WHITE & CASE

April 2006

Japan External Trade Organization
WTO and Regional Trade Agreements Monthly Report

IN THIS ISSUE

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Summary of Reports

United States

Senate Finance Committee Holds Hearing on U.S.-China Economic Relations

On March 29, 2006, the Senate Finance Committee held a hearing on the state of U.S.-China economic relations. The hearing included **on-the-record** oral testimony from government and business representatives. We review below this testimony and the discussion between the Committee and witnesses.

The full text of the witnesses' statements is available on the Committee website at: http://finance.senate.gov/sitepages/hearing032906.htm.

House Ways and Means Committee Holds Hearing on U.S.-Oman FTA Implementation

On April 5, 2006, the U.S. House of Representatives Ways and Means Committee held a hearing to discuss implementation of the Free-Trade Agreement (FTA) between the United States and Oman. The hearing focused on the how the FTA would affect both nations and their economic and political relationship. The hearing included **on-the-record** oral testimony from panelists representing government and business interests. We review below this testimony and the discussion between the Committee and the hearing witnesses.

The full text of the witnesses' statements is available on the Committee website at: http://waysandmeans.house.gov.

U.S.-China Economic and Security Review Commission Holds Hearing on China's WTO Compliance: Currency, IPR and Subsidies Remain Top Concerns

On April 4, 2006, the U.S.-China Economic and Security Review Commission held a hearing on China's World Trade Organization (WTO) compliance. The Commission reviewed China's capacity of complying with its WTO obligations and the effects of its industrial subsidies on U.S. industries and the global economy. Panelists included officials from the Office of the United States Trade Representative (USTR)

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and the Government Accountability Office (GAO), as well as experts from academia, think tanks, and private firms. We review the hearing in this report.

USTR Releases Results of 2006 Section 1377 Review of Telecommunications Trade Agreements

On April 6, 2006, the Office of the United States Trade Representative (USTR) released its annual Section 1377 Review of Telecommunications Trade Agreements. The review focused on three areas: (i) high mobile termination rates; (ii) access to leased lines and submarine cable capacity; and (iii) universal service-related programs. USTR discussed problems with each of these issues for several U.S. trading partners. We review below USTR's findings.

The full report is available at USTR's website at: http://www.ustr.gov.

GAO Testifies on Challenges in Applying CVDs to China

On April 4, 2006, the United States Government Accountability Office (GAO) released testimony that GAO Director of International Affairs and Trade Loren Yager presented before the U.S.-China Economic and Security Review Commission on the application of countervailing duties (CVDs) to China. The U.S.-China Economic and Security Review Commission's April 4 hearing on China's World Trade Organization (WTO) compliance reviewed China's ability to comply with its WTO obligations and the effects of its industrial subsidies on U.S. industries and on the global economy. We review here the GAO's analysis of applying countervailing duties (CVDs) to China, challenges that would arise, and the likely results of applying CVDs on Chinese products.

Officials Hold 17th U.S.-China Joint Committee on Commerce and Trade Meeting

On April 11, 2006 U.S. Secretary of Agriculture Mike Johanns, U.S. Secretary of Commerce Carlos Gutierrez and U.S. Trade Representative Ambassador Rob Portman met with Chinese Vice Premier Wu Yi in Washington for the 17th senior-level meeting of the U.S.-China Joint Committee on Commerce and Trade (JCCT). The officials discussed bilateral trade issues, including market access for U.S. goods and services, China's lack intellectual property rights (IPR) enforcement, and steel capacity. We review below the meeting's outcome and China's commitments to address these issues.

A fact-sheet on U.S. Request Outcomes is available on the U.S. Department of Commerce website at: http://www.commerce.gov/opa/press/Secretary_Gutierrez/press_releases.htm

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U.S. Undersecretary for International Trade Discusses 17th U.S.-China Joint Commission on Commerce and Trade

On April 18, 2006 the Washington International Trade Association (WITA) hosted a briefing with Department of Commerce's (DOC) Undersecretary for International Trade Frank Lavin. Lavin delivered remarks on the 17th senior-level meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the meeting's outcome. He noted that the United States and China made progress in market access, transparency, intellectual property rights (IPR) and steel, but stressed that the meeting's success is contingent upon China's implementation of its commitments and a positive marketplace response to their implementation.

United States Highlights

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

- Senate Finance Committee Requests Submissions for Senate Miscellaneous Tariff Bill
- U.S. and Canada Resume Softwood Lumber Negotiations, Attempt to Create Framework Agreement
- USTR Portman Plans Trip to Geneva to Discuss Doha Status, Schwab to Accompany
- Mixed Reactions to Portman's Departure from USTR, Schwab's Nomination
- Portman to Leave USTR , Deputy USTR Schwab Selected as His Replacement
- Senators Express Concern to USTR that WTO Negotiations Do Not Address U.S. Trade Laws
- Court of International Trade: NAFTA Bars U.S. from Applying Byrd Amendment to Imports from Canada, Mexico
- Senate Finance Committee Holds Hearing on CBP Commissioner Nominee
- Rep. Thomas: U.S. Should "Part Ways" with EU in WTO Negotiations
- Rep. Rangel Introduces Legislation to Renew GSP, ATPA, and Strengthen AGOA
- House Bill Targets WTO Rules that "Discriminate" Against Nations Relying on Direct Taxation

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Free Trade Agreements

USTR 2006 NTE on Foreign Trade Barriers: Asian Economies

On March 31, 2006, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report on Foreign Trade Barriers (NTE), which surveys significant trade barriers to U.S. exports. Although the report addresses a wide array of issues, it focuses on the protection and enforcement of intellectual property rights (IPR) and foreign restrictions to services trade.

We highlight the NTE report's comments on the trade practices of the United States' major Asian trading partners, including China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, the Philippines, Singapore and Thailand.

USTR 2006 NTE on Foreign Trade Barriers: Middle Eastern Economies

On March 31, 2006, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant foreign trade barriers to U.S. exports. While addressing a wide array of issues, this year's report focuses on the protection and enforcement of intellectual property rights and restrictions to services trade.

We highlight here the NTE report's analysis of the trade practices of major Middle Eastern trading partners Bahrain, Egypt, Oman, Saudi Arabia and the United Arab Emirates (UAE).

Free Trade Agreements Highlights

We want to alert you to the following Free Trade Agreements developments:

- U.S.-SACU FTA to Become "Longer Term" Objective, Both Sides to Deepen Ties Through Commercial Framework
- U.S. and Peru Sign FTA; Congressional Timeframe Uncertain
- USTR Schedules First Round of FTA Negotiations with Malaysia
- Bush Submits U.S.-Uruguay BIT to Congress for Ratification
- United States and Indonesia Discuss Trade Issues Under TIFA
- DR-CAFTA Takes Effect in Nicaragua, Honduras

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Multilateral

World Trade Organization Releases Report on 2005 Trade Developments and 2006 Trade Prospects

On April 11, 2006, the World Trade Organization (WTO) released its latest world trade report, which assessed global economic growth, 2005 trade developments and trade prospects for 2006. We review here the WTO report.

WTO Agricultural Chair Releases Reference Papers in Effort to Push Negotiations Forward

Ambassador of New Zealand and Chairperson of the World Trade Organization's (WTO) Doha Round of agricultural negotiations Crawford Falconer released five reference papers presenting the state of play of discussions on the key issues of food aid, exporting state trading enterprises (STEs), export credits, and Blue Box and Green Box subsidies disciplines. The papers were released during agricultural negotiations held in Geneva the week of April 17.

Ambassador Falconer acknowledged in a note accompanying the five papers that Members were not in a "closing zone" for finalizing the "negotiating modalities" before the April 30th deadline set out in the Hong Kong Declaration. However, he considered that signs of flexibility in Members' positions emerged for several issues.

Multilateral Highlights

We want to alert you to the following Multilateral developments:

- WTO Restarts Agriculture Negotiations, Members Still Far Apart on Disciplines
- Blame Game Begins as WTO Members Face Failed Objective: End of April, No Modalities
- WTO Appellate Body Reverses Panel Ruling on U.S. "Zeroing"
- Agriculture Negotiations Chairman Shifts Focus to "Numbers" In Effort to Move Stalled Negotiations
- WTO Appellate Body Partially Reverses Compliance Panel Ruling in Softwood Lumber Dispute; U.S. and Canada See Decision as a Win
- U.S. Chief Agricultural Negotiator: U.S. Could Remove Agriculture Offer Without More From Other WTO Members

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- U.S. Submits New Agriculture Proposals In Attempt To Breathe Life Into WTO Negotiations
- U.S. To Request Second WTO Panel, Alleges EU Provides New Subsidies to Airbus
- Lamy Plan to Resolve "Incremental" Differences in Agriculture and NAMA Abandons April Deadlines, Calls for May Ministerial Meeting
- EU Presents New Agriculture Proposal for Sensitive Products; U.S. Expresses Disappointment with WTO Negotiations

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Reports in Detail

United States

Senate Finance Committee Holds Hearing on U.S.-China Economic Relations

Summary

On March 29, 2006, the Senate Finance Committee held a hearing on the state of U.S.-China economic relations. The hearing included **on-the-record** oral testimony from government and business representatives. We review below this testimony and the discussion between the Committee and witnesses.

The full text of the witnesses' statements is available on the Committee website at: http://finance.senate.gov/sitepages/hearing032906.htm.

Analysis

On March 29, 2006, the Senate Finance Committee held a hearing on the state of U.S.-China economic relations. The hearing included **on-the-record** oral testimony from government and business representatives.

- **Senator Charles Grassley (R-IA), Chairman of the Senate Finance Committee** stated that the U.S.-China economic relationship is "an important one" because both countries are "engines of the global economy." Grassley noted that there were certain tensions in the U.S.-China relationship, especially the U.S. trade deficit, but noted that U.S. policy responses to this "should be thoughtful in actions [and the United States] must get it right." On China's alleged currency manipulation, Grassley stated that he and Senator Max Baucus (D-MT) had introduced a bill[1] on March 28th that improves

[1] On March 28, 2006, Senators Grassley (R-IO) and Baucus (D-MT) introduced the "U.S. Trade Enhancement Act of 2006." Under the bill, Treasury would list those countries with "fundamentally misaligned" currencies that have "a material adverse impact" on the U.S. economy. The bill also addresses steps that the U.S. government can take if a country with a "misaligned currency" refuses to negotiate or refuses to "adopt appropriate policies to eliminate" the misalignment following negotiations. The legislation would make the Office of the United States Trade Representative's (USTR) general counsel a Senate-approved position and would establish a Trade Enforcement Working Group. USTR would also be required to report annually to Congress on its priorities and the actions taken in

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the U.S. response to material currency imbalances and enhances U.S. engagement on the issue by fostering more cooperation and greater congressional oversight. Grassley added , the United States needs to be prepared to assert U.S. trade rights effectively. He noted that his proposed legislation strengthens the Administration's ability to enforce U.S. rights under trade agreements and enhances congressional oversight of such efforts.

- **Senator Max Baucus (D-MT), Ranking Member of the Senate Finance Committee** echoed Sen. Grassley's statements and stated that China's record "of keeping the promises that it has made" as part of its World Trade Organization (WTO) accession "is mixed." According to Baucus, China has made great strides on several of its "WTO promises." However, "in many key areas, China has not kept its promises" including those on U.S. beef, intellectual property rights (IPR) enforcement, and subsidies to state-owned enterprises (SOEs). He noted that the Grassley-Baucus bill will "hopefully focus the administration's enforcement efforts" and that it will "make U.S. trade policy better" and "address concerns that Americans have on currency and trade enforcement."
- **Karan K. Bhatia, Deputy USTR** stated that although the U.S.-China bilateral trade relationship has been largely beneficial for both, "it is not sufficiently balanced in the opportunities it provides," and as a result, "some recalibration in the way [the United States] responds to problems is required." He noted that USTR has "a complicated task as [the United States] seeks to achieve the dual objectives of solving specific, immediate problems – resorting to more muscular enforcement mechanisms where necessary – and encouraging the long-term transformation of China into a more rules-based, open economy." He also noted that the key to achieving those objectives is treating China as a fully accountable stakeholder in the international trading system and insisting that "China play a constructive role commensurate with its commercial heft and the enormous benefits that it has gained from its participation in the global trading system." Bhatia referred to USTR's "Top-to-Bottom" review of China released in February 2006 (see February 14 W&C Report on USTR's China review) in describing USTR's "action plan" in dealing with China and noted that "the Administration will not hesitate, when appropriate, to use all tools at its disposal to ensure that China lives up to its commitments, including dispute settlement at the WTO or the use of trade remedies within [the United States'] own legal system." He added the United States "will continue to hold China accountable."
- **Timothy Adams, Under Secretary of the Treasury for International Affairs** stated that Treasury is articulating "the three pillars of what China needs to do to contribute to sustained global growth and

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the preceding year on trade enforcement and would create a consultation process with the House Ways and Means and Senate Finance committees.

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eliminate distortions and imbalances." These are: (i) adopt a more market-based, flexible exchange rate; (ii) shift from investment- and export-oriented growth to a more consumption-based economy; and (3) reform and open up China's financial sector, including its capital markets. Adams stated that "implementing these reforms will promote an orderly reduction of global imbalances and lead to sustained and less volatile Chinese growth to the benefit of its own population and the global economy." Adams also stated that "Treasury is in frequent and substantive consultations with the Chinese government on exchange rate and financial market reform issues" and that Treasury believes the most effective way to promote change in China, including on the exchange rate, is by working in cooperation with Chinese counterparts. He noted that "there are several bills in Congress that would close U.S. markets to Chinese goods if China does not move more on its exchange rate" and that Treasury "does not support those isolationist approaches [because] they would damage the economy and not achieve shared goals." He noted that "it is important that [the United States] manages its relations in a way that preserves global growth and maintains an open trade and investment policy, which is a 'win-win' proposition for both economies," and that "the U.S. Treasury is committed to promoting a path of mutual prosperity and global leadership in economic relations with China."

- **Franklin Lavin, Under Secretary of Commerce of International Trade, U.S. Department of Commerce** stated that regarding subsidies, "the United States has stepped up its engagement with China through the JCCT Structural Issues Working Group and the newly established Steel Dialogue." He also noted that subsidy concerns cover a wide variety of programs, including industrial policies, the role of SOEs, and China's continued use of price controls. According to Lavin, transparency remains a major obstacle to identifying and measuring subsidies in China, "a difficulty furthered by China's continuing failure to provide its annual subsidy notification to the WTO." Lavin did note, however, that China informed Commerce the week of March 20 that it intends to make this notification later this spring.
- **John Frisbie, President of the U.S.-China Business Council (USCBC)** stated that USCBC "favors a balanced approach to U.S. trade policy toward China" that "involves recognizing the significant benefits trade and investment with China have provided U.S. companies and the American economy, while also understanding the challenges experienced by some sectors." He noted that "a balanced approach also requires addressing the barriers still faced by U.S. companies doing business with China, while expanding the opportunities created by the opening of China's economy." Frisbie stated that "China should indeed adopt a market- determined exchange rate" and that the U.S. focus should

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be on encouraging China to undertake the broader financial sector reforms that will enable China to remove capital controls at the appropriate time and allow market forces to determine fully the value of its currency." These include: (i) opening the financial sector to more private companies; (ii) introducing more financial market products such as currency futures; (iii) requiring greater commercial accountability from existing financial sector companies; and (iv) allowing more foreign participation in China's capital and credit markets. Frisbie noted that "the Treasury Department has made these reforms a central part of its engagement with China's government and USCBC fully support this dialogue."

Outlook

The Grassley-Baucus bill was likely the most important development to emerge from the Senate Finance Committee's hearing on China for several reasons. First, the bill falls in line with the Bush Administration's current policy on foreign currency practices, namely by working through the Treasury Department in identifying countries with alleged "currency misalignments" and addresses steps that can alleviate such manipulations. Second, the bill would create a larger role for Congress, induce more congressional oversight, and foster more cooperation between Congress, Treasury, and USTR in an effort to strengthen U.S. trade enforcement. These two points stand in stark contrast with the proposed Schumer-Graham legislation[2] that would (i) unilaterally impose a tariff on Chinese imports and (ii) do so without cooperating with Treasury and USTR. That legislation's sponsors have delayed a vote several times because of Treasury's assurances that it is working with Chinese officials in addressing currency issues. However, sources have indicated that both Senators have become impatient and are pushing to schedule a vote on the bill in the coming weeks. Senators Grassley and Baucus likely unveiled their own legislation on March 28th to undermine support for the Schumer-Graham bill. As Timothy Adams, Under Secretary of the Treasury for International Affairs stated in his testimony, Treasury wholeheartedly supports Grassley and Baucus' view that Congress should work with Treasury and other agencies in addressing China's alleged currency manipulation, rather than pursue "isolationist" approaches, such as the Schumer-Graham bill, that would disrupt U.S.-China relations and also likely be found WTO-inconsistent. All the witnesses' testimonies indicate that most government agencies and private-sector groups are urging Congress to adopt a more cooperative route in addressing China currency issues.

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[2] In November 2005, Senators Lindsey Graham (R-SC) and Charles Schumer (D-NY) introduced a bill (S. 295) that would place a 27.5 percent tariff on Chinese goods imported to the United States if China does not address its alleged currency manipulation and take steps to revalue the yuan.

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House Ways and Means Committee Holds Hearing on U.S.-Oman FTA Implementation

Summary

On April 5, 2006, the U.S. House of Representatives Ways and Means Committee held a hearing to discuss implementation of the Free-Trade Agreement (FTA) between the United States and Oman. The hearing focused on the how the FTA would affect both nations and their economic and political relationship. The hearing included **on-the-record** oral testimony from panelists representing government and business interests. We review below this testimony and the discussion between the Committee and the hearing witnesses.

The full text of the witnesses' statements is available on the Committee website at: http://waysandmeans.house.gov.

Analysis

On April 5, 2006, the U.S. House of Representatives Committee on Ways and Means held a hearing to discuss the implementation of United States-Oman FTA . Committee Chairman Rep. Bill Thomas (R-CA) presided over the hearing, which included testimony from other Committee Members and panelists representing U.S. Government and business interests. The hearing focused on how the FTA: (i) will benefit U.S.-Middle East relations; (ii) will benefit U.S. businesses in the region; and (iii) will harm U.S. interests because of Oman's labor situation:

- **Committee Chairman Bill Thomas (R-CA)** stated that although U.S. trade with Oman amounts to less than $800 million annually, the trade relationship between the two countries is still very positive. He noted that the FTA is significant for more than "the economics and markets involved." Thomas also stated that the Congress should view the FTA favorably based the United States' strong friendship with Oman.
- **Rep. E. Clay Shaw Jr. (R-FL), Chairman of the House Ways and Means Trade Subcommittee,** expressed his support for the U.S.-Oman FTA and his hope that the bilateral agreement would receive much the same Congressional support as the U.S.-Bahrain FTA.[3] Shaw noted that the Oman

[3] On December 7, 2005, the U.S. House of Representatives approved implementing legislation for the U.S.-Bahrain Free Trade Agreement (FTA) (H.R. 4340). House Members passed the FTA by a vote of 327 to 95. Both Republicans and Democrats strongly supported the FTA and expressed satisfaction with Bahrain's commitments for labor improvements and its withdrawal from the Arab League boycott of Israel. On December 13, 2005, the U.S.

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FTA would benefit the United States by providing duty-free access for agricultural and manufactured products and by strengthening the U.S.-Middle East diplomatic relations. He also lauded Oman for breaking away from the Arab League boycott of Israel.

- **Rep. Charles Rangel (D-NY), Ranking Member on the House Ways and Means Committee,** stated that "one of the things that has torn this Committee apart on trade is the interpretation of labor standards" by the U.S. FTA partners. He noted that Oman interpretation of international labor standards was contentious. **Rep. Benjamin Cardin (D-MD), Ranking Member on the Trade Subcommittee,** echoed Rangel's statements, stating that the labor chapter of the U.S.-Oman FTA does not "state that Oman must conform with international labor standards," and that without further amendments to Omani labor laws, he would be "unable to support such an agreement." Cardin noted that "Oman must commit to more labor reforms" and opined that Bahrain, unlike Oman, enjoyed bipartisan support because: (i) Bahrain showed the United States that its laws conformed to International Labor Organization (ILO) labor standards; (ii) Bahrain made a formal commitment to reform its labor law, whereas Oman "only made ministerial declarations"; and (iii) Bahrain made immediate changes to its labor laws, whereas Oman has yet to make the changes that it promised the United States in the agreement. Cardin stated that "several additional steps are necessary before the agreement can receive wide bipartisan support."
- **Susan Schwab, Deputy United States Trade Representative (USTR),** stated that the U.S.-Oman FTA is considered "an important element of U.S. policy in the Middle East," and that "with this agreement, Oman has made legally binding commitments to liberalize trade with the United States." According to Schwab, the FTA will provide new market access to U.S. farmers, manufacturers, and service providers and will "help support ongoing economic, political and social reforms in Oman and promote the benefits of pursuing market liberalizing policies in other countries in the region." Schwab noted that on the first day of the agreement, 100 percent of bilateral trade in industrial and consumer goods will be duty-free and that Oman will provide immediate duty-free access for 87 percent of U.S. agricultural exports. She also noted that under the agreement, "Oman will provide substantial market access across its entire services regime, providing new opportunities for U.S. companies involved in banking and securities, insurance, telecommunications, express delivery services, distribution, health care, construction, architecture and engineering." According to Schwab, the agreement will "help ensure a secure and predictable legal and regulatory environments" for foreign investors and

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Senate approved by voice vote the implementing legislation for the U.S.-Bahrain FTA (S. 2027). On January 11, 2006, President Bush signed into law the implementing legislation for the U.S.-Bahrain FTA.

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includes important transparency and labor reform provisions. She concluded that Oman was a key component of the Bush Administration's U.S.-Middle East Free Trade Area (USMEFTA)[4] initiative.

- **Frances Cook, Chairman of the Ballard Group** and former U.S. Ambassador to Oman, stated that "Oman has gone through tremendous changes over the years" that have now made it more attractive to the United States, and that "U.S. security ties with Oman are both the longest-lived, and the most proven in the region." She opined that the Sultan of Oman "viewed the security relationship with the United States as profoundly in Oman's best interest," adding that the FTA will ensure "a level playing field and strict intellectual property rights (IPR) enforcement, a big boost to U.S. industries." On labor, Cook noted that "labor is a complex issue in all of the Gulf Cooperation Council (GCC) states due to their reliance on foreign labor." She noted, however, that Oman enacted a comprehensive labor code in 2003 in order to ensure compliance with ILO standards, and that "Oman is now ahead of most of its neighbors in implementing a modern labor code."
- **Richard Trumka, Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** stated that "the Oman FTA provides precisely the wrong answers to the challenges faced in Oman and the United States." Trumka opined that the agreement is based on a failed model that "neither addresses the problems faced by workers in Oman nor contributes to the creation of good jobs and decent wages" in the United States. He also stated that workers' rights provisions in Oman are "entirely inadequate to ensure that workers' fundamental human rights are respected," and that the dispute settlement mechanism for workers' rights and environmental protections is "far weaker than available for commercial provisions." He noted that the AFL-CIO was concerned with Oman's 2003 Private Sector Labor Law and the Ministry of Manpower's decrees because they do not sufficiently amend current labor laws such that they comply with ILO standards. According to Trumka, ILO standards mandate that countries allow workers the right to

[4] In May 2003, President George W. Bush proposed the creation of USMEFTA with 18 Middle Eastern countries "to increase trade and investment with the United States and others in the world economy." The United States proposed USMEFTA as a step-by-step plan to increase Middle Eastern countries' integration in the global economy and to promote economic growth in the region. To join USMEFTA, the United States requires each Middle Eastern country: (i) to join the WTO; (ii) to consider participation in the Generalized System of Preferences (GSP), which provides duty-free treatment for products of eligible developing countries imported into the United States; (iii) to enter into Trade and Investment Framework Agreements (TIFAs) that create a framework for trade and investment dispute resolution; (iv) to enter into Bilateral Investment Treaties (BITs) that require governments to offer foreign investors the same legal protections as domestic investors; (v) to enter into comprehensive FTAs with the United States; and (vi) to participate in trade capacity building projects whereby the United States government provides funding to spur government-private partnerships related to international trade in the Middle East.

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form their own organizations “free of interference from employers or government,” but Omani labor law “provides the government with an entirely inappropriate level of oversight and control over [these organizations’] activities.”

Outlook

The U.S.-Oman FTA appears to enjoy widespread support, despite the relatively small level of trade between the two nations. Oman’s geopolitical importance and its place in USMEFTA are likely the cause of such support. Labor, on the other hand, has divided Congressmen into two camps: those who believe Oman has made sufficient labor reforms and those who believe that Oman must take additional steps to conform with ILO standards and codify such reforms. However, Democrats’ opposition to the agreement based on labor concerns might be more political than factual: a comparison of the Bahrain and Oman FTAs reveals that the differences in the agreements’ labor provisions are not very significant. In its agreement with the United States, Bahrain agreed to *introduce legislation* on labor reforms to its Parliament but gave no assurances as to whether Parliament would pass such provisions. As such, Bahrain’s labor commitments appear to be just as effervescent as those of Oman, yet the Bahrain FTA enjoyed wide bipartisan support, despite similar opposition from the AFL-CIO. In this regard, it appears that the Democrats’ opposition to the Oman FTA might simply be election-year politics, with the party placating one of its traditional bases, organized labor.

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Summary

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Analysis

The U.S.-China Economic and Security Review Commission held a hearing on China's WTO compliance and China's subsidies regime for its domestic industries. The hearing covered several panels on: (i) Commission perspectives on China's WTO compliance and use of subsidies; (ii) Administration perspectives on China's WTO compliance and use of subsidies; (iii) Chinese economic planning and the role of subsidies; (iv) currency manipulation as an industrial subsidy; and (v) the impact of Chinese industrial subsidies on U.S. industries. Panelists included members of Congress, representatives from USTR and the GAO, and experts from academia, think tanks, and private firms.

- ***Commission perspectives*.** In opening statements, **U.S.-China Economic and Security Review Commission Chairman Larry Wortzel** stated that China "has made progress" in implementing its WTO obligations, but has failed to protect intellectual property rights (IPR)" and "continues to maintain a system of government subsidies and preferential treatment for domestic industries." **Vice Chairman Carolyn Bartholomew** stated that "many in Congress, for years, have called for greater action from China in the areas of concern where it has created an unfair disadvantage for U.S. industry." She noted that using U.S. leverage "to obtain results from China that benefit U.S. economic and national security is essential to maintaining a workable relationship." **Commissioner and Hearing Co-Chair, Michael Wessel** stated that China's subsidies have resulted in "a huge and increasing bilateral trade deficit with the United States and the migration of production and jobs to China." He also emphasized that "the lack of transparency is a huge barrier" in maintaining a fair trade relationship with China. He noted that the United States "cannot afford much longer to ignore the unfair and unacceptable subsidies that China broadly offers to promote its own economic interests."

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- ***Administration perspectives*.** **Timothy Stratford, Assistant USTR for China Affairs** stated that "U.S.-China trade relations are entering a new phase in which greater accountability on China's part and greater enforcement on the Administration's part are needed." He noted that the Administration acknowledges the lack of balance in the U.S.-China trade relationship and pointed out that IPR is the most significant of the many challenges in the U.S.-China trade relationship. Regarding China's subsidies, Stratford noted that "there will be decreasing tolerance for Chinese efforts to protect domestic industries" and that "China's lack of transparency presents enormous challenges in trying to develop comprehensive information about the various types of financial support that China provides to its domestic industries." On the bilateral trade relationship, Stratford stated that it is important for the United States to "demonstrate effective cooperation" to resolve issues and to achieve more balanced relationship. He noted that "multilaterally, China can strengthen the WTO" by opening its markets and by providing leadership in the negotiations and promotion of fair and free trade. As for enforcement of WTO rules, Stratford stated that "[the] Administration will not hesitate, when appropriate, to use all tools at its disposal to ensure that China lives up to its commitments, including dispute settlement at the WTO or the use of trade remedies within our own legal system."

- ***Chinese economic planning and the role of subsidies*.** **Usha Haley, Associate Professor of the University of New Haven**, detailed the forms and functions of current Chinese subsidies, including direct subsidies and China's undervalued currency. She also noted the negative impacts of subsidies and China's lack of transparency on China's and the United States' economies, particularly on U.S. companies operating in China. **Gregory Chow, Professor of Economics of Princeton University,** suggested that the United States should "promote economic cooperation with China… rather than finding faults in China's compliance with the terms of the WTO in order to justify imposing higher tariffs on Chinese products."

- ***Currency manipulation as an industrial subsidy*.** **David A. Hartquist of the China Currency Coalition (CCC),** urged the United States government to take action on the Chinese government's currency manipulation. He expressed concern that there will be "no significant shift in the Chinese leadership's basic position on the yuan" in the short-term and stated that "the CCC continues to believe that an appreciation in the range of forty percent is desperately needed." He noted that the yuan's undervaluation is "generating dangerous and increasingly demanding economies for the United States, for the global economy, and for China itself." In addition, Hartquist stated that "the best remedy to address the yuan's undervaluation is to amend U.S. countervailing duty law so as to implement Articles I, II, and III of the WTO's Agreement on Subsidies and Countervailing Measures

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(ASCM) provisions in a WTO-consistent manner and treat undervaluation of the yuan…as a prohibited export subsidy." **Robert Baugh of the American Federation of Labor and Congress of Industrial Organizations** (**AFL-CIO),** focused on the impact of currency manipulation of the yuan on U.S. manufacturing industries and American workers. He stated that the current policy related to China's currency "serves the short-term interests of the multinational corporate elite" and "leaves American workers, family farmers, domestic producers, and communities devastated" due to trade deficit and job loss. He stated that the Bush Administration's failure to act more forcefully on the situation is not "understandable," and that Congress should "take action by passing the Hunter-Ryan bill (H.R. 1498)[5] and use its mechanism to send a clear message to the Chinese government that the current situation is unacceptable and will not be tolerated."

- ***Impact of Chinese industrial subsidies on U.S. industries*. Alan Price,** on behalf of **the American Iron and Steel Institute (AISI)** and the **Steel Manufacturers Association (SMA)**, noted that the Chinese government provides a range of subsidies to its steel industry including tax benefits. He stated that China's subsidies for the Chinese steel industry, as implemented by China's new Steel and Iron Industry Development Policy issued in July 2005, "are having profound consequences for both steel producers and downstream users of steel in other countries." He argued that the Chinese government should end its steel policy to create a more level-playing field with other global economies.

Outlook

China's currency policies, its use of subsidies, and IPR enforcement remain the major topics related to U.S.-China trade relations.. These issues have been on the Congressional radar screen for quite some time and the witnesses' testimonies may augment Congressional concerns with the bilateral relationship, especially on China's alleged currency manipulation. On the other hand, Congress already possesses almost all of the information presented at the hearing. On February 14, 2006, USTR released its "top-to-bottom" review of China that highlighted the implications of the changes in the China-U.S. trade relationship and actions that USTR will take to ensure China's WTO compliance. In the report, USTR highlighted China's currency policies, IPR enforcement, and non-transparent subsidies regime as primary issues of concern. Based on this report and others like it, the Bush has altered its strategy toward from

[5] H.R. 1498 would clarify that the exchange-rate manipulation by the People's Republic of China is actionable under the countervailing duty provisions and the product-specific safeguard mechanisms of the trade laws of the United States.

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one of “quiet diplomacy” to active engagement and direct confrontation. This policy shift was evident in the United States’ March 30, 2006 request to the WTO for consultations with China on the disparate treatment of U.S. auto parts imports. Thus, it appears unlikely that the U.S.-China Economic and Security Review Commission hearing will lead to significant changes in U.S. trade policy toward China.

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USTR Releases Results of 2006 Section 1377 Review of Telecommunications Trade Agreements

Summary

On April 6, 2006, the Office of the United States Trade Representative (USTR) released its annual Section 1377 Review of Telecommunications Trade Agreements. The review focused on three areas: (i) high mobile termination rates; (ii) access to leased lines and submarine cable capacity; and (iii) universal service-related programs. USTR discussed problems with each of these issues for several U.S. trading partners. We review below USTR's findings.

The full report is available at USTR's website at: http://www.ustr.gov.

Analysis

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR conducts an annual review of the operation and effectiveness of U.S. telecommunications trade agreements. USTR released its latest Section 1377 Review of Telecommunications Trade Agreements on April 6, 2006. The report is based on public comments filed by interested parties and on information developed in ongoing contacts with industry and private sector representatives in various countries. The review focused on three areas: (i) high mobile termination rates (the cost of interconnecting calls to wireless networks); (ii) access to leased lines and submarine cable capacity; and (iii) universal service-related programs. The review also highlights country-specific issues for Australia, China, Egypt, Germany and India.

I. High Mobile Termination Rates.

USTR reports that "lack of effective competitive pressure on mobile termination rates in certain markets continues to be of concern, since U.S. operators and consumers are forced to absorb such costs when calling foreign mobile networks." According to the report, mobile termination rates can often be up to 20 times the rates fixed network providers charge to access their networks. USTR reports that the problem is "most pronounced in countries whose operators offer free incoming calls to their mobile subscribers, but charge network usage fees to the interconnecting network."

- **Germany.** USTR reports that although Germany has completed an analysis of the mobile termination market and concluded that operators in this market exert significant market power, it "has yet to propose any specific remedies." According to the report, the German regulator, BNetzA, has benchmarked rates charged by its operators against those charged by operators in other EU countries. Because regulators in other EU markets have determined that the rates charged by their

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operators are excessively high, USTR reports that "benchmarking against such rates is not an appropriate basis to determine whether rates charged by German operators are reasonable."

- **Japan.** USTR reports that despite its urging, "Japan has declined to examine the mobile market for termination services and, consequently, is unable to determine whether rates are excessive or whether any remedies may be appropriate to address such rates." According to the report, Japan's dominant mobile operator, DoCoMo, reduced its termination rate by 2.6 percent in 2006, but USTR notes that "this is the smallest rate reduction in ten years and suggests that rate reductions have plateaued in this market."
- **Mexico.** USTR is concerned that Mexico's failure to resolve a dispute involving mobile termination rates could "seriously affect U.S. operators and their Mexican affiliates that operate in both local and long-distance markets in Mexico." The report notes that in January 2005, Mexican cellular companies and the dominant local fixed-line service provider, Telmex, concluded agreements on the rate Telmex would pay cellular companies to terminate calls on their mobile networks. U.S. local fixed-line providers, however, did not agree to the Telmex rates and stated that they were excessively high. In March 2005 several competitive local fixed-line carriers requested arbitration by COFETEL, Mexico's regulatory authority. USTR is concerned that COFETEL's arbitration has "dragged on" for over a year and will urge the regulatory body to "resolve the dispute expeditiously."
- **Peru.** USTR notes that Peru's regulator, Osiptel, is in the process of reviewing the mobile termination rates charged by operators in Peru. In November 2005, Osiptel issued a decision "designed to lower mobile termination rates towards a cost-oriented level over the course of three years." The report notes that USTR will continue to urge Osiptel to "remain vigilant against pressure to raise these rates."
- **Switzerland.** USTR notes that "Switzerland's mobile termination rates are still among the highest of any developed economy," and that Switzerland's dominant provider, Swisscom, remains government owned, which may be creating a conflict of interest between effectively regulating the sector and protecting the government's financial interest in that company.

II. Access to Leased Lines and to Submarine Cable Capacity.

USTR reported that commenters expressed concerns with access to and use of leased lines and submarine cable systems. Issues include provisioning times for leased lines, pricing levels for these lines, and the manner in which they are offered.

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- **India.** In its report, USTR notes that "U.S. operators have perennially identified access to submarine cable systems" controlled by VSNL, India's dominant international carrier, "as a serious problem in the Indian market." According to the report, U.S. operators in India are subject to artificial shortages of bandwidth into and out of India and inflating prices due to: (i) VSNL's continued refusal to permit interconnection at its cable landing stations; (ii) VSNL's potentially anti-competitive provisioning practices; and (iii) VSNL's failure to activate additional capacity on these cables. The report also notes that the Telecom Regulatory Authority of India (TRAI) "took action to overcome issues associated with access to and use of submarine cable systems in the Indian market" by submitting recommendations to the Indian Department of Communications on steps to facilitate competitive access to submarine cable systems. TRAI recommendations include: (i) DoT granting TRAI authority to require operators owning cable landing stations to provide licensed operators with equal access to bottleneck facilities on a non-discriminatory basis and to publish the terms and conditions for access to such stations; and (ii) DoT granting TRAI the ability to determine and specify cost-based access charges through regulation.
- **Singapore.** USTR reports that "onerous conditions for accessing leased lines in Singapore have plagued competitors" and notes that when competitors have sought to install their own lines, SingTel, the majority government-owned, dominant carrier, refuses access to its ducts thus "creating further inefficiencies and slowing competitive entry." The report also notes that Singapore's regulator, the Infocomm Development Authority (IDA), requires SingTel to offer competitors combinations of high and low-capacity lines at reasonable rates, but that "SingTel's practice of appealing [such] regulatory decisions directly to the Minister of Communications has reduced transparency and predictability in the regulatory process."
- **Germany.** USTR notes that the situation in Germany is similar to that in Singapore, and that "competitive carriers in the German market have long sought access to combinations of high-capacity trunk lines and lower capacity end-user links." According to the report, the German regulator is considering whether it should require the dominant carrier, Deutsche Telekom (DT), to offer such services.

III. Universal Service-Related Programs.

For the first time ever, USTR has highlighted as an area of concern "the emergence of new regulations around the world that are being billed as universal-service related." The specific problem posed by such regulations, according to USTR Rob Portman, is that "they may, in fact, limit competition or create barriers for foreign telecom operators." USTR intends to remain "vigilant" as countries implement such programs,

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to ensure that they "do not constitute unreasonable barriers to access and use of networks" and are administered in a "transparent, non-discriminatory and competitively-neutral manner."

- **Jamaica.** USTR notes that in April 2005, Jamaica issued an order that required its domestic telecommunications carriers to impose a surcharge on all incoming international calls. The order's purpose is to fund Jamaica's e-Learning Project, a universal service program for building broadband access for schools and libraries in Jamaica. USTR is concerned that "Jamaica is choosing to fund this program predominantly, if not exclusively, through fees imposed on foreign operators," and that the program "appears to lack sufficient transparency to determine whether the extraordinarily large surcharge is necessary to accomplish Jamaica's goals." USTR also notes that is "troubled about the lack of information on how the funds are to be used, as Jamaican authorities do not appear to have identified the actual costs of expanding broadband access for schools and libraries, nor have they provided details of how they plan to administer disbursal of funds." The funds originate largely from U.S. sources, and USTR notes that it "has a particular interest in seeing an accounting of the funds that have been collected, whether they are appropriate to the needs identified, and how they have been used."
- **Japan.** The report states that USTR remains concerned about Japan's universal service program and that under Japan's October 2005 program, designed to address high-cost regions, "the only entities that appear eligible for this fund are the regional fixed-line operators NTT East and West." The report notes that USTR has recommended to Japan that it reform this program to enable a broader range of operators, including mobile carriers, to apply for funding from this program to serve these regions.
- **India.** USTR notes that India's access deficit charge (ADC), which cross-subsidizes local service with revenue generated by long distance calls, has generated problems for foreign operators. On February 23, 2006, TRAI announced that it would impose a more than 50 percent reduction in its current ADC for international calls and move towards a revenue-share-based ADC for long distance calls; TRAI also reaffirmed its commitment to reduce the ADC to zero by the end of 2009. USTR remains concerned, however, that "the new ADC model will not apply to international calls and that they may not benefit fully from the rate reduction unless Indian firms pass their savings on to the U.S. carriers with which they partner."

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IV. Additional Issues.

- **Egypt.** USTR notes that "evidence has emerged that Telecom Egypt (TE), the majority government-owned, dominant operator in Egypt, appears to have been discriminating among foreign carriers seeking to interconnect with its network," and that such discrimination raises issues related to Egypt's World Trade Organization (WTO) commitments to ensure interconnection with a major supplier on non-discriminatory terms and conditions. USTR notes that if Egypt fails to take steps to address the issue by June 2006, "USTR will decide whether additional action may be warranted on this issue."
- **Australia.** USTR notes that the Australian Parliament has recently authorized the sale of its remaining stake in dominant carrier, Telstra, but that the effort "has stimulated a widespread domestic debate about Telstra's willingness and ability to continue its role as a universal service provider without this governmental stake." According to USTR, Telstra has been aggressive in attempting to undermine the authority of Australia's regulator, the Australian Competition and Consumer Commission (ACCC), by directly appealing to the Department of Communications, Information Technology, and the Arts (DCITA) for regulatory relief. USTR noted that it will continue to monitor the situation to ensure that Telstra successfully breaks away from government ownership.
- **China.** USTR notes that although "China has begun to discuss making changes to its capitalization requirement for telecommunications operators," it has taken no concrete steps to address this significant market access barrier. USTR also notes that China is in the process of planning to issue new licenses for third generation wireless services, but that the process "suffers from a lack of transparency and raises concerns that China may issue such licenses in a manner that is not in keeping with the licensing and spectrum management commitments it undertook through adoption of the basic telecommunications Reference Paper when it joined the WTO."
- **Germany.** USTR notes that a key concern regarding Germany's telecommunications regulatory policy is "its apparent endorsement of temporary monopoly power as a condition for innovation and as justification for broad deregulation of DT." USTR strongly supports deregulation to promote facilities-based competition but notes that "the promotion of deregulation before competitive conditions warrant such steps may undermine the development of an efficient and competitive market."
- **India.** USTR notes that "U.S. telecommunications companies have expressed serious concerns" about certain conditions of both the Guidelines for Issue of License for International Long Distance Service and the Guidelines for Issue of License for National Long Distance Service that include

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restrictions on remote management of telecom networks, and on the routing of traffic, and the transfer of accounting, user, and network infrastructure information, outside of India. According to USTR, "these restrictions are among the most severe in the world" and "could erase the practical benefits of the new foreign ownership limits, as it may be impossible for U.S. carriers that provide global corporate data networks to comply with these restrictions within the context of their current business models."

Outlook

According to USTR Rob Portman, "barriers in foreign telecommunications markets negatively impact U.S. telecommunications manufacturers and operators, as well as U.S. consumers and any U.S. company that does business abroad." With the release of the 1377 Review for 2006, USTR has managed to identify those practices that it deems interfere with U.S. telecommunications operators' ability to work in foreign markets. As such, USTR will focus on modifying or eliminating these barriers over the next year.

In contrast to last year's Section 1377 Review, the breadth of issues highlighted for 2006 is somewhat narrower in scope, although the number of countries singled out for specific attention has not diminished. Certain subjects previously identified as areas of concern, including excessive regulatory requirements and licensing fees, burdensome testing and certification requirements, and government mandate on technical standards, were not highlighted as such in the 2006 Review, likely indicating that USTR feels that its trading partners have taken or are taking adequate steps in addressing these problems. However, as noted above, one entirely new area of concern has emerged, which is the promulgation of regulations ostensibly intended to promote universal service objectives. Furthermore, of the specific countries mentioned, increased attention has in particular been directed towards various practices on the part of China, suggesting that USTR intends to take a stronger stand in enforcing its agreements with China.

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GAO Testifies on Challenges in Applying CVDs to China

Summary

On April 4, 2006, the United States Government Accountability Office (GAO) released testimony that GAO Director of International Affairs and Trade Loren Yager presented before the U.S.-China Economic and Security Review Commission on the application of countervailing duties (CVDs) to China. The U.S.-China Economic and Security Review Commission's April 4 hearing on China's World Trade Organization (WTO) compliance reviewed China's ability to comply with its WTO obligations and the effects of its industrial subsidies on U.S. industries and on the global economy. We review here the GAO's analysis of applying countervailing duties (CVDs) to China, challenges that would arise, and the likely results of applying CVDs on Chinese products.

Analysis

I. Background

The WTO's Agreement on Subsidies and Countervailing Measures (ASCM) defines a subsidy as "a financial contribution by a government or any public body within a WTO member that confers a benefit." Upon its accession to the WTO, China agreed to eliminate 3 of its 24 existing subsidy programs. However, given China's current level of development and reform, some WTO Members are concerned that China could maintain or raise its subsidies. Members are also concerned that China has submitted incomplete reports to the WTO on its subsidies.

Under U.S. trade law, the United States will impose CVDs on imports when it determines that the foreign producers of such imports benefited from a government financial contribution that was specific to the foreign enterprise or industry, and upon a determination that the U.S. producers of like or similar products are "materially injured" or "threatened with injury." The United States, however, does not apply CVDs to imports from China because the U.S. Department of Commerce (DOC) classifies China as a "non-market economy" (NME) country. Under U.S. law, DOC will classify a country as an NME when it determines that a nation's "sales of merchandise do not reflect the fair value of the merchandise." It has classified China as an NME since 1981. DOC's refusal to apply U.S. CVD law to Chinese imports is based on two principles: i) from a legal perspective, the DOC does not have explicit authority to apply CVDs on imports from NME countries; and ii) as a practical matter, DOC cannot arrive at economically meaningful conclusions regarding subsidies in NMEs. DOC has maintained this position since 1984.

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II. Two Paths to Apply Countervailing Duties to China

GAO reports that there are two alternative paths for applying U.S. CVD law to China: **(i) the market economy path** and **(ii) the NME path**. Under the market economy path, DOC could change China's NME status and reclassify it as a market economy in whole or in part. DOC could then apply U.S. CVD law to China on a country or industry basis.

According to the NME path, the DOC could reverse its longstanding position and apply CVDs without changing China's NME status. GAO notes that in 1984, in rulings denying CVDs against Poland and Czechoslovakia, the DOC determined that it did not have explicit legal authority to apply CVDs to NME countries.

III. Challenges in Applying CVDs against China

Yager's testimony states that there are challenges in applying CVDs on Chinese imports through either path:

- **Market economy path.** To determine whether a country is classified as a market economy country, it has to pass certain criteria that the DOC has deemed necessary for any functioning market economy. In the testimony, Yager stated that because it may be difficult for China to meet these criteria in the near future, labeling China as a market economy country might be inappropriate.
- **NME path.** GAO believes that "absent a clear grant of authority from Congress, [reversing the DOC's 1984 decision not to apply CVDs to NMEs] could be challenged in court" with uncertain results. In the past, the U.S. Court of Appeals has emphasized that "any selling by NME countries at unreasonably low prices should be dealt with under the antidumping law," and that "there was no indication that Congress has intended or understood that the CVD law would apply."
- **Overall challenges.** Regardless of the path adapted, Yager states that the DOC would continue to face "substantial practical challenges in identifying Chinese subsidies and determining appropriate CVD levels." In joining the WTO, China committed to provide information on its subsidies; however, trade experts argue that it is difficult to obtain sufficient information to understand the benefits derived through Chinese subsidies. DOC officials noted that "underlying features of the Chinese economy continue to make it difficult to identify appropriate benchmarks for measuring subsidies."

IV. Likely Results in Applying CVDs

Yager also testified on the potential results in adopting either path in applying CVDs to China:

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- **Market economy path.** Experts note if the DOC reclassified China as a market economy, the DOC would have to change its methodology for calculating AD duties on affected Chinese imports. GAO analysis indicates that this change would be significant because CVD actions normally have a companion AD action, and that the change would likely result in lower AD duties for most Chinese companies. When imposing both CVDs and AD duties on imports from market economies, DOC has to adjust AD duty rates downward by any amount that is attributable to countervailable subsidies. Experts argue that it is not clear whether newly imposed CVDs would compensate for the likely reductions in AD duty rates.
- **NME path.** Experts worry that if DOC were to apply CVDs to China as an NME, a potential "double counting" of domestic subsidies could emerge, especially when the DOC uses third-party information to quantify subsidies. GAO argues that current U.S. law does not provide for adjusting AD duty rates or establish the authority to avoid double counting in this situation.
- **Overall results.** GAO experts agree that imposing CVDs on imports from China would provide U.S. producers an explicit import relief measure that targets Chinese government subsidies. However, GAO reports that "it is unclear whether, on a net basis, applying CVDs would provide greater protection than U.S. producers already obtain from antidumping duties." GAO notes that CVDs vary but tend to be lower than antidumping duties, particularly those on imports from NMEs. According to GAO, the average CVD rate currently imposed on market economies was about 13 percent while the average AD rate was about 26 percent.

Outlook

Congress, DOC and GAO have recently considered whether China's subsidy programs warrant a dramatic shift in the application of U.S. CVD law to imports from China. In 2005, several Congressional members submitted legislation that would follow one of the Yager's paths to effectuate the imposition of CVDs on NME imports. Whether the United States decides to pursue either path is likely contingent on China's notification to the WTO subsidies. China publicly committed to provide such information this year.

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Officials Hold 17th U.S.-China Joint Committee on Commerce and Trade Meeting

Summary

On April 11, 2006 U.S. Secretary of Agriculture Mike Johanns, U.S. Secretary of Commerce Carlos Gutierrez and U.S. Trade Representative Ambassador Rob Portman met with Chinese Vice Premier Wu Yi in Washington for the 17th senior-level meeting of the U.S.-China Joint Committee on Commerce and Trade (JCCT). The officials discussed bilateral trade issues, including market access for U.S. goods and services, China's lack intellectual property rights (IPR) enforcement, and steel capacity. We review below the meeting's outcome and China's commitments to address these issues.

A fact-sheet on U.S. Request Outcomes is available on the U.S. Department of Commerce website at: http://www.commerce.gov/opa/press/Secretary_Gutierrez/press_releases.htm

Analysis

Senior-level U.S. and Chinese officials met in Washington on April 11, 2006 for the 17th JCCT meeting. The meeting focused on four U.S. trade concerns: (i) market access; (ii) IPR enforcement; (iii) legal and regulatory non-transparency; and (iv) steel capacity.

- **Market Access.** As part of its commitments to improve market access for U.S. goods, China agreed to resume conditionally U.S. beef imports subject to both sides' establishment of a technical protocol. China also agreed to simplify testing and certification standards for medical equipment imports. Regarding market access for services, China committed to "appropriately adjust" capitalization requirements for telecommunications service providers and to discuss these adjustments under the JCCT Telecommunications Dialogue. China's capitalization requirements are the world's highest and a U.S. telecom service provider has yet to enter its market. China also reemphasized earlier commitments to ensure technological neutrality for third generation (3G) mobile communication standards and to ensure an open regulatory environment for foreign express delivery companies.

- **IPR Protection and Enforcement.** The United States lauded China's closure of 14 illegal optical disc manufacturing factories, and China agreed to cooperate with the United States to combat optical disc piracy. China also announced that it would require Chinese personal computer (PC) manufacturers to ship all computers pre-loaded with legal operating system software to reduce demand for illegal software, and that it would consult with U.S. officials about proposals to ensure the installation and use of legitimate software. China also committed to remove pirated and counterfeit

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goods from public markets and to intensify enforcement, legislation and education efforts to stop their manufacture, sale and purchase.

- **Legal and Regulatory Non-Transparency.** To increase legal and regulatory transparency and comply with WTO transparency rules, China announced that it would require all government ministries to publish any new trade-related law or regulation in the Ministry of Commerce's (MOFCOM) Gazette, a single, publicly available volume similar to the U.S. Federal Register. China also agreed to sign the WTO Government Procurement Agreement (GPA) and pledged to submit to the WTO by December 2007 an "entity offer" that lists the government ministries, state-owned enterprises (SOEs), products and services that China will subject to the GPA's disciplines.
- **Steel Capacity.** Both parties agreed to convene a second meeting of the JCCT Steel Dialogue and to include private sector participants in the meeting.

Outlook

The U.S. and Chinese governments established the JCCT in 1983 as an annual high-level mechanism to improve commercial ties and as a vehicle to resolve trade disputes. Both sides expanded the dialogue in 1997 to include sub-ministerial and working group-level dialogues that continue throughout the year. The JCCT contains a number of subcommittee-level dialogues and working groups to address specific issues such as IPR, medical devices and pharmaceuticals, steel and high-technology and strategic trade.

Although China committed to address U.S. concerns, many of these commitments are not specific, and China must prove its willingness and ability to implement them. China's announcement on software installation requirements and its agreement to reopen its market to U.S. beef indicate that officials did make progress in the meeting, but it is clear from China's vague assurances on other issues such as adjustment of capitalization requirements and 3G technological standards that much work remains incomplete. China's latest assurances on capitalization requirements differ little from those it made as part of the 2005 JCCT agreement. Moreover, some of China's 2006 IPR commitments, such as government sector software requirements, are repeat 2005 pledges.

The United States has indicated its preference for negotiation as a tool to resolve trade disputes but has also demonstrated a newfound willingness to use the WTO dispute settlement process to resolve bilateral trade disputes. Should China fail to follow through on its JCCT commitments, particularly on IPR enforcement, the United States might move beyond the bilateral negotiations at the JCCT or other for a and resort to more direct confrontation at the WTO.

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U.S. Undersecretary for International Trade Discusses 17th U.S.-China Joint Commission on Commerce and Trade

Summary

On April 18, 2006 the Washington International Trade Association (WITA) hosted a briefing with Department of Commerce's (DOC) Undersecretary for International Trade Frank Lavin. Lavin delivered remarks on the 17th senior-level meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the meeting's outcome. He noted that the United States and China made progress in market access, transparency, intellectual property rights (IPR) and steel, but stressed that the meeting's success is contingent upon China's implementation of its commitments and a positive marketplace response to their implementation.

Analysis

At an April 18, 2006 WITA meeting, DOC Undersecretary for International Trade Frank Lavin briefed attendees on the outcome of 17th senior-level JCCT meeting held on April 11. Lavin noted that the meeting produced positive outcomes on market access, transparency, IPR and steel, but admitted that China did not make substantive commitments to address all U.S. concerns. He stated that although he expected only incremental success in negotiations with China, he emphasized the long-term importance to both countries of engagement.

On market access, Lavin stated that both sides made "good movement" on certain issues, including beef, telecoms, medical devices, and direct and multilevel sales. China agreed to reopen conditionally its market to U.S. beef imports subject to completion of a technical protocol. Lavin stated that China's decision pleased the U.S. Department of Agriculture. On the Chinese telecommunications sector, Lavin noted that China agreed to make "appropriate adjustments to [its] capitalization requirements" that are the world's highest at $241 million and constitute a significant barrier to U.S. firms. China also agreed to discuss these requirements and other entry barriers in a new JCCT dialogue.

Lavin acknowledged the U.S. business community's frustration with non-transparency but noted that the JCCT had made "a step ahead" with China's agreement to accelerate its acceptance of the WTO Government Procurement Agreement (GPA). Lavin commended the Chinese government's announcement to require all government ministries to publish all new trade-related regulations in the Ministry of Commerce's (MOFCOM) Gazette, however, he noted the United States would also like a comment period on any new regulation.

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Lavin described China's decision to require manufacturers to pre-install legal operating system software on all personal computers manufactured or sold in China as one of the "most exciting" developments of the meeting and noted that it would reduce demand for illegal software at the factory gates. Lavin stated that he hoped China would apply the same principal to optical disc piracy but expressed disappointment at China's "limited response" to a U.S. proposal on digital identification measures that identify the name and location of a disc's manufacturer.

According to Lavin, both parties had "a good launch" on the establishment of the new JCCT Steel Dialogue but the process was just beginning and both governments should use the dialogue to cooperate and avoid future friction on steel. Lavin indicated the potential for steel overcapacity in China and noted that such overcapacity was not in China's interest and it should consider the cost of subsidizing excess production capacity.

Outlook

China may have disappointed U.S. officials with a number of non-substantive commitments on market access, transparency, and IPR, but Chinese businessmen that traveled with the JCCT delegation delighted certain sectors of the U.S. business community with 107 contracts worth US$16.2 billion. Chinese computer manufactures will purchase US$1.2 billion of Windows software that they will install on domestically manufactured personal computers. This indicates that China is serious about IPR enforcement and that it hopes to send a positive signal to the United States prior to President Hu Jintao's first visit to Washington on April 20. However, weak JCCT outcomes and other U.S. economic concerns such as China's currency and energy policies may overshadow this signal.

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United States Highlights

Senate Finance Committee Requests Submissions for Senate Miscellaneous Tariff Bill

On April 25, 2006, Senate Finance Committee Chairman Sen. Charles Grassley (R-IO) and ranking member Sen. Max Baucus (D-MT) requested that Senators submit items for possible inclusion in a Senate Miscellaneous Tariff Bill (MTB). Both Senators sent a "Dear Colleague" letter dated April 21 requesting the submissions. According to the letter, items must be "non-controversial" (*i.e.*, not objected to by a domestic producer of the product for which the duty reduction is being sought) and must amount to less than $500,000 in annual lost revenue. The Committee is in the process of compiling the bill and the deadline for consideration is **May 26**.

The MTB contains "non-controversial tariff bills that temporarily eliminate or reduce duties on narrowly defined products that are imported into the United States and… liquidate or re-liquidate certain duty entries that were incorrectly classified by the Bureau of Customs and Border Protection (CBP)." Grassley and Baucus have stated that they will "strictly adhere to the criteria" in this MTB, as Grassley and Baucus expect the bill will be passed by unanimous consent, rather than be put to a formal floor vote. Following the May 26 deadline for submissions, the Finance Committee will seek public comments on the provisions, and the U.S. International Trade Commission (ITC) will review the product descriptions and seek comments from industry.

U.S. and Canada Resume Softwood Lumber Negotiations, Attempt to Create Framework Agreement

U.S. and Canadian officials have resumed negotiations in an attempt to achieve by the end of April a framework agreement that would settle the longstanding bilateral dispute over trade in softwood lumber. On April 25, 2006, the United States issued to Canada a proposal on a negotiated settlement. Although the proposal has not been made public, sources indicate that it calls for an export tax that would be applied based on three "triggers": (i) market share in the United States; (ii) softwood lumber prices; and (iii) foreign exchange rates. Sources note that the United States made the proposal in light of its April 27 deadline to decide whether to seek an Extraordinary Challenge Committee (ECC) to rule on a North American Free Trade Agreement (NAFTA) panel decision that called on the U.S. Department of Commerce (DOC) to reduce its CVD rate on Canadian lumber to a *de minimis* level. Officials from the Office of the United States Trade Representative (USTR) stated that "the United States continues to believe that a negotiated settlement provides the only durable, long-term solution to this dispute."

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Sources note that the U.S. proposal's key trigger would be the average share of the U.S. market held by Canadian exporters over the past five years. Accordingly, if annual Canadian exports fall within 90-110 percent of the five-year average, the export tax would be set at 5 percent. If exports exceed the five-year average, the tax would double to 10 percent and if exports fall below 90 percent of the average, the tax would decrease to 2.5 percent. The second trigger would be based on lumber prices but would only apply if lumber prices fall below $340 per 1,000 board feet. If the price is $310-$340 per 1,000 board feet, the export tax would double to 10 percent, and if the price falls below $310 per 1,000 board feet, the tax would increase to 15 percent. The third trigger would be based on the foreign exchange relationship between the currencies of the two countries: if the Canadian dollar falls below US$ 0.75, the tax would increase to 20 percent, and if the Canadian dollar were to rise to US$ 0.95 or higher, the tax could fall as low as zero.

On April 25, Canadian International Trade Minister David Emerson stated that both sides had not yet reached an agreement and noted that the two sides have been close to an agreement several times since the latest softwood lumber dispute began in 2002; they have failed to conclude an agreement each time. He also stated that "Canada is committed to the softwood lumber industry" and will only participate in a settlement that respects NAFTA and is in the best interests of the industry and its workers. USTR Rob Portman stated that the softwood lumber dispute was "calling out for a reasonable settlement" but did not provide further information on the state of the softwood negotiations. He noted, however, that the United States is "continuing to discuss possible solutions with Canada."

The bilateral trade dispute over Canadian softwood lumber imports to the United States has endured in some form for over 20 years. Prior to the latest AD/CVD action against Canadian lumber imports, the Canada-United States Softwood Lumber Agreement (SLA), which expired on March 31, 2001, provided Canadian softwood lumber exporters with guaranteed market access to the United States and a guarantee against U.S. trade action during the five-year lifetime of the agreement. Under that Agreement, Canada was permitted the fee-free export to the U.S. of 14.7 billion board feet per year and was required to collect fees when that limit was exceeded, using a tiered fee system. In exchange, the United States committed to dismiss any new petitions for trade action against Canada during the lifetime of the Agreement.

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USTR Portman Plans Trip to Geneva to Discuss Doha Status, Schwab to Accompany

On April 25, 2006, United States Trade Representative (USTR) Rob Portman announced that he would travel to Geneva the week of May 1 in an effort to move the World Trade Organization's (WTO) stalled Doha Round negotiations and encourage WTO Members to redouble their efforts to reach an agreement. Portman expressed disappointment with WTO Director General Pascal Lamy's decision to cancel the ministerial-level meetings that were to have occurred on April 24. Last week, WTO Members agreed to scrap the meeting after it was apparent that they would not achieve full modalities in agricultural market access and non-agricultural market access (NAMA) by the April 30 deadlines established at the WTO's December 2005 Ministerial Conference in Hong Kong. Portman stated that "it's always good for the ministers to come together eyeball to eyeball to talk honestly about [their] differences and attempt to bridge those differences," and that his planned Geneva trip is meant to discuss the negotiations with "others who are interested in a successful conclusion." Portman will also meet with WTO Director-General Pascal Lamy and the negotiating groups' chairmen to "try to figure out ways to break the deadlock and come to a resolution." It is unclear whether Portman will meet with European Trade Commissioner Peter Mandelson while in Geneva.

Deputy USTR Susan Schwab will accompany Portman on his trip. On April 18, 2006, President Bush selected Deputy USTR Susan Schwab to become the new USTR and replace Portman, whom the President tapped to serve as the next director of the U.S. Office of Management and Budget (OMB). Sources indicate that Portman will bring Schwab along in an effort to smooth her transition to USTR. Schwab, however, must await Congressional confirmation before formally beginning her term as USTR.

On the negotiations and the EU's role, Portman stated that he "would just hate to see a minority, a small number countries, within one trading bloc decide the fate" of the WTO negotiations. Portman's statements come just days after the United States and the EU blamed each other for Members' failure to meet the April deadlines for full modalities. EU Trade Minister Peter Mandelson blamed the United States and a developing country group led by Brazil and India for the failure to achieve modalities. He stated that the stalled negotiations came from these countries' "hiding behind high-sounding but unrealistic demands." U.S. officials countered Mandelson's accusations with indictments of their own and noted that "the EU is quite adept at speeches, press conferences, and finger pointing; [the United States] just wishes they would put that same kind of energy into the needed negotiations to make the WTO talks a success."

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Portman's trip to Geneva is likely as much political, as it is trade-related. The U.S. business community and critics of U.S. trade policy have expressed concerns that Portman's departure from USTR and appointment as Director of OMB, particularly at such a critical time in the Doha negotiations, signifies that the Bush Administration is more concerned with domestic issues than international trade and the WTO talks. Portman's trip to Geneva is likely an attempt to assuage these fears by demonstrating that the Administration is not abandoning Doha; it also allows Schwab to begin building relationships within the WTO as the new point-person for United States trade relations. Whatever the case may be, it seems unlikely that Portman's trip will drastically change the current state of the multilateral trade talks, which are inching ever closer to failure.

Mixed Reactions to Portman's Departure from USTR, Schwab's Nomination

On April 18, 2006, President Bush nominated current United States Trade Representative (USTR) Rob Portman to serve as the next director of the Office of Management and Budget (OMB) and selected Deputy USTR Susan Schwab to replace Portman as USTR. Both nominations will require Senate confirmation. Reaction to the changes at USTR have been mixed. Chairman of the U.S. House Ways and Means Committee Rep. Bill Thomas (R-CA) stated that it is critical that the Senate move quickly to confirm Schwab's nomination because of "timely issues" on the U.S. trade agenda. Sen. Saxby Chambliss (R-GA), chairman of the Senate Agriculture Committee, stated that "Schwab's experience at USTR and the private sector will be a great asset to the administration in the months ahead," and that "this is a critical time in the [World Trade Organization (WTO)] Doha negotiations and the future profitability of U.S. agriculture hinges on securing an ambitious agreement that achieves significant market access around the world."

However, chairman of the Senate Finance Committee Senator Charles Grassley (R-IO) opined that the personnel shift at USTR is "bad news" for ongoing WTO negotiations because "having Rob Portman leave that post at this crucial time in WTO talks" could prove detrimental. Senator Max Baucus (D-MT), ranking Democrat on the Senate Finance Committee, also expressed concern that "the transfer of power at USTR" could create uncertainty among U.S. trading partners and Congress regarding U.S. trade policy. He noted that "it's a critical moment in international trade and the world needs to see a strong, consistent commitment to U.S. leadership."

European Trade Commissioner Peter Mandelson also opined that Portman's departure could complicate the WTO talks. He added that the EU will "of course manage without him," but that "at this stage in the

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round, it would have been easier to manage with him." WTO Director General Pascal Lamy stated that he "looks forward to working with [Schwab] as we enter a decisive phase in the negotiations, when key players will be asked to take bold moves, in order to secure a successful conclusion of the Round by the end of the year."

The U.S. business community welcomed President Bush's nomination of Schwab as USTR. William Reinsch, president of the National Foreign Trade Council (NFTC), opined that Portman's departure and Schwab's nomination would not likely "have an adverse impact on the WTO talks." He noted that he is "sorry Portman is leaving because he's done a terrific job," but that "USTR couldn't find a more appropriate replacement than Schwab." Thomas Donohue, president and CEO of the U.S. Chamber of Commerce, noted that "this is a critical year for the trade agenda" and opined that "Schwab can make sure the U.S. doesn't miss a beat at the negotiating table as Rob Portman moves on." John Engler, president of the National Association of Manufacturers (NAM), noted that "Susan Schwab is an excellent choice to take the lead now at USTR."

Sources note, however, that Portman's departure could signal to the United States' trading partners that trade has become less of a priority for the Bush Administration. These sources have also opined that shift at USTR could "slow down" the Doha Round negotiations and Congressional consideration of bilateral free trade agreements (FTAs). Portman "was not known to his international counterparts when he became USTR, but he was perceived to have domestic stature as a seven-term member of the House of Representatives" and a personal connection to President Bush. Critics allege that Schwab does not "have the same strong connection to President Bush."

If critics' assessments are correct, the moves at USTR might complicate WTO negotiations and FTA dialogues despite Schwab's qualifications for the position. Furthermore, regardless of perceptions, Schwab's confirmation process alone may further delay the WTO's Doha Round negotiations, which are in a critical phase due to the need to conclude a comprehensive trade agreement by December 2006 to avoid the mid-2007 expiration of Presidential Trade Promotion Authority (TPA). The transition also could delay the United States' FTA schedule, which is also hurried by TPA expiry. Moreover, the replacement of a Congressional insider in Portman with Schwab, a career bureaucrat/academic, may signal that the Bush Administration will not expend the political capital necessary to seek TPA's renewal, or even extension, in the coming year.

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Portman to Leave USTR, Deputy USTR Schwab Selected as His Replacement

On April 18, 2006, President Bush selected current USTR Rob Portman to serve as the next director of the Office of Management and Budget (OMB). Portman replaces Josh Bolten, who was named the President's chief of staff last month. Portman's appointment must next move through Senate confirmation although Congressional sources have opined that Portman is a popular figure on Capitol Hill and that his confirmation will not be problematic. It is unclear as to when the Senate will schedule confirmation hearings. As OMB Director, Portman will be responsible for assisting the President in overseeing the preparation of the federal budget and to supervise its administration in Executive Branch agencies. He will also oversee and coordinate the Administration's procurement, financial management, information, and regulatory policies. Portman served as USTR for less than a year.

President Bush also selected Deputy USTR Susan Schwab to serve as Portman's replacement at USTR. Schwab received her Deputy USTR Senate confirmation on October 28, 2005 and oversaw relations with the Middle East, Latin America and the Caribbean, Mexico, and Canada. Her main areas of focus were: (i) negotiations on the Free Trade Area of the Americas (FTAA); (ii) continuing free trade Agreement (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 World Trade Organization (WTO) accessions and services, investment, and intellectual property in the WTO Doha Round negotiations. Schwab received her Bachelor's degree in political economy from Williams College, a Master's degree in Development Policy from Stanford University, and a Ph.D. at the George Washington University School of Business and Public Management. She began her career as a USTR agricultural trade negotiator in 1977 followed by positions at the U.S. Embassy in Tokyo, the office of Senator John Danforth (R-MO), as Assistant Secretary of Commerce and Director General of the US & Foreign Commercial Service under President George H.W. Bush, and as Director of Corporate Business Development for Motorola, Inc. Between 1995 and 2004, as President of the USM Foundation, Schwab served as Dean of the University of Maryland's School of Public Policy.

Portman's move to OMB comes at a critical time for USTR. With stalled WTO negotiations threatening to make the Doha Round an incomplete goal and with USTR's busy schedule of FTA negotiations with South Korea, Malaysia, and several other trading partners, Portman's departure could throw USTR's work off track although sources indicate that this is an unlikely scenario. Schwab, who was appointed late in 2005, is unlikely to significantly alter USTR's current policies and strategies.

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Senators Express Concern to USTR that WTO Negotiations Do Not Address U.S. Trade Laws

In an April 6, 2006 letter to United States Trade Representative (USTR) Rob Portman, several U.S. Senators expressed their concern with the current World Trade Organization (WTO) Doha Round rules negotiations and with the related U.S. proposals “that do not proactively address” U.S. antidumping and countervailing duty (AD/CVD) laws. The Senators seek “a comprehensive strategy” in the negotiations to ensure that U.S. trade laws are preserved. The Senators state that “the continued strength of trade law is vital to both [U.S.] ability to counter unfair foreign competition and to the health of the critical parts of U.S. manufacturing and agriculture,” but that “more than 180 proposals have been advocated by trade aw opponents” that would undermine U.S. AD/CVD laws. The letter claims that the “Friends of Anti-Dumping Negotiations” (FANs) group is “hostile to U.S. interests” and has submitted only proposals that would weaken U.S. trade remedies laws.

The letter also expresses the Senators’ dismay that the United States has yet to offer proposals that address several “issues of concern”: (i) “the multi-billion dollar disparity” that U.S. producers face between direct and indirect border taxes; (ii) the need to ensure that dumping and subsidies are fully offset; and (iii) “the need to clarify rights on a myriad of provisions where WTO dispute panels or the Appellate Body have created obligations never agreed to by the United States….” The Senators note that U.S. negotiators must address these “critical” issues “to provide a strategic parity going into the final stages of Rules negotiations.” The letter also notes that Congress, as part of its evaluation of a final WTO Agreement, will closely explore “whether the agreement preserves and strengthens trade remedy rules.” The Senators warn that the Senate has repeatedly stated that it will not accept a WTO Agreement that weakens U.S. trade laws.

The letter’s signers include: Sens. Larry Craig (R-ID), Evan Bayh (D-IN), John D. Rockefeller IV (D-WV), Olympia Snowe (R-ME), George Allen (R-VA), Kent Conrad (D-ND), John Warner (R-VA), Arlen Specter (R-PA), Elizabeth Dole (R-NC), Conrad Burns (R-MT), Harry Reid (D-NV), Robert Byrd (D-WV), Max Baucus (D-MT), and Richard Durbin (D-IL).

The Doha Round rules negotiations have emphasized the WTO instruments that govern Members’ application of anti-dumping and countervailing duties. These instruments are intended to remedy injury caused or threatened to domestic industries by “unfairly” priced or subsidized imports. (The negotiations also cover “safeguard” measures, which provide industries with temporary relief from imports that are

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surging as a result of trade concessions, but most of the proposals concern antidumping and countervailing duties.)

The Senators' letter expresses the concerns of some in Congress, and of their constituents, that a Doha Round agreement on rules might limit the United States' ability to apply its trade laws. The United States is one of the most frequent users of these laws. The Senators advocate that any agreement on rules in the Doha Round should instead strengthen the U.S.'s ability to impose antidumping and countervailing duties. In contrast, the proposals of the FANs (as well as some other WTO Members) seek to impose disciplines on the application of antidumping duties, and to make national authorities' decisions more transparent. These proposals do not single out the United States, but rather would apply to all WTO Members. The FANs proposals address some of the most problematic aspects of anti-dumping practice, and the group has attempted to seek consensus on reform. The United States has not been engaged in this process, and is perceived to be a likely veto of significant reform.

Members of Congress have consistently opposed any changes in WTO rules that might hinder the U.S. ability to protect domestic industries through its trade laws. In 2003 over 60 Senators sent a letter to the Bush Administration opposing any substantive changes in these laws. It remains unclear, however, whether Congress would be willing to scuttle a comprehensive Doha Round agreement based on concerns regarding rules, as the letter suggests. This would probably be a difficult issue, particularly if the agreement coming out of the Round includes provisions on market access that would benefit U.S. agriculture, services and manufacturers.

Court of International Trade: NAFTA Bars U.S. from Applying Byrd Amendment to Imports from Canada, Mexico

The Court of International Trade (CIT) has ruled that the Continued Dumping and Subsidy Offset Act (CDSOA, also known as the "Byrd Amendment") does not apply to antidumping (AD) and countervailing duty (CVD) orders on imports from Mexico or Canada. In *Canadian Lumber Trade Alliance v. United States*, Consol. Ct. No. 05-00324 (Ct. Int'l Trade April 7, 2006), Judge Donald Pogue held that: (i) Canadian and Mexican producers and exporters, but not the Government of Canada, have standing to challenge the administration of the Byrd Amendment because the measure, as applied to them, violates the protections guaranteed under NAFTA; and (ii) the U.S. Bureau of Customs and Border Protection (CBP) cannot "distribute funds collected from duty orders on Canadian and Mexican imports of goods where the Byrd Amendment does not specifically so direct" because NAFTA Section 408 "demands that preferential treatment be given to goods from Canada and Mexico by exempting such goods from the

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auspices of any qualifying amendment" of U.S. trade law, unless Congress has "explicitly stated an intent to change the statutory remedies as to Canada and Mexico."

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) allowed seven WTO Members, including the Canada and Mexico, to impose retaliatory duties on U.S. imports based on the United States' failure to comply with a 2003 WTO Appellate Body (AB) decision that the law was inconsistent with global trade rules. On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005, which repeals the Byrd Amendment for all duties on entries of goods made and filed on or after October 1, 2007. At that time, AD/CVD duties will go to the general fund of the Treasury, as they did prior to the Byrd Amendment's enactment. The Plaintiffs in the CIT case – both producers and exporters of goods from Canada and the Government of Canada – brought this case against the United States on April 29, 2005.

Although Plaintiffs will rightly celebrate – and Defendant-Intervenors lament – the CIT's decision, the case is far from complete. First, the United States will undoubtedly appeal the CIT's decision to the United States Court of Appeals for the Federal Circuit (CAFC), which could overrule the CIT on standing or on the case's merits. Second, Judge Pogue did not order a remedy in the case "because the parties devoted little energy to briefing the question of remedy, and because the dismissal of Canada's claims may impact the parties' briefing on this question." Instead, the parties have until May 8, 2006 to agree on a remedy, or else the CIT will review recommendations and arguments concerning a proper remedy. However, should the CIT side with Plaintiffs on remedy and grant prospective and injunctive relief and disgorgement of all past Byrd distributions, and should the CAFC uphold the CIT's decision, the case could have a severe impact upon the U.S. industries – including steel, lumber, bearings, wheat and others – that have received millions in Byrd distributions from Mexican and Canadian AD/CVD orders. The companies would be forced to return those funds to the general Treasury.

Senate Finance Committee Holds Hearing on CBP Commissioner Nominee

On April 5, 2006, the Senate Finance Committee held a hearing on the Bush Administration's nominee for Commissioner of U.S. Customs and Border Protection (CBP), W. Ralph Basham. Sources note that Basham received a positive hearing, and that the Committee will likely approve his nomination once the April Congressional recess ends on April 24. Committee members will consider Basham's answers to written questions over the next two weeks and then advocate approval of his nomination. At present,

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Basham serves as the director of the Secret Service. Prior to his work at the Secret Service, Basham was chief of staff for the Transportation Security Administration at the Department of Transportation. He has also served as director of the Treasury Department's Federal Law Enforcement Training Center.

Chairman of the Senate Finance Committee Sen. Charles Grassley (R-IO) stated that "the breadth of his experiences will be an important asset as he assumes his new responsibilities." Sen. Max Baucus (D-MT), ranking member of the committee, however, expressed concern that Basham's "long and distinguished career in federal law enforcement" would "affect [his] instincts in striking the delicate balance between trade and security." Basham responded that his responsibilities at the Secret Service are similar to those at CBP, and that "both CBP and the Secret Service must deal with the constant tension of maintaining a balance between security and facilitation."

Once confirmed, Basham will replace acting CBP Commissioner Deborah Spero who assumed the position in Fall 2005 after former Commissioner Robert Bonner resigned.

Rep. Thomas: U.S. Should "Part Ways" with EU in WTO Negotiations

On April 3, 2006, Representative Bill Thomas (R-CA), Chairman of the House Ways and Means Committee, called on the Bush Administration to "abandon any hope of working with the European Union (EU)" in successfully concluding the World Trade Organization (WTO) Doha Round negotiations. Thomas further suggested that the United States should focus more on negotiating bilateral and regional free trade agreements (FTAs) over the next year. Thomas stated that because the United States and the EU have irreconcilable differences on trade issues, the United States should "begin to make those deals [with other countries] and move forward as much as [it] can." Thomas stated that the United States should negotiate duty-free and quota-free agreements with developing countries, and that these countries "should be asked in the process to relinquish their existing trade preferences with the EU."

Thomas did not, however, advocate the United States' total abandonment of the Doha Round in favor of bilateral and regional FTAs. He stated that the United States "should soldier on and try to do the best [it] can" with the WTO negotiations but opined that the United States should not devote its "major resources" to the multilateral talks. He noted that U.S. trade strategy should also focus on ensuring congressional renewal of Presidential Trade Promotion Authority (TPA), which is set to expire in July 2007.

Rep. Thomas's statements demonstrate Congress' current impatience with the stalled WTO Doha Round negotiations, particularly the EU's recalcitrance on agricultural market access. The multilateral talks remain deadlocked on agriculture and non-agricultural market access (NAMA), as the EU refuses to modify its 2005 agricultural proposal until developing countries broaden their NAMA and services

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commitments. Until now, Rep. Thomas has fully supported the Doha Round negotiations; his latest suggestions that United States shift its focus away from Doha demonstrates the extent to which the Round has faltered in the eyes of even the United States' most ardent supporters of the WTO talks. Rep. Thomas' frustrations with the EU also echo those of the Bush Administration and other Members of Congress who view the EU's stance as the primary impediment to achieving "full modalities" on agriculture and NAMA by the April 31, 2006 deadline, as established at the WTO's Hong Kong Ministerial Conference. Until WTO Members reach these agreements, other negotiating areas, such as services, rules and trade facilitation, also will not progress. Unless a significant breakthrough occurs soon, the Doha Round's future will be in serious doubt, and other Congressional Members will join Rep. Thomas in advocating that United States shift its focus to bilateral FTAs.

Rep. Rangel Introduces Legislation to Renew GSP, ATPA, and Strengthen AGOA

On March 30, 2006, Representative Charles Rangel (D-NY), ranking Democrat on the House Ways and Means Committee, introduced legislation to extend for one year the Generalized System of Preferences (GSP) and the Andean Trade Preference Act (ATPA). Both programs provide duty-free benefits to certain developing countries and are set to expire on December 31, 2006. Rangel stated that "extending these benefits before they expire will send a signal to developing countries that [the United States] will stand with them as they grow," and that through the extension of the benefits, "developing countries and U.S. businesses will be able to engage in long-term planning necessary to foster continued economic growth and stability." Rangel and several other Representatives also circulated a letter sent to House Ways and Means Committee Chairman Bill Thomas (R-CA) requesting that the committee hold hearings on the future of the GSP, ATPA, and the African Growth and Opportunity Act (AGOA).

Under the GSP program, beneficiary developing countries' imports receive duty-free access to the U.S. market. The ATPA provides preferential access to the United States for products from Bolivia, Peru, Ecuador, and Colombia. AGOA provides beneficiary countries in sub-Saharan Africa with liberal access to the U.S. market, reinforces African reform efforts, provides improved access to U.S. credit and technical expertise, and establishes a high-level dialogue on trade and investment in the form of a U.S.-Sub-Saharan Rangel's proposed legislation extends and expands the benefits AGOA provides to sub-Saharan African countries. Under the legislation, current duty-free benefits for apparel made in least developed countries with third-country fabric would be extended until October 2007. The proposal also calls on President Bush to decide whether Liberia qualifies for an extension of AGOA benefits.

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Rangel's legislation faces several hurdles. First, most U.S. businesses that support the GSP program requested that the United States government extend GSP for five years in order to provide U.S. industries that use GSP imports the security necessary for long-term contracting. Rangel's one-year extension would likely prove insufficient to assuage these contracting concerns. Second, Senate Finance Committee Chairman Charles Grassley has indicated that Congress will not move on GSP renewal until it can more clearly understand its new commitments resulting from the World Trade Organization's (WTO) Doha Round of multilateral trade negotiations. The Round's development negotiations will likely implicate significant changes to the GSP program. Thus, unless the Round collapses, Rangel's legislations would require amendment to adhere to the United States' new Doha obligations. On the other hand, the Congress may wish to table the GSP program for a year, so as to allow the United States' new multilateral development obligations to take shape in an early 2007 final WTO agreement.

House Bill Targets WTO Rules that "Discriminate" Against Nations Relying on Direct Taxation

On March 29, 2006, Representative Benjamin Cardin (D-MD), ranking Member of the House Ways and Means Trade Subcommittee, announced his intention to introduce legislation that would direct the Office of the United States Trade Representative (USTR) to negotiate an end to World Trade Organization (WTO) rules that "discriminate against countries such as the United States that rely more heavily on direct than indirect taxation." If USTR is unable or unwilling to negotiate changes in these rules, the bill would authorize the application of countervailing duties (CVDs) after January 2008 on imports from countries like China, Brazil and France that are found to benefit from rebates of indirect taxes. The legislation also calls for the creation of a commission of retired federal judges to review WTO dispute settlement decisions to ensure that they are consistent with the United States' WTO obligations. U.S. businesses, unions, and nongovernmental organizations (NGOs) would also be allowed to participate in WTO dispute settlement cases.

Upon introducing the legislation, Rep. Cardin stated that the United States needs "an aggressive trade policy to defend [U.S.] rights in the WTO and level the playing field for American workers, businesses, and farmers," and that the United States "cannot continue to allow unfair practices to place [the] nation at a competitive disadvantage." Cardin has not indicated when he plans to introduce the bill to Congress.

Cardin's legislation likely comes in response to the WTO Appellate Body's (AB) February 2006 ruling that the United States again failed to conform it tax laws on "Foreign Sales Corporations" to a 2000 AB decision that the U.S. tax regime violated WTO rules, including Article 3.1 of the Agreement on Subsidies

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and Countervailing Measures (the SCM Agreement). This was the United States' second attempt to amend its tax regime to comply with the AB's decision, and the EU – the complainant in the case – announced following the February ruling that it would re-impose retaliatory tariffs on U.S. goods of up to $4 billion annually unless the parties reach a mutually agreeable solution by mid-May. Cardin's legislation seeks changes in the SCM Agreement or U.S. law, such that EU Member States' preferential programs offered under their indirect Value Added Tax (VAT) system would be susceptible to U.S. and WTO anti-subsidy provisions.

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Free Trade Agreements

USTR 2006 NTE on Foreign Trade Barriers: Asian Economies

Summary

On March 31, 2006, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report on Foreign Trade Barriers (NTE), which surveys significant trade barriers to U.S. exports. Although the report addresses a wide array of issues, it focuses on the protection and enforcement of intellectual property rights (IPR) and foreign restrictions to services trade.

We highlight the NTE report's comments on the trade practices of the United States' major Asian trading partners, including China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, the Philippines, Singapore and Thailand.

Analysis

On March 31, 2006, USTR published the 2006 NTE Report on Foreign Trade Barriers. The report, required by the 1988 Omnibus Trade and Competitiveness Act of 1988, is an inventory of the most significant foreign barriers to U.S. exports of goods and services, foreign direct investment (FDI), and protection of intellectual property rights (IPR).

The 2006 NTE report classifies into ten categories all government measures and policies that restrict, prevent or impede the international exchange of goods and services, regardless of the measures' consistency with global trade rules. The categories of foreign trade barriers include:

- Import policies;
- Standards, testing, labeling and certification;
- Government procurement;
- Export subsidies;
- Lack of intellectual property protection;
- Services barriers;
- Investment barriers;
- Anticompetitive practices with trade effects tolerated by foreign governments;
- Trade restrictions affecting electronic commerce; and

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- Other barriers.

The report examines the trade practices of 58 countries, which are the largest export markets for the United States.

China

The NTE report offers a mixed assessment of China's trade performance in 2005. Although it compliments steps that China has taken in the areas of tariff reduction, trading rights and tax policy, the report raised a number of concerns over agriculture, industrial policy, services and intellectual property rights (IPR). Specific issues raised in the NTE report include:

- ***Import substitution and similar policies*** continue to plague foreign investors. Examples of such policies include corporate tax deductions to foreign-invested domestic firms (*e.g.*, equipment manufactured in China is eligible for tax deduction but equipment assembled from imported parts is not), local content requirements in auto parts, discrimination against foreign equipment and technology imports, and value-added tax (VAT) exemptions solely for Chinese products.
- ***Tariff classification and tariff valuation*** remain inconsistently applied across China. Importers report that Chinese customs officials continue to use "reference price" lists, rather than relying on actual transaction values. In the software sector, officials still apply royalties and other fees inappropriately. Chinese customs has also valuated forms of digital media incorrectly, subjecting the imports to additional fees.
- ***Non-tariff and regulatory barriers*** remain a significant obstacle to accessing the Chinese market, particularly in the service sector. Foreign firms face high entry barriers, including excessive capitalization requirements, foreign ownership limits and branching restrictions. Restrictions on branching continue despite China's elimination of geographic restrictions on foreign service providers.
- ***Tariff-rate quotas*** remain problematic**.** China's Protocol of Accession obligated it to address many non-tariff barriers (NTBs) that it had used to restrict trade. USTR reports that a significant amount of tariff rate quotas (TRQs) are still in place in China. Under its WTO Working Party Report, China was to establish large and increasing TRQs for imports of wheat, corn, rice, cotton, wool sugar, vegetable oils and fertilizers but has done so in a fragmented, non-transparent manner that imposes burdensome licensing requirements.
- Under its WTO Working Party Report, China committed to the fair and non-discriminatory application of licensing procedures. Licensing applicants have reported that ***the government requires them to***

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provide sensitive business details unnecessary for simple import monitoring and licensing. China's State Administration of Quality Supervision and Inspection and Quarantine has also imposed inspection-related requirements above standard inspections thus limiting licensing.

- USTR reports that ***China participates in discriminatory activities in terms of standards applications***, thus allowing for the manipulation of Chinese standards and regulations to favor domestic industries and to incur higher fees from foreign companies. Some importers also report discriminatory treatment and uneven enforcement of technical regulations and standards.
- The development of ***China-only technical standards*** presents a significant obstacle to U.S. exports. Obtaining the necessary testing of goods is often a slow and cumbersome process, with theft of intellectual property during standards testing commonplace. Importers have also reported that testing and certification procedures are not transparent and also may involve officials from rival firms. The lack of coordination among China's various standards bodies compounds the difficulty in obtaining needed approvals.
- USTR reports that China continues to ***impose high and cumbersome terms of entry for foreign services providers*** thus discouraging foreign suppliers from gaining access to the market. Among these terms of entry are high capital requirements and limits on foreign ownership.

Despite some positive steps taken by China in 2005, ***IPR protection*** remains inadequate. The United States continues to monitor China under Section 301 of the Trade Act and could impose trade sanctions or pursue WTO dispute settlement due to China's failure to combat IPR violations. The report also stated that China has problems with a ***lack of transparency*** in many sectors.

Hong Kong, Special Administrative Region

The NTE provides a favorable report of Hong Kong's policies with respect to IPR enforcement - a long-standing source of friction between Hong Kong and the United States. The report noted that the government has shut down most large-scale piracy operations through investigations and raids and has made efforts to monitor more strictly on-line sales of counterfeit goods. The report also indicated that the judiciary has supported the enforcement of existing copyright and trademark laws, handing down prison terms for convicted violators. However, end-use piracy of software and peer-to-peer file sharing remain problem areas. U.S. pharmaceutical companies remained concerned about marketing approval for patent-infringing drugs, and sales of counterfeit pharmaceuticals.

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Indonesia

Since taking office in October 2004, Indonesia's President Yudhoyono has followed through on pledges to improve Indonesia's business environment, attract greater investment and create new jobs. The NTE notes that these measures have improved many long-standing problems that U.S. industry has encountered in Indonesia, including a lack of enforcement, legal and regulatory non-transparency, and inadequate protection of IPR. Nevertheless, the report states that corruption, non-transparency and lack of IPR protection and enforcement remain significant concerns of the United States.

The report lists several trade issues of concern to U.S. industries:

- The 2004 imposition of **bans on imports of rice, sugar and salt**, and the 2005 increase in **import duties on corn and soybeans**.
- The continuation of ***bans or de facto quantitative restrictions*** on various imported meat and poultry products.
- The ***uneven or ineffective enforcement of patent rights and copyrights***. Despite regulations in place to protect IPR, piracy remains rampant; patent rights remain unprotected; and violators largely go unpunished.
- ***Barriers to services trade*** remain high in some sectors, notably distribution, legal, financial and accounting services and telecommunications.
- ***Continued high tariffs*** on agricultural commodities and other sensitive goods such as alcohol and automotive products.

Japan

In June 2001, President Bush and Prime Minister Koizumi established the Regulatory Reform and Competition Policy Initiative, which works to facilitate regulatory reforms related to trade. Through this mechanism, the United States has been able to make recommendations to open further the Japanese market for U.S. exports.

Regarding import barriers, USTR expressed several concerns:

- In telecommunications, the United States continues to seek regulatory changes and address ***telecommunications market access impediments*****,** including high interconnection pricing schemes, dominant carrier regulation in favor of Japanese telecommunications firms, high access and entrance rates, and chargers for new entrants to the Japanese telecommunications market.

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- Serious ***restrictions on U.S. agricultural products*** remain in the form of tariff rate quotas (TRQs), domestic use requirements for corn and potatoes, and sanitary and phytosanitary (SPS) measures on beef and pork. Japan imposed a ban on U.S. beef imports after the discovery of a single case of BSE in Washington State. Japan lifted the ban in December 2005 but then re-imposed it on January 2006 after the discovery of a shipment of U.S. bone-in beef - a violation of the bilateral agreement lifting the original ban.
- ***Government procurement*** practices in Japan continue to deny effective entry of U.S. computer equipment, as well as construction, architecture and engineering services. The United States has pushed Japan to confront problems of rigged bidding in major public works projects.
- Despite a strong ***IPR protection*** regime, Japan's patent administration system is slow to render final judgment in patent litigation. Japan also needs to take steps to tighten use of copyrighted materials via the Internet and address problems with counterfeiting, piracy and digital trademark.
- Legal and regulatory barriers in the ***services sector*** - including insurance, accounting, legal and medical services - prevent U.S. firms' effective entry into the Japanese market. The insurance sector is the most heavily regulated, with domestic firms enjoying regulatory and tax advantages over foreign competitors.

Beyond general regulatory concerns, the 2006 NTE reviewed sector specific obstacles. The report cited the aerospace, auto and auto parts, civil aviation, electric utilities, paper, and sea transport sectors as maintaining barriers to U.S. exports. In 2005 Japan removed long-standing restrictions on U.S. apple imports.

South Korea

In February 2006, USTR notified Congress of President Bush's intent to negotiation a Free Trade Agreement (FTA) with Korea. The 2006 NTE notes that although eventual approval of this agreement would produce significant gains in trade and investment, the United States remains concerned about several trade barriers and unfair practices that continue to complicate economic relations with Korea:

- Korea maintains a combination of ***high tariffs and quantitative restrictions*** to shelter domestic producers and to limit imports of several agricultural, fishery, food and meat products.
- Other import barriers include non-transparent and burdensome ***labeling requirements*** for a variety of products and ***approval standards*** requiring pharmaceutical manufacturers to reveal proprietary information.

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- Despite notable improvements in 2005, the United States continues to monitor Korea's ***IPR protection and enforcement*** and encourages the Korean government to consider strengthening existing laws. Digital and print media piracy also remain serious concerns, and the United States has urged South Korea to pursue stronger enforcement efforts.
- ***Services sector barriers*** continue to limit or prohibit foreign participation in a number of areas, notably advertising, broadcast media, legal services, and insurance.
- Access to the Korean auto market improved during 2005 due to the resolution of standards issues, but domestic ***auto tax laws*** remain a barrier for U.S. automakers.

Malaysia

Despite ongoing negotiations towards a bilateral FTA between the United States and Malaysia, a number of problematic trade and investment issues remain.

The NTE report cites the following areas of concern:

- ***High tariffs*** remain Malaysia's preferred mechanism to prevent the entry of foreign goods, especially for industries or products with significant local production. The domestic automotive sector benefits from tariffs and non-tariff barriers and tax rebates.
- ***Piracy of optical media*** such as CDs and DVDs remains a concern. Optical media pirated in Malaysia is exported globally, finding markets in the Asia-Pacific, North and South America, Europe and Africa. The government has made efforts to reduce this trade and to prosecute manufacturers and vendors; however the United States encourages legislation to ensure better protection.
- Malaysia's large ***services sector remains highly protected***. Equity restrictions limit foreign participation in the telecommunications and banking sectors, and requirements to partner with domestic firms restrict the actions of foreign firms for legal, architectural and engineering services. Most affiliate agreements require government licenses, and foreign investment in the Malaysian service sector is restricted.
- ***Transparency*** of government decision-making and procedures for government software procurement and procurement projects remains an issue. Although Malaysia has not signed the WTO Government Procurement Agreement (GPA), its public policy objectives encourage greater participation of ethnic Malays in the economy, keeping out foreign competition.

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The Philippines

USTR reports that corruption and a lack of regulatory transparency continue to undermine trade with the Philippines. The NTE report also raises concerns with backsliding on tariff reduction and IPR enforcement commitments. The report also criticizes the Philippines for trade deterring policies:

- In 2004 the Philippine Tariff Commission ***increased tariffs*** for several sensitive sectors and slowed tariff reductions in other sectors. Although the increased tariffs remain within the Philippines' bound tariff commitments under the WTO, the protectionist sentiment concerns U.S. businesses. In April 2005, Philippine President Arroyo raised tariffs on certain types of automobile imports.
- According to USTR, the Philippine ***customs department remains corrupt*** as periodic procedural irregularities occur. Contrary to a 2001 Philippine law, the private sector remains involved in import-valuation, and Customs still applies rules inconsistently.
- Improvement in the Philippines' IPR protection regime resulted in its move from the United States' Special 301 "Priority Watch List," to the "Watch List." Nevertheless, ***IPR protection*** remains a serious U.S. concern. Legal ambiguity and inconsistent, ineffective IPR enforcement contribute to widespread piracy and counterfeiting.
- ***Service sector restrictions*** are pervasive. Limitations on foreign ownership, minimum capitalization requirements and a variety of other regulations restrict or prohibit foreign participation in telecommunications, insurance, banking, financial services and advertising. Compounding these barriers are investment restrictions in the services and manufacturing sectors.

Singapore

According to the NTE report, market access is good, reflecting the benefits of the U.S.-Singapore Free Trade Agreement. Nevertheless, some problems remain.

- Singapore has eliminated all tariffs on U.S. goods, but the United States remains concerned about overly restrictive ***labeling requirements*** for certain meat products.
- ***Service sector barriers*** remain the chief obstacle for U.S. business in Singapore. Foreign law firms face various restrictions limiting their activities, and equity limitations or citizenship requirements for directors effectively preclude foreign broadcast, cable, and news firms from the market.

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- Despite having one of the strongest IPR regimes in the region, Singapore remains a major ***transshipment*** point for counterfeit or pirated goods. A lack of information collection and a loophole in the Copyright Act inhibit enforcement and seizure of such goods.

Thailand

Although the United States – Thailand FTA is progressing, many important issues remain unresolved:

- ***High tariffs*** remain a significant barrier to foreign imports, especially in the agriculture, automobiles, alcohol, paper products, textiles and electronic appliances sectors. The Thai government has been both slow to meet WTO and ASEAN tariff reduction commitments and to simplify its ***complicated tariff regime***.
- A costly, lengthy and complex system of ***standards, testing, labeling and certification*** for food and pharmaceutical imports concerns U.S. companies that fear that such regulations will result in the disclosure of proprietary information or trade secrets.
- Because Thailand lacks adequate legal regulations to protect IPR, and because the government's IPR enforcement efforts have been inconsistent, ***counterfeiting and piracy*** of broadcast, print, and optical media remain serious problems.
- ***Service sector barriers*** continue to discriminate against foreign firms in the telecommunications, legal, financial, construction, engineering and accounting services sectors.
- Thailand's ***agricultural import policy*** is designed to protect domestic producers and to impede market access.
- The NTE cites ***corruption and non-transparency in the Thai Customs Department*** a serious problem. The department also has incentives for revenue maximization versus compliance with legal requirements.

Thailand's ***complicated and non-transparent tax administration and customs authority***, the decisions of which are often arbitrary and irregular, continue to concern the United States.

Outlook

The 2006 NTE Report differed in certain aspects from USTR's 2005 report. In the 2006 report, USTR emphasizes the lack of IPR enforcement and monitoring throughout Asian economies. The 2006 report also identifies foreign barriers to the services trade, including equity and ownership limits, as significant

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impediments to U.S. trade and business. USTR will likely continue to prioritize in its Asian agenda IPR enhancement efforts and the reduction of services barriers.

Not all developments of the past year were negative. Asian market access for U.S. beef improved in 2005, with Korea, Hong Kong, Malaysia, Singapore and Thailand partially lifting bans on U.S. beef that were imposed in 2003. Japan, however, reversed its December 2005 decision to reopen its market and re-imposed its import ban in January 2006. Indonesia also closed its market to U.S. beef in July 2005. These developments indicate that, despite advances in 2005, USTR will continue working to resolve beef-related SPS differences with Japanese and Indonesian officials in 2006.

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USTR 2006 NTE on Foreign Trade Barriers: Middle Eastern Economies

Summary

On March 31, 2006, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant foreign trade barriers to U.S. exports. While addressing a wide array of issues, this year's report focuses on the protection and enforcement of intellectual property rights and restrictions to services trade.

We highlight here the NTE report's analysis of the trade practices of major Middle Eastern trading partners Bahrain, Egypt, Oman, Saudi Arabia and the United Arab Emirates (UAE).

Analysis

On March 31, 2006, USTR published the 2006 NTE Report on Foreign Trade Barriers. The report, required by the 1988 Omnibus Trade and Competitiveness Act of 1988, is an inventory of the most significant foreign barriers to U.S. exports of goods and services, foreign direct investment (FDI), and protection of intellectual property rights (IPR).

The 2006 NTE report classifies into ten categories all government measures and policies that restrict, prevent or impede the international exchange of goods and services, regardless of the measures' consistency with global trade rules. The categories of foreign trade barriers include:

- Import policies;
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- Export subsidies;
- Lack of intellectual property protection;
- Services barriers;
- Investment barriers;
- Anticompetitive practices with trade effects tolerated by foreign governments;
- Trade restrictions affecting electronic commerce; and
- Other barriers.

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The report examines the trade practices of 58 countries, which are the largest export markets for the United States.

In May 2003, President George W. Bush proposed the creation of a U.S. Middle East Free Trade Area (USMEFTA) with 18 Middle Eastern countries "to increase trade and investment with the United States and others in the world economy." The United States views USMEFTA as a step-by-step plan to increase Middle Eastern countries' integration into the global economy and to promote economic growth in the region. To join USMEFTA, the United States requires each Middle Eastern country: (i) to join the WTO; (ii) to consider participation in the Generalized System of Preferences (GSP), which provides duty-free treatment for products of eligible developing countries imported into the United States; (iii) to enter into Trade and Investment Framework Agreements (TIFAs) that create a framework for trade and investment dispute resolution; (iv) to enter into Bilateral Investment Treaties (BITs) that require governments to offer foreign investors the same legal protections as domestic investors; (v) to enter into comprehensive FTAs with the United States; and (vi) to participate in trade capacity building projects whereby the United States government provides funding to spur government-private partnerships related to international trade in the Middle East. The following countries are all major components of the Bush Administration's USMEFTA initiative.

Bahrain

The NTE review of Bahrain is favorable, and the government of Bahrain will resolve most remaining barriers within the next decade under the U.S.-Bahrain Free Trade Agreement (FTA). These barriers include a some tariffs, as well as the need to implement free, fair, and non-discriminatory government procurement. The report also cites U.S. food manufacturers' concerns over excessive food standards and U.S. film industry complaints over cable television piracy.

Egypt

The NTE notes that the Egyptian Government has made notable improvements in tariff reduction, IPR protection and opening its services sectors to foreign investment. However, a number of concerns remain, including:

- ***High tariff rates*** on imports of poultry, alcohol, tobacco products, apparel and certain passenger vehicles.
- ***Import restrictions*** on passenger vehicles and ***import bans*** on natural products, vitamins, food supplements, used and refurbished medical equipment, and poultry products.

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- ***Inadequate IPR protection*** in pharmaceuticals, trademarks, textile and industrial designs, and computer software.
- ***Service sector barriers*** that prevent entry or discriminate against foreign investors in a number of areas. Such barriers include limits on foreign investment in construction and transportation services, limitations on foreign management in computer-and-related services, and restrictions on land acquisition by foreigners in certain cases.
- A ***government controlled, non-transparent pricing mechanism for pharmaceutical products*** continues to frustrate foreign firms. The lack of a clear compensation mechanism to allow for price flexibility based on exchange rate variation also hurts foreign firms' profitability.

Oman

The NTE review of Oman is positive. The report indicates that upon implementation of the U.S.-Oman FTA the Government of Oman will immediately remove or gradually reduce during the next decade tariffs on most industrial and consumer products, as well as on all agricultural products. Similarly, Oman will implement fair, transparent and non-discriminatory government procurement tenders. The report also notes that although the government has substantially reduced sales of pirated video, audio and computer media, unauthorized sales continue as the authorities struggle with enforcement challenges.

Saudi Arabia

According to the report, although Saudi Arabia joined the WTO in December 2005 and committed to revise its trade regime accordingly, the government has yet to implement fully these commitments and a number of barriers to trade and investment remain. These include:

- ***Inadequate IPR protection*** in software and trade marked products, a non-transparent and inconsistent enforcement system, widespread pay television piracy, and a lengthy patent approval process.
- ***High tariff rates*** on a number of items, including certain textiles, sesame extract, cooking salt, edible offal, rabbit meat, furniture, mineral water, plastic pipes, dates and all tobacco imports.
- ***Import restrictions*** on seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, chemicals and harmful materials, pharmaceuticals, and wireless equipment. The Kingdom also has a strict ***import prohibition*** on alcohol, firearms, port products and used clothing.
- ***Restrictions*** on foreign participation in government procurement contracts.

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- ***Services barriers*** including foreign ownership limitations in financial services, preferential treatment of national shipping carriers for government related cargo, citizenship requirements for distributor registration and real estate ownership limitations.
- ***Investment barriers***, including delays in licensing approval and ownership limitations on financial intermediaries.

United Arab Emirates

In March 2005 the United States began FTA negotiations with the United Arab Emirates (UAE). The agreement aims to remove barriers to U.S. goods and service providers - an ongoing concern for the United States. Remaining barriers include:

- ***Barriers to new foreign entrants*** in the insurance and banking sectors; although the UAE has announced it will further open these sectors, changes have occurred slowly.
- ***Ownership restrictions*** prohibit foreign nationals from owning businesses outside economic free zones, and the UAE ***does not grant national treatment*** to foreign investors.
- The NTE notes that although the UAE maintains the Gulf Cooperation Council's (GCC) five percent ***external tariff*** for most products, it places high duties on alcohol, tobacco and some food and agricultural items.
- The UAE has one of the strongest ***IPR protection*** regimes in the region, however the United States remains concerned about protection for geographical indications and the protection of pharmaceutical test data.

Outlook

The 2006 NTE Report differed in certain aspects from USTR's 2005 report. On Bahrain, the 2006 report focuses less on telecommunications sector barriers and more on IPR violations, indicating that USTR officials believe that Bahrain has taken steps to address prior telecommunications market access problems but not IPR enforcement. However, increased focus on IPR enforcement was a general theme of the entire NTE report, and the Bahrain commentary may simply reflect this theme. Before the U.S.-Bahrain FTA can take effect, Bahrain's Parliament must pass several key pieces of legislation to enhance IPR enforcement. Such legislation could assuage USTR and assure the United States that Bahrain is addressing specific issues that USTR has pointed out in its NTE Report.

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On Saudi Arabia, the report also notes that the Kingdom's recent accession to the World Trade Organization (WTO) has made it more responsive to U.S. concerns, but IPR and services barriers remain contentious issues.

On Oman, the report details Oman's supposed unfair government procurement but noted that the U.S.-Oman FTA, when passed, will likely correct these practices. The report also notes that Oman has taken significant steps since 2005 in establishing a predictable legal investment framework.

On the UAE, the 2006 report highlights the U.S.-UAE FTA negotiations, but U.S. Congressional security concerns and the UAE's recalcitrance on financial services issues has stalled the negotiations. It is unclear whether the parties will now be able to complete the agreement before Presidential Trade Promotion Authority (TPA) is set to expire in mid-2007.

On Egypt, USTR and the U.S. Department of State halted talks regarding the initiation of formal FTA negotiations due to human rights concerns. USTR is unlikely to resume these talks until Congress becomes convinced that the Egyptian government has addressed these concerns. The relatively short timeframe for completing FTA negotiations makes it unlikely that USTR will initiate formal negotiations with Egypt.

USTR's heavy involvement in this region, despites its relative economic insignificance, indicates that USTR is dedicated to achieving President Bush's USMEFTA initiative, which focuses on the region's geopolitical importance.

Free Trade Agreements Highlights

U.S.-SACU FTA to Become "Longer Term" Objective, Both Sides to Deepen Ties Through Commercial Framework

On April 18, 2006, officials from the United States and the South African Customs Union (SACU – Botswana, Lesotho, Namibia, Swaziland, and South Africa) agreed to establish "a framework for deepening bilateral commercial ties" and to make a formal Free Trade Agreement (FTA) a "longer term" objective. The Office of the United States Trade Representative (USTR) noted that both sides continue to have differences on core issues, and that "these issues will require detailed examinations over the longer term." Deputy USTR Karan Bhatia led the U.S. delegation and noted that "the United States remains committed to concluding a comprehensive free trade agreement and, in the near term, to strengthening the U.S.-SACU trade and investment partnership in concrete ways." He noted that discussions "focused on the best way to move forward on the FTA" and on how to build upon and improve the U.S.-SACU trade partnership more broadly. The new framework will ensure that "parties will remain vigorously engaged in growing and deepening the bilateral relationship." Bhatia noted that the United States and SACU will "develop a joint work program to address a broad range of FTA and other trade- and investment-related issues." The framework establishes "a basis and building blocks for pursuing an FTA over the longer term," but Bhatia stated that USTR is required under the framework to consult further with the U.S. government and the private sector.

Sources note that intellectual property rights (IPR), agricultural and services market access, competition policy and government procurement all remain contentious issues for the two sides. These issues likely led to the parties' reassessment of the FTA and its timeframe for completion – not the first time the trade talks have been delayed. U.S.-SACU FTA talks stalled between June 2004 and July 2005 but resumed briefly following USTR officials' summer 2005 visit to the region, during which the parties created a work plan "for pursuing talks that involved, among other things, meeting every six to eight weeks to address specific issues ranging from agriculture to services to intellectual property protection." However, the nations met only once thereafter - a September 2005 meeting in Botswana that achieved little. USTR has maintained that early 2007 is the deadline for concluding FTA negotiations, due to the mid-2007 expiration of Presidential Trade Promotion Authority (TPA). The decision by both sides to make the FTA a "longer term" project and create a framework in its place to strengthen commercial ties indicates that USTR and SACU negotiators felt that they could not complete an FTA by December 2006, and that a framework is the next best option.

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U.S. and Peru Sign FTA; Congressional Timeframe Uncertain

On April 12, 2006, U.S. President George W. Bush and Peru President Alejandro Toledo signed the U.S.-Peru Trade Promotion Agreement, a bilateral Free Trade Agreement (FTA) that will grant immediate duty-free access to certain goods traveling between the two countries and phase out remaining tariffs in ten years. The agreement will next move to Congress where the Senate Finance Committee and the House Ways and Means Committee will hold hearings on the FTA's implementing legislation, which the Administration will submit to Congress for a final vote. Although the timeframe for Congressional consideration remains unclear, United States Trade Representative (USTR) Rob Portman has stated that the FTA has "good prospects" for Congressional passage, and that he hoped Congress would approve the agreement before July. Because Peruvian Presidential elections will take place in late April, USTR has urged Congressional action on the agreement to preclude potential problems with the Agreement's implementation if a left-leaning government assumes control. Portman has noted, however, that such a government's opposition to the FTA is uncertain. Sources indicate that Congress will likely schedule the hearings and a vote on the agreement after the International Trade Commission (ITC) releases its economic impact study in late May.

Under the agreement, U.S. exports of consumer and industrial goods will receive immediate duty-free treatment, and the countries will phase-out all remaining tariffs within ten years of when the FTA enters into force. Two-thirds of U.S. agricultural products will also receive immediate duty-free access and remaining agricultural tariffs will be phased-out within 18 years. Many Peruvian products already receive duty-free treatment upon entering the United States under the Andean Trade Preference Act (ATPA). Under the FTA, Peru is required to remove its market access barriers to services trade and "provide a secure, predictable framework for U.S. investors operating in Peru." The agreement also contains provisions for five years of "data protection" on goods including pharmaceuticals – a contentious issue during negotiations.

Although the Congressional timeframe remains uncertain, key House Democrats have already begun to organize opposition to the agreement based on allegations that the agreement lacks adequate worker protections. Representative Sander Levin (D-MI) stated that "the U.S.-Peru FTA fails to address the reality on the ground in Peru where workers do not have their rights in law or in practice." House Ways and Means ranking member Charles Rangel (D-NY) has joined Levin's opposition to the agreement based on labor concerns. On the other hand, FTA supporters have expressed confidence that more Democrats will support the Peru FTA than did the Dominican Republic- Central America Free Trade Agreement (DR-CAFTA), which was decided by one vote in the House. Reps. Rangel, Levin, and other

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Democrats indicated that they will support the FTA if the White House agrees to add language obligating Peru to meet additional International Labor Organization (ILO) standards. The Administration has made no such promise, but considering its weakened political position and that election-year politics might erode Democratic support for the FTA, the White House may have to bend on the labor issue or make unrelated side deals to secure the FTA's passage.

USTR Schedules First Round of FTA Negotiations with Malaysia

The Office of the United States Trade Representative (USTR) has scheduled the first round of formal Free Trade Agreement (FTA) negotiations with Malaysia for the week of June 12 in Kuala Lumpur. USTR also reported that the Trade Policy Staff Committee (TPSC) will hold a public hearing on the negotiations in Washington, D.C. on May 3. The TPSC is composed of interagency officials and chaired by USTR. Prior to FTA negotiations, the TPSC will hold a hearing to allow U.S. industry groups and other interested parties the chance to voice their opinions and priorities on the bilateral agreement.

Sources report that opposition to the FTA is growing in Malaysia, despite the claims of Malaysia's Trade Minister, Rafidah Aziz, that "there is absolutely no opposition to this FTA" in the country. However, former Prime Minister Mahathir Mohamed has already voiced opposition to the agreement, stating that it will likely harm the Malaysian economy, particularly if the United States uses the agreement to open government procurement to foreign competition. During his term as prime minister, Mahathir used government procurement to favor the ethnic Malay class, known as the "bumiputra." Critics of this policy, including the USTR, have alleged that such practices discriminate against foreign competitors. In its 2006 National Trade Estimates Report on Foreign Trade Barriers, USTR noted that Malaysia's government procurement practices "are explicitly discriminatory" and that USTR, through its bilateral negotiations with Malaysia, would seek "fair, transparent, and predictable" government procurement rules for U.S. companies.

The United States is Malaysia's largest trading partner and the largest foreign investor in Malaysia. In 2005, U.S. exports to Malaysia totaled $10.5 billion. According to USTR, Malaysia is an important player, "particularly with respect to strengthening the protection of intellectual property rights, in the Asia Pacific Economic Cooperation (APEC) forum." Given the popularity of former Prime Minister Mahathir and his opposition to the FTA, it is likely that opposition will continue to grow in Malaysia, possibly akin to FTA opposition in Thailand. USTR's scheduling of the June negotiations, however, indicates that the United States wants the negotiations to move quickly in an attempt to complete the agreement before Presidential Trade Promotion Authority (TPA) expires in July 2007. Should the FTA negotiations

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progress at a rapid pace, the FTA opposition movement might lack the time necessary to garner sufficient support and impact the agreement's completion.

Bush Submits U.S.-Uruguay BIT to Congress for Ratification

On April 4, 2006, the Bush Administration submitted to the Senate for ratification a bilateral investment treaty (BIT) with Uruguay. The nations signed the BIT on November 4, 2005 during the Summit of the Americas in Mar del Plata, Argentina. Since then, the Uruguayan government has passed and ratified the bilateral agreement. Upon submitting the treaty to the Senate, President Bush recommended "that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification." According to the White House, the U.S.-Uruguay BIT is the first such treaty concluded since 1999 and the first negotiated on the basis of the 2004 U.S. model BIT text. According to the Office of the United States Trade Representative (USTR), "the new model text draws on long-standing U.S. BIT principles, [U.S.] experience with Chapter 11 of the North American Free Trade Agreement (NAFTA), and the executive branch's collaboration with the Congress in developing negotiating objectives on foreign investment for U.S. free trade agreements." The Senate's timetable for consideration of the BIT is unclear.

The U.S.- Uruguay BIT indicates that although the United States is not yet ready to begin Free Trade Agreement (FTA) talks, it views Uruguay as a viable FTA partner if the countries can resolve outstanding trade issues. BITs protect the rights of the participating countries' foreign subsidiaries and investors in their partner's home market and typically precede formal FTA negotiations. However, given the July 2007 expiration of Presidential Trade Promotion Authority (TPA), USTR's self-imposed deadline to complete all FTAs before TPA expires, and the United States' current FTA docket, it is unlikely that the United States will pursue an FTA with Uruguay in the short-term.

United States and Indonesia Discuss Trade Issues Under TIFA

On April 4, 2006, United States Trade Representative (USTR) Rob Portman met with Indonesia's Minister of Trade Mari Pangestu under the United States – Indonesia Trade and Investment Framework Agreement (TIFA) to discuss expanding U.S. – Indonesian trade relations. Portman stated that USTR is "eager to grow the already strong trade and investment ties between the United States and Indonesia" and noted that USTR is "considering specific initiatives to help support Indonesia's efforts to strengthen its investment climate, as [the United States] is seeking to deepen [its] economic relations with Southeast Asia as a whole." Both officials also discussed the World Trade Organization's (WTO) Doha Round of negotiations and how the two countries "could work together to help achieve a successful outcome" in the

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multilateral trade talks. Portman noted that Indonesia is the largest economy in Southeast Asia and "a major exporter of both agricultural and manufactured goods, so it has a lot to gain from a successful Doha Round."

Portman and Pangestu also welcomed the launch of negotiations of the first-ever agreement to facilitate bilateral cooperation to combat illegal logging. President Bush launched the global Initiative to Address Illegal Logging in 2003 to curb illegal logging around the world. Portman and Pangestu "made good progress" on the issue during TIFA discussions. Portman stated that "the United States and Indonesia are committed to concluding a landmark agreement to combat illegal logging and illegal trade in endangered species," and that the agreement would be a "unique opportunity to strengthen [U.S.] cooperation with Indonesia to better protect Indonesia's parks, forests and sensitive habitats from illegal logging." The officials also discussed planned improvements in cooperation between the U.S. and Indonesian customs agencies, joint efforts to enhance protection of intellectual property rights (IPR), and investment reforms underway in Indonesia. During the countries' two days of TIFA dialogue, they discussed a wide range of bilateral issues, including agriculture, investment, intellectual property and customs.

TIFAs are limited trade agreements that establish "joint councils of trade and economic officials to discuss trade issues." Under U.S. Trade Policy, TIFAs are the first step towards the initiation of formal bilateral or regional Free Trade Agreement negotiations. The U.S.- Indonesia TIFA indicates that although the United States is not yet ready to begin FTA talks, it views Indonesia as a viable FTA partner if the countries can resolve outstanding trade issues. The next step in the process would be for the countries to enter into a Bilateral Investment Treaty (BIT), which protect the rights of foreign subsidiaries and investors in the countries' home markets. According to Pangestu, the United States provided Indonesia with a copy of its 2004 model BIT.

The countries' significant progress on contentious trade issues under the TIFA framework and the United States' provision of the model BIT indicate that the United States is interested in entering into FTA negotiations with Indonesia. However, USTR has consistently maintained that it will not enter into formal FTA talks unless it reasonably believes that it can complete the negotiations by early 2007, due the expiry of Presidential Trade Promotion Authority (TPA) in July of that year. Moreover, the United States is currently negotiating FTAs with seven other countries and has devoted significant resources to the WTO's Doha Round of multilateral trade talks. Unless the United States extends TPA or reallocates resources from another FTA or the Doha Round – a possibility considering current problems – formal U.S.-Indonesia FTA negotiations are unlikely.

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DR-CAFTA Takes Effect in Nicaragua, Honduras

On March 31, 2006, the United States Trade Representative (USTR) Rob Portman announced that the Dominican Republic- Central America Free Trade Agreement (DR-CAFTA) would enter into force with Nicaragua and Honduras on April 1. The Central American countries are the second and third to implement fully the agreement. On February 24, 2006, USTR recommended that President Bush implement the agreement for El Salvador as of March 1, 2006. Portman noted that "Honduras and Nicaragua are now ready to join El Salvador as countries that have fully implemented the agreement" and stated that USTR "will continue [its] work with the remaining three DR-CAFTA partners to ensure timely and full implementation of the agreement." The remaining countries include Guatemala, Costa Rica, and the Dominican Republic.

On December 30, 2005, USTR announced that the United States would not implement DR-CAFTA by its January 1, 2006 target date. USTR delayed implementation because several Central American countries had yet to change their national laws to conform to the FTA's provisions. As USTR's announcement indicates, the United States will continue to implement DR-CAFTA on a rolling basis as countries make sufficient progress to complete their commitments under the agreement. According to USTR, under this process, "entry into force would occur on the first day of the month with a country that the USTR determines is ready by the middle of the preceding month." USTR has not provided a timetable for when the remaining DR-CAFTA countries will be eligible for implementation but has stated that Guatemala still needs to work on intellectual property rights (IPR) and sanitary and phytosanitary (SPS) legislation that conforms with the agreement. Sources indicate that the Dominican Republic will implement the agreement in July. Costa Rica has yet to ratify the agreement and its implementation timeframe remains unclear.

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Multilateral

World Trade Organization Releases Report on 2005 Trade Developments and 2006 Trade Prospects

Summary

On April 11, 2006, the World Trade Organization (WTO) released its latest world trade report, which assessed global economic growth, 2005 trade developments and trade prospects for 2006.[6] We review here the WTO report.

Analysis

On April 11, 2006, the WTO released its latest world trade report which assesses global economic growth, 2005 trade developments and trade prospects for 2006.

I. Slow Global Economic Growth in 2005

The WTO report found that global economic growth slowed to 3.3 percent in 2005, down from 3.9 percent in 2004. The report noted that three factors supported the global economy's recovery towards the end of 2005: (i) low interest rates in developed countries that eased the debt situation in developing countries; (ii) a nearly 30 percent increase in global foreign direct investment (FDI) flows; and (iii) the sharp rise in the stock markets .

A. United States

- North America's GDP and trade growth was 3.4 percent and 6 percent respectively. They corresponded closely to the global averages.
- Lower economic growth in the United States led to a deceleration in merchandise imports. In 2005, merchandise imports rose less than merchandise exports for the first time since 1997.

B. Europe

- France, Germany, Italy and the United Kingdom all recorded "sluggish economic growth" in 2005, with Italy's growth near stagnation.
- Ten new European Union (EU) member countries' economies grew by almost 4 percent, much stronger than the EU average GDP growth rate.

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6 The complete report, *World Trade 2005, Prospects for 2006*, is available at http://www.wto.org

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- The Commonwealth of Independent States (CIS) showed the strongest GDP growth: 6.6 percent among all regions. WTO economists stated that the CIS grew from “sharply higher export earnings [that] stimulated public and private expenditure.”

C. South and Central America

- The regional GDP growth rate for South and Central America ranged between 4 percent and 5 percent.

D. Middle East and Africa

- In Africa and the Middle East, GDP growth rates were between 4 percent and 5 percent.

E. Asia

- The average GDP growth rate for Asian economies was 6.5 percent. China and India continued to grow rapidly with GDP growth rates of 9.9 percent and 7.1 percent respectively.

II. Slow World Trade Growth in 2005

WTO economists stated that in 2005, world trade growth slowed to 6 percent, down from 9.5 percent in 2004. This trend reflected a weaker global economy. World trade, however, “regained momentum… by the second quarter of 2005.” The report also notes that world merchandise nominal export growth also slowed to 13 percent in 2005, a decline from 21 percent in 2004. For the third year in a row, the WTO noted that commercial services exports expanded less rapidly than merchandise exports. The report notes that despite lower trade growth in 2005, this growth was still faster than the average rates over the 1995-2004 period.

The report showed that merchandise trade developments in 2005 varied by sector because of relative price developments. For example, the share of fuels and mining products rose to 16 percent of total trade, as the share of agricultural products decreased to less than 9 percent. Within the manufacturing sector, iron and steel products and chemicals had the largest export value increases. Despite global demand, electronic products including computers expanded no faster than that of other manufactured goods in general. In addition, the report noted of a below-average growth of world trade in textiles and clothing in 2005.

A. United States

- U.S. merchandise import and export growth slowed to 5.5 percent and 7 percent respectively, a decline from 11 percent to 8.5 percent in 2004. For the first time since 1997, U.S. merchandise

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exports grew faster than world merchandise exports. The United States was also affected by the rise in fuel and oil prices.

- The WTO indicated that the United States experienced slowed commercial services trade growth in 2005. Commercial services export growth decreased from 11 percent in 2004 to 10 percent in 2005, and import growth decreased from 15 percent to 10 percent over the same period.
- The United States' trade deficit grew due to a dramatic expansion of oil imports and the rise in oil prices.

B. Europe

- Though still the largest trader in the world in terms of trade in both goods and commercial services, Europe recorded the lowest export and import growth at only 3 percent. The report suggested that exchange rate developments and the rise in oil prices contributed to this sluggish growth.
- The CIS increased its merchandise exports growth due to the rise in fuel and oil prices. This export revenue helped the CIS to record the fastest import growth of 16.6 percent of all regions in 2005.

C. South and Central America

- South and Central America recorded the strongest expansion in commercial services trade, from 20 to 22 percent between 2004 and 2005. The region also experienced strong growth in merchandise trade, from 22 to 25 percent over the same period. WTO economists noted that "strong economic growth, favorable commodity price developments, and exchange rate appreciations" contributed to these regional trade developments.

D. The Middle East and Africa

- The Middle East and Africa increased their merchandise export growth by 29 to 36 percent in 2005 due to the rise in fuel prices. The Middle East recorded the fastest merchandise export growth of all regions, as it is the largest oil export region.
- The report notes that export revenues helped these two regions to increase their merchandise and services imports more rapidly than the global average.
- Merchandise imports growth in real terms for both regions is estimated at 12 percent, slightly slower than 13.5 percent in 2004. Commercial services trade growth in the Middle East and Africa hovered around the world average rate of 11 percent.

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E. Asia

- The WTO report indicated that all Asian countries recorded slower merchandise trade in 2005 compared to 2004. Japan, in particular, was affected by the rise of fuel prices, and its merchandise import growth slowed from 19 percent in 2004 to 14 percent in 2005.
- Despite its GDP growth rate, China's import growth rate decreased dramatically from 21.5 percent in 2004 to 11.5 percent in 2005. The WTO report stated that China's imports decreased in semi-manufactured goods, special machinery, fuels and road mortar vehicles. Imports of computers, telecommunication equipment and electrical machinery continued to rise dramatically. China's exports, however, continued expand by about 25 percent - as fast as they did in 2004.

III. Prospects for 2006

WTO economists predicted that the global economy will grow by 3.5 percent and that world trade will grow by 7 percent in 2006. WTO Director-General Pascal Lamy stated that "the global trading system is undergoing a period of transition" due to "shifting economic circumstances, major advances in technology and the emergence of new players on the global scene." The report also emphasized that the current global economic situation is "full of uncertainties."

On developed countries, the WTO predicts that "the long awaited recovery of investment in Europe will eventually materialize and trigger broader economic growth" because of the corporate sector's improved financial situation and the rise in stock markets. The report, however, noted that "the recovery of private consumption remains fragile if the employment situation does not improve and energy costs continue to rise." The WTO expects the global economy to grow by 3.5 percent in 2006 - slightly faster than in 2005.

The report also warns of the possibility of a slowdown in U.S. demand "under the impact of increased real interest rates and higher energy costs" and of the lack of recovery in the EU's investment climate. Energy costs have already increased in the first quarter of 2006 with crude oil prices exceeding the 2005 annual average by 10 percent.

Outlook

Rising oil and fuel prices are largely to blame for the slowed economic and trade growth in 2005. They will likely continue to act as a drag on world trade throughout 2006, mostly benefiting those countries that own and export large quantities of petroleum resources. Unsurprisingly, China's export growth continues to grow, and 2006 will likely prove no different. Overall, it appears that 2006 will prove unremarkable for

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global trade growth. Given the stagnant state of the WTO's Doha Round of multilateral trade negotiations, 2006 might not produce any major global trade developments, following the same pattern as 2005.

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WTO Agricultural Chair Releases Reference Papers in Effort to Push Negotiations Forward

Summary

Ambassador of New Zealand and Chairperson of the World Trade Organization's (WTO) Doha Round of agricultural negotiations Crawford Falconer released five reference papers presenting the state of play of discussions on the key issues of food aid, exporting state trading enterprises (STEs), export credits, and Blue Box and Green Box subsidies disciplines. The papers were released during agricultural negotiations held in Geneva the week of April 17.

Ambassador Falconer acknowledged in a note accompanying the five papers that Members were not in a "closing zone" for finalizing the "negotiating modalities" before the April 30th deadline set out in the Hong Kong Declaration. However, he considered that signs of flexibility in Members' positions emerged for several issues.

Analysis

Chairperson of the WTO Doha Round of agricultural negotiations Crawford Falconer released five reference papers presenting the state of play of discussions on the key issues of food aid, exporting state trading enterprises (STEs), export credits, and Blue Box and Green Box subsidies disciplines. We highlight below the most relevant aspects of the five papers.

I. Food Aid

At the WTO's December 2005 Ministerial in Hong Kong, Members agreed that the agriculture modalities would distinguish between emergency food aid ("Safe Box for Emergency Food Aid") and non-emergency situations ("Disciplines for Food Aid in Non-Emergency Situations"). In the case of non-emergency situations, Members should ensure elimination of commercial displacement. Falconer's reference paper provided new proposals and indicated areas of convergence and disagreement:

- Members need to decide whether the Safe Box will be subject to disciplines. It is accepted that at least in an emergency situation, Safe Box in-kind food aid is permissible. Falconer's reference paper on this point is intended to test how Members would react to eventual disciplines on how or when an emergency situation is declared, or who is able to declare an emergency. Another issue relates to the duration of the emergency aid.

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- Falconer proposed a multilaterally-oriented trigger as the test for getting into the Safe Box. There seems to be no disagreement that the UN agencies or the Red Cross should play a major role in determining when an "emergency situation" exists or in making the emergency appeals. Members now must consider (i) what, if any, other agencies or relevant international humanitarian organizations, or NGOs, could or should be added to the list; and (ii) whether direct appeal from one government to another or others should also be considered. Concerns remain that the Safe Box could become some kind of loophole to by-pass a more transparent and multilaterally-based process.
- Regarding the duration of the emergency aid, Ambassador Falconer also suggested that if Members accept the appropriateness of relevant international organizations to make the assessment of what constitutes an emergency situation, it would seem more appropriate to allow such organizations to determine also the duration of the emergency.
- Beyond the basic disciplines related to the declaration and duration of the emergency, Ambassador Falconer also wants to test Members' resistance to additional operational disciplines on the Safe Box for matters like re-export, tied aid, and grant form.
- Firm differences remain on the phase out of in-kind food aid to cash food aid in non-emergency situations. However, Ambassador Falconer found some grounds for consensus on basic disciplines for non-emergency in-kind food aid. Accordingly, in-kind food aid should: (i) be needs based; (ii) not be tied directly or indirectly to commercial exports of goods and services to the recipient countries; (iii) be targeted to well-identified vulnerable population groups to address specific nutritional needs; and (iv) take into account local market conditions of the same or substitute commodities, and as much possible, be sourced locally, sub-regionally or regionally.

II. Exporting State Trading Enterprises (STEs)

The Hong Kong mandate for negotiations on exporting STEs includes the elimination of trade-distorting practices, including export subsidies provided to or by them, government financing, and the underwriting of losses. In addition, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be exercised in any way that would circumvent the direct disciplines on STEs. Falconer's reference paper provided new proposals and outlined areas of agreement and remaining differences:

- Ambassador Falconer stated that three different options exist for a definition of an "STE." Some Members believe that the current definition, as provided in the Understanding on the Interpretation of Article XVII remains sufficient, but other Members consider that definition to be either too narrow or

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too broad. The Chairman said that Members should ask themselves whether the existing definition is definitional or operational.

- On the prohibition of trade-distorting practices, Ambassador Falconer proposed to eliminate export subsidies, government financing and the underwriting of losses by the end of 2013 - in parallel with the elimination of all other forms of export subsidies. As the mandate calls for the elimination of "all" trade distorting practices, Ambassador Falconer asked delegations to consider any other practices (apart from the specific case of "monopoly powers") that would be need to be disciplined.

- According to the Hong Kong Ministerial Declaration, the future use of monopoly powers is considered a trade distorting practice. Ambassador Falconer asked Members to decide whether monopoly powers should be subject to disciplines, such that Members cannot circumvent the explicit disciplines on export subsidies, government financing and the underwriting of losses. In the absence of a decision regarding the future use of monopoly powers for developed country exporting STEs, the Chairperson said that it is difficult to determine the precise need for special provisions for developing countries.

III. Export Credits, Export Guarantees and Insurance Programs

Recalling the discussions prior to the Hong Kong Ministerial, Ambassador Falconer stated that the Members are relatively close to reaching an agreement on disciplines related to export credits, export credit guarantees or insurance programs with repayment periods of 180 days and below. He presented draft text defining the terms "export financing support" and "export financing entities" for the purposes of the proposed disciplines. He noted that further reflection would be required to determine whether the definitions thus far provided are sufficiently specific or perhaps too broad. Falconer's reference paper also outlined current proposals and other remaining challenges:

- The Ambassador discussed the proposed "terms and conditions" for export financing support, which state that anything failing to meet those terms and conditions would automatically be deemed a non-conforming export credit, and therefore a prohibited export subsidy. The terms and conditions refer to maximum repayment terms (*i.e.*, repayment required within 180 days), interest payment, minimum interest rates, premiums for coverage of risks, risk sharing, foreign exchange risk, and self-financing. On self-financing, Members still disagree on the time limit for allowing premiums to cover all operating costs and losses.

- The Ambassador stated that detailed elaboration is still required with respect to disciplines related to differential treatment in favor of least-developed and net food-importing developing countries. He

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noted that some Members have been particularly concerned with the possible creation of a loophole by way of special treatment provisions. On this issue, Ambassador Falconer noted that proposals have been put on the table to deal with possible loopholes, and that notification and monitoring should be an effective tool to prevent loopholes or other unintended consequences.

IV. Blue Box

Ongoing negotiations seek to establish strengthened disciplines for the existing Blue Box[7] under Agriculture Agreement and for the expanded criteria agreed in the July Framework (*i.e.*, the so-called "new Blue Box"). Falconer commented on those issues where there has been some progress in relation to the Blue Box and on issues needing further discussion:

▪ It appears that there is a near consensus on a proposal to reduce the cap for Blue Box spending from 5 percent of the total value of agricultural production to 2.5 percent. This lower cap would introduce an additional criterion to those set out in the "July Framework."

▪ However, there is still a legitimate concern that there could be an excessive concentration of generally permitted support on a single, or narrow range, of product(s) under the Blue Box. Ambassador Falconer said that Members need to further explore viable ways to avoid this scenario. Some proposals on the table list complementary techniques to avoid concentration.

▪ Other issues that require further discussion include:

- A flexibility mechanism to deal with the situation where a Member has placed an exceptionally large percentage of its trade-distorting domestic support in the Blue Box, pursuant to paragraph 15 of the July Framework. This means that the 2.5 percent cap should not have the effect of countering the flexibility that is envisaged. The rational of this flexibility is not to discourage moves from Amber to the less trade-distorting category of Blue Box.
- Specific disciplines for cotton, pursuant to the sector-specific initiative endorsed in Hong Kong. For example, the African proponents called for the Blue Box ceiling for cotton to be one third of the general Blue Box ceiling.
- The improvement of transparency of Blue Box measures, including improved notification requirements and formats.

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[7] A special category of subsidies permitted under the WTO Agriculture Agreement; includes payments that are linked to production but with provisions to limit production through production quotas or requirements to set aside land from production.

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V. Green Box

In the Hong Kong Ministerial Declaration, Ministers reaffirmed their commitment to review and clarify Green Box[8] criteria. Ambassador Falconer reported that some Members strongly assert that this area should not entail major changes. However, according to Ambassador Falconer, there exists some tangible openness among Members to include appropriate changes that would ensure that the Green Box is more “development-friendly” (*i.e.*, better tailored to meet the realities of developing country agriculture, provided that the fundamental requirement of at most minimal trade distortion is respected). Other issues include:

- On general services, it appears that Members are open to specification of programs that would cover the special needs of developing country Members, provided that such programs would not cause more than minimal trade distortion. The list of programs that would be covered in future disciplines are likely to refer to the settlement programs, land reform, and any program related to food and livelihood security and rural development in developing countries.
- With regard to other Green Box measures, Ambassador Falconer highlighted the areas where changes have been suggested by Members, which include public stockholding for food security purposes, domestic food aid, direct payments to producers, and decoupled income support.

Outlook

After a “Green Room” meeting on April 21, key WTO Members agreed that current differences among Members prevented the April 24-30 ministerial meetings in Geneva to secure a final deal on “modalities” on agriculture and non-agricultural market access (NAMA). Although no new deadlines have been proffered, Falconer has proposed a new "continuous process of intensive negotiations," which would involve a cycle of weekly meetings for a six-week period aimed at reaching an agreement on full modalities in agriculture "as quickly as possible." As well as updating the status of the faltering negotiations, the reference papers will no doubt form a large part of the weekly meetings.

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[8] A special category of subsidies permitted under the WTO Agriculture Agreement; must not distort trade, or at most cause minimal distortion and must be government-funded and not involve price support. Green box subsidies tend to be programs that are not targeted at particular products, and include direct income supports for farmers that are not related to current production levels or prices. They also include environmental protection and regional development programs.

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Multilateral Highlights

WTO Restarts Agriculture Negotiations, Members Still Far Apart on Disciplines

On April 26, 2006, World Trade Organization (WTO) Members began another round of "intensive talks" on agriculture. The negotiations will last approximately six weeks. WTO Members have already accepted that they will not meet the April 30 deadline for achieving full modalities in agricultural market access and non-agricultural market access (NAMA) as part of the Doha Round of multilateral trade negotiations and have canceled a ministerial meeting originally planned for the week of April 24 in Geneva. The ministerial meeting was intended to secure a final negotiating framework, including specific levels of tariff and subsidy cuts, for agriculture and NAMA. However, based on the "disappointing" assessments of the agriculture and NAMA groups' chairmen, over 25 WTO Members agreed that "it would be pointless to go ahead with the ministerial meeting as the negotiations are not ripe for decisions."

Sources are noting that WTO Members are "hardening their positions" and growing further apart on key issues. The United States and the EU have circulated new proposals on export credits and food aid, but sources note that the proposals differ from one another in appropriate disciplines and lack a common foundation upon which an agreement could be built. Sources also note that issues such as a special safeguard mechanism (SSM) and special product (SP) designation for developing countries have caused differences to emerge between developed and developing countries. On special tariff treatment for farm products designated as sensitive, sources note that "deep differences" continue to prevent the United States and the EU, Japan, Switzerland, and South Korea from agreeing on appropriate disciplines.

On export credits, the EU proposal "reiterated its call for strict disciplines on export credit financing programs in order to ensure the parallel elimination of all forms of export subsidization." The proposal also calls for programs to fully recover their costs and losses through premiums charged over a period of one year. The U.S. proposal would permit programs to recover costs and losses through premiums charged over a 15-year recovery period. U.S. officials argue that the EU approach is aimed at shutting down all export credit agencies.

On food aid, the EU proposal calls for the elimination of food aid in the form of in-kind food shipments unless the aid in question is provided in response to emergency situations defined by a relevant United Nations (UN) agency and complies with needs assessments of the UN World Food Program. The U.S. proposal "would set more lenient terms for "safe box" qualification," would not apply UN criteria, and

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would allow the recipient country, the UN, or non-governmental humanitarian and charity organizations to declare an emergency and thus request food aid.

On sensitive products, the United States is proposing an approach that would require any deviation from agreed tariff cuts for sensitive products to be compensated by an increase in tariff-rate quota (TRQ) volumes. Under the U.S. proposal, “the greater the deviation from the agreed tariff cut, the greater the increase in the TRQ volume for the sensitive product.” The U.S. proposal also includes a base increase of 4 percent in current domestic consumption for all TRQs on sensitive products; that percentage would increase according to the deviation from the agreed cuts. The EU opposes the U.S. proposal and has proposed a "hybrid" approach under which the quota increase for these products would be based on existing import levels and domestic consumption.

With the April deadline for full modalities fading in the background, the renewed agriculture talks show no signs of promise. WTO Members are still far apart on many issues and the United States and the EU, two main players, refuse to budge from their current positions. Although talks are scheduled for six weeks, a period of time that WTO Director-General Lamy hopes will be enough to reach an agreement, unless Members drastically change their proposals or provide room for negotiations, it seems less and less likely that the Doha Round will include completed agriculture negotiations.

Blame Game Begins as WTO Members Face Failed Objective: End of April, No Modalities

World Trade Organization (WTO) Members have accepted that they will not meet the April 30 deadline for achieving full modalities in agricultural market access and non-agricultural market access (NAMA) as part of the Doha Round of multilateral trade negotiations. On April 21, 2006, key WTO Members agreed to cancel a ministerial meeting originally planned for the week of April 24 in Geneva. The ministerial meeting was intended to secure a final negotiating framework, including specific levels of tariff and subsidy cuts, for agriculture and NAMA. However, based on the "disappointing" assessments of the agriculture and NAMA groups’ chairmen, over 25 WTO Members agreed that “it would be pointless to go ahead with the ministerial meeting as the negotiations are not ripe for decisions.”

Lamy noted that “it is clear to me — and it is no surprise to any of you — that we will not be in a position to establish modalities in agriculture and NAMA by the end of April,” and that “despite all the work that has been put in by the Chairs of the negotiating groups and by all participants here and in capitals, the progress made is insufficient for Ministers to be able to negotiate modalities with a reasonable chance of success.” Lamy also stated that “genuine and important progress has been made, but not fast enough,”

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and that “more time is needed” to achieve an agreement. Lamy stressed that “this is not a time for blame or recrimination . . . but for determination [and a] refocusing of our efforts in working together more productively.”

Despite Lamy’s call for comity, trade officials began to point fingers immediately following the announcement. EU Trade Minister Peter Mandelson blamed the United States and a developing country group led by Brazil and India for the failure to achieve modalities. He stated that the stalled negotiations came from these countries’ "hiding behind high-sounding but unrealistic demands.” According to Mandelson, the United States agriculture offer was "overbidding," and he noted that U.S. demands on EU agriculture tariff cuts were unrealistic. He stated that “the United States has yet to cut a single dollar or dime from its escalating farm spending,” and that “no legislative reforms have yet been put forward by the Bush Administration let alone agreed by Congress, and I don't underestimate the political challenge involved in getting reform passed.” Mandelson also stated that countries such as Brazil and India were “demanding much when it comes to agriculture without giving anything of significance when it comes to reduced industrial tariffs.” Mandelson noted that to “close the gap between the EU and its critics,” WTO Members “need political engagement by all governments: and the courage to negotiate—really negotiate—in the realms of the possible rather than hiding behind high-sounding but unrealistic demands.”

U.S. officials countered Mandelson’s accusations with indictments of their own. The Office of the United States Trade Representative (USTR) noted that “the EU is quite adept at speeches, press conferences, and finger pointing; [the United States] just wishes they would put that same kind of energy into the needed negotiations to make the WTO talks a success.” USTR officials have noted that WTO Members’ “proposals to date have really been quite disappointing,” and that “it takes two to tango; [the United States] has come forward with very ambitious market-opening proposals [and is] still waiting for the response from others.”

Although Lamy’s statements are meant to reassure WTO Members and observers that an comprehensive Doha Round agreement can still be reached, his tone and the EU and U.S. responses indicate otherwise Instead of pushing forward on the agriculture and NAMA modalities, EU and U.S. officials wasted precious time arguing over who was to blame for the negotiations’ present failures. Indeed, this bickering not only has delayed the agriculture and NAMA talks, but may also have retarded negotiations in other areas like services that have progressed relatively smoothly over the last month. Whether trade officials can now regroup and recommit to working together to achieve a final agreement is unclear.

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WTO Appellate Body Reverses Panel Ruling on U.S. “Zeroing”

On April 18, 2006, the World Trade Organization’s (WTO) Appellate Body (AB) issued its report regarding “United States — Laws, Regulations and Methodology for Calculating Dumping Margins (‘Zeroing’)” (DS294). In its report, the AB **reversed** the Panel's finding that the “zeroing” methodology applied by the United States Department of Commerce’s (USDOC) in the administrative reviews at issue was consistent with Article 9.3 of the WTO Anti-Dumping Agreement and Article VI:2 of the GATT 1994. The AB’s justification for its ruling was that “the methodology applied by the USDOC in the administrative reviews at issue results in amounts of assessed anti-dumping duties that exceed the foreign producers' or exporters' margins of dumping.” This result contravened both Article 9.3 of the Anti-Dumping Agreement, which “clearly stipulates that ‘the amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2,’" and Article VI:2 of the GATT 1994, which “provides that ‘[i]n order to offset or prevent dumping, a Member may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product.” Thus, the AB found that the United States acted inconsistently with these provisions.

The EU requested on June 12, 2003 formal dispute settlement consultations with the United States on USDOC’s use of “zeroing” methodology in the calculation of dumping margins. Under its “zeroing” methodology, USDOC treats “transactions with negative dumping margins as having margins equal to zero in determining weighted average antidumping margins." Because the parties were unable to resolve the dispute through the consultative process, the EU on February 5, 2004 requested the establishment of a dispute settlement panel; Argentina, Brazil, China, India, Japan, Korea, Mexico, Norway and Chinese Taipei reserved their third-party rights in the dispute. On October 31, 2005, the Panel issued its report ruling, among other things, that the United States’ use of zeroing in original anti-dumping investigations violated its obligations under the Anti-Dumping Agreement. The Panel, however, split on the issue of whether WTO rules similarly prohibited "zeroing" during subsequent anti-dumping administrative reviews. The majority of the Panel ruled that "zeroing" could be used during administrative reviews, reasoning that the relevant provision of the Anti-Dumping Agreement applied only during "the investigation phase,” which the Panel interpreted to mean only during original investigations.

Agriculture Negotiations Chairman Shifts Focus to “Numbers” In Effort to Move Stalled Negotiations

On April 13, 2006, Chairman of the World Trade Organization (WTO) Doha Round agriculture negotiations Crawford Falconer told WTO Members that talks scheduled for the week of April 17 would

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focus on “narrowing differences” on the numbers for reducing farm tariffs and cutting agricultural subsidies. Falconer also stated that Members were far from achieving full modalities in agricultural market access by the April 30 deadline, and that WTO Members are “not in anything that I can recognize as a closing zone for finalizing modalities” nor have they “reached the requisite degree of convergence.”

Sources familiar with the WTO negotiations note that Falconer's numbers focus is a change in strategy; in past meetings, he centered agriculture talks on “textual” issues, such as the disciplines on farm programs and left tariff and subsidy cuts specifics “to be discussed at a higher political level.” These sources point out that Falconer originally planned to focus the April 17-21 talks on recently circulated “reference papers” that focused on the state of negotiations, green box and blue box support, export credits, state trading enterprises, and food aid. Falconer, however, shifted the focus to numbers because “there were more important issues that need even more attention right now.

The mid-April meetings in Geneva are critical to the Doha Round, as they should lay the groundwork for the April 28 agriculture and non-agricultural market access (NAMA) discussions that, if successful, are to conclude with agreements on full modalities. However, given Falconer’s words, it seems unlikely that WTO Members will be able to achieve full modalities in this short timeframe. Falconer’s shift in focus is likely a last-ditch effort to move the stalled agriculture negotiations forward by shifting the talks’ concentration to the specifics of subsidies and tariff reductions. Should this move fail to elicit agreement among Members or new offers on the critical unresolved issues of agricultural market access, amber and blue box supports, food-aid and treatment of “sensitive products,” there is little chance that Members will meet the April 30 deadline for full modalities.

WTO Appellate Body Partially Reverses Compliance Panel Ruling in Softwood Lumber Dispute; U.S. and Canada See Decision as a Win

On April 13, 2006, the World Trade Organization’s (WTO) Appellate Body (AB) issued its ruling on the compliance panel report in “United States—Investigation of the International Trade Commission in Softwood Lumber from Canada” (DS277). The AB partially reversed the compliance panel ruling that the U.S. International Trade Commission’s (ITC) amended threat of injury determination on imports of Canadian softwood lumber complied with WTO rules. The ITC “Section 129” determination was pursuant to a 2004 WTO Panel decision which found that the ITC’s final threat of injury determination in the U.S. anti-dumping and countervailing duty investigations of softwood lumber from Canada was WTO-inconsistent. In its April 13 compliance report,, the AB found that the compliance panel had applied an improper standard of review in assessing whether the ITC's Section 129 determination complied with

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WTO rules. The AB thus reversed the compliance panel's conclusion that the United States had implemented the 2004 Panel decision. The AB, however, stated that it "was not in a position to rule itself whether the revised ITC injury determination was in compliance with WTO requirements" because it did not possess all relevant facts needed to make such a decision. The AB's report states that "Canada, the participant making the request, focused its arguments on the errors made by the Panel and provided little information to enable [the AB] to complete the analysis…."

Both U.S. and Canadian officials see the ruling as a victory. The Office of the United States Trade Representative (USTR) stated that the AB's ruling allows the United States to keep in place the ITC's injury re-determination because the AB "declined to make a finding on the WTO-consistency of the ITC's determination." USTR also noted that the AB's ruling means "there is no basis for Canada to pursue retaliation." Canadian officials, on the other hand, stated that the AB's ruling supports Canada's position that "the compliance panel failed to properly review the measure that the United States claims is the basis for countervailing and antidumping duties on imports of Canadian softwood lumber." Canadian International Trade Minister David Emerson stated that Canada is "pleased with this decision, because it reflects the position [Canada has] maintained all along" and that "the United States can no longer claim that its measures are WTO-consistent." Officials from both countries have stated that they remain fully committed to negotiating a resolution of the long-standing softwood lumber dispute.

U.S. Chief Agricultural Negotiator: U.S. Could Remove Agriculture Offer Without More From Other WTO Members

United States chief agriculture negotiator Richard T. Crowder stated that the United States could withdraw its October 2005 agriculture offer as part of the World Trade Organization's (WTO) Doha Round negotiations if other countries do not submit equally "ambitious" proposals. Crowder stated that other WTO Members' agriculture offers have not matched the "far-reaching" U.S. offer, yet several Members still demand that the United States make further cuts in domestic support and specific commitments on government spending. He noted that the United States has been disappointed with the response from other WTO Members, and that "without something more meaningful [from other countries] on market access, it will be difficult" for the United States to keep its current agriculture offer on the negotiating table.

Crowder also stated that the United States "remains deeply concerned" that WTO Members will be unable to meet the April 30 deadline for achieving full modalities in agriculture and non-agricultural market access (NAMA). He noted, however, that missing the April 30 deadline "does not mean an end to negotiations," and that discussions on agriculture and NAMA will resume on April 17 at a week-long

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meeting of WTO Members in Geneva. Crowder stated that the pillar of agricultural market access "has more moving parts than the most complicated watch," and that negotiators must "look at more than one moving part" to be able "to know where all of those parts will end up in order to agree to a market access deal." This view contradicts WTO Director-General Pascal Lamy's six-point working plan that calls for WTO Members to reach an agreement on separate, incremental issues rather than the agreement as a whole.

The mid-April meetings in Geneva are critical to the Doha Round, as they should lay the groundwork for the April 28 agriculture and NAMA discussions that, if successful, are to conclude with agreements on full modalities. Crowder's words indicate the United States' mounting frustrations with the inaction of its WTO peers – especially the EU. Although some might view Crowder's threat to withdraw the U.S. offer as merely a negotiating ploy, it is likely more real than that. U.S. officials feel that their agriculture offer contains significant sacrifices, particularly on domestic support, and is by far the most ambitious among the major economic powers. They have also maintained that the offer is contingent on other Members' reciprocal concessions in agricultural market access and domestic support. Should U.S. negotiators reach a point where they no longer anticipate equivalent reciprocity from other nations, they might very well remove their offer. At this point, however, such a move would be hasty.

U.S. Submits New Agriculture Proposals In Attempt To Breathe Life Into WTO Negotiations

On April 7-10, 2006, the United States circulated three new agricultural proposals – draft texts on green box subsidy disciplines, food aid and State Trading Enterprises (STEs) – as part of the World Trade Organization's (WTO) Doha Round of multilateral trade negotiations. U.S. officials circulated the proposals to WTO Members in preparation for the April 17 agricultural negotiations in Geneva - the last round of agriculture talks before the April 30th deadline for achieving full modalities in agriculture.

Under the new U.S. proposal on green box support, the United States seeks to amend criteria for qualifying support under Annex 2 of the WTO's Agriculture Agreement. Green box spending is presently exempt from WTO spending caps. Sources indicate that the United States seeks to include agrarian reform and rural employment programs under green box exemption and to offer developing countries more flexibility in qualifying regional aid programs as green box support. Under the proposal, payments used to compensate farmers for destroying crops or animals for disease control purposes would also be classified as green box support.

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The language of the U.S. food aid proposal reflects the March proposal from African and least developed countries (LDCs) but also expands the proposed "safe box." The African/LDC proposal seeks to include "any aid provided in response to emergencies as defined by the United Nations" as qualifying "safe box" aid; the U.S. proposal would not apply UN criteria. The U.S. proposal would also allow recipient countries, the UN or nongovernmental humanitarian organizations to declare an emergency and request food-aid; the African/LDC proposal would allow only a declaration of emergency by authorities in the recipient country for aid to qualify for "safe box" treatment. Sources note that the United States is demanding that certain food aid be provided as in-kind donations rather than in cash form.

Under its STE proposal, the United States seeks the termination of export monopolies and special financing privileges for STEs. The United States also demands strengthened WTO disciplines on STE farm exporting privileges in Canada, Australia, and New Zealand, each of which maintain state-owned agricultural marketing boards that the United States believes provide unfair export subsidies for domestic producers. For example, U.S. countervailing duty (anti-subsidy) actions against the Canadian Wheat Board have produced extensive WTO litigation and remain a contentious bilateral trade issue between Canada and the United States.

Many observers speculate that WTO Members will fail to complete full modalities in agriculture and non-agricultural market access (NAMA) by the April 30 deadlines established at the December 2005 WTO Ministerial Conference in Hong Kong. Although the new U.S. proposals might be viewed as a last-minute attempt to resuscitate the failing agriculture negotiations, they do not address any of the most contentious agriculture issues, namely agricultural market access, overall (amber box) domestic support levels, or "blue box" disciplines. On these issues, the United States, the EU and other Members remain far apart and still appear unwilling to move. Unless the parties can bridge these gaps in the very near-term, the chances that they will meet the April 30 deadline for full agriculture modalities are slim, regardless of the new U.S. proposals.

U.S. To Request Second WTO Panel, Alleges EU Provides New Subsidies to Airbus

Sources have indicated that the United States will request the establishment of a second World Trade Organization (WTO) Dispute Settlement Panel to rule on alleged illegal subsidies provided to the European aircraft consortium Airbus. According to these sources, the United States will submit the request on April 21 during a meeting of the WTO's Dispute Settlement Body (DSB). The request will allege that the EU is providing subsidies for Airbus that were not addressed in the United States' October

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2004 complaint on the EU's subsidization of Airbus (DS316). Under DSB rules, the EU can block the United States' first request for consultations at the DSB meeting, but the DSB must automatically accept any subsequent U.S. request on the issue.

The EU has filed a competing complaint with the WTO alleging that Boeing receive illegal government assistance. The United States' complaint focuses on the EU's "launch aid" program under which European governments cover startup costs for Airbus' new aircrafts; Airbus does not repay these "loans" unless the plane is a success. The EU contends that Boeing receives preferential tax breaks and similar "launch aid" from the U.S. military and Japan, especially for Boeing's 787 Dreamliner which directly competes with the Airbus A-350.

U.S. and EU officials expect that the DSB will eventually merge the two U.S. complaints. A lingering evidentiary dispute, in which the EU alleges that the United States has refused to provide access to relevant documents, has delayed the original U.S. and EU complaints, which would have produced final panel decisions in early 2007. Due to these procedural delays and the United States' new subsidy allegations, the timeframe for resolution of both sides' complaints is now unclear. Although both sides have publicly stated their desire to settle the dispute, the United States' latest move, coupled with the EU's continued frustration over U.S. refusals to provide evidence, indicates that such resolution might not be possible. Should the panel produce final decisions, the respondent in each case will likely lose, leading to the possible imposition of billions of dollars in retaliatory tariffs.

Lamy Plan to Resolve "Incremental" Differences in Agriculture and NAMA Abandons April Deadlines, Calls for May Ministerial Meeting

Following a mini-ministerial in Brazil late last week that failed to break the deadlock on three critical Doha round issues, World Trade Organization (WTO) Director-General Pascal Lamy seeks to schedule another ministerial meeting for early May in an effort to get WTO Members to complete negotiating frameworks for agriculture and non-agricultural market access (NAMA). At the March 31- April 1 mini-ministerial meeting United States Trade Representative (USTR) Rob Portman met with EU Trade Commissioner Peter Mandelson, Brazilian Foreign Minister Celso Amorim and WTO Director-General Pascal Lamy in an effort to move the stalled Doha Round negotiations forward. However, according to Lamy, "little progress was made on the primary outstanding issues,"

Lamy also presented a "six-point work plan that would not ask ministers to develop complete formulas for cutting agriculture subsidies and tariffs or tariffs for industrial goods" by the April 30 deadline that Members agreed to at the December 2005 Hong Kong Ministerial Conference. Lamy instead pressed

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Members to "settle certain disputes about these formulas" to justify continued negotiations and to achieve full modalities by the beginning of summer. Lamy's work plan calls for several decisions in agriculture, including: (i) the overall cut in Amber Box subsidies; (ii) rules for Blue Box subsidies that would prevent the concentration of payments on certain commodities; (iii) the thresholds for the different tariff bands; and (iv) the percentage cuts for each band. Sources indicate that Lamy has urged the EU to "move toward the parameters of the formula proposed by the Group of 20 (G-20) developing countries, which would group agricultural tariffs into four tiers for developing countries and five for developed countries." Under the G-20 proposal, the higher tiers would be subject to deeper cuts, and developing countries would cut their tariffs by two-thirds of developed countries' levels. In non-agricultural market access (NAMA), Lamy is pushing Members to decide on the coefficients for a Swiss formula that would be used to determine the level of the final tariffs after an implementation period.

Lamy's plan is the first formal concession by a WTO or government official that the achievement of full modalities in agriculture and NAMA will not occur by the April deadlines established in Hong Kong. Due to the July 2007 expiry of Presidential Trade Promotion Authority (TPA) in the United States, WTO Members must complete a comprehensive agreement by early 2007. Considering that Lamy has been one of the most optimistic officials about the Doha Round, his plan and comments are a disheartening commentary on the current state of the multilateral negotiations. At this stage, the timely completion of a full-scale multilateral document is in doubt.

EU Presents New Agriculture Proposal for Sensitive Products; U.S. Expresses Disappointment with WTO Negotiations

On April 4, 2006, the European Union (EU) presented a new proposal to improve market access for certain sensitive agricultural products traditionally imported in low quantities. The EU's offer comes as part of the World Trade Organization's Doha Round of multilateral trade negotiations and was presented during a meeting of the Group of 6 (G-6) bloc of nations, consisting of the EU, the United States, Brazil, India, Japan and Australia. Sources indicate that the EU likely unveiled its proposal in response to fellow WTO Members' complaints that the EU's October 2005 agricultural market access offer lacked sufficient ambition. The new EU proposal is the first substantive move by the EU on market access since its original offer.

Sources indicate, however, that the proposal will likely impact only a small number of agricultural goods that have been imported well below permitted quota levels because of high tariffs and administrative barriers. The EU did not identify any products that would be covered by the proposal, stating that the final

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list of products "would depend on the selection criteria and thresholds chosen." In its October proposal, the EU suggested increasing existing tariff-rate quota (TRQ) volumes for sensitive products based on past import levels. Other WTO Members, including the United States, opposed the TRQ proposal, calling on the EU to base TRQ increases on overall domestic consumption of agricultural products. Sources indicate that the new proposal bases the TRQ increase such that imports of designated agricultural products reach 5 percent of total EU domestic consumption. The products in question would be labeled "sensitive" and thus subject to half the tariff cuts of other agricultural goods.

Before the EU released its new proposal, United States Trade Representative (USTR) Rob Portman stated that "little progress was made on the primary outstanding issues" during the March 31-April 1 WTO negotiations in Brazil. Portman met with EU Trade Commissioner Peter Mandelson, Brazilian Foreign Minister Celso Amorim and WTO Director-General Pascal Lamy in an effort to move the stalled Doha Round negotiations forward. Based on the Brazil meetings' inaction, Portman stated that he is "not encouraged" that WTO Members will meet the April 30 deadline for achieving full modalities in agriculture and non-agricultural market access (NAMA). Portman noted that, regardless of the Doha Round's outcome, the United States "would continue to work toward bilateral trade agreements with countries such as South Korea and Malaysia while at the same time maintaining its efforts towards concluding the Doha Round." Portman also opined that "there isn't anything that the United States can do through [its] policies with other countries that can necessarily move the Doha Round forward" and stated that moving the stalled multilateral talks forward will take "political will on the part of other countries." Neither the United States nor any other major agricultural producing nation, such as Brazil, has commented on the EU's new proposal. It is likely that the nations are examining the offer in order to make a detailed, and perhaps coordinated, response. However, lack of public excitement regarding the EU offer by WTO Members, business groups or other interested parties indicates that it likely will not break the deadlocked agricultural negotiations. Nevertheless, after several months of the EU refusing to move past its original offer, the new proposal is cause for cautious optimism. Whether it comes too late remains to be seen.

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