

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. 16

April 18, 2005

U.S. WELCOMES EU DELAY IN LIFTING CHINESE ARMS EMBARGO

Secretary of State Condoleezza Rice April 14 was quick to welcome a statement by Germany's Foreign Minister that the European Union (EU) will delay action on lifting the arms embargo on China. "I can't help but think that it is a positive statement," she said. Her comment came as the U.S. and EU are about to begin broader talks on Asia-Pacific security issues.

Those talks are not intended to negotiate the lifting of the embargo but "a means of ensuring, among other goals, that EU members understand the real dangers to regional security that lifting the embargo would pose," Under Secretary of State for Political Affairs R. Nicholas Burns told a joint House Armed Services Committee and International Relations Committee (HIRC) hearing April 14.

Despite the EU's current Code of Conduct, which is supposed to restrain arms sales, EU governments approved euro 416 million in Munitions List exports to China in 2003, he noted. In the coming talks, the U.S. will express its concerns about EU sales to China of fire control radar, aircraft engines, submarine technology, and maritime search radar, he told the committee.

The talks also will aim to "reinforce the restraints on transfer of sensitive technologies, including the embargo, thereby helping to avoid future disagreements between us and our European allies," testified Assistant Secretary of Defense Peter Rodman. In addition to attempting to curb EU arms sales to China, the U.S. will also try to get Russia and Israel, the two largest arms suppliers to China, to show restraint in their exports. "This issue is now on our agenda with both Russia and Israel," Rodman told the committee.

In his opening statement, HIRC Chairman Henry Hyde (R-Ill.) warned Europe that it will have to decide what kind of transatlantic relationship it wants. "European arms sales to China now raise fundamental questions about whether defense industrial cooperation with Europe is becoming a national security liability for our country," he said (see **WTTL**, April 4, page 3).

MESSAGE TO WHITE HOUSE: CAFTA-DR IS IN TROUBLE

The Bush administration will have to decide quickly whether to step up its campaign for congressional approval of the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR), including getting President Bush personally involved in lobbying, or to delay sending the deal to Congress. Both Democrats and Republicans in the House and Senate are raising concerns about prospects for passage of the accord, and, following a Senate Finance Committee hearing on the pact April 13, there is even doubt about CAFTA-DR getting

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

Finance's endorsement. The first hearing on the CAFTA-DR shocked many in the hearing room because of the broad opposition and doubts raised by both Republican and Democratic committee members about the deal. Finance Committee Chairman Charles Grassley (R-Iowa) was the only member who spoke in favor of the pact.

The Bush administration's failure to get even one more supporter to show up at the hearing disappointed several congressional sources. One more voice in support of the deal "would have changed the whole dynamic of the hearing," one source observed. He questioned whether the White House has made any calculated decision on how to handle lobbying for the implementing legislation.

Part of the problem, he suggested, is the leadership vacuum at the USTR's office without Rob Portman in place and at Commerce with no new under secretary for international trade identified. "The White House has to take this seriously or it will not pass," he warned. Phone calls to the White House with that message were reportedly made after the hearing.

After the hearing, Grassley told reporters that he has not done a vote count in the committee on the bill. "You can see, as we've indicated, that this is not a sure thing in the Senate or in the committee," he admitted. Also speaking to reporters afterward, Sen. Max Baucus (D-Mont.) agreed with that assessment. When asked if there were enough votes on the committee to pass the accord, he said: "I don't know. That's a good question. It's not a slam-dunk either way."

Baucus set the tone for the hearing with a sharp attack on "the lack of leadership coming from the White House" on the agreement. "In fact, I am unaware of any event that the president has participated in to urge passage of this agreement. And I don't believe he has lobbied Congress on the agreement. He has certainly never raised the issue with me," Baucus charged. After the hearing, Grassley said he didn't disagree with Baucus' assessment. "I don't find fault with what Sen. Baucus said, for sure," Grassley said.

The hearing heard concerns about the deal's sugar provisions from Sen. Mike Crapo (R-Idaho), and new questions from Sen. Craig Thomas (R-Wyo.) about the precedent the accord would set for opening the U.S. market to sugar and beef from Brazil and Argentina in future free trade pacts. Sen. Ron Wyden (D-Ore.) objected to the drug patent protection provisions in the agreement, and Sen. Jeff Bingaman (D-N.M.) said he was concerned about the impact of subsidized U.S. farm exports would have on the small farmers in the region. Sen. Olympia Snowe (R-Maine) said there was a lack of trust and confidence in Congress that trade agreements are being enforced. "I don't see a willingness to aggressively enforce trade agreements," she said.

CONGRESSIONAL PRESSURE MOUNTS FOR ACTION AGAINST CHINA

If the U.S. Trade Representative's (USTR) office fails to take action against China's lack of enforcement of intellectual property rights (IPR) during its current out-of-cycle review of Beijing's actions, it could face a legislative backlash from Congress. A similar reaction is erupting over Treasury's failure to get China either to revalue its currency or to let it float.

The strong congressional concern about these issues was evident at a April 14 House Ways and Means Committee hearing on U.S.-China trade relations at which both Republican and Democratic members challenged the Bush administration to take a tougher stand against Beijing. It also was seen in the Senate's rejection by a 67-33 margin April 6 of a motion to table an amendment sponsored by Sens. Charles Schumer (D-N.Y.) and Lindsey Graham (R-S.C.) to impose a 27.5% tariff on Chinese goods, if China fails to revalue its currency.

Schumer and Graham agreed to withdraw their amendment after Senate Majority Leader Bill Frist (R-Tenn.) assured them that if the Senate Finance Committee has not reported out their bill (S. 295) by July 25, it will be discharged and brought to the Senate floor for debate. Because the measure is a revenue bill, the House is likely to object to Senate consideration of

the legislation, which under the Constitution must originate in the House. Senate Finance Committee Chairman Charles Grassley (R-Iowa) told reporters April 13 that he recognized Schumer's concerns. "I'm not sure legislation is the wise way to address it," he said. Nonetheless, he said he was looking at the bill.

As the criticism raged in Congress, Commerce Assistant Secretary for Market Access and Compliance William Lash vented complaints about China's IPR enforcement at an April 12 press conference in Beijing. Lash, who has been mentioned as a possible successor to Grant Aldonas as Commerce under secretary, told reporters that shopping in Hongqiao he found a large variety of counterfeit products. His comments suggest that it will be hard for the USTR's office to claim China is making progress on IPR enforcement in its next Special 301 ruling.

"Piracy, we believe, is getting worse," Lash said. "We go to the other stores, other vendors, some on the street or at fixed locations, and find that the breadth of piracy continues to grow, sophistication of piracy continues to grow. And the damage of piracy continues to grow."

ANOTHER STING OPERATION CATCHES ILLEGAL ARMS EXPORTS

An Iranian national, Abbas Tavakolian, has agreed to accept up to 57 months in prison as part of a guilty plea he entered April 13 in Baltimore U.S. District Court on charges that he attempted to export aircraft parts and components for F-4 and F-14 fighter jets to Iran. Tavakolian was arrested in December after he arranged with undercover Bureau of Customs and Immigration Enforcement (ICE) agents to buy the parts.

Tavakolian first made contact with ICE agents through email and phone calls and then met with them in Europe and a location in the South Pacific. The parts, valued at \$380,000, included gunnery system components.

Just before he was arrested, Tavakolian arranged to have the parts shipped to Iran via DHL and labeled as agriculture equipment. Before the items could be shipped, however, the ICE agents, who were working with the Defense Criminal Investigative Service (DCIS) and Baltimore Police Department, intercepted the shipment and took position of the items. An accomplice in the case, Hossein Vazei, Tavakolian's son-in-law, is still a fugitive being sought by federal agents.

FINANCE WILL PUSH FOR PORTMAN CONFIRMATION

The Senate Finance Committee is expected to push for Senate confirmation of Rep. Rob Portman (R-Ohio) to be the next U.S. Trade Representative (USTR), despite a "hold" that was put on Portman's confirmation April 12 by Sen Evan Bayh (D-Ind.). The committee has scheduled a hearing on Portman's confirmation for April 21 and could press for a cloture vote in the Senate, if Bayh continues to raise objections. Meanwhile, the White House just got around to sending Portman's nomination to the Senate formally on April 14.

Bayh announced that he was placing a "hold" on Portman's confirmation because of his frustration in not getting Finance or Senate action on a bill he has sponsored to change U.S. trade laws to make imports from China subject to countervailing duty (CVD) sanctions. A "hold" is congressional lingo for an objection which blocks an item from getting a vote on the Senate floor by unanimous consent and is usually a prelude to a threatened filibuster.

To overcome a "hold," the Senate needs to vote cloture with 60 votes. Because of Portman's popularity, congressional sources say they don't think there would be any trouble getting the votes, if they were needed. There is a good chance that Bayh could withdraw his hold, having gained publicity for his issue. "We'll work it out," one congressional source told WTTL. Legislation to make Chinese goods subject to CVD actions has been pending in both the House

and the Senate for the last several years without any movement. Commerce's International Trade Administration (ITA) has not applied the CVD rules to Chinese imports because of a court ruling several years ago which upheld the policy that considers all communist countries to be subsidizing their industries, making it impossible to apply current CVD rules to them.

C-TPAT PARTICIPATION GOES OVER 9,000

Customs and Border Protection (CBP) has approved the participation of nearly 400 foreign firms, mostly Mexican, to participate in its Customs-Trade Partnership Against Terrorism (C-TPAT) and is considering opening the program to Canadian manufacturers, Customs Commissioner Robert Bonner reports. As of April, C-TPAT now has 9,083 participants, including U.S. importers, retailers, carriers and customs brokers, he told reporters April 14.

Bonner, who met with reporters to tout the new security criteria issued for C-TPAT participants in March, said CBP rejected 1,729 initial security plans submitted by firms seeking to join the program. In many cases, those applications were accepted after the importers revised their systems to meet Customs requirements (see **WTTL**, April 4, page 4).

A requirement that Customs expects to add for C-TPAT eligibility is the use of tamper-evident trailers or containers that would indicate unauthorized access to the content. While CBP is considering letting some Canadian manufacturers join the program, it is being selective in opening C-TPAT to all foreign firms, Bonner explained. He said the agency is concerned about crushing its staff and resources, if participation were open to all. He also rejected any suggestion of making C-TPAT mandatory. "That would be the end of C-TPAT," he said.

*** * * BRIEFS * * ***

EAR: BIS published revision to EAR provision on chemical and biological exports in April 14 Federal Register. Changes expand scope of countries subject to licensing requirements.

CIALIS: "If a playful moment turns into the right moment, you can be ready" with unfair trade complaint against patent infringing imports. Eli Lilly, maker of Cialis, filed Section 337 petition at ITC April 8 against imports of tadalafil, generic name for its erectile dysfunction drug, from UK, India, Panama, Haiti, Nicaragua, Australia and Mexico.

ILSA: HIRC Middle East subcommittee unanimously reported out amended version of bill (H.R. 282) to drop Libya from Iran and Libya Sanctions Act and add new requirements for mutual funds and pension managers to tell investors if they hold stock in energy firms identified as having invested in Iran.

RELATED-PARTY TRADE: Over 27% of the merchandise imported from China during 2004 was imported by firms related to Chinese exporter, Census reported April 12 in its annual review of related-party trade, which usually involves subsidiaries or parents. This is up from 10.5% in 1992. Overall, 47.8% of U.S. imports came from related parties, slightly more than in 2003; Related-party exports slipped to 30.8% from 32.2% in 2003. For Canada, 45.5% of imports came from related parties, with auto trade being major component. For Japan, 78.9% of imports were from related parties.

THAILAND: Large number of sensitive products and sectors involved in trade between U.S. and Thailand is forcing negotiators to move slowly in talks on bilateral free trade agreement (FTA). After just completed third round of talks, negotiators still don't expect accord to be reached for another year.

RUSSIA: Finance Chairman Charles Grassley (R-Iowa) and Sen. Max Baucus (D-Mont.) wrote to Acting USTR Peter Allgeier April 11 citing concerns they want to see addressed before U.S. agrees to Russia's WTO accession. Among issues raised were: IPR enforcement, opening of pork, beef and poultry market, gas pricing, financial services, sanitary and phytosanitary measures and export tax on ferrous steel scrap.

TRADE FIGURES: U.S. merchandise exports grew to record \$71.2 billion in February, 9.4% over February 2003. But goods imports surged up 18.3% to record \$135.9 billion. Services exports rose 7% to \$29.3 billion, as services imports climbed 9.6% to record \$25.6 billion.