

# Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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## ITAR PENALTIES DRIVE UP VOLUNTARY SELF-DISCLOSURE

The highly publicized and significant penalties imposed on firms for violating the International Traffic in Arms Regulations (ITAR) appear to be prompting an increase in voluntary self-disclosures (VSDs) to State's Directorate of Defense Trade Controls (DDTC). In the first 10 months of fiscal year 2007, which began on Oct. 1, 2006, DDTC has already received 558 VSDs, nearly a 20% jump from the 466 it received for all of fiscal 2006, according to Daniel Buzby, deputy director of DDTC's Office of Defense Trade Controls Compliance.

DDTC is also involved in more criminal investigations. In the last 10 months it has assisted federal prosecutors on 100 cases. This compares to 80 in all of 2006, which was a 50% increase in prosecutions over 2005, Buzby told an American Conference Institute program on ITAR compliance.

DDTC isn't the only federal agency prosecuting more export control cases. Immigration and Customs Enforcement (ICE) in 2006 assisted in 149 arrests related to export violations, a 41% increase over the previous year. It aided in 146 indictment (+66%) and 106 convictions (+5%), reported Stephen Bogni, chief of ICE's Arms and Strategic Technology Investigations unit. Bogni said ICE is increasingly combining other law enforcement statutes in export control cases, often adding money laundering and forfeiture claims to its charges.

The FBI is also playing a larger role in export cases, said Russell Hunt, unit chief in the agency's counterintelligence division. When the FBI becomes involved in a case "that means there is a counterintelligence nexus," he told the conference. FBI cases may span several years and include wiretaps and electronic surveillance.

## RANGEL SAYS DEMOCRATS DIDN'T MOVE GOAL POSTS ON FTAs

House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) July 17 rejected complaints that congressional Democrats "moved the goal posts" after they reached their agreement with the Bush administration May 10 on the terms for getting pending free trade agreements (FTAs) approved. The Democrats are now insisting that not only must the pacts be changed to include new labor and environment provisions, but that the legislatures in Peru and Panama must enact the required changes to their laws before the U.S. Congress votes on the deals (see **WTTL**, July 16, page 1). Administration officials claim this is a new, unprecedented demand. "You can never move the goal post when it never was discussed," Rangel told the annual dinner of the Washington International Trade Association (WITA). After the dinner, an administration official told **WTTL**: "They moved the goal posts; they stole the goal posts." Rangel argued

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that Peruvian lawmakers, rather than being offended by the Democrats' request, were happy to have the attention. "I was assured today by the ambassador from Peru that the congress is prepared to give even a larger vote than the one they got initially," Rangel said.

"This is what we are doing, this is what we want to do, and this I am telling you, by the fall, I am assured that the members of our Congress and the members of the Peruvian congress will be ready to celebrate what may have started off looking like a sow's ear, but for America, for Peru and for the Americas, this is going to be really something that we all can be proud of," he added. "Come September, I'll see you at the treaty signing," Rangel declared.

Rangel said he expects Panama also to adopt the changes in their laws to allow the U.S. Congress to vote. "I am confident that, talking with the people in Panama, that we will not have misunderstandings but they are anxious to make certain that we do move forward," he said. Rangel didn't mention the Colombia FTA. On Korea, he said "that is in the hands of USTR." He noted that some people have serious reservations about the deal. Although U.S. trade officials concluded a deal with Seoul, "I've yet to see any law that says we have to do it the way they said we'd do it, because we're the ones that have to vote," he told WITA.

## **NAMA AND AG PAPERS REVEAL HOW SILLY DOHA TALKS HAVE BECOME**

New negotiating texts released July 17 by the chairmen of the Doha Round agriculture and non-agriculture market access (NAMA) negotiations committees reveal such small differences in negotiating positions that questions can be raised about the seriousness of the talks. The "modalities" that Agriculture Chairman Crawford Falconer and NAMA Chairman Don Stephenson suggest for cutting farm subsidies and industrial tariffs are expressed in ranges and are still inside brackets that indicate a lack of consensus on the final numbers.

In agriculture, differences in the cuts in domestic support are just \$3-\$4 billion apart. For a U.S. farm sector that produces about \$300 billion annually, this doesn't seem like a wide gap. In NAMA, the debate is over tariff cuts that would result in new tariff levels that are only one to three percentage points apart.

In his paper, Falconer, who is New Zealand's ambassador to the World Trade Organization (WTO), comes close to many of the positions proposed by the U.S. He suggests the reduction in Overall Trade-Distorting Domestic Support (OTDS) for the European Union (EU) should be in the range of 75 to 85%. For the U.S., he proposes 66-73%. He suggests a 60% cut in Amber Box aid for the U.S., which is what the U.S. proposed in late 2005. Falconer is close to the U.S. on cuts in *de minimis* payments, offering a 50-60% cut, and also on capping Blue Box aid at 2.5% of total production. He also presents a range of cuts in farm tariffs, with the deepest cuts of 66-73% for products with existing tariffs greater than 75%.

Stephenson's proposals for cutting NAMA tariffs rely on the so-called Swiss Formula, which is a mathematical equation that applies a set coefficient to an existing tariff to determine the new tariff to come out of the round. For developed countries, he suggests a coefficient within the range of 8-9 and for developing countries a coefficient within the range of 19-23. The U.S. and EU have demanded that these numbers produce "new trade flows" for their exports to developing countries, particularly Brazil and India. But any of these numbers, whether calculated with bound tariffs or applied tariffs would liberalize trade.

For example, according to a recent U.N. study, India's average bound tariff on industrial goods is 34.9% and the average applied tariff in 2005 was 16.4%, with a trade-weighted average of 12.3%. A coefficient of 19 for India would bring average bound tariffs down to 12.3%; whereas a coefficient of 23 would bring it down to 13.86%. Since India maintains higher applied rates in sectors that it protects, any cuts within these ranges are certain to open more trade. Similar numbers are seen in Brazil. Canadian Ambassador Stephenson, however, adds a note of caution about averages, quoting a WTO member who once said, "I don't export averages."

## WTO MEMBERS SEE NARROWING OF DIFFERENCES ON AGRICULTURE

The new modalities text released by Agriculture Negotiating Committee Chairman Crawford Falconer July 17 has narrowed key issues in the Doha Round negotiations, but much work remains in fleshing out other, more substantive details, officials in Geneva say. WTO delegates will have a chance to comment on the text during an informal meeting of the committee July 24. First official reactions will be aired during the larger Trade Negotiating Committee on July 26 and again at a General Council meeting on July 27. At those meetings members will discuss what to do in September after the August break and how to blend the farm talks with other Doha topics, including non-agriculture market access, services, rules and trade facilitation.

Falconer's paper includes a tiered formula for reducing Overall Trade-Distorting Domestic Support (OTDS), with a range of suggested cuts (see story page 2). For the U.S., depending on the final cut, OTDS would go to between \$13 and \$16.38 billion from \$19.1 billion, Falconer said. For the EU with a 75% cut it would mean going from 110.3 billion euro to 27.6 billion euro, he explained.

"This is the first time anybody has come up with anything as precise as that, in terms of what the real range of numbers should be," said John Weekes, senior policy advisor at Sidley Austin in Geneva and a former Canadian ambassador to the WTO. The texts give a fairly good picture of what the schedules might actually look like. "People are going to make a judgment about whether they like that picture or not," he added. Criticism about perceived inadequacies in the text is partly about managing expectations in domestic audiences, Weekes said. "People have to recognize that they have to move away from those positions and compromise, if they want to have an agreement," he told WTTL. "The important thing to watch for is if anybody rejects the text" as an inadequate basis for beginning discussions in September, he said.

The U.S. and EU had cautious official statements on the text. "The draft texts are a step in a longer-term process for establishing the detailed negotiating framework for the final stage of the agricultural and NAMA negotiations," said USTR spokeswoman Gretchen Hamel. "Our first reaction is that the texts provide a basis for further work in the Doha Round, though there are points on which we have important concerns and other significant issues in the negotiations that are not included in these texts," said an EU statement.

One trade consultant following the talks warned that French President Sarkozy may be putting pressure on EU Trade Commissioner Peter Mandelson to limit EU flexibility on market access. "They can negotiate on subsidies, but if they have to go down on market access, then they've got a real problem," the consultant said. "I think Mandelson had a certain flexibility [in market access] six months or a year ago. I think he has lost that flexibility," he added.

A senior diplomat from a Mercosur country, the Latin American trade group, complained about the lack of balance between the agriculture and NAMA papers, echoing objections that Brazilian Foreign Minister Celso Amorim was quoted making. In particular, the Latin American official objected to the lack of a tariff cap on farm goods for G-10 countries, which includes advanced developed countries, such as Japan, with highly protected agriculture sectors. "This is something we're not happy with," he said. "It completely gave it away to the G-10," he added.

## ADVANCED DEVELOPING COUNTRIES OBJECT TO NAMA PROPOSALS

Key developing countries are unlikely to accept proposed cuts in non-agriculture market access (NAMA) before they know more about the result of the agriculture talks, according to a senior trade official from one Latin American country. "Regardless of what the coefficient is for developed countries," Brazil and Argentina would be required to create much more trade flow than developed countries, the diplomat from a Mercosur country told WTTL. Much more customs revenue would be lost for them compared to the developed countries, he added. In the latest NAMA modalities paper that NAMA Negotiating Committee Chairman Don Stephenson released July 17, the Canadian diplomat proposed a coefficient in the range of 19-23 for

developing countries and 8-9 for developed countries (see story page 2). Stephenson said he was unable to conclude the text in sections dealing with specific industrial sectors because talks on sectorial deals are not far enough along for him to draw conclusions. Sections on non-tariff barriers and environmental goods were also left incomplete, he said.

Brazilian Foreign Minister Celso Amorim complained that Stephenson ignored the concerns of the NAMA-11, a group of advanced developing countries that are being asked to make the deepest cuts in goods tariffs. "You cannot ignore the NAMA-11 in the NAMA negotiations," a Latin American diplomat told WTTL.

The NAMA-11 met informally after Stephenson's text was released. "I don't think they're going to bite," one attendee at the meeting told WTTL.. "They're not accepting the 19-23-range for the coefficient, because it's not yet the right time for NAMA modalities," he said. NAMA-11 members contend that Stephenson's text is less reflective of members' views than Falconer's agriculture paper. "In many instances, it is just the chairman's view," the diplomat said. "There would have to be more clarity in agriculture to drive the NAMA ambition," he added.

\* \* \* BRIEFS \* \* \*

ITA: Among those being "mentioned" as possible successor to Under Secretary Frank Lavin are ITA Assistant Secretary for Market Access and Compliance David Bohigian, Assistant Secretary for Import Administration David Spooner and BIS Assistant Secretary for Export Administration Chris Padilla.

TRADE PEOPLE: Larry Christensen moving from JPMorganChase to Miller & Chevalier as of July 23.

CUBA: ITC report July 19 predicts U.S. agriculture exports to Cuba could rise from current level of \$338 million annually to between \$514-688 million annually, if restrictions on financing of farm exports were lifted, as well as travel restrictions on U.S. citizens. It says number U.S. citizens going to Cuba each year could jump to 550,000 to one million from 171,000 that traveled there in 2005.

BROKERING: DDTC's plans for revising brokering rules in ITAR have slipped and probably won't be ready for proposal until late fall (see **WTTL**, March 26, page 2).

COMMERCE CONTROL LIST: BIS is July 17 Federal Register asked for public comments on agency's current effort to update Commerce Control List (CCL) to bring it into conformity with multilateral regimes and current industry performance levels. No major decontrols are expected. BIS technical advisory committees have already been working on effort for last year.

ANTIBOYCOTT PENALTIES: BIS in July 17 Federal Register published its final antiboycott penalty guidelines. Agency received comments from just two organizations on original proposal and made minor changes based on them (see **WTTL**, Sept. 23, page 3). One comment challenged BIS estimate on time and cost of filing voluntary disclosures. BIS agreed and obtained OMB approval for reporting requirement. "Based on this comment, BIS re-evaluated the burden hours associated with this information collection and concluded that the burden is large enough to justify a separate collection authorization," agency said. In separate action, Treasury in July 20 Federal Register published annual list of countries cooperating with Arab League boycott of Israel. They are: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen. "Republic of Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury," notice said.

SEMICONDUCTORS: As previously reported (see **WTTL**, March 26, page 3), BIS and DDTC published simultaneous changes to EAR and ITAR in July 17 Federal Register to revise control parameters on radiation hardened semiconductors to prevent next generation of commercial chips from being regulated as USML items. ITAR Category XV was revised to change control criteria for exponential measure describing the single event upset rate described in (d)(4) from  $1 \times 10^{-7}$  to  $1 \times 10^{-10}$ . Chips not meeting this condition will be subject to EAR.

FORD: CIT Judge Nicholas Tsoucales ruled (Slip Op. 07-112) July 19 that Ford is liable for pre-judgment interest of \$196,956.23 in addition to \$3 million penalty and \$184,495 in unpaid duties that were previously imposed on automaker in earlier court rulings for making fraudulent statements on imports.

EXPORT ENFORCEMENT: Dresser has agreed to pay \$9,000 civil penalty to settle BIS charges that it failed to report in timely manner nine requests from customers to participate in restricted trade practice or boycott of Israel. Firm voluntarily self-disclosed its actions.