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## Impact of Reforms on Enforcement Not Assessed, GAO Says

State and Commerce have not fully assessed the impact that the export control reform initiative will have on export enforcement, the Government Accountability Office (GAO) said in an April 23 report, which also raised concerns about the Bureau of Industry and Security's (BIS) lack of enforcement resources to handle its increased workload and potential diversion of unlicensed items. The report comes a month after another GAO report criticized the inadequate monitoring and allocation of federal resources devoted to export enforcement.

BIS and State's Directorate of Defense Trade Controls (DDTC) lack information on how the transfer of some 30,000 licenses to BIS from DDTC will affect BIS resources and the monitoring of exports that no longer need licenses. "In the one assessment that it performed, Commerce estimated financial benefits of one regulatory change but did not assess any potential risks to compliance activities beyond licensing," the GAO said in its most recent report (GAO-12-613).

"A Commerce official also stated that a reduction in exports needing licenses would likely make compliance activities, such as end-use monitoring, more difficult because officials use export licenses for some of the information they rely on," the report noted. "Without such information, U.S. officials conducting end-use checks might need to expend more time and resources obtaining the needed information, according to the official," it continued.

In its March 27 report (GAO-12-246), the GAO said agencies face challenges in investigating illicit transshipments. The report focused on license determination delays; limited secure communications and cleared staff; lack of trend data on illicit transshipments; and lack of effectiveness measures. The GAO said the new Export Enforcement Coordination Center is intended to help agencies coordinate their export control enforcement. "However, it is unclear whether the center will address all of the challenges GAO found, as detailed plans for its operations are under development," it stated (see **WTTL**, March 12, page 4).

## U.S. Joins False Claims Suit Seeking Antidumping Duties

In an unusual move that may signal a new approach to enforcing antidumping orders, Justice has intervened in a private False Claims Act (FCA) lawsuit against a Japanese ink manufacturer and its U.S. subsidiaries for allegedly unpaid duties. Under what is known as the FCA's *qui tam* or whistleblower provisions, Toyo Ink Manufacturing Co. has been sued by a competitor that claims the company knowingly made false statements to avoid paying customs duties on



imports of carbazole violet pigment number 23 (CVP-23), which was the subject of a 2004 antidumping determination (see **WTTL**, Nov. 24, 2003, page 4). The Charlotte, N.C., U.S. District Court April 23 granted a Justice motion to intervene in the case under the FCA, which allows the government to join suits by whistleblowers claiming a share of any revenue owed to the government. In this case, Justice finely parsed which part of the complaint it was joining.

Justice told the court it intervened “in that part of the action which alleges Toyo Ink Manufacturing Co., Toyo Ink International Corporation, Toyo Ink America LLC, and Toyo Ink Manufacturing America LLC (collectively, Toyo) knowingly made false statements to avoid paying customs duties on imports of CVP-23. The United States declined to intervene in that part of the action which alleges Toyo avoided customs penalties and engaged in a conspiracy to violate the FCA.”

One trade lawyer said this case is significant since the FCA is not used in many trade cases, and the government intervenes in even fewer. “Obviously, they think this is meritorious,” one lawyer told **WTTL**. “I’m happy the government is doing something. Hopefully, this will have a deterrent effect on people cheating in this area,” he continued.

John Dickson, CEO of Nation Ford Chemical, Toyo’s domestic competitor, filed the suit in October 2009, claiming Toyo misrepresented Japan and Mexico on Customs documents as the countries of origin for the imported pigment instead of China and India to avoid paying anti-dumping and countervailing duties. A Toyo statement denied liability, saying, “The whistleblower allegations that Toyo Ink engaged in any fraudulent activity are false and appear to be driven by business considerations rather than facts.” It said allegations that Toyo intentionally misidentified its CVP-23 product as Japanese origin “are wrong, since Toyo Ink’s PV-23 is manufactured in only one location, that being Toyo’s Factory in Japan.”

## **Industry Concerned about Slow U.S. Movement on Burma**

U.S. industry is concerned American firms may be at a disadvantage to competitors in Europe and Canada unless the Obama administration moves more quickly to lift sanctions on Burma. Although the administration has lifted sanctions on financial services related to humanitarian, religious and democracy-building activities in Burma, it has not yet acted on opening commercial financial transactions or imports. Washington’s slow movement comes as the European Union (EU) April 23 suspended most of its sanctions on Burma and Canada lifted its sanctions April 24 (see **WTTL**, April 23, page 4).

In a hearing of the House Foreign Affairs Committee subcommittee on Asia and the Pacific April 25, Assistant Secretary of State Kurt Campbell said the administration is taking a “careful, calibrated, step-by-step approach” to easing its sanctions. “In terms of easing the bans on the export of U.S. financial services and new investment for commercial activities, we plan to proceed in a careful manner. We will also work closely with the U.S. Department of the Treasury to reexamine and refresh the Specially Designated Nationals list,” he testified.

In a statement, EU High Representative Catherine Ashton noted “remarkable changes” taking place in Burma. “To encourage further reforms, we’ve suspended our sanctions with the exception of the arms embargo,” she added.

Canada said prohibitions on imports, exports and investment have mostly been removed, as have those related to technical data and financial transactions. Prohibitions remain on trade in arms and related material, along with technical and financial assistance related to military activities. “An asset freeze and prohibition on transactions also remain in place against designated individuals and entities,” it said. In addition, Burma was removed from Canada’s Area Control List, which required that all those wishing to export to Burma obtain an export permit. However, permit requirements for items included on Canada’s Export Control List remain in effect, it noted. The U.S. Congress may also have a chance to have a say on future sanctions against

Burma as it has to renew sanctions imposed by the 2003 Burma Freedom and Democracy Act by the end of July. “I don’t think we should simply let them expire,” House Ways and Means Committee Chairman Dave Camp (R-Mich.) told a program in Washington April 26. “This is on the agenda, on the radar. We need to address it. We haven’t as a committee fully engaged on this issue yet but it is something we need to do by the end of the year,” he added.

Meanwhile, an April 24 letter from nonprofit and union groups, including AFL-CIO and Human Rights Watch, urged the administration “to conduct a comprehensive update of the Specially Designated Nationals (SDN) list before relaxing the investment and financial services bans.” The letter continued, “If these precautions are not taken, new U.S. business activity permitted under the relaxation may directly benefit individuals and entities responsible for human rights abuses, who contribute to corruption, or are otherwise acting to obstruct political reform.”

## **Camp Open to Side Legislation with Russia PNTR**

House Ways and Means Committee Chairman Dave Camp (R-Mich.) indicated April 26 that he may be open to a separate bill to address human rights abuses, intellectual property violations and phytosanitary issues in Russia but not as part of legislation to lift Jackson-Vanik Amendment restrictions on Moscow and grant it permanent-normal-trade-relations (PNTR) status. “I don’t think we want to remove a condition and replace it with another condition,” Camp told the Center for Strategic & International Studies.

“I am going to leave open the question of whether anything goes in tandem or along with PNTR,” he said. “I think the issue is – is this a part of PNTR and I don’t think we can do that,” he added. Camp’s comments responded to questions on his stand on the Magnitsky Rule of Law Accountability Act of 2011 (S. 1039) sponsored by Sen. Ben Cardin (D-Md.), which would impose a travel ban on and freeze the assets of persons responsible for the detention, abuse and death of Sergei Magnitsky, and proposals made by Rep. Sander Levin (D-Mich.).

“I know it [S. 1039] has a lot of bipartisan support in the House and the Senate,” Camp told reporters after his speech. “I haven’t endorsed the bill yet, but it may very likely be part of, but not a condition of, PNTR,” he said.

Camp announced plans to hold a hearing on PNTR in June and criticized the Obama administration for not doing enough to support legislation. “As you well know, Russia continues to have its skeptics on Capitol Hill,” he said. “As such, I call on the administration to intensify its efforts with regard to Russia and make its best case for why Congress should act this year on PNTR. It is time for the White House to get out front on this issue,” he added. Camp said he planned the hearing for June to give the administration time to push PNTR. “I think we need to have the administration engage on the Hill. That will give them May to do that. That will give them an opportunity to come to the Hill so we can make some progress; so the hearing will build on the effort they make,” Camp told reporters.

## **Obama Blocks Iran, Syria Human Rights Abusers**

Just as social media helped fuel the Arab Spring of 2011, information technology also has been used against citizens to cut off their contact with fellow activists and outside support. To address this misuse, President Obama issued an executive order April 23 to isolate those who help Iran and Syria use those technologies to monitor, track and target citizens for violence. Obama’s order blocks the property and interest of persons who operate or direct information and communications technology that could assist serious human rights abuses by Iran or Syria. The order, which is being called the Ghraivity E.O., also blocks the property of persons who have sold, leased or otherwise provide these goods, services or technology to Iran or Syria to commit these abuses; those who have materially assisted such transfers; and those who own or operate the technology.

\* \* \* Briefs \* \* \*

STEEL WIRE: In its third negative ruling in two weeks, ITC voted 4-2 April 23 in final determination that dumped imports of galvanized steel wire from China and Mexico and subsidized imports from China are not injuring or threatening to injure U.S. industry.

SYRIA: EU Foreign Affairs Council approved April 23 new sanctions against Syria, imposing restrictive measures on export of goods and technology which may be used for repression and banning export to Syria of luxury goods. "The EU will continue its policy of imposing additional measures targeting the regime, not the civilian population, as long as repression continues," it said.

EXPORT ENFORCEMENT: Jason Jian Liang, owner of Sanwave International Corporation in Huntington Beach, Calif., was sentenced April 23 in Santa Ana, Calif., U.S. District Court to 46 months in prison and three years' supervised release for illegal exports of L-3 Communications 300-D thermal imaging cameras to Hong Kong and China without licenses. Liang pleaded guilty July 18, 2011.

FCPA: Garth Peterson, U.S. citizen living in Singapore, who was managing director for Morgan Stanley, pleaded guilty April 25 in Brooklyn U.S. District Court to conspiring to evade internal accounting controls company was required to maintain under FCPA. Sentencing is set for July 17. Peterson also agreed to pay more than \$250,000 in disgorgement to settle related SEC charges, will be permanently barred from securities industry and must relinquish interest in Shanghai real estate that is valued at approximately \$3.4 million. Because Morgan Stanley constructed and maintained system of internal controls, Justice declined to bring any enforcement action against securities firm related to Peterson's conduct. Company voluntarily disclosed matter and has cooperated with investigation, Justice noted.

OFAC: Sandhill Scientific, Inc. of Highlands Ranch, Colo., manufacturer of medical equipment, agreed to pay \$126,000 to settle OFAC charges of violating Iranian Transactions Regulations in May 2007 by exporting medical equipment worth approximately \$6,700 to Dubai, UAE, "with knowledge or reason to know that the goods were intended for transshipment or supply to a company in Iran with which Sandhill had an exclusive distributor agreement," OFAC noted. Sandhill also allegedly violated OFAC's Reporting, Procedures and Penalties Regulations in May and July 2008 for failing to respond to two administrative subpoenas. Sandhill did not voluntarily disclose matter to OFAC.

ENTITY LIST: In Federal Register April 27, BIS added 16 persons under 18 entries in Afghanistan, Pakistan and UAE for providing components in improvised explosive devices (IEDs) used against U.S. and coalition troops in Afghanistan. In Federal Register April 25, BIS added two entities in France: Toulouse Air Spares SAS and its president, Laurence Mattiucci, for "direct physical and corporate nexus" with Aerotechnic France SAS, on Entity List. BIS also updated entries for 15 countries under annual review.

HARBOR MAINTENANCE TAX: Court of Appeals for Federal Circuit (CAFC) in *Ford v. U.S.* April 16 upheld CIT ruling denying Ford Motor Company's claim for refund of HMT. CIT had supported Customs decision that Ford submitted insufficient supporting documentation to make claim.

ZEROING: CIT Judge Timothy C. Stanceu remanded April 25 (slip op. 12-56) to ITA administrative review decision on corrosion-resistant carbon steel products from Korea, directing agency, in light of appellate rulings in *JTEKT Corp.* and *Dongbu*, to either reconsider its application of zeroing in antidumping decision or "explain how the language of 19 U.S.C. Section 1677(35) permissibly may be construed in one way with respect to the use of the zeroing methodology in antidumping investigations and the opposite way with respect to the use of that methodology in antidumping administrative reviews, and shall recalculate any antidumping duty margin applied to plaintiff that is affected by an alteration of that decision."

SOFTWOOD LUMBER: U.S. lumber producers that don't belong to the Coalition for Fair Lumber Imports are not entitled to share of \$500 million compensation that Canada has paid coalition members as part of 2006 Softwood Lumber Agreement (SLA), ruled CIT Judge Richard K. Eaton April 19 (slip op. 12-51). On remand from Court of Appeals from Federal Circuit, Eaton said SLA was political question not open to judicial review. He upheld power of USTR to negotiate deals that include compensation. "International trade agreements are often the product of delicate negotiations, leading to a quid pro quo exchange, in which both sides agree to make concessions. Judicial interference would disturb the balance struck through these negotiations, undermining their value as a mutually-satisfactory means of achieving the ends of the foreign trade policy," Eaton wrote. "Here, plaintiffs ask the court to alter the obligations of the Canadian Government under the SLA. To do so might well undermine the confidence that Canada, and presumably other foreign trading partners, have in the United States' adherence to trade agreements executed by those with authority to act on its behalf," he stated (see **WTTL**, July 11, 2011, page 1).