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Contents at a Glance:

Negotiation Watch

1. Registration Deadline for Miami FTAA Ministerial conference & side-events
2. Investment issue remains a stumbling block to Pan-American trade pact
3. Korea signals it may abandon cultural policy in order to obtain US investment treaty
4. Europe weighs a push for WTO investment talks on a plurilateral basis
5. Mckinsey consulting firm issues report on FDI's impact on developing countries
6. Key US senator calls for investment appellate body in Central America trade pact

Negotiation Watch:

1. Registration Deadline for Miami FTAA Ministerial conference & side-events

In the lead-up to this month's meeting of 34 western Hemisphere trade ministers in Miami (see next story), a three and a half day symposium will see broader discussion of the social and environmental impacts of the proposed Free Trade Area of the Americas (FTAA). Further information about the Americas Trade and Sustainable Development Forum is available on the website of the University of Miami's North-South Center:
<http://www.miami.edu/nsc/pages/FTAA.html> .

The International Institute for Sustainable Development (publishers of the INVEST-SD News Bulletin) will be coordinating the Forum's workshops on investment, which will see wide-ranging discussion by academics, arbitrators, government officials, civil society groups and forum participants.

Please note the deadline for registration for the Symposium is today. Because the Forum events take place within the security perimeter of the

Miami Ministerial Conference, registration is essential for those wishing to attend the event.

2. Investment issue remains a stumbling block to Pan-American trade pact,
By Luke Eric Peterson

As selected Western hemisphere trade ministers convene for a mini-ministerial conference this weekend in Washington, question marks still loom over the place of key issues such as investment, services and agriculture in the ongoing effort to conclude a Free Trade Area of the Americas (FTAA).

A full meeting of Ministers from 34 countries will take place in two weeks time in Miami, and this weekend's Washington meeting was called in an effort to clear away some of the stumbling blocks which have plagued the FTAA process.

At the top of the list is an ongoing quarrel between the three biggest trading powers in the hemisphere - Canada, the US and Brazil - over the scope and ambition of the FTAA project.

Canada and the US have been key demandeurs for an ambitious FTAA which would see broad commitments in areas such as investment, services and government procurement. At the same time, they insist that the FTAA is not the place for serious concessions on agricultural subsidies and barriers - indicating that such efforts need take place under the broader WTO rubric, in order that Japan and the European Union would also be bound by any further reduction in Western barriers to developing country agricultural goods.

For its part, Brazilian trade officials have demanded movement on the critical agricultural file, but insist that they have no negotiating mandate to enter into commitments on trade-related areas such as investment, government procurement or rules on intellectual property (which would exceed those of the existing WTO agreement on trade-related intellectual property or TRIPs).

Some press reports suggest that Brazil has expressed a willingness to consider negotiations of these latter issues on a pluri-lateral basis - that is to say, those countries which felt comfortable negotiating on a given issue would commit to binding rules under the FTAA, while others would refrain from signing on at the present time.

In some sense, Brazil finds itself in a particularly strong bargaining position on investment, never having ratified, for domestic constitutional reasons, any of the bilateral investment treaties which it negotiated with a handful of countries during the mid-1990s. Thus, unlike most countries, Brazil approaches the governance of global investment flows with a tabula rasa - which allows the nation to hold out for broader multilateral rules which are more closely linked to investment attraction and sensitive to the development priorities of developing countries.

Conversely, many of Brazil's hemispheric neighbours have subscribed to

investment rules on the standard protection model - either in investment treaties or in the context of broader trade agreements - or are in the process of negotiating such commitments.

As a consequence of this, Brazil may face the longer term prospect of becoming ever more isolated on the investment issue by the United States and Canada, as these latter countries push to sew up their favored investment protection templates with the rest of the hemisphere on a bilateral basis. The US, has already signed up Mexico, Chile and Canada to the same general template, and is exploring bilateral trade negotiations with a large number of nations in the hemisphere (including Costa Rica, El Salvador, Nicaragua, Panama, Honduras, The Dominican Republic) and is considering offers to negotiate from other countries, including Colombia and Ecuador.

INVEST-SD will report next week upon any outcomes of this weekend's discussions in Washington. The following week, INVEST-SD will report from the FTAA's Miami Ministerial Conference.

Sources:

"Allgeier says scope most immediate challenge in FTAA talks", Inside US Trade, Nov.7, 2003

"Changing Tack, Brazil pitches flexible FTAA approach", By Gerald Jeffris, Dow Jones News Wire, Nov. 3, 2003

3. Korea signals it may abandon cultural policy in order to obtain US investment treaty,
By Luke Eric Peterson

US officials continue to insist that they will withhold the conclusion of a bilateral investment treaty with the Republic of Korea unless the Korean government agrees to reduce - and ultimately eliminate - a quota system which requires that Korean cinemas show domestic films for at least 40% of each year.

According to Korean press reports, President Roh Moo-hyun hopes to move forward with the treaty, despite the public opposition of Culture Minister Lee Chang-dong - himself a well-known film director. Last week an aide to the President told Korean reporters "There could be an adjustment of the quota to an appropriate level."

Although Korea hopes to conclude a broader free trade agreement with the US, US trade officials say that a bilateral investment treaty will be a prerequisite for any more ambitious trade agreement. Thus, in the United States' view, Korea's film quota system stands squarely in the way of both agreements.

Liberalization of cultural and broadcasting industries under the terms of US investment treaties has been a controversial policy, with the European Commission recently pushing the US to amend investment treaties which it had earlier concluded with 8 accession candidates to the European Union. The EC objected to those investment treaties on several

grounds, including that they might have conflicted with certain European Union regulations on cultural programming. Both the EU and EU member-states have a series of laws and regulations which dictate that minimum levels of domestic content must be broadcast on European radio, television or shown in cinemas.

France, for example, requires cinemas to show at least 5 weeks of French feature films per quarter, while Spain requires cinemas to set aside one day for new EU films for every three days of non-EU films shown.

Indeed, it was in response to perceived threats to cultural policy-making, that a number of nations, led by Canada and France, have pushed to negotiate an international treaty on cultural diversity, which would seek to safeguard the ability of governments to act to promote and protect domestic cultural production.

In 1999, an advisory committee to the Canadian Department of Foreign Affairs and International Trade recommended that Canada take the lead in negotiating such a international legal instrument in order to provide greater certainty that domestic cultural policies could be preserved in an era of increasing pressure for liberalization of the media, broadcasting and entertainment sectors.

In its final report, the Cultural Industries Sectoral Advisory Group raised concerns about the viability of Canada's current approach to ensuring cultural diversity, which has been to enter exceptions to international trade and investment agreements. For example, Article VI (3) of Canada's 1997 investment agreement with Ecuador stipulates that "cultural industries are exempt from the provisions of this agreement". The Group noted that in an era of media convergence, it becomes progressively more difficult to define the cultural industries which would remain outside the reach of investment treaty disciplines.

Sources:

"Government likely to cut screen quotas", By Sim Sung-Tae the Korea Herald, Oct. 30, 2003

"New Strategies for Culture and Trade: Canadian Content in a Global World", the Cultural Industries Sectoral Advisory Group on International Trade, Report of February 1999, available at:
www.dfait-maeci.gc.ca/tna-nac/canculture-en.asp

4. Europe weighs a push for WTO investment talks on a plurilateral basis,
By Trineesh Biswas

The European Union could abandon its long-standing insistence that all World Trade Organisation Members be bound by a proposed WTO multilateral investment framework.

Today, the EU's 'Article 133 Committee' (the group, comprised of government officials from each member state that determines the commercial policies to be pursued by the European Commission) will meet

to discuss the thorny investment issue. The Committee will discuss a Commission memorandum that puts forth different options for the EU to pursue in relation to the so-called 'Singapore issues' following the set-back of talks at the WTO's Cancun Ministerial Conference in September.

Among various options, the Commission's memorandum proposes that the EU could drop its insistence that the so-called Singapore Issues (investment, competition, transparency in government procurement and trade facilitation) be included in the Doha Round Single Undertaking. In other words, the EU could accept that any WTO rules in these areas would need not be "agreed upon and subscribed to by all WTO members in the form of one indivisible package of commitments."

Indeed, the Commission "sees little prospect for negotiating" investment within the Single Undertaking, but maintains that there is "a strong case for defining rules at the global level." As a consequence, the EC's memorandum sees some value in a pact to be endorsed only by a "critical mass" of WTO members.

Two options were put forward for the negotiation of such a plurilateral agreement. According to the 'Optional Participation' model the agreement would be multilaterally negotiated amongst all Members, but parties would not be obliged to sign up to the end-result. However, the Commission suggested that such negotiations - influenced, as they would be, by all of the organisation's Members - may not yield the level of ambition that some proponents of agreements on the Singapore issues desire.

Thus, the memorandum also contemplates an alternative negotiation structure based on the precedent of the WTO Information Technology Agreement (ITA), which would see participation limited to Members committed to the final result. This, it says, "would increase the possibility of maintaining the preferred level of ambition and a high level of pro-development approaches, especially on investment."

The EU's flirtation with a plurilateral investment agreement at the WTO is in accordance with the radical reforms of the WTO that the EU has been mooting since the end of the Cancun meeting. These reforms would see the creation of a "WTO II," in which deeper rules would be negotiated by willing countries on an optional, plurilateral basis.

However, some development agencies have criticized efforts to push controversial issues forward on even a plurilateral basis. Duncan Green of the England and Wales-based Catholic Agency for Overseas Development warns that a plurilateral agreement on investment could leave some developing countries with the "unenviable choice" between participating in negotiations that they do not want, or taking the risk of "being forced, at a later stage, whether by bilateral, multilateral or investor pressure, to sign up to an agreement they have had no part in negotiating."

Today's meeting of the 133 Committee comes on the heels of the EU's apparent revival of interest in advancing global trade talks, following its post-Cancun retreat into relative silence. European Trade Commissioner Pascal Lamy and Agriculture Commissioner Franz Fischler met

WTO General Council Chair Carlos Perez del Castillo this week, representing the first formal, high-level meeting between the two groups since the Cancun talks fell apart in September.

This re-kindling of interest may reflect the message of another European Commission memorandum. The Wall Street Journal Europe reports that a "reflection paper" being crafted by the European Commission indicates that the EU would face a number of problems in shifting its policy toward bilateral free trade deals, as a result of which the EU is likely to keep its main focus on multilateral trade talks at the WTO.

Sources:

"European Envoys, WTO Seek Ways to Revive Talks," by Scott Miller and Matthew Newman, The Wall Street Journal Europe (via Dow Jones), November 6, 2003

"EU Looks Set To Stay Focused On Multilateral Trade," by Scott Miller and Matthew Newman, The Wall Street Journal Europe, November 6, 2003

"EU shifts stance on deadlocked trade talks," by Tobias Buck, Financial Times, November 6, 2003

"Singapore Issues - Options post-Cancun," European Commission Directorate-General for Trade (REF 514/03), Brussels, October 30, 2003

"Initial Comments on EC Singapore Issues Options Paper," Duncan Green, Catholic Agency for Overseas Development, November 7, 2003

"EU floats ideas to repair Cancun breakdown," Agence France Presse, October 6, 2003
Italian Presidency of the Council of the European Union Calendar,
http://www.ueitalia2003.it/EN/LaPresidenzaInforma/Calendario/11/7/ev_7no_vagrec133.htm

Agenda for November 7 Article 133 Committee Meeting, Council of the European Union (TX 4846/03), Brussels, October 31, 2003,
<http://register.consilium.eu.int/pdf/en/03/tx04/tx04846.en03.pdf>

5. McKinsey consulting firm issues report on FDI's impact on developing countries,
By Trineesh Biswas

"The overall economic impact of multinational investment on developing economies has been overwhelmingly positive," according to a new report from the McKinsey Global Institute (MGI), an independent research group within the international consulting firm McKinsey and Company.

However, the report, "New Horizons: Multinational Company Investment in Developing Countries" also found that government incentives to foreign investors, such as tax holidays and free land, "have negative and unintended consequences." Indeed any positive spin-offs were held to occur "despite the persistence" of such incentive schemes, rather than as a consequence of them.

Although the report draws broad conclusions, the MGI study was based on a set of case studies from four large developing country countries -- China, India, Brazil and Mexico -- focusing on five sectors: automotive, consumer electronics, retail, retail banking, and information technology/business process "offshoring".

An improved standard of living was seen to be the biggest impact of investment by multinational firms according to the study. McKinsey attributed this to the "lower prices, higher-quality goods, and more choice" which accrued to consumers in developing nations. Meanwhile, the impact of multinational investment on employment - a common concern associated with foreign direct investment - was "either neutral or positive" in two-thirds of the cases considered.

Notably, the motive for a given investment was seen to have an influence upon the investment's impact.

For example cost-seeking investment (low-wage) "consistently improved sector productivity, output, employment, and standards of living in the host countries, all without much downside."

Meanwhile, Market-seeking FDI had a "generally positive economic impact" despite having mixed impacts upon employment - as benefits often came at the expense of less competitive domestic firms.

Notably, foreign investment in the banking sector was found to have no clear positive impact on consumers or competition, although McKinsey did not that it tended to boost productivity.

As for the role of incentives, the report argued that these were not a good strategy for attracting investment - dismissing them as expensive and largely ineffective. Even in cases where incentives appeared successful in attracting FDI, the report found that they were "not the most important factors driving location decisions of multinational companies." Rather, companies reported that other factors, including quality of infrastructure and availability of skilled labour are more critical, leading the report's authors to conclude that "FDI would have been attracted without the incentives."

Moreover, incentives were seen to have significant costs that often get overlooked by policy makers. According to McKinsey, incentives generate fiscal and administrative costs - i.e. bureaucracies to run them - and can even end up paying foreign investors to make investments that would otherwise have been made by domestic players. Incentives were also a threat to productivity, by leading to overinvestment or "crowding out" of more efficient producers. The continued use of incentives was thought to increase the risk of corruption and to spur a so-called 'race-to-the-bottom' dynamic, whereby countries or regions compete with each other to win the hearts of foreign investors.

The report devoted little attention to the environmental and social impacts of multinational company investment in the four developing countries studied. A spokesperson for McKinsey, John Cheetham, told Invest-SD that "the survey is primarily on the economic impacts of multinational company investment. Although there is passing mention of

some social impacts, it does not look at environmental impacts - the report was already 540 pages long."

Sources:

"New Horizons: Multinational Company Investment in Developing Countries," McKinsey Global Institute, October 2003, available online at <http://www.mckinsey.com>
Invest-SD interviews

6. Key US senator calls for investment appellate body in Central America trade pact

US Senator Max Baucus (D-MT), the ranking member of the Senate Finance Committee, has called upon the Office of the US Trade Representative to create an appellate mechanism for investment arbitrations taking place under the proposed Central America Free Trade Agreement (CAFTA).

Baucus's proposal which was reprinted last month in Inside US Trade, a Washington-based trade news weekly, refers to the Trade Act of 2002 which had stipulated that new trade agreements should incorporate such an appellate mechanism in order to correct "extreme or unreasonable outcomes - including those that may undermine legitimate environmental regulations."

Noting that recent US free trade agreements with Chile and Singapore did not incorporate such a mechanism, Baucus warned that a failure to include such a body in the CAFTA (which is currently under negotiation between the US and 5 Central American nations) "would set the wrong precedent for the FTAA and for future U.S. regional agreements under discussion for Asia and the Middle East."

Source:

"Baucus proposes new CAFTA environmental rules to bolster U.S. Position", Inside US Trade, Oct.17, 2003, available by subscription only.

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