

# Washington Tariff & Trade Letter<sup>®</sup>

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

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## **SPOONER NOMINATED FOR ITA IMPORT ADMINISTRATION POST**

Two days after the U.S. signed the textile restraint agreement he negotiated with China, David Spooner, chief textile negotiator in the office of the U.S. Trade Representative (USTR), was nominated by President Bush Nov. 10 to be the next assistant secretary of Commerce for import administration(see story below). The post in the International Trade Administration (ITA) has been vacant for almost a year since James Jochum left the job to join the private sector.

Before joining the USTR's office, Spooner was administrative assistant, press secretary and legislative director for Rep. Sue Myrick (R-N.C.). Earlier he was on the staff of the House Rules Committee and communications director for the House Agriculture Committee. He has a law degree from the College of William and Mary and a BA from the University of Virginia.

## **TEXTILE INDUSTRY NOW LIKELY TO TURN TO ANTIDUMPING CASES**

With the U.S. and China signing a comprehensive agreement Nov. 8 to restrict imports of Chinese textiles and apparel, the U.S. textile industry is now expected to turn to the use of the antidumping law to stem the tide of imports expected from other countries that are moving in to pick up the market denied to China. Even before the deal was inked, U.S. importers and retailers were shifting sourcing to such countries as India, Bangladesh, Indonesia, Thailand, and Cambodia, which are free from quotas and capable of producing most of the products that are now under restrictions from China.

An early target may be towels from India and Pakistan, one industry source suggested. Textile manufacturers, however, may find it hard to launch cases against apparel imports, because they are likely to have difficulty getting more than 50% of the interested producers of like products – U.S. companies that have shifted production abroad – to support the cases as required by antidumping rules.

The new textile deal covers 34 textile and apparel categories, including 19 already subject to safeguard restrictions. Five categories that are the subject of pending safeguard petitions, including certain shirts, skirts, nightwear and coats, aren't covered. The U.S. agreed to "exercise restraint" in seeking future safeguard protections for categories not specifically covered by the deal. The U.S. also agreed to allow the entry of goods that have been held in warehouses since current quotas filled up earlier this year. A U.S. trade officials said those items should be released in time for the holiday season, but importers have not been told when the release will come, and some fear the goods may be summer season styles that aren't sellable now. With

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Chinese manufacturers expected to shift more goods to co-production with plants in Hong Kong, Macao and Taiwan, in order to claim those countries as the country of origin, importer sources are already predicting conflicts over those goods and charges of circumvention. Customs has agreements with those three countries that allow it to conduct inspections of clothing factories, but China refused to include an inspection provision in the new bilateral.

## **STATE BLAMED FOR BUSH'S EMBARRASSING FTAA FIASCO**

State Department officials rejected an offer from the U.S. Trade Representative's (USTR) office to help work on the trade agenda for the Summit of the Americas in Mar del Plata, Argentina, and to send someone to the meeting to help negotiate language on the future of the Free Trade Area of the Americas (FTAA), according to U.S. trade sources. State officials reportedly said that trade wasn't going to be a major part of the summit, which was supposed to focus on jobs.

In the end, the Western Hemisphere heads of state could not agree on a statement setting a specific date for the restart of the dormant FTAA talks or a deadline for completing negotiations. While 29 of 34 countries reportedly were prepared to support such language, the four nations of Mercosur – Argentina, Brazil, Paraguay and Uruguay – and Venezuela blocked an agreement.

The final communique reflected a blending of two opposing proposals for the handling of the FTAA issue. One statement, proposed by a group of countries led by Panama, said the leaders "take into account the difficulties that the process of the Free Trade Area of the Americas negotiations has encountered." It vaguely instructed trade officials "to resume their meetings during 2006" with the aim of addressing these difficulties. The second statement, proposed by Mercosur and Venezuela, said: "Other member states maintain that the necessary conditions are not yet in place for achieving a balanced and equitable free trade agreement."

After the meeting, a senior administration officials speaking on background, tried to put a positive spin on the FTAA dispute. "We knew this was going to be an issue. Some people had thought that this might be an opportunity by some to end or put a spike in the FTAA," the official said. "What also became clear was that 29 countries were in favor of the first approach and five countries were in favor of the second. That's really where we left it," he added.

## **SAUDI ARABIA TO END ISRAEL BOYCOTT WITH WTO ACCESSION**

Among the many concessions and promises Saudi Arabia made as a condition for its accession to the WTO, which the WTO General Council formally approved Nov. 11, was the pledge to end its boycott of Israel and to stop the secondary and tertiary boycott of firms doing business with the Jewish state. As a WTO member, Saudi Arabia will extend most-favored-nation (MFN) status to Israel. "We note with satisfaction that Saudi Arabia has concluded its accession respecting the principles of the WTO," said Israel's deputy representative to the WTO.

"We positively note the protocol of the working group of Saudi Arabia specifically indicating that the boycotts of Israel are terminated, especially the boycott of companies who have business relations with Israel," the Israeli diplomat added. In the fiscal year ending September 2004, the latest period for which numbers are available, U.S. firms reported 60 boycott-related requests from Saudi entities, making it the sixth most active participant in the Arab League boycott.

Following the submission of documentation showing the enactment of needed implementing legislation, Saudi Arabia will become the 149th member of the organization in time for the Hong Kong Ministerial. "It's been a long process and I firmly believe as the DG of this organization that it's good for Saudi Arabia, it's good for the trading partners of Saudi Arabia and it's good for the organization," said WTO Director General Pascal Lamy after the General Council meeting. "One more heavy weight around the table: good news," he added. A Saudi

official said the country's WTO accession "helps diversifying the economy, diversifying income for the government and an enabling program for job creation programs." Accession is likely to attract foreign investment in the petrochemical industry but not the oil industry, he noted. "There is nothing in the commitment for the kingdom to open its oil sector," he stated.

"No doubt the accession will enhance the business environment in Saudi Arabia by adding more transparency and predictability and this we expect to lead to more investment and job creation and more access of Saudi goods and services toward market," said Saudi Arabia's Commerce and Industry Minister Hashem A. Yamani.

Early in its accession negotiations, which started in 1993, Saudi Arabia said it would abide by the WTO Agreement on Trade Related Investment Measures (TRIMS). In the question-and-answer process during the negotiations, it said it would "commit not to use TRIMs that are inconsistent with the provisions of TRIMs Agreement. In fact, Saudi Arabia does not use any prohibited TRIMs." It also said no sub-federal governments would impose TRIMs. "In fact, Saudi Arabia is a unitary form of government. There are no sub-federal governments," it said.

### **LAMY DOES "REALITY CHECK" TO SALVAGE SOMETHING IN HONG KONG**

World Trade Organization (WTO) Director General Pascal Lamy met with the heads of member delegations Nov. 10 to do what he called "a reality check" following two days of ministerial meetings in Geneva which concluded that the Hong Kong Ministerial Meeting in December won't achieve its original goals (see **WTTL**, Nov. 7, page 4). Lamy is now trying to salvage enough from the ministerial to keep the Doha Round alive and moving forward in 2006.

The deadlock in the talks, which came after trade ministers, including USTR Rob Portman, met in London Nov. 7 and in Geneva Nov. 8-9, reflects the fact that WTO members still don't trust each other, one WTO source noted. "There is still a high level of mistrust. They all think they are going to be cheated," the source told **WTTL**. Lamy acknowledged the trust problem in his meeting with the delegation heads. "The reality is that there is a trust deficit among Members, which handicaps the whole negotiation," he said.

Despite the gloom last week, there seems to be agreement that no one wants a repeat of the failed ministerial in Cancun, Mexico, in 2003, or of the now infamous Seattle ministerial. In contrast to Cancun, all members can now see potential benefits from the offers that already have been made and don't want to lose the chance to lock those in and improve them, the WTO source explained. Up until recently negotiators were struggling because no one wanted to show their cards, the source added. "Now they really have to show their cards."

"If we all agree that we cannot reach 'Full Modalities' by Hong Kong, then we must necessarily recalibrate our expectations for our conference," Lamy told the meeting. "We must carefully reflect on what we want to achieve at and after Hong Kong, in order not to reduce the level of ambition of the whole Round," he added. "This probably means we are looking at having a range of numbers -- the outer parameters -- in the July 2004 Frameworks, and corresponding texts in the rule-making parts of the negotiations. This would still have to make up an overall package, and would have to be, by definition, balanced," Lamy stated.

There is still no agreement on how the draft ministerial declaration will be written. Theoretically, the chairs of the various negotiating groups would prepare drafts reflecting the positions presented within their groups with brackets around sections where there is no agreement. Lamy would then consolidate them into one text. But some countries are insisting on a "bottom up" process that would have the member write the drafts. Others are afraid the drafts will include proposals that were conditional on commitments from others, and they want to pull back their offers if those concessions don't come. WTO sources say a consolidated draft has to be ready by Nov. 25 so members can take it back to their capitals for political-level review and instructions. Meanwhile, countries belonging to the G-20 group of developing nations continue to be

reluctant to make new offers in services and non-agriculture market access (NAMA). "The U.S. and EU want to move the negotiations to Services and NAMA, but the G-20's position is that correcting the imbalances in agriculture has always been at the center of this round and we are not going to move away from that," said Ambassador Manuel A.J. Teehankee, the Philippines representative to the WTO.

Brazilian Foreign Minister Celso Amorim said Brazil is willing to make additional concessions in these areas. "In the meeting in London and today...we did give some signals, not a proposal, but signals of things that were within the realm of possibilities provided we had real progress on ag," he told a press briefing. "I think that just fell on deaf ears," he declared. "I think if there is political will, we can very quickly come to a possible deal. It's not very difficult to imagine what a possible deal is and you know whoever has been in this house for a long time and certainly Mr. Lamy has been in and around this house, knows where a possible deal is. And I think it's quite possible to do it in a matter of one or two months," said Amorim.

## PLEA DEAL WILL AVOID CHALLENGE TO BIS SEARCH WARRANTS

A pending plea agreement between GasTech Engineering of Tulsa, Okla., and the U.S. Attorney in Tulsa is expected to moot a GasTech motion challenging the constitutionality of the standard search warrant the Bureau of Industry and Security's (BIS) Office of Export Enforcement (OEE) uses in export violation investigations. The motion, filed in June, moved to suppress all evidence BIS collected under the search warrant, citing a 2004 Supreme Court ruling in *Groh v. Ramirez*, which vacated a warrant because it failed to describe with particularity the things to be searched and seized. The motion also cited a Tenth Circuit ruling in *U.S. v. Leary*.

Under a pending agreement, GasTech is expected to plead guilty to one count of conspiracy to sell components for natural gas production equipment to a Canadian firm that sold the complete equipment to the National Iranian Gas Company, according Michael Deal, an export trade lawyer in Franklin, Tenn., who is counsel of record representing GasTech. As part of the proposed deal, GasTech would pay a \$50,000 fine under the general conspiracy provisions of 18 USC 371.

GasTech challenged the OEE warrant, claiming it lacked probable cause as required by *Groh*. It also asserted that, as rejected in *Leary*, the attached "boilerplate description of the items to be seized contained no meaningful limitations, particularly with regard to the computer material."

\* \* \* BRIEFS \* \* \*

EXPORT ENFORCEMENT: Based on report and recommendations of ALJ, BIS has issued order imposing \$44,000 civil fine and five years' denial of export licensing privileges on Suburban Guns (Pty) of Cape Town, South Africa, for allegedly violating previous denial order and buying shotgun screw chokes, choke tubes and barrels from U.S. firm. It imposed \$55,000 civil penalty and five years' denial order on firm's managing director, Phaedon Nicholas Criton Constan-Tatos, also known as Fred Tatos.

BAHRAIN: Finance Committee Nov. 9 conducted "mock markup" of U.S.-Bahrain FTA and approved implementing legislation after Bush administration agreed to add language promising to monitor Bahrain's commitment to dismantle its boycott of Israel (see **WTTL**, Oct. 31, page 1)

FALL-OF-BERLIN-WALL-DEPT.: Little belatedly, BIS has recognized that former Warsaw Pact countries are now in NATO. In Nov. 7, Federal Register notice it moved Bulgaria, Estonia, Latvia, Lithuania and Romania to Country Group B from Country Group D1 and removed restrictions on Czech Republic, Hungary, Iceland, Slovakia and Slovenia, giving them all same treatment as other NATO members.

STEEL WIRE ROD: Five U.S. producers filed antidumping complaints at ITC and ITA Nov. 10 against imports of carbon and alloy steel wire rod from China, Germany and Turkey.

SOFTWOOD LUMBER: Canadian parties Nov. 4 filed motion with NAFTA panel opposing Commerce request for delay and clarification of previous panel ruling on CVD order on lumber (see **WTTL**, Oct. 31, page 4). Canadians say NAFTA rules don't permit such reexamination of ruling on grounds U.S. cited.