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"SUCCESSOR LIABILITY" COSTS FIRM $1.54 MILLION FOR EXPORT VIOLATIONS

The legacy of a second-generation acquisition left ProChem Proprietary Ltd. of Gauteng, South Africa, with a successor liability that has cost it a $1,540,000 civil fine for 220 alleged violations of the Export Administration Regulations (EAR). ProChem agreed to pay the fine as part of a settlement with the Bureau of Industry and Security (BIS), which claimed a company it acquired in 2003 had acquired another company in 2001 which had committed the violations.

> According to the BIS charging letter issued to ProChem, Protea Chemicals had violated the conditions on export licenses for potassium cyanide and sodium cyanide by selling the chemicals to clients in South Africa that were not listed on the license. Half the 220 charges made by BIS cited the company for violating the conditions on the licenses and half cited it for re-selling the chemicals with knowledge that a violation of the EAR would occur.

Protea sold its business to Clidet 345 in March 2001. Clidet was renamed ProChem. On Sept. 1, 2003, Amenable Investments purchased ProChem and renamed it Pro345 Distribution. Then Amenable changed its name to ProChem. Protea is now a division of ProChem, according to BIS. The alleged violations occurred from November 1999 to December 2003, while the division had three different owners, and involved three Protea branches in South Africa.

"The U.S. Department of Commerce licenses that authorized the export of the chemicals from the United States to Protea authorized Protea to resell the chemicals only to end-users listed on each license," BIS stated. "In each instance referenced herein, however, Protea re-sold the chemicals to end-users that did not appear on the licenses," the agency charged.

PORTMAN'S EFFORTS FAILED TO MOVE CHINA TEXTILE NEGOTIATIONS

USTR Rob Portman says he offered to fly to Beijing to complete a deal with the Chinese on a comprehensive textile restraint agreement but talks with China's Commerce Minister Bo Xilai in Geneva convinced him the trip would have been in vain. Nonetheless, he flew back to Washington earlier than he planned to make the trip to China, if a deal seemed possible. "I was ready to fly the 22 hours to Beijing and the 22 hours back in order to finalize it, but we were not able to see eye to eye on the final issues," Portman told reporters Oct. 14.

The fourth round of U.S.-China talks on an agreement to replace the piecemeal safeguard actions against Chinese textiles and apparel imports ended Oct. 12 in Beijing without a deal. "We have not come to an agreement that meets the needs of our domestic manufacturers and

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retailers," said David Spooner, the USTR chief textile negotiator (see **WTTL**, Oct. 3, page 2). While Spooner was in China, Portman was working the issue with Bo in Geneva. "We were not able to come up with agreement, but it was not for lack of trying," Portman said. The latest sticking point reportedly is the percentage growth in quotas in each of the years of the agreement. While Portman wouldn't say what the problem was, he said, "we had very generous proposal for the Chinese but it was not enough for them."

Portman said he still favors a comprehensive agreement to provide stability and predictability to both Chinese exporters and U.S. importers. He warned that if the U.S. and China can't reach an agreement, Chinese apparel manufacturers will face "a very unpredictable future with lower percentage increases."

ITC MEMBERS OFFER DIFFERENT PLANS TO RESTRICT CHINESE PIPE IMPORTS

The four International Trade Commission members who found the U.S. industry being injured by a surge in imports of circular welded non-alloy steel pipe from China have offered two different remedies to help U.S. producers. Two commissioners Oct. 11 said their recommendation to President Bush and USTR Rob Portman in the special safeguard case would be a straight quota on imports for three years. Two others said they would recommend a tariff-rate quota.

ITC Chairman Stephen Koplan and Commissioner Charlotte Lane said they would recommend the imposition of a quota of 160,000 short tons on Chinese pipe for three years. Commissioners Jennifer Hillman and Shara Aranoff said they would recommend a tariff-rate quota which would start with a quota of 267,468 short tons in the first year and grow 5% and 10% in years two and three. They proposed an ad valorem tariff of 25% on any over-quota imports.

Vice Chairman Deanna Okun and Commissioner Daniel Pearson, who voted negative in the original injury determination, said they would submit their own advice to the president. The case against the Chinese pipe imports was filed under the special safeguard provisions China accepted as part of its accession to the WTO and codified in Section 421 of the U.S. trade law granting China permanent normal-trade-relations status. So far, President Bush has rejected all previous petitions for relief under this provision, even when the ITC has found injury and recommended remedies (see **WTTL**, Oct. 10, page 4).

WTO FARM TALKS TAKE ON NEW LIFE WITH COMPETING PROPOSALS

There have been many false springs in multilateral trade talks over the last two decades, and the latest flurry of agriculture reform proposals issued the week of Oct. 10 may prove to be another one. The main difference, however, between these offers and past ones is the level of ministerial involvement. Unlike the failed Cancun Ministerial in 2003, where ministerial efforts came too late, current Doha Round negotiations are getting top political level attention.

After four years of little progress, the Doha Round now has four detailed proposals for reforming agriculture trade on the table from the U.S., the EU, the group of developing countries known as the G-20 and developed countries known as the G-10. Whether these offers are too ambitious, not ambitious enough or just right appears to be in the eyes of the beholder (see story below). With all these offers now on the table, WTO negotiators expect to be in nearly full-time talks between now and the WTO Ministerial in Hong Kong in December.

The U.S. launch the week with U.S. Trade Representative (USTR) Rob Portman unveiling a comprehensive farm proposal to 21 trade ministers from 17 countries whom he had invited to a meeting in Zurich, Switzerland. The U.S. offered to cut trade distorting subsidies in the so-called Amber Box, which is also known as the Aggregate Measurement of Support (AMS), by 60%; cap less trade-distorting subsidies in the Blue Box at 2.5% of the total value of farm production; and limit *de minimis* exemptions to $10 billion, 50% of current levels. It also put specific numbers into the proposed market access tiers, with maximum cuts of 90% on the top tier of tariffs and minimum cuts of 55% for low tariffs for developed countries. The U.S. asked the EU and Japan to cut their AMS domestic supports by 83% and for the EU to harmonize its AMS subsidies down to a 2 to1 ration to U.S. payments from its current 4 to 1 ratio.

> The EU proposal offered to cut AMS subsidies by 70%, but it still wants the Blue Box capped at 5% of production. It proposed cutting its *de minimis* payments by 65%. On market access it offered to cut the highest tariffs by 60%. The G-20 called for an 80% reduction in AMS for the EU and Japan and a 75% reduction for the U.S. Its tariff proposal seeks a 54% average tariff reduction for developed countries and a 36% average cut for developing countries. The G-10 made a market access offer that would cut the highest level tariffs by 50%.

The big loophole in all these proposals is the exemption from tariffs cuts that would be given to "sensitive" products. Rather than facing full tariff cuts, products identified as sensitive could be subject to tariff-rate quotas. The U.S. wants to limit sensitive products to 1% of each country's total tariff lines. According to USTR officials that would be 15 products for the U.S; for the EU it would be 20. The EU originally called for a 10% cap and last week offered to reduce the limit to 8%. "That is a loophole big enough to drive a truck through," Portman told reporters Oct. 14. The 8% limit would still allow the EU to protect 160 product lines, most of which would be the ones most important to the U.S. and developing countries, Portman noted.

REACTIONS TO WTO FARM PROPOSALS DRIVEN BY NEGOTIATING TACTICS

The reaction of World Trade Organization (WTO) members to a truckload of new farm reform proposals in the Doha Round negotiations the week of Oct. 10 was as varied and complex as the offers themselves (see story above). The head-scratching was exemplified by U.S. Trade Representative (USTR) Rob Portman, who told reporters he was both "disappointed" and "optimistic" about the proposals that were made by the EU and several other groups of countries. The reactions are as much a part of the negotiating game as the offers themselves.

> Portman's disappointment was mostly directed at the EU, which he said has not met the U.S. proposal with an adequate market access offer. "I continue to be very disappointed that the EU did not reciprocate with a similar level of ambition on market access as we offered on domestic support," he said. The EU proposal was "only marginally better" than its previous offers, he argued. While Portman thought the EU offer was too little, some EU countries contend it was too generous, and EU Trade Commissioner Peter Mandelson has been summed to an EU Council meeting to defend the offer he announced on Oct. 11.

Like Oliver Twist, developing countries consumed U.S. and EU offers and said, "Can I have more, sir?" Indian Commerce Minister Kamal Nath said the agriculture negotiations "still remain very contentions because the United States proposal is a step forward, not a leap forward." He reflected a general concern among many countries that the U.S. and EU proposals would not cut actual budget outlays to farmers because they are based on current WTO limits and not on actual expenditures. Nath said he wants to see, "real cuts in actual subsidies, yes. In the actual subsidies, applied subsidies. Is it a budgetary cut? Have you reduced your budget to the U.S. farmer – that's the bottom line isn't it -- on trade distorting support."

A group of WTO countries known as the "friends of special products" or G-33 is concerned that the U.S. proposal doesn't give sufficient importance to the guarantee that "special products"in developing countries will be treated with flexibility based on food security, livelihood security and rural development. The G-33 countries also say an essential area is special and differential treatment for less developed countries. Manuel A.J. Teehankee, the Philippine ambassador to the WTO, told WTTL that the U.S. domestic support offer "is a good move, but needs further movement but based on the G-20 counterproposal. It just needs improvement by another ten percent, on the US part." He also said "the burden is now on the European Union to show willingness and ability to move in market access. And that means substantial improvements in market openings for imports from developing countries and a limited number of opt-outs for sensitive products as mandated in the July package."

> The most important reactions to the U.S. proposal came from members of Congress who will have to translate any Doha deal into a new Farm Bill in 2007. "The rest of the world should not see the U.S. proposal on domestic support as a fait accompli no matter what happens on market access," Senate Agriculture Committee Chairman Saxby Chambliss said in a statement. "If other countries do not harmonize their levels of domestic support and provide meaningful and tangible market access, then the Senate and House will find it very difficult to support the final agreement," he warned.

FORKLIFT FIRM PAYS $200,000 FINE FOR ACTIONS OF INDICTED EXECUTIVES

Clark Material Handling Co of Lexington, Ky., has reached a settlement agreement with BIS to pay a $200,000 civil fine for the actions of two of its executives, who were the subject of a federal indictment in April (see **WTTL**, May 9, page 3). Robert E. Quinn and Michael H. Holland were indicted by a federal grand jury in Washington, D.C., for their alleged role in the export of forklift truck parts to Iran in violation of the Iranian Transactions Regulation (ITR).

> In the charging letter to Clark, BIS didn't mention Quinn and Holland by name but identified their titles as vice president of global parts marketing and government/national accounts parts sales representative. BIS charged the firm with one count of conspiracy to violate the ITR by exporting the forklift trucks through the United Arab Emirates to Iran.

The charging letter cited 18 additional violations related to the exports, including exporting without authorization, exporting with knowledge that a violation would occur and making false statements on Shipper's Export Declarations (SED). The agency charge Clark with misstating the ultimate destination and end-user of the parts on the SEDs.

In addition, the agency claimed the two executives made false statements to a BIS Office of Export Enforcement (OEE) investigator. Clark's vice president for global parts "represented to an OEE special agent that he was unaware of any shipments of CMHC parts to a co-conspirator in the UAE or of any shipment to the co-conspirator that were subsequently shipped to Iran," the charging letter stated. This statement was false because the vice president "had arranged for the export of the CMHC parts to Iran via the co-conspirator in the UAE," BIS charged.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: DHL Holdings (USA) of Plantation, Fla., agreed to pay $18,000 civil fine to settle BIS charges that on three occasions it shipped strobe, networking equipment and printers to Saudi Arabia on behalf of Tetrabal and Ihsan Elhashi who were subject to temporary denial order. Elashi and his brothers were subsequently convicted of various export control violations (see **WTTL**, April 25, page 1).

BIS: David McCormick was sworn in Oct. 13 as new BIS under secretary following his Senate confirmation Oct. 7. Darryl Jackson has also been confirmed as assistant secretary for export enforcement and is expected to be sworn in Oct. 17.

LACHMAN: Sentencing hearing for Walter Lachman continued on Oct. 10 from 9:30 A.M. to 5:00 P.M. without conclusion. It is scheduled to resume on Oct. 17 (see **WTTL**, Oct. 10, page 1).

TRADE FIGURES: U.S. trade is booming. Merchandise exports in August rose 12.7% from last August to record $76.7 billion. Goods imports were up 12.2% from last year to record $140.5 billion. Services exports jumped 10.7% to record $31.5 billion. Services imports edged up 4.5% to $26.7 billion.