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BIS Aims to Clear Backlog of 290 Voluntary Self-Disclosures

The Bureau of Industry and Security's (BIS) Office of Export Enforcement (OEE) has nearly completed action on all pending voluntary self-disclosures (VSDs) it received in 2005 and 2006 and is now turning its attention to finishing work on VSDs filed in 2007, OEE Director Thomas Madigan told the agency's annual Update 2009 conference Sept. 30. There are now 290 VSDs from 2007 to 2009 awaiting OEE action, he reported. Of the VSDs on which BIS has completed action in recent years, 90% received only a warning letter or no action, Madigan said. This percentage is lower than previous estimates of cases escaping regulatory action but is based on the most recent data, he explained.

> Of the 229 VSDs BIS received in fiscal year 2007, which ran from Oct. 1, 2006 to Sept. 30, 2007, the agency has closed action on 175; deciding no enforcement action was needed for 67; sending warning letters to 102; issuing proposed Charging Letters to four; referring one to another agency for action; and having one fall in "other" category. There are 52 VSDs still pending action.

In fiscal 2008, which ended Sept. 30, 2008, BIS received 196 VSDs. Of these, it closed 114; deciding no action was needed for 28; sending warning letters to 75; issuing Charging Letters to three. There were eight in an "other" category. The agency is still working on 81 filings. It received 204 VSDs in fiscal 2009, which ended Sept. 30, 2009. Of those, so far, it has closed 47, with 13 resulting in no action; 34 receiving warning letters and 157 still under review.

The agency is also trying to speed up the issuance of letters of authorization to exporters who have filed VSDs and have requested approval to make new shipments related to the potential violations under Section 764.5 of the Export Administration Regulations (EAR), the Update meeting was told by Bernard Kritzer, director of the BIS office of exporter services. As of mid-September, there were only 10 requests awaiting action, he reported. Kritizer said 99% of the applications for permission to ship are usually approved.

U.S. Complaint against EU Is "Chicken War" Deja Vu

Rip Van Winkle could have gone to sleep in 1963 just as the U.S was retaliating in the "Chicken War" against European tariffs on chicken from the U.S. and awoken Oct. 7 to find the U.S. again complaining about European treatment of American poultry. This time the U.S. is asking the World Trade Organization (WTO) to establish a dispute-settlement panel to hear U.S. complaints against the European Union's (EU) ban on the import and marketing of poultry and

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poultry products processed with pathogen reduction treatments (PRTs) that the U.S. claims have been judge safe by U.S. and European food safety authorities. “There is no scientific evidence that the use of pathogen reduction treatments poses any health risk to consumers,” said USTR spokeswoman Nefeterius McPherson. The U.S. and EU held consultations on Feb. 11.

> EU spokesperson Lutz Güllner said the EU feels “litigation is not the most appropriate way to deal with complex issues such as this one.” The EU contends its restrictions on PRTs to clean poultry apply to all meat products whether they are produced in the EU or imported. He said the U.S. applied to the EU for approval to use these treatments, but the EU rejected the applications in 2008.

The infamous Chicken War of the 1960s stemmed from a change in the European Community’s Common Agriculture Policy (CAP) that allowed what was then West Germany to raise its tariff of poultry imports to 40% from 15%. The U.S. complained about the change to the General Agreement on Tariffs & Trade (GATT), which ruled that the U.S. was entitled to compensation because the West German action violated a “standstill” agreement that came out of the Dillon Round of multilateral trade negotiations, according to “*Agriculture in the GATT*” by Josling, Tangermann and Warley. In retaliation, the U.S. in December 1963 imposed extra duties on European imports, including a 25% tariff on light trucks, which remains in place today.

Canada Challenges U.S. Labeling Rules at WTO

Canada Oct. 7 asked the WTO to form a dispute-settlement panel to hear its complaint against U.S. country-of-origin labeling (COOL) requirements for meat, pork, lamb and poultry. Mandated by the 2008 Farm Bill, COOL requirements were the subject of consultations between Ottawa and Washington from last December to June. The U.S. Agriculture Department (USDA) published final implementing rules in January and the requirement went into effect in March. The WTO Dispute-Settlement Body will consider the Canadian request Oct. 23. “The U.S. COOL requirements are so onerous that they affect the ability of our cattle and hog exporters to compete fairly in the U.S. market,” said Canadian Trade Minister Stockwell Day.

> USDA Secretary Tom Vilsack and U.S. Trade Representative (USTR) Ron Kirk issued a joint statement objecting to the Canadian move. “We believe that our implementation of COOL provides information to consumers in a manner consistent with our World Trade Organization commitments,” they declared. “Countries have agreed since long before the existence of the WTO that country-of-origin labeling is a legitimate policy,” they argued.

OFAC Fines Gold Exchange for Iranian and Cuban Accounts

The operator of an online financial exchange that allowed customers to use gold-backed accounts to buy and sell goods has been fined $2,950,000 for allowing citizens of Iran and Cuba to use its service. Treasury’s Office of Foreign Assets Control (OFAC) imposed the penalty on Gold & Silver Reserve, Inc. (GSR), of Melbourne, Fla., for providing financial services to 56,739 online accounts in Iran and 69 accounts in Cuba, the agency announced Oct. 1, 2009.

> GSR operated e-Gold and other online payment systems but closed down the websites in January 2009. OFAC charged the firm with failing to obtain licenses for these accounts and violating the Iranian Transactions Regulations, the International Emergency Economic Powers Act, the Cuban Assets Control Regulations, the Trading with the Enemy Act and relevant executive orders.

The OFAC penalty notice said the agency originally proposed a fine of $5 million for the violations, but it reduced the penalty because the company and its executives were the subject of a separate criminal prosecution. In July 2008, GSR-affiliate e-Gold Ltd., and three of its executives pleaded guilty in D.C. U.S. District Court to conspiracy to engage in money laundering

and operating an unlicensed money transmitting business. Before OFAC issued its notice to GSR and e-Gold, Ltd., the firms agreed to a criminal forfeiture of $1,750,000 and a criminal monetary penalty of $300,000, OFAC noted. GSR had made a disclosure to OFAC about the accounts, but the agency did not consider the disclosure a mitigating factor because it came after the criminal investigation was already underway.

Complaint Seeks 337 Exclusion Order against Toyota Hybrids

The popularity of the unfair trade provisions of Section 337 of the Trade Act to fight patent infringement by imports is underscored again by an investigation the International Trade Commission (ITC) initiated Oct. 6 into a complaint that Paice LLC of Bonita Springs, Fla., filed against Toyota and imports of its hybrid cars and components. Most of the ITC's business now involves 337 cases, which far outpace the antidumping and countervailing duty cases it receives. Paice is seeking an exclusion order against the imports because it has been blocked from injunctive relief in a parallel suit in the Marshall, Texas, U.S. District Court.

> The 337 case involves a drive-train component that Paice claims was invented by its founder and former owner, Alex Severinsky. Paice originally won the district court suit based on the doctrine of equivalence and was awarded a royalty for each hybrid car Toyota imports. Toyota has appealed that ruling to the Fifth Circuit Court. In the meantime, the district court judge has denied a Paice request for an injunction. Hence, Paice's parallel suit at the ITC to get relief.

Kirk Puts Focus on Small-, Medium-Size Firms in Trade Policy

USTR Ron Kirk's new emphasis on the role of small- and medium- size companies may signal a continuing shift in the Obama administration away from the heavy influence of multinational companies in U.S. trade policy. Kirk's Oct. 5 announcement of a new initiative aimed at helping smaller businesses increase their exports and focusing trade enforcement at unfair trade practices that hurt these firms came less than a week after the administration started a purge of registered lobbyists from Industry Trade Advisory Committees (ITACs), which have a large proportion of representatives from big multinational companies. There is one ITAC which comprises small and minority business executives.

> "USTR is sharpening its focus on small- and medium-sized American businesses to craft new trade policies and enforce existing ones in ways that will help these firms grow exports around the world and grow jobs here at home," Kirk said. "This Administration has promised a trade agenda that is more responsible and more responsive to the needs of American workers, families, and businesses. Small- and medium-sized enterprises are at the heart of employment and job creation here in the United States, and so a heightened focus on helping this sector is the right thing for USTR to do," he said.

One step Kirk took was to ask the ITC to undertake a study of the role of small- and medium-size companies in exporting and how to increase trading opportunities for them. Such a study is likely to rely on an already existing annual report that the Census Bureau issues profiling all U.S. exporters and the trade they conduct. In 2007, for example, the latest year for which data are reported, Census said it was able to identify 266,500 exporting firms, including manufacturers and wholesalers. This was a 7.5% increase from 2006, but doesn't include firms it could not identify or small-value shippers that are exempt from filing export documentation.

Of the identified exporters, 97% were small- and medium-sized firms with fewer than 500 workers, but they accounted for only 30% of known exports by value. As in past years, large companies dominated U.S. export statistics. Large exporting companies with 500 or more employees shipped nearly 70% of all exports by value but were less than 3% of all identified exporters. Four percent of manufacturing exporters (2,887 of 71,563) accounted for 84% of

manufactured exports by value. Overall, the top 2,000 exporters in sectors accounted for 77% of all exports by value. Just 50 companies exported 30% of all U.S. exports by value. The majority of exporters (58%) export to only one foreign country, Census reported.

Dodd Promises New Iran Sanctions Bill in October

Senate Banking Committee Chairman Christopher Dodd (D-Conn.) told an Oct. 6 hearing he intends to move legislation in October to impose new financial and trade sanctions on Iran. He said he has delayed action on the measure until now to give President Obama the chance to try a new diplomatic initiative with Tehran. Full Senate action on Dodd's bill will probably wait until after the White House indicates whether its new approach has worked or not. Even as Congress moves on new legislation, administration officials told the hearing that they are also examining new steps to tighten sanctions on Iran if diplomacy fails.

> "I intend to move forward in this committee this month on comprehensive sanctions legislation," Dodd said in his opening statement at the hearing. "I am committed to ensuring that this Congress equips President Obama with all the tools he needs to confront the threats posed by Iran," he said.

Dodd said his bill will incorporate proposals from several senators and will include penalties on companies that support Iran's import of refined petroleum products or bolstering its domestic capacity; authorization for state and local governments to divest from companies involved in critical business with Iran; enhanced authority for Treasury to freeze assets tied to Iran's terrorist and proliferation activities; tougher export controls to help cut off Iran's access to the most sensitive and advanced technology through black market trading partners.

Administration witnesses said they are also considering new sanctions, if diplomacy fails. "The plan we are developing is comprehensive," said Treasury Under Secretary Stuart Levey in his prepared testimony. "It takes into account that no single sanction is a 'silver bullet' – we will need to impose measures simultaneously in many different forms in order to be effective," he said. Deputy Secretary of State James Steinberg told the committee the administration is "intensifying work with our allies and other partners to ensure that, if we must go down this path, we will do so with as much international support as possible." Acting BIS Under Secretary Dan Hill also testified at the hearing and noted that BIS has 235 open investigations involving Iran, which represents 29% of all pending cases.

* * * Briefs * * *

TRADE FIGURES: U.S. goods exports in August continued to climb for fourth month, but at $86.8 billion, were still down 24% from last August. Services exports edged up from July but slid 12% from year ago to $41.4 billion. Goods imports declined slight from July due to lower oil prices and were off 31% from August 2008 at $128.7 billion. Services imports were down 15.4% from year ago to $30.2 billion.

ANTIBOYCOTT: BIS issued warning letter Aug. 18 to Bank of New York Mellon for allegedly providing antiboycott-related information about non-Israeli origin of goods in letter of credit to Yemeni party. "Having considered all the facts and circumstances known to us at this time, including specifically the fact that you discovered the violation yourself and voluntarily disclosed this to us, we are closing this matter with the issuance of this warning letter," the agency said.

TRADE PEOPLE: Maureen Smith, former head of Japan and East-West trade offices at Commerce and then trade consultant in Washington, has returned to ITA as team leader in its aerospace office.

FCPA: AGCO Corp., of Duluth, Ga., Sept. 30, reached deferred prosecution agreement with Justice to pay $1.6 million fine to settle FCPA charges that it paid kickbacks to Iraqi government officials as part of Oil-for-Food program. Separately, in deal with SEC, it will pay $2.4 million civil penalty and approximately $16 million in disgorgement and prejudgment interest. Its Danish subsidiary, AGCO Danmark A/S, agreed to pay $630,000 in fines to the Danish government.