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ANTIBOYCOTT ENFORCEMENT GUIDANCE GETTING CLOSER

Just because some Middle East countries have said they are ending their primary boycott of Israel is “no reason to let your guard down,” warns Wendy Wysong, the Bureau of Industry and Security (BIS) Deputy Assistant Secretary for Export Enforcement. While governments such as Bahrain and Saudi Arabia say they are changing their boycott policies, boycott-related language may remain imbedded in private-sector, shipping and banking documents and may still trigger antiboycott compliance requirements, she told the BIS Regulations and Procedures Technical Advisory Committee June 13. Based on the policies of the Treasury Department, which maintains the list of countries supporting the boycott, “unless there has been a repeal of the actual boycott law, there is still a presumption that they are a boycotting country,” she said.

Wysong said the antiboycott enforcement guidance that BIS has been drafting for 18 months will be proposed in the Federal Register in about a month. She said BIS intends to make several changes in the proposal. One change would clarify that “violations that are disclosed in the course of seeking advice from OAC by telephone or e-mail is not information received from another source for the purpose of determining whether the information received in a voluntary disclosure has already been received from another source,” she said. “In other words, you’ll get credit if you make the call and you ask for information,” Wysong declared.

Another change will add an explicit statement that BIS “will treat similarly situated cases similarly,” she reported. In deciding what legal action to take, the agency considers such factors as a company’s size, the number of violations, and where a firm does most of its business. “We do take all of that into account,” she advised. BIS also removed “violations of export laws other than boycott provisions from the list of aggravating or mitigating factors,” Wysong noted.

The coming guidance will clarify that “prompt and reasonable steps by an acquiring firm to uncover, correct and disclose violations of an acquired firm committed prior to disclosure will be sufficient to prevent attributing the violations” to the acquiring firm, she said. “If you correct them, we take that into account,” Wysong noted. “It is not necessary for the disclosure to take place before the acquisition,” she added.

DOHA FARM TALKS AWAIT FALCONER’S CONSOLIDATED TEXT

The Kabuki Theater known as the World Trade Organization (WTO) Doha Round made little visible progress during the week of June 12, and attention is now focused on the expectation that the chairman of the agriculture talks, New Zealand’s ambassador, Crawford Falconer, will

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present a consolidated draft text on June 21, containing proposals for the three main pillars of the farm talks – market access, domestic support and export subsidies. That document, however, is expected to contain over 400 pairs of square brackets indicating that no agreement has been reached on specific provisions. Based on the reaction to previous “reference” texts that Falconer has released, his text is likely to generate heated debate that will either create a crucible for a final deal or a meltdown of talks.

Falconer’s paper will be the basis for ministerial level talks that will begin June 26. Ahead of those talks, WTO Director General Pascal Lamy came to Washington June 13-14 to meet with U.S. officials, members of Congress and farm groups. If Lamy hoped to find any new offers from the U.S., he didn’t get them in any of the public statements that lawmakers issued after meeting with him. “I conveyed to the Director General in no uncertain terms that this is not an option,” House Agriculture Committee Chairman Bob Goodlatte (R-Va.) declared. “There is absolutely no support in Congress for further concessions on our part,” he said.

Agriculture negotiators came to Geneva the week of June 12 with a flurry of last-minute proposals. “On domestic support we’re down to a discussion of numbers largely amongst the members about how deep the cuts are going to be with some focus on the disciplines in green and blue boxes,” Deputy Assistant U.S. Trade Representative Jason Hafemeister told reporters in Geneva June 16. “That leaves, of course, market access as the area that really needs the most attention and where we’ve spent most of our time this week,” he noted. “We’re not there. We still have some serious differences in this area of the negotiations,” he added.

A more seasoned assessment of the talks came from a trade consultant in Geneva who has been through trade talks before. At some point in every negotiation, everyone thinks it's going to fail, he noted. But "both the U.S. and the EU know that the alternative to the negotiation is dispute settlement. Both of them are fully aware that that is not in their interest," he explained. That “is the worst situation for the U.S. and the EU because you can't sell it as a quid pro quo. You just get condemned and you have to do something, which is very painful, politically speaking,” he opined. “In the end, I don't think it's going to be the U.S. and EU who are going to make problems for an allied solution....I think it's going to be the developing countries, the G-20 and so on,” he said. Unlike countries that have many different issues at stake in the talks, for many of these nations, concessions in agriculture from the EU and U.S. are the only thing they can bring home to show a benefit from the round.

SPECIAL INTERESTS STILL NEED TO BE ADDRESSED IN DOHA TALKS

In December 1993, then-Commerce Under Secretary for International Trade Jeffrey Garten arrived in Geneva in the final hours of the Uruguay Round to pull off the table proposals in the final text that would have weakened U.S. antidumping and countervailing duty laws. Garten succeeded, but U.S. officials don’t want to wait for a last-minute rescue again in new talks on WTO trade rules. Last-minute deals, however, may be required in several Doha areas.

[**EDITOR’S NOTE:** This week, WTTL presents the third and final installment of a three-part series examining the state of play for Doha Round negotiations outside of agriculture and NAMA. WTTL correspondent in Geneva, R. Scott Billquist,, filed this sector-by-sector analysis of the major issues facing talks in these three areas.]

RULES: After agriculture, the topic on which the U.S. is on the defensive most in the Doha Round is rules. Many nations in the Negotiating Group on Rules are calling for changes in the WTO agreements on antidumping and countervailing duty measures to curb Washington’s use of these trade instruments. Most members of Congress and many import-sensitive U.S. industries are absolutely opposed to any changes to these WTO rules. “The main political difficulty for the U.S. is that they will not want to see any weakening of their trade defense mechanisms,” says an attorney in Geneva who has been following the talks. “I think that's the biggest thing because any changes which other countries are likely to support would probably be seen in Washington as weakening,” he adds. “There have been a lot of detailed discussions on the basis of specific written proposals that delegations have made for how those agreements might be amended,” reports John Weekes, a senior policy advisor with the Sidley Austin law office in Geneva and a

former Canadian trade negotiator. Based on these proposals, the chairman of the group is expected to produce a consolidated draft text in July, showing where improvements might be made in current rules.

The U.S. has reluctantly agreed to talk about these issues but with the primary aim of improving the transparency of trade law administration in other countries. "I think the U.S. is realizing - it's not something that happens overnight - but they are realizing there is a tendency for them to become more and more victims of this, so they have also begun to have a stake in clarifying and improving the agreement to prevent abuse and arbitrariness," says a diplomat from a key developing country. "I'm not very, but a little bit optimistic about the U.S. approach," he adds.

The U.S. is at the negotiating table, but its agenda is quite different, notes one ambassador who belongs to the Friends of Antidumping, a group of countries seeking changes in the rules. "The U.S. is trying to improve existing agreements in terms of transparency of the procedures while the other side, in particular the friends group, is emphasizing the need to rewrite core issues of their own interests in the existing agreement, such as sunset, zeroing, lesser duty rules, and so on," he explains. The friends see the rules talks as an important part of the overall balance in the round. "The U.S. is just not addressing that."

GEOGRAPHICAL INDICATORS: Significant resistance remains to EU proposals for extending current protections for geographical indications beyond wine and spirits to other foods and beverages. Two other main issues also are unresolved: (1) Should the registration of products in a GI registry create a legally binding obligation to protect those names or would the registry serve as just a database of GI names, and (2) Should participation in the registry bind only those countries that elect to honor its provisions or should it be mandatory for all WTO members.

"The EU says it should be part of the single undertaking but others - meaning Australia, the U.S., Canada, Latin American countries, most of them - think this it is not part of negotiation issues, so they don't have to do anything on it," says one ambassador involved in the talks. Some observers say the EU needs to see results on the GI issue to counter-balance concessions it is making in agriculture and as a way to offer its farmers an offsetting benefit for the reduction of farm subsidies and protection they face.

These questions involve political decisions, the ambassador tells WTTL. If the main proponents agree on how much legal weight they should give a registry, an agreement can be quick, he suggests. But negotiators have not made any progress, he says. Technical issues include the cost of maintaining the registry, how to notify and register and which WTO committee will look after it. Some of these issues are left over implementation problems from the Uruguay Round.

DISPUTE SETTLEMENT UNDERSTANDING: Work on revising the dispute-settlement system has made good progress in the past months, claims the chairman of this negotiating group, Costa Rica's ambassador to the WTO Ronald Sabor'o. Old and new proposals are being examined on a technical level and both developed and developing countries are putting a lot of effort into the talks, he says. The next stage will begin in July when "we would have all the fresh contributions on the table," he adds. "After the summer break, I hope that we can have a consolidated text coming" from the members of the group, Sabor'o says. He notes that he hasn't given his assessment of the talks yet to members of the negotiating group.

Some important gaps in positions still exist, he admits. Countries that have lost WTO disputes have claimed that WTO panels and the Appellate Body have overstepped their authority and the intent of written agreements. Nations that have won disputes complain about the difficulty in getting losing parties to comply with panel rulings. In some case, a single country can hold both positions.

Even with the difficulties in the agriculture and NAMA talks, this year has been particularly good in terms of the production of proposals, Sabor'o says. Another source points out that the timing for the DSU negotiation depends on when the Doha Round reaches its conclusion. If there's a boost from an agreement on agriculture and NAMA, the DSU group will likely finish this year, he predicts.

COTTON: This issue exploded onto the WTO stage at the 2003 Ministerial in Cancun when four West African cotton producing countries, now known as the C-4, threatened to block the Doha Round if an agreement didn't give them relief from production and export subsidies paid to producers in developed countries - primarily the U.S. -- and better market access in other countries. The issue almost caused the collapse of the Hong Kong Ministerial in December. Since then, the C-4 have offered proposals to meet their demands, but little progress has been made in these talks. The decision in Hong Kong was very clear, contends a trade consultant in Geneva who is closely following these talks. While cotton will be

part of any final agriculture deal, it will also get special attention. "There has to be something specific, something substantial" for cotton, and "it has to be fast," he notes. The C-4 also want to see the total elimination of domestic support for cotton, a goal that would be very hard for the U.S. to accept. At the same time, Brazil is watching these talks carefully to make sure that any agreement doesn't undermine the WTO dispute-settlement victory it won against U.S. cotton subsidies.

The cotton talks, however, are in a holding pattern behind the agriculture talks because no one can decide what substantial, specific or faster means for cotton until negotiators agree on the basic formulas for agriculture. "The Africans proposed a formula depending on the results," the consultant says. The proposal would produce benefits for cotton exporters independent of the final results for agriculture in general, eliminating or capping support for cotton. "Officially, the Americans have not responded much, but unofficially the Americans said it was not fair because the proposal left the Africans off the hook in terms of the general ag negotiations," he says.

High tariffs in developing countries are also of concern to African producers. The decision in Hong Kong to give least-developed countries duty-free, quota free access to developed country markets has shifted the focus to South-South trade in cotton. "It's possible that Africa will ask for commitments from emerging markets, the G-20 countries, but that's a problem of politics between developing countries. That's a hot issue in a lot of ways," the consultant says. Another component of cotton negotiations is the promise of increased aid for West African countries either through individual country contributions or the World Bank. "There is a lot of money that people are willing to give for the cotton sector in general," says the consultant. "What the Africans request is that they get a social safety net for as long as the subsidies are continuing. That is an issue that the donor countries up until now have not yet agreed upon," he adds.

* * * BRIEFS * * *

ANTIDUMPING: Commerce Secretary Gutierrez June 16 announced that ITA will propose rules in Federal Register week of June 19 to allow department to waive antidumping and countervailing duties on imports of supplies for emergency relief work when president declares state of emergency.

CANADA: BIS staffers say they are just starting to work on economic impact analysis of proposal to extend Missile Technology (MT) controls to exports to Canada, indicating lengthy delay for issuing of final rule (see **WTTL**, May 8, page 1). Staff is getting guidance from Commerce General Counsel's office on what has to be done to satisfy legal requirements for analysis and to meet OMB requirements. "We're trying to figure out what we have to do," BIS rule writer Hillary Hess told RAPTAC June 13.

LIBYA: Forty-five day waiting period after congressional notification of Bush administration's intention to take Libya off list of terrorist supporting countries expires June 29, but BIS won't be ready by then to issue new rules to amend EAR to ease controls on Tripoli, BIS staffers told RAPTAC June 13.

MANDATORY AES: Hopes are dim for publication this summer of final rule to require mandatory use of Automated Export System (AES) for all exports and revise Census Foreign Trade Regulation. Final rule "is still stalled," Census official Dick Preuss reported to RAPTAC June 13. Discussions are continuing "at the department level" between Commerce and Department of Homeland Security (DHS) over Customs demand for end of Option 4 and for ability to share AES data with foreign governments as part of effort to build anti-terrorism cooperation with foreign customs agencies (see **WTTL**, March 13, page 1).

ITC: President Bush has designated Daniel Pearson to be chairman of International Trade Commission for two-year term. He named Shara Aronoff to be vice chairman.

VIETNAM: Business community, members of Congress and Bush administration June 13 launched legislative effort to grant Vietnam permanent normal-trade-relations (PNTR) status once it accedes to WTO. Bills (S.3495 and H.R. 5602) to amend Jackson-Vanik Amendment were introduced in House and Senate.

TEXTILES: USTR officials say textile industry misread statements U.S. officials made in Geneva June 14 in response to proposal from Turkey for separate sectorial talks on textile and apparel issues in Doha Round. There has been no change in U.S. position, says USTR spokesperson Neena Moorjani. "We are not in a position to endorse this proposal without further study, but it is an inescapable fact that the textile sector needs special consideration," she says.

MALAYSIA: U.S.-Malaysia FTA talks are off to slow start after first round week of June 12 in Penang. Two sides exchanged and discussed offers and positions. Chief U.S. negotiator Barbara Weisel said she was "pleased with results" but both sides have "a lot of homework" for next round week of July 17 in D.C.