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REPORT FINDS MIXED ASSESSMENT OF CHINESE WTO COMPLIANCE

U.S. trade officials shouldn't rely on the experience or advice of industry sectors to judge China's compliance with its World Trade Organization (WTO) obligations, the General Accounting Office (GAO) cautions. Instead, they should depend on specific complaints or economic and legal information to identify areas to monitor or target for WTO complaints.

> In its second annual survey of U.S. firms operating in China, the GAO found that judgments about Chinese trade compliance varied based on each respondents industry sector. Two-thirds of respondents, however, said "China's implementation of its WTO commitments had a positive impact on their companies," said the GAO, the investigating arm of Congress, in its March 24 report (GAO-04-508).

Many of the some 80 respondents to the survey said they had no basis to judge China's actions because they lacked experience in areas outside their own business or because they lacked understanding of specific commitments China made in its WTO accession agreement. Thus, U.S. policy makers need to reach out to a wider selection of companies to determine the impact of Beijing's compliance, the GAO recommended. The trade and investment picture for U.S. companies in China also is colored by the sharp increase in bilateral business over the last decade. "Overall, the majority of respondents reported that specific business activities such as revenues and total investment in China had increased but they could not directly tie these results to China's having joined the WTO," the GAO reported.

CONGRESS WAITING TO HEAR PAIN FROM EXPORTERS ON FSC/ETI SANCTIONS

With the Senate failing to move legislation the week of March 22 to repeal and replace the Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) law, it's likely Congress won't act on the statute until it hears loud screaming from exporters who are being hurt by the trade retaliation being imposed by the European Union (EU). The Senate's attempt to pass its version of the replacement legislation (S. 1637) is more symbolic than real, since it still has to wait for the House to move its FSC/ETI bill (H.R. 2896). The more serious problem for the legislation remains the deadlock in the House, where little progress is visible.

The fight over the tax bill became more complicated March 26 when presumptive Democratic presidential candidate John Kerry gave a speech promising to unveil his own plan for revising international corporate tax laws. Democrats in the House and Senate now may choose to delay action on the current legislative proposals, claiming a Kerry administration would offer a better option. "If I am elected president, I will fight for the most sweeping international tax law

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reform in forty years – a plan to replace tax incentives to take jobs offshore with new incentives for job creation on our own shores," Kerry said in the prepared speech released by his campaign headquarters. "The reform I'm proposing today is based on a simple principle: money made by American business overseas should be taxed at the same rate as money made by business here at home," he declared in the Detroit speech.

> Kerry said his plan would not apply to companies that produce overseas for sales in the country of production but would apply to those who manufacturer abroad for export back to the U.S. and to other nations. "My proposal offers American companies a reasonable transition to adapt this sweeping change. I don't want to punish anyone," Kerry asserted.

Kerry's proposal came following a week of partisan wrangling over the FSC/ETI bill in the Senate. Democrats in the Senate have been fighting to get a vote on an amendment offered by Sen. Tom Harkin (D-Iowa) which would block a Labor Department proposal to revise the rules defining eligibility for overtime pay. A Republican attempt March 24 to close debate by invoking cloture was short of the 60 votes needed, failing 51 yeas to 47 nays.

Democratic Minority Leader Tom Daschle (D-S.D.) has promised to limit further Democratic amendments to the bill, if the Republicans would let the Senate vote on the Harkin amendment. Meanwhile, Senate Finance Committee Chairman Chuck Grassley (R-Iowa) offered a comprehensive amendment that includes many of the amendments offered on both sides of the aisle, providing more tax benefits for more industries with the hope of attracting more votes.

WTO AGRICULTURE TALKS SEEM POSITIVE BUT SHOW DEEP GAPS REMAIN

WTO members tried to put a positive spin on a week of talks March 22-26 in Geneva aimed at getting the Doha Round agriculture negotiations back on track, but the formal and informal sessions revealed wide continuing difference over how to eliminate trade barriers and cut subsidies in this sensitive sector. At the end of the week, the chairman of the WTO Agriculture Committee, New Zealand Ambassador Tim Groser, said he welcomed a shift among participants to a "listening mode" but noted that they had not yet gotten to a "problem solving" mode.

> Progress in the Doha Round has been stuck primarily because of the inability of members to agree on a "framework" or formula for achieving the three main goals in the agriculture talks: eliminating export subsidies, cutting domestic support and opening markets. The week of negotiations in Geneva were mostly informal bilateral talks or meetings of groups of countries intended to hear various options for creating the framework. Another round of talks is planned for April 20-23.

"We have seen a generally positive attitude that encourages me this week," said Chief U.S. Agriculture Negotiator Allen Johnson. "We've seen countries engage in serious discussions about the issues. We don't see a lot of rhetoric. People are looking at the Cancun framework as a point of departure. These are things we didn't have prior to Cancun," he noted.

Among the major sticking points that emerged during the week was the demand from many countries for the European Union (EU) to agree to end all export subsidies by a date certain. The EU has offered to end export subsidies on products of concern to developing countries, but it says it has not yet received specific requests for such cuts. But it also has not committed itself to accepting all requests. In addition, the EU is demanding that the U.S. eliminate export credit subsidies and subsidized food aid as its part of any deal.

The U.S. and EU also remain divided over the reduction of domestic support and the types of support that would be reduced. Washington wants to bring so-called Amber Box farm support, which is tied to price and production levels, down to the same level for both the EU and U.S., while capping or eliminating so-called Blue Box support that is tied to acreage reduction. The EU, which attempted to decouple its agriculture subsidies from production during the last revisions to its Common Agriculture Policy (CAP), moved much of its aid to Blue Box programs and would face serious difficulty agreeing to the American proposal, EU sources argue.

> The discussions on frameworks for liberalization still haven't begun to address specific numbers that would be inserted into the formulas. Out of the draft Cancun ministerial declaration came a plan for a "blended approach" that would mix the formula used in the Uruguay Round to cut tariffs on a straight across-the-board percentage basis with a so-called "Swiss Formula" which would cut peak tariffs and open quotas on the most protected products.

The U.S. backs this blended approach but wants the Uruguay Round formula to comprise about 2-3% of the total reduction with the remainder coming under the Swiss Formula. Countries with high tariff and quota restrictions on farm imports, such as India, Japan and Korea, oppose such a heavy tilt toward the Swiss Formula.

SURE BET: U.S. WILL APPEAL GAMBLING RULING FROM WTO

You can bet Washington will appeal a preliminary WTO dispute-settlement panel ruling which could force the U.S. to allow foreign firms to provide Internet gambling from abroad. The odds of Washington winning the challenge may be long, but the smart money doesn't expect the U.S. to stay down for the count to satisfy the WTO. The spunky Caribbean nation of Antigua and Barbuda, which reportedly won the still confidential WTO panel ruling, may be fighting outside its weight class with an opponent that is heavier, taller and has a longer arm span.

> The corner cut-man for the U.S. Trade Representative's (USTR) office, Richard Mills, said the U.S. intends "to appeal and will argue vigorously that this deeply flawed panel report must be corrected by the Appellate Body." The U.S. believes "the language on the U.S. services commitments used by the Clinton administration clearly intended to exclude gambling when the U.S. joined the WTO in 1995," he said in statement.

The dispute is over the General Agreement on Trade in Services (GATS) and whether the U.S. commitments to open specific sectors include gambling and sporting services. Antigua argued that the U.S. ban on cross-border gambling discriminates against it, because, even though the U.S. claimed the rules applied to both domestic and foreign gambling operations, they only applied to foreign providers since U.S. firms don't need to cross borders to offer their services.

"The United States legislation on the cross-border supply of gaming services is complex and opaque," Antigua's representative to the WTO, Sir. Ronald Sanders, told the Dispute-Settlement Body last July. "It appears that, even inside the United States, different authorities take different views on the precise interpretation of some of the specific rules," he said.

During oral arguments before the panel in January, American attorneys argued that the ordinary meaning of the U.S. commitment under the GATS doesn't include gambling services. Beyond the text of the trade accord, however, the U.S. noted its concerns about the use of offshore gambling for money-laundering and by organized crime. "Enforcement of our gambling laws is a vital component in our battle against organized crime," one U.S. official said in a prepared statement. "There is a similar concern regarding Antigua's money laundering laws, which I understand have resulted in no convictions since they were enacted," he added.

WTO PANEL RULES AGAINST ITC INJURY FINDING IN SOFTWOOD LUMBER

A WTO dispute-settlement panel, in a ruling released March 22, has declared the International Trade Commission's (ITC) "threat of injury" determination in the antidumping and countervailing duty cases against softwood lumber from Canada to be inconsistent with the requirements of the WTO rules on dumping and subsidies. Although the U.S. hasn't said it will appeal the decision to the WTO Appellate Body, it probably will. Meanwhile, the panel's ruling puts Washington's entire case against the Canadian imports at risk and could increase Canadian resistance to a compromise agreement to settle the long-running dispute.

U.S. and Canadian parties have sharply different views on the impact of the ruling, which has been expected for several months, and how it will fit with the parallel dispute-settlement process before a NAFTA binational panel. USTR and U.S. industry representatives claim the WTO ruling is moot because the ITC in December revised the decision the WTO panel was criticizing when it attempted to satisfy the separate NAFTA panel objections (see **WTTL**, March 1, page 1).

"It's a mixed ruling," said USTR spokesperson Neena Moorjani. "We won on some important legal issues, but the reality is that the impact is limited because the underlying ruling is no longer in effect," she said. Canadian representatives dispute that argument, claiming the new ITC decision has not yet been upheld by the NAFTA panel and even if it were, the WTO panel ruling would still apply to the antidumping and countervailing duty orders that relied on the original ITC determination. Another WTO case may be needed to resolve the dispute.

Although the panel found some portions of the ITC ruling to be sustainable, it rejected the main pillars of the commission's finding. Noting that the ITC did not find Canadian imports causing current injury, the panel said the commission needed to demonstrate that there would be a change in circumstances that would warrant a finding of threat.

"It is clear to us that the fundamental basis for USITC's affirmative threat determination is the conclusion that dumped and subsidized imports from Canada would increase substantially," the panel report noted. "However, looking at the evidence relied on by the United States in support of the determination, we cannot accept that this conclusion is one that could be reached by an objective and unbiased decision maker," it asserted. "It seems to us that, at most, the evidence relied upon by the USITC could support a conclusion that imports of softwood lumber would continue at historical levels, and might increase somewhat, in keeping with increased demand and consistent with historical patterns," the panel continued. "We can find no rational explanation in the USITC's determination, based on the evidence cited, for the conclusion that there would be a substantial increase in imports imminently," the report argued.

* * * BRIEFS * * *

<u>EXPORT SANCTIONS</u>: BIS in March 25 Federal Register extended temporary denial of export privileges for Yaudat Mustafa Talyi and extended TDO to his related firm, <u>Uni-Arab Engineering and Oil Field Services</u> of United Arab Republic (see **WTTL**, Oct. 7, 2002, page 4)

<u>PET</u>: United States PET Resin Producers Coalition March 24 filed antidumping and countervailing duty petitions at ITA and ITC against <u>polyethylene terephthalate resin from India, Indonesia, Taiwan and Thailand</u>.

<u>UKRAINE</u>: Vsiting Kiev March 25, Deputy Secretary of State Richard Armitage said ITA official will visit Ukraine in near future to discuss new petition to grant Ukraine market-economy status. "On the question of WTO, we should support membership but I understand there is some legislative process that has to be followed here," he told reporters. "We are very supportive of Ukraine's accession to the WTO," he said.

<u>PAKISTAN</u>: President Bush March 24 signed order waiving sanctions placed on Pakistan because of military coup. Move will allow Ex-Im Bank financing for sales to that South Asian country.

<u>FTAs</u>: USTR's office has announced plans to start FTA talks with Colombia May 18-19, with goal of reaching argeement in early 2005. It will begin FTA talks with Panama week of April 26. FTA talks with Thailand will start in second quarter of this year, USTR Robert Zoellick told House appropriations subcommittee March 25. President Bush sent Congress notice March 25 of his intent to sign recently signed FTA with Dominican Republic (see **WTTL**, March 22, page 3). But Zoellick would give no date for when president would actually sign any of recent FTA deals. The administration is keeping "in touch with the leadership up here," he told appropriations panel.