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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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EXTENSIVE CHANGES SOUGHT IN WTO FRAMEWORK TEXT

A week of tough negotiations, with no guarantee of success, lies ahead for World Trade Organization (WTO) members attempting to agree before July 30 on a draft Framework Agreement that is supposed to set the stage for the next year of Doha Round talks. While most members say they are willing to use the draft prepared by WTO General Council Chairman Shotaro Oshima and WTO Director General Supachai Panitchpakdi as the basis for negotiations, almost everyone wants some changes in the text (see **WTTL**, July 19, page 1).

The talks will culminate at a WTO General Council meeting July 27-29. That session in Geneva appears likely to be a mini-Ministerial, with many senior trade officials, including U.S. Trade Representative (USTR) Robert Zoellick and European Union (EU) Trade Commissioner Pascal Lamy, expected to attend. For Zoellick, Lamy and EU Agriculture Commissioner Franz Fischler, the meeting is seen as their last chance to seal their legacy as having overcome the failure of the Cancun Ministerial and moved the Doha Round toward completion in 2005.

The draft text is caught between the Scyllia and Charybdis of negotiations. If not enough changes are made, some delegations may refuse to accept it. If too many revisions are adopted, the text could end up being so vague and imprecise that it will only serve as eyewash to save the WTO from the embarrassment of another failed meeting. At the start of talks July 19, Supachai warned members not to make too many changes in the text, saying remaining concerns could still be dealt with in the next year of negotiations. "Let's aim to minimize our disappointments...and to wait post-July to live and fight another day," he told the meeting.

As expected, the main concerns raised about the draft were over its agriculture annex. The focus of this discussion has been language that would allow developed countries to maintain import restrictions on "sensitive" farm products and other sections that would exempt developing countries from having to open their markets for "special products." During meetings on the draft, both developed and developing countries complained about the "imbalance" in how the draft addresses the selection and treatment of products in these two categories.

The draft would limit the selection of sensitive products to those already subject to import quotas. That restriction is either too broad or too narrow for countries depending on their perspective. Japan, for example, reportedly has only 20 farm products subject to import quotas, while Norway reportedly has quotas on some 200. For Japan, the limitation is too narrow, but exporting countries claim Norway is allowed too many products. For special products in developing countries, the agriculture annex would leave the criteria for their selection to future negotiations. This open-ended language was considered too vague for some members. Tim

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Groser, New Zealand's ambassador to the WTO, who heads the agriculture talks and drafted the farm annex, said this imbalance was unintended and an effort would be made to change the draft to elaborate more clearly on selection criteria for special and sensitive products.

Other imbalance complaints were aimed at the draft's proposed restrictions on the use of food aid and loans as export subsidies, treatment of "Blue Box" subsidies, cuts in "Amber Box" subsidies, de minimis rules, and the maintenance of preferences for least developed countries. The market access proposal for different levels of duty cuts for different "tiers" of tariff lines also drew comments. There is concern there may be too many tiers and that the criteria for which products will go in each tier is too vague. The U.S. has continued to push to have to cuts based on applied tariff rates and not bound rates as proposed in the draft.

A separate concern has been raised about the treatment of Singapore issues in the draft. The text calls for talks only on trade facilitation, while declaring no work will be done in the WTO toward negotiations on competition, investment or transparency in government procurement. At a program in Washington July 20, Nancy Boswell, managing director of Transparency International, warned that this language could require the WTO to terminate a working group on government procurement that was established in 1996 at the Singapore Ministerial.

[Editor's Note: WTTL will be in Geneva July 26-30 to cover the WTO General Council meeting. Our Aug. 2, 2004, issue will be devoted entirely to a special report on the outcome of this crucial meeting, which could determine the future of the Doha Round. Because the talks might extend beyond our normal deadline, next week's issue may be delayed to report on the final outcome of the meeting.]

BIS WILL CREATE THREE LEVELS FOR COMPUTER TECHNOLOGY CONTROLS

The Bureau of Industry and Security (BIS) intends to create three bands of requirements for liberalizing "deemed export" controls for computer technology, Assistant Secretary for Export Administration Peter Lichtenbaum told the agency's Systems Information Technical Advisory Committee (SITAC) July 21. The new rules, which he said are likely to be published later this summer, will provide "significant increases in the threshold for requiring a license for computer technology and microprocessor technology," he promised (see **WTTL**, June 14, page 1). The coming regulation is part of a broader BIS review of "knowledge controls".

Under the coming computer technology rules, BIS will allow certain levels of technology to be provided to foreign nationals without any restrictions, establish a License Exception for higher levels with a screening requirement, and retain full licensing requirements for higher levels. The new requirements will be linked to the Country Tiers currently in place for computer equipment.

For Tier I countries, including members of NATO and close allies, there will continue to be unlimited access to computer technology. For Tier II countries, the licensing threshold will be raised to 190,000 million theoretical operations per second (MTOPS) from 33,000 MTOPS. The provision of technology below 33,000 MTOPS will be exempt from restrictions. Technology from 33,000 to 190,000 MTOPS will be covered by a license exception but will require exporters to submit to BIS background information on the foreign nationals who will be given access to the data. BIS will conduct a one-time review of these individuals. Technology above 190,000 MTOPS will require a license.

For foreign nationals from Tier III countries, the licensing threshold will be raised to 75,000 MTOPS from 28,000 MTOPS. Below 28,000 MTOPS, no license or background review will be required. A license exception will be established for technology of 28,000 to 75,000 MTOPS with the requirement for submission of background information on Tier III foreign nationals and the one-time BIS review. Exporters will need a deemed export license to provide technology above 75,000 MTOPS to nationals from these countries. "While we're not rolling back

anything, in order to benefit from these increased levels, industry would have to submit background information on the foreign nationals and we would review it in a time-limited manner," Lichtenbaum said. "If you could release technology today without coming to us for any approval, I don't think we are proposing that you come in for approval now," he added.

BIS REJECTS PETITION ON SCRAP COPPER EXPORTS

Although BIS found that copper scrap prices have increased significantly in recent years, it determined that the rise was not caused by exports. Accordingly, it announced July 21 that it was denying a petition to impose export restrictions on the metal or to monitor exports (see **WTTL**, May 24, page 4). The decision is certain to dampen any lingering interest steel scrap users have about filing a similar complaint under U.S. short-supply regulations

Exports from 1999 to 2003 increased primarily because of low demand in the U.S. for copper scrap and because the last independent secondary copper smelter closed, BIS determined. Despite the increase in exports, "the evidence does not demonstrate a shortage," it said in a statement explaining its decision.

"The world market for copper cathode, not the level of U.S. exports of copper-based scrap, is the most important determinant in the fluctuation of domestic copper scrap prices," BIS said. It also said the increase in domestic prices has not had an adverse effect on the national economy. The petition filed by the Copper and Brass Fabricators Council and the Non-Ferrous Founders Society claimed that increases in foreign demand and exports, primarily to China, had caused a shortage of scrap in the U.S. and led to sharp price increases. In response to the ruling, the petitioners issued a statement contending "the decision protects the windfall profits of a few dozen scrap dealers at the risk of fatally weakening a major basic U.S. industry."

WASSENAAR TAKING BROAD LOOK AT SEMICONDUCTOR EQUIPMENT CONTROLS

The multilateral Wassenaar Arrangement on export controls has begun a comprehensive review of restrictions on semiconductor manufacturing equipment and could be ready to consider major changes to its control list in about 18 months at the December 2005 plenary meeting of senior government officials. Before then, at its December 2004 meeting, Wassenaar is expected to accept U.S. proposals for liberalizing controls on ion implantation and test equipment.

Wassenaar agreed to undertake the review of the list at its December 2003 plenary but technical work on the project only began in the spring. At a July 7-9 meeting in Vienna, about 20 industry representatives from a dozen major companies in the field, including chip makers, briefed a Wassenaar technical working group on the latest state-of-the-art in semiconductor manufacturing. Government representatives continued to meet without industry July 12-15.

"Our take-away from that meeting was that certainly the information provided by industry was very helpful," BIS Assistant Secretary for Export Administration Peter Lichtenbaum told the agency's Systems Information Technical Advisory Committee July 21. "It will be instrumental in helping us evaluate if any changes are required," he added.

The meeting of government representatives apparently also made progress in discussing proposals for revising the Wassenaar list of controlled goods this December. "The prospects for the two U.S. Wassenaar proposals for this year for ion implantation and test equipment are promising from our understanding of the discussions," Lichtenbaum reported. "There is a good chance Wassenaar will adopt those proposals during this years review," he said.

Chip equipment makers complain that the current list of controlled semiconductor manufacturing equipment is obsolete and has not been updated for ten years. The liberal interpretation of Wassenaar rules by most members, except the U.S., has allowed most exports of this equipment

to be approved to most markets, including China. The U.S. also has approved most of the applications it has received but takes much longer to review the applications than other countries, industry source content. While not a written policy, Washington's position on exports of this equipment to China has been to approve applications only for equipment that is two generations behind the state-of-the-art.

MAURITIUS ASKS WTO TO HOLD MEETING ON END OF TEXTILE QUOTAS

World textile industry groups achieved a partial success July 20 in their efforts to get the WTO to consider the expected impact from the elimination of global textile and apparel quotas on Dec. 31, 2004. After months of effort, one country, Mauritius, has finally asked WTO Director General Supachai Panitchpakdi formally to convene an "emergency meeting" in August to examine the "unintended consequences" of the end of the Multifiber Arrangement (MFA) (see **WTTL**, June 21, page 3). The letter from Mauritius reportedly had the backing of members of the Africa, Caribbean and Pacific (ACP) group of countries.

WTO sources say Supachai plans to review the letter carefully and consult with members on the issue before deciding whether to agree to call the meeting. The decision on holding the meeting is up to him.

WTO officials stress that the letter from Mauritian Foreign Affairs and Trade Minister Cuttaree requests a meeting only to discuss the consequences of the end of the MFA and not to discuss an extension of the quota system, which has been the textile industry's goal. The letter also asks the WTO to explore ways to protect developing countries and vulnerable workers from the expected economic dislocations when the MFA ends. It is now generally accepted that there will be a major shift of textile and apparel sourcing to China when the global quota system ends and many current suppliers will no longer be competitive. The issue is likely to be discussed as a side topic during the WTO General Counsel meeting July 27-29.

* * * BRIEFS * * *

HALLIBURTON: In 8-K filing with SEC July 19, Halliburton said SEC has opened formal investigation into potential violations for Foreign Corrupt Practices Act by affiliate in Nigeria. Halliburton said it has terminated relationship with executive who is subject of investigation, which relates to construction of natural gas liquification plant in Nigeria. It said it has hired outside law firm to investigate allegations and is cooperating with government. "While Halliburton does not believe it has violated the Foreign Corrupt Practices Act, Halliburton's own internal investigation of these matters is ongoing and there can be no assurance that the government's or Halliburton's investigation will not conclude otherwise," it said.

CCL JURISDICTION: BIS in July 19 Federal Register published final rule revising EAR to reflect results of annual Munitions List review, which moved several chemicals from USML to Commerce Control List and some from CCL to USML.

APPLES: U.S. July 19 asked WTO dispute-settlement panel for authorization to retaliate against Japan for Tokyo's failure to comply with earlier panel ruling which found Japanese import restrictions on apples to violate world trade rules. Washington is asking panel to authorize \$143.4 million worth of sanctions on Japanese goods to compensate for lost apple trade (see **WTTL**, July 21, page 4).

STATE SANCTIONS: State published notice in July 21 Federal Register rescinding sanctions on two South African firms, Armscor and Denel Group, to reflect export compliance measures they have taken as part of 1998 agreement between U.S. and Pretoria on arms exports.

MOROCCO: By wide bipartisan margin of 323-99, House July 22 approved legislation (H.R. 4842) to implement FTA. Senate approved parallel bill July 21 by 85-13 (see **WTTL**, July 19, page 3).

CHLOROPICRIM: In Sunset Review determination July 22, ITC on 6-0 vote found U.S. industry is likely to face renewed injury if current antidumping order of chloropicrim from China were rescinded.

CARBOXYMETHYLCELLULOSE: ITC July 22 voted 6-0 in preliminary ruling that allegedly dumped imports of material from Finland, Mexico, Netherlands and Sweden may be injuring U.S. industry.