

# 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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## ORDER IMPOSING SANCTIONS ON DUAL-USE EXPORTS TO SYRIA IS CLOSE

The Bureau of Industry and Security (BIS) has received interagency clearance for a general order to implement the ban on exports of items on the Commerce Control List (CCL) to Syria in compliance with the Syria Accountability Act (SAA), which President Bush signed into law in December (see **WTTL**, Dec. 22, page 4). The order is awaiting approval by the White House Office of Management and Budget (OMB), but a senior BIS official told **WTTL** that he expects OMB to okay the order soon, clearing the way for its publication in the Federal Register.

The coming order will declare that it is BIS policy to deny all license applications for CCL exports to Syria. It also will suspend all existing licenses and eliminate use of all license exceptions for Syria. The order will provide a narrow exception for exports going to U.S. government activities in Syria. The ban on exports would apply to all goods that have not yet been laden onboard for export.

The BIS official denied suggestions that President Bush's statement on signing the SAA indicated he would ignore the new law. The president was only asserting his constitutional authority to conduct foreign policy, he explained. The SAA would require the president to impose additional trade and investment sanctions, if Syria doesn't end support for terrorism and remove its troops in Lebanon. Although the president has the power to waive these additional sanctions, there reportedly have been no substantive interagency discussions about a waiver.

Exports of controlled goods to Syria were on the rise in 2003. For the six months from January to June, BIS approved 71 licenses with a stated value of \$157.6 million. It returned 22 applications without action and denied just 4. This compares to approval of 93 licenses with a value of \$109.7 million in all of 2002. BIS denied 5 and returned 55 without action. The bulk of licenses were for low-performance computers for use in oil production and telecommunications, aircraft parts and telecommunications equipment.

## HOMELAND SECURITY WANTS TO SHARE SED DATA WITH FOREIGN NATIONS

Department of Homeland Security (DHS) Secretary Tom Ridge has asked Commerce Secretary Don Evans to make a "national interest" determination to allow DHS to share the information on Shipper's Export Declarations (SEDs) with foreign governments. The Bureau of Customs and Border Protection (CBP) wants permission to release the data as part of a plan to get other governments to share their SED-equivalent data with the U.S. Industry executives who have just begun to hear about the proposal have reacted with concern that foreign officials who get

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access to the data might release business proprietary information to their foreign competitors, especially state-owned enterprises. Commerce sources say no decision has been made yet on how to respond to Ridge's request. They say, however, that department managers want to do something to help DHS reach agreements with other governments to get information on exports coming to the U.S. Commerce is beginning to ask industry groups to comment on the proposal.

The Census Bureau, so far, has resisted the idea of giving foreign governments full access to all data on the SED. By statute, SEDs are confidential and exempt from public disclosure, even under the Freedom of Information Act, unless the Commerce secretary makes a national interest determination to release the data.

Census has been restrictive in sharing the data with other federal agencies, giving only extracts to those involved in export controls or trade statistics. One source said the agency has not even given the information to the FBI, CIA or IRS. It has turned down requests for SED data from foreign governments seeking it as part of unfair trade investigations or to apply tariffs.

In response to the desire of Commerce Deputy Secretary Samuel Bodman to offer DHS something in response to its request, Census has developed a proposal which it presented to Customs at a Jan. 6 meeting. Census suggested that Commerce offer to provide, on request, specific SED information – except the name of the exporter and the value of the shipment – for shipments going to a country that has reached a data-sharing agreement with the U.S. The number of requests for information would be limited and the foreign government would have to agree not to use the data for commercial purposes or for applying taxes or tariffs.

Industry executives admit that foreign governments now get some of the SED data on cargo manifests that importers must file when their goods enter a country. This manifest information is not as complete and sometimes not as accurate as SED data, they assert. They are concerned, however, that even without the release of the name of the exporter, foreign governments will be able to decipher the maker of the export because of the limited number of suppliers of certain products. One source said Defense, which hasn't been briefed yet on the DHS request, may have separate objections to giving information about military sales.

## **ITA MAY INVESTIGATE LARGE NUMBER OF CHINESE FURNITURE MAKERS**

Commerce may find it hard to limit the number of Chinese firms that will be required to participate in its antidumping investigation of wooden bedroom furniture from China. As a result, many Chinese firms are likely to face higher antidumping duties at the end of the investigation, if Commerce finds dumping. The investigation is now moving into its next phase, following the International Trade Commission's (ITC) 6-0 preliminary determination Jan. 9 that the imports may be injuring U.S. industry.

The difficulty in limiting respondents stems from Commerce's decision to seek import information on both quantity and value. In an advance questionnaire sent Dec. 30 to potential respondents, the International Trade Administration (ITA) sided with lawyers at King & Spalding, which represents petitioners, the American Furniture Manufacturers Committee for Fair Trade, on the information to use in selecting respondents. ITA asked for import data on the basis of pieces, which it defined as "one cartoned piece" and containers, which it defined as "one full 40-foot container", plus value.

In arguing for using both quantity and price in selecting respondents, King & Spalding conceded that ITA "will be required to allocate sufficient resources to investigate an unusually large number of mandatory respondents in this case, which the department has orally acknowledged is the largest antidumping investigation ever filed against imports from China." The firm also urged ITA to apply the country-wide dumping rate alleged in the petition rather than an individual rate or "all other" rate to Chinese firms that don't provide timely, complete and accurate responses to agency questionnaires. On the opposite side, attorneys at Wilmer, Cutler

& Pickering, who represent some of the likely respondents in the case, urged ITA to use value as the basis for selecting respondents. This is the approach ITA took in an antidumping case on ball bearings from China, they noted. "There is no principled reason to disregard the Ball Bearing precedent in this case," their brief to ITA contended. Meanwhile, ITA wrote Dec. 30 to China's Bureau of Fair Trade for Imports and Exports, asking for assistance in identifying Chinese furniture producers and transmitting the questionnaire to them.

## MARKET SHOWS STEEL RELIEF HAS WORKED, ZOELICK TELLS LAWMAKERS

U.S. Trade Representative (USTR) Robert Zoellick cited three recent financial developments in the steel industry to demonstrate that the Section 201 import relief given the industry succeeded and that changed circumstances warranted the elimination of relief. In a letter to Sen. Jay Rockefeller (D-W.Va.) and Rep. Sander Levin (D-Mich.) Dec. 16, Zoellick noted the public stock offering for International Steel Group (ISG) and price increases announced by U.S. firms.

The two lawmakers wrote to Zoellick after President Bush terminated the 201 relief Dec. 4 (see **WTTL**, Dec. 8, page 3). They complained the president had failed to meet the statutory requirements for ending of the sanctions.

In his reply, Zoellick noted that ISG's price increased 26% on Dec. 12, its first day of trading. He also cited a \$40 per ton price increase announced by Nucor and a \$35 increase by Weirton. "We are pleased that the breathing space accorded by the safeguard, which the industry was unable to obtain during critical years before President Bush took office, has largely worked as we sought," he wrote. Rockefeller and Levin issued a statement Jan. 8 claiming Zoellick still has "offered no legal basis" for the president's decision.

## CANADIAN TRADE MINISTER ISN'T BRINGING LUMBER OFFER TO WASHINGTON

New Canadian Trade Minister Jim Paterson will be in Washington Jan. 12 for talks with U.S. Trade Representative (USTR) Robert Zoellick and Commerce Secretary Don Evans, but he isn't expected to carry a response to the last U.S. proposal for solving the long-running trade dispute over softwood lumber. A teleconference call Paterson had with Canadian industry representatives and provincial officials Jan. 7 reportedly revealed the same sharp differences over the offer as existed when it was first presented in December (see **WTTL**, Dec. 15, page 2).

Although softwood lumber will be a key item on the agenda for the meetings with both of his U.S. counterparts, Paterson's visit is being described mainly as a short courtesy call. Paterson just became trade minister Dec. 12 when Paul Martin succeeded Jean Chretien as prime minister.

Paterson's visit comes the same day Commerce's International Trade Administration (ITA) is supposed to submit its remand determination to a NAFTA binational panel on its ruling in the countervailing duty case against Canadian lumber. The panel had ruled that ITA's original CVD decision was not supported by substantial evidence and was contrary to law.

The panel objected to ITA's use of cross-border comparisons to U.S. lumber prices to establish a benchmark price for lumber in Canada. ITA reopened the record in the case to collect new information on which to base its remand determination. The agency issued a new questionnaire to Canadian and U.S. producers seeking information on log prices in the U.S. and Canada. It is expected to use those prices to defend its new CVD remand determination.

Even up to the end of December, petitioners and respondents in the case – with barely concealed animosity – were filing opposing briefs with ITA arguing over whether log prices in the U.S. could be used as a new benchmark in the case. "The use of U.S. prices as benchmarks to determine and measure benefit is contrary to the statute," argued lawyers with Weil, Gotshal and Manges, which represents Canadian industry and government interests. They also claimed

that log export restraints in the U.S. and Canada distorted prices. Lawyers at Dewey Ballantine, which represents the Coalition for Fair Lumber Imports, countered that argument, saying U.S. prices have to be used because “provincial government stumpage and log policies depress prices from log sales between Canadian parties such that those prices cannot be used to measure the adequacy of remuneration.”

\* \* \* BRIEFS \* \* \*

LIBYA: Although Libyan leader Quaddafi in December promised to eliminate his country’s nuclear and chemical weapons programs, President Bush Jan. 5 issued order maintaining trade sanctions on Libya because of continuing concerns about those programs. “As Libya takes tangible steps to address those concerns, the United States will in turn take reciprocal tangible steps to recognize Libya’s progress,” president said. “Libya’s agreement marks the beginning of a process of rejoining the community of nations, but its declaration of December 19, 2003, must be followed by verification of concrete steps,” he added. State officials have been meeting with British counterparts and UN representatives to evaluate inspections already conducted and plan next actions.

SPECIAL 301: Despite its continued failure to meet Washington’s demands to strengthen its protection of U.S. intellectual property rights for sound recordings and movies, Korea was only bumped up to priority watch list status by USTR Robert Zoellick Jan. 8. USTR’s out-of-cycle review of Korea found it had made some progress on protecting software since annual Special 301 report last May, but still hasn’t taken necessary action on recording transmissions and film piracy.

BILLBOARDS: American Manufacturing Trade Action Coalition is putting up nine billboards around South Carolina in advance of Democratic primary there. Signs read: LOST YOUR JOB TO FREE TRADE OR OFFSHORING YET? VOTE.

ITC: Veteran ITC staffer Dan Leahy, director of office of external relations, retired Jan. 2 after 34 years of federal government service, including 30 years involved with trade at ITC and USTR’s office.

CARBAZOLE VIOLET: Allegedly subsidized imports of carbazole violet pigment 23 from India may be injuring U.S. industry, ITC decided by 6-0 vote in preliminary determination Jan. 5. By same vote, it also found that allegedly dumped imports from China and India may be injuring U.S. firms.

INNERSPRINGS: In Section 421 petition filed with ITC Jan. 6, American Innersprings Manufacturers claim they are being injured by surge of imports of uncovered innersprings from China.

OUTBOARD MOTORS: Mercury Marine Jan. 8 filed antidumping complaints at ITC and ITA against outboard engines from Japan.

TRADE PEOPLE: Former congressman and WTO Appellate Body member James Bacchus has rejoined law firm of Greenberg Traurig and will serve as chairman of its global trade practice group.

STEEL WIRE: ITC on 6-0 votes Jan. 8 made final determinations that subsidized imports of prestressed concrete steel wire strand from India are injuring U.S. industry and that dumped imports from Brazil, India, Korea, Mexico, and Thailand are also hurting domestic producers.

EGYPT: U.S. Jan. 6 asked Egypt to hold WTO dispute-settlement consultations regarding Washington’s complaint that Cairo violated its Uruguay Round agreement to eliminate ban on imports of textiles and apparel and to bind its import duties on these goods. U.S. claims Egypt replaced ban with new tariffs that were not ad valorem and ranged from 141% to 51,296% of import value.

OFAC: Among OFAC’s latest civil enforcement actions are two settlements with JP Morgan Chase to resolve complaints related to funds transfers to Cuba, Iran, Libya and Sudan. Fines totalled \$90,585.

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