

Vol. 29, No. 22

June 1, 2009

## Legislation Calls for Review of Defense Export Controls

The House Foreign Affairs Committee has made another stab at trying to reform defense export controls, but it is still unclear whether it will succeed this time. In its comprehensive foreign relations authorization bill (H.R. 4210), which it reported out May 20, the committee directed the president to conduct a comprehensive assessment of arms export controls, while also authorizing increases in the staffing of State's Directorate of Defense Trade Controls (DDTC) and setting deadlines for decisions on export licenses. A similar attempt at addressing export control issues was stripped from last year's authorization bill. In some years, separate foreign relations authorization legislation hasn't even passed.

The new proposal would require a study to "determine the overall effectiveness of the United States arms export controls system in order to, where appropriate, strengthen controls, improve efficiency, and reduce unnecessary redundancies across Federal Government agencies, through administrative actions, including regulations, and to formulate legislative proposals for new authorities that are needed." It also wants to ask for a detailed summary of known attempts by "unauthorized end-users (such as international arms traffickers, foreign intelligence agencies, and foreign terrorist organizations) to acquire items on the United States Munitions List and related technical data."

Among many provisions, the bill would require State, starting in fiscal year 2011, which begins Oct. 1, 2010, to assign "at least 1 licensing officer for every 1,250 applications for licenses and other authorizations to export items on the United States Munitions List." In addition, State would be required to have "to the extent practicable, not less than three individuals assigned to review applications for commodity jurisdiction determinations." The measure provides no minimum, but says the secretary of state "shall ensure that the Directorate of Defense Trade Controls has adequate staffing for enforcement of the International Traffic in Arms Regulations." It also would require the president to report on how the U.S. is assuring Israel's military edge.

## New Indian Commerce Minister May Change Tone of Trade Talks

Kamal Nath, who often clashed with U.S. and other trade officials in Doha Round negotiations, was replaced May 27 as India's commerce and industry minister by Anand Sharma, a media-savvy, close ally of the Gandhi family and a stalwart of Indian Prime Minister Manmohan Singh's National Congress Party (see **WTTL**, May 25, page 2). Nath was moved to the post of minister for surface transportation and highways. Although the title seems less glamorous, the



position may be important politically, because India is in the midst of a major expansion of its road and railway system, and the post gives Nath the opportunity to dispense millions in patronage and contracts. Sharma, 56, appears to have little or no experience in trade. He was a deputy minister for foreign affairs in Singh's previous cabinet. His more important role was as spokesman for the Congress Party for six years and as an active member of the campaign team that helped propel Singh's reelection in May. Sharma was close to late Prime Minister Rajiv Gandhi and a leader of the Congress Party's Indian Youth Congress. As a result, he is reported to have strong ties to many of India's younger leaders.

Sharma's work for Singh in the election suggests that he will be more amenable than Nath to following the prime minister's directions. According to sources, Nath had disregarded Singh's direct instructions to reach a deal during Doha Round talks in July 2008 in Geneva. On the surface, at least, Sharma is in the mold of U.S. Trade Representative Ron Kirk and European Union Trade Commissioner Catherine Ashton, who bring a heavy dose of charm, political connections and public relations experience to their posts. Sharma is lawyer who was first elected to the Indian Parliament in 1984 at the age of 31.

## Senators Raise Concerns about Chinese Fraud in Dumping Case

Three senators are putting pressure on Commerce Secretary Gary Locke to reopen an anti-dumping administrative review to reexamine charges by petitioners that data submitted by the Chinese respondent and its U.S. lawyers were fraudulent. The International Trade Administration (ITA) had reviewed the charges and rejected them in its April 14 final order in the first administrative review of lined paper schools supplies from China. Big money is at stake. The original dumping margin on the imports was 94.98%. The administrative review revised the margin down to 22.35%. A brief filed by the Chinese respondent claims there was a clerical error in the final margin calculation and argues the correct margin should be 6-8%.

"We are writing to express our serious concern about possible fraudulent conduct before the Commerce Department that, if true, threatens to undermine the Department's enforcement of the antidumping duty law," wrote Sens. Charles Schumer (D-N.Y.), Sherrod Brown (D-Ohio) and Bob Casey (D-Pa.) in their May 20 letter. "Specifically, the U.S. producers informed us that the Chinese respondent and its U.S. counsel submitted a fabricated annual report during the review proceeding, which the Department relied upon in calculating that respondent's antidumping duty margin," they said. The respondent is Shanghai Lian Li Paper Products, which is represented by the D.C. law firm of Garvey Schubert Barer.

"In light of the allegations of fraudulent conduct, potential imminent injury to the industry, and threat to effective enforcement of our trade remedy laws, we ask that you give full consideration to the Association's request that the Department reopen and reconsider its final results of administrative review," they wrote. The petitioner, the Association of American School Paper Suppliers, has already filed suit in the Court of International Trade (CIT) against the final review order. Any reopening of the case would require a CIT remand order.

At an ITA hearing on the case, the association objected to surrogate data Lian Li submitted from a paper firm in India. The ITA staff memo on the final determination rejected this complaint. "We disagree with the petitioner that the Department should apply AFA [adverse facts available] in calculating normal value," the memo stated. "As an initial matter, we note that Lian Li and its suppliers have actively participated in this review and have provided adequate responses to numerous requests for information," it said. "Regarding the petitioner's assertion that Lian Li has admitted that its suppliers' unaudited financial statements are unusable because the costs are 'arbitrarily distributed,' we disagree," it added. "Lian Li and its suppliers clarified the record and provided reconciliations showing that the reported FOP tied to their financial statements. We do not find that Lian Li and its suppliers withheld information that had been requested," the memo stated; noting that "all the information could be verified."

## WTO Schedules Leaner Ministerial for November

The World Trade Organization (WTO) has decided to hold a long anticipated ministerial conference Nov. 30-Dec. 2 in Geneva, but the meeting supposedly isn't intended to be a negotiating session on the Doha Round nor a high-profile extravaganza as some past ministerials. "Given the global economic environment...holding the sort of conference members have become accustomed to would not only be inappropriate, but would ... be seen as extravagance," said Chilean Ambassador Mario Matus, WTO General Council chairman, in a statement May 26.

"The ministerial conference will not be a negotiation session," said WTO spokesman Keith Rockwell. Keeping Doha and the ministerial separate will take some pressure off the round, he said. The general theme for the ministerial will be: "The WTO, the Multilateral Trading System and the Current Global Economic Environment," the WTO website said. But it is doubtful ministers will avoid addressing the round. Trade sources speculated that ministers could do what they want and Doha talks could happen on the margins, before or after the meeting.

The actual agenda for the ministerial will have to be negotiated over the coming months, officials said. "The ministerial conference can do whatever it wants," one diplomat said. So negotiations over the agenda could be "contentious," he added. Some potential topics for the meeting surfaced at the May 26 General Council meeting. India proposed what one source described as a "wish list" of possible subjects, including "MFN-ization" of regional and bilateral free trade agreements to extend their benefits on a Most-Favored-Nation basis to all WTO members and to increase transparency in FTA negotiations. India also wants a discussion on preferential rules of origin and the impact of international standards on developing nations.

One potential subject could be trade rules and climate change. The ministerial will meet just before the December UN Climate Change Conference in Copenhagen where countries will try to hammer out a global climate agreement. The subject of competition also might come back, one official told WTTL. He noted that talks on the issue were shut down at the Cancun ministerial in 2003, but the topic is coming back because of the aid packages developed countries are providing their industries. "Can we really liberalize services nowadays when most banks are state-owned or practically state-owned?" he asked. Another likely topic is the trade monitoring program that WTO Director General Pascal Lamy initiated last year. The monitoring system is still needed to counter rising negative political pressures on the trade front, Lamy says.

## Lamy Backs Start of "Scheduling" to Move Doha Talks

WTO Director General Pascal Lamy is throwing his support behind a Canadian proposal backed by the U.S. and other developed countries to start talks on "scheduling" commitments in Doha Round agriculture and industrial tariff talks. Scheduling is WTO jargon for when countries present a list of changes they are willing to make in their specific tariffs or trade rules. It opens the door to the traditional "request-offer" approach to negotiations because it gives negotiators the chance to ask for liberalization of trade in particular products or services.

Scheduling also might answer complaints from U.S. industry that the Doha Round has become a "black box" because they can't see what they would actually get out of a final agreement (see **WTTL**, May 18, page 1). Lamy's statements in favor of starting the scheduling process, however, have drawn negative reactions, as expected, from some developing countries that want to keep the focus on negotiating modalities, which provide broad average cuts in tariffs on farm and industrial products along with the flexibility to be exempt from some cuts.

"I am well aware that for some of you, the modalities approach is sacrosanct," Lamy told the WTO General Council May 26. "There is scope to work on these two areas along two simultaneous tracks," he offered. While the modalities approach makes clear what is on the table, it is seen by others as a defensive mechanism, Lamy said. The flexibilities given developing

countries to exempt themselves from final modalities make ascertaining new market access opportunities difficult to gauge, Lamy admitted. The process would be clearer, if governments would indicate what products “would be accorded more flexible treatment in the scheduling stage,” he said. Lamy said technical engagement in the negotiating groups could intensify, and countries could also begin “outcome testing” through bilateral or plurilateral discussions.

One diplomat noted the demands that U.S. trade groups are making for market access in the round. They are “clamoring for more access to the Indian market for their banks, to the Brazilian market for their chemicals,” he said. He questioned what would happen after countries make an effort to accommodate those requests, but U.S. industries don’t get what they want. Do “we give up everything that has been negotiated over seven years and the round is dead” or after the honest effort to accommodate them, conclude the round? he asked.

The diplomat told WTTL that developing countries cannot accept the presumption that the current Doha package is imbalanced against the U.S. “This won’t fly; nobody agrees with that and it’s not helpful to try to achieve that sort of result,” he said. “If you reopen the package, be prepared to see other bits of it reopened too,” he warned.

## WTO Negotiators Struggle with Nontariff Barriers to Trade

The Doha Round negotiating committee on non-agriculture market access (NAMA) tried with little success May 27 to address a wide range of proposals aimed at concerns about the rise in nontariff barriers to trade (NTBs). A proposal for a possible “horizontal mechanism” to deal with NTB problems drew the most fire and debate, officials report. Tied to this horizontal mechanism is a proposal to create a position for a facilitator to resolve NTB disputes.

Members at the NAMA meeting questioned the legal status and financing of such a horizontal mechanism, reported Swiss Ambassador Luzius Wasescha, who chairs the NAMA talks. Some countries accepted the idea but want an appropriate design and assurances of confidentiality, he said. Others said they don’t want it to duplicate the work of the WTO Dispute Settlement Body (DSB). There were also questions about the role of the facilitator in NTB disagreements.

Cuba used the meeting to press an initiative aimed at the U.S. trade embargo. Its proposal to eliminate NTBs imposed as unilateral trade measures remained a unilateral proposal for unilateral measures, Wasescha said. Brazil, however, supported the Cubans. There also appeared to be interest in a proposal from Argentina on NTBs in the chemical sector, Wasescha said. Also discussed was a U.S.-European Union proposal on the interpretation of the TBT Agreement for the labeling of textiles, clothing, footwear and travel goods, Wasescha said. Sri Lanka and Mauritius are cosponsors. The U.S. and Switzerland also presented a paper on NTBs in electronics. A discussion on a New Zealand proposal on NTBs affecting forestry products drew objections from at least one large Asian country that said it duplicated work at the International Organization for Standardization, Wasescha said.

### \* \* \* Briefs \* \* \*

WIRE: American Spring Wire Corporation, Insteel Wire Products Company, and Sumiden Wire Products Corporation May 27, filed antidumping and countervailing duty petitions at ITA and ITC against imports of prestressed concrete steel wire strand from the People’s Republic of China.

EGYPT: Ahead of President Obama’s visit to Egypt first week in June, U.S. and Egypt May 27 signed “Plan for a Strategic Partnership,” which calls for developing framework over next 90 days for cooperation on trade and investment. This could be prelude to FTA talks. Large share of Egyptian goods already enters U.S. duty-free from Qualified Industrial Zones where goods are produced with Israeli components.

EDITOR’S NOTE: With this issue, *Washington Tariff & Trade Letter* celebrates its 28<sup>th</sup> anniversary. As always, we thank our subscribers, friends and “well-informed sources” for making it possible.