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CHINA WAIVERS ON CURRENCY REVALUATION

Chinese officials are chafing under the growing international pressure to raise the value of their currency, the renminbi (RMB), and are saying they won't act on the exchange rate as long as there is speculation about the change. "To be honest, the more speculations are made in society (about RMB), the less chance we will take the measure (to change RMB)," Chinese Premier Wen Jiabao told reporters in Vientiane, Laos, Nov. 28, according to a release by the Chinese Foreign Ministry (see story below).

> In addition to concerns about speculation in the RMB, Wen said the decision to revalue the currency will depend on China being able to maintain a stable macro-economic environment and financial system and a "reasonable and balanced" level for the RMB, as well as the impact of the change on Asian region and the world.

"China is a responsible country," Wen said. "In financial crisis in 1997, we kept the stability of the RMB and made due contributions," he noted. For months, Chinese officials have hinted that Beijing intends to adjust the RMB, but they have never said how, how much or when.

DOLLAR STILL NEEDS TO FALL 15% MORE, ECONOMISTS CONTEND

As the U.S. dollar reaches new lows against the euro, a group of economists claims the dollar has declined only half as far as it needs to go and has to fall another 15% to bring the U.S. current account balance back to a sustainable level. In addition to the euro, most of the dollar's decline has been against the currencies of Australia, Canada, Switzerland and the United Kingdom. The additional decline must come from Asian currencies, especially the Chinese renmimbi, asserted economists at the Institute for International Economics (IIE) at a Nov. 30 conference unveiling their new report, "Dollar Adjustment: How Far? Against What?"

> "In short, the correction of the dollar seems to have gone half way to the ultimate equilibrium that seemed from our conferences and analyses as being essential," said IIE Director Fred Bergsten.

Beyond exchange rate adjustments, reducing the current account deficit, which is a combination of the trade deficit and net investment income, will require changes in U.S. fiscal policies, namely the budget deficit, and an increase in domestic demand in countries now running current account surpluses, he noted. So far, the exchange rate adjustment of the dollar has been "extremely lopsided," Bergsten said, with most of the decline coming against the euro and other currencies in Canada and Chile. He said the second leg of the decline must come against Asian

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currencies that are held down by government intervention. The Chinese renminbi in particular needs to appreciate 15-20%. This change should come from an adjustment of the peg of the RMB against the dollar; not by allowing the currency to float. The Chinese "should reject the proposals that they have been presented by the U.S. government, by the International Monetary Fund and the G-7" to float the RMB, Bergsten said. "That is neither feasible or desirable," he argued. "Instead, China should show its independence by taking a different tack, simply re-valuing its exchange rate on a one-shot basis; 20-25% is our calculation," he declared.

U.S. exports have benefitted from the decline of the dollar since its peak in 2002. The so-called J-Curve effect of exchange rates on trade, which causes exports to decline and then increase after devaluations, can take up to three years to be seen, said IIE Senior Fellow John Williamson. It has only been two and a half years since the decline began. Since the J-Curve is actually a series of continuing curves, the 5% depreciation of the dollar in the last three months probably will be reflected in export growth over the next three years, he explained.

WTO APPELLATE BODY ISSUES SPLIT OPINION ON "SUNSET" PROCEDURES

The World Trade Organization's (WTO) Appellate Body Nov. 29 sided with the U.S. for a change, reversing a key portion of a dispute-settlement panel's ruling against the way Commerce applies a Uruguay Round agreement requiring countries to reconfirm antidumping and countervailing duty findings every five years. The Appellate Body said the panel "did not make an objective assessment" when it found ITA's Sunset Policy Bulletin (SPB) didn't comply with WTO rules on determining the likelihood of continuation or recurrence of dumping.

> The Appellate Body upheld other portions of the panel's ruling on the sunset review of oil country tubular goods (OCTG) from Argentina (see **WTTL**, July 19, page 4). It agreed that Commerce regulations are inconsistent with WTO rules in their treatment of respondents who file incomplete submissions in sunset cases.

APPAREL IMPORTERS SUE TO BLOCK CITA ACTION ON SAFEGUARDS

U.S. apparel importers Dec. 1 asked the Court of International Trade (CIT) to issue a preliminary injunction to prevent the Committee on Implementation of Textile Agreements (CITA) from acting on textile industry petitions to impose safeguard restraints on a range of imports from China. The suit by the U.S. Association of Importers of Textiles and Apparel (USA-ITA) claims CITA's acceptance of the petitions based on allegations of a threatened surge of imports after global quotas end Dec. 31 violates CITA's own regulations.

> The complaint also challenges the committee's fundamental legal authority, as well as its failure to comply with the Administrative Procedure Act (APA) (see WTTL, Nov. 29, page 4). Although past lawsuits against CITA and critical congressional reports have failed to change the committee's practices or to lift the secrecy that has veiled its operations, USA-ITA contends the implementation of the China safeguard rules presents a new and challengeable legal framework.

Unlike the textile agreements under the Multifiber Arrangement, the rules on Chinese imports are not part of a textile agreement. "Although the [China] WTO Accession Agreement, which provided for textile-specific safeguard relief, was and is not a textile agreement, CITA has asserted responsibility for supervising and implementing the textile-specific safeguard, including the right to self-initiate a review and to conduct consultations with the government of the People's Republic of China following a determination to establish a safeguard," the suit notes.

While Congress gave the International Trade Commission (ITC) the job of reviewing product-specific safeguard actions against Chinese imports, it was silent on how the textile rules would be administered. In the absence of specific authority from Congress, "there is no legal basis for CITA to carry out or implement the textile-specific safeguard," the suit asserts. USA-ITA also complains about CITA's claim that it is exempt from APA requirements because it qualifies for a "foreign affairs exemption." The suit points out that the ITC followed APA rules when it published implementing regulations for its safeguard procedures and also abides by Freedom of Information Act (FOIA) requirements to disclose petitions when they are filed.

> The group claims CITA is not following its own regulation in accepting petitions based on threat of market disruption because the rules don't mention threat. In addition, the rules require the submission of data that show imports increasing rapidly in absolute terms. Threat petitions are "based on the perceived threat of market disruption and more specifically on the largely speculative threat that the volume of imports will surge when quotas are lifted," the association argues.

USA-ITA asks the CIT to enjoin CITA from proceeding with its review of petitions based on threat, from maintaining current restrictions on cotton socks, and from violating the APA and FOIA. It also prays for it to declare that "CITA's administration of the China Textile Safeguard regulations does not touch upon foreign affairs and such process is a simple trade remedy available to domestic industries that has no current claim to the foreign affairs exemption."

Separately, associations representing textile manufacturers have asked CITA to reapply expiring safeguard restrictions on bras, dressing gowns and knit fabric. The American Manufacturing Trade Action Committee also issued a statement critical of the USA-ITA suit. "AMTAC notes that a simple reading of the [WTO] Working Party Report that facilitated China's accession into the WTO allows countries to implement safeguards on the basis of threat," it said.

REPORTS SEE GLOBAL TRADE GROWING BUT AT SLOWER PACE

World trade over the next two years won't be as strong as it was in 2004, according to forecasts from the World Bank and Organization for Economic Cooperation and Development (OECD). OECD sees U.S. GDP growth slipping from 4.4% in 2004 to 3.3% in 2005 and 3.6% in 2006. Growth in euro-zone nations will edge up slight to 1.9% next year from 1.8% this year and to 2.5% in 2006, OECD predicts. Japan's expansion will slip from 4.0% in 2004 to 2.1% and 2.3% in next two years. After strong 6.1% growth in the developing world in 2004, those countries will experience a slightly slower expansion of 5.4% in 2005 and 5.1% in 2006, the World Bank reported. East Asia, with expected 7.1% growth in 2005, and South Asia, with 6.3% growth forecast, are main factors in developing world prospects, Bank explains.

NAFTA PANEL SENDS LUMBER CVD BACK TO ITA AGAIN

"Honey, I've shrunk the CVD!" may become the title of the next International Trade Administration (ITA) determination in the countervailing duty case against softwood lumber from Canada. A NAFTA binational panel issued a third remand ruling Dec. 1 ordering the agency to recalculate its subsidy margin. Based on previous panel decisions, ITA has already reduced the CVD margin from its original level of 19.34% to 13.23% and then to 7.82%. If ITA fully complies with the latest order, the margin is expected to fall further.

> After ITA issued its second remand determination in the case on July 30, 2004, Canada challenged the order claiming the agency didn't fully address all the problems the panel identified in its second opinion in the case. The panel agreed.

In the newest ruling, the NAFTA panel listed 12 specific changes ITA must make in its CVD calculation to meet the panel's objections. Looking at agency subsidy calculations on a province-by-province basis, the panel directed ITA — among other changes – to adjust imputed profits for log sellers and log volume in Quebec, to include balsam fir and larch in the Ontario benchmark, recalculate British Colombia's benchmark based on separate market conditions on the coast and in the interior of the province, and eliminate import data in surrogate benchmarks for Saskatchewan and Manitoba. The Coalition for Fair Lumber Imports said, "The panel has, without justification, directed the Commerce Department to change its subsidy calculations from the 2002 finding in ways that will result in a gross understatement of the subsidies." But the Coalition also saw some positives in the ruling. "The panel decision is yet another confirmation that Canadian lumber is subsidized," stated Coalition Chairman W.J. "Rusty" Wood.

* * * BRIEFS * * *

LIBYA: Included in omnibus appropriations bill Congress adopted during lame-duck session Nov. 20 was provision giving president authority to lift ban on Export-Import Bank financing of U.S. exports to Libya. "Expanding U.S. business opportunities abroad, including in countries such as Libya, provides the path to economic growth for America," commented Bill Reinsch, president of National Foreign Trade Council.

EXPORT ENFORCEMENT: BIS in Dec. 1 Federal Register imposed 10-year denial of export privileges on Technology Options (India) Pvt., Ltd., and its managing director, Shivram Rao, for effort to export thermal mechanical test system and universal testing machine to Indira Ghandi Centre for Atomic Research without approved license while center was on BIS Entity List.

STATE SANCTIONS: Four Chinese and one North Korean entities have been barred from doing business with U.S. government or obtaining export licenses because of their sale to Iran of items subject to controls for potential use in weapons of mass destruction, State announced in Dec. 1 Federal Register. Identified in announcement are Liaoning Jiayi Metals and Minerals, Q.C. Chen, Wha Cheong Tai Company, Shanghai Triple International, and Changgwang Sinyong Corp.

INTERAERO: As part of previous plea agreement, Interaero was sentenced by D.C. U.S. District Court Judge Garrett Penn Nov. 18 to pay $500,000 fine over five years for exporting military aircraft parts without approved license from State (see **WTTL**, Aug. 23, page 3).

ANTIDUMPING: ITA treatment of repacking expenses in U.S. as selling expense in constructed import pricing for ball bearings from Japan is "internally inconsistent with its classification of U.S. warehousing expenses" and should have been treated as movement expenses, ruled three-judge panel of Court of Appeals for the Federal Circuit Dec. 2. In *NSK Ltd. v. U.S.*, court reversed CIT Judge Nicholas Tsoucalas' opinion that ITA's treatment of expenses was correct.

EC HORMONES: CIT Judge Judith Barzilay Dec. 1 denied complaint by Gilda Industries against way USTR's office selected targets for retaliation against EU ban on hormone-treated meat from U.S. In *Gilda v. U.S.* (slip op. 04-150), she said firm failed to take advantage of opportunity to comment on proposed retaliation list, which included toasted breads that it imports. Barzilay also rejected firm's charge that USTR has failed to change retaliation list as provided by "carousel" provision in 2002 Trade Act.

TRADE PEOPLE: Steven Pinter, former chief of licensing at OFAC and senior sanctions advisor, has joined Eren Law Firm in Washington, D.C.

SHRIMP: ITA gave Vietnamese shrimp producers big advantage in U.S. market against Chinese competition with final antidumping ruling on frozen and canned shrimp. In final antidumping determination issued Nov. 30, ITA imposed duties ranging from under 5% to 25.76% on four mandatory respondents from Vietnam, but set separate rate for 29 other producers at 4.38%. Although one Chinese producer was found to be de minimis, ITA set duties for three other mandatory Chinese shrimp firms at 27.89% to 84.93%. It set separate rates for 35 other Chinese firms at 55.23%.

SOFTWOOD LUMBER: U.S Nov. 24 formally asked for Extraordinary Challenge Committee to review NAFTA binational panel's rejection of ITC threat of injury ruling in softwood lumber from Canada cases.

BRAS: Despite objections from apparel importers, Customs Nov. 30 issued final rules in Federal Register imposing restrictions on preferential treatment given to bras from Caribbean Basin countries.

CEMENT: U.S. has asked WTO dispute-settlement panel to issue preliminary ruling dismissing Mexico complaint against U.S. antidumping duties on cement from Mexico. U.S. brief says Mexico has made 450 claims against ITA's 12th administrative review which found 60% margin for cement exported by Cemex and Cemento. Mexico has failed to provide brief summary of objections, which is required under WTO rules, making the complaint defective, U.S. argued. "The United States believes that this average dumping margin of 60 percent over a twelve-year period is the highest margin that Commerce has ever determined over such a long period of time for any foreign exporter for any type of merchandise," U.S. brief asserted.