



# EABC Policy Review:

European-American Business Council

Note: For an Adobe PDF version of the January 16, 2004 issue of EABC Policy Review, please click [here](#).

Dear Reader:

"Abstracts" has a new name -- the "EABC Policy Review". It will continue to provide detailed news and analyses of US and EU policy developments that impact companies engaged in Trans-Atlantic commerce. And it will give special emphasis to tracking those issues contained in the newly adopted EABC 2004 Policy Agenda. (More on the 2004 Policy Agenda in February.) The EABC Policy Review will be issued every two weeks rather than on a weekly basis, to allow EABC staff to become more active in supporting member company efforts to advance the EABC Committee's Policy Agenda. Moreover, we are expanding our work across the Atlantic to serve our members in Brussels, as well as in Washington DC. 2004 is the year when the Council's work truly becomes "Trans-Atlantic". To keep members informed of new Council programs and policy initiatives, a one-page "EABC Update" will be emailed to you each month .

We thank our members, as well as the Council's friends, for your continued interest and support. We wish you a prosperous 2004! EABC: Michael Maibach & Annette Hussong

In this week's issue:

**EU WELCOMES ZOELICK WTO INITIATIVE**

**EU, OTHERS SEEK RETALIATION AUTHORIZATION IN US BYRD AMENDMENT CASE**

**WTO REPORT SAYS US ECONOMY LARGELY OPEN BUT BARRIERS PERSIST IN IMPORTANT AREAS**

**OECD ISSUES PROPOSAL FOR TIGHTENED CORPORATE GOVERNANCE PRINCIPLES**

**EUROPEAN COMMISSION PUSHES FOR SINGLE EUROPEAN MARKET IN SERVICES**

**EUROPEAN MEMBER STATES INCREASINGLY DELAY IMPLEMENTATION OF EU LAW**

---

**EU WELCOMES ZOELICK WTO INITIATIVE** The European Union (EU) this week welcomed a proposal by United States Trade Representative Robert Zoellick to inject new momentum into flagging trade talks at the World Trade Organization (WTO). In a [letter](#) sent over the past weekend to all 148 members of the WTO, Zoellick outlined what he called a "common-sense" approach to re-energizing the talks and to prevent 2004 from becoming a "lost year" for the Doha Development Round of trade liberalization negotiations. Specifically, he proposed a Ministerial meeting in Hong Kong before the end of 2004 and to focus the global talks on core market access topics: agriculture, goods and services. EU Trade Commissioner Lamy, who will be traveling in Asia this week to shore up support for revitalizing the talks, said he was "pleased" with Zoellick's letter and that the EU would continue its quest for alliances with the US and other key members in support of the round.

The letter puts liberalization of agriculture market access at center stage, arguing that an "ambitious result" in agriculture was "essential" for the negotiations to proceed and succeed. Emphasizing the 2002 US agriculture proposal and moving away from a joint 2003 EU-US agriculture paper, the letter proposes eliminating agricultural export subsidies by a fixed deadline and to make substantial cuts in domestic farm support. The plan could bring about strong opposition from US and EU farm and labor unions, which fear the loss of subsidies and greater global competition. Despite the political risks, however, the US Administration does not want to see the talks fail altogether and, if President Bush wins the elections in November, aims to complete them before the middle of 2005, when the presidential trade promotion authority expires. The proposal could also provide political cover for EU trade negotiators on such sensitive issues as market access for agricultural goods.

On industrial goods, Zoellick said he supported an ambitious formula for cutting tariffs, while giving developing countries some flexibility, and zero-tariff initiatives in sectors where there was sufficient support for such an approach. Regarding the services sector, he called for more meaningful offers in the "near term" from a majority of WTO members and urged industrialized members to provide technical assistance to developing countries to evaluate the potential benefits from liberalized trade in services. On the controversial Singapore issues, Zoellick proposed dropping investment and competition, while proceeding with negotiations on trade facilitation. He suggested that WTO members be open to considering different options for moving forward on government procurement. Finally, he proposed appointing as chairman of the WTO General Council a member from a developing country, even though under normal rotation the chair would go to a representative of an industrialized member this year.

Commissioner Lamy told the European Parliament earlier this week that the USTR's letter was a "good move" and said it looked like "as though the two big trade blocs - the EU and the US - are beginning to think along the same lines."

He told Parliamentarians he was ready to show flexibility in several areas, including the Singapore issues and geographical indicators. He also said that the EU was "ready to negotiate seriously" on agriculture, including a list of products of interest to developing countries on which the EU would be willing to end export subsidies. He called on the G-20 group of developing countries, including Brazil and China, to "contribute constructively" on the full range of issues and not to remain "a purely defensive alliance on agricultural issues." Lamy said the first major milestone for the WTO would be to get, by March-April, agreements on the modalities for agriculture, industrial products, and the Singapore issues, among others.

**EU, OTHERS SEEK RETALIATION AUTHORIZATION IN US BYRD AMENDMENT CASE** The European Union (EU) and four other countries on Thursday asked the World Trade Organization (WTO) for authorization to place punitive sanctions on United States (US) exports for Congress' failure to repeal the Continued Dumping and Subsidies Offset Act (CDSOA), commonly referred to as the Byrd amendment. Congress adjourned last year without acting on a December 27 deadline for compliance with a January 2003 ruling by a WTO appeals panel, which said the law violates international trade rules. EU Trade Commissioner Pascal Lamy said the EU move was necessary to protect the interests of EU exporters affected by the US measure and that the Byrd Amendment was a "WTO-incompatible response to dumping and subsidization."

The Byrd Amendment mandates that revenues collected from duties on foreign firms be distributed to US companies. Opponents of the law charge it encourages US companies to file more anti-dumping cases by granting them a government subsidy in addition to import protection. Claims filed by companies under the Byrd Amendment increased in 2002, as 1200 US firms collected \$329 million in antidumping revenues at year's end (a rise from the \$230 million disbursed to 900 firms in 2001). Over the past three years, US Customs, which administers the program, has paid about \$710 million dollars to US companies.

According to WTO rules, countries can see retaliation equal to the level of nullification and impairment they have suffered. While this has generally been interpreted as the trade damage suffered from a given measure, the term is not explicitly cited in the Dispute Settlement Understanding. In the case of the Byrd Amendment, it is not the fact that duties are being collected that is contested, but rather that these duties are distributed to companies requesting trade remedy measures instead of the US Treasury. Because it is difficult to assess what trade damage affected exporters actually suffer, the EU retaliation authorization request does not specify a certain amount of trade damage, but rather says that the level of nullification and impairment would be based on the amount of duties disbursed from trade remedy cases to US petitioners. The EU said the amount of the sanctions and the list of specific products targeted by the sanctions would be defined at a later stage.

The retaliation authorization requests filed this week are on the agenda of a January 26 Special Session of the Dispute Settlement Body, but are expected to go to arbitration as the US has already indicated it would object to the requests when they are presented on January 26. United States Trade Representative (USTR) General Counsel John Veroneau issued a statement January 15, shortly after the sanctions requests had been filed with the WTO. "The retaliation being sought by the other complaining parties does not appear to be based on actual harm to their exports," the statement said. "Accordingly, we will object to their proposed retaliation, sending this matter to arbitration."

**WTO REPORT SAYS US ECONOMY LARGELY OPEN BUT BARRIERS PERSIST IN IMPORTANT AREAS** Trading partners urged the United States (US) on Friday to ensure that security measures being implemented by the Bush Administration against terrorism at air- and seaports do not hamper free trade. While recognizing the right of the US to protect its public, members of the World Trade Organization (WTO) said they were concerned that the measures could be costly and burdensome, particularly for poorer countries. The concerns were raised as part of a mandated review of recent developments in US trade policy.

Such reviews involve reports by the WTO General Secretariat and the government of the country that is being examined as well as discussions by the WTO's full membership in the Trade Policy Review Body (TPRB). Ireland's trade envoy Mary Whelan, who chaired the review, said WTO members acknowledged the unique status of the US in the multilateral trading system, and were appreciative of the US leadership in the WTO, its commitment to trade liberalization and the successful completion of the current round of trade liberalization negotiations under the Doha Development Agenda.

However, several members were concerned about the significant changes in import regulations brought forth by new security measures, including a new 24-hour rule requiring the electronic transmission to the US authorities of information pertaining to US-bound cargo prior to departure. Concerns were also voiced about the Bioterrorism Act of 2002, which entered into force last December and which requires in particular the registration of most food manufacturing and handling facilities, and prior notice to the US Food And Drug Agency of all food shipments destined for the US.

Many members were also critical of the US' uneven record of compliance with WTO rulings, warning that this could undermine the credibility of the Dispute Settlement Understanding. Some said that the active use of antidumping and countervailing duty measures had continued to create uncertainty for foreign exporters. US initiations of antidumping investigations increased in 2001, to the highest level since 1992, but decreased in 2002 and the first half of 2003. While members expressed satisfaction with the recent removal of US safeguards on foreign steel products following a WTO ruling, concern was voiced with respect to the lack of progress in repealing other legislation found to be violating

international trade rules, including the so-called Byrd Amendment and the 1916 Antidumping Act.

The WTO report lists additional areas of concern to US trading partners, but also highlights the fact that the US has "taken further steps to liberalize its trade regime, both unilaterally and through negotiations," since the last WTO review in 2001. For a copy of the report, please click [here](#).

**OECD ISSUES PROPOSAL FOR TIGHTENED CORPORATE GOVERNANCE PRINCIPLES** Key industrialized countries this week proposed to tighten corporate governance principles to step up investor protection and strengthen shareholders' ability to counter fraud by irresponsible company managements and auditors. The Organization for Economic Development and Cooperation (OECD) on Monday issued for public comment a [revised draft of its Principles of Corporate Governance](#), which have become a reference point for numerous countries' corporate governance initiatives since their adoption in 1999. Governments are scheduled to approve the revised principles at their annual ministerial meeting in Paris in May.

The revised principles, the result of a year-long consultation with governments and business and civil society groups, stress the importance of enhancing investors' rights, including the attendance of key meetings and votes in important company decisions. They also spell out the right of shareholders to nominate company directors and argue that investors should be able to provide input on board members' and executives' compensation. The principles also call for increased transparency from business analysts, brokers and rating agencies to disclose conflicts of interest. "Whistle Blowers" are to be given protection by providing them with a confidential contact at the board level. Unveiling the revised principles, OECD Secretary General Donald Johnston said it was now urgent to re-establish investor confidence after a series of corporate scandals in the US and Europe. He added the ongoing consultation on the principles would be taken very seriously and could lead to a further tightening of the guidelines.

The European Union recently stepped up its efforts in putting in place new regulatory measures to revive investors' confidence after major accounting scandals at corporate giants Ahold and, most recently, Parmalat. On November 21 last year, the European Commission published the [results of an online consultation](#) on proposals for new company corporate governance laws as part of the so-called Financial Services Action Plan and first concrete initiatives are expected in the second half of 2004.

Despite concerns expressed by some respondents that some of the proposals lacked flexibility and were often overly prescriptive, the Commission has insisted the new regulations were needed to ensure investor protections. "A self-regulatory market approach, based solely on non-binding recommendations, is not sufficient to guarantee sound corporate governance. In view of the growing integration of European capital markets, the European Union should adopt a common approach covering a few essential rules and should ensure adequate coordination of national corporate governance codes," the Commission said in a statement. Two changes have

been highlighted by the Commission as particularly important in the effort: a recommendation to promote the role of non-executive or supervisory directors and a recommendation on executives' compensation.

**EUROPEAN COMMISSION PUSHES FOR SINGLE EUROPEAN MARKET IN SERVICES** The European Commission this week proposed legislation to free up the services sector in the European internal market. The proposed directive would require member state governments to cut excessive red tape and administrative burdens to make it easier for businesses to offer their services across borders. The Commission is hoping to encourage greater cross-border economic activity and to boost competition, particularly among smaller- and medium sized companies, which currently constitute the bulk of service providers in the EU. The initiative is part of the so-called Lisbon Agenda, a European Union (EU) effort to create a free European market and to boost European competitiveness. The services covered by the directive account for almost half of all economic activity in the EU.

Internal Market Commissioner Frits Bolkestein said if implemented the proposed legislation would increase choice, improve quality and bring down prices for consumers and also for businesses that use services. He added: "This Directive is potentially the biggest boost to the internal market since its launch in 1993. We cannot expect European businesses to set the global competitiveness standard or to give their customers the quality and choice they deserve while they still have their hands tied behind their backs by national red tape." Bolkestein said the legislation in particular targets regulatory and administrative barriers which can be dismantled quickly, whereas the Commission foresees a process of consultation and evaluation for areas requiring greater transnational coordination.

The directive does not cover services provided directly and for free by public authorities, nor services already covered by specific EU law, such as financial services, telecommunications and transport. It does, however, cover professional services such as consulting, information technology-related services, advertising, audiovisual and healthcare services. The law would forbid requirements for directors or staff of companies to be of specific nationalities; requirements for companies to have their principal place of establishment in the member state where the services is provided; and economic needs tests, under which businesses are allowed to establish themselves only if the regulator of the host country considers there to be unsatisfied demand.

Under the proposal, governments would have to commit themselves to eliminating complex, lengthy and costly authorization and licensing procedures and would have to use objective criteria for those procedures that remain. Excessive documentation requirements would be cut and electronic documentation procedures required. It would also ask member states to offer businesses a single point of contact for information to prevent companies having to deal with a multitude of different authorities. The Commission also proposes to

introduce the country of origin principle, whereby a service provider, which is operating legally in one member state, can market his services in others without having to comply with additional host country rules. Said Bolkestein: "Some of the national restrictions are archaic, overly burdensome and break EU law. Those simply got to go."

**EUROPEAN MEMBER STATES INCREASINGLY DELAY IMPLEMENTATION OF EU LAW** European Commissioner for the Internal Market, Frits Bolkestein, warned Monday that European countries' competitiveness was being harmed because member states are failing to transpose European internal market rules into national law. According to the latest figures released by the Commission this week, only five countries meet the Commission's "pass mark" for implementing a sufficient number of European regulations into national legislation. Most notably, the European Union's (EU) original core countries are some of the worst offenders with France, Germany, Luxembourg, Belgium and Italy showing a deficit of more than double the target implementation number. Bolkestein scolded EU member states saying it was "unacceptable" that countries transposed legislation "late and incorrectly."

The Commissioner has repeatedly voiced his frustration with member states' tardiness, most recently before the Council of Ministers in September when he highlighted the loss of competitiveness of Europe in the global marketplace. "We should not forget that the Internal Market Strategy is all about competitiveness. How can we best restart trade and market integration? First, we need much faster adoption of key proposals. I have said it before, I will say it again." Other Commission officials suggested that some member states are taking advantage of the internal market to strengthen their own competitiveness within Europe: "What is an obstacle for one is a very nice safe haven for another," said Gerrit de Graaf, an official in the Commission internal market division.

On the average, member states fail to transpose 2.3 percent of internal market legislation into national law after the deadline has passed, a marginal improvement over the May 2003 figure of 2.4 percent. Directives that should have been implemented more than a year ago include one on the recognition of professional qualifications and another on copyright and related rights in the information society. Only three countries have met the "zero tolerance" target: Denmark, Finland and Portugal. The reflection of the EU's core countries being the worst offenders also shows in the number of infringement cases pending before the European Court of Justice (ECJ): Italy has an impressive 146 cases pending before the ECJ, followed by France with 135 cases. The two countries combined account for 28 percent of all infringement cases - more than Denmark, Finland, Ireland, Luxembourg, the Netherlands, Portugal and Sweden combined.

---