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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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BIS REACHING OUT TO UNIVERSITIES ABOUT DEEMED EXPORT REQUIREMENTS

The Bureau of Industry and Securities' (BIS) effort to inform universities about "deemed export" licensing requirements may increase the scrutiny given to foreign students and professors coming to the U.S. to do research. Foreign visitors to the U.S., including business travelers, have been facing greater difficulty getting visas since State started to clampdown on visa processing following the attacks of Sept. 11, 2001. In some cases now, State is asking professors and post-graduate students about research they may plan to do in the U.S.

BIS has stepped up its outreach to the academic community in recent months to raise its awareness of deemed export licensing requirements. In December, it participated in a program sponsored by State's Directorate of Defense Trade Controls (DDTC) with representatives from such major research schools as the University of California Berkeley, Stanford, Cal Tech, and MIT.

In the fiscal year that ended Sept. 30, 2003, BIS received only one deemed export license from a university. Based on recent discussions, however, it expects to receive more this year. BIS has alerted schools that foreign students or professors working on research that involves equipment or technology that would need a license if exported might be subject to deemed export requirements. It has discussed both fundamental and applied research, but has not given universities clear guidance on what type of research might trigger licensing requirements.

NEW ITA RULING STILL FINDS SUBSIDIES FOR CANADIAN LUMBER

Commerce's International Trade Administration (ITA) has switched to log prices in Canada plus log import prices as the new benchmark it proposes to use to determine the level of subsidies given to the Canadian softwood lumber industry. In its Jan. 12 remand determination to a NAFTA binational panel, ITA used the new benchmark to find a new subsidy rate of 13.23%, which is 5.57% below the 18.8% rate found in its original countervailing duty (CVD) decision.

Because the panel declared ITA's use of cross-border lumber prices in the U.S. as the benchmark in its original determination to be inconsistent with U.S. trade law, the agency was forced to reopen the record in the case to seek data for a new way to measure subsidies (see **WTTL**, Jan. 12, page 3). "To derive the market value of Crown timber we are relying on the market principle of derived demand," ITA said in its remand determination. "Given the circumstances of this case, the best method to determine whether provincial stumpage prices are consistent with market principles is deriving stumpage prices from log prices," it explained. "It is

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generally accepted that the market value of timber is derivative of the value of the downstream products. This is the basic market principle that underlies the department's benefit analysis in this case," ITA continued. In the remand decision, ITA also bowed to the panel's ruling and established procedures for excluding lumber produced from timber from the Maritime provinces, used railroad ties over 10 years old and old wood. It also slightly modified its numerator-denominator calculation determining the percentage of subsidy in finished lumber products.

The agency rejected Coalition for Fair Lumber Imports arguments that Canadian domestic log prices are distorted by provincial stumpage programs and log export restraints in both Canada and the U.S. The Coalition wanted ITA to use U.S. log prices as its benchmark. "While we acknowledge petitioner's concern, we are not persuaded that the alleged suppression eliminates Canadian market log prices as an appropriate benchmark for purposes of this remand determination," ITA stated.

While the Coalition was pleased that ITA continued to find a significant subsidy given to Canadian lumber, it still disagreed with the proposed new rate. "It is clear that Commerce is now dramatically underestimating the full magnitude of the subsidies based on a lack of data in the current proceeding and the original NAFTA panel report," said Coalition Chairman W.J. "Rusty" Wood. The new proposed CVD rate won't be adopted until – or if – the ITA remand determination is accepted by the NAFTA panel.

OFAC ALLOWS ENHANCED WEBSITE LISTINGS FOR IRANIAN FIRMS

In a recent ruling, Treasury's Office of Foreign Assets Control (OFAC) said the posting of enhanced information about an Iranian firm on a U.S.-based website would not violate the Iranian Transactions Act (ITR). "The listing of basic information on a website in a uniform format for companies around the world, including Iran, by a U.S. person is not prohibited by the ITR," it said. Providing marketing services to the Iranian firm, however, would be.

As long as the material posted, including enhanced top-of-the-page listing, on the website is "pre-existing information" it could be carried on the website. "The U.S. company would not be prohibited from accepting previously existing, camera-ready brochures and pictures, fully created and in existence, from Iran for placement on the website," OFAC ruled. Such a transaction would be analogous to running an advertisement in a newspaper, it added.

Website operators can also provide enhanced search assistance to their subscribers to find the Iranian firm's listing "unless the support were provided to persons in Iran," OFAC said. It would not violate the ITR to provide direct e-mail service to a subscriber to reach the Iranian entity as part of an enhanced listing agreement "provided that you provide no services to the Iranian entity in developing or customizing the inquiry form," the agency declared.

In a separate ruling, OFAC advised a firm that a U.S. person can pay court costs to an Iranian entity as part of a court judgment without a license. "The regulations generally do not prohibit the payment by a U.S. person of court costs relating to litigation with an Iranian entity and, in this instance, no license is required by the U.S. company to pay such costs," it said. The payment of other court-ordered costs would be permitted if they covered services before Iranian sanctions were imposed in May 1995. Payment for services performed after May 1995 "constitute a prohibited trade-related transaction." Nonetheless, it issued the firm a license to pay the judgment. Any payments would have to be properly routed through a non-U.S. bank, it advised.

U.S. INDUSTRY OBJECTS TO EXPANDING APPAREL QUOTA IN 2004

WTO General Council Chairman Carlos Perez del Castillo has urged apparel exporting countries and developed importing countries to reach bilateral agreements on how to make up for any shortfall in quotas in 2004 due to the end of the Multifiber Arrangement (MFA) at the end of

the year. Castillo's advice came after he failed to find consensus among WTO members on addressing the issue of "carryforward" on a multilateral basis under the Agreement on Textiles and Clothing (ATC) (see **WTTL**, Nov. 24, page 1).

U.S. apparel importers and retailers are concerned about the lack of carryforward, claiming supplies will be squeeze because of the quota "borrowed" from 2004 in 2003 and the lack of 2005 quota to borrow in 2004. They have petitioned the U.S. government to increase quota levels in 2004 to deal with this shortfall.

A broad array of textile, yarn and fiber associations, along with UNITE, the garment industry union, wrote to President Bush Jan. 15 urging him to reject the petition. "Carryforward should be strictly forbidden in 2004 due to the fact that there will be no quotas to borrow from or reconcile in 2005," the groups wrote. "Moreover, importer complaints that there will be a quota shortage are completely unfounded," they argued, noting that current quotas include an annual growth factor that will provide increased access for these goods.

Sources at the WTO expect some countries to take Castillo's suggestion and increase quotas for imports where shortages may occur in 2004. Several options are being discussed for applying both the carryforward and swing provisions of the ATC. But some participants in the talks aren't convinced the shortage represents the crisis exporting countries have painted. "There will be an impact and a great deal of uncertainty," one source conceded. "A lot of adjustments will have to be made," he added. That adjustment may be helped through programs of the World Bank or the Organization for Economic Cooperation and Development.

There is also a sense in Geneva that the end of the MFA is not a crisis but a successful implementation of the Uruguay Round agreement to end textile and apparel quotas – a goal sought by exporting countries. "The way we see it here it is a major achievement of the multilateral trading system to integrate the sector into normal WTO rules," one source declared.

ZOELLICK SEEKS TO JUMPSTART STALLED TRADE AGENDA

The same week President Bush called for sending humans to Mars, U.S. Trade Representative Robert Zoellick urged World Trade Organization (WTO) members to make significant progress in completing the Doha Round negotiations by the end of 2004. Which goal is more achievable remains to be seen. Zoellick's Jan. 11 letter to some 145 WTO trade ministers, however, has sparked a positive reaction that has dispelled some of the gloom about prospects for any progress in trade talks an election year.

The push to invigorate the WTO negotiations, especially on agriculture, appears to reflect the White House's recognition that the two biggest items on its trade agenda – the Doha Round and the Free Trade Area of the Americas – are stalled and can't be restarted without addressing agriculture. It also shows that President Bush is willing to run on a free trade platform and continue trade liberalization efforts in the face of a go-slow, if not protectionist, stand expected by whomever the Democratic presidential candidate will be.

Zoellick's 6-page letter won praise for showing that the U.S. was ready to resume a leadership role in the Doha talks and because it laid out all the key issues blocking negotiations in a detailed and precise way, one source in Geneva noted. "He's a very clever thinker," the source opined. European Union (EU) sources also praised the initiative, especially in an election year. "We thought this was going to be a year for the dogs," one EU spokesperson said. Some skepticism remains, however, with U.S. trading partners waiting to see if Washington is actually ready to make the concessions, especially on domestic farm supports and on import-sensitive products, that will be needed to move the talks forward.

"I do not want 2004 to be a lost year for the WTO negotiations," Zoellick wrote. He called for WTO members to reach agreement on the key modalities or formulas for reducing farm and

industrial tariffs, export subsidies and domestic support in all negotiating areas by mid-year and for a ministerial meeting to be held at the end of the year in Hong Kong. “We need strong engagement by capitals, particularly at senior levels, to test ideas and possible compromises,” he stated. Zoellick promised to embark on a series of visits to capitals around the world in the coming months “to hear other ideas and assessments of how we can advance together.”

To move on agriculture, Zoellick embraced positions proposed in the draft Cancun ministerial declaration that was never adopted. “I believe that we will not be able to solve the puzzle of the DDA [Doha Development Agenda] unless we have an agreement to eliminate export subsidies by a date certain,” he wrote.

A EU spokesperson said the EU has already said it is willing to make such a commitment for the most trade distorting subsidies and is waiting to hear requests in this area. Zoellick also repeated the U.S. call for “a significant narrowing of the differences” of caps countries have on so-called amber box subsidies and for imposing discipline on blue box subsidies.

Zoellick endorsed the use of a “blended formula” for cutting farm tariffs and market barriers. This approach would mix the straight percentage reduction method used in the Uruguay Round with what is known as the “Swiss formula” for targeting cuts at specific high or peak tariffs. WTO representatives in Geneva already have drafted a model formula that will allow countries to conduct a simulation to determine how such reductions would affect their tariffs. While the formula or modality may be adopted this year, sources in Geneva say the actual level of reduction plugged into the final formula won’t be agreed upon until the very end of the round.

* * * BRIEFS * * *

ANTIBOYCOTT: BIS apparently issued only one warning letter in 2003 for “potential violation” of antiboycott rules. Sole letter posted recently on agency website went to Bank One in September. Bank had voluntarily discovered and disclosed that it provided information on business relationship with boycotted country on bill of lading. Given these facts, BIS said it was closing investigation.

AVIONICS: As previously reported (see **WTTL**, Dec, 15, page 3), State in Jan. 7 Federal Register amended ITAR to remove “certain quartz rate sensors when the sensors are integrated into and included as an integral part of a commercial standby navigation system for use on a civil aircraft or exported solely for integration in such systems.” Sensors are to be controlled under CCL, but BIS hasn’t issued new rules taking up jurisdiction.

KOSHER CHICKENS: By 5-1 vote Jan. 14, ITC made preliminary determination that imports of allegedly dumped kosher chicken from Canada are not injuring U.S. industry. Action ends investigation.

TRADE FIGURES: U.S. exports of goods in November of \$63.8 billion were up 10.5% from last November, Commerce reported Jan. 14. That was highest level since February 2001 and included record exports for foods and consumer goods. Services exports rose 6.6% to record \$26.8 billion from year ago. Goods imports were up 5.4% to \$107.4 billion and services imports were also record \$21.2 billion, increase of 8% from November 2002.

BYRD AMENDMENT: EU, Canada and six other countries Jan. 15 asked for WTO permission to retaliate against U.S. for its failure to repeal Byrd Amendment, which distributes antidumping and CVD duties to companies that petitioned for trade relief. WTO has found law inconsistent with trade rules, but U.S. failed to come into compliance with decision by Dec. 27 deadline.

DOMINICAN REPUBLIC: USTR Robert Zoellick was in Dominican Republic Jan. 14 as part of week-long start of talks aimed at “docking” DR with CAFTA. At press conference, Zoellick said U.S. will use Chile and Singapore FTAs as framework for DR FTA, but “we will be customizing the provisions dealing with agriculture, goods, textiles, services, financial services, and investments.”

CUSTOMS: In Jan. 14 Federal Register, CBP proposed raising to \$5,000 from \$2,500 cutoff for publishing in newspaper its intent to forfeit seized goods.

U.S. TRADE POLICIES: WTO Trade Policy Review of U.S. released Jan. 14 generally gives positive assessment of trade liberalization efforts, notes increased security measures since 9/11, but warns that perceptions about growing trade deficit “could give rise to protectionist sentiment.”

SNAP: BIS has extended deadline for comments on mandatory use of SNAP+ for filing export licenses electronically until Feb. 12.