

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. 26, No. 20

May 15, 2006

DOD AUTHORIZATION BILL WOULD PENALIZE ARMS SALES TO CHINA

For the second year, the House Armed Services Committee (HASC) has included provisions in the annual National Defense Authorization Act (NDAA) that would bar Pentagon procurement from any firm that sells arms to China and from Airbus, the European aircraft manufacturer. Before the House May 10 passed the bill (H.R. 5122) by a 396-31 vote, the White House Office of Management and Budget (OMB) warned lawmakers that “if the president is presented a bill that includes such provisions, his senior advisors will recommend that he veto the bill.”

Exporting and defense industry representatives expected the provisions to be in the House bill and didn't try to block it. “There was never any chance to make it right in the House,” one industry source said. The focus of business opposition will come in the Senate Armed Services Committee, which is still considering its version of the NDAA, and in the eventual House-Senate Conference Committee. Final passage of the legislation isn't expected until the fall.

Section 1211 of bill would prohibit the Pentagon from buying goods or services from any entity that knowingly transfers items on the U.S. Munitions List to China. “This section would create disincentives for potential arms exports to China by denying sellers access to Department of Defense procurement opportunities,” the HASC report on the bill asserted. Section 812 would prohibit Defense procurement from any foreign person with whose country the U.S. has requested World Trade Organization (WTO) consultations on the basis of alleged illegal subsidies. The only such case now pending is the U.S. complaint against EU subsidies for Airbus.

The China provision would “undermine longstanding U.S. policy – repeatedly affirmed by Congress – to open U.S. procurement markets to suppliers from allied and friendly countries that open their procurement markets to U.S. suppliers,” OMB said in a Statement of Administration Policy (SAP). The Airbus provision would reduce competition, “driving up costs and negatively impacting firms that partner with foreign entities,” the SAP stated. OMB also objected to a section which would expand the “Buy America” provisions of the Berry Amendment to all tiers of the supply chain and especially specialty metals, and to Section 832, which would create a Strategic Materials Protection Board which would identify items critical to national security.

DEMOCRATS LEAVE DOOR OPEN TO SUPPORT OMAN TRADE DEAL

House Democrats indicated May 10 that they could still be convinced to support the U.S.-Oman Free Trade Agreement (FTA) as they did the Bahrain FTA, if Oman takes a few more steps towards strengthening its labor laws. When the House Ways and Means Committee approved

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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

draft Oman FTA implementing legislation in a “mock” markup on a 23-to-11 vote along party lines, three Democrats voted “present” to show their opposition to the deal as it now stands but their willingness to support the final legislation if the Omanis act on three unresolved issues raised by the Democrats. Meanwhile, Senate Finance Committee markup is set for May 16.

Oman has had a steady stream of correspondence with Ways and Means Democrats and Republicans, as well as with U.S. Trade Representative (USTR) Rob Portman about its labor laws and its noncompliance with the Arab League boycott of Israel. Ways and Means Republicans say Oman’s written commitments have resolved these issues, while Democrats claim Oman still hasn’t gone far enough.

“We asked Oman to look at the commitments made by Bahrain in the context of its FTA negotiations,” Chairman Bill Thomas (R-Calif.) said at the start of the mockup. “Oman has now made commitments, to be fully implemented by October 31 of this year, that are at least as strong as those made Bahrain,” he said. Rep. Ben Cardin (D-Md.) said he still wasn’t satisfied. Cardin said committee Democrats sent Oman a letter in April identifying 10 labor practices that needed to be improved to meet International Labor Organization (ILO) standards. A May 8 letter from Oman’s Commerce Minister to Portman pledged improvements in the country’s labor laws. These letters “have moved us toward meeting those needs,” Cardin said.

The major remaining problem with Oman’s trade laws is the structure of worker organizations. Rather than independent unions, the country provides for representative committees made up of both labor and management. Also of concern is the treatment of foreign workers who make up the bulk of manual laborers in the country.

SOUTH-SOUTH FIGHT ERUPTS IN DOHA FARM TALKS

The U.S. and European Union (EU) had the chance to sit back for a change and watch other countries fight over agriculture issues in the Doha Round the week of May 8. The dispute involved developing countries and focused on how to interpret provisions in the Doha negotiating mandate that are supposed to allow developing countries to exclude “special products” (SP) from required reductions in farm tariffs. The disagreement broke out after New Zealand Ambassador Crawford Falconer, who chairs the Doha agriculture talks, suggested in a May 4 “reference paper” that a proposal from developing countries in the G-33 to allow countries to exclude up to 20% of their tariff lines from farm liberalization would “trump anything envisaged” by the July 2004 Framework Agreement that has been the roadmap for the Doha negotiations for the last two years.

Opposition to Falconer’s paper came from coalitions of countries belonging to the African Group, the Least Developed Countries (LDC) group, the G-33, and the Africa, Caribbean and Pacific (ACP) Group. These groups May 11 circulated a statement that reiterated the importance of SPs and special safeguard mechanisms (SSMs). Pitted against them were many members of the Cairns Group of agriculture exporting countries, including Chile, Costa Rica, Malaysia and Thailand.

Falconer’s paper said applying the G-33 proposal in case studies of two unnamed developing countries resulted in 98.4% of the value of the agricultural products being categorized as SPs for one and 94% for the other. Falconer said the 20% figure would have to be substantially reduced. On the other extreme, the U.S. has proposed limiting SPs to only 5 tariff lines.

One of the key criticisms of Falconer’s paper was its implied addition of a numerical or market access measure to determining how many SPs could be designated. G-33 representatives said the criteria for determining SPs were mandated in the July framework, affirmed in the Hong Kong declaration and based selection only on food security, livelihood security and rural development. “What is at stake here...is the livelihoods and food security of farmers who are resource poor, living at or below the poverty line, and who do not have the benefit of safety net or any benefit of domestic support or other subsidies,” one ambassador told WTTL. “This

is a major component of the developmental dimension of the Doha round for the G-33 and the Africa Group,” he added. SPs and SSM “cannot be looked upon from the perspective of commercial access only,” another diplomat from the group said.

Falconer apparently was intentionally provocative in his paper to get countries to discuss issues they have been talking around for months. As one trade official said, the talks were general and were not very focused. With the feedback he has gotten, there is the hope that a compromise text may emerge. “When he put out the reference papers, people from both sides were very critical,” one ambassador told WTTL. “It’s at least bringing attention to how to tackle this. Previously, they were just talking in the air about special products,” he added.

Falconer’s strategy wasn’t limited only to SPs. In a May 11 reference paper he raised similar criticism of a proposal from developed countries with highly protected farm sectors, known as the G-10, who have proposed designating 15% of tariff lines as “sensitive products” – the rich country equivalent of an SP. Applying the proposal in case studies of two G-10 countries found 88.1% and 84.3%, respectively, of the value of their farm trade would be excluded from full tariff cuts. “I think it is high time that we at least start to get more ruthlessly realistic and frank about what real bottom lines are,” Falconer wrote.

LAWMAKERS ADD WARNING AGAINST DEAL WITH RUSSIA

A bipartisan group of House and Senate members May 11 echoed the business community’s message of concern about a political deal between Washington and Moscow over Russia’s accession to the WTO. They said they would oppose granting Russia permanent-normal-trade-relations (PNTR) status if key trade issues are not adequately addressed in the bilateral trade deal being negotiated (see **WTTL**, May 8, page 2). In a letter to President Bush, they said Russia “has demonstrated a consistent disregard” for rules governing international investment and trade and especially those dealing with intellectual property rights (IPR) and sanitary and phytosanitary (SPS) restrictions on agriculture imports.

“While we recognize that many of these issues are being considered within the context of the multilateral accession protocol, we urge you not to conclude the bilateral negotiations for Russia’s WTO accession while Russia fails to provide basic WTO protections for IPR, adopt measures consistent with the SPS Agreement or eliminate major industrial subsidies and other nonmarket based government interventions in sectors such as energy,” they wrote. The letter was signed by Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Mont.) and House Ways and Means Committee Chairman Bill Thomas (R-Calif.) and Ranking Member Charles Rangel (D-N.Y.).

U.S. CRITICIZES WTO APPELLATE BODY RULING ON ZEROING

In an unusual act before the WTO Dispute-Settlement Body May 9, the U.S. publicly criticized a recent WTO Appellate Body ruling which said Washington was violating the WTO Anti-dumping Agreement by its use of a “zeroing” methodology in calculating dumping margins in administrative reviews (see **WTTL**, April 24, page 4). Despite American objections, the DSB adopted the Appellate Body decision. A U.S. representative to the DSB called the Appellate Body ruling “deeply troubling.” He said the U.S. was so troubled by the decision that it had taken the unusual step of filing a formal paper explaining its disagreements.

In particular, the U.S. complained that the Body had departed from the rationale it used in its *EU Bed Linen* ruling on zeroing. It objected to the rationale that the “margin of dumping” always refers to “the product as whole.” “This new rationale has serious implications for other provisions of the Antidumping Agreement and the manner in which members administer their antidumping regimes,” the trade official said. “It would also require dramatic changes to the

operation of prospective normal value systems and the use of constructed value,” he said. The U.S. also objected to the ruling’s break with past decisions in its finding of an “as such” violation from a “measure” without showing the measure caused the U.S. to breach its obligations. “Based on what we have heard and read thus far, the Appellate Body report is being applauded in some quarters because it goes beyond what negotiators could achieve,” the official stated.

BIPARTISAN HOUSE BILL PROPOSES CHANGES IN CFIUS LAW

A bipartisan bill (H.R. 5337) introduced May 10 indicates that Congress may not make changes as drastic as many in the business community feared it would in the procedures for reviewing foreign investments in the U.S. for national security reasons. With the backing of leaders in both parties, the measure would give official statutory status to the Committee on Foreign Investment in the U.S. (CFIUS) and make the Department of Homeland Security vice chair of the committee. It would reaffirm the requirement for conducting a full 45-day review of a proposed investment whenever the buyer of the U.S. company is a foreign government.

Rather than requiring Congress to be notified of all investments that are reviewed, the bill would only require reports to committees of jurisdiction after the investigation is completed. Because top political appointees were unaware of the decision in the Dubai Ports World case, the measure would require the CFIUS chair’s and vice chair’s signatures on all decisions (see **WTTL**, April 3, page 4).

*** * * BRIEFS * * ***

CHINA CATCH-ALL: Industry sources say they have been told by BIS officials that the agency will publish proposal for China catch-all rules before Memorial Day (see **WTTL**, May 1, page 1).

ANTIBOYCOTT: BIS has imposed \$13,500 civil fine on BNP Paribas office in New York City for alleged violation of antiboycott regulations. BIS charged firm with providing boycott-related information to customers in Dubai and Bahrain and failing to file report on boycott requests.

FSC/ETI: EU says it won’t reintroduce retaliatory sanctions on U.S. exports after Senate May 11 followed House action May 10 to pass tax bill that repeals “grandfathered” tax breaks for overseas leases that EU considered still in violation of WTO ruling against FSC/ETI export tax law (see **WTTL**, Feb. 27, page 3). Legislation and EU action ends dispute dating back to 1982.

EXPORT ENFORCEMENT: Plains All American Pipeline of Houston, Texas, will pay \$82,500 administrative fine to settle 30 BIS charges that it exported crude oil to Canada in excess of amount allowed on export license and to end-user not authorized on license. Firm voluntarily self-disclosed shipments.

EX-IM BANK: Sen. Finance Committee Chairman Charles Grassley (R-Iowa) May 12 announced he was lifting his “hold” on confirmation of James Lambright to be Ex-Im Bank president. Grassley said he has asked GAO to review Bank criteria for issuing credit guarantees (see **WTTL**, March 13, page 4).

ANTIDUMPING: WTO report May 9 shows continued decline in number of new antidumping investigations initiated by members during July-December 2005 compared to same period year earlier. Report says 16 members reported initiating 82 new cases versus 106 initiations in 2004 period. China launched the most, 13, followed by Argentina and India with 11 each. Figures echo decline in U.S. cases (see **WTTL**, Feb. 6, page 1). So far in 2006, only one new antidumping case has been initiated in U.S.

EAR: BIS in May 12 Federal Register issued final rule amending procedures under which related persons can appeal application of export denial orders to them.

IEEPA: Mohammad Fazeli pleaded guilty May 8 in L.A. U.S. District Court to one-count information charging him with attempting to export 100 Honeywell sensors to Iran (see **WTTL**, April 3, page 2).

TRADE FIGURES: U.S. goods exports in March boomed to record \$82.1 billion, up 15% from last March. Goods imports jumped 14% to \$148.8 billion. Deficit for 1st quarter was lower than 4th quarter 2005.

CHINA CURRENCY: Treasury decision May 10 not to name China currency manipulator will help Grassley-Baucus bill to change terms used to describe Beijing’s practices (see **WTTL**, April 3, page 1).