

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

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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## INCREASED USE OF WIRETAPS IN EXPORT ENFORCEMENT FORECAST

The FBI's increased role in enforcement of U.S. export controls is expected to bring greater use of wiretaps and covert physical searches as tools to uncover illegal activities, according to a Justice Department official. Lawyers involved in enforcement cases say they have already encountered government wiretaps in cases against their clients (see **WTTL**, March 14, page 1).

“Has the FBI changed the landscape? You bet it has,” said Ronald Roos, deputy chief of Justice’s counter-espionage section. The FBI is bringing its additional resources to export enforcement investigations, as well as its ability to use the Foreign Intelligence Surveillance Act (FISA) to obtain covert search warrants and to conduct wiretaps, Roos told a recent conference in Washington.

Under FISA, a special board of judges can grant the FBI permission to conduct wiretaps and searches for national security reasons. These FISA warrants can be granted with less need for the government to show “probable cause” that a crime has been committed. Roos also said his office is being reorganized to match the geographical structure of the FBI, which has set up 13 regional working groups. The department is considering establishing Technology Transfer Task Forces in regions around the U.S. to work with companies that are being targeted, he reported.

Other changes are being made in Justice’s enforcement policies, he indicated. “We’re changing the way we look at export control enforcement,” he said. His office is now asking: What countries are seeking controlled item? What are they after? Who are middlemen? What networks are out there? What industries are being targeted? Which companies are most vulnerable? What Justice and the FBI have been finding is “not surprising,” Roos said. The countries attempting to obtain controlled items are mostly in the Middle East and in the Pacific region.

## CIT INJUNCTIONS LAST UNTIL SUPREME COURT OPTION ENDS, COURT RULES

Injunctions that the Court of International Trade (CIT) issues to prevent liquidation of imports until a “final decision” is reached in any trade litigation last until the time has lapsed for seeking certiorari before the Supreme Court and plaintiffs don’t have to seek repeated renewal of the injunction at each stage of the case, the Court of Appeals for the Federal Circuit (CAFC) has ruled. In its May 11 ruling in *Yancheng Baolong v. U.S.*, the appellate court upheld a CIT contempt of court ruling against the Commerce Department for ordering Customs to liquidate crawfish imports from Yancheng (CAFC case nos. 04-1464,-1500). The CAFC, however, rejected Yancheng’s request for reimbursement of its legal fees, because the government has not waived in sovereign immunity to allow the awarding of attorney fees in cases before the

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CIT. The only recourse the CIT may have in future violations of its injunctions may be to order the arrest of government attorneys, something it has only done once. A long line of legal precedents “foreclose any argument by the government that the preliminary injunction was ambiguous or was not intended to persist through the appeal process,” the appellate court stated. “Thus, the Court of International Trade did not abuse its discretion by holding the government in contempt of the preliminary injunction,” it declared.

## **VISIT OF CENTRAL AMERICAN LEADERS HAS MIXED IMPACT**

The impressive and unprecedented visit of six Central American and Caribbean presidents to several states, the Congress and the White House to support the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) gave a strong morale boost to supporters of the deal, but may not have attracted many votes for the trade pact. Their appearance in Washington, however, signaled the formal start of the White House push for the implementing legislation and finally got President Bush to say more than one sentence in support of the deal.

The visits to Capitol Hill “had a very good effect,” one pro-CAFTA-DR congressional source told WTTL. “We feel the momentum has begun to shift,” he added. But another source had an opposite reaction. “It had zero impact,” he declared.

To build support for the deal, Central American leaders met with former President Bill Clinton on May 10. Dominican Republic President Leonel Fernandez said he received no commitment from the former president. “He could not make a pledge because we are not seeking one,” Fernandez told reporters. “We talked to him about the importance of this bill. He just paid close attention to what we were saying....He didn’t make a formal commitment,” he added.

In addition to Fernandez, the visiting presidents included Abel Pacheco of Costa Rica, Elias Antonio Saca of El Salvador, Oscar Berger of Guatemala, Ricardo Maduro of Honduras and Enrique Bolanos of Nicaragua. After meeting with Bush and Vice President Cheney May 12, Bolanos told reporters the two U.S. leaders had “pledged to provide the leadership necessary to get this agreement passed in Congress.” He said the president asked the visitors what they were learning on their trip. “We told him what we had encountered with members of Congress,” Bolanos said. “We sensed that members of Congress are expecting him to come up in front and fight for CAFTA approval...And he’s willing to do that,” the Nicaraguan leader said.

## **PORTMAN SEEKS TO WITTLER VOTES AWAY FROM CAFTA-DR OPPONENTS**

The fight over approval of the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) is likely to stretch well into summer and may not be resolved until Congress is ready to leave for its August recess. Suggestions that the House might get to vote before Memorial Day have evaporated as the White House and CAFTA-DR supporters settle in for the long, slow task of gathering votes one member at a time with promises and special favors.

The House Ways and Means and the Senate Finance Committees are playing Alphonse and Gaston over which will go first with their non-markup markup of a CAFTA-DR implementing bill. Ways and Means Chairman Bill Thomas (R-Calif.) wants Finance to move first because he’s not sure the panel has the votes to pass the deal. Ways and Means Republicans have more discipline and are likely to support the bill even if there are one or two defections.

Even if Ways and Means and Finance move ahead with a markup, the White House is likely to delay sending the final implementing legislation and Statement of Administrative Action to Congress until it is more assured that it has the votes. Members are still not committing themselves to the accord “because people are not sure it’s going to come up for a vote, but it will come up,” one congressional source stated. But another source said there is a good possibility that the administration would not send up the deal, if there aren’t enough votes for

it. "They will not send it up to fail," he said. Although Finance Chairman Charles Grassley (R-Iowa) has been quoted as indicating interest in moving the draft before Memorial Day, congressional sources say the committee is likely to take a go-slow approach at the request of Ranking Member Sen. Max Baucus (D-Mont.). "There is no urgency," one source said. "It is more important to do it right."

For the administration, the initial goal of U.S. Trade Representative (USTR) Rob Portman is to break up the block of negative votes among members from sugar growing and textile states. He is doing that with promises to amend the textile provisions of the accord after it is enacted and to strengthen the compensation mechanism in the deal to block sugar imports if the sugar program is threatened.

The move on textiles has already succeeded in splitting the textile industry, with the National Council of Textile Organizations (NCTO) and the National Cotton Council announcing support for the deal after Portman pledged to amend it after it is adopted to provide more protection of U.S. makers of pockets and coat linings. Before Portman took his post, then-Acting USTR Peter Allgeier also promised NCTO that the "cumulation" provisions in the deal wouldn't be implemented until the U.S. reached agreements with Mexico and Canada to assure greater protection against transshipment of materials to Central America from non-NAFTA sources. Among such measures would be unannounced plant visits. Mexican representatives say Mexico would support such an agreement but also wants reciprocity to help it prevent transshipments to Mexico through the U.S. and to assure its access to the Central American market.

Portman also is reaching out to lawmakers from sugar states offering to give them assurances that the compensation mechanism in CAFTA-DR would be used. "Personally, I've had some very good conversations with sugar state lawmakers in the Senate and the House," Portman told reporters May 10. "Some of them support the agreement," he noted. "We have some belts and suspenders in this agreement to make sure sugar is protected," Portman said. "We will have to be in a position to flesh out this compensation program. We want to do that," he added.

## **REPEAT OFFENDER TO PAY \$904,500 FINE FOR NEW VIOLATIONS**

EMD Biosciences of San Diego, which was fined \$708,000 in 1999 for unlicensed exports of toxins and biologicals when it was known as CN Biosciences, has agreed to pay a \$904,500 civil fine to settle new BIS charges that it exported similar products to Canada on 67 occasions between 2002 and 2003. As in its previous settlement, BIS imposed a two-year denial of export privileges but agreed to suspend the denial order as long as EMD stayed in compliance. BIS translated the 67 shipments into 134 violations, adding a knowledge count to each individual export. EMD neither admitted nor denied the BIS charges. As part of the 1999 settlement, BIS suspended \$354,000 of the fine. The new exports included Cholera and Botulinum Toxins.

## **PUMP MAKER FINED \$700,000 FOR EXPORTS TO IRAN, ISRAEL, CHINA, UAE**

When it came to exports of diaphragm pumps, Wilden Pumps and Engineering of Grand Terrace, Calif., didn't take sides in the Middle East; it exported to Israel, Iran and the United Arab Emirates (UAE). To settle the Bureau of Industry and Security's (BIS) 71 charges of violations of U.S. export controls, Wilden will pay a \$700,000 civil fine. It also had its export licensing privileges denied for three years, but with BIS agreeing to suspend the denial order for two years and waive it, if the firm remains in compliance with export rules.

According to the BIS charging letter, Wilden exported diaphragm pumps classified as EAR 99 to Iran through the UAE on two occasions in 2000 and 2001 without approval from Treasury's Office of Foreign Assets Control (OFAC). On the Shipper's Export Declarations (SEDs) for both shipments, it claimed the items were eligible for License Exception NLR (no license required) and that the ultimate destination was the UAE. BIS also charged Wilden with exporting pumps that were controlled under Export Control Classification Number (ECCN)

2B350i.4 to Syria, Israel, China and the UAE on 24 occasions without approved licenses. For some of these exports, the government claims the company knew a license was required. In addition to the unlicensed exports, BIS charged the firm with misstating the license status of 19 exports to Israel and the UAE, claiming they qualified for exception NLR on the SEDs.

## EU'S USE OF STANDARDS AS TRADE WEAPON CONCERNS U.S. INDUSTRY

The European Union (EU) is spending millions of dollars to promote the use of EU standards in emerging markets as a way to give European products an advantage in those markets, U.S. manufacturers complain. "The Europeans are aggressively exporting their system and their standards to other countries and developing markets around the world," said Robert Noth, manager of engineering standards for Deere & Company in testimony to the House Science Committee's technology subcommittee May 11. Noth was on a panel of industry witnesses who warned about the use of standards in the EU and China to gain market advantages.

Although Commerce launched a Standards Initiative in 2003 to give more visibility to the role of standards in trade, the U.S. provides far less support to international standards setting than the EU. Industry witnesses called for increased government support for standards development and for a strong stand against the use of standards as a trade barrier.

Last year, U.S. trade officials negotiated a deal with China to block the adoption of a wireless standard that would have restricted the access of U.S. companies to the market. "This example illustrates the concerns that many industrial sectors, particularly in the U.S. high-technology sector, are currently facing in China," testified Oracle Vice President Donald Deutsch.

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

WTO: Former EU Trade Commissioner Pascal Lamy will be voted next WTO director general when WTO General Council meets May 26. Ex-Uruguay Ambassador to WTO Carlos Perez del Castillo withdrew from running just as heads-of-delegation meeting was about to convene May 5 to make final recommendation. Lamy was well in lead ahead of meeting. His appointment to succeed Supachai Panitchpakdi, who will become head of UNCTAD, Sept. 1 comes with concern among Latin and Central American countries because of his role in EU restrictions on bananas. But selection process for new DG drew wide praise and Lamy is expected to play forceful role in helping move WTO toward completion of Doha Round.

TRADE FIGURES: "Soft patch" in U.S. economy in March and lower-valued dollar may have contributed to decline of imports in March from February and \$5.6 billion reduction in trade deficit from previous month. If one month figures become trend, economists' forecasts of decline in deficit for year because of dollar's value could come true. Compared to same month year ago, March goods exports were up 6.9% to \$72.1 billion; services exports gained 7.7% from last year to \$30.1 billion. Goods imports in March rose 10.5% from last March to \$131.5 billion, as service imports increased 8.8% to \$25.7 billion.

ANTIDUMPING: Bernard Smith, part of owner of Stealth Components, agreed to plead guilty May 11 in Boston U.S. District Court to charges of avoiding paying over \$385,000 in dumping duties on imports of DRAMS from Korea (see **WTTL**, Jan. 24, page 1).

TEXTILES: Four days after close of comment period, CITA said it would impose safeguard actions on three categories of Chinese products it self-initiated investigations on: cotton knit shirts, cotton trousers and underwear. These products were also subject of industry petitions based on threat of disruption. Injunction blocking review of threat cases was lifted by CAFU in April (see **WTTL**, May 9, page 1). CITA said it will seek consultations with Chinese by end of May.

CONGO: Conforming to UN resolution imposing arms embargo on Democratic Republic of Congo, DDTC posted notice saying no ITAR licenses will be approved for Congo effective April 18.

DOHA ROUND: Agriculture Negotiating Committee May 10 put off decision on adopting compromise deal reached at mini-ministerial in Paris on setting tariff rates to give members more time to review details of proposal for translating non-ad valorem tariffs to ad valorem tariffs. Also disagreement remains over how to decide prices for sugar and whether sugar should get special treatment (see **WTTL**, May 9, page 3).