationship [with China]." The report stated, however, that "the U.S.-China relationship is not inescapably destined to be adversarial," and that "in areas where China poses challenges to the United States, the United States must meet the challenges with a variety of tools and approaches, and as aggressively as necessary to protect important U.S. interests."

Congress created the USCC in 2000 when the United States granted China permanent normal trade relations (PNTR). The Commission consists of former government officials and business and labor representatives appointed by Congress. Of all the USCC commissioners, only one disagreed with the report's findings. Commissioner William Reinsch, former Under Secretary for Export Administration-Department of Commerce, voted against approving the report and stated that "the report's tilt is embodied in its negative tone" and that "the verdict [on China] is always the same – guilty." The report highlighted several outstanding economic and trade-related issues between the United States and China and added recommendations to Congress on how to solve these issues:

- **China's currency manipulation.** The report states that China's currency remains "highly undervalued" through direct, international currency market intervention by the Chinese government. The Commission found that this manipulation "frustrates" China's consent to abide by World Trade Organization (WTO) rules and violates the International Monetary Fund's (IMF) Article IV, which charges members to "avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members." The Commission believes that "the Chinese government's continued intervention in the exchange rate market to support

an undervalued renminbi exposes it to a WTO dispute" and is "pushing the [Bush] administration" to file a dispute settlement case with the WTO over currency matters. China last revalued its currency in July 2005 by 2.1 percent. The Commission also recommended that Congress consider "imposing an immediate, across-the-board tariff on Chinese imports" so as to pressure China into strengthening its currency and urged the U.S. Treasury Department to "maintain a high level of pressure on China to take more significant actions expeditiously to revalue its currency."

- **China's intellectual property rights (IPR) protection.** The report states that China's IPR protection lacks substance and that "violations of intellectual property rights in China continue virtually unchecked." According to the report, China's main IPR deficiency is "effective enforcement of its laws" which is among its WTO commitments. Chinese piracy rates are upwards of 90 percent, and the report states that Chinese piracy has heavily affected the U.S. software and motion picture industries' competitiveness. China's weak IPR protection and enforcement also contradict the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Again, the Commission recommended that the United States initiate action through the WTO dispute resolution process to address China's failure to comply with the TRIPS agreement.

- **China's non-market economy status.** The United States currently considers China a non-market economy (NME) and thus cannot implement trade remedies – such as anti-dumping (AD) and countervailing duties (CVD) actions – against Chinese imports under a market economy methodology. The Commission recommended that Congress enact legislation to make countervailing duties applicable to NMEs. The Commission also urged Congress to keep treating China as an NME "in the application of anti-dumping and countervailing duties through 2016," as permitted by China's WTO accession agreement, unless China meets the criteria for market economy status.

- **U.S. trade remedies.** The Commission also made recommendations to Congress on U.S. trade remedy enhancement. The Commission recommended that Congress repeal the new shipper bonding privilege[3] for

[3] Part of U.S. AD law (19 U.S.C 1673 *et seq.)* and CVD law (19 U.S.C. 1671 *et seq.).* At the conclusion of an affirmative AD or CVD investigation, upon receiving a request from an exporter or producer that did not export the subject merchandise during the investigation and is not affiliated with any producer who did export the merchandise, the ITA will conduct a "new shipper" review to establish the individual AD or CVD duty rate for that exporter. During the review, any importer purchasing from the shipper under investigation receives the right to post a bond or security, in lieu of cash deposit to cover the additional antidumping or countervailing duties assessed after the review. This is known as the "bonding privilege." In publishing the final results of the new shipper review, ITA instructs CBP to terminate this bonding privilege and collect cash deposits of estimated duties on future entries at the specific rate determined by the review.

Chinese imports because it allows "many importers of Chinese goods to avoid payment of anti-dumping duties." The Commission recommends that these importers subject to AD/CVD actions should be required to submit cash deposits in the amount of any applicable duty. The Commission recommended that Congress maintain the Continued Dumping and Subsidies Offset Act of 2000 (CDSOA)[4] even if it violates WTO trade rules. Repeal of the CDSOA has been currently added to the 2006 Budget Reconciliation Act and is under consideration in Congress.

- **U.S. coordination with the EU, Japan.** The Commission recommended that the United States coordinate efforts with the EU and Japan in pressuring China to upwardly revalue its currency. The Commission also urges the United States and the EU to work jointly in determining whether China has reached market economy status to "arrive at a consistent analysis that ensures that China will have taken concrete and irreversible steps to earn market economy status before the benefits of such status are conferred."

- **U.S. mandated corporate reporting.** The Commission recommended that Congress establish a corporate reporting system "to gather sufficient data to provide a comprehensive understanding of the trade and investment relationship with China." Under such a system, U.S. companies would be required to report to the Commerce Department their investments, production schedules and contracts with Chinese firms in China. The Commerce Department would maintain a record of all U.S. firms' activities in China to increase transparency and reporting of U.S business activities in China.

The USCC report concluded that "current trends in U.S.-China relations have negative implications for [the United States'] long-term economic and national security interests." The report also concludes that the United States' greatest challenge with regards to China is "to develop a coherent strategic framework for approaching China in a way that does protect vital U.S. interests while recognizing legitimate Chinese aspirations, minimizing the likelihood of conflict, building cooperative practices and institutions, and advancing both countries' long-term interests wherever that is possible."

OUTLOOK

Although the USCC report addresses many of the concerns echoed by the Bush Administration, its recommendations are far more aggressive than those that the Administration is likely willing to pursue. President Bush and Treasury Secretary John Snow have approached China using "quiet diplomacy" – a passive approach in which the United States pressures China

[4] Congress enacted the CDSOA on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act. The CDSOA had three goals: (i) to strengthen the remedial nature of U.S. trade laws; (ii) to restore conditions of fair trade; and (iii) to assist domestic producers.

to reform – and will not likely adopt the USCC report's defiant tone or its extreme recommendations. Although the House has passed legislation (H.R. 3283) that would repeal the new shipper bonding privilege, it is unlikely that the Senate will vote on the measure (S. 1421) because of current time constraints. The 2005 report is almost identical to the 2004 version. Although the USCC report will likely find allies in China's traditional critics in Congress, it is doubtful that any of the USCC's recommendations will come to fruition, barring a drastic change in the Administration's diplomatic stance or serious evidence of Chinese currency manipulation in the soon-to-be-released Treasury Department report on global currency practices.

U.S. Highlights

House Passes Spending Cut Bill That Includes Byrd Amendment Repeal

On November 18, 2005, the U.S. House of Representatives passed the Deficit Reduction Act of 2005 (H.R. 4241) which includes a repeal of the Continued Dumping and Subsidy Offset Act (CDSOA), the so-called "Byrd Amendment." The House approved the $49.5 billion spending cut bill by a close vote of 217-215. The Senate passed their version of the bill (S. 1932) in early November. The Senate version does not contain an analogous provision repealing the Byrd Amendment. The House and Senate will convene a conference committee to prepare the final version of the bill; each chamber will then vote on the final budget package. If Congress repeals the Byrd Amendment, AD/CVD duties would go to the general treasury. Repeal, however, is still uncertain, as the CDSOA enjoys broad support in both the House and the Senate. The repeal provision might be removed in conference. With Congress beginning its two-week Thanksgiving recess on November 21, the timeframe for the conference committee is unclear.

The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief or supported the petition. In March 2005, the World Trade Organization (WTO) found the law to be inconsistent with international trade rules and allowed seven WTO Members - including the EU, Canada and Japan - to impose retaliatory duties on U.S. imports. India has recently suggested that it too might impose retaliatory duties on U.S. imports if the Byrd Amendment is not repealed.

President Bush Nominates Richard Crowder as Chief Agriculture Negotiator

On November 16, 2005, President Bush nominated Richard Crowder to be the U.S. Chief Agricultural Negotiator. Crowder is currently the President and Chief Executive Officer for the American Seed Trade Association. From 1989 to 1992 he served as Under Secretary for International Affairs and Commodity Programs at the U.S. Department of Agriculture. United States Trade Representative (USTR) Rob Portman lauded the nomination and stated that Crowder "brings to the negotiating table unique insight to the needs of farmers and ranchers coupled with solid experience in the government" and that Crowder "comes at a crucial time in the global trade talks." Under U.S. law, Crowder's nomination is subject to Senate approval. The timeframe for Senate consideration is unclear.

Senators Push Back Vote Deadline for China Tariff Bill

Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) have postponed the deadline for a vote on their bill (S. 295) "that would assess a 27.5 percent tariff on all Chinese imports" until December 23. Schumer stated that voting on the bill would be inappropriate as President Bush is currently in Asia to meet with Asian ministers at the Asia Pacific Economic Cooperation (APEC) forum and Chinese President Hu. Schumer and Graham introduced the legislation in April over mounting concerns that China's pegged currency rate gave it an unfair trade advantage over the United States.

This is not the first time that the Senators delayed consideration of the bill. They delayed a July vote after Treasury Secretary Snow assured them that China would allow its exchange rate to float. China did allow a moderate float but announced that it was moving to a "managed" floating currency regime. Schumer stated that he was "disappointed in the steps that have been taken so far" but noted that the vote could be pushed back to March 2006 if he and Congress felt that China was taking adequate steps to allow its currency to float.

Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee, and Congressional sources, however, doubt the bill would become law since the Senate's schedule is so full that little time could be devoted to the bill. Meanwhile, the Treasury Department has also delayed the release of its report on whether China is manipulating its currency. If the report finds that China is a currency manipulator, then the bill may be brought up for consideration, given the mounting trade deficit with China and anti-China sentiment in Congress, especially if Senators feel that China is not doing enough to float its currency.

USTR Seeks Comments on Telecommunications Obligations, Commitments Under Various Agreements

The Office of the United States Trade Representative (USTR) has requested comments on the operation, effectiveness, and implementation of and compliance with World Trade Organization (WTO) agreements affecting market opportunities for telecommunications products and services of the United States. According to the USTR notice, comments should reflect: (i) whether any WTO Member is acting in a manner that is inconsistent with its WTO commitments affecting market opportunities for telecommunications products; (ii) whether Canada or Mexico has failed to comply with its telecommunications commitments and obligations under the North American Free Trade Agreement (NAFTA); (iii) whether Chile, Singapore, Australia, and any other free trade agreement (FTA) partner with an agreement before January 1 2006 has failed to comply with its telecommunications commitments and obligations under the respective FTA; and (iv) whether any other country has failed to comply with its telecommunications commitments and obligations under additional telecommunications agreements.

Comments to the USTR are due by noon on December 9, 2005, and USTR will conclude its review by March 31, 2006.

U.S. Trade Officials Urge China to Open Markets and to Become Active in WTO Talks

United States Trade Representative (USTR) Rob Portman urged China to open its markets further and also requested that China help break the current impasse in World Trade Organization (WTO) negotiations. At a November 14th conference in Beijing, Portman also urged China to protect American copyrights, trademarks and patents and to enforce intellectual property rights (IPR). Portman stated that "American goods and services are not receiving fair treatment in China, and that Americans must compete at home and abroad against Chinese producers who are able to sell at less than fair market prices." According to Portman, the United States' problems with China include: (i) investment limits for foreign companies; (ii)

"cumbersome, opaque, and unequally-applied rules in telecommunications, insurance, financial services and other sectors"; (iii) delays in government responses to U.S. concerns; and (iv) weak IPR protection and enforcement. Portman added that the United States is "eager to work with the Chinese to help them improve their system" but that problems of IPR protection "are not being solved quickly enough" and that "China should act immediately." David A. Sampson, Deputy Secretary of Commerce, echoed Portman's statements in urging China to limit counterfeiting and crack down on piracy but also emphasized economic successes in the bilateral relationship and noted that "to focus exclusively on the U.S. trade deficit [with China] is . . . to look at only one part."

Portman also stated "that China, being a major player now in the global trading system, and a major beneficiary of the multilateral trading system, has a responsibility to be more engaged in the [WTO] talks" and urged Chinese officials to "step up" and become more involved in the negotiations. On China's WTO commitments, Portman lauded China for taking steps to meet its WTO obligations but also stated that China "still falls short in a number of areas" especially IPR enforcement.

Portman and Sampson's statements come days before President Bush is scheduled to meet with Asian leaders at the annual Asia Pacific Economic Cooperation (APEC) forum. Bush will urge Asian leaders to help move WTO trade negotiations forward during the meeting and will then travel to China where he will also urge China to open its markets, to increase IPR protection, and to make its currency more flexible. Although Portman's comments on Chinese trade issues echo those of other U.S. officials, his statements on China's participation in the ongoing WTO negotiations are somewhat novel. Although it is somewhat unlikely that China will respond to the Bush Administration's requests and suddenly take a more active and public role in the multilateral negotiations, Portman's comments indicate that the Administration is willing to look beyond its bilateral trade conflicts to advance the stalled WTO round. The Administration's decision to take this step is a clear signal of how much it values the WTO negotiations.

United States and India Unveil Trade Forum; India Suggests Possible Retaliation Over Byrd Amendment

On November 12, 2005, the United States and India launched the India-United States Trade Policy Forum intended to double trade between the two countries within three years. United States Trade Representative (USTR) Rob Portman and Indian Minister of Commerce and Industry Kamal Nath also expressed their hope that World Trade Organization (WTO) Members could use the trade forum to settle differences on agriculture and other issues that have "dimmed hopes for a bold conclusion of the Doha Round." Portman has described the forum as a "hub" around which the two countries can strengthen economic ties and resolve bilateral trade issues. Portman also envisioned that the forum will serve as an "early warning system" for any impending trade problems and a forum for open communication. Both officials expect merchandise trade to double by 2008 but noted that non-tariff barriers remain a contentious issue that the nations must resolve for the forum to provide the most benefits.

Among the current bilateral trade conflicts is the United States' failure to rescind the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment." The WTO's Appellate Body ruled in 2003 that the Byrd Amendment was inconsistent with global trade rules. India recently suggested that it will consider retaliatory measures against the United States if it does not repeal the contentious trade measure. The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the WTO allowed seven WTO Members – including India, the EU, Canada and Japan – to impose retaliatory duties on U.S. imports. Although India has yet to impose such tariffs, Minister Nath stated that his country might impose additional import duties on U.S. products as the WTO ruling allows.

On November 3rd, the House Committee on the Budget passed by a vote of 21 to 17 the Deficit Reduction Act of 2005 (H.R. 4241), which includes a measure to repeal the Byrd Amendment. The bill is awaiting a floor vote in the House but faces stiff opposition, due to partisan conflicts unrelated to the CDSOA's repeal. If the House approves the budget reconciliation package, the House and Senate will convene a conference committee to report the final version of the bill; each chamber will then vote on the final budget package. Should Congress fail to include the Byrd repeal measure in the final budget bill or to approve the final budget package, Indian retaliation would provide further pressure on Congress to repeal the Byrd Amendment in 2006.

During Asia Trip, President Bush will Urge China to Commit to Market Reforms

The White House announced that President Bush will urge Chinese leaders to move towards a more flexible currency during his weeklong trip to Asia beginning November 14th. Bush will also encourage China to improve U.S. imports' access to the Chinese market and to strengthen intellectual property rights (IPR). The White House reported that Bush will not make any demands during his meetings with Chinese President Hu but will treat the meetings as "discussions with two friends."

The President's trip will begin with a meeting in Japan with Japanese Prime Minister Koizumi. Bush will discuss Japanese economic reforms and the reopening of Japan's market to U.S. beef. Bush will then meet with South Korean President Roh and will meet with Malaysia's Prime Minister and Indonesia's president while in South Korea for the November 18-19 Asian Pacific Economic Cooperation (APEC) meeting. At the APEC meeting, Bush and other Asian leaders will focus on the current status of World Trade Organization (WTO) negotiations, and Bush will encourage Asian leaders to make advance the Doha negotiating round. Following the APEC meeting, Bush will travel to China.

Separately, a group of 16 U.S. Senators, led by Senator Debbie Stabenow (D-MI), sent a letter to President Bush on November 10th calling on him to "tell the leaders of China and Japan, '[The United States] no longer accept[s] your illegal trade practices and demand[s] that you change them.'" The Senators also urged Bush to pressure Japan and China into halting their currency manipulation and strengthening their IPR enforcement. According to the letter, counterfeiting is a $16 billion industry in China, costing hundreds of thousands U.S. jobs, and

software piracy costs U.S. businesses close to $13 billion annually. The letter also claims that the U.S. auto industry loses $12 billion annually due to counterfeit auto parts. The letter included the Commerce Department's statistics showing a September bilateral trade deficit of $66.1 billion. Stabenow noted that such statistics should be a "wake-up call for policy makers."

Although Congressional Members are pressuring Bush to adopt a more defiant stance against China on its perceived currency manipulation, the President intends to maintain a gentler approach when dealing with China and will not likely demand that China make its exchange rate regime more flexible. Instead, as has been current practice, Bush will use "quiet diplomacy" to inform the Chinese of U.S. concerns and hope that the more passive approach yields benefits while not offending the Chinese Government. Treasury Secretary John Snow used the same approach in his October meetings with Chinese officials, urging China to make their exchange rate more flexible and to enforce IPR. The Treasury Department is scheduled to release its report on world currency manipulation, including China's practices, following the President's trip to Asia. Should the report state that China is manipulating its currency, more members of Congress will likely adopt a "hard-line approach" with China, regardless of the results of President Bush's meetings. Should congressional anti-China sentiment further increase, it is likely that Congress will consider one or more pieces of legislation targeting Chinese trade and currency practices.

President Bush Nominates Chief Textile Negotiator to be Asst. Secretary of Commerce

On November 10, 2005, President Bush nominated David M. Spooner, the United States chief textile negotiator, to be the Assistant Secretary of Commerce for Import Administration. Before serving as a textile trade negotiator, Spooner was a transition coordinator at the Office of the United States Trade Representative (USTR) during President Bush's first term. Prior to that, he served as an administrative assistant to Representative Sue Myrick (R-NC). Spooner has also served as an associate for the House Rules Committee and the House Agriculture Committee.

Spooner's nomination follows a November 8th textile agreement between the United States and China to limit Chinese imports of 34 categories of textile and apparel products through 2008 by placing quotas on these items. Under the agreement, U.S. quotas for 14 of the most sensitive categories would be based on 2005 imports and would include limits 10 percent higher than 2005 levels. These limits would increase to 12.5 percent by 2007 and to 15 percent by 2008. Under U.S. law, Spooner's nomination is subject to Senate approval. The timeframe for Senate consideration is unclear.

Republican Senators Oppose Efforts to Repeal Byrd Amendment

Senator Mike DeWine (R-OH) and 24 other Republican Senators have sent a letter to Senate Majority Leader Bill Frist (R-TN) urging the Senate not to repeal the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment." The letter advocated that the Senate "not accede in a conference on the budget reconciliation package to an anticipated House provision" that would repeal the law. Signatories to the letter noted that they

do not believe "that the budget reconciliation process should be used to substantively change U.S. trade law" and stated that 72 Senators oppose repeal of the Byrd Amendment – a reference to a February 2003 Senate letter calling on the Administration to preserve the law. In a separate letter, Democratic Senators Robert Byrd (D-WV), Max Baucus (D-MT), Daniel Inouye (D-HI), and Kent Conrad (D-ND) also voiced their strong opposition to the repeal of the Byrd Amendment and stated that "no budget reconciliation bill – or any other bill – should be used as a vehicle to undermine and weaken America's trade laws in this manner."

The Byrd Amendment mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade Organization (WTO) found the law to be inconsistent with international trade rules and allowed seven WTO Members – including the EU, Canada and Japan – to impose retaliatory duties on U.S. imports. On November 3rd, the House Committee on the Budget passed by a vote of 21 to 17 the Deficit Reduction Act of 2005 (H.R. 4241), which includes a provision mandating the Byrd Amendment's repeal. The bill will next go to the House floor for a vote, where it will be subject to amendment. If passed, the House and Senate will convene a conference committee to report the final version of the bill; each chamber will then vote on the final budget package. If Congress repeals the Byrd Amendment, AD/CVD duties would go to the general treasury. Repeal, however, is still far from certain, as the CDSOA enjoys broad support in both the House and the Senate, and House members will likely offer amendments to the House bill to remove the repeal provision. Moreover, Congressional sources have indicated that many Democrats and moderate House Republicans might oppose the budget reconciliation package because of several provisions unrelated to trade. If this opposition is sufficient to sink the entire budget package, the Byrd repeal provision – assuming it survives amendment – would go with it. Finally, the Senate version of the budget bill (S. 1932) does not contain the Byrd repeal provision. Thus, even if the measure survives amendment and if the house passes the bill, the repeal provision might be removed in conference. The House is expected to vote on H.R. 4241 on November 10th.

USTR Urges Japan to Ensure Postal Privatization

The Office of the United States Trade Representative (USTR) has made recommendations to Japan's Government to ensure that Japan create "a level playing field" between private banking, insurance and express delivery companies, and Japan Post's sectors that provide similar services. In October, Japan's parliament (the Diet) approved legislation to privatize portions of the Japan Post - a process estimated to run from 2007 to 2017. Japan Post's life insurance (Kampo) and banking divisions are exempt from many regulatory and tax policies that apply to foreign and Japanese private firms. USTR Portman stated that "he is counting on Japan to establish a truly level playing field between the new Japan Post entities and private sector companies before approving any new products." USTR included the recommendations its annual regulatory reform report to President Bush and Japanese Prime Minister (PM) Junichiro Koizumi. President Bush and PM Koizumi will meet in mid-November in Japan before President Bush attends an Asia-Pacific Economic Cooperation (APEC) conference.

The USTR report also praised Japan's reforms in wireless telecommunications, fruit and vegetable trade, and e-commerce and focused on regulatory and pricing issues of medical

devices and pharmaceuticals. In the coming months, Japan's Government will determine pharmaceutical reimbursement policies that USTR says could impact U.S. pharmaceutical companies and their ability to "market innovative devices and drugs expeditiously." USTR Portman urged the Japanese Government "to ensure medical device and drug prices are established in a manner that is transparent, predictable and fair, and rewards innovation."

USTR delayed the release of annual regulatory reform report to determine whether Japan would continue its efforts to privatize Japan Post - particularly Kampo - after the September Japanese elections and several U.S. officials' visits to Japan. PM Koizumi's landslide victory has provided him with a mandate for privatization - the bedrock of his election platform - and the recent legislation reforming Japan Post provides an early indication that Koizumi will continue to champion the issue. Despite these moves, the USTR report and Portman's comments make it clear that the United States will continue to monitor Japan Post's privatization to ensure that the Japanese Government enact these policies and remove the regulatory advantages it has provided to Kampo and other branches of Japan Post.

House Introduces Bill to Create Special Trade Prosecutor, Baucus Promises Similar Bill

Members of Congress have introduced two bills that are intended to force the Administration to pursue trade complaints more aggressively. Representatives Sander Levin (D-MI) and Dave Camp (R-MI) introduced legislation on November 1st (H.R. 4186) that would require the Office of the United States Trade Representative (USTR) to create a special "trade prosecutor" position responsible for "spearhead[ing] trade enforcement cases at the WTO and through dispute settlement mechanisms included in other trade pacts." Levin stated that "this bill will charge one individual with the task of investigating foreign trade abuses and taking action by using any and all means within USTR's power to level the playing field for U.S. companies." The bill is the House version of a Senate bill (S. 1542) that Senators Debbie Stabenow (D-MI), Lindsey Graham (R-SC) and Evan Bayh (D-IN) introduced in July. Under the Senate bill, the chief trade prosecutor will assist the USTR in investigating and prosecuting disputes before the WTO.

Senator Max Baucus (D-MT), ranking member of the Senate Finance Committee, stated on November 1st that he will introduce a bill "in the coming weeks" that would require the Bush Administration: (i) to consult with Congress on its trade enforcement policies; (ii) to list and to prioritize trade enforcement efforts with Congress; and (iii) to report periodically its trade enforcement agenda to Congress. Senator Baucus also plans to include a provision in the bill that would create a trade prosecutor position similar to H.R. 4186 and S. 1542. He added that the bill is almost ready for introduction but noted that the current congressional schedule would likely delay consideration of the bill until 2006.

Both bills reflect the Democratic view that the Bush Administration has not sufficiently enforced trade rules included in free trade agreements (FTAs) and WTO rules. They are also prime examples of the approach that many Democrats (and Republicans in import-sensitive areas) take on "free trade" - declaring support for trade liberalization, while at the same time

pushing policies that protect domestic workers and industries through "stricter enforcement" of domestic and global trade rules. Oftentimes, however, these policies are less about "leveling the playing field" or "enforcing trade laws" than they are about benefiting strategic constituencies, such as organized labor and the steel and textile industries. Congressional observers note that the new position would require Senate confirmation and would give Congress more influence on trade enforcement. It is unclear, however, how much support either bill will receive from the Administration or Congressional Republicans, a majority of whom routinely oppose such measures.

Japan Food Safety Commission Adopts Report to End U.S. Beef Ban

On October 31, 2005, Japan's Food Safety Commission (FSC) adopted a report concluding that the risk of bovine spongiform encephalopathy (BSE) contamination of U.S. and Canadian beef from cattle aged less than 20 months is "extremely limited" and thus recommending that Japan end its ban on such beef. Yasuhiro Yoshikawa, Chairman of the FSC Prion Expert Committee, stated that risk of BSE is limited if both countries strictly observe export inspection measures. The FSC will now put the recommendation to the public comment process for four weeks in November and will deliver a formal recommendation to end the ban on U.S. and Canadian beef to the Japanese Ministries of Health, Labor and Welfare, and Agriculture, Forestry and Fisheries. The ministries will then issue directives to regional bureaus, and beef imports should resume by the end of 2005. Prime Minister Junichiro Koizumi will discuss the process with President Bush during their November 16 summit in Kyoto.

Reactions from the Office of the United States Trade Representative (USTR) and key members of Congress were mixed, with most lauding the FSC's recommendation but criticizing the amount of time it has taken to end the beef import ban. USTR Press Secretary Neena Moorjani stated that the FSC's recommendation is an important step forward, but that "the process has taken much too long." She added that the United States "will continue to keep pressure on until Japan brings its beef import requirements in line with international standards." Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee, expressed his frustration with the "drawn out" process but hoped that there was an "end in sight."

On October 26, Senators Pat Roberts (R- KS) and Kent Conrad (R-ND) introduced legislation (S. 1922) that would impose $2.7 billion in tariffs on Japanese imports unless Japan lifts its ban on U.S. beef by the end of 2005. With the FSC's recent recommendation, it is unlikely that the bill will move forward through Congress, barring a major setback in the ban removal process. The United States, according to the Office of the USTR, will continue to pressure Japan until it lifts the ban. Several observers have noted, however, that Japanese imports of U.S beef will not likely recover to pre-ban levels because of the in-roads into the Japanese market that Australian beef has made since the ban on U.S. beef began in 2003. Approximately 95 percent of Japanese beef imports currently come from Australia, and observers estimate that U.S. imports will recapture 20 percent of the market. Prior to the ban, U.S. beef accounted for 37 percent of all beef imports to Japan.

Senate Confirms Bhatia and Schwab as Deputy USTRs

On October 28, 2005, the U.S. Senate confirmed the nominations of Karan K. Bhatia and Susan Schwab to be Deputy United States Trade Representatives (USTR). USTR Rob Portman lauded the confirmation and stated that both would make "immediate and invaluable contributions as soon as they are sworn in." Portman added that "the World Trade Organization [WTO] meeting in Hong Kong is less than two months away, and their vast experience will bring further significant talent to our already skilled trade team." Bhatia will handle trade relations with Asia and Africa, and his agenda priorities will include: (i) leading trade efforts with China; (ii) continuing free trade agreement (FTA) negotiations with Thailand and the Southern Africa Customs Union (SACU); (iii) strengthening trade relations with the Asia-Pacific Economic Cooperation (APEC) forum; and (iv) supervising USTR negotiations on pharmaceuticals, labor, and environment. Schwab will oversee relations with the Middle East, Latin America and the Caribbean, Mexico, and Canada. She will focus on: (i) negotiations on the Free Trade Area of the Americas (FTAA); (ii) continuing FTA negotiations with the Andean countries, Panama, and the United Arab Emirates; (iii) concluding the Oman and Bahrain FTAs; (iv) implementing the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA); and (v) supervising negotiations on WTO accessions and services, investment, and intellectual property in the WTO Doha Round negotiations.

Senators Introduce Legislation to Sanction Japan Unless U.S. Beef Ban Lifted

On October 26, 2005, Senators Pat Roberts (R- KS) and Kent Conrad (R-ND) introduced legislation (S. 1922) that would impose $2.7 billion in tariffs on Japanese imports unless Japan lifts its ban on U.S. beef by the end of 2005. The Senators introduced the bill two days after the Japanese Food Safety Commission (FSC) met to consider a report recommending that U.S. beef imports from cows younger than 20 months be resumed. The FSC did not approve the report, but Ryozo Kato, Japan's Ambassador to the United States, indicated that the commission will likely approve the report at its next meeting, thereby allowing Japan to lift the beef ban before 2006. The Senate bill has 18 cosponsors and would require the Office of the United States Trade Representative (USTR) to certify whether Japan has lifted its ban on U.S. beef by December 15, 2005. If Japan has not lifted the ban by that date, the legislation directs the Treasury Department to impose $2.7 billion in tariffs on the Japanese products of its choosing.

In a prepared statement, Senator Roberts expressed his impatience with Japan's efforts to lift the ban and said that the U.S. beef industry has suffered approximately $5.4 billion in economic losses since Japan barred U.S. beef in December 2003, when one case of bovine spongiform encephalopathy (BSE) was discovered in the United States. The legislation is unlikely to progress quickly through the Senate, as Chairman of the Senate Finance Committee Senator Charles Grassley (R-IA) has urged Congress to delay retaliation until President Bush returns from Japan on November 15-16. On October 25, Senator Grassley told reporters that he had received a letter from Ambassador Kato stating that the FSC would likely approve the draft report at its next meeting, expected to occur the week of October 31. Although Ambassador Kato's assurances might delay Congressional action on the Japanese ban in the short term, the

FSC must act soon to remove the ban, or Senator Grassley will be unable to prevent Congress from sanctioning Japanese imports.

Cosponsors of the legislation include Senators Wayne Allard, (R-CO); Max Baucus, (D-MT); Kit Bond, (R-MO); Sam Brownback, (R-KS); Conrad Burns (R-MT); Norm Coleman, (R-MN); John Cornyn (R-TX); Larry Craig, (R-ID); Mike Crapo, (R-ID); Byron Dorgan, (D-ND); Mike Enzi, (R-WY); Tim Johnson, (D-SD); Blanche Lincoln, (D-AR); Harry Reid, (D-NV); Ken Salazar, (D-CO); Jim Talent, (R-MO); Craig Thomas, (R-WY); and John Thune, (R-SD).

House Ways & Means Committee Approves Byrd Amendment Repeal in Final Budget Reconciliation Recommendations

On October 26, 2005 the House Ways and Means Committee approved by a 22-17 margin the *Entitlement Reconciliation Recommendations for Fiscal Year 2006 Act* - a budget reconciliation measure that includes a repeal of the Continued Dumping and Subsidy Offset Act (CDSOA), also known as the "Byrd Amendment." The Committee will now forward its recommendations to the House Budget Committee, which will compile a comprehensive House budget reconciliation package for full House consideration. House sources indicate that repeal of the Byrd Amendment would save approximately $3.5 billion over five years. During the mark-up of the budget measure, the Ways and Means Committee rejected an amendment offered by Rep. Stephanie Tubbs Jones (D-OH) that would have removed the Byrd repeal provision.

As a result of a March 2005 World Trade Organization (WTO) Appellate Body ruling that the Byrd Amendment violates multilateral trading rules, Canada, the EU, Japan and other WTO Member states have imposed retaliatory tariffs of nearly $134 million on U.S. products. The Bush Administration has repeatedly called for the CDSOA's repeal in light of mounting trade retaliation and international pressure to comply with global trading rules. U.S. Trade Representative (USTR) Rob Portman yesterday lauded the repeal's inclusion in the reconciliation package. In a meeting with several U.S. senators, he stated that Congress must handle the Byrd issue immediately, citing the WTO Members' retaliation and the $3.5 billion savings as a "substantial incentive" to repeal the provision.

Insertion in the 2006 Budget Reconciliation, however, is but the first of several steps toward the contentious law's eventual repeal. First, the full House Budget Committee must consider the Ways and Means recommendations, including the Byrd measure, for the final budget reconciliation package. Although the Republican leadership supports the measure, it is unclear whether a majority of the Budget Committee members - Republicans and Democrats alike - will vote to include it in the final budget bill. Furthermore, assuming the repeal provision survives the committee vote, Byrd Amendment proponents in the House and Senate will likely offer amendments removing the provision from the final bill. Given that the law enjoys broad support in both chambers, inclusion of such an amendment in the final bill is somewhat probable. Thus, although the provision's inclusion in the Ways & Means budget package is a positive step towards the eventual repeal of the Byrd Amendment and a good signal of the Republican leadership's desire to eliminate the measure, its demise is still far from certain.

Portman Hopeful that Japan Will Lift Ban on U.S. Beef Imports

On October 25, 2005, United States Trade Representative (USTR) Rob Portman expressed concern that Japan had not lifted its two-year ban on U.S. beef imports following an October 24 Japanese committee meeting convened to explore the ban's removal. Portman added that he is hopeful that Japan will "finally make a decision" during the week of October 31, stating that Japan "must make a decision, and the decision should be favorable for the U.S. cattlemen who have waited patiently for Japan to do the right thing." On October 24, Japan's Food Safety Commission failed to approve a report calling for the removal of the beef import ban, but Japanese officials have stated that the committee will approve the report during the week of October 31. Approval of the report could lead to a resumption of U.S. beef exports to Japan by the end of 2005.

Japan closed its market to U.S. beef following a December 2003 discovery of bovine spongiform encephalopathy (BSE), or "mad cow" disease, in the United States. Despite Congressional and beef industry calls for retaliation, Portman remained opposed to imposing economic sanctions against Japan, believing that such action would be counter-productive to U.S. interests. Portman was likely referring to an amendment to the 2006 Agriculture Appropriations bill prohibiting the importation of Japanese beef into the United States until Japan lifts its current ban on U.S. beef (S. Amdt. 1732 to H. 2744). Although both the House and Senate have passed the amendment, President Bush has yet to sign it into law. Congressional sources have noted that Senators Pat Roberts (R-KS) and Ken Conrad (D-ND) plan to introduce legislation October 26 imposing retaliatory tariffs on Japanese imports if Japan does not remove the U.S. beef ban by the end of 2005. Chairman of the Senate Finance Committee Senator Charles Grassley (R-IA) has urged his colleagues to table such legislation until the President concludes his November visit to Japan. Members of Congress have expressed concerns over the costs to the U.S. beef industry that the ban has created and over other market access issues. The longer that Japan delays removing the ban, the higher the probability that Congress will impose retaliatory measures.

Free Trade Agreements

Sen. Grassley Urges More Market Access in Andean FTA; House Democrats Gear Up for Fight

Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee, stated that he would not support the U.S.-Andean Free Trade Agreement (FTA) if Colombia did not improve its market access offer on agriculture. In a November 16th letter to Colombia's chief FTA negotiator, Grassley stated that, at a minimum, U.S. agricultural products must receive market access parallel with the access provided in the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). Grassley also noted that "Colombian proposals on corn, soybeans, pork, and beef . . . appear to be CAFTA-minus" and added that Colombia's proposals were "sanctioning higher tariffs." In the areas of sanitary and phytosanitary measures, Grassley stated that Colombia's proposal "unnecessarily goes beyond the text of CAFTA" and encouraged further negotiations to address these concerns.

Separately, House Democrats have begun mounting opposition to the Andean FTA along the same lines as their opposition to the DR-CAFTA. Their concerns include inadequate standards for worker protection and the environment. Representative Sherrod Brown (D-OH) stated that "the same bipartisan coalition is ready to fight against the Andean agreement if the labor standards are not improved." House Democrats have sent two letters to United States Trade Representative (USTR) Rob Portman expressing their concerns. U.S. and Andean FTA negotiators met in Washington, DC this week to attempt completion of the FTA.

House Ways & Means Chair Pushes for Committee Approval of U.S.-Bahrain FTA by Weekend; U.S. and Oman Expected to Sign FTA in January

Rep. Bill Thomas (R-CA), Chairman of the House Ways and Means Committee, stated on November 16 that he will bring the U.S.-Bahrain Free Trade Agreement (FTA) to a committee vote by November 18. Thomas stated that he wants Ways and Means to vote on the FTA before Congress begins its two-week Thanksgiving recess. Both Ways and Means and the Senate Finance Committee held "mock-markups" of the bill on November 3rd and 9th respectively.

Sources note that President Bush has sent a Statement of Administrative Action to Congress after Congressional members "agreed on procedures to monitor improvements in Bahrain's labor laws." Previously, Sen. Max Baucus (D-MT), Ranking Democrat on the Finance Committee, stated that Democrats were concerned with Bahrain's labor laws but remained confident that Bahrain would amend those laws.

Separately, Acting United States Trade Representative (USTR) for Services and Investment Christine Bliss stated that the United States and Oman may sign the U.S.-Oman FTA in mid-January. The FTA negotiations were concluded in October. Once the FTA is signed, the Bush Administration will "reflect on the most appropriate time frame for introducing [the FTA] for congressional consideration." The rapid movement by the United States with respect to both

FTAs indicates that President Bush intends to actively pursue his goal of creating a U.S.-Middle East Free Trade Area (USMEFTA) by 2013.

U.S. Representatives Concerned that IPR under Andean FTA Could Undermine Access to Affordable Medicine

Several U.S. Congressmen have expressed concerns about the U.S.-Andean Free Trade Agreement's (FTA) intellectual property rights (IPR) provisions. Led by House Ways and Means Committee ranking Democrat Charles Rangel (D-NY), 14 Congressmen signed a November 10 letter to President Bush that targeted the FTA's pharmaceutical intellectual property standards and indicated that the standards under consideration "could severely undermine" access to pharmaceuticals and affordable health care for citizens of both the United States and the Andean countries. The letter also stated that recent FTAs "promote only the protection of innovation" but do not address access to pharmaceuticals.

The congressional letter criticized several Bush Administration proposals for the FTA, including: (i) providing patents for new uses of patented products; (ii) providing pharmaceutical manufacturers with five years of market exclusivity independent of paten protection; (iii) expanding patient coverage to include a wide variety of medical methods for treatment; (iv) placing national drug authorities in charge of pharmaceutical patents; and (v) restricting a country's ability to allow "parallel importing" (*i.e.*, allowing retailers, wholesalers and other parties to obtain goods subject to IPR directly from licensed or authorized overseas sources, rather than dealing with local suppliers, licensees or agents) of patented pharmaceuticals. According to the letter, these provisions would undermine access to affordable medicine in the Andean countries, and the "IP provisions developed and tailored for the U.S. health care system may be entirely inappropriate for poor countries."

U.S. negotiators are meeting with their Andean counterparts this week in London in an effort to complete the FTA by the end of November. Colombia, Ecuador, and Peru (with Bolivia as an observer) have been involved in FTA negotiations with the United States since May 2004.

U.S. Ambassador Pledges FTA Talks with New Zealand

U.S. Ambassador to New Zealand William McCormick has pledged that the United States will hold free trade agreement (FTA) talks with New Zealand. President Bush appointed McCormick as ambassador in July 2005, and the Senate confirmed him in October. McCormick's pledge followed his November 9th meeting with New Zealand Trade Minister Phil Goff and stated that the United States has always "been willing to enter into discussion on a free trade agreement" with New Zealand. McCormick did not indicate when he thought talks would begin.

Despite New Zealand's open markets, the United States has never pursued a bilateral trade agreement because of the New Zealand's anti-nuclear policy – especially its national law prohibiting nuclear-powered ships from entering Kiwi ports. When asked if New Zealand's nuclear policy would influence the Bush Administration's FTA agenda with the country, McCormick responded that the United States has "never addressed the two [issues] as being in

the same category" and that the agreement "is a complicated issue so there is a lot of discussion to take place."

Considering that New Zealand is staunch proponent of free trade and a moderate strategic ally of the United States, a bilateral FTA between the two nations makes sense. Furthermore, several facets of the U.S.-New Zealand trade relationship would expedite FTA negotiations, eliminating major concerns that the parties could not conclude an agreement before Presidential Trade Promotion Authority (TPA) expires in mid-2007. First, New Zealand is already one of the world's most open markets, with 95 percent of imports duty-free and an average weighted tariff at just 0.7 percent. Second, New Zealand maintains high standards regarding labor, the environment and human rights, thereby assuaging Democrats' most common concerns regarding proposed FTAs. Finally, both New Zealand and the United States have an incentive to enter into free trade negotiations, as an FTA would provide each with highly sought-after increases in market access: (i) imports from New Zealand – particularly agriculture – have been the frequent subject of U.S. trade remedies actions and other barriers to entry; and (ii) the United States has expressed frustration over many of New Zealand's non-tariff barriers to trade (NTBs), including sanitary and phytosanitary (SPS) measures and services barriers.

Senate Finance Approves U.S.-Bahrain FTA in Mock Markup

The U.S. Senate Finance Committee approved draft legislation to implement the United States-Bahrain Free Trade Agreement (FTA). The Committee unanimously approved the legislation on November 9th as part of its informal markup to provide the Bush Administration with guidance before it submits formal implementing legislation to Congress. The Senate proposal's language includes the Administration's plans to monitor and report on Bahrain's dismantling of its primary boycott of Israel. The Office of the United States Trade Representative (USTR) included the boycott removal in its 2005 National Trade Estimate (NTE) report on foreign trade barriers. Finance Chairman Sen. Charles Grassley (R-IO) stated that the FTA will serve as a model for other U.S-Middle East FTAs and opined that the FTA "will get done this year." Ranking Democrat Max Baucus (D-MT) also lauded Bahrain's commitment to making further changes to its labor laws and echoed Grassley's opinion that "the agreement would secure broad bipartisan support in Congress."

Under Trade Promotion Authority (TPA) procedures, Congress cannot amend an FTA's implementing legislation once the President submits the final bill. The House Ways & Means Committee approved and submitted to the President its version of the draft implementing legislation on November 3rd, and the Finance Committee's parallel actions are Congress' last before consideration of the President's formal bill. Under TPA, Congress will have 90 legislative days to vote on the legislation, but both Committees' unanimous approval indicates that Congress will consider and vote on the Bahrain FTA before the end of the 2005 session. Congressional sources opine that passage of the agreement should not be a problem.

United States, Uruguay Sign Investment Treaty

The United States and Uruguay signed an amended bilateral investment treaty (BIT) on November 4th. Thomas Shannon, Assistant Secretary of State for Western Hemisphere Affairs and Reinaldo Gargano, Uruguayan Foreign Minister signed the agreement during the Summit of Americas in Mar de Plata, Argentina. State Department officials stated that the agreement "reflects the commitment of the United States to create new economic opportunities together with those countries in the hemisphere that are willing to help themselves by implementing sound economic policies." The United States is currently Uruguay's largest trading partner, and the agreement is meant to "enhance the business climate and promote economic growth."

According to the United States Trade Representative, U.S. BITs "level the playing field and ensure that U.S. investors are protected when they establish businesses in other countries. By safeguarding foreign subsidiaries of U.S. firms, BITs help promote new U.S. exports to the markets of BIT partners. BITs also protect the interests of average American investors, whose stock and bond portfolios often include stakes in foreign-invested firms."

Former president of Uruguay Jorge Batlle signed an accord establishing the basic terms of the U.S.-Uruguay BIT in October 2004, but it failed to obtain the necessary approval of the Uruguayan Congress. The amended BIT contains changes that Uruguay's new president Tabare Vasquez proposed in order to mollify the Uruguayan Congress. Gargano expressed his belief that Vazquez's center-left government, which dislodged its conservative predecessor in Uruguay's 2004 presidential elections, would quickly ratify the new treaty. U.S. ratification of the treaty will require Senate approval.

ITC Report Finds CBERA Has Negligible Impact upon U.S. Economy

The International Trade Commission (ITC) reported that 2003-2004 imports under the Caribbean Basin Economic Recovery Act (CBERA) continued to have a negligible overall effect on the U.S. economy. According to the report, the value of 2004 imports under CBERA preferences was less than 0.10 percent of the U.S. gross domestic product. The value of total U.S. imports from CBERA countries was 1.9 percent of total U.S. imports. The report also found that 71 percent of all U.S. imports entering under CBERA preferences in 2004 came from the Dominican Republic, Honduras, Trinidad and Tobago, and Guatemala. The report also stated that "based on recent foreign direct investment (FDI) trends, the probable future effect of CBERA on the United States is expected to be minimal in most economic sectors." Under CBERA, 24 Central American, South American, and Caribbean countries receive preferential tariff treatment on most of their products.

The report is available online at http://hotdocs.usitc.gov/docs/pubs/332/pub3804.pdf.

President Bush Calls for Democrats to Support U.S.-Panama FTA

During a November 7th meeting in Panama with Panamanian President Martin Torrijos, President Bush called on Congressional Democrats to support the U.S.-Panama Free Trade Agreement (FTA) and announced that the FTA was near completion. He stated that "the

Democrat Party had free-trade members who are willing to make the right decisions based not on politics but based on what's best for the interest of the [United States]" but added that "that spirit has dissipated in recent votes, and Panama can help reinvigorate the spirit." U.S. House Ways and Means ranking minority member Rep. Charles Rangel (D-NY) responded by noting Congressional Democrats' support of FTAs with Chile, Singapore, Australia and Morocco, and that FTA negotiators had not resolved FTA items such as poultry, sugar, rice, pork, and government procurement. Rangel stated that "it is hard to understand why the President is blaming Democrats in Congress for holding up an agreement that his own negotiators haven't been able to finish."

President Bush's comments most likely derive from the bitter fight in Congress over the Dominican Republic - Central American Free Trade Agreement (DR-CAFTA). Although Democrats argued that DR-CAFTA's failures on labor rights were the source of Democratic opposition, it was widely known that most Democratic opposition was a partisan rejection of the Bush Administration, rather than a vote based on the agreement's substance. This was not the first time that Democrats have used the "labor card" as an excuse to vote against Republican-sponsored FTA legislation that they actually oppose for political reasons. Recent Democratic actions indicate that it will not be the last. Last week, Ways and Means Democrats withheld support for the U.S.-Bahrain FTA markup, arguing that they needed to "receive more solid assurances that certain laws will be upgraded to protect workers' rights to organize unions and strikes." Congressional Democrats have also stated that the Panama FTA's labor rights provisions might "draw Democratic opposition to the Panama agreement."

United States and China Achieve Textile Agreement

The United States and China have reached an agreement in principle to limit Chinese imports of 34 categories of textile and apparel products through 2008 by placing quotas on these items. Each quota will reflect the import-sensitivity of the particular product, with smaller quotas applied to more sensitive products. Insiders expect United States Trade Representative (USTR) Rob Portman and China's Foreign Minister Bo Xilai to finalize the agreement this week. Under the agreement, U.S. quotas for 14 of the most sensitive categories would be based on 2005 imports and would include limits 10 percent higher than 2005 levels. These limits would increase to 12.5 percent by 2007 and to 15 percent by 2008. Sensitive categories include trousers, underwear, bras, shirts, and all categories for which U.S. safeguards are currently in place. The agreement includes language mandating that the United States will use "restraint" in implementing additional safeguards outside the agreement; observers note that this gives the United States the added ability to continue pursuing safeguards on categories not covered.

The agreement follows the November 2nd agreement between the two countries to limit imports of cotton, wool and man-made fiber socks from China to 10 million dozen pairs through the end of 2005. Negotiators from both sides were able to build on the momentum from that agreement, which USTR calls "the first time the two countries have mutually agreed upon an import restriction for a specific apparel category."

Senate Finance Committee to Conduct "Mock Markup" of Implementing Legislation in Bahrain FTA; House Ways & Means Democrats Withhold Their Support

The U.S. Senate Finance Committee will informally markup and vote on draft implementing legislation for the U.S.-Bahrain Free Trade Agreement (FTA) on November 9th. During the "mock markup", Senators will be afforded the opportunity to offer technical changes or to make legislative recommendations to the Bush Administration before the Administration submits the formal legislation. After reviewing the draft implementing legislation, the President will submit a finalized form of the bill to Congress. Under the President's Trade Promotion Authority (TPA), Congress will have a maximum of 90 days from the date of the bill's submission to conduct an "up-or-down" vote on the agreement. Committee approval of the draft legislation is sound indicator that it will approve the formal legislation once submitted. The House Ways and Means Committee conducted its markup of the FTA on November 3rd and approved the agreement. The scheduling of the mock markups indicates that Congress will likely vote on the Bahrain FTA before the end of the 2005 session.

During the Ways and Means Committee's consideration of the draft implementing legislation, Committee Democrats withheld support for the FTA bill, "in a sign of determination to promote strong worker protections in trade pacts." Representative Charles B. Rangel (D-NY) stated that the Democrats support the agreement but chose to vote "present" during the mock markup (instead of providing an affirmative or negative vote) to ensure that Bahrain enacts proposed changes to its current labor laws. Bahrain's Government has assured the United States that will amend its labor laws to protect union activities and bring Bahrain's labor laws in line with international standards. The Ways and Means Committee was unable to determine "detailed instructions" for President Bush with respect to labor assurances in the FTA but agreed to work with the White House and the Bahraini government "to ensure improvements in Bahrain's labor laws."

Focus on international labor standards in pending FTAs is normal for congressional Democrats. Ways and Means Democrats' non-vote on the U.S.-Bahrain FTA draft legislation, however, is not indicative of their opposition to the FTA. Indeed, the Democrats' abstinence is a likely sign that they are willing to approve the FTA legislation. If they truly opposed the FTA or found the labor situation in Bahrain untenable, Rangel and his fellow Democrats would have offered amendments or voted against the draft legislation. For example, when the Committee considered the Dominican Republic – Central American Free Trade Agreement (DR-CAFTA) draft legislation, all but two Committee Democrats offered an amendment seeking labor assurances and ultimately voted against the bill. Thus, it is likely that the Democrats' refusal to vote for the Bahrain FTA draft bill was merely a play to its political base (*e.g.* labor unions), rather than a signal that they will oppose the FTA when the formal implementing legislation is put to a vote.

United States, EU, Japan, and Korea Agree on Zero Tariffs on Multi-Chip Circuits

The United States has entered into an agreement with the EU, Japan, Korea, and Taiwan to apply zero tariffs on multi-chip integrated circuits (MCPs). In announcing the agreement on November 3rd, United States Trade Representative (USTR) Rob Portman stated that "applying zero duties on MCPs among our key semiconductor trading partners will boost sales and thereby enable this industry to grow even faster." Portman noted that the agreement's "conclusion is reflective of the priority the United States attaches to moving the high-tech trade agenda forward" and stated that the agreement "is a shot in the arm" in pushing current World Trade Organization (WTO) negotiations forward. Under the agreement: (i) the United States will cut its 2.6 percent duty on MCPs; (ii) the EU will cut duties bound at rates as high as 4 percent; and (iii) Korea will cut its 8 percent bound duty. Japan does not have duties on MCPs. Each country is working through domestic approval procedures, and the agreement is expected to take effect on January 1, 2006.

MCPs are semiconductors used in devices where miniaturization is desirable, such as cell phones, digital cameras, and personal digital assistants (PDAs). U.S. companies account for over 50 percent of global MCP production, worth over $4 billion in 2004, and the United States is a leading MCP exporter. As Portman noted, the agreement signals an understanding between all interested parties of the importance and growth of the high-tech sector. Although WTO negotiations have slowed, the agreement between the United States and the EU indicates that the two parties will continue to negotiate in less contentious areas, despite their differences on agriculture and services. The negotiations also indicate a "zero-for-zero sector elimination" approach to non-agricultural market access (NAMA) negotiations, in which Members agree to zero tariffs on products that all sides seek to have duty-free.

Portman: United States Wants to Begin FTA Talks with South Korea, but Issues Must be Resolved

United States Trade Representative (USTR) Rob Portman stated that he would like to initiate free trade agreement (FTA) negotiations with South Korea by the end of 2005. Speaking at the November 1st Asia Forum, Portman noted that the United States and South Korea still have several issues and trade disputes that they must work out. The United States has repeatedly demanded that Korea change its "screen quota" rules mandating that Korean movie theatres reserve 40 percent of their screen time for Korean films. Pharmaceuticals and auto trade are also contentious issues between the countries. Portman stated, however, that Korea deserves praise for the reforms it has enacted since the Asian Financial Crisis.

U.S. auto industry representatives note that South Korea has placed non-tariff barriers over the years to prevent the United States, the EU, and Japan from exporting their automobiles to the Korean market. Auto imports make up 2 percent of the Korean auto market. The Korean Government's consideration of Korea-specific emissions standards for all automobiles sold in Korea would significantly reduce auto imports because foreign automakers' limited Korean market shares would make Korea-specific car manufacture uneconomical. Thus, the Korean Government could eliminate much of its auto imports if foreign automakers do not specify their

cars to Korean standards. Senator Max Baucus (D-MT), ranking Member of the Senate Finance Committee, has stated that Korea should "end its discriminatory practices against foreign automakers" also adding that Korea, like Japan, must lift its ban on U.S. beef.

Because the Administration has indicated that the United States must conclude any future FTA negotiations before Presidential Trade Promotion Authority (TPA) expires in mid-2007, the window of opportunity for the Korean FTA grows smaller by the day. Unlike several FTAs that the United States has recently completed, such as Bahrain and Oman, the U.S.-Korea FTA will be far more complex due to the size of Korea's economy and its regulatory regime. Thus, if the United States and Korea wish to complete the FTA before TPA expires, they must commence formal negotiations soon. Although Portman sounds cautiously optimistic about beginning formal negotiations with Korea, hurdles remain on agriculture and auto trade. The U.S. Congress has recently expressed its impatience and anger with Japan's "slowness" in lifting its current ban on U.S. beef. Should Korea show the same recalcitrance in lifting its own ban on U.S. beef, Congress might hinder USTR's pursuit of an FTA with the country. Should this or any other issues prevent the commencement of negotiations by early 2006, it will be far less likely that the parties will begin FTA talks.

ITC To Investigate Economic Impact of U.S.-Oman FTA

The U.S. International Trade Commission (ITC) will prepare a report assessing the likely impact of the U.S. Free Trade Agreement (FTA) with Oman on the U.S. economy and specific industry sectors. The United States Trade Representative (USTR) requested the report that will also explore the impact of the agreement on gross domestic product, exports and imports, employment, production, and U.S. consumer interests. USTR requested that the ITC provide the report by February 3, 2006. The ITC will also hold a public hearing on connection with the investigation on December 7, 2005.

House Ways & Means Approves U.S.-Bahrain FTA in Mock Markup

The U.S. House Committee on Ways and Means approved draft legislation to implement the United States-Bahrain Free Trade Agreement (FTA). The Committee unanimously approved the legislation on November 3rd as part of its informal markup to provide guidance to the Bush Administration on the formal implementing legislation. Chairman Bill Thomas (R-CA) stated that the FTA "establishes a strong foundation as [the United States] moves towards the goal of a Middle East Free Trade Area (MEFTA)." The Administration would like to see MEFTA created by 2013.

The Committee will send the draft legislation to the President who will submit the bill to Congress in its finalized form. The Committee's approval of the draft legislation indicates that it will approve the formal bill once submitted and signals that Congress will consider and vote on the Bahrain FTA before the end of the 2005 session.

House Ways & Means Committee Conducts "Mock Markup" of Bahrain FTA Implementing Legislation

Later today, the House Ways & Means Committee will informally markup and vote on draft implementing legislation for the U.S.-Bahrain Free Trade Agreement (FTA). The Draft Implementing Proposal, Statement of Administrative Action, and Section-by-Section Summary of Draft Implementing Proposal are available on the Committee's website at http://waysandmeans.house.gov/legis.asp?formmode=item&number=450.

Because the President's Trade Promotion Authority ("TPA") prohibits Congressional amendment to an FTA's formal implementing legislation, a "mock markup" allows lawmakers the opportunity to offer technical changes or to make legislative recommendations to the Bush Administration before the Administration submits the formal legislation. After reviewing the draft implementing legislation, the President will submit the bill to Congress in its finalized form. Under TPA, the Congress will have a maximum of 90 days from the date of the bill's submission to conduct an "up-or-down" vote (*i.e.* a vote without amendment) on the agreement. Committee approval of the draft legislation is sound indicator that it will approve the formal legislation once submitted. Moreover, the Committee's scheduling of the mock markup provides a clear signal that Congress will consider and vote on the Bahrain FTA before the end of the 2005 session.

U.S. and China Close to Textile Agreement

The United States and China completed the fifth round of textile negotiations and are close to an agreement on textile and apparel trade. Industry sources report that after several days of "extensive, late-night negotiations," the sides have "narrowed their differences on the major issues in the talks." David Spooner, special textile negotiator at the Office of the United States Trade Representative (USTR) stated that the "discussions this week have yielded substantial progress on a large number of issues." Sources indicated that all that remains is to "hammer out details" via emails or conference calls. These sources opine that both sides will try to reach an agreement before President Bush's trip to China on November 19. The parties have not set a date for resumption of negotiations.

The United States and China on November 2nd reached an agreement to limit imports of cotton, wool and man-made fiber socks from China to 10 million dozen pairs through the end of 2005. The Office of USTR announced that the limit is the "first time the two countries have mutually agreed upon an import restriction for a specific apparel category." Spooner stated that through the new import limit, the United States has managed to preserve "the status quo." October 28 expiration of the China textile safeguard, limiting sock imports from China, likely played into the import agreement's resolution. The U.S. and China may be able to build off the agreement - a first for both countries - and the textile negotiations' positive movement to reach a comprehensive textile agreement before President Bush leaves for Asia in mid-November.

US-Latin America

President Bush's Visit to Brazil May Influence FTAA Negotiations

SUMMARY

Deputy Secretary of State and former US Trade Representative, Robert Zoellick, visited Brazil in October to meet the Brazilian Minister of Foreign Affairs, Celso Amorim, and the Minister of Finance, Antonio Palocci.

The main purpose of the trip was to prepare for the upcoming visit of President George W. Bush, which is scheduled to occur on November 5-6. Zoellick also discussed the December WTO Ministerial in Hong Kong.

ANALYSIS

I. The Collapse of the FTAA Negotiations Harms Brazil

During the visit, Deputy Secretary of State Robert Zoellick noted that Brazil has been adversely affected by the failure to conclude the Free Trade Agreement of the Americas (FTAA) negotiations.

A survey by the Federation of Industries of the State of Sao Paulo (FIESP) found that, as a result of the collapse of the FTAA negotiations, the US is vigorously pursuing bilateral agreements with other Latin American countries.

According to the study, the United States now has a tariff advantage over Brazil in both the Mexican and Chilean markets. Consequently, Brazilian exports are losing market share to US exports in these countries.

II. Upcoming Meetings Seen as an Opportunity to Address Hemispheric Trade and the Hong Kong Ministerial

President George W. Bush will visit Brazil on November 5-6, after taking part in the Fourth Summit of the Americas, in Mar de la Plata, Argentina.

The Brazilian and US governments have indicated that they would like to discuss hemispheric trade and the Hong Kong Ministerial at the Summit. Recently, Brazilian Minister of Development, Industry, and International Trade Luiz Fernando Furlan stated that there is a possibility to discuss the FTAA during President Bush's visit to Brazil.

As part of their preparatory discussions, Zoellick and Palocci discussed the recent U.S. proposal to decrease farm subsidies and a recent Brazilian proposal regarding non-agricultural tariffs. Last August, the Brazilian Ministry of Finance published a study proposing the reduction of tariffs for non-agricultural products.

OUTLOOK

Zoellick's trip to Brazil provided a useful forum to address bilateral trade issues and hemispheric trade negotiations. Zoellick's visit to Brazil also laid the ground for the upcoming visit of President Bush in November.

Although the Bush administration has reaffirmed its commitment to the FTAA process, it remains unclear how it will seek to revive the FTAA given the continued deadlock with Brazil. Therefore, President Bush's visit to Brazil offers a unique opportunity to seek common ground and bolster the FTAA.

Prospects for Advancing Trade Integration in the Western Hemisphere Appear Gloomy

SUMMARY

On November 4, 2005, the Washington International Trade Association (WITA) held a discussion with United States Trade Representative (USTR) for the Americas Regina Vargo and Jeffrey Schott from the Institute for International Economics (IIE). Speakers offered their views on the Free Trade Area of the Americas (FTAA) and ongoing U.S. bilateral trade negotiations with the Andean countries and Panama. Vargo and Schott also discussed the World Trade Organization (WTO) negotiations and the impact a successful completion of the Doha Round could have on bolstering the FTAA.

ANALYSIS

WITA held the discussion "After CAFTA: What is next for trade in the Americas" on November 4, 2005. USTR for the Americas Regina Vargo and Jeffrey Schott discussed the U.S. trade agenda for the Americas and the status of ongoing trade negotiations with Andean countries and Panama. The speakers also discussed implementation issues with regards to the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) and the North American Free Trade Agreement (NAFTA).

I. U.S.-Andean FTA Near Completion; U.S.-Panama FTA on Hold; FTAA Still Alive

USTR for the Americas Regina Vargo emphasized three lessons after DR-CAFTA's passage:

- DR-CAFTA's passage brought momentum to other trade talks. The United States took a leading role at the WTO agriculture negotiations and moved forward with Andean countries. According to Vargo, both DR-CAFTA and the U.S.-Andean FTA show a clear commitment from the United States to advance hemispheric integration.

- DR-CAFTA underscored President Bush's commitment to the region. The underlying message of DR-CAFTA is that trade integration can bring prosperity and growth to these countries if they integrate the FTA into their national development strategy. The Bush administration emphasized this message at the Fourth Summit of the Americas in Mar del Plata, Argentina on November 4 – 5.

- The FTA with Central America and Dominican Republic showed how difficult it is to get Congressional approval for new FTAs. DR-CAFTA only passed by two votes. The lesson for future FTAs, including the U.S.-Andean FTA, is that it will be challenging to get them approved by the U.S. Congress.

With regards to the U.S.-Andean FTA negotiations, Vargo stated that the administration is seeking to bring them to a close but noted that it will be very challenging. The parties are making uneven progress; some areas are near completion while substantial work remains in others. Vargo did not make predictions whether talks would be concluded in the next negotiating round on November 14 or whether momentum would be lost if they are not concluded this month. She stressed, "It is time to make decisions and move forward." Regarding the U.S.-Panama FTA, Vargo stated that the countries are trying to go back to the negotiation table but nothing has been scheduled yet.

Vargo concluding her remarks by noting the U.S. efforts in deepening NAFTA, implementing DR-CAFTA, and building Congressional support for the U.S. trade agenda:

Boosting NAFTA's Competitiveness

Vargo noted that the United States, Canada, and Mexico have completed three successful rounds to streamline NAFTA Rules of Origin (ROO). The simplification of ROO is worth $70 billion of trade and will benefit businesses and boost competitiveness in the North American region.

Providing Trade Capacity Building for Central American Countries

The United States is committed to trade capacity building in Central American countries to incorporate the FTA into their national development strategies. A key lesson learned from NAFTA is that Mexico made little effort to pursue domestic reforms in many areas, thus failing to fully exploit the economic gains from the agreement. Vargo noted that a key goal of the administration is to help FTA partners meet the "Millennium Challenge" goals so that they exploit fully the FTAs with the United States.

Building Support at the U.S. Congress for U.S. Trade Agenda

After CAFTA's passage, USTR Robert Portman focused on rebuilding support for future FTAs. USTR's main goal will be to rebuild a bipartisan coalition for free trade "to make trade a non-partisan issue."

II. Progress on the FTAA Contingent on Outcome at the WTO; FTAA Needs to Be Revived

Jeffrey Schott emphasized three issues that are relevant for the Western Hemisphere:

- **Doha Round.** According to Schott, Doha is "stuck" not because there is resistance in the United States to reforming trade barriers but because of resistance from European Union countries, which are struggling with a painful enlargement process, agriculture reforms, and sluggish growth. If there is no progress at the WTO to reform agricultural subsidies, there will be little prospect to revive the FTAA.

- **FTAA.** Schott noted that the FTAA has been stalled for the past two years. In contrast, there has been substantial trade activity among Western Hemisphere countries and with other world regions. The numerous FTAs in the Americas are not necessarily a bad thing for the FTAA if they accelerate the pace of reform in Latin America. According to Schott if Latin American countries implement domestic reforms and thus, enhance their growth prospects, they will pursue broader trade initiatives like the FTAA. The Caribbean countries are the most interested in resuming the FTAA talks but are probably the least influential.

- **Fading Interest of the U.S. in Latin America.** The United States is focused on domestic issues and the WTO Hong Kong Ministerial. U.S. businesses are also losing interest in the FTAA and focusing more on bilateral FTAs. Schott noted that U.S. exports and U.S. investment flows in Latin America have not grown at the same pace as in other regions. As a result, U.S. investment has gone elsewhere.

- **NAFTA.** NAFTA was useful to promote trade and investment opportunities but Mexico did not accomplish enough on domestic reforms (*e.g.*, energy) to make the most of the agreement.

Schott concluded by stressing that the FTAA needs to be revived. Latin American countries need trade and investment to promote their development strategies.

OUTLOOK

The U.S. trade agenda for the Western Hemisphere appears to be focused on completion of the U.S.-Andean FTA and DR-CAFTA implementation. The United States will only push the FTAA forward after the Hong Kong Ministerial takes place in early December. If the outcome at the WTO is partially successful, the United States may seek to revive the FTAA talks if it can bridge differences with Brazil. A failure to reach consensus at the WTO Ministerial, however could have a tremendous negative impact on the FTAA and diminish U.S. interest in Latin America even further.

Western Hemisphere Leaders Divided Over Resumption of FTAA Talks

SUMMARY

At the Fourth Summit of the Americas held on November 4-5, 2005, regional leaders agreed to increase efforts to strengthen democracy and eradicate poverty throughout the Western Hemisphere.

However, regional leaders failed to agree on a timeframe to resume the stalled Free Trade Area of the Americas (FTAA) negotiations. Stiff opposition from several Latin American countries to a U.S. proposal to include a paragraph in the Summit Declaration endorsing the FTAA underscored the lack of consensus with respect to regional integration. Not only did the Summit Declaration lack a strong endorsement of the FTAA, but also the leaders were unable to agree to a specific date to resume the FTAA negotiations.

ANALYSIS

I. Leaders Endorse Mar del Plata Declaration

At the Fourth Summit of the Americas,[5] leaders signed the Mar del Plata Declaration, which calls for strengthening democratic institutions and eradicating poverty throughout the Western Hemisphere. The leaders also issued an Action Plan with more than 60 concrete goals aimed at implementing the Mar del Plata Declaration.

The Mar del Plata Declaration focused on two issues: (i) job creation to address poverty, and (ii) the importance of strengthening democratic institutions. We highlight below the key commitments set forth in the Declaration:

1. **Macroeconomic Policies.** Leaders agreed to implement macroeconomic policies that create jobs, reduce poverty, and raise living standards. In particular, presidents noted that if sustainable economic policies are not implemented, it would be almost impossible to reduce poverty.

2. **Employment.** Leaders agreed to develop a framework that encourages "decent employment." This framework shall include: (i) responsible fiscal polices; (ii) a favourable environment to attract investment and encourage competitiveness; (iii) a legal framework that supports democracy and transparency; and (iv) policies to discourage new entrants into the informal economy.

3. **Education and Technology.** Leaders agreed to develop educational and cultural polices and provide additional governmental support to encourage

[5] Former U.S. President William J. Clinton launched the first Summit of the Americas in 1994. The main objective of the Summit was the creation of a hemispheric free trade zone (with the exception of Cuba). In the First Summit of the Americas held in Miami in 1994, leaders agreed to create the FTAA by January 2005. The Second Summit of the Americas took place in Santiago de Chile (April 1998) and the Third Summit was held in Quebec in April 2001.

scientific and technological advancements. These policies will promote vocational training, enrollment in educational institutions, and employment opportunities, especially for young adults. The overall goal is to encourage employed and unemployed individuals to acquire or update their skills.

4. **Private Sector Collaboration.** Leaders agreed that the private sector must be taken into account in public policy decisions. Presidents stressed the need to support small and medium sized companies, because they represent a key source of employment in Latin America.

5. **Gender Equality.** Leaders also committed to grant equal access, regardless of gender, to public benefits and be cognizant of gender issues when addressing social and labour policies.

II. Diverging Views Over FTAA Language

The United States sought to include language addressing the FTAA, support for the ongoing World Trade Organization (WTO) negotiations, and other trade-related issues in the Summit Declaration. However, from the very beginning, the FTAA was a major point of disagreement among the various delegations. Regional leaders failed to agree on common language with regards to the FTAA. Consequently, the Summit Declaration included two different paragraphs on the FTAA. Mercosur and Venezuela endorsed one paragraph and the remaining 29 countries endorsed the other.

Western Hemisphere leaders **did not** agree on a specific date to resume the FTAA negotiations. The Declaration only stated that once the WTO Ministerial is concluded, Colombia would hold informal consultations with Latin American countries to schedule a senior trade officials meeting in 2006.

We highlight below the views of key Latin American countries with respect to the FTAA:

- **NAFTA** countries took a uniform pro-FTAA position. Mexico adopted an extremely active role, leading the pro-FTAA contingent. Moreover, President Vicente Fox stated that the FTAA would be completed in the near future with or without Mercosur countries.[6]

- In preliminary meetings, **Mercosur** countries, notably Brazil and Argentina, rejected efforts to include any language on the FTAA in the Summit Declaration. Their vocal opposition to any FTAA language led to strains with the United States.

[6] Local press sources indicate that President Fox's statement endorsing the FTAA was the main reason why President Nestor Kirchner cancelled a previously scheduled meeting with President Fox.

- The day before President Bush arrived in Mar del Plata, **Argentine officials** demonstrated some flexibility by expressing willingness to some language regarding the FTAA. However, Mercosur countries were still reluctant to agree on specific commitments or timetables because they would like to first see progress at the multilateral level.[7]

- In spite of the strong pressure that many delegations exerted on Mercosur countries, and their evident isolation from the remaining Latin America countries, Mercosur leaders rejected any language on calling for a resumption of the stalled FTAA negotiations.

- Our sources in Argentina note that Mercosur's strong opposition arises out of: (i) Brazil's refusal to advance the FTAA before the WTO Ministerial Meeting clarifies commitments towards phase out of agricultural export subsidies; and (ii) President Kirchner's failure to obtain President Bush's support to renegotiate Argentine debt with the International Monetary Fund (IMF).

- Several **Latin American** countries such as Chile, the Andean countries, and Caribbean nations support reviving the FTAA negotiations. Many of these countries have signed or are negotiating FTAs with the United States.[8]

- Venezuela's President, Hugo Chavez, stated, "The FTAA is dead," and instead proposed, the ALBA *(Alternativa Bolivariana para América – Bolivarian Alternative for the Americas).* Venezuela, however, relaxed its tough stance on the FTAA and supported Mercosur's language to reject a timeframe to conclude the FTAA. Thus there is no mention in the Mar del Plata Statement that the FTAA has collapsed.

III. Civil Society Representatives Hold Parallel Meetings

On November 2, 2005, leading representatives from the business community in the Americas held various meetings and workshops to discuss the political and economical situation of Western Hemisphere countries. Business leaders focused on how: (i) to improve the competitiveness and productivity through human capital formation and technology; (ii) to promote transparency and democratic governance, and (iii) to develop strategies to generate employment. Business leaders submitted their proposals to the leaders attending the Summit.

[7] The governments of Brazil and Argentina stated that any real advance in the FTAA negotiations would depend on the results of the WTO Hong Kong Ministerial. At the Ministerial, countries will consider the possibility of phasing out export subsidies and reducing tariffs for agricultural products, among other relevant issues.

[8] The US has signed FTAs with Canada and Mexico (NAFTA), Chile, Central American nations and the Dominican Republic (CAFTA-DR) and is finalizing negotiations with the Andean nations (Colombia, Ecuador and Peru).

With regards to the FTAA negotiations, South American businessmen supported the initiative. Nevertheless, they highlighted that the agreement should be balanced and must take into account the different levels of development within the Western Hemisphere.

OUTLOOK

During the 1990s, many Latin American countries adopted market-orientated economic policies under the so-called "Washington Consensus." after decades of state interventionism. These policies encouraged investment flows into the region, which led to remarkable growth rates in many countries. By the end of the decade, "the economic bonanza" came to a halt as many countries faced macroeconomic unbalances, financial crises, and corruption scandals. The result was the upsurge of a new wave of "populist" leaders in South America (Lula Da Silva, Kirchner, Tabaré Vázquez, and Chávez, among others). In comparison to their predecessors, these leaders are very distrustful of the "Washington Consensus" and market-oriented policies. Instead, they favor greater state intervention to address social concerns.

Some of these leaders praise themselves for not having good relations with the United States. The result is that President Bush continues to be highly unpopular in the region and his presence in Argentina triggered massive protests across Mar del Plata and Buenos Aires. The political context surrounding President Bush's relations with several populist Latin American leaders strongly influenced the Summit and the final declaration.

We draw the following conclusions from the Summit:

- This Summit showed a clear alignment of many countries in the hemisphere to the U.S. objective of creating the FTAA in the near future. A possible explanation of this alignment might be that many of these countries have already opened their markets through FTAs with the United States. As a result, the extension of tariff preferences to the hemisphere does not appear to pose a threat to them.

- Some press sources indicate that Mercosur Presidents were highly disappointed because of the lack of support of other Latin American countries and their alignment to the U.S. stance on the FTAA. Overall, U.S.-Mercosur relations were not at their peak during the Summit. In Argentina's case the meeting between President Bush and President Kirchner failed to produce the expected results. As a result, we can expect that future relations between them will not be as smooth as they were before the Summit. In contrast, the bilateral encounter between President Lula and President Bush appeared friendlier, causing in fact displeasure in Argentina. The United States showed a more conciliatory attitude with Brazil because it needs the latter's support and leadership at the WTO negotiations.

The final declaration reflected strong diverging views with regards to the resumption of the FTAA talks. Mercosur countries succeeded at including "vague language" to resume the negotiations after the outcome of the Hong Kong Ministerial. The remaining 29 countries,

including the US, conceded on this language and failed in their attempt to set a date to resume the talks.

US-Latin America Highlights

Bush Admits That FTAA Has "Stalled" With U.S. Focus on Doha Negotiations

President Bush admitted that his efforts to create the Free Trade Agreement of the Americas (FTAA) - a free trade zone in the Western Hemisphere - have "stalled," and that he will use upcoming meetings with Latin American leaders to build support for the current World Trade Organization (WTO) Doha Round of trade negotiations. President Bush stated that "at this point in time, the Doha Round really trumps the FTAA as a priority, because the Doha Round not only involves our neighborhood, it involves the whole world." President Bush said that he will use his November 4 -5 trip to the Summit of the Americas in Argentina to work with Brazilian President Lula and other leaders "to set the stage for a good outcome in the Doha Round," rather than to push FTAA negotiations. President Bush initially focused on the FTAA during his first Summit of the Americas [Third Summit of the Americas held in Quebec], stating that the agreement would address poverty and economic growth. Since then, the United States has completed free trade agreements (FTAs) with Chile and the Dominican Republic and Central American (DR-CAFTA) countries. The Administration is also close to completing a deal with the Andean nations of Colombia, Ecuador, and Peru. President Bush has stated that he is "very satisfied" with each of these FTAs.

President Clinton launched the FTAA during the first Summit of the Americas in 1994. Differences over market access between the United States and Latin American nations delayed the agreement's original 2005 completion date. Although President Bush will not focus on the FTAA during this summit, his advisors stated that he will speak with President Lula to discuss the United States' and Brazil's leadership in FTAA negotiations. President Bush will also meet with leaders from the Dominican Republic and Central American nations to discuss implementation of DR-CAFTA, and he will seek Latin American leaders' support for the current Doha trade negotiations. Following the summit, President Bush stated that he will travel to Panama to discuss "trade issues and Panama's absence from DR-CAFTA" and will meet with Panamanian President Torrijos to urge Panama to join the agreement.

President Bush's satisfaction with bilateral trade agreements in Latin America may impede a larger agreement addressing many of the items that current FTAs already cover. With the President's focus on Doha rather than on the FTAA, concluding the agreement may take several years. On the other hand, Doha may resolve many of the key market access differences that exist between the United States and Brazil and have stalled the FTAA. If the FTAA nations refocus their efforts on the FTAA and use the Doha negotiations as a springboard for future FTAA negotiations, completion of the agreement may still be possible.

Business Groups Urge Governments to Enhance Competitiveness through Trade Facilitation and the FTAA

The U.S. Chamber of Commerce and 100 other business groups in the Americas are urging interested governments to cut red tape in business transactions to enhance economic competitiveness and incur growth. The Chamber and other signatory organizations - including

Brazil's National Confederation of Industry, Chile's Confederation for Production and Commerce, the Argentine Chamber of Commerce, and the Canadian Chamber of Commerce - released the recommendations in advance of the fourth Summit of the Americas in Argentina November 4-5. President Bush and leaders from 33 other Western Hemisphere nations will discuss trade and other significant issues during the summit. The recommendations urge governments to implement reforms agreed to at the 1999 Free Trade Area of the Americas (FTAA) ministerial conference and to take "an ambitious stance in the global Doha Development Agenda trade facilitation negotiations." Other recommendations include smarter regulations, increased e-business usage, and streamlining customs and port administration.

The Chamber's report on measures to facilitate trade in the Western Hemisphere is available online at http://www.uschamber.com/publications/reports/0511_3simplethings.htm.

MULTILATERAL

EU Offers New Set of Proposals to Move WTO Negotiations Ahead

SUMMARY

On October 28, 2005, the EU presented a new set of proposals on agriculture and other issues during a meeting of the Five Interested Parties (FIPS – United States, EU, Australia, Brazil and India) near London. EU Trade Commissioner Peter Mandelson stated that the new proposal's suggested cuts "go further the EU's original offer" but added that the EU proposals "are fully conditional on satisfactory movement in other areas of negotiation." Mandelson added that the proposal is meant to unlock the World Trade Organization (WTO) Doha Round negotiations to ensure the success of the WTO's December ministerial in Hong Kong. We review here the EU's new proposal.

ANALYSIS

On October 28, 2005, the EU presented a new set of proposals on agriculture and other key negotiating areas during a FIPS meeting near London. EU Trade Commissioner Peter Mandelson stated that the new proposal's suggested cuts "go further than the EU's original offer" but added that the EU proposals "are fully conditional on satisfactory movement in other areas of negotiation." The EU's commitments include:

- **Domestic Support in Agriculture.** The EU is prepared to accept a 70 percent reduction in Aggregated Measures of Support (AMS) and to accept the U.S. offer of a 60 percent AMS reduction, but Mandelson noted that the U.S. cuts would not bring about the reforms suggested by other countries. The EU also proposed AMS reduction based on three bands with the EU in the top tier, the United States in the middle tier, and Japan in either the top or middle tier. The EU proposed an 80 percent cut in *de minimis* support for all developed countries in both product-specific and non-product specific support and suggested that WTO Members develop disciplines to govern new Blue Box regulations. On overall reduction in trade-distorting subsidies, the EU proposed a three-band system and offered to make a 70 percent cut in the first band and required a 60 percent cut of countries in the second band and a 50 percent cut of those falling in the third band.

- **Market Access in Agriculture.** The EU's proposal reflects the Group of 20's (G-20) proposed tariff reduction formula in which countries employing higher tariffs would make deeper cuts. Developed countries would have a 100 percent tariff cap; developing countries would have a 150 percent tariff cap; and Least Developed Countries (LDCs) would have no tariff cuts. The EU also proposed "flexibilities for sensitive products." The EU's four-band proposal is based on the following parameters:

	Developed Countries		Developing Countries	
Number of bands	**4**		**4**	
Thresholds	**Thresholds within AVEs**	**Linear cuts**	**Thresholds within AVEs**	**Linear cuts**
	0-30%	35% (20%-45%)	0-30%	25% (10%-40%)
	30-60%	45%	30-80%	30%
	60-90%	50%	80-130%	35%
	Above 90%	60%	Above 130%	40%

The EU also proposed that a maximum of 8 percent of total tariff lines be designated as "sensitive products," with a Special Safeguard Clause (SSG) for beef, poultry, butter, fruits and vegetables, and sugar. The EU proposal emphasizes improving the protection of Geographical Indications (GIs) and calls for the extension of the protections available for wines and spirits under Article 23 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to all products.

- **Non-Agricultural Market Access (NAMA).** The proposal seeks an agreement on a simple "Swiss" tariff cutting formula with a coefficient of 10 for developed countries and no flexibilities or exclusions for any product. The EU also stressed the need for an agreement on the elimination of export duties.

- **Services.** The EU proposed a quantitative target applicable to the offer of WTO Members, except LDCs, with improved commitments on 139 of the 163 services sub-sectors (85 percent). The EU also proposed specific qualitative parameters for services offers so as to encourage forward movement on services negotiations.

The EU's proposals in market access are conditional on "further clarification from other developed countries on the elimination of their forms of export support," and the EU wishes to see an agreement before Hong Kong on a progressive formula that cuts into applied tariffs as well as ambitious mandatory country targets for services sectors to be liberalized.

OUTLOOK

The EU presented its proposal prior to the FIPs teleconference on October 28, as United States Trade Representative (USTR) Rob Portman had predicted on October 27. Portman, who

was prepared to hold the FIPs meeting with or without a tabled EU proposal, had also stated that he "expected the EU proposal to be at least as ambitious as the U.S. proposal." Based on today's proposal, the Office of the USTR publicly stated that they were "disappointed with the new EU proposal," and Members must put forth more effort prior to the December ministerial. The Office of the USTR added that "the proposed tariff reductions are lower than proposals from the G-20 developing countries and far lower than the U.S. proposal," and that "the large number of exceptions for so-called sensitive products apparently has not changed from earlier EU proposals," allowing for "substantial loopholes to the relatively lower tariff cuts the EU has offered." The Office of the USTR also stated its belief that a final agriculture agreement based on the EU proposal would weaken other negotiating areas, and that "the Doha Round would not approach its potential for promoting development, opportunity and global economic growth." Unless the United States, EU and other WTO Members make grand advances in the next week, they will not be able to agree on the key aspects of the agriculture negotiations in each of the three pillars by the targeted November 7-8 date when the FIPs will meet again. Such an outcome would provide yet another setback on the road to Hong Kong.

Doha Round Agriculture Negotiations Move Forward; Significant Challenges Persist

SUMMARY

As of early October the Doha Round agriculture negotiations have witnessed considerable activity with WTO Members including the European Union (EU), United States (U.S.), and the Group of 20 (G-20) countries having submitted offers pertaining to each of the "three pillars" of the negotiations. Despite the numerous offers and counter-offers however, wide divergences on key aspects of the negotiations continue to divide Members. The area of market access remains particularly fraught with contention over the levels of tariff reduction that developed and developing country Members should undertake and the appropriate flexibilities that they should be allowed in this regard. In principle negotiators are still aiming to reach agreement on full modalities for the agriculture talks by the Hong Kong Ministerial scheduled for 13-18 December 2005. The EU in its latest proposal has called for agreement amongst the Five Interested Parties[9] (FIPs) on the key aspects of the agriculture negotiations by November 7-8 at a high-level meeting in Geneva.

ANALYSIS

We provide below an account of the negotiating positions of the major players in each of three pillars of the agriculture talks.

I. Domestic Support

A. Total bound AMS

There appears to be a gradual convergence of U.S. and EU positions on the reduction of total bound levels of the Aggregate Measurement of Support (AMS), although the G-20 countries are calling for steeper cuts. The latest U.S. proposal dated October 10 calls for reduction within five years of the total bound level of AMS by 37% for countries with bound AMS levels below U.S.$12 billion; by 60% for countries with bound AMS levels between U.S.$12 billion and U.S.$25 billion (such as, the U.S.), and by 83% for countries with bound AMS levels above U.S.$25 billion (the EU and Japan).

The latest EU proposal dated October 28 offers a 70% cut in its total bound level of AMS contingent on proposals made by other WTO Members and accepted a 60% reduction in AMS by the U.S. on the condition that it undertakes reform in certain other areas. The EU also called for countries falling in the "third band" to cut their bound AMS levels by 50%.

The proposal submitted by the G-20 countries is more ambitious, calling for a cut in total bound level of AMS by 60% for countries with bound AMS levels below U.S.$15 billion; by 70% for countries with bound AMS levels between U.S.$15 billion and U.S.$25 billion (U.S.), and by 80% for countries with bound AMS levels above U.S.$25 billion (EU and Japan).

[9] U.S., EU, Brazil, India and Australia

B. Overall trade-distorting support

While U.S. and EU positions on the reduction of overall permissible levels of trade-distorting support are not very far apart, the G-20 has urged significantly higher cuts for countries falling in the middle and lowest bands. The U.S. calls for the reduction within five years of the overall permissible levels of trade-distorting support by 31% for countries with overall bound levels below $10 billion; by 53% for countries with overall bound levels between U.S.$10 and 60 billion (the U.S. and Japan), and by 75% for countries with overall bound levels above U.S.$60 billion (EU). The EU has agreed to the reduction in overall trade distorting support based on three bands but has not defined the bands. It offers to cut the EU's overall bound levels by 70% and to accept a 60% reduction in the second band.

The G-20 has proposed the most ambitious measures in this regard: (i) developed countries should reduce overall permissible levels of trade-distorting support by 70% for countries with overall bound levels below $10 billion; by 75% for countries with overall bound levels between U.S.$10 and 60 billion (such as the U.S. and Japan), and by 80% for countries with overall bound levels above U.S.$60 billion (such as the EU); (ii) developing countries will be in separate bands for overall cuts due to difference in *de minimis* entitlements.

C. Blue Box[10]

Negotiations pertaining to blue box support will be difficult. The July 2004 Framework Agreement had set a ceiling on Blue Box support at 5% of a country's average total value of agriculture production over a period to be established during negotiations. The U.S. has proposed lowering that ceiling to 2.5% of the value of agricultural production. In its counter-proposal, the EU posits that the commitments agreed upon in the July Framework package cannot be achieved by introducing product specific ceilings or by lowering the 5% overall ceiling on 'Blue Box' payments. In particular, the EU refers to the obligation under the July Framework Agreement to negotiate new criteria to ensure that blue box measures are less trade distorting than AMS measures. This language survived in the text of the July Framework Agreement despite U.S. resistance, and at the insistence of Brazil and other countries. U.S. efforts will likely be geared towards allowing the inclusion within the blue box of counter-cyclical farm payments to U.S. farmers designed to compensate them in the event of a decline in international commodity prices. The U.S. will not find this easy in the face of opposition from the EU and G-20 countries. The EU proposal clearly emphasizes the need to develop disciplines to govern the new Blue Box in order to avoid the shifting of highly trade-distorting payments into the new box without significant changes.

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

II. Market Access

A. Tariff Reduction

Negotiations on the reduction of agricultural tariffs constitute the most contentious area in the agriculture talks. The EC confronted with internal pressure from EU member states has been resisting U.S. and the G-20 demands for deeper cuts in EU tariffs. The latest EU proposal based on an earlier G-20 paper sets out four tariff reduction bands with countries required to make deeper cuts on tariffs falling under the higher bands. The EU offer however falls short of U.S. and G-20 demands for higher cuts within each of the four tariff bands. The U.S. has demanded by far the highest reduction, with narrower bands and deepest cuts within each band.

The table below sets out key negotiating proposals for tariff reduction by **developed countries**.

EU		**U.S.**		**G-20**	
Thresholds within AVEs	**Linear Cuts**	**Thresholds within AVEs**	**Linear Cuts**	**Thresholds within AVEs**	**Linear Cuts**
0-30%	35% (20%-45%)	0-20%	55-65%	0-20%	45%
30-60%	45%	20-40%	65-75%	20-50%	55%
60-90%	50%	40-60%	75-85%	50-75%	65%
Above 90%	60%	Above 60%	85-90%	Above 75%	75%
Tariff Ceiling = 100%		**Tariff Ceiling** = 75%		**Tariff Ceiling** = 100%	

The EU in its latest proposal has made clear its unwillingness to accept the U.S. position which it considers could lead to cuts at least as deep as those under earlier U.S. proposals based on the harmonizing "Swiss formula", which cuts higher tariffs more steeply.

As for tariff reduction by developing countries, the EU has accepted the G-20 proposal establishing different sets of tiers for developed and developing countries, coupled with lower tariff cuts for the latter. The U.S. has also conceded greater flexibility to developing countries with lower reduction commitments and longer phase-in periods to be determined when base parameters for developed countries are established. However, unlike the EU, the U.S. proposes identical bands for both developed and developing countries.

The table below provides key negotiating proposals for tariff reduction by **developing** countries.

EU		**U.S.**		**G-20**	
Thresholds within AVEs	**Linear Cuts**	**Thresholds within AVEs**	**Linear Cuts**	**Thresholds within AVEs**	**Linear Cuts**
0-30%	25% (10%-40%)	0-20%	**A-B%**	**0-20%**	**25%**
30-80%	30%	20-40%	b-c%	20-50%	30%
80-130%	35%	40-60%	c-d%	50-75%	35%
Above 130%	40%	Above 60%	d-e%	Above 75%	40%
Tariff Ceiling = 150%		**Tariff Ceiling** = x%		**Tariff Ceiling =** 150%	

Although the U.S. has not yet specified the level of tariff reduction applicable to each of the four bands for developing countries, the G-20 countries have found the U.S. proposal as being unacceptable. The Indian Commerce Minister criticized the U.S. proposal for progressively higher tariffs within each band, arguing that it was tantamount to the harmonizing Swiss formula approach that Members had already rejected.

B. Tariff Ceilings

The U.S. proposes a lower tariff ceiling for developed countries than that proposed by the EU and G-20 countries. The G-10[11] countries reject the notion of capping agricultural tariffs in their proposal. The G-10 does not put forward specific percentages for tariff cuts, but proposes a 'credit-based' model that could potentially grant countries a significant measure of flexibility for cuts within each tariff band in exchange for a slightly higher average tariff reduction.

C. Sensitive Products

- **Number**: The EU has called for a maximum of 8% of total dutiable tariff lines to be designated as sensitive products. This would amount to 176 tariff lines eligible for treatment as sensitive products given that the EU has a total of 2200 tariff lines. The U.S., on the other hand proposes limiting tariff lines subject to "sensitive product" treatment to only 1% of total dutiable tariff lines.

- **Treatment:** The U.S. has proposed that in the case of sensitive products with existing tariff rate quotas (TRQs), the quotas should be expanded, in-

[11] Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland, Chinese Taipei.

quotas brought down to zero, and tariffs outside the quotas halved. The U.S. would like to see potential sensitive products without TRQs remain that way, and suggested other options to provide a measure of protection, such as longer phase-in periods for tariff cuts. The EU agrees with the principle that for a particular tariff line designated as sensitive product, the higher the deviation from the corresponding tariff cut, the higher the TRQ expansion.

Agreement on the number of tariff lines eligible for sensitive product treatment therefore appears to be a tougher issue than agreement on the nature of their treatment.

III. Export Competition

Both the EU and the U.S. have said that they will agree to a "date certain" for the elimination of export subsidies but difficult negotiations can be expected before that date is decided. The latest U.S. proposal has called for the elimination of export subsidies by 2010 as well as the establishment of disciplines on certain other forms of export support.

The EU has not yet provided a date for the elimination of export subsidies but has stated its intention to "front-load" the elimination of export subsidies. In other words, the EU would be prepared to undertake larger cuts in export subsidies in the early rather than the latter years of the elimination period. However, it has stressed that the elimination of export subsidies must be matched by the removal of other trade-distorting practices in export competition, which are less easily quantifiable, such as export credits, stronger disciplines on state trading enterprises ("STEs") and commercially driven food aid by countries such as the U.S., Canada, Australia and New Zealand.

OUTLOOK

WTO Members appear to have made progress in their discussions on the reduction of domestic support in particular with the EU and U.S. having closed in on some of their differences. The EU is likely to approximate the level of subsidy reduction called for by the U.S. given that this reform is considered well within the bounds of the EU's Common Agricultural Policy. G-20 proposals on domestic support however, remain more ambitious than those of the EU and U.S. and will be a point of contention. Several Members remain skeptical about whether the U.S. proposal on cutting domestic support would lead to a real reduction in its subsidy expenditures. The U.S. has insisted however, that its proposal would require it to significantly reduce subsidies, claiming that a 60% cut to trade distorting support would leave its subsidy cap at U.S.$ 7.6 billion and halving Blue Box support to 2.5% of the value of total agricultural production would allow subsidies of up to U.S.$ 4.8 billion. These limits would be lower than current U.S. spending on such programs including its controversial 'counter cyclical payments'. Negotiations on the establishment of new criteria for blue box support are nevertheless expected to be contentious given U.S. intentions to shift counter-cyclical payments under this category.

The agriculture negotiations have clearly entered a critical stage with Members having made proposals on key aspects of each of the different negotiating pillars. Positions however, remain polarized, particularly in market access where the proposals circulated do not build on

one another. Moreover the offers on subsidy reduction by key Members such as the U.S. are conditioned on a certain level of ambition in market access. Therefore even the convergence on domestic support achieved so far remains tenuous, as it is contingent on progress on market access, the most difficult area in the negotiations.

The U.S. and G-20 have dismissed the EU's latest market access proposal as being inadequate, particularly given the EU's proposal to shield 8% of tariff lines under "sensitive product" protection. Certain EU Member States such as France, on the other hand, have criticized the EU offer as giving away too much. All 25 EU member states would need to agree to an EU offer before it can formally be made, so that the French and other dissenting EU member states could in principle veto the offer. The EU meanwhile, is attempting to strike trade-offs between agriculture and other areas of the Doha negotiations. In particular, the EU is demanding non-agricultural market access concessions by large developing countries such as Brazil, China and India, stating that without it "no outcome on agriculture or other parts of our negotiation" is possible. Moreover, the latest EU agriculture proposal is conditioned on agreement at the Hong Kong Ministerial on specific targets in NAMA, Services, Anti-Dumping and Development. The EU sets out these targets in an annex entitled "EU Requirements for Progress in Non-agricultural Issues".

Decisions on the key aspects of the negotiations are expected at the high-level talks between the FIPs scheduled for November 7-8, a week or two before Director-General Lamy plans to table a first draft of the ministerial declaration for Hong Kong.

Status Report on WTO Trade Facilitation Negotiations: Legal Drafting of Agreement to Start After Hong Kong Ministerial

SUMMARY

WTO Members are entering a critical stage in the Doha Development Agenda ("Doha Round") as they attempt to bring it to a successful conclusion in 2006. In contrast to the general stalemate in the Doha Round, the negotiations on trade facilitation have shown significant progress. Although the trade facilitation talks started much later than negotiations in the other areas of the Doha Round, they are now the most advanced. These negotiations, however face the risk of being "taken hostage" as a form of pressure for progress elsewhere (for example agriculture, NAMA and services, among others).

A compilation of Members' proposals put forward by the WTO Secretariat provides an idea of the possible content of a WTO Agreement on Trade Facilitation. Moreover, a draft report of the Chair of the trade facilitation negotiating group circulated in late October calls for the initiation of negotiations on actual trade facilitation text in early 2006 on the basis of a "list of elements" drawn from the Secretariat's compilation. This list provides an even clearer indication of the "elements" that could be included in an eventual Trade Facilitation Agreement.

ANALYSIS

WTO Members agreed to launch negotiations on Trade Facilitation as part of the "July Package" in August 2004[12]. Negotiations formally started with the establishment of the Negotiating Group (NGTF) and the appointment of the Ambassador of Malaysia Muhamad Noor Yacob as the Chair in November 2004.

The NGTF has met several times throughout 2005 in formal and informal sessions. The tone of the negotiations has been positive. Discussions have progressed in the full sessions of the negotiating group with little need for private consultations with the Chair.

I. The Negotiating Mandate

The negotiating mandate provides that negotiations shall aim to clarify and improve relevant aspects of GATT Articles V, VIII and X with a view to further expediting the movement, release and clearance of goods, including goods in transit. The negotiations should further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues. The mandate acknowledges the "cost implications" of these negotiations for developing and least-developed countries (LDCs). For this reason, it requires that:

- The scope of the commitments be commensurate with the capacity for implementation of developing and LDCs (paragraph 2 of Annex D).

[12] Annex D of the General Council's Decision of August 1, 2004 (WT/L/579).

- The capacity for implementation of the new commitments, particularly in the case of developing and LDCs, be determined in accordance with their trade facilitation needs and priorities (paragraph 4 of Annex D); and

- Technical assistance and capacity-building (TA&CB) should help developing and LDCs to implement the commitments resulting from the negotiations (paragraphs 5 and 6 of Annex D).

Finally, the mandate provides that the principle of special and differential treatment (S&D) should extend beyond the granting of traditional transition periods for implementing commitments.

The negotiations have so far focused on Members' proposed clarifications and improvements of relevant aspects of GATT 1994 Articles V, VIII and X. However, discussions on the development aspects of these negotiations have only gradually started to receive further attention from Members.

II. Proposed Measures

More than 60 proposals have been submitted from developed and developing countries covering a wide range of matters falling within the scope of the covered GATT provisions.[13]

Secretariat Compilations: The WTO Secretariat has prepared two documents to assist Members in their discussions:

- *Compilation of Members' Proposals.* [14] This document sets out the proposals' main elements, built-in flexibilities and envisaged mode of operation. It is a "live document" that the Secretariat intends to update with every new contribution. The document also makes reference to relevant S&D components and inputs on TA&CB. A second section compiles proposals of a crosscutting nature, with no direct link to any particular measure.

- *Summary of Questions and Answers on Members' Proposals* [15]. This document compiles questions and answers related to the proposals that Members have submitted so far.

Covered Measures: Members have proposed disciplines on the following subject matters. Some Members have also complemented their proposals with an account of their "national experiences".

[13] Negotiating proposals are identified under the code: TN/TF/W/*.

[14] TN/TF/W/43.Rev.3, dated October 4, 2005.

[15] JOB(05)/222, dated October 6, 2005.

Measures Related to GATT Articles V, VIII and X	
Publication and availability of information	Publication of trade regulations and penalty provisions. Internet publication. Notification of trade regulations. Establishment of inquiry points or information centers. Other measures to enhance the availability of information.
Time periods between publication and implementation	Interval between publication and entry into force.
Consultation and commenting on new and amended rules	Prior consultation and commenting on new and amended rules. Information on policy objectives sought.
Advance rulings	Provision of advance rulings.
Appeal procedures	Right to appeal. Release of goods in event of appeal.
Other measures to enhance impartiality and non-discrimination	Uniform administration of trade regulations. Maintenance and reinforcement of integrity and ethical conduct among officials.
Fees and charges connected with importation and exportation	General disciplines on fees and charges imposed on or in connection with importation and exportation. Reduction/minimization of the number and diversity of fees/charges.
Formalities connected with importation and exportation	Disciplines on formalities/procedures and data /documentation requirements connected with importation and exportation.
Consularization	Prohibition of consular transaction requirements.
Border agency cooperation	Coordination of activities and requirements of all border agencies.
Release and clearance of goods	Expedited/simplified release and clearance of goods. Establishment and publication of average release and clearance times.
Tariff classification	Objective criteria for tariff classification.
Matters related to goods transit	Strengthened non-discrimination. Disciplines on fees and charges. Disciplines on transit formalities and documentation requirements. Improved coordination and cooperation.
	Operazionalization and clarification of terms.
Measures Related Cooperation between Customs and Other Authorities on TF and Customs Compliance	
Exchange and handling of information	Multilateral mechanism for the exchange and handling of information.

III. Development-Related Aspects

The introduction of trade facilitations reforms by certain developing country and LDC Members will depend in large measure on successful capacity-building initiatives. Some Members have put forward initial ideas, like the ones described below, to deal with the "development" aspects of the negotiating mandate. However, this debate is still at an incipient stage.

A. TA&CB in the course of the negotiations, including support in the identification of Members needs and priorities.[16]

Several proposals have called for the accurate assessment by individual WTO members of their own trade facilitation needs and priorities within the context of the WTO negotiations. This exercise is aimed at: i) categorizing each Member in terms of capability to implement an agreement on Trade Facilitation; and ii) defining the technical and financial resources required to implement the agreement.

A group of Latin American countries co-drafted a communication that outlines preliminary ideas for ensuring that the scope of commitments undertaken by developing countries is linked to the capacity for implementation.[17] The communication also underscored the inter-relation between trade facilitation rules on the one hand, and the identification of Members' needs and priorities, TA&CB and S&D, on the other. The paper stresses the importance of the self-assessment by Members of their needs and priorities pertaining to trade facilitation reform.

In addition, the WTO Secretariat published a note describing the WTO TA&CB activities on trade facilitation being carried out in collaboration with the IMF, OECD, UNCTAD, WCO and World Bank (TN/TF/W/54). At this stage, the activities are aimed at assisting developing countries and LDCs to assess their needs and priorities and enabling them to participate fully in the negotiations. The Secretariat also published a "Self-Assessment Questionnaire" to assist Members in identifying their needs and priorities, within the context of the proposals that have been tabled in the Negotiating Group.[18]

The questionnaire has been designed to help Members i) develop an inventory of the proposed facilitation measures that have been implemented already in its territory, ii) identify gaps where further facilitation measures could be taken, and iii) identify areas where targeted technical assistance and/or capacity building support is needed and could be requested.

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[16] Proposals submitted by China and Pakistan (TN/TF/W29), Peru (TN/TF/W/30), and the African Group (TN/TF/W/33 and TN/TF/W/56).

[17] Communication from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay (TN/TF/W/41).

[18] TN/TF/W/59, dated July 28, 2005. The questionnaire has been drawn up on the basis of the Secretariat's compilation of proposals that have been made by Members in the Negotiating Group (TN/TF/W/43/Rev. 1) and is intended to complement more detailed diagnostic tools for assessing needs and priorities that are available from other sources – such as UNCTAD, the World Bank and the World Customs Organization. Members who wish to carry out a more comprehensive analysis of their needs and priorities should consult these tools.

B. TA&CB beyond the negotiating phase

Several proposals have underscored the need for a future WTO Agreement on Trade Facilitation to ensure that developing countries have access to appropriate technical support and capacity building funds for implementation of the agreement. In particular, Pakistan and Switzerland jointly proposed that a mechanism for the provision of technical and financial assistance to developing countries to implement their commitments on trade facilitation be effective.[19] The two proponents acknowledged that large differences exist among developing countries regarding the implementation of trade facilitation measures. They also stated that the challenge was to provide enough flexibilities for individual Members to define their own pace and extent of development through tailor-made solutions, while simultaneously ensuring that Members collectively set ambitious targets for the longer term. Pakistan and Switzerland have proposed therefore a mechanism that would comprise of: i) an action plan containing obligations, implementation periods and required means; ii) a pledging mechanism for TA&CB and funding; iii) conditions for the provisions of TA&CB and funding (e.g. existence of an action plan, recipient Member's commitment for implementation); iv) the establishment of a WTO Trade Facilitation Committee to endorse Members' trade facilitation obligations and commitments (i.e. TA&CB and funding), and v) a multilateral process to review whether the support and assistance provided to a particular Member was effective and whether that Member is in a position to take on new binding trade facilitation obligations.

IV. Participation of WTO Members

Most Members including developing countries and LDCs have participated in the negotiations actively and constructively. Developing countries appear supportive of all proposals, with one exception: the proposal for an "Electronic Single Window" whereby a single submission to one agency of import or export documentation would suffice for all purposes. Developing countries have pointed out that the implementation of a Single Window could prove be too expensive an undertaking for them. A pilot project in Vietnam for the construction of a Single Window is estimated to have cost $ 35 million. Developed countries, like the United States, are also opposed to binding rules on this matter.

The World Bank and the World Customs Organization have been active in demonstrating the value of trade facilitation for developing countries; showing for example that being a land-locked country in itself added 30% to the cost of doing business. It is also clear that for traders in developing countries the main problems and costs arise in the context of trade with other developing countries rather than that with the developed world.

[19] TN/TF/W/63.

A new landscape of alliances has emerged since the launch of negotiations in August 2004. The ***Colorado Group*** comprises developed and developing countries with a high level of ambition in these negotiations.[20]

The ***Core Group***[21] has put pressure on other Members to include the development-related component in the negotiating mandate. Cuba, Kenya and Venezuela still appear to have reservations with regard to the negotiating process. India on the other hand has adopted a very positive approach and is probably the only country that has been commenting in detail on all the proposals. It seems to be well prepared and to know exactly what its needs and priorities are with regard to trade facilitation reform. Malaysia has also played a very constructive role, in large part due to the leadership of Ambassador Noor as chairman of the negotiating group. The Philippines is now more supportive of the negotiations but is seen as being erratic in its approach. The Caribbean countries have also become more supportive of the negotiations. Countries, like Rwanda, Uganda and Zambia, have become increasingly active in the negotiations, in particular because of their land-locked situation.

Joint proposals submitted by developed and developing countries have been a notable feature of the negotiations. Uganda and United States submitted a proposal on the prohibition of consular transaction requirements; India and the United States on customs cooperation; Paraguay, Rwanda and Switzerland on transit; and Pakistan and Switzerland on development-related issues.

V. Draft Report for Hong Kong Ministerial

In late October, the Chair of the Negotiating Group on Trade Facilitation, Ambassador Noor circulated a draft report (TN/TF/W/72) a final version of which will be forwarded to the General Council for inclusion in the Hong Kong Ministerial Declaration. The draft report calls for the initiation of negotiations on actual trade facilitation text in early 2006 on the basis of a "list of elements" drawn from the WTO Secretariat's compilation of Members' proposals. This list provides an idea of the "elements" that could be included in an eventual Trade Facilitation Agreement. The draft report also calls attention to the need for the provision of technical assistance and capacity building to developing countries and LDCs that will allow them to participate effectively in the negotiations and to implement the results of the negotiations. Members are likely to hold private meetings with the Chair or among themselves to further discuss this draft, before the next meeting of the Negotiating Group on November 9-10.

[20] Members of the Colorado Group include Australia, Canada, Chile, Colombia, Costa Rica, the European Communities, Japan, Korea, Hong Kong, Morocco, Norway, New Zealand, Paraguay, Singapore, Switzerland, and the United States.

[21] Members of the Core Group include Bangladesh, Botswana, Cuba, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Nigeria, Philippines, Tanzania, Trinidad and Tobago, Uganda, Venezuela, Zambia and Zimbabwe.

OUTLOOK

Negotiations on trade facilitation have been progressing smoothly so far. There appears to be no opposition to an agreement that would contain binding disciplines within the scope of the GATT provisions that pertain to trade facilitation (Articles V, VIII and X). Middle-income developing countries are also open to accepting binding disciplines, although low-income developing countries would need more time and assistance to implement them. Reaching consensus on commitments to provide technical and financial assistance to developing countries will constitute the most difficult area in the negotiations. The negotiating mandate for the Doha Round requires that WTO Members take into account the compliance costs of trade facilitation commitments for developing and least-developed countries. Although the developed countries accept that this will be essential to reaching a worthwhile agreement, they are reluctant to making commitments at an early stage in the negotiations, lest they be asked for more in the end-game.

Relevance to Toyota

A successful conclusion of trade facilitation negotiations is also linked to a positive outcome on the other negotiating areas of the Doha Round – agriculture, market access for non-agricultural products, services, rules and trade and development issues. Ministers at the Hong Kong Ministerial will likely endorse the initiation of negotiations on the actual text of a trade facilitation agreement. Legal drafting would then begin in 2006 soon after the Ministerial, with a high level of ambition and with every prospect of completing the work by the end of the year.

WTO Panel Issues Ruling on United States-"*Zeroing*"

SUMMARY

A WTO Panel has ruled that the United States violated its obligations under the Anti-Dumping Agreement by using the practice of "*zeroing*" in original dumping investigations. (Under "*zeroing*", the investigating authority does not average positive and negative dumping margins together. Instead, it considers all negative dumping margins to be zero. This has the effect of inflating the overall average dumping margin, and can lead to the imposition of anti-dumping duties which may not otherwise not apply at all.)

The Panel split on the issue of whether "*zeroing*" was similarly prohibited during administrative reviews, the annual procedure under which the U.S. Department of Commerce (DOC) determines final anti-dumping duty liability during the preceding year. The majority of the Panel ruled that "*zeroing*" could be used during administrative reviews. It reasoned that the relevant provision of the Agreement applied only during "the investigation phase", which the Panel interpreted to mean only during original investigations. However, one dissenting member of the Panel argued that "*zeroing*" is WTO-inconsistent during administrative reviews as well. The strong dissenting opinion in this Panel report virtually guarantees an appeal.

ANALYSIS

I. Background

Use of zeroing in original investigations is WTO-inconsistent

The EC argued that the United States acted inconsistently with its obligations under Article 2.4.2 of the Anti-Dumping Agreement by using "*zeroing*" in a number of identified original investigations. Article 2.4.2 sets out certain rules for the calculation of a dumping margin, providing in part that "the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions....". The Panel, applying prior Appellate Body jurisprudence, found that *zeroing* by the DOC during original investigations violated Article 2.4.2. The Panel said that it would not be appropriate for it to "depart from the Appellate Body's conclusion that...the margin of dumping for the product in question must reflect the results of all such comparisons...."

Therefore, U.S. "*zeroing*", as applied in original investigations, was WTO-inconsistent.

EC claim against the U.S. statute is rejected

The EC challenged a provision of the U.S. Tariff Act as inconsistent, as such, with the requirements of the Agreement that any difference between the export price and normal value be treated as a margin of dumping. The EC pointed to the wording of the statute, which used terms such as "amount", which the EC argued required or strongly suggested a positive result. However, the Panel rejected this claim, finding that the statute did not directly speak to the issue

of negative-value dumping margins. In making this finding, the Panel relied heavily on a 2004 Federal Circuit court decision that the Tariff Act does not require (and does not preclude) the DOC to disregard negative margins.

Therefore, the statute was not as such inconsistent with U.S. WTO obligations.

DOC "Standard Zeroing Procedures" WTO-inconsistent as such

The EC also challenged the DOC "Standard *Zeroing* Procedures", specifically the computer programs that separate sales with positive margins from sales with negative margins, and then subtotal only the dumping amount for sales with positive margins. The EC argued that these Procedures were WTO-inconsistent as such, independently from their application in specific cases.

The Panel first addressed the issue of what measures could be challenged as such in WTO dispute settlement. Drawing on earlier Appellate Body jurisprudence related to the DOC "Sunset Policy Bulletin", the Panel in the present case concluded that "it is possible for a measure to be challenged as an act or instrument that 'sets forth rules or norms that are intended to have general and prospective application' even where the measure in question is not 'a legal instrument' under the law of a Member and does not bind an administrative agency." In the view of the Panel, "the objective of protecting the security and predictability needed to conduct future trade can...readily be frustrated if well-established norms that systematically and predictably lead to WTO-inconsistent actions cannot be challenged or if they can be challenged only if they are embodied in a particular type of instrument." The Panel said that the argument that there could not be WTO-inconsistency as such if an agency has discretion to change its procedures "strikes us as artificial, at the very least in the case of a norm that has been applied invariably for a considerable period of time." In such a case, the Panel noted, "WTO-inconsistent conduct may be as predictable as when WTO-inconsistent conduct is envisaged in a law or regulation." It added that "to accord decisive weight to the nature of a particular instrument in which a norm manifests itself creates a risk of addressing symptoms rather than causes."

Applying this framework to the facts of this case, the Panel said that the DOC Standard *Zeroing* Procedures represented "a well-established and well-defined norm" followed by the DOC, and it was possible to "identify with precision the specific content of that norm and the future conduct that it will entail." The Panel concluded that the U.S. *zeroing* methodology, as it related to original investigations, was a norm that was WTO-inconsistent "as such."

Panel rejects EC claims regarding administrative reviews: reference to "investigation phase" limits the discipline to original investigations only

The Panel pointed to the rule set out in Article 2.4.2 regarding the establishment of "the existence of margins of dumping during the investigation phase." It rejected the EC argument that the "decisive element" in the interpretation of the scope of Article 2.4.2 was the word "investigation." Instead, it said that it was necessary to determine the meaning of the phrase in the context of the Agreement as a whole.

The Panel ruled that Article 2.4.2 had to be interpreted to apply "only to determinations of dumping in the context of investigations" pursuant to Article 5 of the Agreement, and not to administrative reviews. The Panel pointed to a number of factors that it said supported this conclusion, including the textual similarities between "the existence of margins of dumping during the investigation phase" and the wording of the investigation disciplines set out in Article 5, the fact that the Agreement consistently used the word "investigation" in relation to proceedings under Article 5 and different terminology in relation to proceedings following the original investigations, and the "express distinction between investigations and reviews."

Thus, the Panel ruled that the phrase "the existence of margins of dumping during the investigation phase" meant that Article 2.4.2 applied to the investigation within the meaning of Article 5, as opposed to subsequent phases of duty assessment and review. Consequently, the Panel dismissed the EC claim that the United States acted inconsistently with Article 2.4.2 when it "zeroed" negative margins during administrative reviews.

Rule requiring "fair comparison" also limited to original investigations

The Panel also rejected the EC claim that the United States breached the "fair comparison" requirement of Article 2.4 during the administrative reviews. Article 2.4 provides in part that "[a] fair comparison shall be made between the export price and the normal value."

The Panel recalled its ruling that Article 2.4.2 is limited in application to investigations within the meaning of Article 5. It reasoned that "[t]o interpret Article 2.4 as prohibiting...*zeroing* not only in investigations...but also in duty assessment proceedings...would render ineffective the language in Article 2.4.2 that limits its scope of application to investigations." The Panel therefore found that that United States did not act inconsistently with Article 2.4 when it zeroed in the challenged administrative reviews.

One Panel member dissents from the "radical conclusions" of the majority

One (unnamed) member of the Panel issued a dissenting opinion on the interpretation of the phrase "during the investigation phase" in Article 2.4.2 and the scope of the "fair comparison" principle in Article 2.4.

The dissenting member disagreed with the view of the majority of the Panel that the insertion of the words "during the investigation phase" in Article 2.4.2 could reflect "a compromise bridging different interests." The dissent asked: "Who could imagine that the more precise dumping calculations, those without *zeroing*, should be done in the original investigation and the more rudimentary ones, those with *zeroing*, in the assessment and review stage, with the result that inflated duties would be finally assessed in the later stages of the proceedings?" If this were the case, according to the dissenter, "I have the greatest of doubts whether such a text would ever have had a chance of being adopted."

The dissenter acknowledged that the words "investigation phase" and "investigation period" were "not identical", but, in his view, the difference in wording was "not such as to justify the radical conclusions which are drawn from this difference by the [majority of] the

Panel." He therefore did not share the majority's opinion that Article 2.4.2 applied to original investigations only. He reasoned that "the existence of dumping is not only examined in original investigations. Assessment and review proceedings require the same kind of investigation into the existence of dumping."

The dissenter said that the argumentation of the majority of the Panel with respect to Article 2.4 was "inconceivable because of the results to which it leads, contradictory because in conflict with the independent nature of the fairness requirement under Article 2.4...and artificial because it seeks interpretation of the basic principle 'informing all of Article 2' in one of its most enigmatic paragraphs." The dissenter also stressed that the majority's view ignored the fact that Article 2.4.2 is preceded by the requirement that it is "subject to the provisions governing fair comparison" in Article 2.4. In the view of the dissent, this "double security" clearly subordinated Article 2.4.2 to the "fair comparison" rule of Article 2.4, with the "consequence that, in case of conflict, the fairness principle prevails."

Therefore, the dissenter indicated that he was "not in a position to admit that the disciplines established for *zeroing* by Articles 2.4 and 2.4.2 are limited to original investigations."

The report of the Panel in *United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (DS294) was released on October 31, 2005.

II. Significance of Decision /Commentary

This decision - if upheld on appeal – would weaken the disciplines of the Anti-Dumping Agreement by allowing the use of the WTO-inconsistent "*zeroing*" methodology during administrative reviews.

Under WTO rules, a product will be considered as "dumped" if it is "introduced into the commerce of another country at less than its normal value." More specifically, "dumping" occurs where the export price of the product is less than the comparable price for the like product in the exporting country. This produces a so-called "positive dumping margin." However, when "*zeroing*" is used, investigating authorities do not give any credit for "negative dumping margins", i.e. when the export price of the product is higher than the price in the exporting country. Instead, the negative margins are set at zero. This means that a negative margin for one shipment or class of goods cannot be used to offset a positive margin for another shipment or class.

This can be illustrated through examples. Suppose the export price of the product in the exporting country is $100. There are different scenarios that may apply:

- **Positive dumping margins**: If there are two shipments of the product - one at $60 and one at $80, the average of the two positive dumping margins ($40 and $20) will produce a final dumping margin of $30. This is uncontroversial.

- **Positive and negative dumping margin without *zeroing***: If there are two shipments of the product - one at $60 and one at $140, the average of the positive (+ $40) and negative (- $40) dumping margins should produce a final dumping margin of zero. In other words, dumping would not exist under the Agreement, and no dumping duties should be imposed.

- **Positive and negative dumping margin with *zeroing***: If there are two shipments of the product - one at $60 and one at $140, the average of the positive (+ $40) and the "zeroed" ($0) dumping margins will produce a final dumping margin of $20. In this case, dumping will be found to exist, and a dumping duty of $20 will be imposed.

For original investigations, the Appellate Body has found that "*zeroing*" is WTO-inconsistent. In the 2001 *EC - Bed Linen* case, the Appellate Body found that *zeroing* "does not take into account the *entirety* of the *prices* of *some* export transactions [original emphasis]." In the 2004 *US - Lumber Dumping* dispute, the Appellate Body stressed that *zeroing* "inflates the margin of dumping for the product as a whole." However, the Appellate Body has so far not been asked to rule on whether *zeroing* is also prohibited during administrative reviews. (In the U.S. retrospective duty system, goods subject to a dumping order are permitted to enter the United States upon payment of a deposit. In an annual administrative review, the DOC determines the final liability for dumping duties during the preceding year, and sets a new deposit rate.)

In the present case, the majority of the Panel found that the prohibition against "*zeroing*" applied only during investigations, and not during administrative reviews. They pointed to the fact that the applicable provision of the Agreement, by its own terms, applied during "the investigation phase", which the majority considered to mean during the original investigation.

Yet if the drafters of the Agreement intended to confine the scope of the rule to the "investigation", they could have used the word "investigation." They chose not to do so. They used a broader term - "the investigation phase" - indicating their intent not to limit the applicable discipline to original investigations only. As the dissenting opinion in this case noted, "the existence of dumping is not only examined in original investigations. Assessment and review proceedings require the same kind of investigation into the existence of dumping." Moreover, the term "investigation phase" appears only once in the Agreement, and it should not have been treated as synonymous with an "investigation."

The word "investigation", although not defined, is a term of art under the Agreement, and the majority of this Panel failed to recognize the legal significance of the fact that the drafters chose a different, and broader term. The dissenting opinion put it succinctly: "Who could imagine that the more precise dumping calculations, those without *zeroing*, should be done in the original investigation and the more rudimentary ones, those with *zeroing*, in the assessment and review stage, with the result that inflated duties would be finally assessed in the later stages of the proceedings?"

The Appellate Body has already made clear that "*zeroing*" is WTO-inconsistent during original investigations. It will now likely be asked to clarify that this prohibition applies to administrative review proceedings as well.

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WTO Panel Partially Upholds Challenge to Korean Anti-dumping Investigation on Paper Imports

SUMMARY

A WTO Panel has partially upheld a challenge by Indonesia to a Korean anti-dumping investigation on imports of paper. The Panel found, among other things, that Korea failed to use "special circumspection" in basing its findings on information from secondary sources. In an unprecedented move, the Panel reversed itself on a major substantive issue between the interim and the final report.

ANALYSIS

I. Background

This dispute arose from an anti-dumping investigation by the Government of Korea on imports of paper from Indonesia. In its final determination, Korea treated three of the companies under investigation as a single exporter, and calculated one dumping margin for all three.

Indonesia brought a wide-ranging challenge to Korea's measures, arguing that the imposition of the anti-dumping duties violated a number of procedural and substantive provisions of the Anti-Dumping Agreement. A non-exhaustive summary of the Panel's principal conclusions is set out below.

II. Korea's Determination of Dumping

The Panel examined a number of claims by Indonesia related to the WTO-consistency of the determination of dumping by the Korean investigating agency. The violations established by Indonesia included the following:

Several related companies can be considered as a "single exporter"

Article 6.10 of the Anti-Dumping Agreement provides that the authorities shall, "as a rule", determine "an individual margin of dumping for each known exporter or producer concerned of the product under investigation." However, in cases where the number of the exporters, producers, importers or types of products is "so large as to make such a determination impracticable", then the authorities may have recourse to samples.

Indonesia claimed that Article 6.10 precluded the treatment of separate legal entities in an anti-dumping investigation as a single exporter, and the assignment of a single margin of dumping to them. In the alternative, Indonesia argued that such treatment would be possible only if there was evidence of "actual coordination" in the domestic and export sales of the companies to the importing Member. The Panel rejected both of these arguments.

The Panel began by noting that nowhere in the text of Article 6.10 was there any specific guidance as to whether each separate legal entity must be treated as a distinct exporter or producer. However, as context, the Panel referred to Article 9.5, the so-called "new shipper"

provision. Article 9.5 requires that the investigating authority determine individual margins for exporters and producers who did not export during the initial investigation period. However, it goes on to state that the investigating authority need not calculate an individual margin of dumping for any newcomer who is related to an exporter subject to an existing anti-dumping duty. The Panel said that the context of Article 9.5 "strongly suggests that the term 'exporter' in Article 6.10 should not be read in a way to require an individual margin of dumping for each independent legal entity under all circumstances."

The Panel said that when read in context, "Article 6.10 does not necessarily preclude treating distinct legal entities as a single exporter or producer for purposes of dumping determinations in anti-dumping investigations." At the same time, the Panel stressed that Article 6.10 did not provide the investigating authority with "unlimited discretion" to do so. It said that while Article 6.10 did not require that each separate legal entity be treated as a single 'exporter' or 'producer', it did not allow a Member to treat distinct legal entities as a single exporter or producer "without justification."

The Panel noted that evidence of actual coordination of domestic or export sales could well be a "highly relevant element" in determining whether separate legal entities may be treated as a single exporter or producer. However, it did not consider this to be the "only permissible interpretation" of Article 6.10. Instead, it said that Article 6.10, read in context, "could permissibly be interpreted to allow such treatment in other circumstances where the structural and commercial relationship between the companies in question is sufficiently close to be considered as a single exporter or producer."

In the present case, the Panel pointed to the commonality of management among the three companies, coupled with the fact that they were all owned by the same parent company, as indications of "a close legal and commercial relationship" between them. The Panel also noted that the companies could "harmonize their commercial activities to fulfill common corporate objectives." More specifically, the Panel said that the ability and willingness of the three companies to shift products among themselves was "of some importance to the consideration of whether the three companies should be treated as a single exporter and subject to a single margin determination."

The Panel thus concluded that Korea had an adequate basis to treat the three companies as a single exporter and producer, and thus rejected Indonesia's claim.

Imposition of a single duty did not exceed the dumping margin for a group of companies

Indonesia pointed out that although Korea had assigned a negative preliminary dumping duty to one of the three companies, that company was subject to a positive dumping duty in the final determination, when it was considered part of a single exporter. Indonesia argued that Korea's decision to treat the three companies as a single exporter thus violated Article 9.3, which provides that the amount of the anti-dumping duty cannot exceed the margin of dumping.

The Panel rejected this argument, stating that Article 9.3 did not "mention a distinction between an individual margin for separate corporate entities and a single margin calculated for a group of them." It reasoned that as long as the single duty imposed was not higher than the single duty calculated for the three companies, there could be no violation of Article 9.3.

Recourse to "facts available" instead of "belatedly submitted information"

The Anti-Dumping Agreement provides that where an interested party "refuses access to, or otherwise does not provide, necessary information within a reasonable period of time", then an investigating authority may make its determination on the basis of "facts available", i.e., based on information not provided by an interested party.

Indonesia challenged Korea's decision to disregard domestic sales information and to have recourse to "facts available" to calculate normal values for certain Indonesian companies. The Panel rejected this claim, reasoning that the financial statements and accounting records of the affected companies constituted "necessary information" that was not submitted to the Korean authorities within a reasonable period of time. Korea said that it needed this information during the verification process, and yet it was not provided at that time. The Panel stated that "[v]erification is a critical stage in an anti-dumping investigation where the [investigating authority's] main objective is to satisfy itself about the completeness and accuracy of the information on which it will later base its determinations." The Panel considered that it would be unfair to require the investigating authority to "carry out a second verification visit to verify the belatedly submitted information." The Panel also upheld Korea's decision to disregard the domestic sales data submitted by these companies.

Failure to use "special circumspection" - Panel reverses its interim ruling

The Agreement provides that if the authorities have to base their findings on information from a secondary source, they should do so with "special circumspection." The Agreement does not define what is meant by "special circumspection", but it adds that the authorities should, where practicable, check the information from other independent sources at their disposal.

Under certain circumstances, the investigating authority can "construct" the normal value of the product based on the cost of production, expenses, and profits. In the present case, the Korean investigating authority used the financial expenses of a producing company as proxy for those of a trading company. The Panel said that it did not exclude the possibility that, in a given investigation, such information could be allowed, provided that the reasons for doing so were adequately explained in the investigating authority's determination. However, the Panel said that there was no explanation on the record as to why the Korean authority acted as it did. The Panel concluded that this ran "counter to the obligation to exercise special circumspection in the use of information from secondary sources when applying facts available...." It concluded that Korea acted inconsistently with its obligations under Article 6.8 and the related Annex in calculating constructed normal values. As noted above, at the interim review stage, the Panel had determined that the actions of the Korean investigating authority were WTO-consistent, a conclusion it reversed in the final report.

The Panel also found that, in calculating a particular margin of dumping, Korea failed to fulfill its obligation to corroborate information obtained from secondary sources against other independent sources.

III. Korea's Determination of Injury

Indonesia made a number of challenges to Korea's injury determination, two of which succeeded before the Panel.

Determining impact of imports: not a "checklist obligation" or a "mechanical exercise"

Article 3 of the Agreement sets out the disciplines applicable to the determination of injury. Article 3.4 states that the examination of the impact of the dumped imports on the domestic industry shall include an evaluation of "all relevant economic factors and indices having a bearing on the state of the industry", including fifteen factors listed in that provision.

The Panel said that the obligation of the investigating authority to evaluate all relevant economic factors under Article 3.4 had to be read in conjunction with the "overarching obligation" in Article 3.1 to carry out an "objective examination" on the basis of "positive evidence." It emphasized that the requirement to analyze the mandatory list of fifteen factors under Article 3.4 was not a "checklist obligation", consisting of a "mechanical exercise to make sure that each listed factor has somehow been addressed" by the investigating authority. Instead, Article 3.4 requires the investigating authority to "carry out a reasoned analysis of the state of the industry." The Panel said that such an analysis could not be limited to a mere identification of the "relevance or irrelevance" of each factor, but rather had to be based on a "thorough evaluation of the state of the industry." It added that the analysis had to "explain in a satisfactory way why the evaluation of the injury factors set out under Article 3.4 lead to the determination of material injury, including an explanation of why factors which would seem to lead in the other direction do not, overall, undermine the conclusion of material injury."

The Panel said that the Korean investigating authority did not adequately explain why the data collected with respect to the Article 3.4 injury factors led to a determination of material injury. The Panel found that the Korean authorities did "not adequately evaluate the injury factors, especially those that showed a positive trend, and explain their relevance in the determination of material injury...." Accordingly, Korea was found to have acted inconsistently with Article 3.4.

Confidential information: need to show "good cause"

Article 6.5 provides that any information which is by nature confidential, or which is provided on a confidential basis, shall be treated as such by the authorities, "upon good cause shown." The Panel agreed with Indonesia that Korea violated the Agreement by treating as confidential the information submitted in the domestic industry's application for the initiation of the investigation without first requiring that good cause be shown.

IV. Systemic Issues

Composition of delegation: industry representatives not excluded

At the First Meeting of the Panel, Korea objected to the presence on the Indonesian delegation of representatives of the Indonesian paper industry. Korea asked that they be required to leave the hearing room because "access to confidential information submitted by Korea would give them an unfair competitive advantage over their Korean counterparts." However, the Panel ruled that Indonesia was entitled to determine the composition of its delegation, and assumed responsibility for the confidentiality of Korea's submissions. The Panel also noted that Korea had made no request for procedures to protect specific Business Confidential Information. In any event, the business representatives were not part of the Indonesian delegation during the Second Meeting.

Access to submissions: a "natural corollary" to the right to determine delegation

The Panel stated that the confidentiality provisions of the DSU and its Working Procedures did not "prevent a party from seeking advice of individuals, as necessary, for its effective participation in this dispute", provided that any persons consulted were held accountable. The Panel saw this as a "natural corollary to the proposition that Members are free to determine the composition of their delegations" to Panel Meetings.

The report of the Panel in Korea - Anti-Dumping Duties on Imports of Certain Paper from Indonesia (DS312) was released on October 28, 2005.

V. Significance of Decision / Commentary

Reversal of the interim report: This decision marks the first time that a WTO Panel has reversed itself between the interim and the final report on a substantive finding regarding the WTO-consistency of a measure. In the interim report, the Panel rejected Indonesia's claim that Korea had breached its obligation under the Anti-Dumping Agreement to use "special circumspection" when relying on secondary sources of information. However, after further arguments from Indonesia at the interim review stage, the Panel reversed its earlier ruling and concluded in the final report that Korea had breached the Agreement after all. Although the Panel groused that Indonesia's arguments "could...have been raised in a more coherent manner", it said that it "nevertheless felt obliged to address them and have accordingly revised our finding with respect to this claim...."

It has long been a widely-shared assumption in WTO circles that a Panel's ruling at the interim review stage on the WTO-consistency of a measure was definitive, and would not be reversed in the final report. The Panel's decision in the present case clearly calls into question this assumption, and may encourage future Panels to be more attentive to requests during the interim review to revise substantive findings. The Panel said that in the interim report, it had addressed what it "perceived" to be the main arguments of Indonesia. During the interim review, Indonesia drew the attention of the Panel to "certain additional arguments" which were made earlier, but were not taken into account in the interim report. No explanation is provided in the

Report as to why these arguments were not reflected in the interim. In any event, it seems likely that the reversal of the substantive findings of a panel from the interim to the final report will remain fairly rare in WTO dispute settlement.

Treating separate companies as a single exporter: This Panel found that an investigating authority may treat separate legal entities as a single exporter, and assign to them a single margin of dumping, where "the structural and commercial relationship between the companies in question is sufficiently close to be considered as a single exporter or producer."

The Panel's reasoning and conclusions on this issue are suspect. Article 6.10 of the Agreement provides that the authorities shall, "as a rule", determine "an individual margin of dumping for each known exporter or producer concerned of the product under investigation." (Where the number of exporters is too large, sampling may be used.) Nowhere in this provision is there any indication that an investigating authority may consider separate companies to be a single exporter where the "structural and commercial relationship" between the companies is "sufficiently close." Indeed, the only justification the Panel invoked for this finding was an unrelated Article - the so-called "new shipper" provision in Article 9.5 - which states that an investigating authority need not calculate an individual margin of dumping for any newcomer who is related to an exporter subject to an existing anti-dumping duty.

The Panel acknowledged that the "new shipper" provision of Article 9.5 applies only after a duty has been put in place. It nevertheless concluded that the "context" provided by Article 9.5 "strongly suggests that the term 'exporter' in Article 6.10 should not be read in a way to require an individual margin of dumping for each independent legal entity under all circumstances."

Yet the supposed "context" of Article 9.5 should not be used to import rules that demonstrably have not been included in Article 6.10. If the drafters of the Agreement wanted to permit investigating authorities to assign a single margin of dumping to related companies, they could clearly have done so, or they could have included a cross-reference to the new shipper provision. They did neither. The Panel's conclusions on when an investigating authority may treat several companies as a single exporter has no support in the text of the applicable provision, Article 6.10.

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Cato Institute Hosts Panel on U.S. Farm Trade Policies, WTO Negotiations

SUMMARY

On November 9, 2005, the Cato Institute hosted a panel of speakers on U.S. farm trade policies and the current status of World Trade Organization (WTO) agriculture negotiations. Representatives from the government and the private sector gave their **on-the-record** assessments of current U.S. farm trade policies and whether the December WTO ministerial in Hong Kong would achieve any outcomes. We review here those assessments.

ANALYSIS

On November 9, 2005, the Cato Institute hosted a panel of speakers on U.S. farm trade policies and the current status of WTO agriculture negotiations. Representatives from the government and the private sector gave their assessments of current U.S. farm trade policies and whether the upcoming December WTO ministerial in Hong Kong would achieve any results or modalities. **Daniel Griswold, Director, Center for Trade Policy Studies, Cato Institute** chaired the event and stated that WTO Members need to make deep cuts in agriculture to "spur liberalization in agriculture and non-agriculture trade." He also requested that panel speakers give their assessment of the different agriculture proposals tabled by the EU, the United States and the Group of 20 (G-20) developing nations:

- **Brian Fisher, Australian Bureau of Agriculture and Resource Economics,** compared U.S. farm trade policies to those of Australia and noted that non-program agriculture exports (*i.e.*, exports that do not receive domestic support) were experiencing an uptrend, although program agriculture exports were experiencing a downtrend. Fisher stated WTO Members "cannot ignore export competitiveness" and must work harder on liberalizing their agriculture markets. Fisher added that producing at world prices (as opposed to producing under domestic supports) increases economic competitiveness and gives producers an incentive to increase productivity.

- **Clayton Yeutter, former U.S. Agriculture Secretary and United States Trade Representative, (USTR)** noted that the potential for U.S. growth in agriculture exports will come from developing countries in Asia, and that "there is only so much food you can shove down American mouths" which makes it necessary for the United States to access foreign agricultural markets. Yeutter added that unless the United States reforms its agriculture policy, it will not be able to gain access to developing markets. He also stated that WTO agriculture negotiations "need to get rolling" and echoed USTR Rob Portman's opinion that the EU agriculture proposal was "not acceptable." He did note, however, that expectations for the WTO ministerial in Hong Kong were too high, and that "2006 will offer a lot of time for further negotiation." Yeutter opined that WTO Members will

narrow their differences in Hong Kong, and that WTO Members should focus on: (i) services and industrial tariffs; (ii) completing the removal of all agriculture export subsidies; and (iii) narrowing differences on sensitive agriculture products. He stated that "Hong Kong should provide motivation to [reach agreements] in 2006." When asked if Japan had presented a proposal, Yeutter stated that Japan had not presented a proposal and had "hid behind the EU proposal" so that when WTO Members attacked the EU's suggestions, Japan would be "off the hook."

- **Cal Dooley, former U.S. Congressman (D-CA)** stated that the "next golden age of agriculture will be based on agriculture policies that will assist developing countries." He noted that developed countries must adopt better policies and regulations that will enable developing countries to compete effectively and provide further market access. Dooley also opined that the U.S. agriculture proposal, if implemented, can accelerate the least developed countries (LDCs) development of least developed countries.

- **Dan Griswold** stated there were six "good reasons" to reduce U.S. farm subsidies and trade barriers: (i) reduced barriers would reduce food prices for American consumers; (ii) lower barriers would lower costs and increase exports for U.S. producers; (iii) U.S. taxpayers would save money; (iv) reduced barriers and farm subsidies would enhance environmental quality; (v) reduced barriers would mean larger markets for U.S. farmers; and (vi) reduced barriers would create a "more hospitable world for American values and foreign policy." Griswold also noted that U.S. agriculture policy is a "relic of a bygone era."

OUTLOOK

All panelists agreed that the December WTO ministerial in Hong Kong would not yield many tangible results, especially in agriculture. Apart from the status of WTO negotiations, the speakers focused their comments on developing nations and how developed nations – like the United States and EU countries – could enhance developing nations' competitiveness in their markets by cutting domestic support programs and reducing trade barriers. An increased focus on developing nations might prove the necessary ingredient to get WTO negotiations back on track. With agriculture negotiations at a standstill, divided developed nations might look to the needs of their developing counterparts as motivation to bridge the gaps between their proposals. As logical and altruistic as this concept seems, however, it is likely that anything can put multilateral trade negotiations back on track for a significant substantive outcome in Hong Kong. Instead, it is now likely that the best hope for the ministerial is a "narrowing of differences" in agriculture and moderate gains in the other negotiating areas.

Multilateral Highlights

Ecuador Requests WTO Dispute Proceedings Against United States Over Shrimp Duty

On November 15, Ecuador initiated World Trade Organization (WTO) dispute settlement proceedings against the United States over the U.S. Department of Commerce's "*zeroing*" methodology in antidumping (AD) investigations. Ecuador specifically challenged Commerce's 2004 use of the *zeroing* methodology to calculate AD duties during its investigation of shrimp imports from Ecuador and other countries. According to Ecuador's request for WTO consultations, the "*zeroing*" methodology violates the WTO's Antidumping Agreement and Article VI of the General Agreement on Tariffs and Trade (GATT) and allows Commerce to "treat transactions with negative dumping margins as having margins equal to zero in determining weighted average antidumping margins." As a result, Commerce based its dumping calculations on "unfair and improper comparisons" between the export price and the normal price that created inflated dumping margins on which Commerce based its dumping determination. Without *zeroing*, Commerce would have not have found that Ecuadorian shrimp had been dumped at above *de minimis* levels and thus would not have imposed AD duties on the subject merchandise from Ecuador. WTO rules mandate that Ecuador and the United States have 60 days from the initial request to settle their dispute without resorting to the establishment of a dispute settlement Panel. Ecuador, however, has requested a panel earlier than 60 days because it believes that "consultations will not settle the dispute."

In *U.S. – Lumber AD Final* (WT/DS264), a WTO panel and the Appellate Body (AB) found the Commerce Department's "*zeroing*" methodology in AD investigations was inconsistent with Article 2 of the WTO's Antidumping Agreement. The United States, however, has yet to conform its dumping methodology to the AB's ruling. Thus, should Ecuador's challenge proceed to a WTO panel, it is likely that the panel would again find Commerce's use of *zeroing* in AD investigations to be contrary to WTO rules.

Portman and Johanns Offer Assessments on WTO Negotiations Status

United States Trade Representative (USTR) Rob Portman and U.S. Secretary of Agriculture Mike Johanns have concluded meetings in London and Geneva meant to further World Trade Organization (WTO) negotiations on agriculture. Upon conclusion of the meetings, Portman stated that Members did "not [make] the progress that [the United States] had hoped to make in order to put together a program for the Hong Kong meeting that would enable [WTO Members] to set forth a framework or as the WTO language would be "modalities" in order to complete the negotiation more rapidly."

WTO Director-General Pascal Lamy hosted the meetings of two-dozen foreign trade and agriculture ministers on November 7-9. With the December WTO ministerial in Hong Kong quickly approaching, WTO Members sought to reach an agreement on modalities during this last round of meetings, especially on agriculture issues. The EU presented an amended agriculture proposal on October 28 that the United States and other countries roundly criticized for its lack

of ambition on agricultural market access. Since that time, negotiations in all sectors have stalled, as the problems in agriculture negotiations have hindered the other main negotiating areas: non-agricultural market access (NAMA); services; and trade facilitation. Portman and Johann's comments indicate that this the London meeting failed to end the stalemate:

- **Portman on past and current expectations for Hong Kong:** "I will remind those listening that the Hong Kong meeting was never meant to be the end of this process. It was always meant to be a milestone along the way, but an important one. It's a meeting of all the ministers. It's an opportunity to take stock of where we are, but also again we'd hoped it would have been an opportunity to make some tough decisions on at least the framework for discussion going forward. Again I'm not sure we're going to be able to meet those framework aspirations but I do believe it's important to push hard to try to make that happen. In any case, I believe the Hong Kong meeting is extremely important and it ought to be kept on the Doha schedule."

- **Portman on agriculture's importance:** "[R]egardless of what the U.S. or the EU may think, agriculture was put front and center in the Doha Round because of the fact that in the Uruguay Round and for that matter previous trade talks agriculture had not been addressed adequately and agriculture is where most of the trade distortion is – the highest tariffs are in agricultural products."

- **Portman on other negotiations' dependence on agriculture: "**I would argue that the best way to get progress in the other areas is to complete the agriculture negotiations. But I think it's also another way to go about it is to broaden the discussion now to come up with some commitments on the part of all of us, including the developing countries, to make serious changes in tariff structure for nonagricultural products-- again primarily industrial goods -- and to make some serious commitments with regard to knocking down the barriers to trade and services."

- **Johanns' "realistic" assessment of negotiations: "**Now, one thing I do want to emphasize is that collaborating on expectations for the Hong Kong Ministerial is not a sign of crisis. It just simply is not. It is a realistic assessment that will help ensure that we engage in problem solving rather than finger-pointing in December. I'm optimistic that we can make significant progress in Hong Kong even if it is not as much as Ministers would have liked."

- **Johanns on concluding the Doha Round: "**Well, let me just say the common goal as to wrap this up in 2006 as I mentioned in my comments. And of course Trade Promotion Authority doesn't become an issue until mid-year of 2007. So we would still be very, very much on track with a

> commitment to wrapping up the Doha round in 2006. Again, I emphasize that in terms of expectations, I think it is important to evaluate our expectations as we go along. That's exactly what we've spent a fair amount of time doing in reference to the Hong Kong meeting. But I still believe we can have a very successful Doha round. We may not get as far as we had hoped for in the Hong Kong meeting, but having said that, we can still make good progress, we can lay a pathway to have a successful round completed by the end of 2006."

Although Portman and Johanns made it clear that the latest round of meetings did not solve the standstill on agriculture issues, they were quick to remind that the December ministerial in Hong Kong was never meant as a "final stepping stone" and that the United States would continue to push for an agreement by 2006. Such comments are clearly an attempt to lower overall expectations for Hong Kong to ensure that observers and critics cannot portray the ministerial's failures as the death knell for the entire Doha round. They also provide a clear indication that Portman and Johanns do not think WTO negotiators can meet Hong Kong's original goals. Other WTO negotiators have echoed such sentiments in the last several days. Portman's comments also provide further evidence that NAMA, services and trade facilitation negotiations hinge on a breakthrough in agriculture. Until this breakthrough occurs, it is unlikely that WTO Members will achieve significant gains in these "subordinate" negotiating areas.

WTO Services Chair Releases New Draft of WTO Services Text

The World Trade Organization's (WTO) chairman of the negotiating group on services released a revised draft text on services for the December WTO ministerial in Hong Kong. The new draft, issued on November 3rd, retains the original draft's key components but focuses more on "development concerns." Chairman Fernando de Mateo kept language in the draft text that calls for improvements on all four modes of services delivery and "numerical targets and indicators" for negotiations. The draft also included revisions from the initial draft: (i) removal of the general call for elimination of "economic needs tests" (the draft, however, calls for "substantial reductions" in such tests); (ii) de-linking Mode 4 (movement of natural persons) commitments from Mode 3 (commercial presence) requirements; (iii) targeted technical assistance to developing countries and least developed countries (LDCs) to help them participate effectively in negotiations; and (iv) a call to WTO Members to "intensify their efforts" to reach an agreement on services rulemaking.

Member governments and nongovernmental organizations (NGOs) have criticized the revised draft text. Venezuela and Cuba argued that "draft texts from negotiating group chairs should reflect points where members have already reached consensus." A group of NGOs criticized the "numerical targets and indicators" in the draft, indicating that not all negotiating Members have agreed to these targets, especially LDCs. They also pointed to the lack of a "special emergency safe-guard mechanism" that would allow governments to temporarily restrict the provision of certain services in their markets. This mechanism would be most beneficial to LDCs, and although Members discussed the mechanism during negotiations, they did not add it

to the draft text. The United States and other developed countries have opposed safeguards measures.

USTR and WTO Director-General Urge Agreement, Outline Costs of Failure

Following his appearance before the House Agriculture Committee, United States Trade Representative (USTR) Rob Portman stated that the World Trade Organization's (WTO) December ministerial conference in Hong Kong could end in failure if WTO Members do not reach an agreement on agriculture at meetings in Europe during the week of November 7. Portman and Agriculture Secretary Mike Johanns will travel to London and Geneva that week to meet with trade ministers from several WTO Member countries to advance WTO agriculture negotiations. Portman will also meet with the Five Interested Parties (FIPs) - the EU, the United States, Australia, Brazil, and India - to "continue to work [with other WTO Members and to make sure that the Europeans] understand that they are risking the loss of tremendous benefits to their economies and to the world economy."

Portman stated that he does not expect the EU to produce "a great offer" but added that the EU must conclude that its revised proposal would provide "substantial improvement" in agricultural market access. Portman also noted that the United States will continue to work toward success at the December ministerial conference, and that the meeting "was never designed to conclude the negotiations but simply to be a milestone on the way to the agreement in 2006." When asked what would happen if Hong Kong does not produce the broad agreements originally expected, Portman stated that the United States will "just keep pushing" for the agreements after Hong Kong. Following his meetings in Europe, Portman will travel to Africa and India to discuss the status of WTO negotiations with officials from both regions.

WTO Director-General Pascal Lamy called on WTO Members to "engage seriously and show flexibility" in the Doha Round of negotiations," adding that a failure to compromise could lead to "negative implications for global trade and the world economy." Lamy defended all tabled proposals thus far, noting that "what is already on table shows that this [high] level of ambition can be maintained," and that they could serve as the basis for further trade liberalization. Lamy highlighted the consequences of a failure to reach an agreement: (i) increases in Amber Box and Blue Box domestic agriculture support by all Members that could further distort markets; (ii) large losses in the trade of industrial goods; and (iii) lost opportunities to continue services liberalization.

With Hong Kong less than six weeks away and still no agreement on agricultural market access, Doha Round negotiations are at critical stage. As Portman and other officials have repeated, the EU must present a new proposal or be willing to compromise on its current offer to facilitate movement in the negotiations. Because negotiations in other sectors - including non-agriculture market access (NAMA) and services - hinge on the success of the agriculture negotiations', the chances of finalizing negotiating texts by Hong Kong are slim unless the EU makes significant changes to its proposal in the coming week.

NAMA Chair Expresses Concern Over "Wide Gaps" in Negotiations

On October 25, 2005, Stefan Johannesson, Chairman of the World Trade Organization's (WTO) negotiating group on non-agricultural market access (NAMA) warned WTO Members that NAMA negotiations were "nearing crisis" because of continued differences on all major issues of discussion. Johannesson added that he was "deeply concerned" given that the group has two weeks before it is to present a first draft text on NAMA for the WTO's December ministerial in Hong Kong. Johannesson noted that differences on formulas and figures for reducing tariffs on industrial and consumer goods are preventing negotiations from moving forward, and he cautioned that resolving differences in separate negotiations - such as agriculture - would not lead to an "immediate breakthrough in NAMA." According to Johannesson, there are "wide gaps" between members on the tariff cut commitments, translated through coefficients for reducing tariffs. Lower coefficients will results in higher cuts.

Members have agreed that a final NAMA deal will incorporate two coefficients, one for developed countries and the other for developing countries. Proposed coefficients for developed countries range from zero to 10 and those for developing countries range from 10 to 30, with the United States proposing "low single digits" for both coefficients. Meanwhile, Argentina, Brazil and India have proposed a formula that includes different coefficients for developed and developing countries and additional flexibilities through longer implementation periods. The three countries' proposal also excludes some tariff lines from any cuts for developing countries. Johannesson stated that some elements of the "sectoral initiative", in which the United States seeks a deal to eliminate or to reduce sharply tariffs on certain products, might be included in the draft text for Hong Kong. Developing countries have, however, been demanding that Members concentrate on establishing the general formula before reviewing the sectoral initiative. Such concerns, however, may be moot because the "wide gaps" among Members on tariff reduction formulas jeopardize the timely completion of the draft text, regardless of the sectoral initiative's resolution.

Portman, Congressional Members Sound Off on Latest EU Agriculture Proposal

On October 28, 2005, the EU unveiled its new multilateral agriculture proposal as part of the World Trade Organization's (WTO) Doha Development Round. The offer would reduce the EU's tariffs on agricultural imports between 35 and 60 percent and would designate about 176 of 2200 farm products as "sensitive products," making them eligible for higher tariffs. The EU conditioned its proposal on all Members agreeing to restrictions on food aid, proposed an international registry to give legal protection to geographically named products and urged tougher regulation of state trading enterprises (STEs) such as the Australian and Canadian wheat boards. United States Trade Representative (USTR) Rob Portman and key Members of Congress expressed disappointment in the EU proposal:

- **USTR Rob Portman** stated that the United States was "deeply disappointed" with the EU's revised proposal, and that it fell short of the previously agreed WTO objective of providing "substantial improvement" in market access for agricultural products. According to Portman, the offer

does not match or exceed the U.S. or Group of 20 (G-20) offers. Portman indicated that the level of tariff cuts and the number of "sensitive" tariff lines were the proposal's most problematic areas. He added, however, that the United States hopes that WTO Members can make progress in the coming weeks, hinting that the United States might be willing to compromise. Portman noted that although the United States agrees with the EU that Members must also advance other negotiating areas, agriculture "holds the key to success in the talks."

- **Senate Finance Chairman Senator Charles Grassley (R-IA)** and ranking member **Senator Max Baucus (D-MT)** both described the EU's offer as insufficient. Grassley stated that the offer "doesn't provide enough market access for American farmers" and added that "if this is the best offer the European Union can make, then it looks like the Doha Round might remain stalled." Baucus opined that the EU proposals "appear designed to spur controversy rather than agreement" and stated that the weakness of the offer could "put the Hong Kong ministerial and perhaps even the entire Doha round of WTO negotiations at risk."

- **Senate Agriculture Chairman Senator Saxby Chambliss (R-GA)** remains "confident that the offer can improve with time" but added that he was concerned about the EU proposal's call for restricting countercyclical payments to U.S. farmers. Agriculture ranking member **Senator Tom Harkin (D-IA)** disagreed with the EU proposal's call for the United States to change its international food aid system, noting that "the European Union demands that we reform a policy that has been successful and highly beneficial."

- **House Agriculture Chairman Representative Bob Goodlatte (R-VA)** disagreed with European demands for the registry of international geographical indications to protect European regional products and added that "the United States provides protections through our trademark system, a rules-based method that is open and includes fair treatment and enforcement mechanisms."

The overall consensus on the EU proposal among the U.S. Administration and Congress is dissatisfaction with the EU offer. U.S. officials have consistently indicated that the EU's agricultural market access offer would be integral to the success of the Hong Kong Ministerial and the Doha round more broadly, as the United States conditioned its bold offer on domestic support reductions on the EU's (and other WTO Members') reciprocation on market access. Because agriculture has become the "lynchpin" issue in the Doha round, if the United States and the EU cannot quickly resolve the problems that Portman and others have raised, the Doha round's future could be in jeopardy.

WTO Services Chair Circulates First Draft of Text

On October 26, 2005, Fernando de Mateo, chairman of the World Trade Organization's (WTO) negotiating group on services, circulated the first draft negotiating text on services, citing "deep concern" over the lack of movement in services negotiations and noting that WTO Members need to intensify negotiations to achieve a higher level of services liberalization. The text will be part of an overall ministerial declaration for the WTO Doha Round trade talks that WTO Director-General Pascal Lamy will circulate to Members in mid-November. Trade ministers are expected to adopt the declaration during the December WTO ministerial in Hong Kong.

In order to promote further liberalization, the draft urges WTO Members to commit to: (i) binding current market access levels in their WTO services schedules for two of the four services "modes" of delivery - cross-border supply (Mode 1) and consumption abroad (Mode 2); (ii) removing existing commercial presence (Mode 3) requirements for cross-border supply; and (iii) committing to enhance foreign equity caps for commercial presence commitments. The text also calls for new commitments on cross-border movement of services professionals (Mode 4) in relation to contractual services suppliers and independent professionals, including removal of any "economic needs tests" (i.e. conditioning license issuance on the consideration of economic factors and community development) and improving Mode 4 commitments for intra-company transferees and business visitors. In addition, the draft text calls on Members to reduce any exemptions from most favored nation (MFN) status in their services schedules and to ensure that the request-offer process "shall remain the main method for [services] negotiation."

The draft text did not endorse "complimentary approaches" for advancing negotiations such as the creation of benchmarks and/or minimum standards that Members would agree to meet. On October 27, the EU circulated a proposal calling for developed countries to make new commitments in at least 139 sectors covered under the WTO's General Agreement on Trade in Services (GATS); developing countries would have to make new commitments in at least 93 sectors. Developing countries have disagreed with the EU's benchmarking proposal, arguing that the methodology undermines their negotiating flexibility. Developed countries have also denounced the EU proposal as unrealistic, doubting that even the EU could implement such commitments.

Unlike WTO rules covering the trade in goods that call for broad-based commitments on trade liberalization, WTO services rules mandate that Members make individualized liberalization commitments (and exemptions) for specific services sectors. These commitments are enshrined in a Member's "services schedule." It is only by reference to a country's schedule, and (where relevant) its exemption list, that one can determine which services sectors and under what conditions the WTO's basic liberalization principles apply within that country's jurisdiction.

United States Initiates Formal WTO Inquiry on China IP Enforcement

On October 26, 2005, the Office of the United States Trade Representative (USTR) announced that it filed a request under Article 63.3 of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to determine if

China is complying with its obligations under TRIPS. USTR Rob Portman stated that "the United States is deeply concerned by the violations of intellectual property rights in China" and that the United States "will utilize all tools at our disposal to ensure that U.S. intellectual property rights are protected." Article 63.3 allows WTO Member states to request information on TRIPS implementation in other countries. The United States has asked China to explain how its laws protect intellectual property rights (IPR) and combat piracy and counterfeiting, and to note where improvements in its IPR regime are needed. Another U.S. trade official stated that the information the United States has requested would help identify weaknesses in Chinese enforcement legislation and would hopefully assist in addressing those problems. The official also commented, however, that the United States might pursue a WTO dispute settlement case if China does not attempt to improve its IPR enforcement or lower instances of piracy. In its Article 63.3 request, the United States has asked China to outline: (i) all IPR and piracy cases it has encountered; (ii) what remedies and punishments have been proposed; (iii) factual information on the products in question; and (iv) whether Chinese or non-Chinese firms were involved in the cases. The United States has asked China to respond by January 23, 2006.

Japan and Switzerland have also filed similar requests at the WTO. The U.S. Government and industry groups have long complained of weak IPR enforcement and rampant piracy in China, noting that these problems have led to billions of dollars in lost revenue. The U.S., Japanese and Swiss requests might provide evidence of these weaknesses and allow the countries to address solutions without resorting to a formal WTO dispute. However, if China's history of stalling and/or outright refusal to provide requested information on internal policies in other WTO fora is any indication of its response to the current TRIPS inquiries, little new information would be gleaned from this exercise. Indeed, the requesting parties might have anticipated this very outcome, seeking to use China's non-compliance as a basis for filing a formal WTO dispute on China's TRIPS violations. Such a maneuver, however, would certainly contradict the United States' current policy of "quiet diplomacy" - the avoidance of persistent, public pressure - to pursue reforms in China.