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

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CHINA COMMISSION WARNS OF CHINESE MILITARY BUILDUP

The coming annual report from the U.S.-China Economic and Security Review Commission will fuel the debate over export controls imposed on China. It warns about China's expanding military ambitions but also concedes that unilateral controls aren't effective. Citing other sources that have raised these arguments and cautions before, the commission complains that China has failed to control exports and reexports to rogue countries and terrorists and has also hampered Bureau of Industry and Security (BIS) efforts to conduct post-shipment verifications (PSVs).

"It is apparent that China's leadership for various reasons has no desired to control the export or reexport of some items and technologies that the United States believes to be militarily critical and therefore wants to keep out of the hands of rogue nations, potential adversaries and terrorists," the reports states.

The report cites the BIS proposal to tighten controls on exports of certain products to military end uses in China. It also raises concerns that BIS – with only one liaison officer in Beijing and one in Hong Kong – doesn't have enough staff in China to monitor controlled trade.

"Unfortunately, U.S. export controls are not achieving their objectives as they apply to China; a major reason is that, for the most part, U.S. controls are unilateral," the commission argues. It points out the Japan is the only other industrialized nation with significant dual-use controls on China. "The bottom line with respect to export controls is that while unilateral controls may delay acquisition of controlled goods and technologies by targeted nations, those delays are unlikely to be significant if a targeted nation is intent on acquisition and if other nations possess and are willing to provide the goods and technology," it asserts.

The report covers more than export controls, focusing mainly on economic issues, China's compliance with its World Trade Organization (WTO) obligations, and Beijing's military expansion and goals. The commission is less diplomatic than U.S. trade officials and industry in describing China's failure to live up its WTO promises. It complains about China's "spotty and halting" adherence to WTO rules. "China's failure to enforce intellectual property rights provides a particularly egregious example of its noncompliance with WTO rules," it says.

CIT SENDS CHINESE BEDROOM FURNITURE CASE BACK TO ITA

The legal battle over the largest and most complicated antidumping case ever, involving wooden bedroom furniture from China, will go on a little longer following the Oct. 31 decision of Court of International Trade (CIT) Judge Donald Pogue to remand several major disputes back to the

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International Trade Administration (ITA) for review. In a detailed 140-page decision (slip op. 06-140), Pogue sent nine disputed issues back to the agency, while affirming 11 other portions of the ITA ruling from November 2004. Both the U.S. industry and Chinese exporters had filed cross motions challenging ITA's judgment. The ITA had found that one of seven Chinese firms had de minimis margins; one had a 2.22% margin; but one had a margin of 198%. The average rate for Chinese firms receiving separate rates was 8.64% (see **WTTL**, Nov. 14, 2004, page 4).

The major issue remanded to ITA was how it calculated labor rates in China and surrogate countries. Pogue told the agency to either justify why its data set constitutes the best available information or incorporate other countries meetings its criteria. ITA was also told to "reconsider its use of its methodology or an alternative method for determining the labor rate for the PRC in this case."

Pogue rejected the request of respondents to bar ITA from using its zeroing methodology in calculating dumping margins. He noted several rulings by the Court of Appeals for the Federal Circuit permitting this methodology. "Accordingly, given that this issue has been unanimously addressed by multiple opinions, the court finds respondents' argument barred by *stare decisis*," he wrote. Most of the other items remanded to ITA require the agency to justify or revise its valuations of various components and materials used in making furniture.

LAMY CRITICIZES GROWTH IN BILATERAL FTAs

WTO Director General Pascal Lamy warned Oct. 31 that the proliferation of bilateral free trade agreements could undermine the "most-favored-nation" concept -- one of the foundations of international trade rules -- while also hurting efforts to forge a multilateral trade accord in the Doha Round. "Regional trade agreements can divert negotiating energy and resources from multilateral fora -- which is particularly serious for developing countries with limited capacities. We are already seeing evidence of this where given the suspension of the WTO negotiations, staff in many of our members is being reassigned to their regional trade agreements departments," Lamy said in his prepared speech to a Columbia University audience.

"The proliferation of regional trade agreements can greatly complicate the trading environment, creating a web of incoherent rules, and intricate rules of origin," he complained. "Some countries conduct 90% or more of their trade with preferential partners and thus run the risk of developing strong domestic lobbies resistant to any liberalization of tariffs at the multilateral level which will undermine their preferences," he argued.

Lamy also said a shift to bilateral and regional FTAs is creating a "domino" or "bandwagon effect", as countries try to reach deals to avoid being left out of preferential arrangements. "There is also the phenomenon of 'addictive regionalism' whereby countries attempt to create preferential relationships with all their major trading partners. Under this scenario, some countries, particularly the developing countries with small domestic markets, risk being left on the sidelines and further marginalized," he said. Lamy was in the U.S. giving a series of speeches, but mainly to run in the New York Marathon Nov. 5. He met with U.S. Trade Representative Susan Schwab and other administration officials Nov. 3 to assess the status of the Doha Round, but nothing was expected to result from those meetings.

U.S. HAS FAILED TO FILE ANNUAL AGRICULTURE REPORTS WITH WTO

The U.S. is among several major countries that have failed to file required annual reports with the WTO on how much they spend on domestic support and subsidies. The last U.S. report on domestic subsidies covered 2001, and it has not filed reports on how much money is being distributed under the 2002 Farm Bill. The chairman of the WTO Agriculture Committee, Swiss Ambassador Christian Haberli, told the committee Oct. 31 that 70 WTO members didn't file reports for the period of 1995 to 2000. Other non-filers since 2001 included the European

Union (EU), Argentina, Canada, Korea, Norway and Switzerland. Japan hasn't filed since 2002. Haberli told the committee, which is a different committee from the agriculture negotiating committee for the Doha Round, that he has deep concerns about the failure of major trading nations to supply information on their farm support. Lack of such information makes Doha talks more difficult because countries don't have reliable numbers on actual expenditures against which to judge offers. This "creates an additional imbalance between delegations with substantial human resources available to seek information from other sources, and the small delegations that simply lack the means to obtain the information," he said.

The U.S. on Oct. 6 did notify the WTO on estimated export subsidies and food aid it provided or budgetary obligations from October 2002 to September 2003. It reported that it donated about 1.6 million tons of various food products under the PL-480 program; \$1.4 billion in technical assistance; \$620 million in donated commodities that were monetized or sold locally; plus \$3 billion to \$6 billion that was available under various export credit guarantee programs.

CANADIAN LUMBER GROUP OPPOSES TAX ON DUTY REFUNDS

Even as Ottawa started to disburse antidumping and countervailing duty refunds to Canadian lumber producers, some Canadian firms are still objecting to the U.S.-Canada Softwood Lumber Agreement (SLA) and are opposing legislation (C-24) pending in the Canadian Parliament to impose a tax on some of those rebates. C-24 was supposed to place a tax on firms that opt not to participate in a refund scheme through Canada's Export Development Canada (EDC). Some Canadian firms are protesting that the legislation will end up placing nearly a 20% tax on all firms receiving refunds whether or not they participate in the EDC repayment plan.

The tax is supposed to help Canada pay the \$1 billion it promised to U.S. lumber producers and charities as part of the SLA. Canadian firms that assign their refunded duties to the EDC in return for quicker repayments pay their share of that money by allowing EDC to keep 19% of their money. Those that wait for direct refunds from the U.S. were supposed to be the only ones subject to the tax.

"That is not how Bill C-24 is drafted," testified Elliot Feldman of the law firm Baker & Hostetler, representing Canada's Free Trade Lumber Council, at a House of Commons committee hearing Oct. 31. "The draft makes everyone pay the special charge," he pointed out. Because of wording in the legislation defining "specified person", both firms participating in the EDC plan and those receiving direct rebates would be subject to the tax, he argued. Moreover, the payment of interest on duties held by Customs stopped on Oct. 1 even though the SLA didn't go into effect until Oct. 12, further reducing the money due to Canadian firms, Feldman noted. Canada should just pay the \$1 billion out of its own funds rather than reducing payments and adding taxes to "a reeling industry," Feldman testified.

Meanwhile, EDC has rushed to start paying Canadian lumber firms. Canada Oct. 30 announced that EDC disbursed an initial \$950 million in refunds to its industry. "The refunds are going out ahead of schedule," said Canadian Trade Minister David Emerson. Separately, Canada's Gorman Bros. Lumber, Ltd., Oct. 31 filed a second request with a NAFTA panel to rule on its complaint against a change of scope ruling ITA issued earlier in 2006. The agency widened the softwood lumber case to cover Gorman's exports of "end-matched lumber."

CONGRESS IS GROWING SOURCE OF UNILATERAL TRADE SANCTIONS

Congress has become a bigger source of new unilateral trade sanctions in the last five years than the executive branch, according to a new report from National Foreign Trade Council and USA-Engage, a pro-trade lobbying group. "In recent years, congressionally mandated sanctions have increased in prominence relative to the number of presidentially initiated sanctions," the report said. From 2002 to 2005, the U.S. imposed more sanctions than it did in the period from

1997 to 2001, it found. In the latest period, the U.S. added 125 new unilateral sanctions and eliminated 47. In the earlier period, it imposed 59 new sanctions and dropped 26. The report noted the shift in new sanctions away from whole countries and towards individual persons and entities. Part of the shift in focus is due to the fact that most countries of concern are already covered by sanctions. "While this study focuses on identifying sanctions against countries, it is quite apparent that a great number of new sanctions have been and will likely continue to be imposed against individuals and groups," the report noted.

But "targeted sanctions" that are intended to have minimal impact on collateral states, institutions, and persons, "have still not demonstrated their effectiveness or their comparative efficacy as contrasted with broad-based sanctions," the report stated. It cited the U.N. food-for-oil scandal as an example.

While focusing on unilateral controls, the report noted that the U.S. also participates in many multilateral sanctions. In some cases, U.S. sanctions were imposed before the multilateral controls and remain in place after multilateral restrictions are lifted. "The result in such cases is that U.S. unilateral sanctions usually exist before and persist well after the effective period of the accompanying multilateral sanctions," the report argued.

FRAUD JUDGMENT MAY LEAD TO NEW DUTIES ON LARGE PRINTING PRESSES

An Iowa federal court ruling in 2004, which found that Japan's Tokyo Kikai Seisakushho (TKS) had filed false statements in a 1997-1998 administrative review of a dumping order on large newspaper printing presses from Japan, led Oct. 31 to ITA issuing a revised preliminary "sunset review" decision that could lead to the presses made by TKS facing antidumping duties of 51.97% and other Japanese press exporters getting hit with duties of 55.05% to 59.67%. The final sunset review determination now awaits the ITC's decision on injury.

In the original case, based on TKS filings, the agency revoked the dumping order. ITA opened a changed circumstances review of the case after the court ruling. The new sunset review found that "TKS' misconduct during the 1997-1998 administrative review may have significantly undermined the integrity of the results of the original sunset review," an ITA fact sheet said.

*** * * BRIEFS * * ***

STATE: DDTC has posted notice on its website alerting exporting community that it has started push to end backlog of licenses by January and is assigning almost all licensing officers to task. As result, all phone calls on license questions are being rolled over to its Response Team.

ITAR INDICTMENTS: Five members of California family of Chi Mak, including his wife, brother, sister-in-law and nephew, were indicted by Los Angeles grand jury Oct. 25 on charges of conspiracy to violate ITAR with export of defense items to China. Family also had been indicted in November 2005 for failing to register as foreign agents for China, which allegedly gave them "tasking list" of information to obtain.

WIRE ROD: CIT Judge Gregory Carmen Oct. 31 upheld (slip op. 06-159) ITC's December 2005 negative injury determination in antidumping case against alloy steel wire rod from Germany, Turkey and China.

COATED PAPER: New Page Corp. filed antidumping and countervailing duty petitions at ITA and ITC Oct. 31 against imports of coated free sheet paper from China, Indonesia and South Korea.

BUTT FITTINGS: In "sunset review" decision Oct. 31, ITC said lifting dumping orders on stainless steel butt-weld pipe fittings from Italy, Malaysia and the Philippines would renew injury to U.S. industry.

CENSUS: Jerry Greenwell, who was chief of foreign trade division's regulatory outreach branch, has new title of Trade Ombudsman. Gerard Horner, who was chief of division's automated export system branch, and who with Greenwell was one of main players in drafting mandatory AES rules, has left Census and joined BIS Office of Technology Evaluation.

LEMON JUICE: Allegedly dumped juice from Argentina and Mexico may be causing injury, ITC said Nov. 3.