

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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Vol. 26, No. 28

July 10, 2006

BIS CHINA PROPOSAL DRAWS CONCERNS FROM U.S. EXPORTERS

The Bureau of Industry and Security's (BIS) proposed changes to export licensing policies for China were published in the July 6 Federal Register, and, as expected, drew strong negative reactions from the exporting community (see **WTTL**, July 3, page 1). Since industry representatives say they saw or were briefed on various drafts of the proposal earlier, they expected most of the provisions. Nonetheless, one representative called the proposal "very disturbing for a lot of U.S. companies." A major concern is the expectation that the new rules will be "entirely unilateral" with no other allies imposing the same restrictions.

At a June 29 meeting before the proposal was published, an ad hoc group of company representatives met in Washington, and participants identified specific provisions in the notice that are most troubling. They also voiced concern that the proposal marks a significant shift toward the tightening of trade with China. They said it fails to recognize the extent and pace to which U.S. companies are integrating China into their supply chains and assembly operations.

One concern is the proposed definition of what constitutes "knowledge" that an export is going to a military end-use in China, which would trigger the stricter licensing requirements. The notice adopts the definition in Section 772.1 of the Export Administration Regulations (EAR). That definition includes both direct knowledge and "reason to know." For months, Commerce and State officials had told business groups the new rules would require only direct knowledge. Sources say that issue was hotly fought in the interagency discussions before publication of the proposal and supporters of the broader definition won the argument.

A proposed requirement to obtain an end-use certificate from China's Ministry of Commerce (MofCom) for any export that requires a license and is valued over \$5,000 also raised industry objections. In fiscal 2005, which ended Sept. 30, 2005, BIS approved 1,303 licenses for China, of which all but 35 had listed values greater than \$5,000. Industry fears that MofCom will be unable or unwilling to provide certificates for that many cases or will take months to provide the needed documents. Objections are also voiced to the restrictions on in-country transfers from one Chinese firm to another, as well as reexport controls from third countries.

AFTER FAILED TALKS, DOHA ROUND FACES UNCERTAIN DIRECTION

With prospects for the Doha Round looking dimmer after another failed ministerial meeting in Geneva July 1, the next chance for saving the round will come at the annual meeting of leaders of the Group of Eight industrial nations (G-8) in St. Petersburg, Russia, July 15-17. While a

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**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**

strong message of support for the conclusion of the round is likely to come from the G-8 leaders, there is doubt that they will attempt to broker a deal and the real work of trying to save the round will still come from ongoing talks among the trade ministers belonging to the G-6 and World Trade Organization (WTO) Director General Pascal Lamy.

Chinese President Hu, Brazilian President Lula, and Indian Prime Minister Singh, have been invited to attend side meetings of the G-8. As of July 7, there has been no formal invitation for Lamy to join the talks to brief the leaders, sources in Geneva report. Even if Lamy and the G-6 trade ministers show up in Russia, sources don't expect them to reach a deal to take back to other WTO members.

When the latest effort to reach agreement on tariff cutting modalities for farm and industrial goods and reducing farm subsidies collapsed July 1, Lamy was assigned the mission of being a facilitator and catalyst, as well as "confessor," to bring the G-6 together on a deal. It was made clear, however, that he wasn't to be the author of a deal himself (see story below). Lamy started that task during a previously scheduled trip to Japan July 5-6 during which he met with Japanese Prime Minister Koizumi and other top Japanese government and business leaders. According to sources in Geneva those meetings went very well, with the Japanese indicating a willingness to compromise on several key issue. "If Japan is prepared to move that puts pressure on the rest to move," one source noted.

Lamy will now spend the next couple of weeks talking with other G-6 members, mostly on the phone, to see if there is more room for compromise toward a deal. One thing Lamy will be trying to determine in the coming days is whether the current deadlock is political or tactical, a source in Geneva explained. If the talks are blocked for political reasons, Lamy won't be able to accomplish much. He is likely to have more success closing tactical differences. "We don't want the round to fail for tactical reasons," the source said.

Whether or not Lamy meets with the G-6 in St. Petersburg, sources don't expect a new deal to emerge at that time, and a couple of more weeks of talks may be needed. If a deal can be reached among the G-6, officials at the WTO would prefer the final agreement to be handled by country representatives in Geneva rather than having trade ministers come back. They cite the security and administrative costs required for ministerial gathering.

DOHA TALKS IN GENEVA REVEALED FINAL ROADBLOCKS

After an emotionally intense weekend that ended on Saturday July 1 with the failure of ministers to make any progress on reaching deals in the agriculture talks of the Doha Round, the pace of activity slowed in Geneva as officials reverted back to keeping better track of the World Cup and waiting for new instructions from their home capitals. That lethargy was also felt during the few days that trade ministers met before the talks collapsed. "There was never a sense of energy or buzz that comes from knowing there's an imminent breakthrough," U.S. Trade Representative (USTR) Susan Schwab told a business group in Washington July 7.

After the talks broke down there was much finger pointing with many diplomats blaming the U.S. for taking a hardline and not making a new offer to reduce domestic farm support. Americans complained particularly about the stand taken by Indian Trade Minister Kamal Nath. A major U.S. complaint was the failure of countries to provide specifics on what farm products would be designated as sensitive or special and thus exempt from full tariff cutting obligations and a how a proposed special safeguard mechanism would work. The new U.S. mantra is that these "3Ss" are a loophole or "black box" that could undermine any of the expected benefits from ambitious farm tariff cuts.

Developing countries again attempted to show their solidarity. After the talks ended, Brazilian Foreign Minister Celso Amorim assembled members of the G-20, the G-33, the ACP, the LDCs, the African Group, the small/vulnerable economies, the NAMA 11, the Cotton 4 and Caricom

for a joint press conference. "It is very important to show that developing countries...are not only united, but they are united around concrete proposals," he said. "And they are also prepared to negotiate....This is not like a post-mortem joint statement," he added. Moments later, Nath declared, "There is no need to pretend that this has not been a failure."

Some diplomats in Geneva said they believe U.S. negotiators came to the meeting with a limited negotiating mandate on domestic supports from the Congress. This limitation was obvious to everyone, one developing country trade official told WTTL. "I'm surprised it wasn't obvious to the DG because perhaps this meeting could have been postponed," he added. "I don't know what was hoped to achieve, because this U.S. lack of negotiating space was known to everyone," he said.

Despite the gloom after the failure of the meeting, the talks did surface numbers that will be needed to reach a deal in both the agriculture and non-agriculture market access (NAMA) negotiations. U.S. and E.U. negotiators "don't want to accept NAMA [coefficient] at 30, so they're saying Brazil and India have to move below 30 in NAMA, move towards 20," said another developing country ambassador. "I think that's what they're really testing this past week," he added. "Brazil and India have to wake up and see whether they can deliver below 30," he said. "And the U.S. has to agree that it can't be 15. It has to move north. So, I think that's where the final thing is. And that will unlock domestic support," he argued.

Some sources in Geneva say the trade-off will be a coefficient north of 20 for industrial goods for a cap on domestic farm support below \$20 billion. No American official is indicating that those numbers are right. One U.S. business source suggested the NAMA coefficient for developing countries would have to be 18 for the U.S. to come down below \$20 billion.

FINAL CANADIAN LUMBER DEAL STILL FACES HURDLES

A supposedly final deal to resolve the U.S.-Canada dispute over softwood lumber, which was initialed in Geneva July 1 by USTR Susan Schwab and Canadian Trade Minister David Emerson, has run into immediate opposition from Canadian provincial governments and lumber industries and may be dead on arrival. The 71-page text was intended to flesh out the details of a preliminary agreement reach April 27, but Canadian sources complain the document includes many new provisions that were not in that initial accord, making it unacceptable to many parties in Canada (see **WTTL**, May 1, page 2).

The Canadians complain that Prime Minister Stephen Harper and Emerson reached the deal with U.S. negotiators without getting final support from the provinces and industry and are now trying to force the deal on them. Because the proposed pact requires all litigation to be withdrawn as part of the bargain, Canadian lumber firms that have launched their own lawsuits in U.S. courts could stymie the deal by refusing to terminate their cases.

"The government promised not to go forward until it has a commercially viable agreement," said Carl Grenier, executive vice president of Canada's Free Trade Lumber Council. "The industry associations and many individual companies declared publicly and in writing on Friday [June 30] that the deal is not commercially viable, and, in fact, makes no sense," he added. Harper reportedly is prepared to take the deal, which is still subject to final legal scrubbing, to the Canadian Parliament where he could face a no-confidence vote.

Among the new provisions that drew complaints is the termination clause, which would allow either country without cause after 23 months to give one-month's notice on its intent to withdraw from the agreement. After the one-month wait, both parties agreed to require a one-year waiting period before new antidumping or countervailing duty petitions could be filed. One lawyer said this makes the deal a three-year agreement rather than the seven-to-nine-year deal originally promised. The Canadians are concerned that the U.S. Coalition for Fair Imports could take the \$500 million it will get under the agreement and use the money to launch a

series of new complaints in just three years. Other troubling provisions include one that would impose import quotas on a monthly basis with little carryback or carryforward. This would limit import growth during seasonal periods when construction work picks up. The Canadians also object to restrictions that would prevent any tenure holder of lumber logging rights in Canada from also being classified as a remanufacturer that would be exempt from quotas.

COURT REJECTS REHEARING ON APPLICATION OF “CAROUSEL” LAW

The Court of Appeals for the Federal Circuit (CAFC) July 6 rejected (case 05-1384) a government request to rehear and clarify an earlier ruling directing the Court of International Trade (CIT) to decide whether the U.S. Trade Representative (USTR) has properly implemented the so-called “carousel” law. The ruling is the latest twist in a suit complaining that the USTR hasn’t complied with the Trade and Development Act of 2000, which requires it to review and change periodically the list of European Union (EU) goods that are subject to retaliatory tariffs due to Europe’s failure to comply with a WTO ruling against its restrictions on imports of hormone-treated beef.

This is second CAFC ruling in *Gilda Industries v. U.S.*, a suit brought by a company which imports toasted breads from Spain that have been subject to retaliatory tariffs since 1999. In a May 1 decision, the court overturned a CIT decision which said Gilda had failed to state a claim but remanded the case back to the CIT to determine whether the USTR had made a proper determination that it didn’t have to invoke the carousel law because there was an “imminent resolution” of the dispute with the EU.

In its motion for a rehearing, the government wanted the CAFC to direct the CIT to tell the USTR to reopen the administrative record to find support for the “imminent resolution” decision. “In fact, the record at present does not support such a finding, which is why we have ordered a remand,” the three-judge appellate panel wrote. “Thus, had we been required to make a final determination based on the record, there would have been no basis on which we could have concluded that the statutory exception applies,” it continued.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: BIS in July 6 Federal Register published notices of settlements with Universal Technology, Inc., of Mount Laurel, N.J., its president, Terry Tengfang Li (also known as Terry Li), and its chief executive officer, Nei-Chien Chu (also known as Pearl Li), for export of electronic products to China on 17 occasions without approved licenses. Universal agreed to pay \$170,000 civil fine and to be denied export licensing privileges for 20 years. Terry Li and Pearl Li agreed to 20-year denial orders for their roles in exports.

SERVICES: New report prepared for the Coalition of Service Industries claims benefits from liberalization of services in Doha Round would produce welfare gains for developing world of \$6 billion from 2005 to 2015, four times expected gain from cutting industrial goods tariffs.

CATFISH: ITA published anticircumvention determinations in July 7 Federal Register, finding that imports of fish from Cambodia by Lian Heng Trading Co. and Lian Heng Investment Co. are circumventing antidumping order on certain frozen fish fillets from Vietnam. Agency terminate circumvention order for two other firms, L.S.H. and Sun Wah. In separate legal action, a federal grand jury in Panama City, Fla., issued indictment in May against Panhandle Trading Co., its vice president Danny Nguyen, plus four Vietnamese firms, on charges of allegedly importing catfish from Vietnam and mislabeling it as grouper to evade antidumping duties.

FOREIGN INVESTMENT: President’s Export Council approved letter to President Bush urging him to work with Congress to avoid enactment of legislation that would restrict foreign investment in critical infrastructure. “It is important that the national security review process for inward investment not be decided by political calculation but be based on fair, objective criteria,” PEC wrote.

GSP: Notice of annual product and country review determinations announced in July 5 Federal Register