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Decline in Exports Expected to Continue into 2009

The decline reported Dec. 11 in U.S. merchandise exports in October is expected to continue into 2009, with the World Bank predicting that total U.S. exports next year will decline 2.6% from 2008. The reversal in the export picture comes after three years of double-digit growth. The $3 billion decline in goods exports to $104.8 billion in October from September was less than the $10.1 billion decline from August to September and was still up 4.4% from October 2007. The World Bank also predicts a 1.1% decline in imports in 2009, but a continuing deterioration of the U.S. trade balance. In October, merchandise imports of $174.6 billion were $2.7 billion below imports in September but still 4% above October 2007.

> "The global recession and attendant decline in world trade and in commodity prices will have a dramatic impact on current account balances," the bank said in its Global Economic Prospects 2009 report released Dec. 9. "Despite the improvement in the U.S. terms of trade, its current account shortfall is expected to deteriorate from $770 billion in 2008 (5.4 percent of GDP) to $830 billion or 5.8 percent of GDP in 2009," the report forecasted.

The decline in world trade "is driven first and foremost by a sharp drop in demand, as the global financial crisis poses a rare simultaneous recession in high-income countries and a sharp slowdown across the developing world," the World Bank said. "The global credit crunch is likely to affect private investment especially, which is the most cyclical and most internationally traded component of GDP," it said.

"At the same time, the credit crunch is restricting export finance," the report noted. "Already there is anecdotal evidence that commercial bank trade credits are drying up and that export receipts are becoming more difficult to insure. Similarly, exporting firms may cut back on shipments if their access to credit lines is limited. Finally, the crisis has been associated with sharp, unpredictable swings in exchange rates, which also will hamper trade," it reported.

No Doha Ministerial, No Deal; Now What?

The last hope for reaching a Doha Round deal on modalities by the end of the year died Dec. 12 when World Trade Organization (WTO) Director General Pascal Lamy called off plans for holding a ministerial meeting in December and conceded that not enough advance progress had been made on key remaining issues to warrant bringing the ministers to Geneva (see **WTTL**, Dec. 8, page 1). "Should economic conditions further deteriorate as most analysts expect, it

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could even prove to be more difficult" to reach agreement on modalities next year, Lamy, looking tired and frustrated, told reporters after he announced his decision to a Heads-of-Delegations meeting.

> Unless things changed over the weekend, Lamy told negotiators he recommended against holding a ministerial in December. "We have two comprehensive texts on the table. It is the fruit of seven years of work. It puts us closer to the finishing line of modalities. This being so, my sense is that we should now focus on seeing how we gather the necessary political energy into the New Year," he said.

Trade diplomats in Geneva were quick to blame the U.S. for the final deadlock and particularly the opposition of American manufacturing and agriculture groups who criticized the revised agriculture and non-agriculture market access (NAMA) negotiating texts issued by the two chairmen of those negotiations on Dec. 6 plus objections from members of Congress to reaching a deal now. U.S. industry has insisted that a commitment to negotiating zero-tariff deals in industrial sectors has to be part of any interim agreement on modalities. There was also the sense among foreign negotiators that they didn't want to reach an agreement with a lame duck Bush administration and preferred to start fresh with the new Obama administration trade team.

The declaration of the leaders of the world's 20 largest economies in November that they wanted to reach a Doha deal this year had no impact on the nitty-gritty of negotiations. Nor were negotiators motivated by fear that the global financial and economic crisis might descend into a depression if an outburst of protectionism occurred. In the end, there were three main issues dividing negotiators: cotton, special safeguard mechanism (SSM) in agriculture and sectorals. Lamy indicated that a deal was possible on cotton, but a deal on SSM and sectorals wasn't in sight. Privately, foreign officials in Geneva say it was the U.S. that prevented agreement in these two last areas.

A statement from U.S. Trade Representative (USTR) Susan Schwab defended Washington's efforts in the talks. "The U.S. has shown flexibility repeatedly in the past several weeks to achieve the convergence among WTO members necessary to convene a ministerial," she said. "Due to numerous outstanding issues voiced by several WTO members, it became apparent that the gaps were too large to bridge at this time," she added. "The US remains committed to working with the WTO and our trading partners to reach a successful Doha outcome, one that fulfills the promise of this round," Schwab said.

At a Dec. 12 press conference in Geneva, Brazil's Minister of External Relations Celso Amorim was visibly downbeat after a meeting with the group of developing countries known as the G-20. Amorim said he had wanted the ministers to meet because he thought a deal would be easier to reach now. "If we wait, it will probably take years," he said. Excessive demands for sectorals are the main reason for the impasse, Amorim argued. What India, Brazil and China offered in July, was accepted by all WTO member countries, except one country, Amorim said, not mentioning the U.S. by name. "I think this is something that one has to take into account," he said. The financial crisis was created in the economy that is now making the most excessive demands, Amorim said; adding: "This is another irony. They should be showing the leadership. That's not happening." He claimed Brazil was prepared to call the ministerial on the basis of Lamy's texts.

Lack of Deal on Sectorals Doomed Doha Deal This Year

The final irony of the failure of WTO negotiators to reach a Doha Round deal this year was their disagreements over industrial tariffs rather agriculture, which was the seminal issue behind the launch of the round and the subject that seemed to stymie talks for seven years. Dissatisfied with the formulas for cutting tariffs in the non-agriculture market access (NAMA) talks and pushed by U.S. manufacturing industries, American negotiators insisted that any interim deal on modalities had to include commitments from advanced developing countries, particularly Brazil, China and India, on sectoral negotiations aimed at bringing tariffs to zero in such key areas as chemicals, wood and industrial machinery. The wind blowing in the face of U.S. demands, however, was the fear among many nations that any deal to eliminate tariffs would only benefit China and lead to a flood of Chinese imports.

> "The biggest problem is NAMA, and the U.S. has barricaded itself in a position from which it seems difficult to get out," one high-ranking Latin American diplomat told WTTL, citing the letters from the National Association of Manufacturers, House and Senate members and the American Farm Bureau Federation that said the agriculture and NAMA texts released Dec. 6 are not a basis for discussions. "I don't really see any margin for maneuver on the part of the U.S.," he said.

In his statement to negotiators Dec. 12, WTO Director General Pascal Lamy cited the differences over sectorals as one of the key reasons why he wasn't calling for ministers to come to Geneva. "On sectors, the underlying issue is a different understanding of the value of the package on the table," he said. "Some understand sectorals as a top-up, a non-mandatory addition to the main package. It would be the cherry on the pie. For others, this is an essential part of the agreement, which can only be finalized if there is a guarantee of commitments. It would be the pie on the cherry. At this stage, these two positions are not reconcilable. My sense is that it would help if we could get a better collective appreciation of the value of what is on the table, and how much of the difference sectorals would make," he said.

A Brazilian source said the linking of sectorals and NAMA is "a major change to the balance that was there in July." He claimed the U.S. changed its position since July and now insisted the agreement on coefficients and flexibilities in the tariff-cutting portion of the NAMA text had to be tied to agreements from specific countries to participate in specific sectoral talks. He said the coefficient discussed in July already isn't easy for Brazil. He said Brazil would not commit beforehand to the sectorals in which it will participate. The Brazilian government has talked with its industry on which "sectoral" it should participate in, he said, emphasizing the singular. The result is "nothing remotely resembling what the U.S. is asking for," he said.

The current –hourly– crisis for the U.S.-brand car industry also played a role in late discussions on the NAMA text. One source noted concerns that a U.S. bailout for the industry might lead to an overstock of subsidized U.S. auto exports, which might cause countries to want to raise their tariffs. In that case, "maybe it's good to have the possibility of raising your tariffs quickly and preventing those cars from coming in," he said.

The Dec. 6 NAMA text issued by Luzius Wasescha, the Swiss ambassador to the WTO and chair of the tariff talks, called for a coefficient of 8 for developed members and for coefficients of 20, 22 and 25 for developing countries, which are given greater flexibility for exclusions from the formula when they agree to lower coefficients. For developed countries, a coefficient of 8 would mean their average bound tariffs would be well below 3%, and tariff peaks below 8% even on their most sensitive products. Most tariff lines for developing countries applying the formula would be less than 12-14%, depending on the coefficient and the flexibilities chosen. Their bound tariffs would average between 11 and 12%, with only a limited number of tariff lines above 15%, according to one estimate. The water, that is the difference between bound rates and those actually applied, would be substantially reduced, one source argued.

Technology Panel Seeks Methodology to Create Methodology

At its second meeting Dec. 8, the Bureau of Industry and Security's (BIS) Emerging Technology and Research Advisory Committee (ETRAC) still appeared as stumped about its assignment as it did when it first met in September (see **WTTL**, Sept. 29, page 3). The panel has been asked to propose a methodology for identifying emerging technologies that should be subject to export controls and especially deemed export controls, but the discussion at the meeting indicated it was still trying to devise a methodology for determining that methodology. Committee members seemed more interested in their assignment to conduct a zero-based analysis of the Commerce Control List (CCL) to come up with recommendations for technologies that should be exempt from deemed export requirements. "We want to form subcommittees that have people that are experts in that field to come up with methodologies that we can refine and combine together," said ETRAC co-chairman Richard McCullough of Carnegie Mellon University. "Many of us came to the committee to scrub the CCL. We need to use a zero-based CCL review methodology as the vehicle," he said. McCullough said it was important also to hear from existing BIS technical advisory committees (TACs) which are already reviewing the CCL.

> McCullough recommended forming six subcommittees to conduct the review. The six are: (a) biology, biotech, and health sciences; (b) chemical and materials sciences; (c) communications, advanced computing and software; (d) nuclear technologies and directed energy research; (e) space and remote sensing technologies; and (f) nanotechnologies and microelectronics. Several members suggested that nanotechology was part of all these categories. Another suggestion was to organize the subcommittees to mirror the existing TACs.

Academic members of ETRAC also restated their concerns about the impact deemed export controls are having on their research. "Professors are required to take export decisions when the information is very vague," said Seth Marder of Georgia Tech. "The regulations do not provide guidelines to know if you are in violation of the law. It is our responsibility. The government grants may or may not discuss restrictions, but the responsibility rests with the professor and school, and they could be legally liable," he said.

James Tour of Rice University said, "I don't care where students are from, I just want to research." He also said the rules are confusing and restrictive. "In an academic sense, I don't think we can create any list. We need a much less restrictive regulation," Tour argued. He also disclosed that "half of my laboratory is Chinese' half of the communications on my computer terminals is to China in Chinese, and another third is all Russian."

Michael Reiter of the University of North Carolina expressed the sentiment that "anything that relies on faculty is doomed to failure." He said the government should get involved in the form of an additional visa checks. Robert Breault of Breault Research Organization, Inc., suggested "we need to create a methodology to create a methodology. Instead of punishing the universities, who have been so terrified that they have pulled back from research...as we go through this learning curve, let's take some of the terror out. Reduce the fines for non-intentional violations."

Treasury Again Declines to Name China Currency Manipulator

In a Dec. 10 report to Congress, Treasury again refused to name China as a currency manipulator under the definition set by statute, but it raised concerns that the slow pace of appreciation of the currency has slowed even further. The report only tracks currency levels up to October 2008, and there have reports since then that the appreciation of the renminbi has either stopped or started to move toward depreciation. "With respect to exchange rate developments in China, the pace of renminbi appreciation accelerated in the first half of 2008, with the currency rising by 6.2 percent against the dollar (a 12.4 percent annualized rate)," Treasury reported.

> "The rate of appreciation against the dollar was faster than in any period since the end of the peg in July 2005. In contrast, between the end of June and the end of October the renminbi appreciated by only 0.2 percent against the dollar," it said.

"The effective appreciation of the dollar since mid-summer, however, has resulted in a rise in the real effective exchange rate of the renminbi," Treasury noted. "On a real effective basis, the renminbi has appreciated between 14 and 26 percent, depending on the measure used, since unpegging from the dollar in 2005. But, by several of these measures, the real effective exchange rate of the renminbi remains below its peak in early 2002," it said. These calculations, however, were made before the recent reversal of the dollar, which has started to fall again in value. Nonetheless, Treasury said Chinese renminbi is undervalued. "Persistently large current account surpluses, continued historically large interventions in foreign exchange markets as evidenced by the rapid accumulation of foreign currency reserves, and a weak real effective exchange rate provide ample evidence that the renminbi is substantially undervalued," Treasury reported to Congress.

Industry Calls for Ending Last Computer Export Controls

Although the number of computers subject to export licensing requirements has dropped drastically over the last few years, the remaining controls on the Commerce Control List (CCL) should be removed because they are no longer effective, the computer industry argues. "The most advanced computing power is available to any country that wants to invest enough money in doing so," Dan Hoydysh, director of global public policy for Unisys, told the BIS Regulation and Procedures Technical Advisory Committee (RAPTAC) Dec. 10. "There are foreign computer companies that compete or are capable of competing with U.S. computer companies for sales of computers that perform above the level that is controlled by U.S. export controls," he said, speaking on behalf of the Computer Coalition for Responsible Exports.

> The CCL once controlled the export of even desktop computers to most destinations, but the threshold for requiring a license has been raised over the years so only a few high-performance computers (HPC) now require licenses each year. Nonetheless, the computer controls in Category 4 of the CCL impose other continuing compliance requirements on the industry.

"The technology and hardware threshold increases will be obsolete within twelve to eighteen months," Hoydysh told RAPTAC. "Wassenaar does not have computers on either [control] list, which indicates, to me, that computers should not be controlled. Don't control something just because you can. Nothing should be controlled unless it is clearly demonstrated that it affects national security. Controls of these items undermine our competitiveness in the global marketplace," Hoydysh said. He told RAPTAC that of the top twenty super computers in the world, two are indigenous to China, ranked 10th and 19th. The coalition will file a formal petition to BIS to remove the remaining controls on computers, Hoydysh reported.

Treasury Issues Guidance on CFIUS Policies and Procedures

The Committee on Foreign Investment in the U.S. (CFIUS) is reportedly imposing fewer mitigation requirements on proposed foreign investments in U.S. companies that come under its scrutiny, and new guidance issued in the Dec. 8 Federal Register is likely to continue that trend. The guidance is a companion to final regulations the department issued in November on CFIUS requirements and provide advice on when a foreign investment should trigger the voluntary submission of a pre-investment notice to CFIUS and how the committee will review these submissions (see **WTTL**, Nov. 17, page 3). Although the number of foreign investments coming under CFIUS review had been growing over the last two years, that trend has reversed in recent months as merger and acquisition activity has slowed with the sharp drop of foreign direct investment due to the global financial crisis.

The guidance says CFIUS will not require a mitigation agreement just to assure compliance with other existing controls on trade or investment, including controls imposed under the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) or the National Industrial Security Program Operating Manual (NISPOM). "Accordingly, for example, if the NISPOM provides adequate authority to address the risk posed by a transaction – e.g., the possibility in a particular case that a foreign government may use a foreign company to obtain classified government information concerning systems critical to U.S. national defense – then CFIUS would not pursue its own risk mitigation measures under section 721 to address that risk," the guidance states. Before CFIUS seeks a mitigation agreement or imposes a condition on a foreign investment, "the agreement or condition must be justified by a written analysis that identifies the national security risk posed by the covered transaction and sets forth the risk mitigation measures that the CFIUS member(s) preparing the analysis believe(s) are reasonably necessary to address the risk," it says. The committee also must agree that risk mitigation is appropriate and must approve the proposed mitigation measures.

* * * Briefs * * *

ITC: Commission has added another administrative law judge. Edward Gildea joins ITC from Social Security Administration's office of hearings and appeals in Peoria, Ill., where he served since 2004. From 1985 to 2004, he was in sole law practice in Elmhurst, Ill. Gildea has undergraduate and law degrees from DePaul University and masters degree in management from Northwestern University, J.L. Kellogg Graduate School of Management. He is also CPA.

TEXTILES: End of era was marked in Dec. 10 Federal Register notice published by Committee for the Implementation of Textile Agreements (CITA). Notice cancelled all directives requiring filing of electronic visa information for imports of textiles and apparel from China under bilateral textile agreement, one of last remnants of textile import restrictions. Cancellation is effective Jan.1, 2009, although goods exported prior to Jan. 1 from China still need to file if they arrive in U.S. after Jan. 1.

ANTIDUMPING: ITA in Dec. 10 Federal Register issued interim rule withdrawing regulations covering cases of "targeted" dumping. Adopted in 1997 as part of implementation of Uruguay Round Agreements Act, agency says there have been very few allegations or findings of targeted dumping since then. "This situation has caused the Department to question whether, in the absence of any practical experience, it established an appropriate balance of interests in the provisions," notice explains. "The Department believes that withdrawal of the provisions will provide the agency with an opportunity to analyze extensively the concept of targeted dumping and develop a meaningful practice in this area as it gains experience in evaluating such allegations," it states.

AES: Census has made changes to Automated Export Systems (AES) so submissions with non-existent ECCNs will be rejected. System still will not detect when real but wrong ECCN is entered.

EXPORT ENFORCEMENT: Three Chinese nationals were charged in criminal complaints filed Dec. 5 in Boston U.S. District Court with filing false statements on Shipper's Export Declarations (SEDs). Complaints and accompanying affidavit by IRS agent claim they worked for Chitron-US in Waltham, Mass., and shipped various electronics products to Hong Kong and stated on SEDs that Hong Kong was ultimate destination. Complaint contends this was false because ultimate destination was China. No charges were made that exports were made without required licenses. According to affidavit, Chitron-US is wholly-owned and controlled subsidiary of Chitron Electronics Company Limited a/k/a Shenzhen Chi-Chuang Electronics, a Chinese company based in Shenzhen, China. Yufeng Wei, also known as Annie Wei, and Bo Li, also known as Eric Lee, were arrested on Dec. 5. Wei was released on bail, and Lee is awaiting bail hearing. Zhen Zhou Wu, also known as Alex Wu, was also target of complaint. He is Wei's ex-husband and apparently still in China where he has lived since around 1999.

HOUSE: New Ranking Republican on Ways and Means Committee will be Rep. Dave Camp (R-Mich.). He fills post of retiring Rep. Jim McCrery, who is joining DC lobbying firm, Capitol Counsel, when he leaves office in January. Democratic Caucus named five new Democratic members to committee. They are: Reps. Danny Davis (D-Ill.), Bob Etheridge (D-N.C.), Raúl Grijalva (D-Ariz.), Brian Higgins (D-N.Y.), and John Yarmuth (D-Ky.). With Democrats gaining larger majority in House following November elections, ratio of Democrats to Republicans on panel will be 26 to 15 in 111th Congress.

IRAN: BIS plans to publish new rules consolidating current export licensing requirements for Iran that are under agency's jurisdiction and eliminating many current exemptions.

WASSENAAR ARRANGEMENT: At its annual plenary Dec. 2-3 in Vienna, regime said it adopted "significant number of amendments to the control lists, including some in technically complex and challenging areas such as on low-light level and infrared sensors." It said it gave particular attention to items of potential interest to terrorists such as charges and devices containing certain explosives. "Participating States also worked actively to make the existing control text more easily understood and user-friendly for commercial exporters and licensing authorities," it said.

TAIWAN: WTO Government Procurement Committee Dec. 9 invited Taiwan to join Government Procurement Agreement after completing process that began in 1995 when it started talks on accession to WTO.