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## GAO Probe Claims Loophole in U.S. Export Controls

A House hearing June 4 heard allegations that the failure of U.S. export control laws to restrict domestic sales of controlled goods provides a loophole that allows illegal exports to occur. But the suggested solution to this lapse may be new requirements on credit card companies to assure that card holders buying these products are legitimate. Witnesses from the Government Accountability Office (GAO) told the House Energy and Commerce Committee's oversight subcommittee that they were able to use phony companies to buy several controlled items and export them without licenses (see **WTTL**, May 25, page 1).

After the hearing, subcommittee chairman Burt Stupak (D-Mich.) told **WTTL** that he is working on credit card legislation that would address several types of illegal activities, including drugs, pornography and trade in sensitive goods. While the Energy and Commerce Committee doesn't have jurisdiction over export control laws, it does have jurisdiction over interstate commerce, including domestic commerce in export-controlled goods, Stupak said. "This all moves interstate, so we have jurisdiction," he said.

Gregory Kutz of the GAO described to the subcommittee a sting operation that was able to buy a variety of controlled items and then ship them to a cooperating government in southeast Asia without licenses. The purchases were made by phone, e-mail and fax. In several cases, GAO investigators provided phony end-use certificates to manufacturers, promising not to export the items. The agency also set up a bogus website for its front company. Anyone with "a credit card, a compute and a mailbox" can buy these controlled goods, Kutz told the subcommittee. "Controls at the point of sale" should be considered, he said.

GAOer Anne-Marie Lasowsk said the sting operation underscores previous GAO concerns about the export control system, which the agency in 2007 had placed on its list of high-risk areas needing attention. She said the GAO has called for a fundamental reexamination of export controls, with particular focus on interagency jurisdiction issues, licensing and establishing a systematic program for assessing the effectiveness of the system and setting priorities.

## Markey Raises New Complaints about China VEU

Rep. Edward Markey (D-Mass.), a past critic of the Bureau of Industry and Security's (BIS) Validated End-User (VEU) program, used a June 4 House hearing to vent new charges against the program, which he said has turned into the "End-Use Abuser" program. Markey cited



information claiming that one of the locations approved for license-free exports for the latest approved VEU, Aviza Technology China, is also the address for a firm that was debarred by the State Department in 2006 (see **WTTL**, May 4, page 3). The VEU program “is essentially unacceptable and is not something that should be in place,” Markey declared.

Markey cited information provided to him by the Wisconsin Project on Nuclear Arms Control, which had also raised questions about earlier approved VEUs. The documents showed that an approved bonded warehouse for Aviza at No. 23 Fuxing Road in Beijing is also the location of China International Electronic Services (CIES), which was related to CEIEC, a Chinese firm debarred by the State Department in December 2006 for proliferation concerns. CIES reportedly has separated itself from CEIEC, but Markey waved bills of lading showing that CEIEC had receive shipments at that address as recently as April 2009.

BIS Acting Assistant Secretary for Export Administration Matthew Borman defended the VEU program. In response to Markey’s allegations, Borman said, “I don’t believe that is correct, sir, that any of those validated end users that we approved had been sanctioned.” He stressed that all VEUs go through extensive review by many agencies, including the intelligence community. “I would be very surprised if the information from the Wisconsin project could be corroborated,” he told the hearing held by the House Energy and Commerce oversight subcommittee (see story page 1). Borman also noted that Aviza has a history of approved individual licenses, has been visited by U.S. government representatives, and its previous exports have been the subject of post-shipment verifications.

## ITC Hears Arguments in Chinese Tires Safeguard Case

Questions raised by International Trade Commission (ITC) members at their June 2 hearing on a Section 421 safeguards petition targeting imports of tires from China appeared aimed at determining why and when U.S. tire firms closed production in the U.S. and whether the different prices and quality of tires constitute separate, noncompeting markets. Commissioners also questioned why U.S. tire manufacturers were not participating in the case, which was filed by the United Steel Workers (see **WTTL**, April 27, page 3).

Commissioners Deanna Okun and Irving Williamson asked the steelworkers’ representatives to provide a better understanding of the marketplace so they could determine exactly where the competition is hurting U.S. tire production. “We’re here representing the workers, not the companies,” Terence R. Stewart, the union’s attorney, responded. “As far as we understand it, different companies look at the market differently,” he said.

Stewart, with the firm of Stewart & Stewart, said, major manufacturers have “good” (Tier 3), “better” (Tier 2) or “best” (Tier 1) ranges within their marquee brand names, as well as the so-called “no-name” lines they produce for private and big-box retailers. Stewart said 32% of Chinese tire imports to the U.S. have been in six of the top 10 best-selling replacement sizes. “The Chinese offer quite a full range of products,” he told the ITC. They started their push into the U.S. marketplace with smaller sizes but then steadily moved to larger ones, he added. The penetration into the higher end, the steelworkers contend, will continue if the commission does not act in their behalf.

Commissioner Charlotte Lane wondered aloud why tire producers were “not here today in support of this petition.” Those companies have factories in China and fear reprisals, replied USW President Leo Gerard. “They were willing to provide [the USW] with data but didn’t want to be asked questions about it. That they’re not here speaks volumes,” he said. The companies came “to the union and asked us to take their case because they’re intimidated,” Gerard claimed. But other sources told **WTTL** that those companies didn’t participate because they are actually among the producers in China that are exporting back to the U.S. Commissioner Dean Pinkert asked if the union’s cause might be better served by imposition of tariffs on Chinese imports,

rather than quotas. Tariffs, Stewart replied, would go “against the nature of why [Section 421] exists.” The USW is asking the ITC to recommend a quota of 21 million tires on Chinese imports for three years, with an additional five percent each following year. ITC Chairman Shara Aranoff asked about upcoming union negotiations. “We’re going to bargain in an environment where we’re optimistic that we’re going to get relief,” Gerard answered.

Speaking against the petition, U.S. retailers and distributors and Chinese manufacturers claimed the decline in Tier 3 tire production in the U.S. is attributed to a shift in companies’ business plans, not Chinese dumping. “Restarting U.S. production for economy-grade replacement tires would be a dramatic reversal of the business strategies the U.S. tire industry has pursued over the past decade,” said Ed Gwinn of DE Global Limited, a consulting firm, in a prepared statement.

“If a border measure is imposed on imports of Chinese tires, U.S. producers are not going to invest in production of Tier 3 replacement tires and therefore it will not create U.S. jobs,” Gwinn said. Other sources told WTTL that rather than coming back to the U.S., Tier 3 production would go to other countries, including Thailand, South Korea and Taiwan.

Vic Deiorio, the vice president of Singapore-based Giti Tire (USA) Ltd., told the commission that business decisions that led to U.S. plant closures occurred years before China significantly penetrated the U.S. market. “The major U.S. producers’ decision to abandon U.S. production capacity for the Tier 3 market preceded, rather than followed, major increases in Chinese imports,” Deiorio said in a prepared statement. “Most of the plant closures cited in the [USW] petition occurred during 2006,” Deiorio said. “The most significant growth in China’s share of tire imports did not begin until 2007,” he added.

## Lawmakers Ask for Investigation of Ex-Trade Officials

A union-instigated request for a Government Accountability Office (GAO) investigation into the role of former U.S. trade officials in the pending Section 421 safeguard case against imports of tires from China could reopen congressional interest in tightening ethics laws to restrict the future employment of government officials. In a letter to the GAO June 1, six House members said “an examination of the activities of these and other former trade staff and officials is merited to determine whether additional limitations on their post-government employment activities are necessary.” The officials cited in the letter represent various parties in the 421 case, including U.S. retailers and distributors of imported tires and a Chinese trade association whose members reportedly include U.S.-brand tire makers (see story page 2).

The House members asked the GAO to “provide us with a report on the activities of former U.S. government personnel who were involved in the development and implementation of trade policy who, after leaving federal service, represent and advise foreign interests, including importing parties here in the U.S.A.” The letter named two former Commerce assistant secretaries for import administration, James Jochum and David Spooner, as well as former Commerce staffers Marguerite Trossevin and Stephen Claeys.

“We are well within the bounds of any ethical restrictions,” Jochum told WTTL. His firm, Jochum Shore & Trossevin represents the American Coalition for Free Trade In Tires, which comprises U.S. firms that sell imported tires. Spooner’s firm, Squire, Sanders & Dempsey, represents tire makers in China belonging to the China Chamber of Commerce. Jochum left government nearly five years ago. Spooner left in December 2008. Neither is subject to any restriction on doing legal work before the International Trade Commission, which is hearing the tire case. They are barred from doing business before Commerce for one year after leaving their posts or from representing a foreign government for one year post-government service. Government legal sources say the clients the two men represent don’t come under the definition of a foreign government, and their legal work isn’t subject to any restrictions under current laws, regulations or executive orders.

## Baucus Complains about Lack of USTR Consultation

The Obama administration is less than four months old, but members of Congress are raising the same complaints about inadequate consultation by the U.S. Trade Representative's (USTR) office that were raised against the Bush administration. Senate Finance Committee Chairman Max Baucus (D-Mont.) used the June 5 confirmation hearing for Deputy USTR-designee Miriam Sapiro to complain that he had read about the administration's decision to delay bringing the Panama and Colombia free trade agreements (FTAs) to Congress in the newspapers before he was consulted by administration trade officials.

The administration's decision to delay the FTAs until President Obama issues a "framework" on trade was "a shot out of the blue," Baucus said, noting that he only heard about it at a hearing (see **WTTL**, May 25, page 3). What is a "framework? I have no idea," he asked. Now he said he has read in the papers that the White House won't send up the Panama deal until after Congress passes health care reform. "That was the first time I heard about that," he said.

"What's going on here? Are those reports true or not true?" he asked. Sapiro said President Obama "wants to outline a new framework for trade that embeds it in his overall economic policy." She promised to consult with the committee, but added no new light on when Obama would issue his framework or when he would ask Congress to vote on the trade pacts.

### \* \* \* Briefs \* \* \*

**TRADE PEOPLE:** Former BIS Under Secretary Mario Mancuso June 1 joined DC law firm of Akin Gump Strauss Hauer & Feld as partner in its international corporate transactions practice.

**STEEL GRATING:** Alabama Metal Industries Corp. and Fisher and Ludlow May 29 filed antidumping and countervailing duty complaints at ITA and ITC against imports of steel grating from China.

**WIRE DECKING:** AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., and Nashville Wire Products Mfg. Co., Inc. June 5 filed antidumping and countervailing duty petitions at ITA and ITC against imports of wire decking from China.

**FCPA:** United Industrial Corporation (UIC), a provider of aerospace and defense systems, reached settlement with SEC May 29, signing cease-and-desist order promising not to violate FCPA in future and paying \$337,679.42 in disgorgement and prejudgment interest. Separately, Thomas Wurzel, former president of ACL Technologies, Inc., which was UIC subsidiary, agreed to pay \$35,000 civil penalty. He neither admitted nor denied SEC charges that he violated FCPA by paying bribes to Egyptian officials through agent. "He knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to Egyptian Air Force officials for the purpose of influencing these officials to award business to UIC related to a military aircraft depot in Cairo, Egypt," SEC said.

**EXPORT ENFORCEMENT:** David Lee, 41, of Park Ridge, Ill., was sentenced June 3 in Chicago U.S. District Court to two years probation, with first six months in home confinement with electronic monitoring and also ordered to pay \$3,000 fine and about \$4,375 in restitution. He pleaded guilty March 25 to exporting seven thermal-imaging cameras to South Korea without licenses from BIS.

**MORE EXPORT ENFORCEMENT:** Philips Electronics North America Corp. agreed to pay \$9,000 civil fine May 26 to settle two BIS charges that it exported medical equipment through Netherlands to Cuba without OFAC license. Philips filed voluntary self-disclosure and neither admitted nor denied charges.

**MORE EXPORT ENFORCEMENT:** After making voluntary self-disclosure, Firth Rixson Monroe of Rochester, N.Y., agreed May 26 to pay \$85,000 civil fine to settle BIS charges that on three occasions it exported titanium billets to China without licenses. It neither admitted nor denied BIS charges.

**WTO:** Dispute Settlement Body selection committee recommended Ricardo Ramírez Hernández of Mexico and Peter Van den Bossche of Belgium to fill two vacant seats on Appellate Body. If confirmed, Ramirez will start four-year term July 1. Bossche would start work Dec. 12. Outgoing members are Luiz Olavo Baptista of Brazil and Giorgio Sacerdoti of Italy. Selection committee also recommended reappointing David Unterhalter of South Africa to another four-year term. DSB will formally decide on June 19.