

# 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

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## MANZULLO ASKS STATE TO JUSTIFY DDTC BUDGET

Rep. Don Manzullo (R-Ill.) wants Secretary of State Candoleezza Rice to explain how her department intends to fulfill President Bush's export reform directive, if it hasn't provided additional funds for the Directorate of Defense Trade Controls (DDTC) in the fiscal 2009 budget (see **WTTL**, Jan. 28, page 1). "Madam Secretary, I would greatly appreciate it if you could respond in writing, regarding how this budget request for DDTC licensing will comport with the President's directive from January 22, 2008," Manzullo said in a Feb. 13 letter to Rice.

Manzullo noted that the directive said DDTC would get additional resources and intelligence support to help speed the review of defense export license applications. "According to the President's budget request for fiscal year 2009, no additional staff is requested" for DDTC, he pointed out. "The very modest amount of additional funding requested for DDTC Licensing (\$229,000) does not even keep up with inflation – yet the rest of the Department of State's budget request is well over the rate of inflation (\$703.3 million increase)," he added.

State officials made it clear when the export licensing reform directive was issued that the administration wasn't going to ask for more funds for DDTC in the 2009 budget. Additional resources to implement the directive were to come from an undefined "self-financing" mechanism. "We have determined that we would have self-financing to cover the resources for these new reforms," Under Secretary of State John Rood told reporters. "We are still in the process of determining the specifics. We have several options we are evaluating," he added.

Although Manzullo didn't address the Bureau of Industry and Security's funding in his letter, the budget proposal for BIS in 2009 appears to be as modest as DDTC's. While the proposed budget authority for BIS would rise to \$84 million in fiscal 2009 from an estimated \$73 million in fiscal 2008, actual 2009 outlays would rise to \$82 million from \$76 million in 2008, which was down from \$85 million in 2007. The number of BIS employees would grow to 392 full-time equivalents from 364. The BIS budget says the added funds would be used to increase the number of criminal investigators working on counter-proliferation and transshipment issues and to implement the Validated End User (VEU) initiative. The budget, however, keeps travel and transportation spending authority at the same \$3 million level of the past two years.

## IMPORTERS MOUNT CAMPAIGN AGAINST CHANGE IN "FIRST SALE" RULE

Manufacturers, importers, retailers, law firms and trade associations have launched a concerted effort to block a Customs and Border Protection (CBP) proposal that would change a nearly 30-

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year old policy on customs valuation of imports. Nearly 100 firms and organizations signed a Feb. 11 letter to Department of Homeland Security Secretary Michael Chertoff urging him to withdraw CBP's Jan. 24 proposal to change the "first-sale" method of valuing imports for the purpose determining the duties they must pay. If the proposal were implemented, it "would amount to a hidden tax on U.S. consumers," wrote firms ranging from Christian Dior to Home Depot. Because product values tend to rise as they move higher in the supply chain, setting customs valuations later than the first sale would likely mean a higher duty on the goods.

"This proposal is not only flawed and highly objectionable, but also is particularly disturbing with regard to the timing, process and manner that CBP employed to publish its position," the letter declared. "Moreover, while government and business have collaborated as partners to protect our ports and boost our economy, the decision to put forward such a significant change in practice without consultation with the U.S. trade community presents a disturbing message with respect to that essential partnership," it said.

The Customs proposal would amend a policy that has its roots in the Trade Agreements Act of 1979 and the customs valuation agreement of the Tokyo Round. Through a series of Customs advisory letters and court rulings, the policy has generally based the import price for customs valuation purposes on the "first sale" by a foreign manufacturer to a U.S. importer. "Application of this 'first-sale' principle often results in the transaction value being determined on the basis of the price paid by a foreign buyer to a foreign seller," CBP said.

"CBP's current interpretation is to base transaction value on the price paid by the buyer in the first or earlier sale (e.g., the sale between the manufacturer and the intermediary) provided the importer can establish by sufficient evidence that this was an arm's length sale and that, at the time of such sale, the merchandise was clearly destined for exportation to the United States," CBP explained in the Jan. 24 Federal Register proposal.

Now it wants to change that approach. "Specifically, CBP is proposing that in a series of sales situation, the price actually paid or payable for the imported goods when sold for exportation to the United States is the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. The result will be that transaction value is normally determined on the basis of the price paid by the buyer in the United States," it stated.

The CBP proposal stems from a decision issued by the World Customs Organization's Technical Committee on Customs Valuation. In its Commentary 22.1, the committee concluded that "in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement." Based on this finding, CBP said its current interpretation of the valuation agreement "as set forth in T.D. 96-87 and in CBP ruling letters is not correct."

## **MERCHANDISE EXPORTS IN 2007 JUMPED 12.3%, AS DEFICIT NARROWED**

U.S. manufacturers, farmers and service providers continued to enjoy strong export growth in 2007, with total merchandise exports increasing 12.3% over 2006 and services export rising 12% to a record \$472 million (see table page 3). In the last two years, U.S. merchandise exports have grown more than 26%.

The \$104 million surplus in services trade helped narrow the overall U.S. trade deficit of goods and services to \$711 million, a 6% drop from 2006 and the first decline in the deficit since 2001. U.S. goods exports to China again grew faster than imports, with U.S. exports rising 18% compared to the 12% growth in imports from China. While Chinese exports to the U.S. keep rising, some of that growth is coming at the expense of other Asian nations. Imports from

Japan declined 2%, while imports from the Newly Industrialized Countries of Asia – Hong Kong, Taiwan, Korea and Singapore – rose just 1%. Almost every sector of the U.S. economy benefitted from the growth of exports, but some that haven't stand out. Both exports and imports of metalworking machinery declined in 2007, along with semiconductors. The slowdown in U.S. construction took its toll on lumber imports, which declined 17% from the

year earlier. The closely watched clothing sector also saw a decline in exports and a slight increase in imports.

<b>Preliminary 2007 vs. 2006 U.S. Merchandise Trade Figures</b> (in billions)						
	<b>2007 Exports</b>	<b>2006 Exports</b>	<b>% Change</b>	<b>2007 Imports</b>	<b>2006 Imports</b>	<b>% Change</b>
Total	\$1,149	\$1,023	12.3%	\$1,965	\$1,861	6%
<b>BY COUNTRY/REGION</b>						
Canada	249	231	8	313	302	4
Mexico	137	134	2	211	198	7
European Union (25)	247	214	15	355	330	8
Germany	50	41	22	94	89	6
France	27	24	13	42	37	14
United Kingdom	50	45	11	57	54	6
Japan	62	60	3	145	148	-2
China	65	55	18	322	288	12
NICs: HK, Singapore, Taiwan, Korea	107	98	9	111	110	1
South/Central America	108	89	21	135	134	1
<b>BY SECTOR</b>						
Agriculture	84.2	66	28	81.7	74.9	9
Aircraft, parts, engines	87.2	75.3	16	34.4	28.4	21
Autos, parts, engines	120	107	13	259	256.7	9
Clothing	3.2	3.8	-16	81.2	79.1	3
Chemicals-Organic	33.8	29.8	13	42.2	42.2	0
Chemicals-Inorganic	10.8	9.0	20	13.4	11.4	18
Petroleum, total categories	37.7	31.6	19	331.2	302.4	9
Iron & Steel	13.9	11.8	18	31	32.9	-6
Metalworking Machines	6.7	9.5	-29	8.7	9.6	-9
Pharmaceuticals	35	31	13	71.7	64.4	11
Semiconductors	50.2	52.4	-4	26.6	27.4	-3
Telecommunications	31.4	28.3	11	44.4	40.3	10
Wood Products	2.1	2.0	5	10.4	12.5	-17

2007 saw records broken for almost every measure of trade. Overall exports and imports of goods and services hit records, as did exports of agriculture products, industrial supplies and materials, capital goods, automobiles and auto parts, and consumer goods.

The depreciation of the dollar against the euro appeared to help U.S. exports to the European Union grow by 15% compared the 8% increase in imports from the EU. The shift in trade was most noticeable in trade with Germany, with U.S. export rising 22% to only a 6% increase in imports from Germany.

As the Bush administration presses for approval of the Colombia and Panama free trade agreements, it got strong supporting data from the 21% rise of exports to Central and South America. It credits much of that growth to approval of the U.S.-Central America-Dominican Republic (CAFTA-DR) trade pact.

## EXPORTER GROUPS HIT DEEMED EXPORT PANEL'S RECOMMENDATIONS

A dozen trade groups representing exporting industries wrote to Commerce Secretary Carlos Gutierrez Feb. 15, urging him to reject the December recommendations of the department's Deemed Export Advisory Committee (DEAC) and to "go back to the drawing board and work

closely with industry in developing an approach that will produce a more balanced result.” While the groups agreed with many of the findings and suggestions the DEAC made, they complained about the lack of details on how to implement the advice and warned about the interagency’s historic inability to reach agreement on reducing unnecessary controls. “In its detailed recommendations, the DEAC does not provide specific guidance on how to limit the scope of dual-use technologies subject to licensing, and it leaves to the interagency process the tasks of identifying both controlled technologies and the nationalities of foreign persons to be subject to deemed export licensing,” the letter stated.

“Moreover, the DEAC proposes what is essentially a loyalty test as the basis for determining which foreign nationals would be approved, a proposal that would significantly expand the number of individuals subject to controls,” it added.

## **RANGEL REFUSES TO SET PRICE FOR ACTION ON COLOMBIA FTA**

House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) Feb. 14 slightly opened the door to possible consideration of the Colombia Free Trade Agreement for national security reasons, but then quickly closed it. Speaking to reporters, Rangel noted that a meeting between Secretary of State Condoleezza Rice and House Speaker Nancy Pelosi (D-Calif.), which was held on Feb. 13, was expected to highlight the importance of the FTA on national security grounds. “As an American member of Congress, national security should always be an issue that should have some influence,” Rangel said. He quickly added: “It’s still a trade bill, however, and we like to look at it as that.”

“I’m very optimistic that the discussions have reached the national security level,” Rangel said. “National security has always been a high priority for the administration, and this would not be the first time that Secretary Rice has been involved,” he noted. Rangel’s reference to the Rice-Pelosi meeting seemed to reinforce the impression that the fate of the Colombian FTA is in the speaker’s hands and not Rangel’s.

Bush administration officials have become extremely frustrated that Rangel and other Democrats, who have complained about the violence against labor leaders in Colombia, have refused to offer any specifics about what Colombian President Uribe needs to do to satisfy their objections. Pressed by reporters, Rangel continued to resist giving any specific suggestions on what could be done to get the Colombian pact moving in Congress. “If I knew what to suggest to the government of Colombia to stop the violence, curtail assassinations, the first thing I would do is give it to the mayor of Newark,” Rangel said.

This view differs from one he expressed in a May 10, 2007, letter to U.S. Trade Representative (USTR) Susan Schwab in which he offered to work with the administration and Colombia on steps that “would allow for consideration of the FTA” with Colombia. One of the ideas he suggested in that letter was a “massive strengthening of the Attorney General’s office” to prosecute cases. He also said that he would “undoubtedly visit” Colombia for a first-hand view. Such a trip now appears to be off the table. “I would not want to go down unless I could bring some good news,” Rangel told reporters.

## **WAYS AND MEANS PASSES SHORTER EXTENSION OF ANDEAN PREFERENCES**

The House Ways and Means Committee Feb. 14 approved a modified bill (H.R. 5264) to extend the Andean Trade Preferences Act (ATPA) until Dec. 31, 2008. At the request of Republicans on the panel, the extension was shorter than committee Chairman Charles Rangel (D-N.Y.) had originally proposed and also dropped his plans for extending the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI) at the same time, along with modifications to the textile sourcing rules in the African Growth and Opportunity Act (AGOA)

and competitive need conditions in the GSP program (see WTTL, Feb. 11, page 2). GOPers on the panel objected to Rangel's proposal to extend the ATPA until Sept. 30, 2010. They were concerned that extending the program for two and a half years would take pressure off lawmakers to vote on the Colombia Free Trade Agreement (FTA). Both Democrats and Republicans said they wanted the administration to address their concerns about the way Ecuador and Bolivia are treating American investors. "This short-term extension also serves notice that we will continue to closely monitor Ecuador and Bolivia's treatment of U.S. investors, which remains a serious concern," said Rep. Wally Herger (R-Calif.).

## **EX-IM BANK WINS SUIT TO REGAIN LOST GUARANTEE FUNDS**

Firms that borrow money or obtain a loan guaranteed from the Export-Import Bank need to remember to read the conditions in the small print in which they give up their right to protest in court the bank's demand for repayment. In one of the largest default cases ever undertaken by the bank, a Manhattan U.S. District Court ruling Feb. 6 ordered Asia Pulp & Paper Company (APP) and three of its Indonesian subsidiaries, to pay Ex-Im \$211.9 million plus interest for defaulted loans. In 2001, APP defaulted on some \$13.9 billion in debts.

Ex-Im took part in negotiations with other creditors to recoup its loans but rejected APP's settlement with the other debt holders and sued to get its money back. In a summary judgment order, Court of International Trade Judge Donald Pogue, who heard the district court case by designation, said APP had waived its right to protest the Ex-Im demand for repayment. "Each of the loan agreements signed by APP contained absolute guarantee of payment and waivers of defense," Pogue noted. "APP is a major international corporation and was represented by counsel in agreeing to the terms of the loan contracts. The language of the guarantees and waivers of defense are clear and unambiguous," he added.

## **SERVICE INDUSTRIES CALL FOR DOHA ROUND "SIGNALING CONFERENCE"**

To get the lagging services talks moving in the Doha Round, service industries are calling for the convening of a "signaling conference" where trade ministers would give a strong hint at the potential market liberalizations they might offer in the services negotiations without having to make an actual commitment. The call for a ministerial meeting on services offers came as the chairman of the Doha Round's services negotiations, Fernando DeMateo, Mexico's ambassador to the World Trade Organization (WTO), released a draft services text Feb. 12 that showed wide differences remaining among WTO members on the level of ambition that the service talks would seek and no new deadline for making new market-opening offers.

The Global Services Coalition, which represents national services groups from around the world, said the text was a good start but called for a ministerial meeting to confirm the level of ambition that would be sought in services. "To ensure that services take their proper place alongside agriculture and NAMA in the Doha Round, there needs to be an early signaling conference involving ministers, preferably before the conference on modalities for agriculture and NAMA, to clarify and reinforce the commitments which WTO members will need to make on services," said a statement by Christopher Roberts, chairman of the policy committee of the European Services Forum.

DeMateo's text basically provided a status report on the services talks, without proposing specific language on what commitments should be sought from members. While new market-opening offers have been few, he noted that proposals have been made to create a safeguard mechanism for services that would allow countries to curtail their commitments in the face of increased competition from foreign service providers. DeMateo said there is agreement on some non-controversial elements, but on others "significant divergences persist." USTR Susan Schwab appeared to endorse a ministerial level meeting on services. "This process should

culminate in minister-level engagement that coincides with the conclusion of negotiations on Agriculture and NAMA modalities,” she told the Peterson Institute Feb. 13.

## **EX-USTRS EXPECT NEXT PRESIDENT TO CONTINUE TRADE TALKS**

Despite the rhetoric on the campaign trail, some former U.S. trade representatives say whoever is elected in November will continue Doha Round negotiations if an agreement isn't reached before President Bush leaves office in January 2009. “Just as happened with respect to the Uruguay Round, that is to say, it was picked up and brought to conclusion by Bill Clinton a year later, even though Bill Clinton never entered the White House as a free trade at all, it will be picked up, if Doha doesn't conclude, by the incoming president whoever that is and it will be concluded,” former USTR Charlene Barshefsky told a Peterson Institute program Feb. 13.

Barshefsky said she preferred to have Doha concluded before the next administration takes office. “I'm just saying that, having seen this picture show once before, including with a president who was less sophisticated on international economic issues, which Bill Clinton was in 1992, then either Hillary Clinton or Barack Obama, or John McCain, I think Doha would not be dead,” she added.

Barshefsky was joined on the program by ex-USTRs Bill Brock, Carla Hills, Clayton Yeutter, Mickey Kantor and Rob Portman. Brock emphasized the need to enact an expanded Trade Adjustment Assistance (TAA) program, although he questioned why it's called trade adjustment when non-trade factors also cause worker dislocation. “We haven't understood what has happened to the body politic,” he warned. “There is a sense of vulnerability out there,” Brock said. Kantor said expansion of TAA could be used “to reach a bargain...with other critical things we need to do, like the Colombia Free Trade Agreement.”

## **RENEWED DEBATE OVER FAST-TRACK COULD START IN SUMMER**

Saying that “we think we are poised to get a modalities deal done” in the Doha Round, USTR Susan Schwab Feb. 13 said the administration would turn “immediately” after that to getting the president's fast-track negotiating authority renewed to approve the final Doha agreement. Trade ministers are aiming to reach agreement on modalities in agriculture and non-agriculture market access (NAMA) sometime at the end of March or in April (see **WTTL**, Feb. 4, page 2).

“It would be our intent, once we have achieved a breakthrough in modalities... we would immediately after that go up to the Hill and start talking about trade promotion authority,” Schwab said. “We know that the debate over TPA at that point would largely be a proxy for the Doha Round,” she added. “Whether we would also be pushing for trade promotion authority for bilateral free trade agreements is something we haven't talked about in the administration,” Schwab added.

There is disagreement over whether fast-track authority is needed to conclude a WTO deal or to get it passed by Congress. “The kind of agreements you least need TPA for are multilateral agreements...because everyone has skin in the game,” former USTR Charlene Barshefsky said earlier in the Peterson Institute program at which Schwab spoke.

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

**CHINA:** WTO panel has issued interim report in favor of U.S. complaint against China's import taxes on foreign auto parts. “We can confirm that, in all major respects, the panel has agreed with the United States that China has acted inconsistently with its WTO commitments,” USTR official said.

**FCPA:** Westinghouse Air Brake Technologies Corporation has reached agreements with Justice to pay \$300,000 penalty and with SEC to pay \$375,000 in disgorgement, interest and fine to settle FCPA charges that its subsidiary in India, Pioneer Friction Ltd., paid bribes to Indian officials.