

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. 11

March 15, 2004

ARAB BOYCOTT OF ISRAEL IS RAISED IN TRADE TALKS, ALDONAS SAYS

The U.S. is raising the Arab League boycott of Israel in talks with Middle Eastern nations as part of bilateral free trade talks as well as in discussions on the accession of some of these countries to the World Trade Organization (WTO), according to Commerce Under Secretary Grant Aldonas. After testifying at a Senate hearing March 10 on the administration's Middle East trade initiative, Aldonas told reporters that the boycott is "an issue you can't escape, if we are to move toward free trade and it's also true in the context of WTO accession."

Aldonas testified with State Under Secretary Alan Larson at the Senate Finance Committee on the Bush administration's Middle East trade policies and a bill (S. 1121) to create a trade preference program for the region. The administration hasn't taken a formal stand on the bill, but Aldonas told the committee that in meetings with business executives in the Middle East he has found support for the president's proposed U.S.-Middle East Free Trade Agreement (MEFTA).

The Arab boycott appeared to weaken in the mid-1990s following the Oslo Accords. It was a main area of interest for then-Secretary of Commerce Ron Brown. After several quiet years, it has regained strength during the current Intifada in Israel. "It's always difficult to tell how much it is being enforced as a practical matter," Aldonas said.

In the talks with Middle Eastern countries, the boycott "is an obvious point that you have to cover," he added. "What you have is a boycott, for whatever reason, that is going to be in violation of Article VII of the GATT [General Agreement on Tariffs and Trade]," Aldonas noted. "You can't be in a position where you are barring imports or exports based on something that isn't approved by the GATT."

The push for trade deals with the Middle East has stepped up with President Bush's notice to Congress March 8 that he intends to sign the recently completed FTA with Morocco, talks on another FTA with Bahrain, and plans for the signing of a Trade and Investment Framework Agreement with the United Arab Emirates on March 15. Progress with bringing Egypt into these talks remains difficult, however. "We will never have a Middle East Free Trade Agreement that is fully complete without having Egypt as a partner in that," Larson said.

ITA ISSUES POLICY BULLETIN ON CHOOSING SURROGATES IN NME CASES

With a mounting number of antidumping cases filed against nonmarket economies (NME), especially China and in the future, Vietnam, the International Trade Administration (ITA) has

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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

decided to spell out in a new policy bulletin how it decides which market-economy country will serve as a surrogate for these communist nations. As would be expected, the agency has given itself great flexibility in the selection process, but it also promised to follow a set sequence of steps in making its choice and to be more transparent in justifying its final selection.

Because NMEs don't have the normal market-driven costs of a market economy, U.S. trade law requires ITA to construct those costs in antidumping cases using a comparable market economy as the model. But the statute doesn't define several of the terms used to select a surrogate country, including "comparable level of economic development," "comparable merchandise," and "significant producer."

The bulletin's statement of policy says in future cases involving NMEs, ITA will require the Import Administration investigating staff to prepare a memo that "must give substantive reasons on the record for why it deems the country selected to be a 'significant producer' of comparable merchandise." The memo "must include more than mere assertions, and must separately address the significant producer and comparable merchandise requirements," it added. The team also must offer an explanation, if it doesn't selected the primary choice for surrogate.

The bulletin notes that the statute doesn't require ITA to select a surrogate that is at a level of economic development most comparable to the NME country or that is the most significant producer of comparable merchandise. Nonetheless, the agency said it will follow a sequential-approach to selecting a surrogate, looking at each of these issues in order:

Economic Comparability: First, early in a proceeding, the operations team will send the Office of Policy (OP) a written request for a list of potential surrogate countries. The OP will prepare a list of proposed surrogates using World Bank data. The OP list will be made available to parties.

Comparable Merchandise: Second, the operations team will identify those countries with producers of comparable merchandise among the potential surrogates on OP's list. In all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. Where identical merchandise is not produced, the operations team must determine if other comparable merchandise is produced. This process will vary depending on the subject merchandise.

Significant Producer: Third, the operations team will determine whether any countries which produce comparable merchandise are "significant" producers of that comparable merchandise. The extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on OP's surrogate country list. Instead, a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). Since these characteristics are specific to the merchandise in question, the standard for "significant producer" will vary from case to case.

Data Considerations: Fourth, if more than one country has survived the selection process to this point, the country with the best factors data will be selected as the primary surrogate country. "Even if no issues arise regarding economic comparability and significant production, data quality is a critical consideration affecting surrogate country selection," the bulletin states.

Exceptions to the Sequencing Procedure: Occasionally, there are also cases in which it is more appropriate for the team to address economic comparability only after the significant producer of comparable merchandise requirement is met. "Cases where particular emphasis on 'significant producer of comparable merchandise' is warranted are generally those that involve subject merchandise that is unusual or unique," ITA explains.

ZOELLICK WORRIED U.S. COULD LOSE WTO CASE ON CHINESE EXCHANGE RATES

Bush administration resistance to the idea of a WTO complaint against China's alleged manipulation of the exchange rate for its currency, the renminbi, stems from concerns that the U.S. could lose such a challenge, according to U.S. Trade Representative (USTR) Robert Zoellick. "One thing I know for sure is that the first case we bring against China, which could be soon, is not one that I want to have a risk of losing," Zoellick told the Senate Finance Committee March 9. A better case against China might be against its tax policy on semiconductors, he

suggested. "If they don't fix it very soon, we are going to bring a case," he declared (see **WTTL**, Feb. 9, page 1). While Zoellick said he was reluctant to talk about a potential Section 301 case in open session, he noted the argument that China is frustrating the working of the trade system and the trade concessions it made by its exchange rate actions. One of the issues that might work against winning a WTO case is China's global trade position. "China globally is in a slight deficit, so its exchange rate deals with its global position not just the U.S. position," Zoellick said. That might mean it is not frustrating the global trading system, he noted.

Zoellick noted that a Treasury team recently was in China to discuss the exchange rate issue. "The report that I got was that the Chinese realize that they are going to need to move to flexible exchange rates and open their capital accounts. The question they are trying to figure out is exactly how to do it without causing a crisis in their banking system," Zoellick told the committee. "Where you have open capital flows and you got a weak banking system, and they got a very weak banking system, you could unleash a problem," he stated.

Zoellick's comments came as an industry group, the Fair Currency Alliance, is reviewing a draft Section 301 case to file at the USTR's office seeking a determination that China is pursuing an unfair trade policy through its effort to keep the renminbi low in value against the dollar. About 40 trade associations and the AFL-CIO belong to the alliance. The caveats raised by Zoellick aren't likely to deter the filing of the Section 301 petition in the next month or so, according to Frank Vargo, vice president for international economic issues at the National Association of Manufacturers. "This case is going to be filed," he declared.

COSTA RICA ASKS FOR INFORMATION ON RESTRICTIONS ON SED DATA

Costa Rican requirements for U.S. exporters to produce copies of their Shipper's Export Declarations (SEDs) with their import data on arrival in the country may remain suspended until the fall, according to U.S. sources. The requirement will be suspended while Costa Rican officials study U.S. Census regulations and the restrictions placed on the release of SED data to foreign governments (see **WTTL**, March 8, page 1). Census had refused to release the SED information, citing legal restrictions on the disclosure of confidential information.

"The problem, at least temporarily, is resolved," a State Department source told **WTTL**. "Our embassy raised concerns along with the Europeans and some South Americans, so Costa Rican authorities decided to put a hold on it," he reported. The director of Costa Rica's customs service has issued an internal directive exempting U.S. goods from the requirement to provide export documentation along with import manifests, the source said.

The Costa Ricans have asked the U.S. for more information on the legal restrictions placed on Census disclosure of SEDs. U.S. agencies are preparing a response to that request. Further meetings between U.S. and Costa Rican officials on the issue are expected in the coming weeks. Costa Rica did not insist on getting the SEDs because "we cannot ask for the impossible," a diplomat at the Costa Rican embassy in Washington told **WTTL**. Although other countries have complained about the new rules, the suspension only applies to U.S. exports, goods already arrived in Costa Rica and those in transit to Costa Rica on March 5, the diplomat reported. The rules don't apply to imports from other Central American countries that belong to the Central American Customs Union with Costa Rica.

NAFTA PANEL SUSTAINS ITA REMAND DECISION ON SOFTWOOD DUMPING

U.S. softwood lumber producers won a key victory March 5 when a binational NAFTA dispute-settlement panel upheld the ITA's remand decision on the antidumping rates imposed on softwood lumber from Canada. With the new ruling, the revised dumping duties ITA imposed in October will remain in place (see **WTTL**, Oct. 20, page 3). Unless Canada can win the

remaining challenges against the International Trade Commission's (ITC) threat-of-injury decision in the cases, the U.S. will be able to maintain stiff sanctions on Canadian wood.

Reviewing the new ITA determination, the panel sustained the agency on most of the challenged issues in the case. It upheld ITA's views on "like product" for purposes of calculating the dumping margins, including the Maritime Provinces in the antidumping case, the decision not to treat finger-jointed flangestock and square-end bedframe components as separate classes of product and the valuation of Tembec's wood chips. The panel gave technical victories to Canadian producers Tembec and Slocan, ordering their objections remanded to ITA again.

Despite the U.S. victory in this decision, Canadian parties apparently are waiting for the separate NAFTA panel ruling on the ITC's remand determination on its threat-of-injury finding before making another offer for an interim agreement to settle the binational dispute, said Commerce Under Secretary Grant Aldonas. That decision isn't due until the end of April. Aldonas told reporters March 10 that he hopes to hear some proposals from the Canadians when he is in Vancouver at the end of March to attend a conference where many Canadian officials and business representatives are expected to be present.

AGENCIES DEFEND CONTROLS ON MISSILE TECHNOLOGY EXPORTS

Officials from the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls tried to convince a House committee March 9 that the General Accounting Office's (GAO) criticism of their handling of missile-related exports was unfounded and failed to understand the risks posed by these products (see **WTTL**, March 1, page 3). Although he defended BIS policies and practices, Deputy Assistant Secretary for Export Administration Matthew Borman told the committee the agency is "considering possible options for revising" the catch-all rules for items subject to Missile Technology Control Regime (MTCR) controls.

Borman also reported that BIS was taking the GAO's advice and conducting an assessment of compliance with the conditions placed on licenses for these products. In 2003, BIS reviewed 565 applications for MT items, he reported.

Borman disagreed with GAO criticism that BIS wasn't conducting enough post-shipment verifications (PSV) for MTCR exports. The close interagency scrutiny given to these licenses precludes the need to PSVs for most of them. "By the time an export is approved, the U.S. government has a substantial degree of confidence that the item will not be diverted to an inappropriate end use," Borman said in his statement.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: BIS has reached settlement agreement with Alicat Scientific of Tucson, Ariz., which has agreed to pay civil fine of \$5,000 for exporting flowmeter and related power supply without approved license to Indian party on agency's Entity List. BIS will suspend \$2,000 of fine for one year and waive that portion, if firm remains in compliance with export controls.

TRADE FIGURES: U.S. merchandise exports in January of \$61.9 billion were up over 8.3% from last January, Commerce reported. Goods imports rose 8% from year ago to \$110.3 billion. Services exports jumped 9% to \$27.1 billion, as services imports gained 8.6% to \$21.8 billion.

MEXICO: USTR's office March 12 announced that U.S. has won WTO dispute-settlement panel ruling that Mexico's international telecommunication rules violate its trade obligations by imposing interconnection restrictions and not preventing Mexican carrier Telmex from engaging in anticompetitive practices.

LIVE SWINE: Several pork industry councils joined together March 5 to file antidumping and counter-vailing duty complaints at ITC and ITA against imports of live swine from Canada.

FTAA: Latest round of talks in Buenos Aires broke down March 10. "Some delegates have requested additional time to continue informal consultations," joint communique said diplomatically.