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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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U.S. LUMBER INDUSTRY CLAIMS CANADA VIOLATING LUMBER DEAL

The ink is barely dry on the U.S.-Canada Softwood Lumber Agreement (SLA) signed last October, but the U.S. industry is already charging that Canadian provinces are violating the accord. U.S. lumber firms are complaining about subsidy programs that Canadian provinces are offering to their lumber firms and provincial forest management programs that the U.S. industry contends provide new subsidies to Canadian producers. “We need to remind the provinces that certain types of subsidies are violations of the agreement,” U.S. Trade Representative (USTR) Susan Schwab told the Senate Finance Committee Feb. 15.

Schwab was responding to questions that Finance Committee Chairman Max Baucus (D-Mont.) raised about Canadian provinces not abiding by the agreement. “We are extremely concerned that a very important and needed bilateral softwood lumber agreement is being threatened by provincial governments,” she declared, citing Ontario and Quebec as the targets of her concerns.

Schwab said she has expressed her “great concerns” in writing to the Canadian government and in conversations with Canadian Trade Minister David Emerson. The issue will be on the agenda for the first regular binational softwood lumber committee meeting, which is called for under the SLA, she told Baucus. U.S. lumber industry sources say they have taken their complaints to the USTR’s office and to Commerce. They contend there are compliance problems in other provinces besides Ontario and Quebec. Because of the housing slump in the U.S. and the sharp drop in lumber prices, the trigger mechanism in the SLA has already been activated and provinces are imposing either export taxes or quotas on Canadian lumber exports.

RANGEL INVITES SCHWAB TO CLOSED-DOOR SESSIONS ON FAST-TRACK

It is appearing that Democratic demands for changing President Bush’s fast-track negotiating authority will be narrow but tough and will test the abilities of House Ways and Means Chairman Charles Rangel (D-N.Y.) and Senate Finance Committee Chairman Max Baucus (D-Mont.) to manage the legislative process. At a Ways and Means hearing Feb. 14, Rangel said he wants to hold closed-door, executive sessions with USTR Susan Schwab to work out the details of new fast-track legislation. “I want to be your new best friend,” Rangel told Schwab. He invited other committee members to the executive sessions, suggesting that negotiations on a measure would be more candid in private. The three areas where Democratic lawmakers are likely to demand significant changes in what the White House calls Trade Promotion Authority are provisions setting U.S. negotiating objectives on labor and environment in new trade deals and requirements for closer consultations with Congress on trade negotiations while talks are

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still in progress. Democrats want trade deals to require adherence to the core labor standards of the International Labor Organization (ILO), enforcement mechanisms for multilateral environmental agreements, and making labor and environment provisions in trade deals subject to the same dispute-settlement rules as those applied to goods and services.

While Democrats will be seeking these changes, Republicans will be working to limit the changes. GOPers are concerned that any extensive changes in the negotiating objectives in fast-track legislation could change the U.S. negotiating mandate in the Doha Round and cause further delays in reaching an agreement.

Schwab has been cagey about what the Bush administration would accept in a new fast-track bill and how long the authority should be extended. "The broader the better; the longer the better," she told reporters Feb. 12. At the Ways and Means hearing and at a Feb. 15 Finance hearing she promised to work with both committees to "bridge the gap" between the administration and Congress on labor and environment issues, but stopped short of saying she would accept a link between the trade deals and ILO standards. Schwab said she supported close consultations with Congress on trade negotiations but said it has to be done "in a way that does not tie the administration's hand in negotiations."

During the Finance hearing, Baucus bristled when Schwab said fast-track is a contract between Congress and the president on how to conduct trade negotiations. "It is not a contract," Baucus declared. "It is solely up to Congress," he said, noting that trade is the prerogative of Congress under the Constitution. Schwab shot back that the last time Congress tried to negotiate trade policy the result was the Smoot-Hawley Act.

LAWMAKERS CRITICIZE USTR RESPONSE ON ENVIRONMENTAL ISSUES

House Democrats Feb. 14 voiced dissatisfaction with the response they received from USTR Susan Schwab to a letter they wrote her in January spelling out the environment conditions they want to see in free trade agreements (FTA), particularly in the deals with Peru and Colombia. At a House Ways and Means Committee hearing, Rep. Lloyd Doggett (D-Texas) said the letter had been faxed to members the night before the hearing. "I don't believe it addressed any of our specifics," he said. Rep. Earl Blumenauer (D-Ore.) complained that the letter sounded like it had been "dashed off" by some staffer just to have a response before the hearing.

In their Jan. 17 letter, 11 Democratic members of Ways and Means identified four environmental objectives they think should be included in FTAs. These include a requirement for parties to enforce any multilateral environmental agreements (MEAs) they have signed, making environmental provisions subject to same enforcement mechanism as disputes over goods or services, ensuring that domestic environment and health protection rules aren't undermined by the deals, and barring foreign investors from having greater rights than U.S. citizens under environmental laws. They also raised concerns about illegal logging.

Schwab's reply defended the environment provisions already in U.S. FTAs. "We are the only nation that includes comprehensive environmental provisions in the body of each FTA," she wrote. At the hearing, she ducked questions Doggett raised about the enforcement of MEAs and whether their enforcement should be required in FTAs. "The issue, as with many trade issues, is much more complicated than a yes or no answer," she said.

U.S. GOODS EXPORTS TOP \$1 TRILLION MARK ON BROAD SURGE OF TRADE

A weaker dollar and stronger economic growth in key foreign markets helped propel U.S. exports over the \$1 trillion mark for the first time in 2006, with growth rates for some products and markets exceeding 20%. Overall, merchandise exports jumped 14.4% or 34% faster than imports (see table page 3). Services exports were up almost 9% over 2005. In a basket of

goods identified as advanced technology products, U.S. exports grew 17% as imports rose 12%. The trade deficit for this group was \$38.3 billion. That figure doesn't reflect a lack of competitiveness in the high-tech field but rather the offshore production of products such as

pharmaceuticals, electronics, computers and medical products in countries such as Ireland, Malaysia, Mexico and China.

The highly publicized merchandise deficit hit a record \$836 billion driven primarily by a \$51 billion jump in petroleum imports. While there is much hand-wringing about the deficit being unsustainable, the core elements of the deficit aren't likely to ever be corrected. More than 70% of the deficit is accounted for by deficits in three product categories which the U.S. probably will never be able to balance: petroleum (-\$271 billion), autos and auto parts (-\$149 billion) and clothing (-\$75 billion). Add in just a few other deficits, such as in toys, computers, computer accessories, TVs, and pharmaceuticals, and nearly all the deficit is accounted for by less than a dozen product categories.

Loud complaints about the trade deficit with China, which hit \$232.5 billion last year, were heard again when Commerce released the year-end trade figures Feb. 13. Most of these complaints focused on China's manipulation of its currency, unfair trade practices, and unfair labor wages and practices. Yet, the U.S. trade deficit with

Preliminary 2006 v. 2005 U.S. Merchandise Trade Figures
(in billions)

	2006 Exports	2005 Exports	% Change	2006 Imports	2005 Imports	% Change
Total	1,023.7	894.6	14	1,859.8	1,677.4	11
BY COUNTRY/REGION						
Canada	230.6	212.0	9	303.4	290.4	4.5
Mexico	134.2	120.4	11.5	198.3	170.1	17
European Union (25)	214.0	186.4	15	330.6	308.8	7
Germany	41.3	34.2	21	89.1	84.8	5
France	24.2	22.4	8	37.1	33.8	10
United Kingdom	45.4	38.6	18	53.4	51.0	5
Japan	59.6	55.5	7	148.1	138.0	7
China	55.2	41.9	32	287.8	243.5	18
NICs: HK, Singapore, Taiwan, Korea	97.9	86.8	13	109.8	102.6	7
South/Central America	89.0	72.4	23	133.7	122.9	9
BY SECTOR						
Agriculture	65.9	59.0	12	75.0	68.1	10
Aircraft, parts, engines	75.0	60.8	23.5	28.6	25.8	11
Autos, parts, engines	107.2	98.6	9	256.6	239.5	7
Clothing	3.8	4.1	-7	79.2	76.4	4
Chemicals-Organic	29.8	26.8	11	42.3	38.0	11
Chemicals-Inorganic	9.1	7.7	18	11.4	10.2	12
Petroleum, total categories	31.6	22.7	39	302.5	251.9	20.5
Iron & Steel	11.8	10.4	13.5	32.9	24.6	34
Metalworking Machines	9.5	7.7	23	9.6	8.3	16
Pharmaceuticals	30.8	27.6	12	64.6	55.7	16
Semiconductors	52.4	47.2	11	27.4	25.8	6
Telecommunications	29.0	25.7	13	40.2	37.0	9
Wood Products	2.0	1.8	11	12.5	12.8	-2

its three largest, industrialized, free-market, high-wage trading partners, including NAFTA countries, the European Union and Japan, was nearly \$348 billion.

House Democratic leaders and Ways and Means Committee members reacted to the 2006 trade figures by sending a letter to President Bush Feb. 13 calling for a "new direction in U.S. trade policy" and stronger enforcement actions against China. "There needs to be a fundamental shift in U.S. policy, not an occasional step," wrote House Speaker Nancy Pelosi (D-Calif.) and Ways and Means Chairman Charles Rangel (D-N.Y.) along with 12 other Democrats. They also urged

the White House to focus on the unfair trade practices of China, the EU and Japan. "We call upon the administration to present Congress within 90 days a comprehensive plan to eliminate the surging deficits with these 'Big 3' economies," they wrote.

DOW PAYS \$325,000 FINE FOR ALLEGED FCPA VIOLATIONS IN INDIA

Dow Chemical Corp. reached a consent decree with the Securities and Exchange Commission (SEC) Feb. 13 under which it will pay a \$325,000 civil penalty and accept a cease-and-desist order to settle SEC charges that it violated the Foreign Corrupt Practices Act (FCPA) by paying some \$200,000 in improper payments to government officials in India and failing to record the expenses properly in its financial statements. The payments were made by a Dow subsidiary, DE-Nocil Crop Protection Ltd., which is based in Mumbai, India.

According to the SEC charges, some of the payments went to an official on India's Central Inspection Board to expedite the approval of three De-Nocil products. Additional payments went to other Indian officials, including tax officials, and for gifts, travel and entertainment.

Dow voluntarily disclosed the violations after it conducted an internal investigation of the payments. In accepting the consent agreement, the firm neither admitted nor denied the government's charges. In a statement, Dow said it has discharged some of the employees involved in the violations and also taken steps to enhance its ethics and compliance programs. "We will pursue every violation that we uncover and respond with appropriate discipline," said Jerome Peribere, president and CEO of Dow AgroSciences.

*** * * BRIEFS * * ***

BIS: Office of Export Enforcement Director Michael Turner, who is retiring from government April 1, will be joining Washington, D.C., trade consultants MK Technology on April 2 (see **WTTL**, Jan. 29, page 4).

CHINA: USTR officials Feb. 15 revealed publicly for first time that they had drafted WTO complaint last fall against China's failure to enforce intellectual property rights but delayed filing case in response to Beijing's request for more time to deal with issue. USTR Susan Schwab told Senate Finance Committee that her office consulted with U.S. business groups before agreeing to postpone case. Separately, Treasury Secretary Henry Paulson named former Deputy USTR Alan Holmer to be special envoy for China and Strategic Economic Dialogue. Holmer was president of Pharma, drug trade association, from 1996 to 2005.

HOUSE: Viji Rangaswami has rejoined House Ways and Means Committee as Democratic Trade Counsel and deputy staff director. For past two years she was at Carnegie Endowment for International Peace. She was Ways and Means trade counsel from 1999 to 2004.

JAPAN: U.S. and Japan Feb. 16 signed mutual recognition agreement under which Tokyo will accept U.S. certifications that U.S. telecommunications and radio equipment meet Japanese standards. NIST will designate qualified U.S. conformity assessment bodies whose testing will be accepted by Japanese.

LIBERIA: U.S. and Liberia Feb. 15 signed Trade and Investment Framework Agreement (TIFA) which will be forum for discussing bilateral trade issues. TIFAs often are precursors to FTAs.

OFAC: Agency imposed \$3,241.20 civil fine on Encore Medical, LP, of Chattanooga, Tenn., as part of settlement for firm's alleged violation of Iranian Transactions Regulations. OFAC claims Encore shipped physical therapy equipment to Iran through Brussels and Australia without approved license. In separate settlement with BIS in 2005, Encore agreed to pay \$101,000 fine (see **WTTL**, Aug. 8, 2005, page 4).

MORE OFAC: Tyco Valves & Controls Middle East, Inc., Dubai, United Arab Emirates, has agreed to pay \$450,905.50 civil fine to settle OFAC charges that it export goods to Iran without OFAC license. "Tyco voluntarily disclosed this matter to OFAC and enhanced its compliance program," OFAC statement noted.

ANTIDUMPING: Court of Appeals for Federal Circuit Feb. 13, in *Viraj Group v. United States* (case No. 2006-1158) reversed two CIT rulings in *Slater III* and *Slater IV* on "collapsing" multiple related firms in antidumping cases. CAFC ordered CIT to remand case back to ITA to reinstate its prior policy on collapsing entities and to impose single antidumping duty rate on all Viraj units.