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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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INDUSTRY COMPLAINS ABOUT NEW BIS LIMITS ON AGENCY SPEAKERS

Groups that organize conferences on export controls are complaining about a new Bureau of Industry and Security (BIS) policy that is restricting the number of agency speakers permitted to speak at non-BIS programs. Under the new rules, which apparently were first imposed late in 2003, BIS will generally allow only two officials to speak at conferences, one from the export enforcement side of the agency and one from export administration. The policy has caused several organizations to scramble to find replacement speakers for invited BIS officials.

The new policy runs counter to the government's effort to encourage "voluntary informed compliance," one attorney told WTTL. "They are defeating their own purpose by not letting their people speak," he said.

BIS Deputy Under Secretary Mark Foulon defended the policy. "I can categorically state that there is no policy to cut back on speaking engagements," Foulon told WTTL. "It is quite the opposite. We need to keep the public informed," Foulon said.

The policy is intended to manage agency resources better and to make sure speaking invitations were accepted on a fair and equitable basis, he explained. "We have to make sure that we are doing it right and not stretching ourselves too thin," Foulon said. "We need to make sure we are perceived as being even-handed," he added. At the same time, the policy "is not engraved in stone," he said. "Each event is judged on its merits." It also is a matter of perception. "We cannot be seen as a wholly-owned subsidiary of any organization," Foulon told WTTL.

COMMERCE CLOSES DOOR FOR NOW ON CHINA'S MARKET ECONOMY STATUS

The Bush administration April 28 paid China back for its agreement to drop its encryption standard for mobile communications, to crack down on intellectual property piracy and to improve cooperation on end-use visits for controlled exports. But Washington waited until a week after Chinese Vice Premier Wu Yi delivered those concessions to the Joint Commission on Commerce and Trade (JCCT) before announcing that it was rejecting a Section 301 complaint against China's labor practices and won't accept an expected petition against Beijing's manipulation of the exchange rates for its currency, the renminbi (see WTTL, April 26, page 3).

At a news conference featuring four Cabinet members, administration officials said they would use engagement with China to improve Beijing's labor and currency policies rather than the launching of trade complaints. To get tough on China's violation of workers' rights, the White House is sending Labor Secretary Elaine Chao to Beijing to talk about the problem. Commerce

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Secretary Don Evans also said the U.S. would seek progress in Chinese labor and exchange rate policies by requiring improvements in these areas as a condition for China being considered a market economy in antidumping cases. "China will be required to reform its labor standards and its currencies policies before it can be granted market-economy status," he said.

Evans cited the six criteria in U.S. trade law which determine whether a non-market economy (NME) can be considered a market-oriented economy. Evans seemed to be raising the bar for interpreting these conditions, while also conceding the department's past flexibility in applying the law.

The statute gives Commerce discretion to interpret these factors, saying it shall determine "the extent to which" the conditions are met and not that they "must" be met completely. Evans noted that Commerce switched the status of Russia, which maintained a "managed floating" exchange rate and Romania, which used a "crawling band" exchange rate.

An early test of Commerce's policy could come in the current antidumping case against Chinese wooden bedroom furniture. Attorneys from Arnold & Porter in Washington filed a request April 20 on behalf of the furniture sub-chamber of the China Chamber of Commerce for Import & Export of Light Industrial Products and Arts-Crafts (CCCLA) and the China National Furniture Association (CNFA), asking the department to "initiate an inquiry to determine that the Chinese wooden bedroom furniture industry is a 'market-oriented industry' (MOI)." It has not been determined, however, whether these groups have standing in the investigation.

While trade law requires China to demonstrate that it meets six criteria to be considered a market economy, it only requires an industry to meet three criteria to be consider an MOI inside an NME. This three-prong test requires an industry to prove that the government isn't involved in production and pricing, that there is no significant government ownership of the industry, and that production inputs are characterized by market-driven prices and sourcing.

U.S. Trade Representative (USTR) Robert Zoellick virtually conceded that the AFL-CIO's Section 301 complaint against Chinese labor practices was valid. "We do not need a year-long investigation to know that there are serious concerns with labor rights and working conditions in China," he said. But the White House wasn't about to give organized labor, its chief trade nemesis, the satisfaction of having its petition accepted even though the petition met Section 301 requirements. The law explicitly cites a government's "persistent pattern" of denial of worker rights to be an unreasonable and discriminatory trade practice that is subject to trade retaliation. While Zoellick complained that the AFL-CIO was seeking to impose 77% tariffs on Chinese goods, the law gives him broad discretion to select a remedy and doesn't require him to accept the petitioner's recommendations.

NAFTA PANEL AGAIN REJECTS ITC INJURY RULING IN SOFTWOOD LUMBER

Amid a swirl of last-minute charges of conflict of interest aimed at one of its members, a binational NAFTA panel April 29 released its second ruling that the International Trade Commission (ITC) has failed to support its "threat-of-injury" determination in the softwood lumber dumping and countervailing duty cases. The decision is likely to strength opposition in Canada to any deal that would impose new quotas on Canadian lumber and not force the refund of almost all duty deposits importers have paid on the imports (see **WTTL**, April 19, page 2).

On eight out of 11 key points addressed in its ruling, the panel said the ITC's response to a previous remand determination did not provide substantial evidence on the record to support the commission's findings. The panel remanded the case back to the ITC, which will have 21 days from the actual date of the report, April 19, to change its decision, provide needed evidence or reargue its position.

Since the panel claimed the record didn't contain the evidence needed to support the ITC determination, it's not clear where the commission would get that material without reopening

the record. Release of the panel's report was delayed 10 days because of charges the Coalition for Fair Lumber Imports made against panelist Louis Mastriani, of the law firm of Adduci, Mastriani & Schaumberg in Washington. The coalition claimed Mastriani violated dispute-settlement rules because he had a conflict of interest that should disqualify him from participating in the lumber case. The U.S. government agreed that Mastriani should step down, but Canada said he should stay on. The split vote, which didn't occur until April 28, meant no action would be taken against Mastriani, and the final report was released the next day.

Mastriani did not get formal notice of the conflict-of-interest charges until April 26, a week after the panel report was submitted to the governments. In an April 28 response that he released publicly, the attorney refuted the charges. "These allegations are thoroughly devoid of merit on their face and seem to be an attempt by the Coalition for Fair Lumber Imports Executive Committee to prevent the release of the already signed NAFTA remand opinion," Mastriani wrote.

The alleged conflict involved his law firm's representation of respondents in cases involving hand trucks from China and outboard engines from Japan. In arguments filed with the ITC in those cases, his firm took positions on the "export orientation" of the Chinese industry and substitutability and price sensitivity in the engine industry, two issues also in the lumber cases.

STATE CLAIMS JURISDICTION FOR AMORPHOUS SILICON IMAGING PRODUCTS

State in early April issued a Commodity Jurisdiction (CJ) opinion, declaring focal plane arrays made with amorphous silicon materials to be subject to the U.S. Munitions List (USML) and the International Traffic in Arms Regulations (ITAR) and not the Commerce Control List (CCL) and the Export Administration Regulations (EAR). No shift in export licensing jurisdiction will be made immediately, however, because State and BIS are still negotiating the technical parameters for the products and technology that will move to State, BIS Deputy Assistant Secretary Matthew Borman said April 27 (see **WTTL**, Feb. 2, page 2).

State and Defense have been pushing for tougher export controls on amorphous silicon products for more than three years. They also have pressed the Wassenaar Arrangement to adopt stricter multilateral controls on these materials.

At a recent Wassenaar "experts group" meeting, representatives failed again to bridge the differences between U.S. and French proposals on new controls. The regime has had difficulty defining the level of performance of amorphous silicon arrays that should be controlled. The issue will be back on the agenda for the next experts meeting in September, with the hope that agreement could be ready in time for the next plenary session of Wassenaar members in December when annual changes in the regime are usually adopted.

ZOELLICK WARNS AGAINST CASE-BY-CASE COMPLAINTS OVER FARM TRADE

The dike that has held the so-called "peace clause" in place and prevented a flood tide of WTO trade disputes over farm subsidies has sprung a leak. An interim and still confidential WTO dispute-settlement panel decision April 26 in support of a Brazilian complaint against U.S. cotton subsidies could hurt Doha Round negotiations on agriculture, if other countries decided to follow Brazil's lead, warned U.S. Trade Representative (USTR) Robert Zoellick at a House Agriculture Committee hearing April 28.

Brazil already has filed a similar complaint against European Union (EU) export subsidies for sugar, and there is speculation that other countries may now go after other U.S. and EU subsidies. The "peace clause" was part of the Uruguay Round agreement and was intended to preclude complaints over farm programs until 2004. "My message is that it would be a very big mistake to try to solve these very complex agriculture issues through the process of litigation, country by country," Zoellick cautioned. "It will be piecemeal, it will be uneven,

it's going to be very drawn out, it's going to be long, and in my view, it is going to be contentious and ultimately counterproductive," he declared. "I don't think that approach is going to lead to a sustainable solution, and that means it will be very important for everyone to negotiate together," he said. If the interim ruling on cotton is issued in June without major changes, Zoellick told the committee it could be "100% sure we're going to appeal this and press this all along the way."

In any event, there will be no immediate impact from the decision, because the appeal process could take years and there will be additional time to implement any required changes if those appeals fail, he assured the lawmakers. If the U.S. loses, the ruling could present "opportunities and problems both offensively and defensively" related to U.S. trade policy, WTO relations and farm policy, he said.

WTO OFFICIAL SAYS GLOBAL TEXTILE QUOTA SYSTEM WON'T BE EXTENDED

Skeptics who have predicted that the global system of textile and apparel quotas, which is to end Dec. 31, 2004, would not terminate as schedule may be proven wrong. The chief of the WTO textile division, Chiedu Osakwe, told a Washington International Trade Association breakfast April 28, that WTO members have expressed no interest in extending the Multifiber Arrangement (MFA) beyond this year. In the Doha Round negotiations, however, great anxiety has been expressed about the impact of lost apparel trade when combined with market access demands, reduced preferential treatment, and China's expected domination of the field.

The only proposal now being considered is a call for a two-year moratorium on the initiation of antidumping and countervailing duty cases after the MFA ends, Osakwe reported. Some exporting countries are arguing that the price drops and increased competition that are expected after MFA ends will become grist for the filing of antidumping cases. But those proposals are tied to the Doha Round, which isn't likely to be completed until two years after the end of the MFA.

The end of the MFA has raised many technical questions and a big debate at the WTO, Osakwe noted. Exporting countries are seeking clarification of the rules that will apply after midnight on Jan. 1, 2005. Because large shipments of textiles and apparels likely will be waiting offshore for the expiration of quotas, producers want to know when visa requirements will be lifted and how goods in transit will be treated when they arrive at port, Osakwe said. There is also discussion of how rules of origin will be applied.

* * * BRIEFS * * *

LIBYA: Who says BIS can't issue regulations fast. With push from White House, agency published rules in April 29 Federal Register implementing liberalized trade policy for Libya (see **WTTL**, April 26, page 1). BIS has also posted on its website guidance for applying new rules and frequently asked question.

WASSENAAR ARRANGEMENT: BIS also moved quickly to issue regulations implementing multilateral export control changes that Wassenaar Arrangement adopted in December. New rules were published in April 29 Federal Register.

FSC/ETI: Senate will begin again on May 3 to debate legislation (S. 1637) to replace FSC/ETI tax laws, but bill could face filibuster from Sen. John McCain (R-Ariz.) who has complained about legislation getting loaded up with \$170 billion in extra tax breaks for special interests. Compromise to limit amendments seems to have died, raising prospect for more contentious debate (see **WTTL**, April 12, page 4). Senate Finance Committee Chairman Charles Grassley (R-Iowa) told reporters he expects to get time agreement to limit debate, but if McCain tries to block action "we'll have to work with the filibuster," he said. Grassley also said Senate probably will need another cloture vote to move legislation.

RELATED-PARTY TRADE: Role of foreign investment as driver in merchandise exports and imports was underscored again in latest Commerce annual report on related-party trade in U.S. trade figures. Fully 32% of U.S. goods exports went to foreign parties related to U.S. exporter, and 48% of imports came to U.S. firms that were related to the foreign exporters, it reported.