

# Washington Tariff & Trade Letter<sup>®</sup>

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. 14

April 3, 2006

## KOREAN FTA TALKS LIKELY TO REVIVE LINGERING TRADE COMPLAINTS

Coming U.S.-Korean free trade agreement (FTA) talks will look a lot like the trade disputes the two countries have fought for the last ten years, if industry advice on the negotiations is followed. Comments sent to the U.S. Trade Representative's (USTR) office on the talks focused on many old complaints involving tariff and non-tariff barriers to U.S. exports of autos, films, TV programs, agriculture commodities, pharmaceuticals, medical devices, and insurance.

The fact that Korea exports more than one million cars annually but has a foreign import penetration of only 2.7% was cited by the Automotive Trade Policy Council, which represents Detroit's Big Three carmakers. "This FTA must focus on developing performance-based market access thresholds in Korea as well as automotive safeguard provisions," the council wrote. "Only after Korea demonstrates that its auto market is open and that import access is sustained, should the U.S. consider lowering its automotive tariffs on Korean-built vehicles," it added.

Firms making drugs and medical devices, including Novartis, and their trade association, Advamed, raised concerns about the procedures Seoul uses for approving new products and its system for pricing these products for reimbursement. The stainless steel industry said no concessions should be given to Korean exports as long as the trade imbalance continues and Korean steel remains subject to antidumping and countervailing duty orders. A wide array of farm groups urged the talks to seek cuts in Korean tariffs on food imports. Yum Brands, which operates 500 KFC and Pizza Hut restaurants in Korea also called for eliminating tariffs on food it uses, including poultry, potato flakes, cheese, frozen French fries and beef.

## PRESSURE ON CHINESE CURRENCY EASES, AS FOCUS SHIFTS TO LEGISLATION

The air has gone out of the threat that Congress would impose a 27.5% penalty tariff on Chinese imports in retaliation for Beijing's failure to allow the renminbi to float freely. Instead of immediate sanctions, lawmakers have turned to a series of legislative proposals that would give U.S. trade officials more weapons to use against unfair Chinese trade practices, including keeping its currency undervalued. With no deadline to vote on the tariff legislation sponsored by Sens. Charles Schumer (D-N.Y.) and Lindsey Graham (R-S.C.), there appears to be no schedule for when or if Congress will actually enact a broad China bill.

On their return from a trip to China, Schumer and Graham announced on March 28 that they would not demand a vote on their tariff bill and would wait until September 29 to see what progress China makes in letting its currency float. With Treasury Secretary John Snow having

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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

helped arrange for the two lawmakers to get top-level briefings from Chinese officials, Schumer and Graham said they have come to understand that Beijing can't let its currency float quickly and would face serious economic problems if it did (see **WTTL**, March 27, page 4).

With the Schumer-Graham bill on the back burner, the Senate will shift its attention to legislation Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Mont.) introduced March 28. Their bill would amend current law, which requires Treasury to identify countries that "manipulate" their currencies, and instead would require the department to identify each country that has a "fundamental misalignment of its currency."

Misalignment is defined as "a material sustained disparity between the observed levels of an effective exchange rate for a currency and the corresponding levels of an effective exchange rate for that currency that would be consistent with fundamental macroeconomic conditions based on a generally accepted economic rationale." In addition, Treasury would have to identify countries whose misaligned currency causes or contributes to "material adverse impact on the economy of the United States." If these two conditions are met, the bill would require bilateral negotiations to get the currency into alignment and would authorize steps the president could take to put pressure on the misaligner, including seeking IMF action, blocking guarantees by the Overseas Private Investment Corp. and not granting a country market-economy status.

## **U.S., EU COMPLAINTS AGAINST CHINA FORESHADOW MORE CASES**

The Bush administration's new get-tough-with-China policy, which seeks to forestall harsher congressional action and cool public anti-trade sentiment before the elections, produced its first results March 30 when the U.S. formally asked Beijing for World Trade Organization (WTO) consultations on taxes China imposes on imported auto parts. Deputy USTR Karan Bhatia told the Senate Finance Committee March 29 that the trade office is also preparing a WTO complaint against China's lack of enforcement of intellectual property rights (IPR).

The European Union joined the case against China's local content requirements and auto tax. The U.S. and EU contend China uses the tax to circumvent its WTO tariff commitment on parts. The tax on finished cars made in China with more than 60% foreign parts brings the combined tax and tariff to the same 28% level imposed on imported cars. This compares to the 10-14% tariffs on parts.

"We have tried but to date failed to resolve our differences over China's unfair treatment of U.S. auto parts," USTR Rob Portman told reporters. "China maintains regulatory policies that impose discriminatory tariffs on and encourages its automakers to use Chinese parts at the expense of auto parts from the United States and other countries," he said. "We have spent the last year in dialogue with them," Portman noted.

## **INDICTMENTS TARGET EXPORTS TO IRAN AND CHINA**

Exports to Iran and China continue to be the top priority for export enforcement agencies, two recent indictments indicate. A federal grand jury in Albany, N.Y. March 17 handed up a one-count conspiracy indictment against Jun Wang for allegedly violating the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) by exporting aviation equipment to China. A Los Angeles, Calif., man, Mohammad Fazeli, was arraigned March 20 on a three-count indictment alleging he attempted to export pressure sensors made by Honeywell to Iran without a license from the Office of Foreign Assets Controls (OFAC).

According to a copy of Wang's indictment obtained by WTTL, the government claimed that "it was part of the conspiracy that importers located in China and government-controlled entities in China requested that defendant obtain and ship various export items, including restricted items, to China." It also claimed Wang had not filed Shipper's Export Declarations (SED) when he

sent Crossbow Altitude and Heading Reference Systems for use in missiles and torpedoes to China via U.S. mail. The indictment of Fazeli claimed he was contacted by an unindicted co-conspirator in Iran to buy and export the pressure sensors.

Fazeli allegedly first contacted Gopher Electronics in St. Paul, Minn., to buy the sensors and was told the firm would not export them to Iran. Fazeli then ordered the sensors for delivery to Los Angeles, the indictment alleged. The government claimed he then received instructions from his Iranian customer to mail the sensors to Alturath Engineering Consultation in Dubai, United Arab Emirates. The indictment claimed he mailed the sensors as instructed.

## APPELLATE COURT VACATES ITC RULING ON GRAY MARKET IMPORTS

U.S. firms seeking to block “gray market” imports that infringe their trademarks have to make sure that “all or substantially all” of their sales of the goods in the U.S. are materially different from the imports, the Court Appeals for the Federal Circuit (CAFC) ruled in a March 30 decision vacating and remanding an International Trade Commission (ITC) Section 337 determination barring imports of forage harvesters (case 04-1588). In *Bourdeau Bros. v. ITC*, the court said Deere & Co., which had brought the case, had appeared to allow some of its dealers in North America to sell used forage harvesters that were made for the European market.

The court agreed with the ITC that there were material differences between the U.S. and European models. Nonetheless, citing an earlier court ruling in *SKF*, it said the burden is on Deere “to establish that all or substantially all of the sales were materially different from the allegedly gray market goods.” It remanded the case to the ITC to determine whether the company bore its burden. Deere must prove that the sales of the used foragers by its dealers were not authorized.

“Even if Deere cannot establish on remand that the sales of the European forage harvesters by authorized Deere dealers were not authorized, it may still prevail if it can establish that the number of sales of European forage harvesters was so small that substantially all of Deere’s sales in the United States were of North American forage harvesters, such that substantially all of the authorized sales were of goods bearing the asserted material differences,” the CAFC ruled. The standard of proof is a preponderance of the evidence, it added.

## REPORTS ON CARGO SECURITY SPARK CALLS FOR MORE INSPECTIONS

Congress is facing a dilemma on the future of port and cargo security. A batch of reports issued the week of March 27 revealed weaknesses in Customs scrutiny of incoming containers and shipments and the need for closer examination of these cargos. But lawmakers recognize that requiring 100% inspection of cargo will close down U.S. trade. The issue of port security is “politically loaded,” House Ways and Means trade subcommittee chairman Clay Shaw (R-Fla.) admitted March 30. “But if we go to 100% screening” of all cargo “we will virtually close down our ports,” he told the Washington International Trade Association.

Although Customs has responded to the post-9/11 threat of terrorism by creating the Container Security Initiative (CSI) and Customs-Trade Partnership Against Terrorism (C-TPAT), reports from the Government Accountability Office (GAO) and the staff of the Senate Permanent Subcommittee on Investigations found serious flaws in these systems. Customs officials reacted to these charges by saying “a more sophisticated, next generation tool is under development.”

The subcommittee report complained that under CSI, which is supposed to have cargos inspected at foreign ports before they are loaded on ships heading to the U.S., only a de minimis number of containers are actually inspected abroad. “In fact, the vast majority of high-risk containers are simply not inspected overseas,” the report said. “To make matters worse, the

U.S. government has not established minimum standards for these inspections,” it added. The report also criticized the Advance Targeting System (ATS) which is suppose to identify risky cargos. The system is dependent on “the least reliable” form of data, it said. “Moreover, the subcommittee has found that this targeting system has never been tested or validated and may not discern actual realistic risks,” the report asserted.

The subcommittee also noted shortcomings in C-TPAT. “The subcommittee found that an overwhelming proportion of participating companies receive benefits prior to having their security profile validated,” it said. Only 27% of participants have been subjected to validation, the report found.

Several bills aimed at tightening port security are moving through Congress. The House Homeland Security Committee March 30 reported out H.R. 4954, which would give CSI and C-TPAT statutory authorization although they would continue to be voluntary programs. Matching legislation (S. 2459), introduced by Senate Homeland Security Chairman Susan Collins (R-Maine) and Sen. Patty Murray (D-Wash.) will be the subject of a hearing April 5.

### **SENATE BANKING COMMITTEE MODIFIES CHANGES TO CFIUS**

The Senate Banking Committee March 30 reported out amendments to the Exon-Florio Act to impose new requirements in the review of foreign investments in the U.S., but the changes reflect a cooling of the congressional hyperventilation that followed revelations about the proposed acquisition of U.S. port facilities by Dubai Ports World (see **WTTL**, March 13, page 4). Although the initial draft of Chairman Richard Shelby’s (R-Ala.) legislation drew strong objections from the business community and Treasury Secretary John Snow, the committee adopted several amendments that eased those concerns and modified the measure and new requirements imposed on the Committee on Foreign Investment in the U.S. (CFIUS).

The Business Roundtable, which represents major U.S. corporations, praised the final version, which the committee approved by a 20-to-0 vote, as a bill “that seeks to enhance confidence in the regulatory process and protect national security, without discouraging foreign investment in the United States.” It said it still had concerns about the notification and reporting requirements, which “increase the risk of politicizing transactions.”

#### **\* \* \* BRIEFS \* \* \***

**EX-IM BANK:** Legislation to reauthorize Bank may add provisions to strengthen requirements for review of financing deals to make sure loans won’t increase competition for U.S. industries directly or indirectly. At Senate Banking Committee hearing March 29, acting Ex-Im President James Lambright indicated willingness to review current procedures to see if they could respond to lawmakers’ concerns. Members have criticized Bank’s handling of deals that they claim hurt U.S. soda ash, steel and ethanol industries.

**EXPORT ENFORCEMENT:** Ameribrom of Fort Lee, N.J., has agreed to pay \$82,500 civil fine to settle BIS charges that it exported chloropicrin-based pesticides and soil fungicide to Israel on 11 occasions without acquiring required end-use certificates.

**ECUADOR:** Latest round of U.S.-Ecuador FTA talks in Washington, which started March 23, were extended into April 1-2 weekend. USTR spokesperson said negotiators have “made good progress toward narrowing their differences.” Other source suggest deal is close.

**TRADE BARRIERS:** USTR’s office March 31 released annual National Trade Estimate report identifying r foreign trade barriers or unfair trade practices in 63 countries. Most of complaints in 712-page report repeat of those from previous years. U.S. trade official admitted, however, that removing all barriers in report probably wouldn’t eliminate U.S. trade deficit. “The trade deficit is the result of a whole variety of factors that are much broader than what we’re doing here at the USTR,” he said.

**DR-CAFTA:** President Bush March 31 signed order putting trade pact into effect for Nicaragua and Honduras as of April 1. They join El Salvador, which was previous designated (see **WTTL**, Feb. 27, page 4).