## WASHINGTON WEEKLY

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## Fear of Medicare Cuts Overblown, in Our View

We do not believe that facilities will face a drastic BBA-like freeze in payments (which could save the government approximately \$110 billion) for the next 12–24 months.

At the White House Economic Forum held last week, Treasury Secretary John Snow called deficit reduction "the centerpiece of the second term." Although we expect the administration's aggressive push on the deficit to cause a debate around severe reductions in facilities reimbursements in 1Q05, we do not believe that facilities will face a drastic Balanced Budget Act (BBA)-like freeze in payments (which could save the government approximately \$110 billion) for the next 12–24 months. However, a return to the fiscal 1990–93 market basket (MB) reductions (MB-40 to MB-120, or a savings of \$12 billion-\$36 billion) will likely be the worst-case scenario in 2005 if Congress acts.

The massive cuts of 1997, when hospital reimbursements were frozen after the BBA was passed, were precipitated by a number of key events, none of which emerged in 2004. These included

- at least three major budget bills, two of which made smaller cuts to hospital reimbursement; and
- a drastic reduction in insolvency projections for the Medicare program.

Massive cuts such as those experienced in 1997 are typically preceded by smaller cuts that investors can and should anticipate. Congress is more likely to attempt minor cuts similar to those attempted in 1990 and 1993 before addressing drastic cuts.

The Balanced Budget Act of 1995 was an earlier failed attempt at many of the reforms that were eventually carried out in 1997. Health care providers were to bear the brunt of \$270 billion in cuts, including substantial cuts to the PPS, as well as reduced reimbursements if budget targets in other parts of the bill were not met. In addition, the 1995 bill would have transformed Medicaid into a block program. Massive cuts such as those experienced in 1997 are typically preceded by smaller cuts that investors can and should anticipate. From 1989–97, as Congress grappled with taming budget deficits, it turned to provider cuts as a principal source of revenues. Large cuts remain possible, but Congress is more likely to attempt minor cuts similar to those attempted in 1990 and 1993 before addressing the drastic cuts that we saw in 1997.

#### Also in This Issue

Health Care: The D.C. Pulse

Reports indicate that additional FDA whistleblowers from offices regulating medical devices and biologics may be approaching Senate Finance Committee Chairman Charles Grassley.

## Geopolitical Risks

Osama bin Laden's newest audiotape was aimed at bolstering Saudi militants, was timed to increase turnout in two public protests against the royal family, and marks bin Laden's public and explicit return to his roots—attempting to overthrow the Saudi royal family.

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# **LEHMAN BROTHERS**

The Omnibus Budget Reconciliation Act of 1990 included

- MB-110 basis points for large urban hospitals;
- MB-175 basis points for other urban hospitals;
- MB+300 basis points for rural hospitals; and
- creation of the physician payment system.

The Omnibus Budget Reconciliation Act of 1993 included

- MB-250 basis points for large urban hospitals, and MB-100 basis points for rural hospitals for fiscal 1994 and 1995;
- MB-200 basis points for all hospitals in fiscal 96; and
- MB-50 basis points for all hospitals in fiscal 1997.

## Can (Will) Congress Look to Hospitals for Reductions?

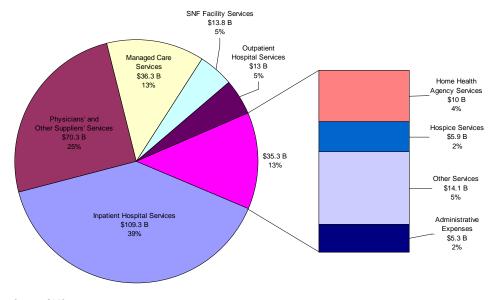
Reductions in the market basket increases for hospitals traditionally have been viewed as "savings" that can be applied elsewhere when budget deficits become paramount. Top Congressional staff for health care committees, particularly House Energy and Commerce and Ways and Means, indicated that the December 9 Medpac projections of hospital Medicare margins have rendered drastic spending cuts to hospitals less likely as they "complicated the picture." Put simply, it will be tougher to cut back hospital reimbursements when Medpac has fostered the perception that hospitals are already being underpaid.

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Hospital Medicare Margins, F	iscal 2001–03			
	FY01	FY02	FY03	FY05E
Overall Medicare	5.0%	2.3%	-1.9%	
Inpatient	9.8%	5.9%	1.3%	2.6%
Outpatient	-7.0%	-9.0%	-11.5%	-14.4%
Urban			-1.3%	-1.3%
Rural			-6.2%	-3.1%
Major Teaching			5.8%	5.0%
Other Teaching			-1.9%	-1.7%
Non-Teaching			-5.8%	-4.7%
	FY01	FY02	FY03	FY05E
Overall Medicare	5.0%	2.3%	-1.9%	-1.5%
Source: Medpac				

Congress is more likely to focus on sectors that are perceived to be "overpaid," including (as key Congressional staff and Medpac indicated) home health and skilled nursing facilities (SNFs). However, this does not necessarily mean that Congress will not reduce the hospital MB. Although fiscal 2003 Medicare margins were negative, Congress long contemplated an MB-40 approach, which was estimated to save Medicare \$12 billion over 10 years. Hospitals will not be able to escape the brunt of proposed payment reductions, given that a significant proportion of Medicare revenues are spent on hospital payments.

## Medicare Spending by Service Type, 2003

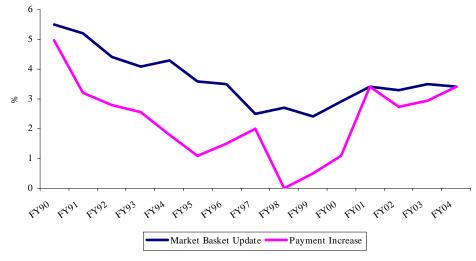


Source: CMS

In our view, hospitals are more likely to see a return to the reimbursement environment of fiscal 1990–93, when substantial reductions were made to the MB, than to see a return to the payment freeze that the BBA ushered into law in fiscal 1998.

In our view, hospitals are more likely to see a return to the reimbursement environment of fiscal 1990–93, when substantial reductions were made to the MB, than to see a return to the payment freeze that the Balanced Budget Act ushered into law in fiscal 1998.

## Medicare Inpatient PPS Update



Source: CMS

## **Medicare Insolvency Projections Drive Change**

The 1993–97 reimbursement cycles were largely driven by projections in 1993 that showed Medicare insolvency as early as 1998.

One of the most effective forces driving changes in Medicare payment policy is the imminent insolvency of the Medicare Hospital Insurance (HI) trust fund that is paid for through payroll taxes. The 1993–97 reimbursement cycles were largely driven by projections in 1993 that showed Medicare insolvency as early as 1998. In fact, looming Medicare insolvency has proven one of the most important indicators of pending reductions in reimbursements. In the early 1980s, insolvency was expected to occur before 1990, and Congress responded with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and then with the Social Security Amendments of 1983. TEFRA tightened the limits on payments for acute-care hospital

LEHMAN BROTHERS

December 20, 2004

The relative drop in the past two years is now approaching the levels that preceded hospital payment cuts in 1982 and 1993.

In their 2004 report,
Medicare trustees estimated
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inpatient operating costs and called for the development of a PPS to cover those costs; the Social Security Amendments of 1983 enacted the PPS.

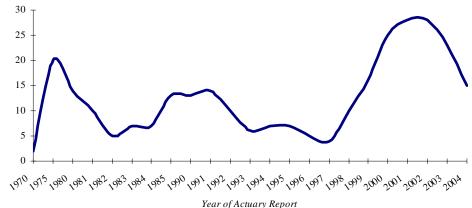
The most recent insolvency projections do not show the same urgency that was present in 1982–84 and 1993–97. The peak in insolvency projections largely tracks the surplus in budget deficits that the federal government experienced through 2000. Since 2000, the estimate has decreased almost 50%, bringing insolvency to within 15 years. That is still above the average insolvency projection of 13 years, but it is the trend that is more troubling. The relative drop in the past two years is now approaching the levels that preceded hospital payment cuts in 1982 and 1993.

### Medicare Hospital Insurance (HI) Trust Fund Years to Insolvency

In their 2004 report, Medicare trustees estimated that Medicare Part A expenditures will exceed income (excluding interest earned on the fund), nine years earlier than they estimated in their 2003 report. While the Medicare bill was a factor, it was short-term payments to providers and managed care companies that accelerated the trend, not the drug benefit itself. HHS Secretary Tommy Thompson noted five principal reasons:

- higher Spending, lower revenues (2.0 years);
- Medicare Modernization Act (2.0 years);
- regular assumption adjustments (1.5 years);
- model refinements (0.5 years); and
- increased utilization (1.5 years).

## Medicare Trustee HI Insolvency Projections, 1970



Source: CMS

Rising health care costs and the new drug benefit will increase the federal deficit and Medicare's share of that deficit, even though they will not be counted as part of the Medicare trust fund's potential shortfall. Medicare insolvency projections are an artificial construct, helping to understand only the "soundness" of the hospital insurance fund, not of the overall program itself. It is important to note that Supplementary Medical Insurance (SMI-Part B) is not considered in the calculation of the "bankruptcy" of Medicare, even though the premiums that beneficiaries pay cover only approximately 25% of Part B's costs. The remaining costs are covered by transfers from the general fund. This is also true for the new Part D benefit. Therefore, rising health care costs and the new drug benefit will increase the federal deficit and Medicare's share of that deficit, even though they will not be counted as part of the Medicare trust fund's potential shortfall.

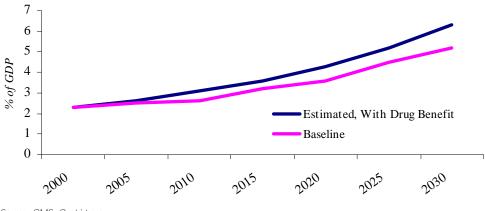
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While a decrease in hospital insurance insolvency projections typically have led to cuts in Medicare, an increase in budget deficits could accelerate deficits and potential action against the Medicare program in Congress.

#### **Medicare and Deficits**

As the chart below indicates, the Medicare drug benefit will help Medicare take an increasing percentage of GDP, particularly in the out years. While a decrease in HI insolvency projections typically have led to cuts in Medicare, an increase in budget deficits (fueled by the Part D drug program) could accelerate deficits and potential action against the Medicare program in Congress.

### Medicare Spending as a Percentage of GDP



Source: CMS, Centrist.org

## The 2005 Budget Process

In 1Q05, there is likely to be significant headline risk for facilities, due to the President's State of the Union address, his budget request, and the Medicare trustees' 2005 report in March. These events will likely help set parameters around both the President's approach to fiscal policy and potential Congressional action on a budget resolution. In our view, the budget request and Congressional attempts to pass a budget remain key events. What cannot be anticipated at this time is whether cuts to hospital reimbursements will be used as potential "savings" toward one of President Bush's other proposals.

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## 2005 Events

Event	Date	Significance
President State of the Union	January 2005	Bush could push for action on budget deficit
Congress Reconvenes	January 6	Congressional leaders will begin to set policy priorities
Medpac Meeting	January 11–12	Will vote on final recommendation for hospital reimbursement
President Bush Budget	First Monday in February 2005	Reconciliation Request?
Medicare Trustee Report	Early March 2005	An insolvency re-estimate could encourage change
Congressional Budget Resolution	?	Congress Must Pass Reconciliation Language
The 45% Threshold	2007	Administration must propose Medicare reorganization
The Baby Boomers	2011	Their arrival in retirement has been long anticipated

Source: Lehman Brothers

LEHMAN BROTHERS

December 20, 2004

In a budget resolution will almost certainly lead to cuts to the Medicare program, and likely reductions in market basket increases in the fiscal environment we find ourselves.

In each of the major budget deals that we reviewed throughout the 1990s (and 1980s) it was the use of reconciliation instructions that led to substantial cuts to health care and other programs.

The U.S. population is

expected to age rapidly through 2030, when 19.6 percent of the population will be over the age of 65, compared with 12.3 percent in 2000.

### **Budget Reconciliation Is Key**

Inclusion of reconciliation instructions (key committees instructed to make changes in existing revenue or direct spending programs under their jurisdiction to achieve a specified budgetary result) in a budget resolution would very likely lead to cuts to the Medicare program and a reduction in MB increases in the current fiscal environment. It is the President's budget request that would provide the strongest indication of such action, while the trustee report could prompt Congress to push for reconciliation instructions in a budget, although we believe that is less likely. Ultimately, Congress must include reconciliation instructions in a budget resolution that passes both the House and the Senate and a conference committee for it to become binding and lead to these cuts.

In each of the major budget deals that we reviewed throughout the 1990s (and 1980s), we found that it was the use of reconciliation instructions that led to substantial cuts to health care and other programs. There has been increasing speculation on Capitol Hill that we could be headed back toward reconciliation language in 2005. There are three key steps in the reconciliation process:

- In budget resolution, Congress tells committees to revise spending and revenue, indicating the committee, the deadline, and the dollars that must be cut.
- Committee reports recommendations directly to chamber, or to budget committee.
- Each chamber must pass respective reconciliation bills.

House: As under normal order, the House sets a rule to consider legislation

Senate: Limited to 20 hours of debate; amendments then considered in turn

Although Congress has not passed a budget in a few years, President Bush's ambitious policy proposals increase his need to pass one this year. This will likely mean an aggressive 1Q05 push from the White House. The reconciliation process, which controls Senate debate, will also help the president avert filibusters that Senate Democrats would be expected to raise.

### The Baby Boomers

Baby boomers will place an additional burden on the Medicare system, as there will be a significant increase in the number of Medicare eligibles around 2011. The U.S. population is expected to rapidly reach retirement age through 2030, when 19.6% of the population will be over the age of 65, compared with 12.3% in 2000. Two reasons predominate: the aging of the baby boom generation (those born between 1946 and 1965) and increased longevity. Increased longevity contributes to this phenomenon in two ways. First, more people will be alive at the Medicare eligibility age of 65. That is, those reaching the Medicare eligibility age in 2003 were born in 1938, when the average life expectancy was 63.5 years. By comparison, the average person born in 2003 is expected to live 77.1 years. In addition, individuals' duration of eligibility will increase. Persons reaching 65 years of age in 2000 are expected to live four years (28.7%) longer than persons reaching 65 years of age in 1950.

## Health Care: The D.C. Pulse

#### Sector **Recent Developments** • Tauzin Takes Over at PhRMA **Brand** Former House Energy and Commerce Chairman Billy Tauzin (R-LA), one of the principal architects of the Medicare Pharma Modernization Act, agreed to take over the top position at the Pharmaceutical and Research Manufacturers of America. The long rumored move is a positive for the brand industry, providing it with a powerful advocate in Washington just as up to 50% Generics of all U.S. drug purchases will shift to the federal government. **Biotech** • Biologics/Device Whistleblowers Med-Tech Reports indicate that additional FDA whistleblowers from offices regulating devices and biologics may be coming forward and approaching Senate Finance Committee Chairman Charles Grassley (R-IA). Grassley held VIOXX hearings last month and has vowed to hold additional hearings on drug safety and to push legislation next year. Grassley's actions will increase pressure for FDA reform of drug safety, while individual whistleblower complaints (if they materialize) could pressure individual drugs, devices, or biologics. • FDA Drug Safety Report Revealed A review of FDA scientists conducted two years ago by the HHS OIG found that almost 20% of FDA scientists were pressured to recommend approvals of new drugs, despite concerns about drug safety. Though portions of the study were made public in 2003, the full data were never released until a Freedom of Information Act request from the Union of Concerned Scientists. Additional findings include 36% of scientists were only somewhat or not confident at all in decisions regarding drug safety; 22% were somewhat or not confident at all in decisions regarding drug effectiveness; and > 18% found that they had been pressured to approve or recommend a drug despite reservations about safety. Contrary to reports, the actual survey question responses (which we reviewed) are not significantly different from those of the original OIG report issued last year. However, in light of Dr. David Graham's recent allegations about the problems with drug safety at the FDA, the findings have more relevance and could play a significant part in the ongoing debates on drug safety. Moreover, the findings are regarding New Drug Applications and do not speak to the Office of New Drugs-Office of Drug Safety conflict that has received the most attention. • Drug Reimportation Developments Continue > Congressional proponents have indicated that they likely would use the parallel of flu vaccine importation through the Investigational New Drug Application process to argue that the FDA has the ability to safety reimport drugs. > Reports have indicated that states are wary to even attempt reimportation for Medicaid programs, as they could face intense scrutiny of their Medicaid funding plans. > The Canadian federal government is sparring with provinces over exporting drugs to the United States, with provinces at least in part opposing the federal governments push to slow the drug exodus. CMS announced a semi-revised schedule for the final rule on the national coverage decision for implantable defibrillators, as the final study results from the ScD-HEFT trials have yet to be released in a peer-reviewed journal, the prerequisite before final coverage is granted. If the results are published before December 28, the agency will publish its final determination. If the data are not available, CMS will post a final decision on that date maintaining current ICD coverage, per the MMA time frames; > open a new reconsideration of ICD coverage on December 29 and post a final decision one week after the trial results are published; and likely shorten the 30-day comment period. • Medpac Limits Downside for Facilities **Facilities** Congressional staff continue to express their belief that preliminary data from Medpac showing negative Medicare margins for hospitals have altered perceptions held by staff toward the hospital sector, a positive heading into what we expect will be Managed a bruising deficit debate in 2005. Medpac recommendations often set perceptions around a sector, even if the Care recommendations are not necessarily followed by Congress. This is important heading into the 2005 budget debates. In **PBMs** addition, community hospitals could benefit from the negative tone of Medpac staff toward specialty hospitals by recommending elimination of the whole hospital exemption (which allows physicians to recommend patients to facilities in which they have an interest in the whole hospital) and by recommending a limitation of investments in existing specialty hospitals • Medical Malpractice Reform In a positive for facilities and managed care, President Bush last week vowed "to take a legislative package to Congress which says we expect the House and Senate to pass meaningful liability reform on asbestos, on class action, and medical liability" reform next year. Despite Bush's continued focus on pushing medical malpractice reform in 2005, with reports that it could be one of the first issues Congress takes up this year, the obstacles to medical liability reform continue to appear to strong in the Senate. • McClellan stays at CMS; Leavitt becomes HHS Secretary Medicare In a development that removes uncertainty around MMA implementation, CMS Administrator Mark McClellan was passed Watch over for the job of HHS Secretary, remaining in place at CMS to implement the Medicare Modernization Act. The White House went to great lengths to explain that McClellan was intentionally left at CMS so that he can focus on implementing MMA. There has been increasing speculation that as a former governor (Utah), EPA Administrator Michael Leavitt, was selected as HHS Secretary as a precursor to an aggressive push on Medicaid reform. As a former governor himself, Tommy Thompson did not push for Medicaid reform. However, having passed Medicare reform and added a drug benefit in his first term, President Bush could push for Medicaid restructuring. In our view, Medicaid reform has yet to become a priority issue in Washington. Democrats have expressed concern about Leavitt's use of Medicaid waivers to restrict coverage for beneficiaries in Utah, which is likely to provide at a minimum some headlines during his confirmation hearing.

Source: Lehman Brothers

**GPR Weekly** 

	GPR Weekly	<del> </del>
ISSUE	THE WEEK JUST PAST	OUR CALL
Iraq We shouldn't think [the violence] will all stop on January 30. We are facing a battle between good and evil. — Iraqi Interim President Iyad Allawi	Facing the Music: Judicial proceedings (investigative hearings, not the start of formal trials for war crimes) are slated to begin against at least two of Saddam Hussein's eleven colleagues in custody "next week, maybe, or in the middle of next month," noted Iraq's Defense Minister Hazim al-Shalaan; According to Hassan, Barzan Ibrahim Hassan al-Tikriti, a presidential adviser and half-brother of Hussein, will be the second to face judicial action, following Ali Hassan al-Majid, a.k.a. Chemical Ali; Saddam and the rest of his colleagues will be brought to justice in succession, a process that we believe will last throughout a good part of the coming year	Short-Term Catalysts  • Increased U.S. troop count, Shiite majority candidates backed by Grand Ayatollah Ali al-Sistani, and widespread campaigning by all groups point to a firm January 30 election date
	<ul> <li>Campaigning: While President Bush warned Iran and Syria to stop "meddling" in Iraq, campaigning kicked off for the upcoming democratic elections, a process that will likely pit against each other an array of lesser-known Sunni minority candidates, Shiite nominees backed by Iraq's main religious figurehead Grand Ayatollah Ali al-Sistani, and interim President Iyad Allawi, who recently entered himself into the fray; on January 30, voters will elect a 275-member assembly that will appoint a government and draft a constitution</li> <li>Attacks: Heavy and intense episodic bombings focused on the "secure" Green Zone in Baghdad, Iraqi police stations and training centers, and sites believed to be associated with interim President Iyad Allawi's convoy; the</li> </ul>	More US. troops alone fails to accelerate stabilization and rebuilding timetable
	prolonged inability to safeguard Iraqi police in particular brings into question the recent belief that U.S. troops should transfer responsibility for security detail to Iraqi police and troop training support in the near future, in our view	
Iran and Terrorism We have reminded the Europeans the suspension of [uranium] enrichment is valid only for the duration of the negotiations.	• Iran: While alleged statements from Washington calling for the ouster of Mohamed Elbaradei after the completion of his second term captured most of the headlines, Tehran quietly asserted its own beliefs in typical friendly and pragmatic terms; Iran's Supreme National Security Council secretary Hassan Rowhani noted, "It does not matter to us who the secretary-general is," and indicated that a misstep by any negotiator, including a new secretary-general, would be cause for a new round of uranium enrichment	Short-Term Catalysts  • The United States and IAEA lack "effective" diplomatic and nondiplomatic tools to dissuade Iranian nuclear initiatives
— Hassan Rowhani, Iran's Supreme National Security Council secretary	Terrorism: A man claiming to be Osama bin Laden praised the al-Qa'eda attack on a U.S. consulate in Saudi Arabia and sharply criticized the House of Saud for acting as a U.S. puppet, in an audiotape posted on an Islamist Web site; as we see it, al-Qa'eda likely has a significant presence in Saudi Arabia awaiting the proper moment to mobilize and strike additional symbolic hard targets in the politically fractured country, with or without a public statement affirming such intentions	Continued mixed rhetoric to the EU and a disregard for the IAEA shift focus to Iran at the center of escalating regional politics
Oil  Concentrate your operations on the oil, in particular in Iraq and the Gulf.  — Excerpt from an audiotape of a man identified as Osama Bin Laden	Crude Talk: Light sweet crude oil on the NYMEX traded between \$40 and \$44, responding to a number of geopolitical factors, including a disparaging report from the UN accusing the Coalition Provisional Authority of mishandling and incorrectly monitoring Iraqi oil supply, a Yukos bankruptcy filing issued in the United States aimed at scaring off Western investment in the embattled Russian oil giant, an order for insurgents to target oil in the Gulf from a man identified as Osama Bin Laden, and a string of fires set ablaze by militants near a vital oil pipeline 43 miles southwest of Kirkuk in Iraq	Short-Term Catalysts  • Escalating ST violence in the Middle East threatens oil facilities  Long-Term Call  • Failure to effectively secure global oil infrastructure from geopolitical risks leaves headline risks
Other Developments US security would be better served by not engaging in unnecessary military deployments and	Ukraine: A new run-off presidential election will be held on December 26 (mandated by the highest-ranking court in Ukraine) barring what the opposition challenger Vladimir Yushchenko describes as "the main task of the Yanukovych team" and others to "do their best to thwart the elections of December 26"; elections, which will be a tumultuous and difficult process once again, are likely to begin on the scheduled date, in our view	Short-Term Catalysts  Lack of a satisfactory resolution to fraudulent election claims leads to violent outbursts in Kiev
interventions that fuel the flames of vehement anti-American sentiment.  — Charles V. Peña, director of defense policy studies at the Cato Institute, on U.S. missile defense strategy	U.S. Defense Testing: The United States extended a two-year streak without a successful full flight test of the U.S. national missile defense system when a malfunction stopped the first test flight of a new high-speed interceptor missile just before its launch; barring further setbacks, the military is close to final preparations to activate missile defenses designed to protect against an intercontinental ballistic missile attack from North Korea or elsewhere in eastern Asia, according to agency sources	Long-Term Call     A victory by Yushchenko aligns Ukraine more closely with United States

Source: Lehman Brothers

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