

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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Vol. 27, No. 16

April 16, 2007

FIRMS DOING BUSINESS WITH ITT NIGHT VISION NEED DDTC APPROVAL

Firms doing export business with ITT Corporation's Night Vision division will need approval from State's Directorate of Defense Trade Control (DDTC) for these business relationships under the terms of ITT's statutory debarment published in the April 11 Federal Register. As part of its deal to settle criminal charges for the unlicensed exports of night vision technology, in addition to paying \$100 million in penalties, ITT accepted a partial three-year debarment from export licensing for items on the U.S. Munitions List (see **WTTL**, April 2, page 2).

According to Section 127.1(c) of the International Traffic in Arms Regulations (ITAR), "any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit or have any direct or indirect interest," the Federal Register notice declares.

Under the terms of the debarment, DDTC will continue to review and consider the approval of past and pending export licenses for the division on a case-by-case basis. "Such exceptions have been granted with respect to certain existing authorization and pending authorizations for key programs involving ITT-Night Vision Division that have been identified as being necessary to U.S. national security and foreign policy interests," State says.

"Approvals of future requests for authorizations may be granted after a full review of all circumstances to include law enforcement concerns and whether an exception is warranted by overriding U.S. foreign policy or national security interests, or whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interest of the United States, and whether other compelling concerns exist that are consistent with the foreign policy or national security interests of the United States," the notice states.

MINISTERS PROPOSE END-OF-2007 DEADLINE FOR DOHA ROUND

Trade ministers have been proposing new deadlines for completing the multilateral Doha Round every year for the last three years and missing each target. So some skepticism is likely in response to the proposal of G-6 trade ministers April 12 in New Delhi, India, to aim for completing negotiations by the end of December 2007. This new glimmer of hope is needed to persuade Congress to grant President Bush at least a six-month extension of his trade negotiating authority, which expires July 1. Unless trade ministers can convince lawmakers that an extension is worthwhile, the new deadline will be dead in three months. "Unfortunately, the

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Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail is \$647 a year. Combo subscription of print and e-mail is \$747. Additional print copies mailed with full-price subscription are \$100 each. Circulation Manager: Elayne F. Gilston

history of the Doha Round up to this point has been the setting of artificial deadlines and the failure to meet these deadlines,” said U.S. Trade Representative (USTR) Susan Schwab after a meeting with trade officials from Australia, Brazil, India, Japan and the European Union (EU), who collectively are called the G-6. The meeting failed to produce any public sign of substantive progress on the key issues of agriculture, industrial tariffs and services.

Aside from still unresolved discussions with Congressional Democrats on the labor and environment provisions of bilateral and multilateral trade agreements, Schwab will need to show lawmakers some tangible evidence that an extra six months of negotiations could conclude the round successfully. “I think the single most important thing that we can accomplish in terms of a breakthrough is also the single most important thing for me to be able to contribute to the political dialogue at home on trade promotion authority,” she said.

With a new end-of-year deadline, a breakthrough that will satisfy everyone in the negotiations isn’t likely to appear until December. Given the history of past multilateral talks, negotiators won’t make their final, last, best offers until the very last minute. The last six months of 2007, therefore, will increasingly look like the last six months of 1993 after Congress granted President Clinton a six-month extension of fast-track negotiating authority and Uruguay Round talks were concluded in Geneva in December near the final days of that authority.

In New Delhi, the G-6 agreed to meet more frequently over the coming months, including another group meeting to be hosted by Japan or Australia in Tokyo or Canberra. They said they would also intensify engagement with the Doha negotiating groups in Geneva, a move many countries outside the G-6 have been urging in recent months.

At a joint press conference, the six trade ministers underscored the difficulty they face trying to resolve the issue of special products which will be exempt from full liberalization under any final accord. Talks on special products are an area “in which let us say the architecture is a little bit lagging behind,” said Brazilian Foreign Minister Celso Amorim. The number of products that will be allowed in this category has “not been totally frozen yet,” he said. “We would never come to these advances in process if we were not convinced that it is possible to freeze these numbers,” he added. A number between 5% and 10% seems to be the target.

U.S. TAKES NARROW AIM AGAINST CHINESE IPR VIOLATIONS

The U.S. chose a set of narrow targets April 10 in its World Trade Organization (WTO) complaints against China’s intellectual property rights (IPR) enforcement with the hope that the limited scope will make it easier to win its case if the dispute ends up going to a WTO dispute-settlement panel. Washington’s request to Beijing for consultations focused on activities, such as the prosecution of street vendors and Chinese customs procedures, but won’t hit the factories and criminal organizations that produce millions of counterfeit and pirated films, music CDs, books, designer goods and brand-name products that are sold in China and around the world. A third complaint aims at China’s slow censorship review process for foreign books, music and movies which allows pirated copies to reach the Chinese market before the originals.

U.S. industry groups publicly applauded the USTR’s move against China, but sources privately concede the complaints won’t resolve the IPR problems in China even if the WTO approach is successful. “Everyone who follows China is skeptical,” one industry source said. “A dose of realism is appropriate here,” he added. A major problem in China is local corruption which weakens IPR enforcement and isn’t addressed in the U.S. complaints, he noted.

The Bush administration’s request for consultations reflects a combination of frustration in getting China to act more forcefully on IPR issues and political pressure from Congress, which is considering several measures that would force tougher action against Chinese trade and currency policies. USTR officials said they were ready to initiate a complaint against China last

fall but delayed action when the Chinese requested more time to fix the problems. When those efforts were deemed inadequate, the U.S. decided to go ahead with the WTO process. U.S. industry supported the delay and the final decision to go forward with the complaints.

The administration's new-found religion on China, including Commerce's decision to reverse a 23-year-old policy on the application of the countervailing duty law to non-market economies, isn't likely to quell the call for legislation. Speaking to reporters April 11, Sen. Charles Schumer (D-N.Y.) said the WTO case won't ease the push for China legislation. "They have to move on currency. Currency is much bigger than anything they have done," he said. "I think [Treasury] Secretary Paulson realizes the same thing and that's why even they have ratcheted it up a little bit," he added.

Part of the U.S. complaint against China focuses on the threshold between "administrative" enforcement of existing Chinese IPR rules and criminal prosecution. The U.S. wants IPR rules to be enforced criminally against retailers found with fewer than 500 pirated products in their possession. It also wants Chinese customs to destroy confiscated counterfeit exports rather than allowing them to be sold back into commercial channels once their infringing trademarks are removed. The U.S. claims foreign works should have copyright protection even while they are awaiting a decision from Chinese censors.

END OF MULTIFIBER ARRANGEMENT RESHUFFLING SUPPLIERS

As the sources of textiles and apparel exports shuffled after the termination of the Multifiber Arrangement (MFA) at the end of 2004, countries such as Cambodia, Bangladesh, Philippines and Vietnam have seen their exports to the U.S. jump, while Mexico, Central America, sub-Saharan Africa and East Asia, including Taiwan and Korea, have seen them decline, a new WTO report reveals. Exports from China have also grown but at a restrained pace due to safeguard import restrictions imposed by the U.S. The EU, which also imposed limits on China, has experienced similar import growth, WTO economists note.

The global textile and apparel trade picture has followed the pattern that many predicted toward the end of the MFA. Several marginally competitive producers and exporters are losing market share to more competitive countries.

"Exporters from developed countries and those from advanced developing economies in East Asia are losing market share, together with major developing suppliers in Central America and the Mediterranean region, which process textiles originating from developed countries," the WTO says. "China's exports continued to gain market share in all major developed import markets despite restrictions introduced in 2005. Some smaller suppliers expanded their textiles and clothing exports even faster than China, and the share of least-developed countries in imports of the United States and the European Union increased sharply in 2006," it notes.

WTO economists also predict that world trade in 2007 will grow at a slower pace than in 2006, advancing 6% compared to 8% last year. 2006 growth, particularly for least-developed countries, was fueled by increases in prices for oil and commodities. "They and developing countries as a whole saw their shares of world merchandise trade reach record proportions," the WTO states. "And for some of the smaller suppliers, fear of a setback in textiles and clothing in the face of competition from China proved unfounded in 2006," it adds.

"China's trade growth continued to outstrip other major traders. China's merchandise exports grew by 27%," the WTO reports. "In the second half of 2006, its merchandise exports started to exceed those of the United States, but for the whole year U.S. exports still exceeded those of China." Nominally, China became the third largest exporter and importer in the world in 2006, behind Germany and the U.S. and could vault into second place ahead of the U.S. this year. These trade figures, however, are distorted by the high valuation of the euro and low valuation of the renminbi in relation to the dollar and the translation of the figures into dollars.

CHANGE IN ZEROING METHODOLOGY WILL DROP DUMPING MARGINS

The International Trade Administration's (ITA) recalculation of dumping margins April 9 to implement a WTO ruling against its practice of "zeroing" in antidumping investigations will lead to the revocation of dumping orders for eight individual foreign exporters, slight decreases in dumping margins for some continuing orders and higher duty rates for many firms caught in the "all-others" category. An ITA staff "issues and decision" memorandum on a Section 129 determination to implement the WTO ruling revised the margins for 11 antidumping cases involving various steel products from eight EU countries and pasta from Italy.

The Section 129 decision implements a new dumping methodology ITA adopted in December (see **WTTL**, Jan. 1, page 4). The WTO ruling resulted from an EU complaint and affected 15 dumping cases involving EU products. ITA previously revoked the orders in three of those cases and one case is under review.

Respondents that will have their antidumping orders revoked saw margins of 2.5% to 7.01% fall to zero. Nine other respondents whose orders will stay in place will have their margins reduced by 1-2% and in some cases by less than 1%. In several cases, firms subject to "all-others" rates and use of adverse facts available will have their margins increased because low-margin respondents were taken out of the calculation. For example, the "all-others" rate for stainless steel bar from France jumped to 35.92% from 3.9% and for stainless steel bar from the United Kingdom, it shot up to 83.85% from 4.48%.

The EU said it welcomed the ITA decision to abandon its zeroing policy, to revoke orders and reduce margins. It objected, however, to the U.S. policy of applying the new rates prospectively from the date of the recalculations rather than from the date the duties first went into place. "As collection of duties may take place several years after the import in the U.S., this is in fact maintaining measures affected by zeroing in breach of the obligation to stop them by 9 April," the EU said. It also protested the "massive increase" in some all-others rates. "The U.S. was also under the obligation to review the dumping margins in 16 administrative reviews (i.e. the annual reviews of the level of dumping)," the EU said. "To the EU's knowledge, the United States has not yet taken any action to bring them into compliance with its WTO obligations. The EU will now reflect on this situation and its future moves," it stated.

* * * BRIEFS * * *

SUNSET REVIEWS: WTO Appellate Body decision released April 12 overturned dispute-settlement panel's decision against U.S. policy on rules for foreign respondents to participate in "sunset reviews." Appellate Body said ITA rules on when respondents waive participation rights are consistent with WTO rules. "We also note that exporters are not compelled to waive their right to participate in a sunset review," the Body said. "An exporter that submits a statement of waiver does so *voluntarily*," it ruled.

TRADE PEOPLE: Five trade lawyers from D.C. law firm of Miller & Chevalier have moved to new firms in Washington. William McGlone has joined Latham & Watkins. Lisa Prager, Josephine Aiello LeBeau, Anne Seymour and Joshua Holzer went to Wilson, Sonsini, Goodrich & Rosati.

GLYCINE: GEO Specialty Chemicals, Inc., filed antidumping petitions at ITA and ITC March 30 against imports of glycine from India, Japan and Korea. This is first antidumping petition in 2007.

EXPORT ENFORCEMENT: Stephen Lincoln, former sales manager for Buehler United Kingdom in Rugby, England, accepted seven years of denial of export privileges in deal with BIS to settle charges that he exported U.S.-controlled software from United Kingdom to Iran without license.

TRADE FIGURES: Goods exports in February surged 9.8% from February 2006 to \$88.4 billion. Goods imports rose only 3% to \$152.9 billion. Services exports increased 7.8% to \$35.6 billion, as services imports rose 6.3% compared to year ago to \$29.5 billion.

CUSTOMS: GAO report (GAO-07-529) April 12 says import revenue functions of Customs have suffered since CBP became part of DHS. Number of staff assigned as import specialists and to revenue collection and audits has declined. Although Customs has taken actions recently to correct problems under instructions from Congress, GAO says Customs needs to develop workforce plan to measure revenue functions.