

Washington Tariff & Trade Letter[®]

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

Vol. 25, No. 48

December 5, 2005

PANEL TO URGE CAUTION ON NANOTECHNOLOGY EXPORT CONTROLS

At its Dec. 6 meeting, the President's Export Council (PEC) is expected to review and approve a draft letter to President Bush urging the U.S. to limit future export controls on nanotechnology products and technology to those with "clear military and national security applications." The letter, prepared by a working group of the PEC subcommittee on export administration (PECSEA), recognizes that many nanotechnology applications may be dual-use and fall under existing export controls, but calls for a "rational approach to evaluating potential nanotechnology export controls (see **WTTL**, Oct. 25, 2004, page 3).

The draft recommends that: (1) Controlled nanotechnology items must have clear military significance or potential for sensitive use. (2) Nanotechnology export controls must be multinational to be effective. (3) Controls on nanotechnology must not place an unreasonable burden on the U.S. economy.

"Due to the many diverse and discrete areas of scientific knowledge, technology and applications that embody nanotechnology, the process for reviewing nanotechnology in relation to export controls will require a robust and evolving framework for independently evaluating each area," the letter notes. It says it is impractical to establish an export policy on nanotechnology per se. Controls on products incorporating nanotechnology "should not exceed U.S. controls on products with the same functionality that do not incorporate nanotechnology," it recommends.

The draft points to the worldwide development of nanotechnology and the likelihood that many discoveries and innovations stemming from it will be brought to market first in other countries. Industry experts have suggested that a likely early use of nanotechnology will be in consumer products, including video games, which are produced outside the U.S., particularly in China. "Export controls must not place restrictions on the U.S. R&D and academic communities that adversely affects our ability to develop leading-edge commercial applications of nanotechnology and attract and retain the best minds from abroad or that prevents U.S. industry from fully participating in the international marketplace," the letter states.

AS HOPES DIM FOR WTO MINISTERIAL, FUTURE OF DOHA ROUND IN DOUBT

The future of the Doha Round is now at risk. A year after ministers on Aug. 1, 2004, reached a Framework Agreement aimed at making significant progress in all segments of the round before the Hong Kong Ministerial Dec. 13, the failure to meet those goals has lowered the chances for negotiations to be completed by the end of 2006. There is a strong possibility that, like the Uruguay Round, which failed to be completed by its original December 1990

Copyright © 2005 Gilston-Kalin Communications, LLC. All rights reserved. Reproduction, copying, electronic retransmission or entry to database without written permission of the publisher is prohibited by law.

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

deadline, the Doha Round could stretch out an extra two or three years until after the European Union (EU) goes through another series of reforms of its Common Agriculture Policy (CAP). While ministers may set new deadlines in Hong Kong for decisions in the coming year, previous deadlines have been missed, and there are no signs that members will be more diligent in keeping to new timelines. A key issue is whether ministers will actually want to negotiate on the substance of the declaration in Hong Kong or will just set deadlines for next year.

If trade ministers merely decide to endorse the bland rhetoric and vague commitments of Director General Pascal Lamy's draft ministerial declaration, they should be able to wrap up their meeting in two days and go out partying and shopping (see story below). If they want to save the Doha Round, they will have to spend day and night the full week making some real concessions.

In addition to the draft ministerial declaration, Lamy has prepared a set of eight questions, five on agriculture and three on non-agriculture market access (NAMA), that he will present to ministers in Hong Kong. The questions, which Lamy read to the WTO General Council Dec. 2, ask for specific decisions on the formulas for cutting domestic farm support, reducing agriculture and industrial tariffs, and providing parallelism in farm subsidies. They also ask how much flexibility should be allowed in NAMA tariff cuts and what to do with unbound tariffs.

WTO delegates talk about "soldiering on" with hope for a breakthrough, but they also say they feel like they are in the "center of a no-man's land." One diplomat described the situation as "dire." A Brazilian official continued to blame the EU for the impasse, calling Europe a "big block of ice" that won't break. "In some ways it's even worse, because the EU has said it will not negotiate before Hong Kong, and will not negotiate in Hong Kong," the Brazilian said.

LAMY'S DRAFT [...] FOR HONG KONG LEAVES [...] UNDECIDED

Hopes that Pascal Lamy as WTO Director General would play a more forceful role than previous DGs in pushing the Doha Round talks to achieve concrete results at the Dec. 13-18 Hong Kong Ministerial have not been fulfilled yet. In drafting a ministerial declaration for the meeting, Lamy concedes he has deliberately not included positions on which members haven't agreed. WTO sources claim Lamy is working behind the scenes to try and get more concessions for the final draft before he presents it to ministers in Hong Kong.

After releasing his first draft Nov. 26, Lamy issued a revised text on Dec. 1. The first version was merely a compilation of reports from negotiating committee chairmen, with most decisions left in empty brackets or identified as "working hypotheses" (see **WTTL**, Nov. 28, page 2). The second draft clarified some language but still failed to force ministers to make any tough decisions.

Lamy is trying avoid a repeat of the failed Seattle and Cancun ministerials where the chairmen of the negotiations, with input from a few countries, drafted declarations that tried to force members to make difficult choices. At those meetings there was a revolt, particularly among developing countries, against the process' lack of transparency. "This is a no-surprise draft and one that has fully taken into account the bottom-up approach that we have been following strictly," Lamy told the General Council Dec. 2. "It has tried to capture in a better way the current situation in the negotiations without trying, in anyway, to push the envelop," he added.

Lamy's revised draft was met with enthusiasm and effervescence by some officials who said it was a more "operational" document that ministers could use as the basis of negotiation. But others were less enthusiastic. "This is not a document from which you can have a substantive negotiation, because in things like market access and ag, there is absolutely no reference to a formula, no reference," a Brazilian diplomat told **WTTL**. "With this parameter set by the EU of not allowing any reference to numbers anywhere, -- anywhere because they don't accept them in ag -- then it's virtually impossible to do anything," he said. A WTO official defended the draft. "In my view, there is a higher level of commitment to success among the members

now in terms of this conference than we saw before Cancun or Seattle, but I would also say there is a greater degree of angst and sober reflection about the possibility of the meeting not being successful," said WTO spokesman Keith Rockwell. "Based on the discussions that I've seen on this particular process in comparison to the other preparatory processes, this has been by far the most smooth in terms of acceptance by members," he noted.

JUDGE SLAPS CUSTOMS ON DEEMED LIQUIDATION

Court of International Trade (CIT) Judge Jane Restani Dec. 1 rebuked Customs for ignoring instructions from Commerce on the revised duty rate on roller and ball bearings and then requiring the importer to seek duty refunds through the "deemed liquidation" process. In *Koyo Corp. v. U.S.* (Slip Op. 05-152), Restani ordered Customs to reliquidate the entries at the appropriate duty rates and refund the duties owed with interest.

The goal of the deemed liquidations provision in the Trade Act "was not to allow Customs to ignore the outcome of years of litigation and to thumb its nose at Commerce and the courts," Restani wrote. "Customs cannot ignore Federal Register notices or throw liquidation instructions in a drawer and wait six months to elapse from the time of public notice of new rates, so that it thereby collects duties to which it is not entitled," she declared.

U.S., EU REACH COMPENSATION DEAL ON EU ENLARGEMENT

The European Union has agreed to compensate the U.S. for the reduced market access American exports have faced in the 10 East European countries that joined the EU in May 2004. Because those countries had to harmonize their tariffs and import rules, especially for agriculture products, with the EU's, U.S. exports encountered higher barriers to entry. The agreement, initialed in Brussels Nov. 30, still must be approved by EU member states.

Under the deal, which averts a U.S. challenge at the WTO of the EU's enlargement, all EU countries will permanently reduce tariffs on protein concentrates, certain fish, and some chemicals. The EU will also open quotas for U.S. boneless ham, poultry and corn gluten meal and expand quotas on a variety of farm products, including beef, pork, rice, barley, wheat and live bovine animals.

CRACKDOWN ON AIRCRAFT PARTS EXPORTS NETS TWO GUILTY PLEAS

Two cases on opposite ends of the country illustrate how the government is pursuing illegal exports of aircraft parts. In one case, Richard Greenleaf, the former vice president of NewCal Aviations, Inc., of Little Ferry, N.J., pled guilty in Newark U.S. District Court Nov. 30 to one count of making a false statement in connection with the export of aircraft parts to a Specially Designated Foreign National of Libya even after Bureau of Industry and Security (BIS) special agents had visited the company and warned it against exporting the parts without a license.

According to Greenleaf's plea agreement with the Newark U.S. Attorney, which was obtained by WTTL, BIS agents visited NewCal in April 2001 and informed him of the licensing requirements for the DeHaviland aircraft spare parts the firm was exporting. They also told him they knew that he had exported parts to Mediterranean Aviation Company, Ltd. (Medavia) a firm located in Malta which was a designated national related to the government of Libya.

Despite this visit, NewCal exported parts to Medavia between 2002 and 2004 without the approval of BIS or Treasury's Office of Foreign Assets Control, the plea agreement notes. The U.S. attorney and Greenleaf agreed that the violation to which he was pleading guilty carries a Base Offense Level of 6 under Federal Sentencing Guidelines. They agreed, however,

on a two level reduction to Level 4 because Greenleaf has accepted personal responsibility for his action. He will be sentenced in March 2006. NewCal separately pled guilty to one count of falsifying and concealing a material fact in connection with the exports and one count of exporting to a Specially Designated National. It agreed to be placed on two years' probation and to pay a \$200,000 fine.

In the second case, Amanullah Khan of Brea, Calif., pled guilty Nov. 28 in the Santa Anna, Calif., U.S. District Court to making false airworthiness certifications about \$5 million worth of aircraft parts and attempting to export other parts to China without a license. The exporting part of the case resulted from an undercover operation called Operation Dark Star conducted by the Immigration and Customs Enforcement Bureau (ICE).

ICE agents conducting Operation Dark Star posed as Chinese arms brokers and arranged with Khan to have fighter aircraft and helicopter parts exported to China. Khan pled guilty to conspiracy and violating the Arms Export Control Act. For both the false certification and exporting violations, Khan, who had prior convictions for making false certifications, was sentenced to 188 months in prison and ordered to pay \$5.4 million in restitution.

BUSH ADMINISTRATION RISKS BACKLASH ON CHINA CURRENCY

The White House has taken a calculated risk that Congress won't enact legislation – or override presidential veto – that would retaliate against China's continued refusal to make significant adjustments in the value of its currency, the yuan. Despite threats from lawmakers to impose a 27% duty on Chinese imports to compensate for the undervalued yuan, the Treasury Nov. 28 again refused to name China or anyone else a currency manipulator in its annual report on international exchange rate policies.

“To say congressional patience is running out on the currency issue is a tremendous understatement,” said Sen. Lindsey Graham (R-S.C.), who, along with Sen. Chuck Schumer (D-N.Y.), has sponsored a bill to impose the retaliatory tariffs. “I expect in the near future, unless some dramatic change occurs, the Congress will speak loudly and forcefully on China's continuing currency manipulation,” Graham said in a statement after Treasury released its report.

China's slight adjustment of the yuan in July was an important step but progress has been too slow, Treasury Secretary John Snow said in statement released with the report. “The actual operation of the new system is highly constricted,” he said. The U.S. would like to toss the yuan hot potato (or yam) to the International Monetary Fund (IMF). Snow said Washington has asked the IMF to provide a comprehensive report to its board on how to promote greater flexibility in exchange rates in China and other Asian countries. IMF spokesman Thomas Dawson said the IMF's “position on the Chinese exchange rate regime is well known,” noting November consultations with China. “We also note the request for a comprehensive report and will consider how to incorporate it in our surveillance work,” he said.

*** * * BRIEFS * * ***

USTR: Scott Quesenberry, legislative director for Sen. Elizabeth Dole (R-N.C.), name USTR chief textile negotiator. He is graduate of Dartmouth, with 1996 law degree from Emory.

EXPORT ENFORCEMENT: Trans-Media Services Ltd. of Balzan, Malta, and its chairman, Mohammed Saleh Sweidan, have reached settlement with BIS, which cut its charges against them for their agreement to pay fines of \$19,800 each for exports on satellite communications equipment to Libya. Charging Letters made five charges, but settlement cites only two for misrepresentation and concealment of facts.

BIS: Agency amended EAR in Dec. 1 Federal Register to drop import certification requirements for exports to new NATO members, Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia, plus India.