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

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GOVERNMENT OBJECTS TO LACHMAN'S LIGHT SENTENCE

In an unusual gesture, a government attorney stood up and formally objected to the relatively mild sentences Boston U.S. District Court Judge Douglas Woodlock imposed late on Nov. 18 on Walter Lachman, Maurice Subilia Jr. and Fiber Materials, Inc.(FMI), for their violation of the Export Administration Act (EAA). The objections may set the stage for an appeal of Woodlock's rejection of the government's call for up to four years of imprisonment for the two men and a larger fine on the company. Lachman and Subilia also may appeal their conviction, but no decision has been made yet, their lawyers told WTTL (see **WTTL**, Oct. 10, page 1).

Woodlock sentenced Lachman and Subilia to three years' probation and a \$250,000 fine each. He ordered Lachman to spend the first year of probation in home detention. Because Subilia "testified untruthfully," according to Woodlock, he was ordered him to spend the first six months of probation in a half-way house and then one year in home detention. Woodlock fined FMI \$250,000 but imposed only a special assessment of \$400 on a fourth defendant, Materials International.

After a federal jury in 1995 convicted the men and FMI on two counts of violating the EAA by exporting a control panel for a hot isostatic press to India without a license, Woodlock spent eight years examining the government's claim that the panel met the "specially designed" criterion which triggered a licensing requirement. In 2003 he issued an order of acquittal notwithstanding verdict. The government appealed, and in November 2004, the First Circuit Court reversed his ruling, rejecting the claim that the "specially designed" provisions were unconstitutionally vague and agreeing that specially designed can mean "capable of use with."

Woodlock said Lachman and Subilia "sought for their own private economic advantage and heedless of the national security interest of this country to exploit imprecision in the regulatory regime for controlling exports." But he asked, "Is there a punishment for arrogance? I don't think so." The judge rejected the government's contention that the control panel posed a risk to national security. "I'm satisfied from the evidence in this case that the realistic potential use of the technology that was transferred and is at issue here for the Indian missile and proliferation program is de minimis and was de minimis," he declared. [**Editor's Note:** A copy of the transcript of the Lachman sentencing hearing will be sent to WTTL subscribers on request.]

ITA RULING ON CANADIAN LUMBER LEAVES LONG PROCESS AHEAD

It may be another two years before the International Trade Administration's (ITA) revised countervailing duty (CVD) ruling on softwood lumber from Canada results in the return of any

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duty deposits to importers, lawyers for Canadian producers conceded. Responding reluctantly to a NAFTA binational panel order, ITA Nov. 22 said it has recalculated the subsidy margin on Canadian lumber and come up with a de minimis rate of 0.80% (see **WTTL**, Nov. 21, page 3).

But rather than terminating the original CVD order and returning the deposits, Commerce General Counsel John Sullivan said ITA will apply the ruling prospectively only on imports entering after the final revised order is published. That order might not come for another two months pending industry comments and review of the new remand determination by the NAFTA binational panel.

Sullivan also said ITA will continue to conduct administrative reviews on the imports entered before the final order and any refunds on earlier deposits would only come after ITA completes its reviews. Canadian respondents are already challenging the first administrative review of the current antidumping order on Canadian lumber, and a long litigation process looms over any CVD reviews that maintain duties on Canadian imports. The U.S. also is weighing whether to seek an Extraordinary Challenge Committee review of the panel ruling on the CVD order.

Ottawa added more fuel to the dispute Nov. 24 with the announcement of a five-year, C\$1.5 billion package of aid for its lumber industry. The package, worth about US\$1.28 billion, would help forest product-dependent communities diversify, support innovation in the industry, and facilitate loan insurance. Both USTR Rob Portman and Commerce Secretary Carlos Gutierrez issued statements saying they were disappointed by Canada's action. "While we continue to believe that a long-term durable settlement is the only way to resolve this dispute, Canada's actions complicate our attempts to reach a negotiated solution," Portman said.

Canadian sources claim ITA's decision to bow to the NAFTA panel but hold the deposits was made at a Nov. 15 White House meeting attended by a half dozen Bush administration officials, including ITA Under Secretary Franklin Lavin and Deputy USTR Susan Schwab, and representatives of the Coalition for Fair Lumber Imports. The meeting was revealed in an ex parte meeting memo placed in the public files at Commerce. "That's inaccurate," said Harry Clark, an attorney with the Coalition's law firm Dewey Ballantine, who attended the meeting. The Coalition presented information on log prices and subsidies in Canada, according to the memo. "They didn't do what we wanted. We didn't want a de minimis finding," Clark told **WTTL**.

DOHA COMMITTEE CHAIRS SUBMIT DRAFT LANGUAGE FOR MINISTERIAL

The wide divisions that still hamper Doha Round negotiations three weeks before trade ministers are scheduled to meet in Hong Kong were highlighted in the progress reports and draft ministerial declaration language that the chairmen of the various Doha negotiating committees submitted to the World Trade Organization's (WTO) Trade Negotiations Committee (TNC) the week of Nov. 21. WTO Director General Pascal Lamy was scheduled to produce a consolidated draft declaration from these submission on Saturday, Nov. 26 (see related stories pages 3 & 4).

WTO members expect to continue a heavy pace of talks on Lamy's draft the week of Nov. 28. Trade officials who have scaled back Hong Kong ambitions and put off a deal on "modalities" for cutting agriculture and industrial tariffs until next year are working to fix the timelines and objectives for negotiations in 2006.

"In Hong Kong again we're not just taking stock of where we are since July 2004," said USTR Rob Portman. "We're trying to move beyond that and make Hong Kong also an opportunity to give more direction to negotiators," he told reporters in Geneva Nov. 22.

As trade officials debate the coming Lamy text, "the idea is always to try to see if we can go beyond, not in terms of reopening the draft, but see if there's anything that can be discussed that can be useful to make Hong Kong more than what is in the draft," a Brazilian official said. "You have on one hand the draft ministerial text and on the other the modalities, which aren't there and won't be there in Hong Kong," he added. "Whatever we can do, that would be pro-

gress," the official noted. There also will be advance discussions on procedures, which often take up a lot of time at ministerial meetings. "Let's see if we can start early on in the ministerial to try to tackle these things," the Brazilian official said. "So even identifying some issues – I'm not sure they can agree on issues -- but identifying other issues would already be an outcome of this meeting next week," the official said.

The well-acknowledged problems in the agriculture talks were underscored in the report of the chairman of the Committee on Agriculture, New Zealand Ambassador Crawford Falconer. In his report he says he considers the draft text on full modalities to be "a task postponed," the timing for which lies "in the hands of members." The report includes the range of numbers that have been discussed in talks on cutting domestic supports and tariffs, but Falconer carefully refers to them as "a working hypothesis" and conditional.

The report of the chairman of the services negotiations, Mexican Ambassador Fernando de Mateo, says, "On the issue of setting numerical targets and indicators, positions remain too divergent to be bridged by any compromise language." It says it is up to the members to consider whether this issue should be pursued further at the TNC. In a proposed annex for the Ministerial Declaration, Mateo calls for new and improved offers in services to begin with "commitments at existing levels of market access." In Mode 4, which covers the movement of people, the annex proposes that offers should be "de-linked from commercial presence." In addition, it supports plurilateral talks on specific service sectors. Such an approach was taken after the Uruguay Round in financial services and basic telecommunications.

The chairman of the negotiating group on non-agriculture market access (NAMA), Iceland Ambassador S. H. Johannesson, says "a common understanding on the formula, paragraph 8, flexibilities and unbound tariffs" is a critical objective for Hong Kong. While progress has been made, "establishment of full modalities is, at present, a difficult prospect," he reports. There is support for using the Swiss Formula to cut high tariffs more than low tariffs, he indicates. Differences remain, however, on the "coefficients" or rate of reductions in each category and whether there should be a limited number of coefficients or multiple coefficients.

DOHA TALKS ON TRADE RULES COULD SEEK BROAD CHANGES

Import-sensitive U.S. industries are likely to cry foul if the WTO Ministerial meeting in Hong Kong agrees to adopt language in its final declaration proposed by the chairman of the Doha Negotiating Group on Rules. The draft submitted to the Trade Negotiations Committee (TNC) Nov. 22 calls for consideration of changes in antidumping rules to "avoid the unwarranted use of antidumping measures, while preserving the basic concepts, principles and effectiveness of the instrument." The text goes far beyond the U.S. goal of merely strengthening disciplines.

The draft drew a negative reaction from Rep. Charlie Rangel (D-N.Y.), ranking Democrat on the House Ways and Means Committee. "The text opens the door to a broad re-negotiation of the WTO Antidumping Agreement and contains numerous other flaws," he said in a Nov. 22 letter to USTR Rob Portman. "Accordingly, I urge that it be rejected as a basis for further discussion or negotiation in this critical area," said the letter, which was also signed by Rep. Ben Cardin (D-Md.).

The draft says antidumping rules should be modified to limit the costs and complexity of investigations while strengthening due process, transparency and predictability. "In the negotiations on antidumping, the Negotiating Group on Rules has been discussing in detail proposals on such issues as determination of injury/causation, the lesser duty rule, public interest, transparency and due process, interim reviews, sunset, duty assessment, circumvention, the use of facts available, limited examination and all-others rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations," the draft notes. The report says there has also been "broad agreement" on the need to strengthen disciplines on subsidies in the fisheries sector.

DEVELOPING COUNTRIES HAVE DIFFERENT AGENDA FOR HONG KONG

Developing countries are heading to the WTO Ministerial Meeting with different objectives than most industrialized nations. Indian Commerce Minister Kamal Nath, whose views reflect many small and poor countries, provided an insight into that agenda following talks of the G-4 Plus One Nov. 22. "A successful round for developing countries means a round where there's no displacement of poor farmers at the cost of subsidized market access. A successful round means that market access for developing countries for products of their interest is obtained through an end to agriculture subsidies and removal of tariff peaks," he said.

Success also will mean "removal of non-tariff barriers, which again block trade flows of developing countries," he added. Another goal would be the "prevention of biopiracy and misappropriation of traditional knowledge." Also being sought is an amendment to TRIPS to reflect the 2004 deal on drugs and public health.

Nath shares the view of many negotiators that a deal on full modalities for cutting agriculture trade distortions won't be achieved in Hong Kong. "Let me put it squarely, the fact is that we are, because of the lack of time now, we are having to recalibrate the full fixing of modalities in Hong Kong to a later date," he said. But trade officials don't "want to just not leave it there. We just don't want to leave it open ended," he said. "We are not looking at postponing this round at all. We are going to stick to 31 of December 2006," he said.

Trade ministers from the Caribbean who met Nov. 19 also raised concerns about how the talks were addressing small economies such as theirs. They reportedly agreed to insist that the Hong Kong Ministerial Declaration allow the region to preserve its long-standing preferences, provide flexibility to designate Special Products and call for a meaningful Special Safeguard Mechanism. They also called for better access in the area of services supply.

The Caribbean also wants recognition of the developmental aspect of the Doha Round in formulas for cutting farm and industrial tariffs and in special and differential treatment for developing countries. Caribbean officials also restated their objections to the new tariff formula the EU has proposed for banana imports. They expressed their concern with the decision of Honduras to place bananas on the agenda of the Hong Kong meeting.

HONG KONG TO MARK START OF YEAR-LONG MINISTERIAL ROLE IN DOHA

The low expectations for the WTO's Hong Kong Ministerial Meeting are now prompting trade ministers to consider the calling of another quasi-ministerial meeting early in 2006 to get the round back on track to finish by the end of the year. Trade officials are being cautious not to call the post-Hong Kong meeting a ministerial. Instead, ministers may be invited to attend a regular WTO General Council meeting in March.

2006 could see a series of mini-ministerials similar to those that have been held during 2005. The most recent of those was Nov. 22 when USTR Rob Portman met in Geneva with his counterparts from the European Union (EU), Brazil, India and Japan. This group is now being called the G-4 Plus One. The group may meet again during the next WTO General Council meeting Dec. 1-2.

Prospects for a continuing round of ministerials was raised by India Commerce Minister Kamal Nath. "There will be several meetings after Hong Kong," he said. After the failed Cancun Ministerial "the pattern of negotiations changed," Nath noted. Since then, ministers have met every two or three months. "Work will continue. Ministers will keep meeting. That's a major change in the negotiating process in the onward movement in the WTO," he said. USTR Rob Portman also endorsed the call for a post-Hong Kong meeting. "I believe we ought to have another meeting," he said. "Without a meeting, without setting up sort of a backstop, it's tough to make progress," he added. "We've got to make sure that coming out of Hong Kong we don't simply all breathe a sigh of relief and go back home...and leave Doha behind."