

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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U.S. FAILS AGAIN TO GET WASSENAAR TO ADOPT “NO-UNDERCUT” POLICY

While adopting several changes to its control list, the annual plenary meeting of the Wassenaar Arrangement in Vienna Dec. 8-9 refused again to agree on a no-undercut policy to prevent members from approving exports that other members have rejected. The regime, however, reiterated its commitment “to further develop and undertake, as a matter of high priority, measures to implement initiatives, e.g., work conducted against terrorism,” it said.

The group also said it welcomed the United Nation’s adoption of resolution UNSCR 1540 in April, which aims to curtail terrorism-related trade.

“Participating states noted that the resolution decides that all states shall establish, develop and maintain appropriate and effective export and trans-shipment controls, which is also a primary objective of the Wassenaar Arrangement,” the regime said.

The statement also said members would “intensify efforts to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organizations, as well as viewing them as an integral part of the global fight against terrorism.” The main focus of this effort has been directed at controlling sales of portable, shoulder-mounted anti-aircraft missiles known as Manpads. The regime also announced Slovenia’s membership in the group.

CANADA WILL CHALLENGE ADMINISTRATIVE REVIEW ON LUMBER

Canada will ask a new NAFTA binational panel to hear its complaint against the International Trade Administration’s (ITA) Dec. 14 final determination in the first administrative review of the countervailing duty (CVD) and antidumping orders on softwood lumber from Canada. Using a new methodology to calculate subsidies in Canada, ITA set the CVD rate at 17.18%, a sharp increase from the 9.24% rate it found in its preliminary ruling in June. A new complaint will further delay any Byrd Amendment distributions to the U.S. lumber industry.

“I am extremely disappointed by this decision,” said Canadian Trade Minister Jim Peterson. “The United States used a cross-border benchmark for BC [British Columbia] that has clearly been found illegal by the WTO and NAFTA,” he declared.

The final administrative review also found dumping margins ranging from 10.59% for Tembec to 0.92% for West Fraser, with an all-other rate of 4.03%. These were approximately the same rates as found in the preliminary decision. The high final CVD rate in the administrative review also differs from the steadily reduced rates ITA has issued in the underlying CVD case

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in response to adverse rulings from a NAFTA binational panel. In remand rulings in response to panel orders, ITA has adjusted the underlying order from 19.34% to 13.23% and then to 7.82%. Lawyers for Canadian respondents claim the latest ruling from the panel should reduce the rate to below 3% or to *de minimis* (see **WTTL**, Dec. 6, page 3).

Separately, Ottawa agreed to withdraw its request for a WTO arbitrator to set a deadline for the U.S. to eliminate its practice of “zeroing” in the antidumping leg of the case after Washington agreed to drop this methodology in the lumber case and issue a revised dumping rate by April 15, 2005. ITA, however, continues to use zeroing in the administrative review and for other dumping cases.

In another move to comply with WTO rulings, ITA issued a notice in Dec. 16 Federal Register on the results of its Section 129 review, which aimed to bring the underlying CVD order in line with a WTO Appellate Body ruling against the way it calculated the “pass through” of subsidies for logs to sawmill operators who bought the logs in arm’s length transactions. Based on the revised calculation, ITA set the new cash deposit rate at 18.62% instead of the original 18.79% for exports from Alberta, Ontario and Saskatchewan. It left the rate unchanged for BC and Manitoba because “all the benefits passed through to the sawmills,” an ITA staff memo said.

WTO NEGOTIATORS FIND IT HARD TO AGREE ON FARM TRADE REFORMS

World Trade Organization (WTO) negotiators are finding it difficult to translate the WTO General Council’s Aug. 1 “framework” agreement on agriculture into specific “modalities” or formulas for liberalizing farm trade. Talks in Geneva Dec. 13-17 revealed wide differences of opinion over how to implement the framework’s call for cutting tariffs, reducing domestic subsidies and protecting sensitive products from import competition. There are even disagreements over what was agreed to in the framework.

The level of disagreement has raised concerns about the ability of negotiators to make significant progress in the Doha Round talks before the next WTO Ministerial Meeting in Hong Kong in December 2005. Last week’s informal talks on agriculture showed that the early optimism about the state of the negotiations may have been premature (see **WTTL**, Sept. 27, page 2).

At the closing session of the talks Dec. 17, the chairman of the agriculture negotiating committee, Tim Groser, New Zealand’s ambassador to the WTO, warned participants that work will have to accelerate, if they are to have an agreement on modalities by the Hong Kong meeting. “Behind every technical issue lies a political question, but underlying every political issue are technical issues which our ministers cannot possibly be expected to resolve,” Groser said.

One area of disagreement is a proposal to allow developing countries to maintain tariffs and import restrictions on “special” agriculture products. Developing countries want maximum flexibility to apply a proposed special safeguard mechanism (SSM) for these commodities. But developed countries and some advanced developing countries complained the proposal would allow restrictions on almost all farm products in developing countries and defeat the trade liberalization goals of the round. The initial dispute is over whether the SSM should be limited to surges in imports or also cover falling prices.

Advanced developed countries making up the G-20 also clashed with the U.S., European Union (EU) and high income countries known as the G-10 over proposals to restrict domestic subsidies. In particular, the G-20 wants caps placed on Amber Box and Blue Box supports on a product-specific basis and also to combine Amber Box, *de minimis* and Blue Box subsidies to come up with an overall reduction commitment. This has proven to be a technically difficult issue for several countries because of the different types of supports and base periods.

In addition, the framework plan for cutting tariffs, which called for reducing tariffs on a tiered basis with greater cuts for higher tariffs, may be falling apart. Negotiators are pointing out

the problems with different rate cuts for different tiers when tariffs are near the border between two tiers. The G-20 also has objected to EU and G-10 proposals to delay the long and difficult task of converting non-ad valorem tariffs – those tariffs not based on a straight percentage of the price of the import – to ad valorem tariffs until after the December 2005 ministerial. The G-20 claims this would reduce the transparency in the negotiating process because countries would not know the tier into which these non-ad valorem tariffs would go.

MAKERS OF CONTACT LENS MACHINES OPPOSE NEW EXPORT CONTROLS

Firms that make the machines that make contact lenses are trying to head off a Pentagon proposal to impose new multilateral export controls on the equipment. The idea is in early interagency discussions in preparation for the drafting of a U.S. position to take to the Wassenaar Arrangement next year as part of the regime's annual list review.

Wassenaar now exempts these products from control, but some U.S. officials are concerned the equipment can be modified to perform as electro-optical manufacturing machines which are controlled. Category 2 of the Wassenaar control list says: "2.B.1.a. does not control turning machines specially designed for the production of contact lenses." The draft proposal would remove that note.

There are already 5,000 contact making lathes in use around the world, Bruce Davies, president of Sterling Ultra Precision of Tampa, Fla., told the Bureau of Industry and Security's Material Processing Equipment Technical Advisory Committee Dec. 16. Numerous U.S. and foreign firms make the equipment. The imposition of controls would put U.S. firms that now are the major suppliers of these products at a disadvantage to foreign competitors especially in China, India and East Asia, which are the fastest growing markets for contact lenses, Davies argued. Firms such as Sterling regularly visit customers to service and maintain the equipment they sell, and to provide replacement supplies for consumable components. These contacts provide assurance that the equipment is being used properly and not for controlled uses, he said.

U.S. WILL RESTRICT ENTRY OF 2004 OVER-QUOTA TEXTILES, APPAREL

Retailers who hoped to receive extra winter apparel after global textile quotas end on Dec. 31 may not get those goods until spring. The Committee on Implementation of Textile Agreements (CITA) issued rules in the Dec. 13 Federal Register ordering Customs to stage the entry of goods that were shipped in 2004 in excess of permitted quotas over several months in 2005.

CITA said over-quota apparel won't be allowed into the U.S. until after Feb. 1 and then will be limited to 5% of applicable quotas each month thereafter. Over quota goods from China in three categories won't be let in until after Jan. 24. CITA claims that goods shipped in 2004 are still subject to the Multifiber Arrangement (MFA) quotas even after the end of quota.

Separately, CITA in the Dec. 17 Federal Register lifted requirements for import visas, ELVIS, guaranteed access level certifications and exempt certifications for textile and apparel imports from WTO members for goods exported from the country of origin after Jan. 1, 2005. The European Union (EU) on Dec. 13 announced the termination of its MFA restrictions on New Year's Day as part of its implementation of the end of global quotas.

CITA's staged entry ruling came as China said it would impose export taxes on certain categories of textiles and apparel to prevent a surge in these exports after Jan. 1. Beijing's statement responds to concerns of many small apparel-exporting countries and the U.S. textile industry who have warned that China was poised to dominate the apparel export market after MFA quotas end. Beijing gave few details on the implementation and duration of the taxes. "The tariffs will help encourage the export of high-value products and optimize the mix of Chinese textile exports," said a statement by China's Ministry of Commerce.

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BIS: Early name mentioned as possible replacement for outgoing Under Secretary Ken Juster is Commerce Assistant Secretary for Import Administration James Jochum (see **WTTL**, Dec. 13, page 4). He served as assistant secretary for export administration until moving to import post in 2003. Ex-congressional aide on Senate Banking and Finance Committees, Jochum is highly regarded among lawmakers and got good grade from business community during his time at BIS.

CHINA: USTR's annual report Dec. 11 on China's compliance with WTO commitments said Beijing "deserves due recognition for the tremendous efforts made to reform its economy to comply with requirements of WTO." Nonetheless, it found shortcomings on IPR enforcement and other sectors. China issued flurry of market-opening announcements in December opening insurance and retailing and eliminating import licensing for autos and auto parts.

ITAR CONVICTION: Lieb Kohn of Brooklyn, N.Y., pleaded guilty Dec. 15 in Bridgeport, Conn., U.S. District Court to conspiracy to violate Arms Export Control Act by shipping parts for F-4 Phantom jet fighter and Hawk missile guidance system to Israel without licenses. His firms, L&M Manufacturing and Nesco NY, Inc., also pled guilty. Israeli authorities, working with ICE, searched premises of Q.P.S. in Binyamina, Israel, and found items Kohn had shipped.

SINGAPORE: Under terms of U.S.-Singapore FTA, Singapore has proposed granting right to practice law in Singapore to graduates of Columbia, Harvard, NYU and Yale law schools after completion of special courses in Singapore. USTR asked for public comment on proposal in Dec. 8 Federal Register.

CHEMICAL WEAPONS: BIS in Dec. 7 Federal Register proposed changes in Chemical Weapons Convention Regulations. Among changes are new definition of "production" and clarification of which persons and facilities are subject to regulations.

OFAC: Treasury published new general order in Dec. 17 Federal Register revising Cuban, Sudanese and Iranian trade regulations to ease restrictions related to publishing activities with nationals of these countries. New rules, which track advisory opinion OFAC issued earlier in 2004, would allow payments of commissions, collaborations, editing, royalty payments and marketing (see **WTTL**, Aug. 9, page 1).

TRADE FIGURES: October 2004 merchandise exports were up 13.4% from year ago to record \$69.4 billion, Commerce reported Dec. 14. But goods imports surged 20% from last October to record \$129 billion. Services exports were also record at \$28.7 billion, 6.5% ahead of last year, and services imports hit \$24.5 billion on 10% increase from last October.

VIETNAM: Hanoi appears on track to gain accession to WTO at next Ministerial Meeting in Hong Kong next December. WTO reported progress in talks Dec. 15 in Geneva on first draft of working party report on Vietnam's accession. Vietnamese officials said they have concluded bilateral deals with Argentina, Brazil, Chile, Cuba, EU and Singapore and are close to agreements with seven other countries.

PANAMA: Assistant USTR Regina Vargo reported progress Dec. 13 in latest round of FTA talks with Panama. Preliminary agreements have been reached on telecommunications, financial services, goods, government procurement and investment. Agriculture is main area remaining open. "We have very few texts issues left," Vargo told reporters during teleconference call.

EGYPT: Israel and Egypt signed agreement Dec. 14 to open Qualified Industrial Zones near Cairo, Alexandria and in Suez Canal Zone where goods produced with at least 35% combined Israeli and Egyptian content will get duty-free treatment in U.S. Despite QIZ accord, Egypt isn't ready for FTA with U.S., USTR Robert Zoellick suggest at press conference following signing. Egypt must still deal with bilateral investment issues and "our agriculture goods that have had a hard time coming in," Zoellick said.

SCRAP STEEL: Users of scrap steel have abandoned plans for seeking short-supply restrictions through BIS and instead will file a Section 301 petition with the USTR's office requesting investigation into scrap export taxes imposed by Russia and Ukraine. Decision of Emergency Steel Scrap Coalition to chose 301 route has won support of Scrap Recycling Industries, which opposed short supply case. ESSC has drafted 301 petition and discussed it informally with USTR staff.

EDITOR'S NOTE: In keeping with our regular schedule, there will be no issue of *Washington Tariff & Trade Letter* on Dec. 27, 2004. Our next issue will be Jan. 3, 2005. Until then, we wish all our subscribers a HAPPY HOLIDAY and a HEALTHY and PROSPEROUS NEW YEAR.