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

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BIS ISSUES DENIAL ORDER ON LACHMAN AND FMI

The Bureau of Industry and Security (BIS) has dropped the other shoe in its long-running prosecution of Walter Lachman and Fiber Materials, Inc. (FMI), placing them on the denied parties list March 12 for the unlicensed export of hot isotopic presses to India. Lachman and FMI, along with Maurice Subilia, a former FMI executive, and Materials International, Inc., have been denied export licensing privileges until Nov. 18, 2015.

Even though this case kicked around the federal courts from 1995 to 2005, BIS decided the parties were not entitled to protest the orders (see **WTTL**, Nov. 28, 2005, page 1). “Due to exceptional circumstances, this order is being issued without prior notice or opportunity to respond,” BIS said in each denial order.

After a federal jury in 1995 convicted Lachman, Subilia and FMI on two counts of violating the Export Administration Act, Boston U.S. District Court Judge Douglas Woodlock was troubled by the verdict and spent eight years examining the government’s claim that the panel for the isostatic press at issue met the “specially designed” criterion in the Export Administration Regulations. In 2003 he issued an order of acquittal notwithstanding verdict. The government appealed, and in November 2004, the First Circuit Court reversed his ruling. The appellate court rejected the claim that the “specially designed” provisions were unconstitutionally vague and agreed the government that specially designed can mean “capable of use with.”

After he was reversed by the appellate court, Woodlock on Nov. 18, 2005, sentenced Lachman and Subilia to three years’ probation and a \$250,000 fine each. He ordered Lachman to spend the first year of probation in home detention. Because Subilia “testified untruthfully,” according to Woodlock, he was ordered to spend the first six months of probation in a half-way house and then one year in home detention. Woodlock fined FMI \$250,000 but imposed only a special assessment of \$400 on the fourth defendant, Materials International.

LACK OF PROGRESS IN LABOR TALKS MAY RISK ACTION ON FTAs

An apparent stalemate in the talks between the USTR’s office and Congress on how to treat labor rules in free trade agreements (FTAs) could prevent completion of a deal with Panama before the March 31 deadline to get the agreement treated under fast-track legislative procedures. The delay in reaching an accord on labor raises speculation that Congress may have to grant at least a short-term extension of fast-track beyond its July 1 expiration date. An extension also may be needed to allow U.S.-Korea FTA talks to be completed and handled under the expedited legislative process (see story page 3). If the administration and congressional

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Democrats can't reach agreement on labor issues in FTAs in the next two weeks, the two sides also will have to decide whether it is better to deal with the subject in the debate over extension of the current fast-track statute. The same compromise on labor that will be needed for pending FTAs is also likely to be added to new fast-track renewal legislation and the question that is likely to arise is why negotiate twice on the same issue.

Although U.S. Trade Representative (USTR) Susan Schwab told lawmakers in February that she wanted to work with them to find a compromise on the treatment of labor rules in the FTAs, House Ways and Means trade subcommittee chairman Sander Levin (D-Mich.) says there has not been much progress in those talks. "I think they are where they were a week or two ago," Levin told reporters March 15 in response to questions on the status of the talks.

"I think the best way to put it it's been a restatement of positions," he said. "My hope remains that this could be resolved by the end of the month," Levin added. "It isn't a matter of simply finding some ground between one and twelve. It's agreeing on solid trade policy," he said.

Ways and Means Chairman Charlie Rangel (D-N.Y.) gave a somewhat more upbeat assessment when he spoke to the Washington International Trade Associations March 13. "Where are we? We are almost to the point where we believe that we might be able to succeed in moderation one way or another on the ILO," he said. Rangel said the labor issue is the toughest hurdle in clearing the way for votes on the pending FTAs with Colombia, Peru and Panama. "The questions of environment are not that important. The questions of getting medicines, life-saving savior medicines, we can overcome. The question of our ports we could overcome," he said.

Without commenting, Rangel quoted press reports that said the administration has offered to include specific reference to International Labor Organization (ILO) standards in the FTAs with the three Latin American countries as long as there is an exception for the U.S. "The newspapers say that I've been offered the acceptance of ILO with a parallel provision that said it excludes the United States from any commitment to fulfill our laws or lack of laws that relates to any item that's in the ILO and not in American law. That we insulate ourselves against a lawsuit," he noted. But Rangel dismissed concerns that the U.S. would be sued by any country because U.S. laws failed to meet ILO requirements. Republicans oppose inclusion of the ILO standards "not because they are afraid of lawsuits, but just because they just don't like unions," Rangel declared.

COTTON REMAINS POTENTIAL ROADBLOCK TO FINAL DOHA DEAL

Even if the major trade players in the Doha Round reach a deal on agriculture and industrial tariffs, a final accord still may be held hostage to the complaints of four cotton producing countries in Africa. Known as the C-4, Benin, Burkina Faso, Mali and Chad, are getting support for their call for the cutting of cotton subsidies and the dropping of cotton tariffs in developed countries. At a March 15-16 conference on cotton at the WTO in Geneva, African nations joined in complaining about the lack of progress on cotton issues in the round and saying that the promise of some \$7 billion in aid for the region doesn't satisfy the need for changes in trade policies.

A new group called the C-36, which includes the C-4 and all cotton-producing African countries, met to discuss "coherence" between aid and trade. Participants reportedly were upset with the lack of attendance of representatives from developed countries. Thirteen African ministers talked about cotton yet not one minister from the North attended, one source told WTTL. "Who is kidding whom," he said.

The U.S. didn't discuss trade because it said the subject was against the single undertaking, one source said. The downside for African ministers at the meeting is they have to go home and put a positive spin on the meeting rather than say nothing happened, a source noted. The \$7

billion in promised aid also seems to be creating some resentment among African nations. There is concern that the money would be funneled mostly to the C-4, one source noted. The Africans also complain that they have not seen the money that has been promised since 2004.

The conference also raised an issue that could get more attention in the Doha negotiations – tariffs on biofuel imports such as ethanol and subsidies for domestic production. A shift to biofuel production could replace some cotton production, participants noted. At the same time, developing countries see the potential for increased exports of biofuels, if countries such as the U.S. opened their markets.

COMMERCE WILLING TO ACCEPT CHANGES IN COUNTERVAILING DUTY LAW

Commerce has indicated that it is willing to accept changes in U.S. trade law to clarify the application of the countervailing duty (CVD) rules to nonmarket economies (NME) and may be ready to change its own CVD policy on NMEs before Congress acts. Commerce Assistant Secretary for Import Administration David Spooner March 15 told the House Ways and Means trade subcommittee that Commerce believes it already has the authority to apply the CVD law to NMEs. “There is no legal bar to Commerce’s application of the CVD law to non-market economies, including China, and we will do so, as long as appropriate circumstances warrant such application,” he testified.

The hearing addressed legislation (H.R. 1229) that would make that authority explicit and add specific conditions for applying the CVD law to China. “If Congress would like to affirm Commerce’s authority, as proposed in section 2 of H.R. 1229, we would welcome the opportunity to work with you,” he said.

Commerce may be able to head off the legislation if it decides to initiate a pending CVD petition against coated free sheet paper from China (see **WTTL**, Dec. 4, page 4). The International Trade Administration (ITA) asked for public comment on changing the policy it has followed since the 1984 Federal Circuit ruling in *Georgetown Steel*, which gave the agency discretion not to apply the CVD law to NMEs. ITA in 1991 initiated two CVD cases against lugnuts and ceiling fans from China but did not find a basis for applying the CVD rules, Spooner explained.

Spooner disagreed with critics who argue that applying the CVD law to NMEs would result in “double counting” of subsidies if the same product were also subject to an antidumping order. Double counting is prohibited under World Trade Organization rules. “Whether or not we would face double counting should we apply CVD to China would be very fact intensive, case-by-case,” he stated. He suggested it wasn’t necessary to deal with this issue in legislation. “Commerce would prefer to wait until we had some hands-on experience should we apply CVD to China before we crafted a legislative fix,” Spooner said.

If ITA doesn’t initiate a CVD case on coated paper, support is likely to grow for H.R. 1229. Trade subcommittee chairman Sander Levin (D-Mich.) told reporters he expects the bill to be marked up by the full Ways and Means Committee when lawmakers return from their April 2-13 Easter/Passover recess. “It is likely that it will come up after our return,” he said. Levin also said he thought the bill would then go quickly to the House floor for a vote. “I think this can stand on its own merits. I don’t want to wait for an omnibus,” he said. Levin said he doesn’t intend to merge H.R. 1229 with other legislation (H.R. 782) which would declare currency manipulation to be countervailable. Ways and Means and the House Financial Services Committee will hold a joint hearing on H.R. 782, he said.

KOREAN TALKS COULD MISS MARCH 31 DEADLINE DESPITE HIGH HOPES

Although Assistant USTR Wendy Cutler gave an upbeat assessment March 16 on the chances for completing a U.S.-Korea Free Trade Agreement (KORUS) by the March 31 deadline before

the window closes on the use of the fast-track legislative process for considering the pact, the lengthy list of unresolved issues in the talks may make that expectation unrealistic. Cutler admits she expects many sleepless nights in the next two weeks, especially starting March 26, as negotiators and top trade officials rush to finish the accord in time to notify Congress.

Having completed the eighth round of talks in Korea the week of March 12, Korea's chief negotiator Kim is coming to Washington for another set of talks March 19-21. At the same time, Chief U.S. Agriculture Negotiator Richard Crowder is heading to Seoul for talks on opening the Korean agriculture market, especially for U.S. rice.

The last round completed work on three sections dealing with government procurement, customs and competition. Negotiators said they were close to agreement on sections dealing with transparency, non-tariff barriers, telecommunications and e-commerce. But the biggest and toughest issues remain unresolved, raising the risk that the talks can't be completed by March 31. Among sections still awaiting agreement are those on agriculture, textiles, automobiles, pharmaceuticals, and motion pictures (see **WTTL**, Feb. 26, page 1).

* * * BRIEFS * * *

EXPORT ENFORCEMENT: ITT Corporation's engineered valve group agreed to pay \$26,400 civil fine in settlement with BIS to resolve eight charges related to export of lined valves and valve bodies to China, Israel, Saudi Arabia and Taiwan without approved licenses. Firm self disclosed exports, which it had claimed were eligible for License Exception NLR (No License Required.)

MORE EXPORT ENFORCEMENT: BIS has imposed \$44,000 civil fine on EMD Chemicals of Gibbstown, N.J., to settle charges that it exported hydrofluoric (sic) acid to Guatemala on nine occasions and causing reexport to Iran of industrial pigments by its affiliate, Merck KgaA in Germany. EMD voluntarily disclosed actions to BIS.

OFAC: OFAC reached settlement agreement with Guidant Corporation, which is now part of Boston Scientific, under which company will pay \$277,017 civil fine for exporting vascular intervention and cardiac surgery devices to Iran and Iraq from 2000 to 2004 without approved licenses. Firm voluntarily disclosed exports. In separate settlement, Varian, Inc., on behalf of two of its subsidiaries, Varian AG of Switzerland and Varian Deutschland, GmbH, of Germany, agreed to pay \$114,958 civil fine for unlicensed exports of U.S.-origin software to Iran and Iraq from 2001 to 2003. Varian made voluntary self-disclosed.

ANDEAN TRADE PREFERENCES: Democrats in House plan to move legislation to extend ATPA beyond short six-month extension that Congress approved in December (see **WTTL**, Dec. 11, page 1). "We objected to what the majority did here, as you, in tying the extension of the Andean Trade Preferences Act to the FTAs," Rep. Sander Levin (D-Mich.) told reporters March 15. "We opposed it. So we are going to have a hearing on this in the near future. And it is my strong hope and Mr. Rangel's strong hope that we will extend these preferences. We objected to the conditionality on them in the first place, so we want to untie them. It's not sound trade policy," he said.

ANTIBOYCOTT: Nissan International Transport USA of Torrance, Cali., has agreed to pay \$6,000 civil fine in agreement with BIS to settle two charges of violating antiboycott regulations by certifying that goods it carried were not of Israeli origin and failing to report receipt of request for boycott information.

CHIQUITA: Banana firm agreed to pay \$25 million civil fine in five annual installments to settle OFAC charges that it provided money to Colombian paramilitary groups that were on OFAC list of designated terrorists. Firm said payments were made to protect its personnel in Colombia. [**Editor's Note:** Copy of information filed in D.C. U.S. District Court against Chiquita will be sent to **WTTL** subscribers on request.]

SUNSET: ITC March 15 determined that U.S. industry is likely to face renewed injury if antidumping order on canned pineapple from Thailand were lifted.

CHINA: USTR Susan Schwab March 9 praised China for terminating one of nine subsidy programs that was target of U.S. complaint against China at WTO (see **WTTL**, Feb. 5, page 1). Beijing terminated central bank program that allowed large exporters to take advantage of loans not available to other companies. "This is welcome move by China," Schwab said.