

Washington Tariff & Trade Letter[®]

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

Vol. 25, No. 12

March 21, 2005

BIS WILL CALL FOR COMMENTS ON DEEMED EXPORT COMPLIANCE

The exporting community is gearing up to respond to a Bureau of Industry and Security (BIS) Federal Register notice in next week or two that will call for comments on a Commerce Inspector General's (IG) report in March 2004, which criticized the agency's deemed export policies. Industry representatives say they are concerned that the imposition of tougher rules could hurt firms that bring foreign employees to the U.S. for research or training and stymie joint research efforts with universities that rely increasingly on foreign grad students for staff.

The IG report found fault with BIS enforcement of its deemed export regulations and recommended that the agency instituted a compliance program to monitor and inspect those being licensed to make sure they are complying with any conditions imposed by the license. The IG also called for BIS to conduct an outreach program to explain deemed export requirements to the research and academic communities. BIS has done that (see **WTTL**, March 14, page 4).

The most troubling part of the report for industry, however, calls for closing what the IG considered to be loopholes in the requirements and changing policies that are different from rules for actual exports. The IG proposals that BIS will seek comment on include: (1) Revising the confusing definition of word "use" in regulation to make it clear that operating, installing, maintaining or repairing controlled equipment in the U.S. is subject to deemed export requirements; (2) Basing deemed export requirements on the birthplace of a foreign national and not just his or her current citizenship or permanent residence status; and (3) Reevaluating policy that allows issuance of deemed export licenses to nationals of Iran and Iraq.

BIS reportedly will take no position on any of these proposals and will wait to hear industry comments before deciding what, if anything, to do to respond to the IG's recommendations. BIS sources say no regulation has been drafted. "I don't believe a change in the regulation is imminent," one source said. Given past experience with BIS regulation writing timetables, an actual proposal could be a year or more away.

BUSH NAMES CLOSE FRIEND AND ALLY REP. PORTMAN TO USTR POST

Initially, President Bush's selection March 17 of Rep. Rob Portman (R-Ohio) to be the next U.S. Trade Representative (USTR) caught most of the Washington trade community by surprise, but as more details emerged about Portman's close ties to the president, the choice was hailed for putting in the trade office someone who will restore the original purpose of the USTR's position as a person who bridges the shared responsibilities for trade between the White House

Copyright © 2005 Gilston-Kalin Communications, LLC. All rights reserved. Reproduction, copying, electronic retransmission or entry to database without written permission of the publisher is prohibited by law.

Published weekly 50 times a year except last week in August and December. Subscription in printed or electronic form is \$597 a year in U.S., Canada & Mexico; \$627 Overseas. Additional copies with full price subscription are \$75 each.
Circulation Manager: Elayne F. Gilston

and Congress. Portman's name was not among those "mentioned" by the Great Washington Mentioner when President Bush tapped USTR Robert Zoellick to be deputy secretary of State. There has been speculation, however, about his potential role in the Bush administration ever since his days as an early supporter of then-Governor Bush during the 2000 presidential campaign. Portman campaigned for Bush ahead of the 2000 primary in New Hampshire. He also role-played as a surrogate for Vice President Al Gore and Senator John Edwards during practice debate sessions with Bush and Vice President Cheney during the 2000 and 2004 election campaigns.



Rep. Rob Portman (R-Ohio)

Often referred to in news articles as a "close Bush family friend" and the president's "go to guy" in Congress, Portman will bring to the trade post some of the same characteristics that made Robert Strauss one of the most successful USTR's in history, but without Strauss' Texas bravado.

Because of Portman's close personal ties to Bush, his nomination dispels any concerns about the administration's intention to downgrade the position (see **WTTL**, March 7, page 1). In addition, foreign negotiators should feel confident that Portman will be speaking with the direct authority and support of the president, something recent USTRs have not always been able to say.

Although Portman served as a trade lawyer with the D.C. law firm of Patton, Boggs for a few years before joining the Bush I administration and his election to Congress, he has not been active on trade issues. A member of the House Ways and Means Committee, he joined its trade subcommittee for the first time in January. Nonetheless, he has been part of the House Republican leadership team and has made most of his reputation as a quiet, behind-the-scenes negotiator. "He's not flashy; he's solid. He won't hold a lot of press conferences," said one source who has worked with him.

Robert Jones Portman

Date of Birth: Dec. 19, 1955
Place of Birth: Cincinnati, Ohio
Married: Wife's name is Jane
Children: 3
First Elected to Congress: May 3, 1993
Represents: 2nd District, Ohio
House Committees: Ways and Means, Budget
Private Sector Experience: Trade attorney with law firm of Patton, Boggs (1984-1989)
White House Experience: Associate Counsel for President George H.W. Bush (1989); Director Legislative Affairs (1989-1991)
Education: BA, Dartmouth (1979); JD, University of Michigan (1984)
Cato Institute Rating: Free Trader

Portman's rapport with and access to his former Capitol Hill colleagues may be one of his strongest assets. No USTR since Bill Brock has had that kind of relationship with Congress. But congressional sources also warn that some trade issues, particularly approval of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), may need more than collegiality. "It will take more than friendship and negotiating skills to get that through Congress," another congressional staffer said.

Apparently, one of Portman's first phone calls after being selected for the USTR position was to Rep. Charles Rangel (D-N.Y.), the ranking Democrat on the Ways and Means Committee. "Rep. Portman called me this morning to express his interest in working together, and I could not be more pleased that he is reaching out," Rangel said in a statement. Portman has an especially close relationship with Rep. Ben Cardin (D-Md.), the new ranking Democrat

on the Ways and Means trade subcommittee. Cardin and Portman have worked closely over the past two years on pension-reform and savings legislation, which they co-sponsored.

WTO AGRICULTURE TALKS STARTING TO FEEL THE PAIN

As World Trade Organization (WTO) negotiators get closer to the bone in negotiations on the agriculture leg of the Doha Round talks, they are finding the level of pain that will be caused by some proposed reforms in farm trade is making progress more difficult. Talks in Geneva the

week of March 14, found growing resistance to specific proposals that would require cutting domestic subsidies, opening markets and simplifying tariff systems. On the positive side, the negotiators are starting to get into the details of an agriculture agreement and away from the broad rhetoric of the last three years.

The chairman of the agriculture negotiating group, New Zealand's WTO Ambassador Tim Groser, started the week of talks on an upbeat note based on the detailed proposals that had been presented by countries ahead of the meeting, according to sources in Geneva (see **WTTL**, March 7, page 2). By the end of the week, however, after several days of informal talks, Groser suspended plans for a formal meeting of the group on March 17 and 18.

One of the main areas of discussion and disagreement continues to be how to convert non-ad valorem tariffs, such as cents per kilogram, into ad valorem tariffs based on a fixed tariff rate per value of import. Coming out of the WTO mini-ministerial in Kenya in February was a plan being called the "40-20 filter" which would require countries to estimate the tariff level for non-ad valorem duties and conduct a two-part screening or filtering process to determine which of them are 40% above average and then 20% above other ad valorem equivalents. Those that don't pass through the double filter would require adjustment.

There was also debate over the timing for reducing domestic subsidies. Countries belonging to the so-called G-20 and farm exporting nations that belong to the Cairns Group are pushing for the "frontloading" of these reductions or a large "down payment," especially if the final accord calls for a long phase-out period. Norway is one of the countries opposed to this early reduction. A similar debate arose over rules for safeguard actions, with G-20 countries voicing concerns that safeguards could be used to maintain protection that is supposed to be reduced in the negotiations. The G-20 is also calling for cuts in tariffs on processed foods to eliminate tariff escalation that puts higher tariffs on processed food and lower ones on raw materials.

Proposals also were presented for broad sectorial cuts. Colombia and Costa Rica want deep cuts in tariffs on flowers. The U.S. called for similar reductions on such products as pork, oilseeds, beef, barley, distilled spirits and poultry. The EU and the G-10 nations, which includes high-protection countries like Japan, Korea and Switzerland, want the talks to include non-trade concerns that would permit countries to support farmers where farming is difficult or because of their importance to tourism.

ADMINISTRATION WON'T SUPPORT CBI RENEWAL IF DR-CAFTA DEFEATED

The Bush administration is upping the ante on congressional failure to approve the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). If lawmakers fail to okay the trade pact, the White House won't support renewal of the Caribbean Basin Economic Recovery Act (CBERA), also called CBI, when it expires in 2008 for those the six FTA candidates, warns Assistant USTR Chris Padilla. "The administration will not seek renewal of CBI for Central America," Padilla told a State Department industry advisory committee March 16.

Opponents of the pact claim the region will still have tariff-free preferences and other trade benefits under CBI even if the trade pact is rejected. While the issue of CBI renewal is a long way off, Padilla emphasized that the administration would oppose the continued extension of unilateral preferences without an FTA.

Padilla also said there is hope that Congress will complete its votes on DR-CAFTA by Memorial Day, which falls on May 30 this year. The ball on congressional action will begin to roll with a Senate Finance Committee hearing announced for April 6. A Ways and Means hearing is likely about the same time. That will be followed by the administration's informal submission of implementing legislation and an informal, non-markup markup by both committees. That will be followed by formal submission of an implementing bill pre-cleared by the panels. In the past, the fast-track process on FTA implementing legislation has taken an

average of six to eight weeks, administration sources say. Meanwhile, DR-CAFTA supporters cheered the announcement of Freshman Rep. Henry Cuellar (D-Texas) that he will support DR-CAFTA. The bill will probably need at least 15 Democratic votes to pass.

WTO PANEL RULES AGAINST EU GEOGRAPHIC INDICATIONS REGULATIONS

A WTO dispute-settlement panel ruling released March 15 against European Union(EU) rules for protecting geographic indications (GIs), will make it more difficult for Brussels to demand expansion of GI rules in the Doha Round. Because the U.S. and EU are both claiming victory in the opinion, the case is likely to be appealed to the WTO Appellate Body to clarify which side won. U.S. trade officials say they are still studying the panel's opinion and have not decided whether to file an appeal. While upholding the EU's right to regulate GI's, the panel agreed with the complaints of the U.S. and Australia that its implementing regulations denied national treatment to persons from other WTO nations that want to register their names.

It also found the EU's procedures, which require the government of the registering party to file the application for GI protection, to be inconsistent with national treatment. Adoption of the report "should serve to clarify some of the existing WTO provisions related to geographical indications, but it does not in itself resolve any of the differences between members under discussion under the Doha work program on geographical indications," a source in Geneva said.

* * * BRIEFS * * *

CHINA ARMS EMBARGO: According to report from Chinese embassy in Washington, Luxembourg Foreign Minister Jean Asselborn March 17 told Chinese Foreign Minister Li Zhaoxing that EU will "do its best" to lift arms embargo on China by end of June (see **WTTL**, Feb. 28, page 2).

BIS: Agency March 14 began posting on its website, www.bis.doc.gov, selected advisory opinions issued over last two years. Initially released opinions cover such subjects as BIS interpretation of rules on deemed export, license exceptions, Iran, and sales representatives.

CORRECTION: Settlement agreement between BIS and L-3 Communications was based on firm's voluntary self-disclosure, fact not mentioned by BIS. In addition, L-3 obligation to conduct audit of exports is for period from Jan. 1, 2005 to Dec. 31, 2005, not 3005 (see **WTTL**, March 14, page 2).

ORANGE JUICE: ITC March 15 voted 6-0 in "sunset" review that revoking antidumping order on frozen concentrated orange juice from Brazil would not lead to continuation or renewal of injury to U.S. industry.

BYRD AMENDMENT: Court of Appeals for Federal Circuit March 9 upheld CIT ruling in *Cathedral Candle v. ITC* (04-1083), agreeing that firm was ineligible for distribution of Byrd Amendment funds because it missed deadline for filing for payments. Court agreed burden is on companies to take action to qualify for distribution and that law "does not require notice to all potentially eligible producers."

CORRUPTION: Annual Global Corruption Report issued March 16 by Transparency International identifies massive level of corruption in major public construction projects in scores of countries, including Iraq.

EXPORT ENFORCEMENT: BIS in March 14 Federal Register issued temporary denial order against six firms in Hong Kong, China and Pakistan and one woman in Hong Kong because of their alleged illegal export to Pakistan of items controlled for nuclear non-proliferation reasons.

MORE EXPORT ENFORCEMENT: Rockwell Automation has reached settlement agreement with BIS under which company will pay \$46,750 civil fine to settle 17 agency charges related to exports and reexports that its Entek-US division made of balancing machines without approved licences to Malaysia, Mexico, India and Venezuela. Some reexports went through United Kingdom.

STILL MORE EXPORT ENFORCEMENT: BEF Corporation of Allentown, Pa., agreed to pay \$39,000 civil penalty to settle BIS charges that it participated in conspiracy to export mini-photo labs to Iran through United Arab Emirates without approved license from Treasury's OFAC.