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State Debars Ex-Honeywell Exec for Fake Export Documents

State's Directorate of Defense Trade Controls (DDTC) issued a three-year administrative debarment Nov. 25 to LeAnne Lesmeister, a former senior export compliance officer at Honeywell International, Inc. She was charged with 21 violations of the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR) between 2008 and 2012. The department said civil penalties were not appropriate at this time.

> The charges included "creation and use of export control documents containing false statements or omitting and misrepresenting material facts for the purpose of exporting, retransferring, or furnishing defense articles, technical data, or defense services, and causing the unauthorized export of technical data and provision of defense services," DDTC order said.

According to State's July 11 charging letter, Lesmeister created several export control documents, purporting to be authorized by DDTC, which she presented to Honeywell as valid department authorizations. "Such documents are fabrications that were never submitted to the Department for approval," the letter charged. The fabricated documents include DSP-5s and technical assistance agreements using license numbers for other Honeywell products and transactions to which Honeywell was not a party.

"Honeywell is committed to acting with integrity in all our business dealings. That's why we immediately and voluntarily reported to the U.S. Department of State the discrepancies we discovered in export authorization documentation that led to this decision," said Scott Sayres, senior communications manager, Honeywell Aerospace, in an e-mail to WTTL. "We also took strong corrective action, including initiating a comprehensive review of our processes to ensure this type of misconduct doesn't happen again. Appropriate disciplinary action was taken and the employee is no longer with the company," he added.

Intransigence over Bali Package Dims Talks on WTO's Future

Although a last-minute deal appeared to have been reached on key provisions of a "Bali Package" to take to the World Trade Organization's (WTO) ministerial conference in Bali Dec. 3-6, the fight over the agreement has scuttled immediate hopes that the meeting would be able to chart a bold course for the organization's future. It also

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resurrected fresh doubts about the WTO's ability to be a forum for multilateral deals. The big question after Bali will be what to do next, one trade official said. After the chances for a Bali package were declared dead Nov. 26 at a WTO General Council meeting, a deal Nov. 28 among a group of less developed countries (LDCs) and developed countries on the trade facilitation element of a package revived hopes for a deal in Bali (see related stories below and page 3). What comes out of Bali will be the key to the WTO's future, several sources in Geneva said.

> The roster of attractive possibilities for the WTO's future will be much longer and broader if Bali is a success and not a failure, one trade official said. Although some countries say new issues shouldn't be put on the agenda until after the Doha Round is settled, others want the problems of the 21st century to be the focus of multilateral negotiations, he said. The difference in views is among the WTO's "many problems," he said.

Since the 2011 WTO ministerial, trade officials have focused on two goals: negotiating a small package of accords and finding a mechanism for future talks in light of the Doha Round deadlock. WTO Director-General Roberto Azevedo had said he wanted to finish the small package before turning to the larger goal. If the Bali deal remains stuck, WTO's multilateral negotiations probably go into a freeze, one former ambassador told WTTL. The road forward for the WTO was "never, ever discussed seriously in Geneva," he said. Azevedo likely doesn't know which road to take and wants to keep the issue off the Bali agenda because it could cause a "huge clash" at the meeting, he added.

In Bali, Azevedo will give each minister three minutes to present the case for where the WTO is and where it should go. He is expected to evaluate those speeches when he gets back to Geneva and come up with a suggestion on how to organize future negotiations. One option that appears not to be on the table is totally abandoning the Doha Round. There's a group that wants to keep the status quo and what has already been achieved for continuing negotiations, he said. Others, including the U.S., don't agree. An approach must be found that doesn't give up Doha but also accommodates changes to the negotiating approach, the former ambassador suggested.

Pressure Put on India, Pakistan to Bridge Bali Differences

The geopolitical and economic clash between India and Pakistan has put at risk the chances for an agreement on food security during the WTO's Bali ministerial conference. While late efforts were being made to bridge the gap in their positions ahead of the Dec. 3-6 meeting, a way needs to be found to let both countries save face for their domestic constituencies, one trade official said. A deal on a so-called "due restraint" or "peace clause" to allow countries to provide subsidies to their farmers for a short period to assure food security seemed to be near, but at the Nov. 26 WTO General Council meeting, WTO Director-General Roberto Azevedo announced that no agreement could be reached to take to Bali (see **WTTL,** Nov. 25, page 2).

Later, Azevedo said hope for a deal remains, but many sources said they would put the blame for any breakdown on the split between India and Pakistan. Among India's demands was for the due-restraint agreement to remain in place indefinitely until a broader agriculture agreement could be reached as part of the Doha Round. That was "simply not acceptable" to most members, one official said. A preliminary agreement

would have limited the clause to four years, but that wasn't acceptable to India. India also was threatening a deal on trade facilitation, saying it wouldn't agree on that issue without a solution to its political problem, a former ambassador said. Another Indian concern is a requirement for countries to provide information on their farm subsidies if they invoke the peace clause. India is worried that information proving it wasn't distorting trade might be used by other countries to launch WTO disputes.

> Pakistan opposes the peace clause because it is concerned India might use it to dump government-administered food stocks onto its market. It has said a four-year peace clause is too long. Pakistan's position makes it unlikely that India will be able to open up the text in its favor, but if India accepts the draft solution, Pakistan will be forced to accept it too, he said.

According to varying reports, the Indian Cabinet met Nov. 28 to discuss the WTO and the Bali package and to prepare new instructions for Indian Commerce and Industry Minister Anand Sharma. Reports from India Nov. 29 were contradictory, high-ranking sources in Geneva said. Indian and Pakistani trade ministers are expected to meet when they get to Bali, sources report. Meanwhile, India's business community reportedly was about to start a media campaign on the importance of a Bali package and why the government's concerns should not be allowed to break up the whole package.

Other WTO members criticized the terms of the peace clause, but for other reasons. Latin American agricultural exporters don't like the duration and the number of crops that could be eligible for aid. Several weeks ago a proposal would have limited subsidies to just two or three crops, but India recently said it wants five to seven crops included. For now, the number has been left open. There is also concern that other developing countries, such as China, might want more crops included.

Although an agreement on a peace clause would apply to the WTO's agriculture rules, it wouldn't protect a country from being challenged under the antisubsidy agreement. India reportedly has said it wants protection from attacks under the subsidy agreement. Pakistan can still impose countervailing measures against India if it is injured by India's subsidies. India thus "can't do whatever it wants," one official said.

Bali Deal on Trade Facilitation Gets New Life

Gloom over chances for an agreement on trade facilitation at the WTO Bali ministerial was lifted somewhat when dozens of developing and developed countries announced Nov. 29 that they support "any effort necessary to achieve a positive outcome at the Bali Ministerial on a package of trade facilitation, agriculture and development and least developed country [LDC] issues." The number of brackets indicating a lack of agreement in the initial trade facilitation text has reportedly been cut to 65 from 2,000, although some sources suggest different numbers. Many of the brackets reflect differences over the use of the words "shall" or "may."

Countries signing on to the statement ranged from Australia and Canada to China, Korea and Russia, as well as Brunei Darussalam on behalf of ASEAN, Egypt on behalf of the Arab Group, Jamaica on behalf of the African, Caribbean and Pacific group of countries, Morocco on behalf of the African group and the Solomon Islands on behalf of the LDCs. The vast majority of WTO members said too much work has been done to give up, one

trade official said. Even if a deal can't be reached in Bali, talk should resume in Geneva afterward, some suggested. One former ambassador suggested WTO Director-General Roberto Azevedo might float a compromise trade facilitation text. Azevedo "is considering it but may be afraid to do it," he said. Such a move would come with the risk that it might kill a deal, but many of the differences that have been bridged over the last few months resulted from compromises Azevedo proposed, another source noted.

> Meanwhile, section I of the trade facilitation text covering disciplines has "a lot of brackets," one trade official said. The text in section II on special and differential treatment, technical assistance and capacity building doesn't have any brackets, he said.

Least developed countries in Africa, Latin America and the Pacific reportedly have agreed on the text on special and differential treatment, technical assistance and capacity building. Cuba and Bolivia are still raising objections to the various Bali package texts, but officials say those concerns can be overcome. China is pushing strongly for a deal, one source noted. The Chinese negotiators have discovered they have more flexibility in the multilateral space, than in Pacific and Atlantic trade talks they aren't in, he said.

USTR Offers "New Ideas" for Pharmaceutical Patents in TPP

Just weeks after Wikileaks released the draft text of the intellectual property rights (IPR) chapter of Trans-Pacific Partnership (TPP) talks, sparking complaints from health and consumer groups, the U.S. Trade Representative's (USTR) office is trying to explain its positions on a "new set of ideas that would give more weight to concerns of developing countries" relating to pharmaceutical patents (see **WTTL**, Nov. 18, page 1). The blog gives a hint at the difficulty the U.S. faces in getting strong IPR rules for pharmaceuticals and biologics data in a TPP deal.

> "U.S. negotiators will work with counterparts from the other TPP countries to reach a 12-country agreement on how the final TPP should tailor pharmaceutical IPR protection to reflect the situations of individual countries and address the term of data protection for biologics," said a USTR blog posted Nov. 27 after recent TPP talks in Salt Lake City. The blog said the USTR "listened to helpful, in-depth feedback" from TPP partners on these ideas.

On access to medicines, the USTR has "begun to work with TPP partners to gauge their interest in a 'differential approach,' and to identify ways to tailor potential flexibilities based on countries' existing laws and international obligations," it said. Regarding biologic medicines in the TPP negotiations, "opinions vary on the best term of patent protection for biologics. Standards also vary across the TPP region…Traditionally, the U.S. approach to trade negotiations has been to base proposals on existing U.S. law, where the current standard is 12 years," the USTR blog noted. "Reflecting input from stakeholders, the U.S. now supports patent pre-grant opposition procedures. These procedures, available in some countries, allow third parties to formally object to a patent at the initial application phase," USTR continued.

Nonprofits were quick to weigh in on the new thinking. Specifically, the statement on biologics "is noteworthy is the apparent concession in its tone that it is not going to actually obtain 12 years of data exclusivity in the agreement," noted Sean Flynn in a

blog post on InfoJustice.org. "This is an area in which there is no national – much less international – consensus on what minimum terms should be. A more likely end game for the TPP is probably that the biologics issue drops out of the agreement entirely," Flynn added. In a Nov. 27 tweet, Jamie Love, director of Knowledge Ecology International, said the USTR proposal makes consumers worse off. "USTR can't even be honest about the fact that the support for 12 years of biologics test data IPR is new. Lying is just so natural," Love tweeted. "First time USTR admits to backing 12 years for biologics data IPR, they describe it as a 'traditional' decision," he added.

Froman Says Korea Will Have to Wait to Join TPP

Make an exclusive club sound like fun, and everybody wants to join. But sometimes there's a waiting list. After Korean Deputy Prime Minister Hyun Oh-seok reportedly expressed interest Nov. 29 in his country's joining the ongoing Trans-Pacific Partnership (TPP) talks, U.S. Trade Representative (USTR) Michael Froman said Seoul would have to wait until current talks are concluded before being able to join the accord.

> According to a Korean Broadcasting System (KBS) report, Hyun indicated Korea's interest in joining the TPP at a meeting of the Export-Import Bank of Korea in Seoul. "As the country expresses its interest in joining the TPP today, it will seek to check the possibility of its participation through preliminary bilateral talks, but such a move will not be based on the premise that the country will, in fact, join the TPP," KBS quoted Hyun saying.

"Before deciding on whether to take part in the TPP, the country must first gather information related to the negotiations and carefully review conditions for its participation," Hyun reportedly said. "There is a need for the government to first express interest in joining the TPP and hold preliminary bilateral talks with countries already taking part," Hyun acknowledged.

After that report, Froman issued a statement welcoming Hyun's remarks. "We look forward to consulting with Korea at an appropriate time to lay the groundwork for Korea's possible entry into the TPP," he said. However, given the negotiations in progress, Froman said any new members would join after the current talks are completed. "Given that prior to entry any new member needs to complete bilateral consultations with current TPP members and those members need to complete domestic processes, as appropriate, the possible entry of any new country would be expected to occur after the negotiations among the current members are concluded," Froman said.

Court Rules on Price of Rice Straw, Cow Manure

Rarely do federal courts give journalists the opportunity to use "cow manure" in a headline, but a decision by Court of International Trade (CIT) Senior Judge Richard Goldberg presents such a chance. In his Nov. 14 order posted Nov. 25, Goldberg remanded to Commerce its 12th administrative review of the antidumping order on preserved mushrooms from China because the department had not based its review on substantial evidence and had not adequately explained its selection of surrogate country values for rice straw and cow manure (slip op. 13-142). Commerce asked for the remand. Based on submissions by a domestic producer, Monterey Mushrooms, Inc., Commerce used

surrogate costs from Colombia rather than from Indonesia and India, as respondent Blue Field Food Industrial Co. had proposed. As a result, the dumping margin for the 12th review was calculated to be 308.33% compared to the 2.17% rate found in the 11th review. A table in Goldberg's ruling shows benchmarks from India, Indonesia, and the U.S. offering a range of rice straw prices between $10.00 and $90.08 per metric ton. This compares to the $1350.88 price Commerce adopted.

"These benchmarks should have alerted Commerce to potential aberrations in its rice straw surrogate," Goldberg noted. Commerce's surrogate valued for cow manure was $1337.94 per metric ton. Blue Field's proposed surrogates, by contrast, valued cow manure somewhere between $21.55 and $162.04, with benchmarks from the U.S. and the Philippines ranging from $5.48 to $220.00. "Commerce also failed to base its cow manure surrogate on substantial evidence," he ruled.

"Even though it enjoys some discretion in selecting the best available information, Commerce must defend its surrogate choices when confronted with data undermining the surrogate's reliability," Goldberg wrote. "Applying these standards, the court finds Commerce did not base its rice straw surrogate in substantial evidence. Blue Field's data suggested—rather elegantly in the court's view—that something was wrong with Commerce's surrogate," he said. "Commerce also erred in dismissing the Indian data because of contemporaneity problems. While Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets, the agency should not dismiss alternative surrogates when its own surrogate appears flawed," Goldberg said.

Weatherford Pays $250 Million for Trade and Bribery Violations

Weatherford International, a Swiss oilfield services company with operations in Houston, and four subsidiaries agreed Nov. 26 to pay nearly $253 million in penalties for violating the Foreign Corrupt Practices Act (FCPA), U.S. trade sanctions and U.S. export controls. The penalties are part of a global settlement it reached with the Securities and Exchange Commission (SEC) ($65.6 million), Justice's Fraud Section ($87.2 million), the U.S. Attorney for the Southern District of Texas ($50 million), the Bureau of Industry and Security (BIS) ($50 million), and Treasury's Office of Foreign Assets Control (OFAC).

> The FCPA violations allegedly occurred between at least 2002 and July 2011 when Weatherford and its subsidiaries authorized bribes and improper travel and entertainment intended for foreign officials in multiple countries to obtain or retain business or for other benefits. These payments were made in Congo and in Iraq to obtain United Nations Oil for Food contracts, the SEC charged.

"The nonexistence of internal controls at Weatherford fostered an environment where employees across the globe engaged in bribery and failed to maintain accurate books and records," said Andrew Ceresney, co-director of SEC's Enforcement Division, in a statement. "They used code names like 'Dubai across the water' to conceal references to Iran in internal correspondence, placed key transaction documents in mislabeled binders, and created whatever bogus accounting and inventory records were necessary to hide illegal transactions," he said. In a SEC filing in July 2011, Weatherford revealed it had spent nearly $120 million in legal fees for ongoing investigations into its trade practices (see **WTTL,** August 8, 2011, page 3). "This matter is now behind us. We move forward fully

committed to a sustainable culture of compliance," said Bernard J. Duroc-Danner, Weatherford's chairman, president and CEO.

In addition to the SEC charges, Weatherford and four of its subsidiaries agreed to pay BIS a $50 million civil penalty, the largest ever levied by BIS, to settle charges the company exported oil and gas equipment to Iran, Syria and Cuba in violation of the Export Administration Regulations (EAR) and the Iranian Transactions and Sanctions Regulations (ITSR). BIS also charged that between 2002 and 2007 Weatherford International Ltd. exported pulse neutron decay tools, which are controlled for reasons of nuclear non-proliferation, to Venezuela and Mexico without required licenses.

> OFAC charged the firm with violating U.S. trade sanctions by providing oilfield equipment and services to Cuba, Iran and Sudan. OFAC deemed what would have been a $91 million fine against the company to be satisfied by the $50 million the company paid under a two-year deferred prosecution agreement (DPA) with the U.S. Attorney in Houston, as well as the BIS civil penalty.

Included in Weatherford's $65.6 million settlement with the SEC was a $1.875 million penalty assessed in part for its lack of cooperation early in the investigation, the SEC noted. As part of a three-year DPA with Justice's Fraud Section, the company also agreed to pay $87 million in criminal fines for the FCPA violations. Under the global settlement, the company must retain an independent compliance monitor for 18 months and self-report to the SEC staff for an additional 18 months. Weatherford has also agreed to external audits of its efforts to comply with the relevant U.S. sanctions and export control laws for calendar years 2012, 2013 and 2014.

Iran Deal Poses Risks for Exporters; Legislation Still Possible

U.S. exporters will have to tread carefully to take advantage of the Nov. 24 deal the U.S. and four other major powers reached with Iran to curb Tehran's nuclear program in exchange for the easing of trade sanctions. Because the plan would lift some sanctions but leave others in place, many exporters and financial institutions may choose to skip the opportunity and wait until a final agreement is reached – one goal of the deal – and U.S. trade sanctions are clearly revised.

> With the announcement of the deal in Geneva in talks of the so-called P5+1, Congress is scrambling to come up with an alternative to pending legislation that would have imposed new sanctions on Tehran. Rather than voting on a straight measure to increase sanctions, lawmakers may adopt a bill that includes a six-month trigger mechanism that would hold off any new sanctions during the six months that negotiations are supposed to lead to a final deal and Tehran is supposed to curb its nuclear program.

"I expect that the forthcoming sanctions legislation to be considered by the Senate will provide for a six month window to reach a final agreement before imposing new sanctions on Iran, but will at the same time be immediately available should the talks falter or Iran fail to implement or breach the interim agreement," Senate Foreign Relations Committee Chairman Robert Menendez (D-N.J.) said in a statement. Nonetheless, there are still strong objections in Congress from both Democrats and Republicans that the

deal Secretary of State John Kerry struck with other foreign ministers and Iran wasn't tough enough and will allow Tehran to continue its nuclear program. In a background briefing for reporters Nov. 24, one senior administration official said all sanctions that Congress has already passed remain in force. The interim agreement will not require Congress to "unwind the legislative architecture of sanctions," the official said.

> "With respect to new sanctions, the introduction of new sanctions would, we believe, derail the agreement, and we believe that people in Congress understand the importance of testing whether we can get to a comprehensive solution over the next six months," the official said. "So we are open to working with Congress in the event that this agreement is violated, or that we get to the conclusion of this six months and we don't have a deal and we don't believe that we should continue negotiations," the official said.

In an alert to clients Nov. 26, attorneys at Baker & McKenzie urged firms to "act cautiously on new Iran-related transactions, making sure to confirm that such transactions are permitted under applicable laws and regulations following any roll back of the sanctions and that it is feasible to get paid (i.e., if you are anticipating Iran-related transactions, you should discuss that with your banks to ensure that they understand what you are doing, and what risks it might pose to them)." They also advised firms to include precautionary language in contracts and agreements to anticipate re-imposition of sanctions and to monitor legal and legislative developments.

Under the deal, the U.S. "will license safety-related repairs and inspections inside Iran for certain Iranian airlines, and we will establish a financial channel to facilitate humanitarian trade in food, agricultural commodities, medicines, and medical devices for Iran's domestic needs," a senior administration official said. In addition, the U.S. will suspend sanctions on Iran's petrochemical exports, trade in gold and precious metals and Iran's auto industry. Sanctions on some two dozen major Iranian banks and financial actors will remain in place. "Those banks will continue to be de-SWIFTED -- that is unable to access the SWIFT international financial messaging service," the senior official said.

"Our key secondary sanctions that threaten to cut off from the U.S. any bank that does business with designated banks, individuals and entities in Iran remains in place," the official added. Sanctions also remain on over 600 individuals and entities, shipping and shipbuilding and investments and technical services to Iran's energy sector.

Ex-Im Claims No Adverse Effect of Financing on U.S. Airlines

The Export-Import Bank (Ex-Im) defended its financing of U.S. aircraft exports Nov. 22 in part by playing down the impact of its aid on the U.S. economy. "Most of the Bank's transactions are simply too small or too localized to have any significant likelihood of having an adverse impact on U.S. industries or jobs," the bank said in one of two remand statements it issued in response to a D.C. U.S. Court of Appeals order directing it to provide a reasonable explanation of how it applies its Economic Impact Procedures (EIP). The appellate court order was the result of a Delta Airlines suit claiming it was hurt by Ex-Im's financing of Boeing aircraft sales to Air India (see **WTTL**, June 24, page 6).

As Ex-Im was responding to the court's order, Delta and its co-plaintiff, the Air Line Pilots Assn., were seeking summary judgment against the bank in one still pending in the

D.C. U.S. District Court and a motion for discovery of internal bank information on its lending decisions in a second case in the court. The government has filed briefs opposing both. The circuit court had ordered Ex-Im to provide a reasonable explanation for how its EIP screens out loans and guarantees to service providers or to explain any adverse effects the Air India loan guarantees have on U.S. industries and U.S. jobs, or take whatever other action the Bank deems appropriate to comply with the Bank Act and the Administrative Procedure Act (APA).

> Ex-Im issued its two response just ahead of the Dec. 2 deadline the court set. One 34-page response reviewed all the bank's legislation dating back to 1934. The second 42-page response argued in part that its financing doesn't determine which routes foreign airlines establish, including those that compete with Delta, and U.S. airlines have access to the same level of financing as foreign airlines.

"Historically, financing available to U.S. airlines for the purchase of new wide-body aircraft has been either more favorable than, or equally favorable as, Ex-Im Bank financing to foreign airlines for the purchase of equivalent aircraft," it argued. The bank claimed these loan guarantees help support approximately 10,700 jobs; don't create direct competition to U.S. airlines and that any adverse effects on U.S. airlines are likely to be negligible or theoretical.

Ex-Im said that it has been financing aircraft exports for years without objection from U.S. airlines. "The Bank had not heard any economic impact concerns from any U.S. airlines in the 17 years prior to the adoption of the screen. Indeed, the screen was in place for almost a decade before any U.S. airline raised any questions about it," it noted. "When a single U.S. airline did raise questions about the Bank's financing to foreign airlines, the analysis it submitted to the Bank did not support its claim that the Bank's financing provided a financing cost advantage to foreign airlines," it continued.

"Moreover, a foreign airline's decision whether to open a new route to the U.S. or to expand its existing service is generally not driven by the number of aircraft in its fleet," Ex-Im said. The "far more likely reason is that the foreign airline has analyzed the potential traffic on the route, as well as the cost of operating on that route, and has determined that opening or expanding such a route would be a good business venture," it added. Financing is only a small part of this calculation, it suggested.

"The value of aircraft such as the Boeing 787 aircraft, known as Dreamliners, involved in the Air India Transactions are approximately $116 million each, and the costs of operating wide-body aircraft over the course of its expected 25 year lifetime exceed $1 billion," the bank noted. The difference between the cost of government and private financing "is extremely small in the context of these huge purchase and operating costs. It is highly unlikely that such a difference in financing costs would induce an airline to make a purchasing decision of this magnitude," Ex-Im wrote.

BIS Gives Advice on Free Trial Downloads of Software

Time-limited software that is offered for free trial download from a website but stops working after 30 days could be subject to the Export Administration Regulations (EAR) if the software provider knows the software is being downloaded by a prohibited party or

in an embargoed destination, the Bureau of Industry and Security (BIS) said in an Oct. 24 advisory opinion just posted on its website. The unidentified requestor of the opinion had asked BIS whether it needed to screen customers when the software is downloaded free or only at the time of purchase.

> "In general, the posting of software on a public website for free and anonymous download makes that software publicly available, and therefore not subject to the EAR (see Section 734.7 of the EAR). If, however, as in this situation, the software is time limited or otherwise restricted to a trial period, it is not publicly available under Section 734.7 of the EAR," BIS said in a letter from C. Randall Wheeler, director of the information technology control division in the BIS Office of National Security and Technology Transfer Controls.

"Because the presence of the time restriction drastically limits the ability of the public to use the software for free, the software is not 'generally accessible' as contemplated by Section 734.7(a)," she wrote. "Consequently, the software would be subject to the EAR during the 30-day free trial as well as when it is downloaded after purchase of the unlock code," Wheeler advised. The letter went on to note that posting the software to a public website would not itself result in a violation of the prohibition against knowingly entering into transactions with prohibited persons or individuals in embargoed destinations without the appropriate authorization from BIS.

The safe harbor offered by a Sept. 11, 2009, advisory opinion and the note to License Exception TSU, which say publishing EAR99 software to a public website where it may be anonymously downloaded free of charge by anyone does not establish knowledge or raise any red flags, "applies only if the download is free and anonymous, meaning, at a minimum, that no registration is required and that you do not engage in IP [internet protocol] address tracking or other electronic tracking of the download recipients," Wheeler wrote.

"If, however, you 'know,' as defined in Part 772 of the EAR, that a prohibited party or individual in an embargoed destination will download the EAR99 software, you could be in violation of the EAR if the download subsequently occurs without the required license from BIS. You may also be in violation of the EAR if you sell the unlock code to a prohibited party or individual in an embargoed destination," she added.

* * * Briefs * * *

IMPORT ENFORCEMENT: Jun Yang, Texas honey broker, was sentenced Nov. 14 in Chicago U.S. District Court to three years in prison for illegally brokering the sale of 778 container loads of Chinese-origin honey, which was misrepresented as originating from India or Malaysia, to avoid $37.9 million in antidumping duties. Yang pleaded guilty in March, and has already paid $2.89 million in penalties, including $250,000 fine and $2,640,284 in restitution.

EXPORT ENFORCEMENT: Peter Gromacki of Orange County, N.Y., was sentenced in Manhattan U.S. District Court Nov. 26 to three months in prison for exporting 6,000 pounds high-grade T-700 carbon fiber to China. In similar case, Hamid Reza Hashemi, dual U.S.-Iranian citizen who lives in Iran, was sentenced Nov. 15 to 46 months in prison and one year supervised release for export of carbon fiber to Hashemi's company in Tehran. On same day, Amir Abbas Tamimi also received sentence of 46 months but no supervised release for conspiracy to violate

IEEPA. Tamimi was charged with exporting helicopter component parts to Iran through South Korea. All three pleaded guilty in July 2013 to charges in indictments unsealed Dec. 4, 2012 (see **WTTL,** Dec. 10, 2012, page 4). At that time, spokeswoman in Manhattan U.S. Attorney's office said she could not give any guidance "at this time" on whether indictments were related, but her office publicized three cases in same press release.

BANGLADESH: USTR signed Trade and Investment Cooperation Forum Agreement (TICFA) with Bangladesh Nov. 25. With agreement, U.S. will "be able to track and discuss Bangladeshi efforts to improve worker safety and worker rights. This is an important priority for the United States as Bangladesh seeks to prevent more tragedies in its ready-made garment sector," USTR Michael Froman said in statement. USTR, Labor and State released worker rights action plan July 19 after U.S. dropped country from GSP eligibility in June (see **WTTL**, July 22, page 11).

TPP: Chief negotiators reported "significant progress" after latest TPP talks in Salt Lake City, USTR said Nov. 24. "Substantial number of outstanding issues" were resolved in areas including intellectual property, cross-border trade in services, temporary entry, environment, market access, state-owned enterprises, investment, financial services, sanitary and phytosanitary issues, government procurement, labor, e-commerce, legal issues, technical barriers to trade and rules of origin, USTR noted. TPP ministers next will meet in Singapore Dec. 7-10.

SEALS: WTO dispute-settlement panel Nov. 25 upheld EU ban on commercial seal products, but found exceptions for indigenous communities (IC) and hunts conducted for marine resource management purposes (MRM) violated GATT provisions on national treatment because it treated ICs in Europe differently than those in Canada. Ban itself is not inconsistent with agreement "because it fulfills the objective of addressing the EU public moral concerns on seal welfare to a certain extent, and no alternative measure has been demonstrated to make an equivalent or greater contribution to the fulfilment of the objective as the EU Seal Regime," panel added. However, panel agreed with Canada's claim of violation, because "the detrimental impact caused by these exceptions does not stem exclusively from legitimate regulatory distinctions and consequently the exceptions accord imported seal products treatment less favourable than that accorded to like domestic and other foreign seal products," report noted. "The EU has argued and continues to believe that the fact that the Canadian Inuit are not using the exemption to date cannot be attributed to the EU or the EU's seals regime," EU statement said.

TRADE PEOPLE: Ex-DDTC Licensing Director Kevin Maloney Nov. 25 became director at Goforth Trade Advisors LLC, which was founded by Candace Goforth, ex-DDTC director of trade controls policy. He retired from DDTC in October and was replaced by Anthony (Tony) Dearth (see **WTTL**, Nov. 25, page 1). Maloney can be reached at (703)722-8116.

ITA: Four European trade groups wrote Nov. 28 to Chinese Vice Premier Ma Kai expressing regret at breakdown of Information Technology Agreement (ITA) talks and urging Beijing to reduce number of information and communications technology (ICT) products it wants excluded from expanded deal (see **WTTL**, Nov. 25, page 5). "In the same vein that we have encouraged other negotiating parties, we kindly request the Government of China to substantially reduce the number of ICT products it proposes to remove from the scope of the ITA and enable a rapid conclusion of the negotiations, in a way that is consistent with China's position as the largest world exporter of ICT products," wrote BusinessEurope, DigitalEurope, European Semiconductor Industry Association and SEMI Europe. "Important progress has been made already and an agreement is now within reach," they said.