U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN
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Grassley Expresses Concerns Over European Actions to Reinvigorate Trade Disputes

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, has expressed his disappointment to outgoing European Commission Trade Commissioner Pascal Lamy regarding the European Commission's recent actions relating to disputes over repeal of the Foreign Sales Corporation/Extraterritorial Income Act, trade in bananas, and trade in beef treated with growth-promoting hormones.

"(A)fter completing this tremendous legislative effort with respect to FSC/ETI compliance, it seems that we're right back where we started before Doha – facing the prospect of continued litigation and increasing tension over beef, bananas, and FSC," Grassley wrote. "That is unfortunate. For instead of looking ahead together to the substantial work that remains to bring the Doha Round to a successful conclusion, the Commission's actions divert precious energy and resources on both sides of the Atlantic, over issues that should have been resolved long ago. Nevertheless, I intend to engage your successor in an effort to minimize these distractions and advance a positive trade agenda, both bilaterally and multilaterally, over the coming years."

The text of Grassley's letter to Lamy follows.

November 18, 2004

The Honorable Pascal Lamy
Member of the European Commission
B-1049 Brussels
Belgium

Dear Commissioner Lamy:

Thank you for the courtesy of your letter dated November 5, 2004. Your remarks underscore how important it is that we maintain and respect the rule of law in our bilateral and multilateral trade relations. I have worked hard to advance that respect. I also believe it is important that we do everything we can to resolve outstanding bilateral trade disputes in a thoughtful manner, so we can focus our efforts on developing a mutually supportive trade agenda. That's why I'm troubled by

some recent actions taken by the European Commission. I share my concerns with you out of courtesy, as I intend to raise them with your successor at the earliest opportunity.

First, I am deeply disappointed by the request for consultations in the FSC/ETI dispute under Article 21.5 of the WTO Dispute Settlement Understanding ("DSU"). There is simply no basis for perpetuating this dispute any further. I am confident that upon review, our grandfathering of legally binding contracts will be upheld. As my staff has indicated to yours, to the extent these contracts are leases they are not implicated by the WTO decisions on FSC/ETI. Leasing is a service and the WTO decisions do not address services. To the extent these contracts are other than leases, they must be legally binding as of September 17, 2003, in order to be grandfathered. That means grandfathered contracts will not have any impact on future trade–if the contracting parties are not legally bound as of September 17, 2003, they cannot claim a continued benefit. This is consistent with a fundamental rationale for the DSU, which is that a compliance effort should not be punitive. In addition, the system is self-policing. Parties claiming a continued benefit must demonstrate to the Internal Revenue Service that it derives from a legally binding contract entered into as of September 17, 2003. Absent that demonstration, the benefit will be denied.

Now, I understand that the Commission has indicated there is no linkage between the request for further consultations under Article 21.5 and the recently initiated Airbus dispute. However, earlier indications from the Commission clearly suggested that any decision to challenge our FSC/ETI repeal legislation would be linked to whether the United States initiated WTO dispute resolution procedures against Airbus subsidies. I fail to see why our decision to exercise our legitimate rights against Airbus subsidies should drive a decision to pursue Article 21.5 proceedings in an unrelated case. To the extent it did, I very much hope that such linkage will not serve as precedent in the future.

Second, I am extremely troubled by the announcement on October 27, 2004, that as of January 1, 2006, the European Union will impose a tariff of 230 euros per metric ton on banana imports that do not originate in African, Caribbean, and Pacific ("ACP") countries. As you know, in April 2001 the United States and the European Union reached an Understanding on Bananas in an effort to resolve the ongoing WTO dispute over trade in bananas. As part of that Understanding, the United States agreed to a temporary tariff-rate quota through 2005, under which the most-favored-nation ("MFN") rate of duty is 75 euros per metric ton while ACP bananas may be imported duty-free. The United States agreed to this lengthy transition period in order to afford ACP countries and the EU sufficient opportunity to adjust to a final tariff-only regime. A final tariff rate was not specified at that time. However, in November 2001, the United States agreed to the EU's request for a WTO waiver from the MFN obligation found in Article 1 of the General Agreement on Tariffs and Trade ("GATT") based on the understanding that the final tariff rate would "at least maintain total market access for MFN banana suppliers."

Now, you don't have to be a trade lawyer or an economist to see that increasing the MFN duty on bananas by over 200 percent will not serve to maintain total market access for MFN banana suppliers. In fact, it will have exactly the opposite effect. One study estimates that a 230 euro tariff will reduce banana exports from Latin American suppliers by over one-third, resulting in lost income of about $400 million per year and over 75,000 job losses. That is not the outcome envisioned by the United States when we agreed to the Understanding and when we consented to the WTO waiver.

It appears at least some in Europe would concur. A recent report by Sweden's Ministry of Agriculture, Food and Consumer Affairs concludes that the final tariff should "reach a level of no more than 75 euro/ton ...." And according to at least one press report, Sweden's position is supported by a number of EU Member States. I very much hope that the Commission will reconsider its position and instead honor the commitment to introduce a final tariff rate that will at least maintain total market access for MFN banana suppliers.

Third, I am quite dismayed by the Commission's most recent decision to initiate a new WTO case against the sanctions we imposed in response to the EU's ban on imports of U.S. beef treated with growth hormones. Apparently the Commission claims that, by changing its regulation from a permanent ban on six hormones to a provisional ban of indefinite duration on five hormones and continuation of the permanent ban on the sixth, the EU is now in compliance with its WTO obligations. Regardless, the EU's ban on beef treated with growth hormones remains in place. And this new version of the ban isn't backed by sound science any more than the old ban that was ruled illegal by the WTO. Instead, the new ban appears to be backed by "political" science. This exercise in smoke and mirrors sets a poor example. By replacing one scientifically unfounded ban with another and claiming compliance, the EU significantly discredits the DSU. And in the meantime, beef producers in my home state of Iowa and across the United States will continue to be injured, while consumers in Europe will continue to be denied access to high-quality beef. That is hardly a thoughtful and effective way to resolve a dispute that has been left outstanding for far too long.

I appreciate your acknowledgment of my efforts with respect to FSC/ETI. I've worked hard for over two years to bring the United States into compliance with the FSC/ETI decisions. During that time I've heard some in Europe berate the United States for a lack of commitment to the multilateral trading system. And quite frankly, I'm left frustrated. Because after completing this tremendous legislative effort with respect to FSC/ETI compliance, it seems that we're right back where we started before Doha–facing the prospect of continued litigation and increasing tension over beef, bananas, and FSC. That is unfortunate. For instead of looking ahead together to the substantial work that remains to bring the Doha Round to a successful conclusion, the Commission's actions divert precious energy and resources on both sides of the Atlantic, over issues that should have been resolved long ago. Nevertheless, I intend to engage your successor in an effort to minimize these distractions and advance a positive trade agenda, both bilaterally and multilaterally, over the coming years.

Sincerely yours,

Charles E. Grassley
Chairman