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European Update

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Clinton Administration Still Undecided on Carousel Sanctions

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The Clinton Administration has yet to decide how it will alter the retaliation lists of European Union products subject to punitive tariffs imposed after the EU failed to implement two adverse decisions in the World Trade Organization on beef and banana trade. While the decision could be approved by officials at the deputies level, it would have to be cleared by President Clinton in the case that it included politically sensitive items, further delaying the decision.

It is possible that the delay in a carousel decision on the beef retaliation list is in part due to disagreement among agencies, and confusion within the Agriculture Dept. on what position it should take. The interagency process functions much more quickly when USDA and the Office of the US Trade Representative agree upon a position. USDA may opt to back the position of USTR on the beef list, which will possibly target Spain and Italy (France and Germany have already been targeted); the United Kingdom is exempt from that list.

Another controversial issue that has arisen is the targeting of Denmark's pork exports in the revised beef retaliation list. This position is advocated by US pork producers. Denmark is now targeted on the beef list, but USTR and USDA are not planning to include them in the next rotation, sources said. The National Pork Producers Council (NPPC) has generated congressional pressure on the Administration to retain EU pork products on the beef list.

The beef list may be harder to compose

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US Responds to EU and WTO on FSCs

On May 2, the United States responded to EU and WTO complaints with a proposal for a new corporate tax policy. Unlike Foreign Sales Corporations, which relieve offshore exporters of partial corporate taxes, the new regimen also includes any US company manufacturing abroad regardless of whether they export or not. The US thereby negates the claim that the national revenue forgone through FSCs is contingent on exports, and so accommodates the WTO's policy prohibiting export subsidies.

In 1984, the Foreign Sales Corporation scheme created a new persuasion for US manufacturers to export, as they had been discouraged due to the US worldwide taxation. The Reagan Administration felt the need to equalize tax rate treatment without scratching our entire corporate tax system. The European Commission remained quiet until 1997, when it and the World Trade Organization formally protested FSCs with the same argument used in 1981 against Nixon's Domestic International Sales Corporations- that it is an illegal export subsidy. However, while other countries, including the EC, employ a territorial tax system (only taxing the income made within their national boundaries), the US taxes all corporate income no matter where it is realized.

By establishing a Foreign Sales Corporation, a US company can financially benefit as European

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July 1 Marks Beginning of New Era in EU-Mexico Trade Relations

The EU and Mexico's Free Trade Agreement officially began on July 1, 2000, following the signature of the EU-Mexico FTA at the European Council in Lisbon in March. This accord, which constitutes the first commercial agreement to be signed between the EU and a Latin American country, covers 95% of EU-Mexican trade in industrial goods. Once tariff concessions are complete (mostly by 2003 but by 2007 for certain goods), the agreement will offer the EU a commercial playing field nearly level to that of the North American Free Trade Agreement (NAFTA).

Seen as a major coup for Mexico, the signing of the FTA is hoped to reduce Mexican economic dependence on the United States. European officials favored the FTA with Mexico primarily as a means of rectifying the NAFTA-induced deterioration of the EU's share in the Mexican market. The FTA stipulates that European manufacturing exports will be free of duty in Mexico by 2007. In addition to staking their claim to a larger part of the Mexican market, European exporters hope that Mexico will facilitate their access to other NAFTA members, namely the United States and Canada. However, exports to North American countries will be limited by the NAFTA rules of origin.

Mexico is also striving to increase its market share in the EU, concerned that the penetration of the US market will soon reach its limits. As of July 1, 2000, the EU will eliminate 82% of its tariffs on Mexican products, which will considerably improve Mexico's position in the European market – EU tariffs for the remainder of Mexico's manufactured products will be lifted by 2003. Mexican products will now gain access to a market of 375 million consumers

As expected, most sensitive agricultural products (i.e., grains, meats, dairy products, bananas, avocados) have been excluded from the FTA and placed on a waiting list. However, the EU did grant Mexico some concessions for its fruit and vegetable exports. The accord also includes a special automotive package, and provides for a future negotiations in agriculture and wine, as well as future cooperation in customs facilitation.

US-EU Cuban Rum Dispute Heads to WTO

On July 3, The EU announced its request for a WTO disputes panel to rule against a US law restricting the rights of foreign right-holders of US trademarks. Section 211 of the 1998 US Omnibus Appropriations Act stipulates that trademarks used in connection with assets confiscated by the Cuban government in the 1960s cannot be registered without permission from the original owner, even in cases where the trademark was abandoned in the US, thereby making it available to everybody. According to Section 211, US Courts are prohibited from recognizing or enforcing any assertion of such rights unless the original owner has given his consent.

In February 2000, the US Appeal Court employed Section 211 in ruling against a French-Cuban joint venture which tried to defend its trademark and tradename 'Havana Club', a Cuban rum, against the Bacardi company, mainly on the basis of Section 211.

The EU holds that Section 211 violates numerous obligations of the US under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) because it treats certain foreign right-holders with Cuban assets less favorably than US right-holders. The law further violates international trademark rules enshrined in the TRIPs Agreement because a trademark registration and its enforcement before courts cannot be made conditional on the consent of a trademark owner who has abandoned his rights.

The EU's request will be addressed by the WTO Dispute Settlement Body on July 27.

Commissioner Pascal Lamy Signs First Accords Facilitating Trade in Goods with Candidate Countries

On July 10, Commissioner Lamy signed landmark agreements facilitating EU trade with Hungary, the Czech Republic, and Latvia. These accords are the first to extend the benefits of the EU's single market in industrial goods to applicant countries in sectors for which candidate countries have aligned their rules with Community legislation.

These accords build on the Europe Agreements, which constitute the broad framework for the EU's relationship with the candidate countries and include sectoral agreements covering trade worth €15 billion Euro with Hungary, and 10 billion Euro with the Czech Republic.

Talks on additional agreements are in progress with Estonia, Lithuania, Slovenia and Slovakia.

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because it will stay in place longer than a banana list. This is because the underlying dispute over the EU's ban on beef raised with growth hormones is almost intractable, given its political sensitivity. In the banana dispute, private-sector supporters of the rotation approach believe an effective list could produce some movement in the EU within two rotations.

Under the Africa Growth and Opportunity Act, USTR is required to rotate retaliation lists every six months unless a resolution is close or there is agreement between USTR and the petitioner that there should be no rotation.

Wine and Spirits Agreements Concluded Between the European Union and South Africa

The EU and South African negotiators reached a provisional technical agreement on Friday 9 June on the conclusion of two bilateral agreements on trade in wines and spirits scheduled to enter into effect on September 1, 2000.

In parallel with the implementation of the wine and spirits agreements, the EU will provide financial assistance of approximately $ 15 million.

These agreements are of particular importance to the EU because they provide better protection for Community designations of origin than the protection available at multilateral level. It has also undertaken to give exclusive protection to certain traditional names of spirits such as "grappa", "ouzo", "Korn", "Pacharan" and "Jagatee" which will be effective after a period of five years.

In 1999, the EU's wine imports from South Africa amounted to $ 190 million while its wine exports to South Africa totaled only $ 10.5 million. By contrast, the EU had a bilateral trade surplus in spirits with Community exports amounting to $ 85 million as compared with $ 3.8 million worth of imports.

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exporters do. About 90% of FSCs reside in Barbados, Guam or the Virgin Islands, but they can operate in any US possession or country with US Treasury reciprocity. The market value of the exported goods can be attributed to no more than 50% of imports. In addition, the law requires a foreign bank account, the board of directors' meeting held offshore and a non-US citizen on the board. The US justifies the tax exemption for a FSC by denying the generated income as significantly connected with US activities. Nevertheless, a company can set up a mailbox through which transactions or orders are transferred and call it a Foreign Sales Corporation. Firms have also developed as outsourced FSC management, providing the foreign director and setting up the offshore meetings via telephone. The tax savings, which usually range from 15% to 30%, totaled US$2.5 billion of forgone 1999 revenue, according to US Treasury records. However, the EC claims much higher estimates, insisting the tax relief is still an export subsidy.

The US Administration stands firmly on the grounds that the national revenue forgone via tax relief to exporters is not a subsidy, but a means to fair trade. The 1981 GATT decision on Reagan's DISC system concluded that "economic processes located outside the territorial limits of the exporting country need not be subject to taxation by the exporting country." However, it did not address, nor endorse, utilizing other rules of taxation. Instead, it merely describes a territorial taxation regimen. It neglected to mention whether the exporting country could impose *different* tax rates on its exporters, and the United States perceives its FSC regime compatible with both GATT and WTO regulations. However, a WTO panel sided with the EC and demanded the FSC system be dismantled by October 1, 2000. Furthermore, in February of this year, the WTO Appellate Body denied a US appeal and confirmed the contention that Foreign Sales Corporations provided illegal export subsidies.

The latest proposal to balancing global tax treatment adopts a "Separate Elective Regime", which offers tax relief on income from any offshore operations, exports and non-exports. In essence, the US has expanded the rules and broadened the benefits. The new system maintains a 50% minimum of market value attributed to US resources and still allows special transfer pricing rules in the allocation of income by the parent company. Should administration implement the new "Separate Elective System" we may assume that the existing FSCs will most likely be permitted to use current FSC standards until the end of this year. Many companies, including some foreign, may also find the new system advantageous as well as small-business friendly.

However, the EC remains disgruntled and irritated, offering intercession and advice. US corporations should anticipate the European reply and beware of possible retaliation. The proposal needs to move through congress soon to meet the October 1 deadline, when the WTO and EC may respond with sanctions of their own. However, quantifying the actual dollar effect on trade from the tax relief to determine due retaliation will be quite a chore. In the meantime, we wait for finalization of the new tax regime and hope it satisfies them and the WTO for the sake of fair trade.

Trade Briefs

EU-Canada Joint Statement Urges Launch Of New WTO Round

On June 26, Canadian Prime Minister Jean Chrétien announced that Canada and the European Union have agreed on two statements on international trade and peace-building activities. The statement followed the Canada-EU Summit held June 26 in Lisbon, Portugal, between Prime Minister Chrétien and the Prime Minister of Portugal, António Guterres, representing the Presidency of the European Council, and the President of the European Commission, Romano Prodi.

In the joint statement on the WTO, both parties pledged to support the launch of a new trade Round reflecting the balanced interests of all WTO members, aim to further liberalize international trade, facilitate the integration of developing countries into the global economy and take into account sustainable development, consumer health and cultural diversity. The statement supports the pursuit of international discussions on trade, globalization and social development between all interested parties.

China's 2000 Accession to WTO Looks Doubtful

The working party on China's accession to the World Trade Organization has outlined a tremendous work load for trading partners, eliciting questions among some negotiators on China's ability to gain entry to the WTO this year. Negotiators have stated that it will be very difficult to meet the September 2000 goal for completion of multilateral deliberations leading to China's membership.

The working group is currently focusing on addressing technical details and policy differences in the accession protocol and the working party report, while China concludes five outstanding bilateral agreements and finalizes the details of agreements completed in principle. China must still complete agreements with Mexico, Switzerland, Costa Rica, Ecuador, and Guatemala and has not yet notified the WTO about all the bilateral agreements it has concluded, according to officials.

The multilateral work has been slowed by China's opposition to numerous points, primarily what it views as demands that exceed normal WTO obligations.

The U.S. has suggested a simultaneous accession in which Taiwan would enter in the same General Council session that approves China's entry, however most other WTO members prefer Taiwan to enter immediately after China has been granted membership.

EU Member States Unable to Agree Upon New Solutions to Banana Dispute

In an attempt to resolve the continuing dispute over bananas, The European Commission offered new proposals to end the stand off, however were undermined when EU foreign ministers refused to support its preferred stance.

Following last year's WTO ruling against its current system, the European Commission has been struggling to decide upon a banana import system that complies with global trade regulations. The WTO sided with the United States and Latin American countries, who contended that current EU policy favors EU territories and former European colonies in the Caribbean over Latin American exporters and US marketing companies such as Chiquita Brands International Inc and Dole Food Co. Inc.

Unable to reach internal accord or offer solutions, the EU continues to await the newest "carousel sanctions", the Clinton administration's revised list of products subject to punitive tariffs that were imposed after the EU failed to implement the WTO's decision on the banana trade.

OECD names 35 tax havens, warns of sanctions

On Monday, June 26, the OECD published a list of 34 tax havens from Europe to the Caribbean and the South Pacific, warning of sanctions if they failed to change their ways in a year's time.

After four years of work focusing on legislation and reported practices, the OECD took the diplomatically sensitive step of issuing a warning list and giving identified countries a year to change their ways. Failure to comply with international tax standards will result in "defensive measures".

The full OECD tax haven list includes: Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, the British Virgin Islands, Cook Islands, Dominica, Gibaraltar, Grenada, Guernsey, Isle of Man, Jersey, Liberia, Liechtenstein, the Maldives, the Marshall Islands, Monaco, Montserrat, Nauru, the Netherlands Antilles, Nieui, Panama, Samoa, Seychelles, St Lucia, St Christopher and Nevis, St Vincent and the Grenadines, Tonga, Turks and Caicos, the U.S. Virgin Islands and Vanuatu.