

Vol. 29, No. 38

September 28, 2009

Gates and Locke Meet to Coordinate Export Control Review

Defense Secretary Robert Gates is putting his mark on the Obama administration's planned review of U.S. export controls and met Sept. 21 with Commerce Secretary Gary Locke to make sure their two departments are working together in the review. "Gates continues to show very close interest in the work of the group," one source noted. The White House review is being headed by Deputy Economic Advisor Michael Froman, who has already been holding inter-agency meetings on the review (see **WTTL**, Sept. 7, page 1).

Gates and Locke met for an hour at the Pentagon to discuss trade and visa reforms. They "agreed to work together with their counterparts at other Cabinet agencies toward these important reforms," Commerce reported. "The secretaries plan to meet again in the next few weeks with fellow administration officials to address their progress," the statement added. Gates has assigned the Defense Technology Security Administration (DTSA) to play the lead role for the Pentagon in the review, with DTSA Acting Director Jim Hursch heading up the task.

"Secretary Gates and DoD support this goal wholeheartedly," a Pentagon spokesman told **WTTL** in an e-mail. "DoD recognizes that economic security is a critical element of national security. To the extent that current U.S. export controls unnecessarily inhibit economic activity, those controls need to be reformed," the spokesman said. "DoD will be an enthusiastic participant with our inter-agency colleagues and Congress in considering a range of reform options for U.S. munitions and high technology export controls, keeping in the forefront of our minds that critical U.S. military technological advantages must be preserved and the lives of our U.S. servicemen and service women must be protected," he added.

Court Blocks Imposing CVDs on China without New Rules

Court of International Trade (CIT) Chief Judge Jane Restani ruled Sept. 15 that the International Trade Administration (ITA) can't apply the countervailing duty (CVD) law against imports from China unless it issues a new regulation and methodology to describe how it will apply antidumping (AD) rules for nonmarket economies (NME) to prevent the double counting of duties. The decision, if not overturned by Court of Appeals for the Federal Circuit, would be a blow to domestic industries that have used the CVD law to enhance penalties against Chinese imports and undercuts a major Bush administration initiative to show its toughness against China. "Commerce should refrain from imposing CVDs on NME goods until it is prepared to address this problem through improved methodologies or new statutory tools," Restani



ruled. “If Commerce is to apply CVD remedies where it also utilizes NME AD methodology, Commerce must adopt additional policies and procedures for its NME AD and CVD methodologies to account for the imposition of the CVD law to products from an NME country and avoid to the extent possible double counting of duties,” Restani declared (slip op. 09-103). The court finds that “Commerce is not barred by statutory language from applying the CVD law to imports from the PRC, but that Commerce’s current interpretation of the NME AD statute in relation to the CVD statute here was unreasonable,” she ruled.

Restani also rejected ITA’s decision to set Dec. 11, 2001, the date of China’s accession to the World Trade Organization, as the starting point for measuring Beijing’s subsidies to Chinese producers of off-road-tires. “Application of this cut-off date was arbitrary and unsupported by substantial evidence,” she ruled. “As China’s economy is in a continuing state of transition and reform, for Commerce to identify and measure subsidies in the PRC, Commerce must determine what kind of subsidy exists and whether the subsidy is measurable at a particular time in the PRC, rather than through imposition of a bright-line rule,” she said.

In her ruling and remand order to Commerce on a suit filed by Chinese exporters of pneumatic off-the-road tires, Restani may have given impetus to Congress to enact legislation clearly applying the CVD law to China. “Congressional silence regarding the application of the CVD law to NME countries may indicate that Congress never anticipated that the CVD law would be applied while a country remained designated as an NME country,” she wrote. Restani also noted the problem of mixing AD duty calculations based on surrogate country exports, as required under rules for treating AD cases against NMEs, and subsidies calculated inside China.

“It is not clear, however, how the CVD and AD law may work together in the NME context, if at all, and *Georgetown Steel* explains that at least with respect to the old-style NME countries, the AD statute was intended to cover the ground. Thus, no coordination was necessary,” she wrote. Unlike the market economy “context where private decision-making is expected to control the setting of prices, the NME AD statute was designed to account for government intervention in an NME country’s economy, including resulting price distortion,” Restani added.

Russia Claims It Is Ready to Renew WTO Accession Talks

High-ranking Russian officials have been meeting quietly with trade partners in Geneva to reconfirm that the Kremlin has backed away from Prime Minister Putin’s announcement that Moscow would drop its individual bid to join the WTO in favor of joining as a customs union with Belarus and Kazakhstan (see **WTTL**, June 22, page 2). That effort was also underscored in a meeting Sept. 21 between U.S. Trade Representative Ron Kirk and Russian First Deputy Prime Minister Igor Shuvalov. Kirk apparently made it clear to Shuvalov that Washington doesn’t want Russia’s accession to the WTO link to Belarus and Kazakhstan.

Russian President Medvedev also signal the new approach speaking to business executives in Bern, Switzerland, Sept. 21. “We agreed that we will act in parallel: on the one hand, we will form an alliance and on the other, we will establish a foundation in order to sign an agreement on a free trade zone,” the Russian leader said, according to comments posted on his website. “We will arrive at the desired result when Russia enters the World Trade Organization,” he said.

In his meeting with Shuvalov, “Ambassador Kirk welcomed Mr. Shuvalov’s clarification of Russia’s aspirations with regard to WTO accession and operation of its overall trade regime, and reiterated that the United States continues to support Russia’s individual accession to the WTO and will continue to provide constructive support to achieve that goal,” said a statement issued by Kirk’s office. Kirk also raised concerns the U.S. wants addressed before Russia joins, including on U.S. farm exports, intellectual property rights and licensing procedures for information technology products. The U.S. isn’t the only country that has issues to resolve before Russia gets WTO membership. In addition to Georgia’s geopolitical objections to

Moscow's accession, Australia and Canada have raised questions about Russian beef quotas. Trade officials from those countries are furious, one diplomat in Geneva reported. "If the Russians are making available a much smaller quota to Australia and Canada, they would be not very pleased with the terms of the accession," he said.

The Russians are "undoing the confusion that Putin threw out," one high-ranking trade diplomat told WTTL, referring to recent meetings with the WTO secretariat. The Russians are saying, "we'll do whatever it takes," he said. The Russians "will still say that they want the three to join at the same time, but they have become less ambitious about their customs union," the diplomat suggested.

Obama Tells Hu Tire Case Isn't Shift to Protectionism

President Obama tried to reassure Chinese President Hu Jintao Sept. 22 that his decision to impose tariffs on Chinese tires was not a signal of a change in U.S. policy toward protectionism. The two leaders met for 90 minutes on the sidelines of the U.N. General Assembly meeting in New York. Hu raised the tire issue with Obama at the meeting, according to a background briefing by a senior administration official (see WTTL, Sept. 21, page 3).

"The tire issue came up," the official reported. "The Chinese remain concerned about it. The President emphasized that we had differences on the issue, and said that the U.S. remains firmly committed to free trade and resisting protectionism," the official noted. Obama explained that the "decision should not be read as a derogation of that position. It had to do with the facts of this particular case." The official further reported that "both sides emphasized the importance of close consultations in order to attempt to manage potential trade disputes in the future."

Paper Industry Makes New Try against Imports

The U.S. paper industry has taken a new tack in its effort to block imports of coated paper. Although the International Trade Commission (ITC) in November 2007 rejected the industry's injury claim in an earlier petition, three paper companies and the United Steelworkers Sept. 23 filed new antidumping and countervailing duty complaints against imports of coated stock paper from Indonesia and China (see WTTL, Nov. 26, 2007, page 2). The main difference in the new petition is the two years of additional imports and alleged injury since the first case.

The complaints were filed by Appleton Coated, NewPage Corporation, S.D. Warren Company, which operates as Sappi Fine Paper North America, and the United Steel, Paper and Forestry and Rubber union. The petition is another example of the new aggressive stand against imports being taken by the Steelworkers, who also filed the Section 421 case against tire imports from China.

In addition to what is expected to be a new period of investigation, the new petition has been refocused to aim at coated paper rated 80 or more on the brightness scale and sheet-fed paper as opposed to Web-press paper which is the main type of paper produced in the U.S., according to Gilbert Kaplan of King & Spalding, which is one of the law firms representing the petitioners. In addition, the petitioners have dropped Korean paper from the case. In 2007, the ITC voted 5 to 1 that imports were not the cause of injury to the domestic industry.

Voluntary Disclosure Leads to Charges against Subsidiaries

A voluntary self-disclosure that Thermon Manufacturing Company of San Marcos, Texas, made to the Bureau of Industry and Security (BIS) has led to charges against five of its foreign subsidiaries and settlement agreements that will cost those firms \$176,000 in civil fines. Thermon

reported to BIS that its subsidiaries had reexported its heat-tracing equipment without approved licenses to Iran, Libya and Syria, as well as to an Indian organizations on the BIS Entity List. "Thermon's foreign subsidiaries placed orders intended for and ultimately shipped to sanctioned countries and listed entities," said Kevin Delli-Colli, BIS acting assistant secretary for export enforcement. "A number of the violations occurred despite the fact that Thermon U.S. told the subsidiaries that such actions were prohibited," he added.

Thermon Heat Tracers Pvt., Ltd., of India agreed to pay a \$31,500 civil fine to settle seven charges for exporting the equipment to the Bhabha Atomic Research Center and other Indian facilities that were on the Entity List. Thermon Far East Ltd. of Japan will pay a \$13,500 fine for three charges tied to exports to Libya. Thermon Europe B.V., based in the Netherlands, agreed to pay a \$43,500 fine for nine charges related to exports to Libya and Syria. Thermon UK was fined \$29,000 for six charges linked to exports to Iran, Libya and Syria. BIS fined Thermon Korea, Ltd., \$58,500 for unlicensed exports to Iran.

* * * Briefs * * *

USTR: President Obama Sept. 24 sent Senate nomination of Islam A. Siddiqui to be chief USTR agriculture negotiator. He is currently VP for science and regulatory affairs at CropLife America. During Clinton administration he served as USDA under secretary for marketing and regulatory programs, senior trade advisor to Secretary Dan Glickman and deputy under secretary for marketing and regulatory programs. He received B.S. degree from Uttar Pradesh Agricultural University in Pantnagar, India, and M.S. and Ph.D. degrees from the University of Illinois at Champaign-Urbana.

CUSTOMS: President Obama Sept. 22 said he will nominate Alan D. Bersin to be commissioner of Customs and Border Protection. He is now assistant secretary for international affairs and special representative for border affairs in Homeland Security Department. Earlier, he was chairman of San Diego County Regional Airport Authority, California's secretary of education, superintendent of public education in San Diego and chairman of California Commission on Teacher Credentialing.

MALDIVES: U.S. is opening new diplomatic initiative with Maldives, which sits on major shipping routes in Indian Ocean. USTR in Sept. 18 Federal Register asked for public comments on extending GSP benefits to island nation. On Sept. 7, President Obama made presidential determination that Maldives is eligible to receive defense articles and services under Arms Export Control Act.

EXPORT ENFORCEMENT: Aviation Services International, B.V. of Netherlands and two of its executives, Robert Kraaijpoel, 66, and Robert Neils Kraaijpoel, 40, entered guilty pleas Sept. 24 in D.C. U.S. District Court to one-count criminal information charging them with conspiracy to export aircraft components and other items illegally from U.S. to entities in Iran via Netherlands, United Arab Emirates and Cyprus.

MORE EXPORT ENFORCEMENT: Foxsemicon Integrated Technologies, Inc. (FITI) of Taiwan and its U.S. affiliate, Foxsemicon LLC of San Jose, Calif., have reached settlements with BIS after making voluntary self disclosures. FITI will pay \$250,000 civil penalty to settle BIS charges that it committed 31 EAR violations with export of pressure transducers from U.S. to China. Foxsemicon will pay \$160,000 civil fine.

ITC: Catherine B. DeFilippo has been named director of ITC office of investigations, which handles review of antidumping and countervailing duty cases. With ITC since 1986, she has served as chief of applied economics division and earlier was senior economist in office of Commissioner Deanna Tanner Okun.

FASTENERS: Nucor Fastener Sept. 23 filed antidumping and countervailing duty complaints at ITA and ITC against imports of standard steel fasteners from China and Taiwan.

STEEL PIPE: United States Steel Corporation and V & M Star L.P., Sept. 16, filed antidumping and countervailing duty petitions at ITA and ITC against imports of seamless carbon and alloy steel standard, line, and pressure pipe from China.

PHOSPHATE SALTS: ICL Performance Products and Prayon, Inc., Sept. 24, filed antidumping and countervailing duty complaints at ITA and ITC against sodium and potassium phosphate salts from China.

CFIUS: Next WTTL audio-conference briefing on Oct. 15 will be on *CFIUS and Next Wave of Foreign M&A*. Go to www.exportprac.com for details.