

# 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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## BIS ANNUAL REPORT SHOWS SHARP JUMP IN EXPORT LICENSING

The number of export licenses reviewed by the Bureau of Industry and Security (BIS) in fiscal 2004, which ended Sept. 30, 2004, surged 25% over the year before, producing the highest volume of licenses in 11 years, according to the agency's annual report released Feb. 23. Of the 15,534 applications for which reviews were completed, BIS approved 13,058 (84%) worth \$13.8 billion, returned without action (RWA) 2,181 (14%) worth \$1.3 billion and denied 272 (2%) worth \$162 million, it reported. It also revoked 23 licenses worth \$154 million.

Despite the heavier load, the average processing time, which counts only the time a case is actively being reviewed, dropped to 36 days from 44 days in 2003.

The largest share of applications was for thermal imaging cameras. BIS approved 2,768 applications in this category with a worth of \$575 million. Exports to Germany and Japan accounted for 46% of these cases. China was the destination for the largest number of approved licenses last year with 1,336 worth \$528 million. BIS reviewed 995 deemed export applications, which compares to 846 the year before. BIS said the increase was due to its outreach program to industry and universities. It conducted 116 such events last year.

The number of applications being escalated to the interagency Operating Committee (OC), which is supposed to resolve disputes among export control agencies over licensing decisions, increased. In 2004, 269 cases were escalated to the OC but only 35 were further escalated to the political-level Advisory Committee on Export Policy (ACEP) for resolution. This compares to 170 and 44, respectively, in 2003. In fiscal 2002, 427 cases went to the OC. Some in industry complain that the decline in ACEP reviews has been due to the unwillingness of BIS leaders to oppose the views of State and Defense.

## THE INCREDIBLE SHRINKING TITLE VII CASE LOAD

If Peter, Paul and Mary were trade lawyers instead of singers, they might be singing, "Where have all the filers gone?" Strong U.S. economic growth, the decline in the value of the dollar and less-than-generous dumping margin determinations in high-profile cases contributed to a sharp decline in the number of antidumping and countervailing duty (CVD) cases in 2004 under Title VII of the Trade Act and could make 2005 a record low year for new petitions.

In 2004, only 10 new antidumping investigations were initiated and two CVD cases. This compares to 37 antidumping cases in 2003 and five CVDs. Since July 2004, only two new dumping cases have been initiated. The ITC made a negative determination in October in one

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of them, polyvinyl alcohol from Taiwan, and has not yet voted on frozen orange juice from Brazil. The filing of trade complaints has always been cyclical, rising when the value of the dollar has risen or the economy has declined and falling when the reverse was true. Dumping cases hit peaks in 1986 at 83, 1992 at 84 and 2001 at 77. CVD filings have been in a long-term decline for 20 years, peaking in 1982 at 60 but averaging less than 10 a year since 1990.

Although the 2004 investigations into dumping of wooden bedroom furniture and shrimp were two of the largest the International Trade Commission (ITC) and the International Trade Administration (ITA) ever handled, those cases were initiated in 2003. By July of 2005, the agencies may have only one active new case on their books. As the number of new investigations has declined, the agencies have entered a cycle of increasing "sunset reviews" of older cases for which they have to determine the likelihood of continued dumping and injury.

In addition, the ITC is seeing a growing number of cases under Section 337 of the Trade Act. Section 337 gives the ITC the power to investigate complaints against imports that are allegedly violating intellectual property rights, including patents, trademarks and trade dress. The cases go through a review process overseen by an administrative law judge. The ITC has become the popular venue for these complaints, especially for high-tech products, because it completes its reviews and judgments much more quickly than U.S. district courts and has the power to issue exclusion orders enforced by Custom on imports of all subject products.

## **U.S., BRAZIL MAKE EFFORT TO RESTART FTAA TALKS**

After more than a year in the deep freeze, talks on creating a Free Trade Area of the Americas (FTAA) could begin again this spring based on the tentative progress made during discussions Feb. 22-23 between Acting U.S. Trade Representative (USTR) Peter Allgeier and Brazilian negotiator Adhemar Bahadian. While the two co-chairs of the FTAA talks released no details on their meeting, they agreed to meet again at the end of March with the aim of convening a vice-ministerial meeting of representatives of all 34 countries involved in the FTAA negotiations in late April or early May (see **WTTL**, Feb. 14, page 1).

The FTAA Trade Negotiations Committee (TNC) last met in February 2004, and USTR spokesman Richard Mills confirmed that no work has been conducted by any of the FTAA working groups during most of last year. Just getting these groups back together will be an important step but no guarantee that the FTAA talks are back on track.

The Allgeier-Bahadian talks apparently were fairly general. The two officials issue a joint communique afterwards saying they have "continued to make progress and are optimistic about the results of this meeting." Mills said the two were able to narrow some differences. The FTAA talks have been in limbo since the Western Hemisphere Trade Ministerial in Miami in November 2003 failed to give the negotiations a push toward meeting the December 2005 deadline for completing an agreement. In Miami, the U.S. reluctantly accepted a Brazilian plan for a two-tiered approach to a hemispheric accord. After Miami, negotiators were unable to translate that plan into a specific negotiation agenda, and then the talks just stopped.

## **EUROPEAN FIRMS RISK SANCTIONS IF EU LIFTS CHINA ARMS EMBARGO**

In addition to President Bush's admonishments to European Union (EU) leaders against dropping the EU arms embargo on China, members of Congress are warning that such action is likely to trigger quick enactment of legislation to bar European firms that sell Munitions List (ML) items to China from doing business with the Pentagon. After the president raised the issue repeatedly with European leaders during his five-day trip to Europe the week of Feb. 21, senior administration officials expressed some hope that EU officials got the message and may delay any change in policy for several weeks or months. "I am now more confident than I

was a week ago that the Europeans appreciate that this is real on the part of the Congress and not simply a statement -- a characterization or exaggeration on the part of the administration," a senior administration official told reporters. "Obviously, we have some work to do with the Europeans on this, but I think on this issue, we have set the stage for productive discussions. We'll see. We'll see," the official added.

Legislation that would have imposed restrictions on EU companies that sell defense items and technology to China almost was enacted as part of the 2005 National Defense Authorization Act (NDAA) last year and was killed only after concerted opposition from the White House and business community (see **WTTL**, Oct. 11, page 1). Industry representatives say it would be hard to stop such a measure again, if the EU were to go ahead with a formal lifting of the arms ban.

The House voted 411 to 3 Feb. 2 for a non-binding resolution (H. Res. 57) supporting the embargo and warning of sanctions on EU firms if the ban were lifted. The resolution said lifting the embargo would be inconsistent with the concept of mutual security which has fostered closer ties between American and EU defense firms and "would necessitate limitations and constraints in these relationships that would be unwelcome on both sides of the Atlantic."

Recognizing the potential for sanctions, EU officials are trying to come up with a policy that would limit defense sales to China even if the embargo is lifted. "We have a problem; the Europeans understand the depth of the problem," the senior official explained. "What we have heard from them is an acknowledgment of our problem. They have underlined the EU's commitment last December that any lifting of the embargo would not lead to a qualitative or quantitative increase in arms being sent to China," the official added. "Without suggesting in any way that we're going to change our position of opposition to [lifting] the embargo, we are willing to hear how the Europeans intend to make their political commitment a reality," he said.

After meeting with French President Chirac, President Bush said he told the French leader that "there is deep concern in our country that a transfer of weapons would be a transfer of technology to China, which would change the balance of relations between China and Taiwan, and that's of concern." Bush noted that the EU is developing a protocol for defense sales that would satisfy the U.S. concerns. "I said I'm looking forward to seeing it and that they need to make sure that if they do so, that they sell it to the United States Congress," he said. "But the Congress will be making the decisions as to whether or not -- as to how to react to what will be perceived by some, perhaps, as a technology transfer to China," Bush added.

While the U.S. and EU have maintained an arms embargo on China since the Tiananmen Square massacre, the EU has approved exports of some defense items and technologies to China. The House resolution cited one report which claimed the EU approved \$540 million in ML sales to China in 2003. The just-released BIS annual report (see story page 1) says BIS approved 1,336 licenses for exports to China in fiscal 2004. Those exports represented 10% of all licenses that BIS approved last year. Of those licenses, 35% were for deemed exports to Chinese nationals.

## **SHIFT OF TEXTILE IMPORTS APPARENT BEFORE END OF QUOTAS**

The fastest growing source of textile and apparel imports into the U.S. in 2004 wasn't China; it was Chile. Textile imports from Chile surged 150% last year, according to Census figures on goods covered by the Multifiber Arrangement (MFA). Other fast growers were Finland which exported 126% more in 2004 and Venezuela, which exported 119% more. Of course, the combined U.S. market share for these three suppliers is below 1%.

The big shift, obviously, was in Chinese imports, which jumped almost 41% and captured 25% of the U.S. market. This growth came as total MFA textile and apparel imports from all suppliers grew just 10.42%. The potential winners and losers in a post-MFA world were already beginning to be seen in 2004 even before global quotas were lifted. Of the top 20 suppliers to the U.S., nine saw their exports decline last year. The 3.38% decline in imports from Hong

Kong and the 4.19% slid in imports from Taiwan probably reflect the continuing movement of their textile industries to mainland China. Overall, the five countries of Central America saw their exports decline almost 2%, with imports from Honduras dropping 4.86%, from El Salvador down 7.88%, and from Costa Rica off 5.75%. On the upside, imports from Guatemala gained 12.88% and from Nicaragua, 17.03%. Imports from the Dominican Republic slipped 1.66%.

## **RUSSIA'S WTO MEMBERSHIP WILL LEAVE LEGAL RISKS FOR BUSINESS**

President Bush and Russian President Vladimir Putin Feb. 24 formally endorsed the goal of Russia's accession to the World Trade Organization (WTO) by the end of 2005, but legal and business experts are warning foreign investors and traders that Russia's WTO membership probably won't overcome the risks they will face doing business there. While the Russian legislature, the Duma, is enacting stronger laws aimed at protecting commercial and property rights, rampant corruption throughout the government and judiciary undermine these laws.

In Slovakia, Bush and Putin issued a joint statement saying the two countries are committed to completing Russia's WTO accession in 2005. "Our trade ministers have made progress in pursuing our bilateral negotiations, and we have instructed them to accelerate these efforts," the declared (see **WTTL**, Feb. 7, page 2).

But the statement also included many caveats about the issues that remain unresolved in those talks. These include agriculture, manufacturing, services and intellectual property rights. The meeting of the two leaders came a week after the WTO working party on Russia's accession held its 26<sup>th</sup> meeting in Geneva. The chairman of the group, Stefan Johannesson, Iceland's ambassador to the WTO, said the talks made good progress, but he also cautioned that "a lot of work has to be done." He also noted accelerated progress in bilateral market access talks.

Russian official claim Moscow is committed to complying with its WTO obligations. Foreign observers, however, say they are worried about non-WTO issues, such as the Kremlin's growing control of certain sectors, particularly oil, and the lack of legal protection in the courts. The international investment scene was also chilled by the arrest and prosecution of Mikail Khodorkovsky, the former head of Yukos, the oil giant, and the sale of Yukos assets in an allegedly rigged process to a firm controlled by the government-owned oil firm, Rosneft.

Putin's tighter hand on the Russian economy has reduced some of the non-governmental criminal activities in Russia, observers note. This has made Russia a little safer place to do business and has also contributed to strong economic growth in the last five years. It has also encouraged some of the money taken out of Russia illegally in the past to return, they say. This is evident in foreign investment data that show Cyprus and the British Virgin Islands to be among the largest sources of foreign direct investment in Russia, one source suggested.

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

**SOFTWOOD LUMBER:** ITA issued revised final administrative review in Feb. 24 Federal Register in countervailing duty case on softwood lumber from Canada to correct ministerial errors. Revised order lowers country-wide CVD rate to 16.37% from 17.18%. Separately, Canada has withdrawn request for NAFTA panel review of ITC's Section 129 decision reconfirming its threat-of-injury determination.

**ITC:** Commission revised its procedural regulations in Feb. 22 Federal Register to amend requirements for filing petitions and briefs and for protection of proprietary information. New rules also eliminate need for clerical and support staff to file separate administrative protective orders (APO). If such employees are under supervision of person with APO, they will only have to sign agreement to be bound by terms of APO.

**DRAMs:** WTO dispute-settlement panel issued mixed ruling Feb. 21 on Korea's complaint against CVD order on DRAMs from Korea. Panel said ITA didn't have enough evidence on record to support subsidy finding and ITC failed to consider non-attribution of other factors to U.S. industry's injury. U.S. is expected to appeal decision, but wording of ruling could give ITA and ITC room to issue revised determinations that meet panel's objections.