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BIS Considers Public Release of Commodity Classifications

The Bureau of Industry and Security (BIS) is considering making its commodity classifications (CC) public as part of its implementation of President Bush's January national security directive, which instructed the agency to increase the transparency of the export licensing process. "We are looking at potential ways to publish commodity classifications," BIS Acting Assistant Secretary for Export Administration Matt Borman told an American Conference Institute program May 28. "But we want to do it in a way that doesn't compromise any sensitive business information that might be submitted with a commodity classification request," Borman said.

Under consideration is a way to allow companies that file CC requests through the Export Control Automated Support System (ECASS) to check a box on the request form indicating whether they agree to permit BIS to make the agency's decision public. A broader concern is how CC decisions will be translated from one product to another. In many cases, product specifications that are submitted in an ECASS are particular to a specific product and BIS' decisions are based on that data. Even a slight change in those specifications might lead to a different decision. BISers are discussion what precedent, if any, an ECASS ruling should have on other products claiming to meet the same specifications.

Schwab Concerned about Direction of Doha Talks

U.S. Trade Representative (USTR) Susan Schwab gave a dire assessment of Doha Round negotiations May 28, casting new doubts on the chances for concluding the multilateral talks in 2008. "I will tell you frankly, we are concerned about the direction the Doha negotiations are taking in Geneva," she told reporters. "Recent developments in Geneva have moved the negotiations in the direction of less balance and less market access. The new draft texts in agriculture and manufacturing are disappointing, because they do not move us closer to a deal that will contribute to economic growth and development," she declared.

Schwab said she is not certain a mini-ministerial will be held to find a compromise in the agriculture and non-agriculture market access talks. "The latest texts, I think, have brought us to an important crossroad. Are we ready for a ministerial yet? I don't know. I think we've got some more work to do," she said (see stories pages 2 and 3). Schwab complained that the talks have shifted from negotiating the opening of markets to negotiating about expanded exceptions and exclusions. She was particularly critical of a "handful of advanced developing countries" that have failed to make meaningful market-opening offers. "Quite honestly, these

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countries mask their narrow interests behind claims of speaking for the rest of the developing world when in fact there are developing countries that are very much pro-ambition in this round and their voices are being drowned out," she complained. "It's basically a case of the elephants hiding behind the mice," she added.

Doha Tariff Talks Polarized over Development Goals

Just days after a new draft negotiating text was released, Doha Round talks on non-agriculture market access (NAMA) bogged down again over divergent interpretations of the round's stated goal of spurring development in developing countries. The issues "are all unresolved," Don Stephenson, chairman of the NAMA negotiating group, told World Trade Organization (WTO) members May 27. The aim of meetings the week of May 26 was to bridge gaps in positions before ministers begin horizontal negotiations to balance NAMA and agriculture agreements.

> A pulse was difficult to find, Stephenson admitted after talks on May 27. The liveliest discussions at that session were over the speaking order and the prospect of weekend meetings, he said. Another resource said, "There has been no new progress" (see **WTTL**, May 26, page 4).

One dispute is over whether the Doha Development Agenda, the round's formal title, is intended to help development in poor countries or to give greater market access to exports from developed countries. The U.S. and other industrialized countries claim market access is part of the Doha mandate, while developing countries insist the round is about development, not industrial market access. In the talks, a group of developing countries known as the NAMA-11 said developed countries should make deeper tariff cuts by using a coefficient of 5 rather than the 7 to 9 range in the current text. China also pressed for a lower coefficient for developed countries. An Indian official said another NAMA text is needed before horizontal talks can start.

Speakers from Mexico, Chile, Turkey, Israel, Singapore, Costa Rica and Malaysia, however, said new market access opportunities would help development. A U.S. official said real market access is needed for a reduction in agricultural subsidies, liberalization in services, advances in trade facilitation and development, one source reported. An EU representative said the expanding range of coefficients is making the NAMA text increasingly unbalanced, resulting in no new market access, more tariff peaks and more tariff escalation.

Too Much in Services Text in Brackets, Industry Complains

The latest draft text in the Doha Round services talks, released May 26 by the chairman of the services negotiating group, Mexico's WTO Ambassador Fernando de Mateo Venturini, drew criticism from services trade associations from around the world because key provisions remain in brackets, indicating a lack of progress. The Global Services Coalition, which represents services trade associations in over a dozen countries and the EU, said the latest text shows how far the services talks lag behind agriculture and NAMA negotiations.

> "At this point in the negotiations, a text is needed that provides political guidance on the level of ambition in the Doha Round services negotiations," the coalition said. "Critical components (operative language calling for new market access and bindings of existing market access) still remain in brackets - highlighting that it is only provisional or subject to further discussion," the statement noted.

In his written report to WTO members, Mateo said his draft was based on the written suggestions and comments received from delegations. "I have undertaken to modify certain of the elements of my informal report in order to propose language that could attract a consensus among members," he said. The annex to his report contains what he suggests would be the draft of a final general agreement on services. The specific market liberalization commitments to be made by each country will be spelled out in a separate, detailed schedule of concessions. But the crucial language in the annex that is still in brackets states: "Negotiations must be driven by the same level of ambition and political will as reflected in the agriculture and NAMA modalities. While respecting the existing structure and principles of the GATS, Members shall respond to bilateral and plurilateral requests by offering commitments that substantially reflect current levels of market access and national treatment and provide new market access and national treatment in cases where significant trade impediments exist." Also in brackets is language calling for more market access under Modes 1 and 4.

Divisions Still Prevent New Doha Rules Paper, Chairman Says

The divergent views and unresolved positions in the WTO rules negotiations still preclude the issuing of a revised draft agreement, said a May 28 statement by the rules negotiating group chairman Ambassador Valles Galmes of Uruguay. "There are sharply conflicting views on most of the issues reflected in the draft texts" he issued in November, Galmes wrote in the cover letter to a paper outlining the current state of the talks. The paper includes three annexes on antidumping, horizontal subsidies and fisheries subsidies, as well as a proposal on the application of the dumping rules to developing countries.

> Galmes reported on the continuing divide over proposals to revise WTO "zeroing" rules in antidumping cases – a key U.S. demand. He noted a joint working paper submitted by 20 delegations, proposing alternative language to prohibit countries from disregarding or zeroing out export prices that exceed the normal values in antidumping investigations. His report also mentioned a proposal from other delegations that would allow zeroing in targeted dumping cases.

Differences also continue over Galmes' proposal to terminate dumping orders after 10 years. Many delegations welcomed the idea, with some proposing a shortening of the sunset to five or eight years. Others, mainly the U.S., still reject automatic termination, suggesting that it would be better to develop standards and criteria to govern sunset determinations.

"Participants were sharply divided on the desirability of a possible procedure for taking due account of the representations of domestic interested parties when deciding whether to impose a duty and if so whether to impose that duty at the full margin of dumping or less," the paper said. Views on disciplines for fisheries subsides have diverged since November, sometimes for contradictory reasons, Galmes wrote. Some delegations say the scope of his text is far too ambitious, he noted. Others say the text falls considerably short of expectations. Views on exceptions similarly diverged. There is general agreement on giving special treatment to developing countries, but strong objections to the idea of a "blank check" to avoid new rules.

U.S. Requests Talks with EU on Information Products

Washington's decision – announced May 28 – to request formal World Trade Organization (WTO) consultations with the European Union (EU) on a U.S. complaint that Europe is violating the 1998 Information Technology Agreement (ITA) still could become grist for Doha Round NAMA talks. The U.S. been complaining for almost two years about the EU's imposition of tariffs on products the U.S. claims should be duty free under the ITA.

> American trade officials have run hot and cold over the year about whether they would take the case to the WTO for dispute settlement or wrap the dispute into the NAMA talks (see **WTTL**, Nov. 12, page 1). The timing of the U.S. request, which was joined by Japan, still leaves the NAMA option open.

The EU has raised tariffs on three groups of products: (1) cable or satellite boxes capable of accessing the Internet, (2) flat panel displays for computers, and (3) computer printers that can scan, copy and/or fax. "The EU claims that this equipment has evolved beyond the technology subject to the ITA," USTR Susan Schwab noted. "However, if ITA participants only provided duty-free treatment to products with the technology that existed at the time the ITA was concluded, very few ITA products would be eligible for duty-free treatment today," she said.

> The EU quickly rejected the U.S. claims. "The EU has respected its ITA obligations and has explicitly said it is willing to reassess the current ITA product coverage to reflect new technology in a negotiation with all ITA signatories," an EU statement said. "The US is not willing to do this. Why not?" it added.

Schwab said the U.S. is willing to negotiate an expansion of the ITA but not to renegotiate rules that were agreed upon 10 years ago. "No one likes to pay twice at the negotiating table," she said. The ITA recognized that technology would change over the years. "It is hard to imagine negotiating such an agreement if you thought that technological change would evolve or enable reclassification of products outside the ITA," Schwab argued.

Mandatory AES Rule Brings Sharp Jump in Penalties

The final regulation requiring mandatory use of the Automated Export System (AES) for export documentation, which will be published in the June 2 Federal Register, will bring with it increased civil and criminal penalties for violations of the renamed Foreign Trade Regulations (FTR) (see **WTTL,** May 26, page 1). For many years, the Census Bureau chose not to pursue prosecution of violations of export reporting rules because the $1,000 per violation fines made enforcement almost meaningless. That is likely to change with per violation civil fines rising to $10,000 and criminal fines for "willful violations" going up to $50,000 per violation and up to ten years in jail. Late filing of export documentation can bring fines of $1,000 a day.

> The final FTR rules continue the moratorium on granting post-departure Option 4 reporting privileges to new exporters. A new Section 30.5(c), spells out tougher approval procedures for Option 4 candidates that do apply. "Applications submitted by USPPIs [U.S. Principle Party in Interest] for post-departure filing will be subjected to closer scrutiny by the Census Bureau and other federal government partnership agencies participating in the AES post-departure filing review process," the new regulation states. It also includes new conditions that could lead to the revocation of Option 4 status.

A new Subpart H details the FTR's penalty provisions and the delegation of enforcement powers to BIS and Customs and Border Protection (CBP). The section describes how Census will treat voluntary self-disclosures and what actions might mitigate harsh penalties. Any penalties "may be remitted or mitigated, if: (1) The penalties were incurred without willful negligence or fraud; or (2) Other circumstances exist that justify a remission or mitigation," the regulation states. Census has developed separate penalty guidelines with BIS and CBP, but official are still debating whether to make the guidance public, one official said.

* * * Briefs * * *

EXPORT ENFORCEMENT: TFC Manufacturing, Inc. of Lakewood, Calif., has agreed to pay $31,500 civil fine to settle one BIS charge that it released controlled technology for production of aircraft parts to Iranian national without deemed export license. It neither admitted nor denied BIS charge. Agency will let TFC pay $6,500 within 30 days and balance in five equal monthly installments of $5,000 each.

BRAKE ROTORS: ITC May 29, on 6-0 vote, determined that U.S. industry isn't likely to suffer renewed injury if antidumping order on brake rotors from China were revoked.

BYRD AMENDMENT: Customs in May 30 Federal Register announced latest availability of distributions.

EDITOR'S NOTE: With this issue, ***Washington Tariff & Trade Letter*** celebrates its 27th anniversary. Our continuing thanks to all subscribers and friends. We recall our first marketing piece in 1981 carried this headline: "Free Trade or Protection? Which Way Is U.S. Trade Policy Headed?"