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

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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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## Bersin Says He Supports Extending C-TPAT to Exporters

Customs and Border Protection (CBP) Commissioner Alan Bersin gave his endorsement Oct. 7 to expanding current programs for trusted importers, such as the U.S. Customs-Trade Partnership against Terrorism (C-TPAT) and the Authorized Economic Organization (AEO) programs of other countries, to the exporting side. "We should be knitting together our AEO programs to cover not only imports...but exports," he told the World Customs Forum in Istanbul.

> "As we move toward developing a more seamless network of AEO programs pursuant to a set of standards that are acceptable to all participants, we will be closer to the point at which we can cover all trade, imports and exports alike," Bersin said. He said national customs agencies should work through the World Customs Organization (WCO) to set standards for AEOs that will cover both importing and exporting organizations (see **WTTL**, Oct. 11, page 1).

Earlier at the Forum, Marianne Rowden, president of the American Association of Exporters and Importers, called on customs agencies to "get away from transaction-based regulation" of exports and to "regulate companies and not transactions." She said governments should devote their resources to high-risk companies and not those that have good compliance records

## ITAC Members Complain of Lost Expertise on Panels

Members of Industry Trade Advisory Committees (ITACs) that provide sector-specific advice to U.S. officials on U.S. trade policy say the expulsion of registered lobbyists from the ITACs has diminished their effectiveness because of the reduced number of representatives on the panels and the loss of expertise. ITAC members refute the claims of government officials who say the elimination of registered lobbyists as part of the Obama administration's ethics policy hasn't hurt the ITACs. "That is an uninformed conclusion," one ITAC member told WTTL.

"We're just a shell of the kind of expertise and influence with industries we had," the member said. The expulsion of members who happen also to be registered lobbyists has resulted in a committee "that is less equipped to do what the ITAC was designed to do – take the heat out [of trade talks] and put in more light," he added. Several ITAC members echoed the complaint about the loss of expertise on the committees and also about the fewer number of members on the committees. According to the Commerce website, there are now 245 ITAC members compared to 330 before the lobbyists were thrown off the committees. Commerce officials say they are in the process of filling those vacancies. The committees "had accumulated a lot of



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experience in international trade matters," another ITAC member told WTTL. "You lose some institutional memory" with the removal of members, he said. "A lot has been lost. They had good instincts on trade developments," he added.

> "I would say that, on balance, contrary to the fears of many, I don't think we lost the expertise that we need in order to fulfill the mission of the ITACs," Nicole Lamb-Hale, Commerce's assistant secretary for manufacturing and services, told reporters after an Oct. 12 meeting of ITAC chairmen. "We have people who are coming in who are qualified as required under the statute, who are not lobbyists," she said. These are people "who, quite frankly, before our aggressive outreach maybe had not heard of the ITAC system but had the expertise," she asserted.

At the meeting, all ITAC chairs approved a letter to USTR Ron Kirk and Commerce Secretary Gary Locke opposing a proposal to add non-government (NGO) and non-industry group members to the ITACs. "Such a step is of questionable legality under the statute under which we operate," the letter stated. "It will diminish the quality of advice available to U.S. trade negotiators when they are making decisions critical to the nation's economic well-being," it added. In May, the USTR's office had asked for comment on expanding ITAC membership. The proposal "is not fully baked," Lamb-Hale assured the chairmen. "We are listening," she said.

## BIS Targets Executives and Companies in Settlements

The Bureau of Industry and Security(BIS) appears to be following through with its threat to target individual executives as well as companies in administrative settlements for alleged export control violations. In two recent cases, the agency charged both a company and its president with violating the Export Administration Regulations (EAR) and imposed civil fines on both. One case involved EDCO, Inc. and Mark Vorobik of Mount Vernon, Wash., and the other, International Photo Equipment Company, Inc. (IPE) and Adam Karesh of Orlando, Fla.

> BIS charged EDCO with evading the EAR by doing business with Sunford Trading Ltd of Hong Kong, which was subject to a Temporary Denial Order (TDO). The agency claimed EDCO omitted its name from sales contracts and shipping documents. Vorobik was charged with misrepresentation or concealment of facts, having told BIS agents he didn't know Sunford was under a TDO. BIS fined EDCO and Vorobik each $52,000 but agreed to suspend half of the penalty for a year and then waive the balance, if they don't commit any further violations.

A week before the Sept. 30 settlement, the *Everett (Wash.) Daily Herald* reported that Vorobik had attended an event with Commerce Secretary Gary Locke at Everett Community College. According to its report of the event, Vorobik said his business, which employs 50 people, had gone to eight to 10 different locations to learn about export rules. "Even then, we weren't sure we were meeting all the regulations," he was quoted by the newspaper. "I don't have the time while I'm running a business to check all this stuff out," the article quoted him saying.

IPE and Karesh were charged separately with two counts of acting with knowledge of a violation when IPE shipped photo equipment classified as EAR99 to Syria in 2004 and 2006. The exporter "instructed the freight forwarder to ship the photography equipment to Lebanon so that IPE's customer could pick up the items and drive them the rest of the way to Syria," BIS alleged. Karesh agreed to pay a $45,000 civil fine, of which $20,000 will be suspended for a year and then waived if he remains in compliance with export controls. IPE was fined $45,000, all of which has been suspended and will be waived if it stays in compliance.

## Senators Urge Action on Chinese Treatment of U.S. Poultry

Sens. Chuck Grassley (R-Iowa) and Orrin Hatch (R-Utah) want the Obama administration to resort to old-fashioned jawboning to get China to drop antidumping and countervailing duty orders on imports of poultry from the U.S. In a letter Oct. 12 to Agriculture Secretary Tom Vilsack and U.S. Trade Representative (USTR) Ron Kirk, they urged the administration to skip the World Trade Organization (WTO) dispute-settlement process and request high-level consultations with the Beijing "to explain the negative effects of its actions and to ask more specifically for the withdrawal of the antidumping and countervailing duties on poultry."

> Beijing on Sept. 27 imposed "prohibitive" antidumping duties on imports of U.S. poultry products, the letter noted. The two senators cited reports that China's most recent poultry and auto duties were in retaliation for the U.S. imposition of tire tariffs in 2009 (see **WTTL**, Sept. 20, page 2). They contend the poultry case violated WTO rules just as China's CVD order on imports of grain-oriented electric steel (GOES), on which the U.S. has asked China for WTO consultations.

"Like the steel duties, the poultry duties – as well as the countervailing duties that China imposed on poultry products earlier this year – are plainly inconsistent with China's WTO obligations and threaten to cause serious harm to the U.S. poultry industry," the letter said. "Simply filing a WTO case is not enough. China is one of the major beneficiaries of the global trading system, and it needs to understand that the abusive application of its trade remedy laws is increasing tensions and further undermining our bilateral relations," Grassley and Hatch said.

## USTR Launches Investigation of China's Green Policies

Add China's support for its "green" technologies to the growing list of bilateral disputes between Beijing and Washington. USTR Ron Kirk agreed Oct. 15 to launch a formal Section 301 investigation into Chinese policies and practices affecting trade and investment in green technologies in response to a 5,800-page petition that the United Steelworkers (USW) filed in September (see **WTTL**, Sept. 13, page 3). "This is a vitally important sector for the United States," Kirk said in announcing his decision. "Green technology will be an engine for the jobs of the future, and this administration is committed to ensuring a level playing field for American workers, businesses and green technology entrepreneurs," he said.

> The USW applauded the decision. "By accepting the petition the Steelworkers filed against China's predatory and protectionist policies, it sends the message that America is not going to stand by while our jobs get outsourced," said USW President Leo Gerard. "Today's decision gets us to the starting gate, it doesn't end the process," he noted.

The Section 301 process provides for a 90-day investigation period at the end of which the USTR's office will decide whether to take a complaint to the WTO. "In light of the large number of allegations and the extensive documentation accompanying them, I have asked my staff to utilize the 90-day period allowed by statute to thoroughly examine and verify the USW's claims. For those allegations that are supported by sufficient evidence and that can effectively be addressed through WTO dispute settlement, we will vigorously pursue the enforcement of our rights through WTO litigation," he stated.

## Court Upholds Ruling Ending Retaliation against EU Beef

Too bad, too late, the Court of Appeals for the Federal Circuit (CAFC) ruled in essence Oct. 13 in rejecting a government argument that failure of the USTR's office to notify the U.S. beef industry that it needed to ask for an extension of U.S. retaliation against the European Union's (EU) restrictions on imports of hormone-treated U.S. beef should justify extension of retaliatory 100% duties on EU imports (*Gilda Industries v. U.S.*, case no. 2009-1492). The appellate court's ruling upheld a June 2009 decision of the Court of International Trade (CIT), which said the retaliation had expired by "operation of law" on July 29, 2007, and the duties could not be collected after that date (see **WTTL**, June 22, 2009, page 1). Even though the court ordered duty refunds to the two plaintiffs in the case, the ruling probably won't help other importers who were hit with the duties unless they had filed a timely protest against liquidation with Customs. Four years after the initial imposition of the duties, the U.S. industry had requested an extension and got it, but the lack of notice from the USTR at the end of the second period of retaliation resulted in no request being filed. "Because we conclude that Congress did not intend that the domestic industry be excused from requesting continuation of retaliatory action in the absence of notice from the Trade Representative, we also do not accept the government's position that this interpretation of the statute imposes on the domestic industry additional burdens not contemplated by Congress," the CAFC ruled.

## BIS Approves Three More VEUs in China

BIS Oct. 12 granted three more firms validated end-user (VEU) status in China. In the Federal Register notice, it approved VEU status for Hynix Semiconductor (China) Ltd., Hynix Semiconductor (Wuxi) Ltd. and nine facilities of Lam Research Corporation. Under the VEU rules, specific items under the Export Control Classification Numbers (ECCNs) identified for each plant can be exported to those facilities without an approved export license.

> The two Hynix facilities are eligible to receive exports of items under ECCNs 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, and 3B001.f, BIS said. Lam Research's nine facilities will be eligible for unlicensed exports classified under ECCNs 2B230, 2B350.c, 2B350.d, 2B350.g, 2B350.h, 2B350.i, 3B001.c, 3B001.e (items controlled under 3B001.c and 3B001.e are limited to parts and components) 3D001, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to "technology" according to the General Technology Note for the "development" of equipment controlled by ECCN 3B001).

## Appellate Court Reaffirms *Corus Staal* Views on Zeroing

The Court of Appeals for the Federal Circuit reaffirmed Oct. 4 several earlier decisions, including in *Corus Staal*, that Commerce has discretion not to use a "zeroing" methodology in antidumping investigations. In its latest order (*U.S.Steel v. U.S.*, cases 2009-1573 and 1573), it affirmed a CIT decision upholding an International Trade Administration Section 129 decision on hot-rolled carbon steel flat products from the Netherlands. "Because the statute does not speak directly to negative-value dumping margins, we declined to find a clear and unambiguous Congressional intent that Commerce use zeroing methodology," the appellate court ruled.

> "We are bound by our previous decisions in *Timken* and *Corus*," it stated. "We agree with the government that the Section 129 Determination reflects Commerce's reasonable interpretation of an ambiguous statute," the court ruled.

## * * * Briefs * * *

CHINA CURRENCY: Treasury Oct. 15 delayed issuing report on international economic and exchange rate policies, including China's, until after November's G-20 meeting. Department said Treasury Secretary Geithner recognizes "China's actions since early September to accelerate the pace of currency appreciation, while noting it is important to sustain this course." Separately, during visit to China, Senate Finance Committee Chairman Max Baucus (D-Mont.) indicated Senate might take up House China currency bill (H.R. 2378) when it returns for lame-duck session after elections (see **WTTL**, Oct. 11, page 4).

COMMERCE: Deputy Assistant Secretary for Market Access and Enforcement Stephen Jacobs retiring at end of October after 32 years in government.

TRADE FIGURES: Goods exports in August were up 22% from year ago to $107.7 billion. Services exports rose 10.6% from August 2009 to $46 billion. Goods imports in August reached $166.7 billion, 27.5% jump from last year. Services imports gained 9% to $33.5 billion.