

# Washington Tariff & Trade Letter®

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

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## STATE'S SANCTIONS DRAW OBJECTIONS FROM INDIAN AND RUSSIAN FIRMS

Indian and Russian firms that State hit with nonproliferation sanctions in the Aug. 4 Federal Register have protested that they are innocent of the department's charges and have asked their governments to intervene to get the sanctions lifted (see **WTTL**, Aug. 7, page 4). State said it imposed the sanctions because it had determined that the seven named entities had dealings with Iran that trigger the sanctions provisions of the Iran Nonproliferation Act.

The department's notice named two North Korean firms: Korean Mining and Industrial Development Corporation and Korea Pugang Trading Corporation; a Cuban entity, the Center for Genetic Engineering and Biotechnology; two Indian firms: Balaji Amines and Prachi Poly Products; and two Russian firms: Rosoboronexport and Sukhoy (Sukhoi).

"It should be emphasized that in our cooperation with Iran (the state which is not a subject to the rule of international sanctions), we adhere to the intergovernmental agreements, and do limit our relations by supplying exclusively defensive weapons," Rosoboronexport said Aug. 7. "Many foreign companies, including those from NATO member states, have conducted similar supplies," it added. Rosoboronexport, which says it's the sole intermediary for Russian defense exports, claimed State's action was an "unfriendly act toward the Russian state and an attempt to destabilize Russia military and technical cooperation with other nations."

India's Balaji Amines said its exports of amines to Iran were only to reputed pharmaceutical companies, were minuscule, and not of significant value or volume. "We have obtained end-use certificates from these two organizations showing that the material supplied by us is used for manufacture of life saving drugs," it said. It also released a letter it had written to Indian Prime Minister Singh asking him to "kindly take up the matter with authorities in the U.S."

Speculation that the sanctions against the Russians stemmed from Sukhoi's sale of fighter jets to Venezuela was brushed off by State spokesman Sean McCormack. "I know that there have been a variety of different conspiracy theorists out there talking about the reasons for this," he said at his daily briefing. "The fact of the matter is when a foreign company breaks American law, they'll be held to account and they will be sanctioned according to U.S. law," he added.

## U.S. EXPORTS TO CHINA GROWING TWICE AS FAST AS IMPORTS

Trade figures for the first half of 2006 show U.S. exports to China grew twice as fast as imports from China. For the first six months of the year compared to the same period in 2005,

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exports to China were up 35% to \$25.8 billion, while imports grew 17% to \$127.5 billion, according to trade figures Commerce released Aug. 10. Overall, U.S. industrial exports worldwide in the first half also outpaced imports, rising 16.4% to \$497 billion compared to a 13.5% increase in imports to \$916 billion. This pattern was followed with the European Union, with U.S. exports up 12% v. imports up 8%; Japan (12% v. 5%) and South/Central America (18% v. 14%). Exports of services also outpaced imports, with year-to-June exports rising 13.3% to \$203 billion, as services imports increased 8% to \$168 billion.

The U.S. trade deficit with China for the first half of 2006 reached \$102 billion, but this was still less than the combined deficit with the Canada, EU and Japan, which totaled \$181.6 billion. While some politicians and business groups complain that the U.S. deficit with China is due to China's unfair trade practices and low wages, the trade figures suggest deficits are greater with countries with such high living standards as France, strong labor unions as Germany, fair judicial systems as Canada and affluent consumers as Japan.

Among U.S. industrial sectors showing strong export growth in the first half compared to the same period in 2005 were: raw cotton (+46%), aluminum (+45%), materials handling equipment (+25%), metalworking machine tools (+24%), toys and sporting goods (+20%), electrical apparatus (+18%), semiconductors (+18%), household appliances (+17%), measuring and testing instruments (+16%), and medical equipment (+14%).

On the import side, excluding energy products, big gainers for the first six months were: inorganic chemicals (+20%), household appliances (+20%), plastic materials (+19%), computers (+17%), iron and steel mill products (+14%), and industrial machines (+13%). In the basket of sectors called advance technology, exports grew 16% in the first half, as imports rose 11%. The trade deficit in advance technology narrowed to \$14.4 billion from \$18.2 billion.

## **CANADIAN TRADE MINISTER OPENS DOOR FOR CHANGES IN LUMBER DEAL**

Following an Aug. 9 meeting with a group of executives from the Canadian lumber industry, Canadian Trade Minister David Emerson indicated that there may be some room for changes in the July 1 U.S.-Canada lumber agreement to satisfy industry concerns (see **WTTL**, Aug. 7, page 3). "We all know that when you execute this type of international agreement it does involve a lot of fine tuning of some of the definitions and the statistical theories that are being used and that kind of thing," Emerson told reporters when he emerged from the meeting. "So we will be exploring how we deal with some of those issues to give the industry the comfort that they would require to support this agreement," he said.

Emerson said he gave the industry until Aug. 21 to tell him which firms support or oppose the deal. The deadline was set because the government needs time to plan the fall legislative calendar.

"We've got a legislative agenda that must be activated on September 18 or thereabouts when Parliament reconvenes," he said. "We need to establish our priorities and we need to know now relatively soon if softwood lumber is to be one of those legislative priorities, and we need to do our homework to ensure that that bill is prepared and we are prepared to execute when Parliament reconvenes," he added.

In the meeting, Canadian lumber producers identified many of the problems they have with the deal signed in July. "We had very good discussions around the table," Emerson reported. "We got perspectives from different companies, from different parts of the business, from different regions, and I would say that we had a significant amount of support in the room," he said. "We spent a lot of time talking about areas where industry needed more clarification, where there are some administrative issues that could affect the commercial success of their business," Emerson noted. "And at the end of the day I think we all agreed that if we can get this agreement tidied up that we would be able to achieve a substantial degree of support from the

industry, but we have undertaken to follow up on some of the issues that they need some clarification on and some administrative tidying up,” he said.

## APPELLATE COURT REINSTATES STEEL ANTIDUMPING ORDER

Persistence pays. A long-running legal battle by U.S. steel producers to get antidumping duties imposed on imports of tin- and chromium-coated steel sheets from Japan finally achieved success Aug. 10 when the Court of Appeals for the Federal Circuit (CAFC) overturned a Court of International Trade (CIT) ruling and upheld an International Trade Commission (ITC) injury determination on these products. This is the sixth time this case has bounced around the CAFC, CIT and ITC on remands and court orders in the ongoing *Nippon Steel v. U.S.* court case. This case will be dubbed *Nippon VI* (CAFC No. 05-1404, 1417).

The case also shows the changing face of the steel industry. The original antidumping case was filed by Weirton Steel of West Virginia and decided in 2000. Subsequently, Weirton merged with International Steel Group, which then was acquired by Mittal Steel, which was a defendant-appellant in the latest case.

The appellate court reversed a 2002 order by CIT Chief Judge Jane Restani (*Nippon IV* and *Nippon V*) to the ITC to revoke its injury determination based on her judgment that the commission’s decision was not based on substantial evidence in the record. Restani agreed that the ITC had met this test for two of the required criteria for injury – volume of imports and impact – but not on the third required factor – price effects. She took the unusual step of vacating the ITC injury determination rather than remanding the case back to the commission for action.

The CAFC opinion, written by Chief Judge Paul Michel, acknowledges the thorough review Restani made of the evidence. “It is dispositive, however, that ample evidence existed on both sides of the remaining factor, price effects, and on the question of causation,” he wrote.

“However, when the totality of the evidence does not illuminate a black-and-white answer to a disputed issue, it is the role of the expert factfinder – here the majority of the presidentially-appointed, Senate-approved Commissioners – to decide which side’s evidence to believe,” Michel wrote. “So long as there is adequate basis in support of the Commission’s choice of evidentiary weight, the Court of International Trade and this court, reviewing under the substantial evidence standard, must defer to the Commission,” he ruled.

## BANKS FACE BIGGEST RISKS FROM STATE-LEVEL SUDAN SANCTIONS

The suit filed Aug. 7 by the National Foreign Trade Council and several Illinois pension funds against Illinois’ Sudan trade sanctions law may be of most importance to international banks, industry sources told WTTL (see WTTL, Aug. 7, page 4). In addition to preventing state pensions from investing in companies that do business in Sudan, the law also blocks the deposit of state money in any bank that does business with company doing business in Sudan. So far, the Illinois comptroller’s office has delayed implementation of this provision, sources say.

While banks screen customers and transactions against official U.S. and international lists of designated and blocked parties, the Illinois law covers companies that are not on any of these lists, including some of the largest oil companies in Europe, one source noted. To find out whether a potential customer has business in Sudan would require a major revision of all loan application forms, including the millions of home loan and credit card applications submitted annually.

The Illinois pension funds that have joined the suit – mostly local police and firefighter funds – complain that the restrictions on their investments would bar them from placing money in most international mutual funds that invest in foreign companies. They say this would force them to invest mostly in U.S. bonds and Treasury notes with lower returns on their investment. More

troubling, the Illinois law does not identify which companies are off limits and doesn't refer to any official list of such entities. Instead, it says the prohibition covers any firm identified as doing business in Sudan. Such lists are maintained by various private investment research companies and by anti-Sudan activists with no official standing, the pension funds complain.

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

DFAR: Defense is schedule to publish new proposed changes to Defense Federal Acquisition Regulations in Aug. 14 Federal Register to require defense contractors to comply with U.S. export control rules. Revised proposal would replace last year's proposal which drew strong criticism from defense and research communities (see WTTL, Sept. 26, 2005, page 1). "We have made substantial changes to the proposed rule," one DoD source told WTTL. The new proposal will identify and address all comments made on last year's proposal, source noted. There was criticism last year that DoD had not consulted with Commerce and State on original proposal. Those departments were "absolutely" consulted this time, source said. They were "significantly involved," source added.

WASSENAAR: Federal Register notice amending EAR to implement control list changes that Wassenaar Arrangement Plenary Meeting adopted in December 2005 will be published shortly, BIS sources say.

EXPORT ENFORCEMENT: Varian made voluntary self-disclosure to BIS of unlicensed exports it made along with subsidiaries in Netherlands and Switzerland to North Korea and Syria. In settlements with BIS, Varian agreed to pay fine of \$26,400; its Dutch subsidiary, \$39,600; and its Swiss subsidiary, \$8,800.

MORE EXPORT ENFORCEMENT: David Tatum, who previously reached settlement with BIS for his role in Clark Material Handling Corp. exports of forklift parts to Iran, was sentenced in D.C. U.S. District Court to one-year probation, 50 hours of community service and \$5,000 fine for making false statements to federal investigators (see WTTL, May 8, page 4).

BYRD AMENDMENT: Japan said it will keep sanctions that were imposed on American imports in retaliation for Washington's failure to comply with WTO ruling against Byrd Amendment for another year. Sanctions were supposed to expire at end of August. "However, considering that the United States continues to make disbursement that was found to be illegal, METI plans to extend the applicable period of these retaliatory measures by one year from September 1, following a recommendation made in today's meeting of the Council on Customs, Tariff, Foreign Exchange and Other Transactions," said Japan's Ministry of External Trade and Industry..

CHINA: Ministry of Foreign Affairs amended Control List of Regulations on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies, and "14 more viruses including SARS, toxins, bacteria and equipment have been added into the new list, further clarifying the control scope and reinforcing the strength of control," ministry spokesperson said. "China will continue to redouble its efforts to comprehensively and effectively implement the export control regulations as well as continuously improve the export control system," statement added.

GSP: USTR's office, which is undertaking broad review of GSP program before current legislation expires at end of 2006, published Federal Register notice Aug. 8 asking for additional comments on potential changes in eligibility requirements for advanced developing countries such as Argentina, Brazil, Croatia, India, Indonesia, Kazakhstan, Philippines, Romania, Russia, South Africa, Thailand, Turkey and Venezuela.

ROMANIA: USTR in Aug. 8 Federal Register asked for comments on whether to suspend GSP eligibility for Romania. Request for review of Romania's status came from Distilled Spirits Council of the United States and Pharmaceutical Research and Manufacturers Assn., which complained that Romania gives unfair preferences to EU imports. USTR also raised concern about new law requiring poultry imports to come only from producers approved by EU. There are no EU-approved poultry facilities in U.S., USTR said.

KLEPTOCRACY: Bush administration Aug. 10 launched initiative to crack down on stealing of government funds and corruption by "high-level" foreign officials. Interagency effort includes tighter scrutiny of money laundering and bank transactions, monitoring of funds distributed under Millennium Challenge Corporation and enforcement of Foreign Corrupt Practices Act. "Since 2001, we have significantly increased the number of cases the department has prosecuted under the Foreign Corrupt Practice Act...and I fully expect that trend to continue," said Deputy Assistant Attorney General Matthew Friedrich.

POLYESTER: ITC Aug. 7, on 6-0 vote, made preliminary determination that allegedly dumped imports of polyester staple fiber from China may be injuring U.S. industry.