ISSN 0276-8275

WTTLonline.com

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

Washington Tariff & Trade Letter®

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Vol. 32, No. 49 **December 10, 2012**

Deal Close on Satellite, Iran Sanctions Text in NDAA

The House and Senate reportedly are close to a deal on including provisions on the transfer of licensing authority for satellites to Commerce and new trade sanctions on Iran in a House-Senate Conference Committee report on the 2013 National Defense Authorization Act (NDAA). A final report and measure could be ready to take to the floors of the two chambers Dec. 10 or 11, according to congressional sources. The Senate passed its version of the NDAA legislation Dec. 4 on a 98-0 vote without including any satellite provisions (see **WTTL,** Dec. 3, page 1).

> Before passing its NDAA bill (S. 3254), the Senate adopted an amendment Nov. 30 on a 94-0 vote to impose additional sanctions on Iran. The amendment would designate Iran's energy, port, shipping and shipbuilding sectors as entities of proliferation concern and prohibit business with them. Among other provisions, it also would impose sanctions on persons selling or supplying Iran with commodities for its shipbuilding and nuclear sectors, including graphite, aluminum, steel, metal-lurgical coal and software for integrating industrial processes.

The conference report is expected to be "conceptually close" to the satellite provisions in the House NDAA bill (H.R. 4310), which were sponsored by Rep. Howard Berman (D-Calif.). Changes in the language may include more specific conditions for the approval of licenses once satellite controls are moved to Commerce, according to sources. "The sense is that the Senate Iran package will largely stay the way it is with some refinements," one source told WTTL. "There has been speculation that the administration opposes the amendment; that is not accurate," he said. Administration officials are seeking flexibility for the president, he noted.

Restani: U.S. Negotiators "Got Snookered" in Uruguay Round

U.S. negotiators thought they won language in the Uruguay Round to give deference to national interpretation of trade laws, but they didn't, Court of International Trade (CIT) Judge Jane Restani told the court's 17th Judicial Conference Dec. 3. "I hope there are not negotiators here who negotiated for deference to national interpretation because they got snookered," Restani said. "If I were a negotiator at that time, I would have been snookered too. They thought they got something and they honestly got nothing. There is no deference to national interpretation as far as I can tell," she added. Restani was on a panel of speakers who criticized the way World Trade Organization (WTO) dispute-settlement panels and the Appellate Body (AB) are interpreting the Uruguay Round agreement. They said the panels and Appellate Body have ignored Article 17, which supposedly allows members to have different but permissible

Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail $697 a year. Combo subscription of print and e-mail is $797. Additional print copies mailed with full-price subscription are $100 each.

interpretations of the accord. Rulings on zeroing were especially wrong, they argued. On the ruling in *Bed Linens*, Neal Reynolds, assistant general counsel of the International Trade Commission (ITC) questioned how the AB could say the agreement didn't allow zeroing when two major negotiators, the U.S. and European Union (EU), practiced zeroing. "It seems unlikely to me that two negotiators would enter into an agreement that ran against their policy," he said.

John Greenwald, a partner with Cassidy Levy Kent, was even more critical of the Appellate Body, complaining that members depend too much on the civil law tradition, depend too much on the WTO secretariat, are averse to dissent, don't spend enough time in Geneva reviewing cases and believe that "right-thinking people are free traders." In his prepared paper for the conference, Greenwald was even sharper. "The Appellate Body's habit of finding a single ordinary meaning of a word that has several dictionary definitions should be seen for what it is — a vehicle that can easily be, and is, used and abused to interpret agreements to suit the Appellate Body's policy purposes," he wrote.

State-Owned Chinese Firm Pleads Guilty to Export Charges

In the first case of a Chinese state-owned company pleading guilty to an export violation, the China Nuclear Industry Huaxing Construction Co., Ltd., (Huaxing) in Nanjing, China, pleaded guilty Dec. 3 in D.C. U.S. District Court to conspiring to violate the International Emergency Economic Powers Act (IEEPA), the Export Administration Regulations (EAR), and other related charges. "It is believed that today's plea marks the first time that a PRC corporate entity has entered a plea of guilty in a U.S. criminal export matter," Justice said in a statement. Huaxing admitted it exported PPG Industries' high-performance epoxy coatings to the Chashma II Nuclear Power Plant in Pakistan, which it was building for China and Pakistan.

> Chashma II is owned by the Pakistan Atomic Energy Commission (PAEC), an entity on Commerce's Entity List. As part of its plea agreement, Huaxing agreed to pay a $2 million criminal fine, $1 million of which will be suspended pending five years of corporate probation, which also requires the company to implement an export compliance and training program. In a separate settlement with the Bureau of Industry and Security (BIS), it also agreed to pay another $1 million immediately and conduct multiple third-party audits over the next five years.

In November 2011, Xun Wang, ex-managing director of PPG Paints Trading (Shanghai) Co., Ltd., a wholly owned Chinese subsidiary of Pittsburgh-based PPG Industries, pleaded guilty to conspiracy and agreed to cooperate with the government's investigation (see **WTTL**, Nov. 21, 2011, page 4). PPG Paints Trading pleaded guilty to related charges in December 2010.

Court Imposes Costs on Plaintiff for Misconduct

CIT Senior Judge Nicholas Tsoucalas told the court's Judicial Conference Dec. 3 that he imposed court costs on Tianjin Magnesium International Co. (TMI) in a recent antidumping ruling because when Commerce conducted a verification visit, the firm "tried to phoney up some books and when they [Commerce] went to verify it, they found there wasn't none and they were throwing the books out the window." In an attempt to avoid the antidumping duties, "Commerce found they tried to pull a fast one," he said. The use of CIT Rule 11 to sanction a party is rare, Senior Judge Donald Pogue told the conference, saying, "clearly this is a case where there was an outlier; of course, you're going to get sanctions."

In his Nov. 21 ruling in *Tianjin*, Tsoucalas upheld Commerce's remand determination in an administrative review of imports of pure magnesium from the People's Republic of China. TMI "engaged in intentionally fraudulent conduct in an attempt to obtain lower dumping margins," he declared. "TMI continued to argue the point in its reply brief despite exhaustive and accurate refutations from both Commerce and defendant-intervenors," he noted. "TMI's actions constitute a frivolous drain of the court's resources, potentially within the scope of the court's

authority to impose sanctions under Local Rule 11(c)," Tsoucalas wrote. "Given TMI's conduct, this court finds awarding costs to be an appropriate exercise of its discretion. TMI's actions will not be tolerated in future proceedings before this court," he added.

> Pogue said the standard of review for Rule 11 is the filing of briefs for which there is no basis in law or fact. "Of course, we don't use Rule 11 sanctions very often because most of you are reasonable enough lawyers that you always find a basis for your filing," he told the conference. "That's a question of professional judgment; that's a question of your reputation," he said.

BIS Explains Rationale for Six-Month VSD Deadline Proposal

While a vast majority of voluntary self-disclosures (VSDs) are filed and completed in a timely manner, some linger around a lot longer. The decision of the Bureau of Industry and Security (BIS) to propose a 180-day deadline for firms to submit final VSD information was based on a review of the average times such information is submitted, explained Douglas Hassebrock, director of BIS' Office of Export Enforcement (OEE), at a meeting of BIS' Regulations and Procedures Technical Advisory Committee Dec. 5 (see **WTTL**, Nov. 12, page 4).

> "Too often, initial notifications are not promptly followed by comprehensive narrative accounts, and as a result, OEE must maintain open files on voluntary disclosures for extended periods of time without making sufficient progress towards resolving the matter disclosed," BIS said in the Federal Register Nov. 7 when it proposed that companies be required to submit the final, comprehensive narrative account within 180 days of initial VSD notification.

"The spirit from the government side is very simple. We took a look at the statistical average on how long it takes generally from a VSD from initial self-disclosure to the point that you all got done," Hassebrock said. "We came in right around 110 to 120 days," he added. While the proposal does allow for requests for extension, Hassebrock said that would not be a free pass. "If we go down this path and you require more time, I'm going to be expecting tolling agreements, I'm not going to bend on that. If you're going to tell me there's a reason that it has go past that deadline, I'm going to ask for I think reasonable consideration on your side," he said.

Obama Creates Task Force for Commercial Advocacy

President Obama issued an executive order Dec. 6 creating a new Interagency Task Force on Commercial Advocacy (TFCA), which should not be confused with the Export Promotion Cabinet (EPC) he created in March 2010 or the Trade Promotion Coordinating Committee (TPCC) President Clinton created in 1993 (see **WTTL**, March 15, 2010, page 2). According to Obama's order, the purpose of the new TFCA is to bring all trade-related departments and agencies together to provide enhance federal support for "U.S. businesses competing for international contracts, coordinate the efforts of executive branch leadership in engaging their foreign counterparts on commercial advocacy issues, and increase the availability of information to the U.S. business community about these kinds of export opportunities."

U.S., Argentina Escalate WTO Cases on Import Restrictions

The U.S. and Argentina took complaints about each other's trade practices to the WTO, seeking establishment of dispute-settlement panels to resolve the issues. The U.S. asked for a panel Dec. 6 to examine Argentina's import restrictions of some 600 tariff lines. "These measures include the broad use of non-transparent and discretionary import licensing requirements that have the effect of unfairly restricting U.S. exports," said a statement from the U.S. Trade Representative's (USTR) office. The EU, Mexico and Japan also requested the establishment of

panels to examine Argentina's import restrictions. On Dec. 5, Argentina submitted to the WTO Dispute Settlement Body two complaints against U.S. policies preventing the entry of meat and fresh lemons, and another against the EU and Spain for restrictions on Argentine biodiesel imports. The U.S. originally requested WTO consultations with Argentina Aug. 21 (see **WTTL**, Sept. 3, page 4). The U.S. and Argentina consultations did not resolve the dispute.

Passage of PNTR for Russia Opens Way for First Disputes

With the Senate overwhelmingly approving permanent-normal-trade-relations (PNTR) status for Russia Dec. 6 on a 92-4 vote, the U.S. could become involved early in trade disputes with Moscow over its compliance with its WTO commitments. The U.S. has already voiced concerns about Russian import fees on used autos and a ban on imports on live animals for slaughter. Along with Russian PNTR, the Senate approved PNTR for Moldova and provisions known as the Magnitsky Act, which imposes sanctions on Russian individuals involved in the death of Russian attorney Sergei Magnitsky. The Senate measure is identical to the House version, so the legislation now goes to President Obama for signature.

> EU Trade Commissioner Karel DeGucht outlined potential trade disputes with Russia in a Dec. 5 speech (see **WTTL**, Dec. 3, page 2). DeGucht said Russia's chief trade negotiator had assured him that Russia intended to take the high road in compliance with its WTO obligations. "Three months have now passed and I must say that the picture is if anything less promising than it was then," he said.

DeGucht cited four areas of concern, including the auto fee and animal import ban. A third complaint is about Russia's decision to raise tariffs on hundreds of imported products. "This would again appear to breach one of the core elements of the WTO, to make a legally binding commitment to keep duties at or below agreed levels," DeGucht charged. In addition, he complained about how Russia is implementing a deal on wood exports in its accession protocol.

* * * Briefs * * *

TRANSATLANTIC TRADE: Two trade groups, European-American Business Council and TransAtlantic Business Dialogue, have merged to form Transatlantic Business Council. Veteran trade hand Tim Bennett has been appointed its director-general.

EXPORT ENFORCEMENT: Hamid Asefi, citizen and resident of Iran, and Behzad Karimian, also known as "Tony" Karimian, U.S. citizen living in Louisville, Ky. who holds valid Iranian passport and is Mesaba Airlines pilot, pleaded guilty Dec. 3 in Louisville, Ky., U.S. District Court to conspiracy to violate and violation of International Emergency Economic Powers Act (IEEPA) for exporting aircraft and aircraft parts, including GE Aircraft Engine Model CF6-50C2, to Iran. Sentencing is set for March 4, 2013.

MORE EXPORT ENFORCEMENT: Four individuals -- Hamid Reza Hashemi, dual U.S. and Iranian citizen and Iranian resident; Peter Gromacki, U.S. citizen and resident of Orange County, N.Y.; Amir Abbas Tamimi, Iranian citizen and resident; and Murat Taskiran, Turkish citizen -- were charged Dec. 5 in Manhattan U.S. District Court for violating IEEPA by exporting various goods, including carbon fiber, which can be used in gas centrifuges that enrich uranium and in military aircraft and strategic missiles, and military helicopter parts to Iran and China. Hashemi, Gromacki and Tamimi are in U.S. custody.

OPTION 4: At BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) meeting Dec. 5, Joe Cortez of Census' Foreign Trade Division repeated that Census and CBP will launch pilot of hybrid post-departure and pre-departure filing for exports in AES, probably about year from now (see **WTTL,** Sept. 17, page 2). Cortez also said when finalized, Option 4 will be a "clean slate," that everyone's being asked to reapply. "It's time to reevaluate the whole list," he said.

INFORMAL ENTRY: In Federal Register Dec. 6 Treasury and Customs increased limit from $2,000 to $2,500, for which merchandise may qualify for "informal entry" and reduced merchandise processing fee to $2 from minimum of $25 (assuming entries are filed electronically). Final rule also removed language requiring formal entry for articles formerly subject to quotas under the Agreement on Textiles and Clothing because CBP no longer needs to require formal entries for these articles.