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. 24, No. 33 August 16, 2004

U.S. EXPORTS TO CHINA IN FIRST HALF 2004 SURGED 36%

The "soft spot" in the global economy hit exports in June, slowing trade from the fast pace it enjoyed during the first five months of the year, according to Commerce trade figures released Aug. 13. June 2004 goods exports grew just 8% over June 2003, but for the first six months of the year, overall exports grew nearly 13% compared to the same period in 2003. Exports to China, however, jumped 36%, making it the fastest growing market for U.S. merchandise.

> Almost every region of the world saw significant increases in U.S. exports in the first half of the year. Exports to Central and South America rose 19.7% over the first half of 2003. Exports to Asia, including China, increased 15.5%, while shipments to Western Europe were up 15%.

Exports on Advance Technology Products, which include a wide variety of research-oriented industries, rose 16.8% in the first half compared to 2003. But imports of these products were also up 17.4%. Exports of U.S. services grew strongly as well, rising 13.4% during the first six months of 2004 compared to 2003. Services imports grew almost equally, gaining 13.6%. Among product sectors seeing the strongest export growth in the January to June period were: industrial machines, semiconductors, pharmaceuticals, electrical apparatus, measuring and testing equipment, telecommunications equipment, and wheat.

WTO LUMBER RULING PUTS "ZEROING" IN DUMPING CASES IN JEOPARDY

An Aug. 11 World Trade Organization (WTO) Appellate Body ruling, which found the International Trade Administration's (ITA) use of "zeroing" to average dumping margins for softwood lumber from Canada to be inconsistent with international trade rules, could foreshadow a more important loss for the U.S. in a separate WTO dispute with the European Union (EU). It also puts the WTO in direct conflict with U.S. courts, which have upheld the zeroing practice, most recently in a Court of International Trade (CIT) ruling Aug. 10 (see story page 2).

> The EU's WTO complaint also objects to ITA's use of zeroing in about a dozen other dumping cases. Unlike Canada, which isn't likely to push this victory to the point of retaliation, the EU might retaliate, if it won its dispute and the U.S. didn't drop the practice, several trade lawyers warned. The EU case, however, is probably two or three years away from resolution (see **WTTL**, Feb. 23, page 2).

U.S. trade officials and the U.S. lumber industry contend the WTO ruling will have little affect on the case against Canadian lumber. "While we are disappointed that the panel sided with

Published weekly 50 times a year except last week in August and December. Subscription in printed or electronic form is $597 a year in U.S., Canada & Mexico; $627 Overseas. Additional copies with full price subscription are $75 each.
Circulation Manager: Elayne F. Gilston

Canada on this technical issue [zeroing], we're pleased that overall we prevailed on the main points -- Canadian companies are unfairly competing and dumping lumber," said Richard Mills, spokesman for the U.S. Trade Representative's (USTR) office. Rusty Woods, chairman of the Coalition for Fair Lumber Imports said, "Even if the WTO ruling were implemented, it would not have a major impact in our case." ITA would have to change its legal position on zeroing to apply the WTO ruling, the Coalition argued. There is disagreement, however, over whether U.S. trade law "permits" zeroing or "requires" it.

> Trade lawyers say the direct impact of the softwood ruling will vary depending on the facts for each Canadian exporter. U.S. government sources contend a new calculation might actually lead to higher margins. The Appellate Body, however, said zeroing "inflates the margin of dumping for the product as a whole," thus suggesting that eliminating zeroing would reduce the margins.

In its complaint, the EU wants the WTO to apply to the U.S. the same interpretation of the WTO Antidumping Agreement as was applied to the EU in the *EC-Bed Linen* case. In that decision, the WTO found the EU's practice of zeroing to be inconsistent with the agreement. In its opinion in the softwood lumber case, the Appellate Body adopted many of the same arguments used in the *EC- Bed Linen* case to reject the ITA practice. "In doing so, we have taken into account the reasoning and findings contained in the Appellate Body Report in *EC-Bed Linen*, as appropriate," the latest decision stated.

Any potential further reduction of the dumping margins on lumber would be on top of reductions ITA has already made in both the dumping rates and countervailing duty (CVD) rates in response to remand orders, including one in June, from NAFTA binational panels examining the cases on a separate track. In a second remand determination sent to the panel July 30, ITA cut the ad valorem CVD rate on Canadian lumber to 7.82% to meet the panel's objections and excluded six Canadian mills from CVD sanctions entirely. Its first remand recalculation brought the rate to 13.23%, but the first administrative review of the imports found a preliminary CVD rate of 9.24%. The original CVD rate was 18.79%.

While the Appellate Body agreed that ITA's practice of multiple averaging is permitted under WTO rules, it said the agency could not exclude averages where export prices were above normal values, as it does when zeroing. "We fail to see how an investigating authority could properly establish margins of dumping for the product under investigation as a whole without aggregating *all* of the 'results' of the multiple comparisons for *all* product types," it said.

Citing Article 2.4.2 of the Antidumping Agreement, the Appellate Body said averages for sub-groups of products are not margins of dumping. "Rather, those results reflect only intermediate calculations made by an investigating authority in the context of establishing margins of dumping for the product under investigation. Thus, it is only on the basis of aggregating *all* these 'intermediate values' that an investigating authority can establish margins of dumping for the product under investigation as a whole," it ruled.

COURT UPHOLDS ZEROING BUT REJECTS CLAIM IT IS MANDATORY

The use of "zeroing" in antidumping cases is a reasonable interpretation of U.S. trade law, but it is not mandatory as ITA has argued, ruled Court of International Trade (CIT) Senior Judge Richard Goldberg in an Aug. 10 decision (Slip Op. 04-100). The ruling in *SNR Roulements v. U.S.* adds to the growing list of U.S. court opinions that conflict with the views of WTO panels on the zeroing issue (see story above). "A combined reading of Sections 1673 and 1677 [of the Trade Act] does not unambiguously mandate zeroing," Goldberg stated.

Given the deference courts must give government agencies under the Supreme Court's *Chevron* doctrine, the court "cannot find any basis for rejecting Commerce's determination on these grounds," he ruled. Goldberg also offered an extensive interpretation of the 200-year-old Supreme Court ruling in *Charming Betsy*, which asserts that U.S. laws should not violate the

law of nations whenever possible. Acknowledging the potential conflict between *Charming Betsy* and *Chevron,* Goldberg noted earlier CIT rulings which said WTO decisions are not binding on courts or Congress but may "shed light on whether an agency's practices and policies are in accordance with U.S. international obligations."

> Goldberg rejected the arguments of foreign producers who said WTO rulings in *Hot-Rolled Steel* and *EC-Bed Linens* should be applied in the antidumping case on bearings. He noted the ruling of the Federal Court of Appeals for the Federal Circuit in Timken, which supported use of zeroing.

"The Court is wary of overstepping the bounds of its judicial authority under the guise of the *Charming Betsy* doctrine," he stated. "The Court is also mindful of the prerogatives of the Executive Branch – most importantly, the Office of the U.S. Trade Representative – in dealing with the WTO in its diplomatic and policymaking roles," Goldberg added.

NEW EU TRADE, FARM COMMISSIONERS COULD HEAT UP DOHA ROUND

Incoming EU Commission President Jose Manuel Barroso of Portugal signaled his support for ambitious results in the WTO Doha Round with the naming Aug. 12 of Britain's Peter Mandelson to be the new trade commissioner and Denmark's Mariann Fischer Boel to be agriculture commissioner. He also assured continued stormy debates within the European Council of Ministers over the direction for EU trade and farm policies by nominating two individuals with strong political connections and strong views in support of liberalizing both those sectors.

> Barroso named the two along with a complete new slate of commissioners for all Commission posts as part of his new team, which will take their posts at the end of October, if confirmed by the European Parliament. Press reports in Europe generally applauded Barroso's selections, saying they appeared to support his stated commitment to push economic and trade reforms in the EU.

Mandelson, a member of Parliament from Hartlepool in northeast England, is a close personal and political friend of Prime Minister Tony Blair. He has often been cited as a key player in Blair's raise to power and the New Labour Party's shift to a centrist political philosophy. Often at the heart of controversy and intrigue, he served twice in Blair's cabinet, once as Secretary of State for Trade and once as Secretary of State for Northern Ireland, and was forced to resign twice. His resume suggests he will bring a much more flamboyant style to trade talks than his predecessor Pascal Lamy, but also much stronger political backing from his home government than Lamy, who ended his tour persona non grata in his native France.

Boel will come to the Commission from her post as Denmark's Food and Agriculture Minister. She played an active role in setting EU farm policy while Denmark held the EU Presidency in 2002 and has been a strong supporter of reform of the Common Agriculture Policy (CAP). She appears to support the same policies advocated by outgoing EU Farm Commissioner Franz Fischler. In a 2002 speech, Boel stressed the need for the EU to do more to help developing countries. "A fair system of world trade is another crucial element," she said. "My government urges developed countries that have not yet done so to ensure quota-free and duty-free market access for all exports but arms to the least developed countries," she added.

DRESSER REVEALS INVESTIGATION INTO EXPORTS TO IRAQ, IRAN, SUDAN

In an Aug. 12 10Q filing with the Securities and Exchange Commission (SEC), Dresser reported that it has voluntarily self-disclosed to the government that it is investigating the potential unlicensed export of control valves and parts to Iraq, Iran and Sudan. The internal investigation stems from allegations the company received in April about potential sales by its subsidiary in Dubai, United Arab Emirates (UAE). "Upon initial investigation, we found transactions by the branch relating to Iraq, Iran and Sudan that appeared to have been

undertaken without the required prior U.S. governmental authorizations," Dresser stated. "With the assistance of outside counsel, we commenced a full investigation of the Dubai branch's transactions and whether our other foreign offices may have engaged in transactions relating to U.S.-sanctioned countries in violation of U.S. laws related to export controls and economic sanctions," it continued. "On July 9, 2004, we submitted preliminary voluntary disclosures of the Dubai branch transactions to the Commerce and Treasury Departments under their voluntary disclosure programs," Dresser reported.

> Since the launching of the investigation, the company has done extensive training of foreign nationals in its overseas offices to make sure they understand U.S. export control laws, a company executive noted. Dresser has promised BIS and OFAC that it will inform them about the outcome of its internal investigation.

UNDERCOVER WORK HELPS LEAD TO ARREST, INDICTMENT IN EXPORT CASE

Wiretaps and undercover work by federal agents contributed to the indictment and arrest of a United Arab Emirates (UAE) citizen for attempting to export engine radiators to Iran without approved licenses. With the cooperation of an unidentified U.S. manufacturer, government agents were able to tape record phone conversations and participate in meetings with Khalid Mahmood and get him to admit that the proposed sale violated U.S. export controls.

> In an indictment unsealed Aug. 11, a federal grand jury in Washington, D.C., charged Mahmood, who is also known as Khalid Mahmood Chaudhry, and Mohammad Ali Sherbaf of Iran, with conspiracy to export the radiators to Iran. Mahmood operates a trading company in Dubai known as Sharp Line Trading. Sherbaf is an officer of Sepaham Lifter Company, an Iranian firm which makes heavy forklift trucks, for which the radiators were intended. Mahmood was arrested Aug. 7 in Washington, D.C. Sherbaf is believed to be in Iran.

The indictment includes transcribed conversations of phone calls and meetings Mahmood had with the U.S. manufacturer and a federal agent. Sepahan originally contacted the U.S. firm to get price quotes on the radiators and when asked who would be responsible for the export licenses told the firm that Mahmood would be. Sepahan was seeking 280 radiators with a value of $81,200. The two-count indictment charges Mahmood and Sherbaf with attempting to violated the Iranian Transactions Regulations and the Export Administration Regulations.

* * * BRIEFS * * *

AUSTRALIA: After swallowing two amendments it originally opposed, Australia's ruling Coalition government won Australian Senate approval of the U.S.-Australia FTA Aug. 13 (see **WTTL**, Aug. 9, page 2). Amendment to strengthen availability of generic drugs has raised questions about whether new law affects trade accord. "We've made clear that the United States must certify that the implementation language fulfills the obligations under the FTA before the FTA can come into force," said USTR spokesman Richard Mills. "We reserve all our rights in this process," he said.

EXPORT ENFORCEMENT: Ibn Khaldoon Drug Store of Dubai,UAE, agreed to pay $40,000 civil fine and Aura, Ltd., of Bedfordshire,UK, agreed to being denied export privileges for two years to settle BIS charges that they aided and abetted in export of bone densitometers to Iran without licenses.

MORE EXPORT ENFORCEMENT: Zlatko Brkic of Elk Grove, Ill., paid $20,000 civil fine and accepted two-years' denial of export privileges to resolve BIS charges that he attempted to exported handcuffs to Bosnia and Herzegovina without licenses. BIS suspended fine and will waive it, if he stays in compliance.

FSC/ETI: With chances already uncertain for enactment of legislation this year to fix current FSC/ETI tax law, opponents of proposed House and Senate measures got more ammunition to fight legislation in letter from Congressional Joint Committee on Taxation to Sen. Jay Rockefeller (D-W.Va.). JCT says that of 2.2 million Schedule C corporations filing tax returns, only 500,000 have domestic production receipts that would qualify for tax breaks under Senate bill (S. 1637). Of those, "450,000 of them would either get no tax benefit or a tax benefit of less than $50,000 from Section 102 of S. 1637," JCT's George Yin wrote.