

# 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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## PIPE INDUSTRY TRIES ITS HAND AT CHINA SAFEGUARD RELIEF

The fact that no previous petitioner has succeeded in getting relief from surging Chinese imports under the special safeguard provisions of Section 421 of the Trade Act didn't discourage seven makers of welded pipe and the United Steelworkers from filing a petition with the International Trade Commission (ITC) Aug. 2. The firms and union asked the ITC to conduct a safeguard investigation into imports from China of circular welded non-alloy steel pipe and to recommend that the president impose quotas on the Chinese imports for five years, if it agrees that the industry is being injured.

There have been five previous requests for safeguard relief under Section 421 since the provision was adopted as part of implementing legislation granting China permanent-normal-trade-relations status in 2000 in advance of its accession to the World Trade Organization (WTO). The ITC found no market disruption in two cases and terminated the investigations. It recommended relief in the other three, but President Bush rejected the advice. The president's denial of relief in the first 421 case involving pedestal actuators is now being challenged in federal court (see **WTTL**, July 25, page 2).

The latest petition covers carbon welded pipe from 0.372 inches in diameter to 16 inches. The industry claims imports of Chinese pipe increased over 2600% from 2002 to 2004 and are up nearly 109% in the first half of 2005 compared to the same period a year ago. The U.S. market share of Chinese pipe has risen from 0.4% in 2002 to 10.3%, the industry contends. Pipe petitioners are represented by Schagrin Associates, whose lawyers claim the industry's case is strong enough to succeed despite the past track record with 421 petitions. There is also the hope that the White House may be more open to acting against Chinese imports now than in the past to temper some of the anti-China sentiment in Congress.

## COMMENTS SEEK TO PRESERVE ANTITRUST EXEMPTION FOR EXPORTERS

Government officials and industry representatives are seeking to preserve the antitrust exemption given to certain exporting organizations and are urging a federal commission not to recommend any changes in the Export Trading Company Act (ETCA) or the 1918 Webb-Pomerene Act. Although no specific proposal has been made to changes these statutes, industry sources are afraid that some members of the Antitrust Modernization Commission (AMC), which Congress established in 2002 to conduct a comprehensive review of U.S. antitrust laws, are interested in reducing the protections of these laws in an effort to harmonize U.S. and international antitrust laws. In May the commission issued a memorandum and call for public

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comments on specific issues related to the immunities and exemptions from antitrust rules granted exporters. It sought comments on whether these exemptions should be eliminated or time-limited if they are not justified by the benefits they provide. It particularly wanted comment on whether exemptions in the ETCA and Webb-Pomerene Act should be eliminated.

The AMC has received 62 comments so far, with most defending the continued exemptions given to exporters. Comments came from Commerce and Agriculture, as well as groups representing a wide range of farm crops and food processors, plus trade associations and organizations created under the two statutes.

Enacted in 1982 after a tough battle in Congress to overcome opposition from the House and Senate Judiciary Committees, the ETCA has not proved to be the major export booster that its backers touted. Some supporters of the legislation claimed it would level the playing field with Japanese trading companies and other foreign cartels (see **WTTL**, Oct. 11, 1982, page 3). Under \$20 billion in exports reportedly goes through ETCA and Webb organizations. The number of organizations using the older exemptions of the Webb-Pomerene Act has continued to shrink over the years, with only seven Webbs registered as of May 2005.

“We believe that it is imperative to retain the ETC Act, because, just as Congress intended, it is working to overcome hurdles to exporting that keep many U.S. firms from competing effectively in international markets,” wrote then-Under Secretary of Commerce Grant Aldonas before he left the department for the private sector. He told AMC that 5,200 firms take advantage of the ETCA. One new function being given to ETCs is the administration of tariff-rate quotas (TRQ) the U.S. negotiates with foreign governments for U.S. products, he noted.

The Corn Refiners Association, for example, formed an ETC in January 2003 to administer the TRQ the U.S. negotiated with Mexico for U.S. high-fructose corn syrup. The TRQ must be managed in the U.S. “However, the U.S. government has neither the legal authority to manage export quotas nor the interest in doing so, particularly in light of the advantage of leaving such activity in the private sector,” wrote refiners association president Audrea Erickson.

“Anyone promoting repeal of a validly enacted law bears the burden of demonstrating that the law’s costs exceed its benefits,” wrote the Joint Export Trade Alliance, which represents agriculture, industrial and service firms that use these laws. “In this case, critics of the Webb and ETC Acts have not only failed to make a ‘net cost’ showing; they have failed to identify any costs at all, and indeed there are none,” the group said. “Assertions that the Webb and ETC Acts cause problems for U.S. ‘antitrust diplomacy’ or other aspects of the U.S. government’s outreach effort in the antitrust field are decisively refuted by the evidence,” it added.

## **COMMERCE DELAYS ACTION ON TEXTILE SAFEGUARDS**

For a change, the Chinese and the U.S. textile industry have agreed on something. They both agreed with Commerce’s decision to delay a ruling on six safeguard petitions against textile and apparel imports from China in expectation of the negotiation of a broad bilateral restraint agreement. The Committee for Implementation of Textile Agreements (CITA) Aug. 1 said was putting off until Aug. 31 a decision on whether to accept the petitions so it would have time to consult with U.S. industry and members of Congress on whether there is support for a deal.

The American Manufacturing Trade Action Coalition (AMTAC) accepted the delay on the condition that a comprehensive deal could be negotiated quickly. “A fair comprehensive agreement would cover all categories where safeguard petitions have been filed or approved,” said AMTAC Executive Director Auggie Tantillo. “It should also include any categories where safeguards have not been filed that are disrupted or that are facing imminent disruption,” he added.

The Chinese Commerce Ministry said it was pleased with the decision to delay action on the petitions. “We notice that the United States is fulfilling its promise made last month,” said a

ministry spokesperson, referring to an apparent agreement reached during the last meeting of the U.S.-China Joint Commission on Commerce and Trade (see **WTTL**, July 18, page 2). According to the Chinese, the two sides agreed to hold a new round of talks soon, although no exact date was given. The repeated delays in decisions on textile safeguard petitions are pushing the 12-month base period for potential import restraints further into 2005.

Because of the sharp increases in Chinese imports since the lifting of Multifiber Agreement (MFA) quotas on Jan. 1, 2005, the 7.5% growth limitation permitted under the safeguard rules will be from a much higher level than if the restraints had been imposed in 2004 or early 2005. It appears that Beijing's willingness to enter a broad restraint deal on textiles and apparel, similar to the one it reached with the European Union, is based on Washington's reciprocal willingness to set the base for restraints at higher, post-MFA levels.

U.S. officials had one round of talks with the Chinese on the textile issue before the JCCT meeting and a teleconference call before that, U.S. Trade Representative Rob Portman reported. The exact shape of a deal and level of restraints hasn't been decided. "We're still discussing that internally," he said. "One, whether we would enter into formal negotiations as the EU did to attempt to achieve that number, whatever that might be," he told reporters in Geneva July 29. "The time period of course is another important variable," he added.

### **JAPAN TAKES FIRST RETALIATION AGAINST U.S. OVER BYRD AMENDMENT**

Overcoming its reluctance to offend anyone, Japan Aug. 1 announced plans to retaliate for the first time ever against a U.S. trade action, saying it would impose a 15% tariff on certain U.S. imports because the U.S. has failed to come into compliance with a World Trade Organization (WTO) ruling which found the Byrd Amendment violated world trade rules. Starting Sept. 1, Tokyo will impose the duties on 15 U.S. products, including seven types of bearings, three steel products, navigational instruments, machinery accessories, printing machines, forklift trucks and industrial belts. The total retaliation is intended to stop \$52 million in U.S. imports, the Japanese say.

Canada and the European Union (EU) have already imposed WTO-blessed sanctions in retaliation for the failure of the U.S. to repeal Byrd, which requires Customs to distribute liquidated antidumping and countervailing duties to companies that supported the cases against the imports. Retaliation by five other WTO members, Chile, Brazil, Korea, Mexico, and India is being awaited.

"Japan repeatedly requested the United States to repeal the Byrd Amendment before Japan reached the conclusion that it must take retaliatory action," said Shoichi Nakagawa, Japan's minister of economy and trade. "Furthermore, although the current U.S. administration has made it clear that it supports repeal of the Byrd Amendment, legislation to do so has not even reached the stage of committee debate," he added. "Judging from current conditions in the U.S. Congress, it appears extremely unlikely that the Byrd Amendment will be repealed before the end of this fiscal year," he said.

### **WTO RULES AGAIN AGAINST U.S. SOFTWOOD LUMBER DECISION**

The U.S. is still not in compliance with a World Trade Organization (WTO) ruling that challenged the International Trade Administration's (ITA) methodology for calculating the countervailing duty on softwood lumber from Canada, a WTO dispute-settlement panel ruled Aug. 1. Washington is likely to appeal the decision to the WTO Appellate Body, and while it does, Canada's threatened C\$200 million in retaliation will remain in abeyance.

The latest panel ruling responds to Ottawa's claim that the U.S. Section 129 determination, which was supposed to bring the CVD order into compliance with an earlier panel ruling, failed

to follow the panel's findings. Canada also complained that the first administrative review of the CVD on Canadian lumber had the same flaws (see **WTTL**, Dec, 20, page 1). In the 129 and administrative review, the U.S. "failed to properly implement the recommendations and rulings of the DSB [Dispute-Settlement Body] in this dispute," the panel ruled.

At issue is the treatment of arm's-length sales of logs and, consequently, the numerator used to calculate the subsidy margin. "This ruling is limited to a technical matter unlikely to have any substantive impact on the U.S. countervailing duties on Canadian lumber," said a statement from the U.S. Coalition for Fair Lumber Imports. Canadian Trade Minister Jim Peterson, however, said he was pleased that the panel agreed with Canada "on the central issue in this case." An appeal of the ruling would put off a final decision for three months or more.

## **CARIBBEAN NATIONS WORRIED BY WTO BANANA RULING**

Caribbean countries that have benefitted from the EU's preferential treatment of their banana exports say they are alarmed by a WTO arbitrator panel's Aug. 1 ruling that the EU's tariff-rate quota system for bananas doesn't adequately protect the European market share of Latin American banana exporting countries. "It would be an unacceptable short shrift for Caribbean banana-producing countries to be squeezed out of the European market should the tariff be set too low," said the Caribbean Regional Negotiating Machinery, which represents the region.

The long-running dispute over the EU's banana regime has pitted the U.S. and Latin America against the EU and former European colonies in Africa, the Caribbean and Pacific (ACP). When the EU's old preference system for ACP bananas was ruled inconsistent with WTO requirements, Brussels imposed the TRQ with a 230 euro/ton tariff for over-quota imports. That rate does "not result in at least maintaining total market access for MFN banana suppliers," the panel ruled.

EU officials say they will consult with affected countries to find a new solution to the dispute. "We are currently evaluating the options available for putting into place the new import regime for bananas as from 1 January 2006," said EU Agriculture Commissioner Mariann Fischer Boel.

### **\* \* \* BRIEFS \* \* \***

**EXPORT ENFORCEMENT:** Encore Medical Corporation of Hixson, Tenn., has agreed to pay \$101,000 civil fine to settle BIS complaint against company it merged with, Chattanooga Group, for exports of physical therapy equipment to Iran without OFAC licenses. BIS charging letter charged firm with 13 violations, including conspiracy and evasion based on allegation firm sent equipment to co-conspirator in Australia to circumvent U.S. export controls.

**DR-CAFTA:** With audience of business community representatives and diplomats, President Bush signed legislation (H.R. 3045) to implement DR-CAFTA Aug. 2 (see **WTTL**, Aug. 1, page 2).

**ITC:** Senate late on July 29 confirmed Shara Aranoff to seat on ITC for term ending Dec. 16, 2012.

**AUSTRALIA GROUP:** In Aug. 5 Federal Register, BIS issued final rules amending EAR to implement agreements reached by Australia Group at its April plenary. Among changes are new rules for pumps used to make chemical and biological materials and clarification of controls on certain genetic elements and genetically modified organisms. It also adds Ukraine to list of Australia Group members and notes that Niue, self-governing island in Cook Island group in South Pacific with population of 2,166 [we had to look that one up ourselves] has become state party to Chemical Weapons Convention.

**OFAC:** DHL Express (USA) has reached settlement with OFAC to pay \$25,000 civil fine for alleged facilitation of trade with Yugoslavia 1999-2000 and for late filing of response to request for information.

**WOOD PACKAGING:** Customs on Sept. 16, 2005, will begin enforcing APHIS wood packaging regulations which require pallets, crates, boxes and dunnage to be treated and marked to prevent pest infestation.