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## BIS Drafting Revised Intra-Company Transfer Proposal

Bureau of Industry and Security (BIS) staff are preparing a revised version of their proposed Intra-Company Transfer (ICT) license exception to have ready when the new political leadership arrives at the agency. A new draft to send out for interagency review could be ready in a month, one official said. The revised proposal will aim at balancing the concerns the State and Defense departments have about easing rules on the transfer of goods and technologies within companies with industry complaints that the proposed requirements for getting an ICT were too burdensome and that it would be easier just to keep getting individual validated licenses.

Industry comments submitted to BIS on the Oct. 3, 2008, proposal were generally supportive of the ICT concept but complained about the extra paperwork and burdens that came with obtaining BIS approval to use the exception, Hillary Hess, director of the BIS regulatory policy division, told the BIS Export Control Forum in Newport Beach, Calif., March 16. "There is really no point in publishing this license exception if people are not going to use it," she acknowledged.

"What we are looking at in our analysis of the comments is where this make-or-break point is," she said. BIS is trying to "work out a proposal to take to the other agencies to reassure them that there is enough in here to protect the movement of goods and technologies and to make sure there is still secure trade but not too many hoops to jump through so that it will not be worth it to exporters," she said. "We hope to tee this up for our new political appointees when they come in," Hess said (see **WTTL**, Dec. 22, page 4).

## EU Trying to Buy Settlement of Beef Dispute with More Beef

The European Union (EU) is trying to resolve the long-running dispute with the U.S. over its ban on imports of hormone-treated beef and to avoid new sanctions by offering to increase the quota for imports on non-treated beef. Although EU Trade Commissioner Catherine Ashton met with newly confirmed U.S. Trade Representative (USTR) Ronald Kirk March 19, she told reporters after the meeting that she didn't expect to reach a deal in those talks.

"We have not reached a conclusion because there is quite a lot of technical work to be done," she said. "We are looking at two or three outstanding questions where we need to decide how we can take this forward. And I remain hopeful, but this is complicated, and we need a combination of technical people, legal people to look at that," she added. The U.S. March 12 delayed the imposition of new tariffs on EU imports under the so-called "carousel" provisions



of the trade law because of the progress it said it was making to resolve the dispute (see **WTTL**, March 16, page 4). The U.S. set April 23 as new date for imposition of revised tariffs. The USTR's office said it was in talks on an "interim solution" to the beef-hormone dispute, but EU officials say they hope they can reach a deal that would settle the dispute completely. They also say they don't intend to change EU rules or procedures for determining the safety of imported beef. The increase in the quota for non-hormone-treated beef "side steps that problem," said David O'Sullivan, the EU's director general for trade and chief negotiator on the beef case.

## **EU Gets Assurances on Intent of "Buy American" Legislation**

Members of the House and Senate March 18 gave EU Trade Commissioner Catherine Ashton assurances that the new "Buy American" provisions in President Obama's economic recovery legislation (H.R. 1) won't change the access EU industries have to the U.S. government procurement market, Ashton said after the meetings with the lawmakers. Ashton said she wanted to make sure that the application of the World Trade Organization's Government Procurement Agreement would remain unchanged for EU manufacturers (see **WTTL**, March 16, page 2).

From her discussions with the Senate Finance Committee and House Ways and Means Committee, Ashton said she came away with the understanding that the new law "takes us to the same place as the previous position," she told reporters.

"What was interesting for me especially in the last couple of days on the Hill was the reassurance from congressmen and senators that where they believe they now are is to position the relationship of the European Community back to where it was before," Ashton said at second press conference. "We have to look at the details to make sure that actually is what happens but that is good news for us," she said.

## **Industry Wants Broader Changes to Night-Vision Controls**

Firms that make thermal-imaging cameras and night-vision products have told BIS that easing export controls on China alone won't help them much and broader changes are needed to loosen restrictions on exports to Europe, which is a more important market than China. As a result, BIS delayed issuing a final report on the foreign availability assessment it launched in September 2008 of thermal-imaging cameras in China (see **WTTL**, Sept. 8, page 1). An announcement on the findings of the study was further delayed with departure of the Bush administration and the wait for the arrival of Obama administration appointees, BIS sources say.

To overcome their disadvantage in Europe, the thermal-imaging companies are pressing BIS to ease Regional Stability (RS) licensing requirements for their products. BIS has been waging an interagency fight over the RS issue for night-vision products for over three years.

The importance of the European market and the licensing burden caused by RS controls is seen in BIS statistics for fiscal year 2008, which end Sept. 30, 2008. During the year, BIS reviewed 2,147 license applications for thermal-imaging products in Export Control Classification Number (ECCN) 6A003. This was 300 fewer than in 2007. The top destinations for these licensed exports were close allies, including Sweden, the United Kingdom, Germany, Mexico, Italy, Spain, Norway and Japan, as well as Russia. Of these applications, 1,899 were approved; six rejected; and 242 returned without action. Most of these products are commercial products for firefighters, emergency rescue teams, security surveillance and industrial quality control.

A draft of the final foreign availability report has been circulated interagency and is believed to show that there is indigenous production of thermal-imaging cameras in China of comparable quality and sophistication to U.S. products that are subject to controls. It also will report on the availability of focal-plane arrays imported from France. This domestic Chinese production

may limit the market for U.S. products, even if export controls are eased, sources say. Agency sources say a decision on easing controls on China is more political than technical. The Obama administration will have to weigh the political reaction to easing controls on China for such a sensitive product. This is a particularly difficult issue given the publicity surrounding the \$100 million penalty imposed on ITT, in part, for the transfer of thermal-imaging technology to China and complaints BIS received from Rep. Ed Markey (D-Mass.) and conservative think tanks for the granting of Validated End-User (VEU) certifications to five Chinese companies.

## **Mexico Puts Trucking Dispute Back on Obama, Congress**

Some foreign diplomats in Washington are privately applauding Mexico for its decision March 18 to impose an estimated \$2.4 billion in tariffs on U.S. manufactured goods and farm products in retaliation for the failure of the U.S. to open its trucking market to Mexican trucks and provisions in the 2009 appropriations bill cutting off funds for a pilot project to allow Mexican trucks into the U.S. The diplomats see this as needed pushback against congressional moves to enact protectionist measures and a way to avoid allowing negotiations on the issue to drag on as they have for six years. At President Obama's orders, officials from Transportation, State and the USTR's office began meeting the week of March 16 to try to devise a new pilot program to meet both congressional concern and Mexico's.

“As we have previously stated, the president understands the concerns raised by members of Congress,” a USTR spokesperson said in an e-mail. “At the President's direction, DOT, USTR, and State have initiated the interagency review process to design and propose a new program that will meet the legitimate concerns of Congress and our NAFTA commitments,” she added.

Under current rules Mexican trucks can only travel 20 miles across the border to where they have to unload their cargo for loading onto U.S. trucks. U.S. trucks heading south face a similar restriction. Provisions in the North American Free Trade Agreement (NAFTA) were supposed to end those restrictions and allow free cross-border trucking. A campaign led by the Teamsters Union and some consumer groups has blocked implementation of the accord. Mexican truckers who have a monopoly on the trade across the border also opposed the deal.

A NAFTA Binational Panel ruling in February 2001 sided with Mexico and said the U.S. has failed to meet its obligations under the pact (see **WTTL**, Feb. 12, 2001, page 1). Since then, the U.S. and Mexico have tried several plans to demonstrate the safety of Mexican trucks to overcome the objections to opening of the border. The recently enacted appropriations bill stopped Transportation Department funding for the latest demonstration project.

The list of 89 tariff lines that are now subject to an extra 10% or 20% tariff was carefully composed by Mexico to limit the impact on Mexican citizens and maximize the pain on companies in states and districts represented by lawmakers who supported the cutoff of funds for the demonstration project. Among the products the Mexicans targeted are: fresh pears, apricots, cherries, strawberries and grapes; various juices; soups; wine; sunflower seeds; dog food; dental care products; tableware; toilet paper; man-made fabric yarn; carpets; refrigerators; dishwashers; clothes washers and ball point pens.

## **Lawmakers Complain About Treasury's Guidance on Cuba**

Guidance that Treasury issued to implement changes in Cuban trade and travel rules drew strong objections March 16 from 15 senators, who claimed the department has misinterpreted common commercial practices and the intent of the policy changes that were part of the 2009 appropriations bill (see **WTTL**, March 16, page 1). “I'm dismayed that the spirit and intent of the law has been disregarded by Treasury, but I fully expect that Secretary Geithner will revisit this issue to get U.S.-Cuba relations back on track and get our Cuba policy right for America's farmers and ranchers,” said Sen. Max Baucus (D-Mont.) in a statement accompanying the

release of the bipartisan letter to Treasury Secretary Timothy Geithner. The letter noted that the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000 requires payment of cash in advance or payment through a third-country bank letter of credit for the sale of U.S. agriculture goods to Cuba. "After goods shipped from U.S. ports, the Cuban buyers initiated payments, routing them through third-country banks, as required by the law," the letter said. In 2005, however, the Bush administration issued a rule requiring those advance payments to be made before the products were shipped.

In its guidance, Treasury said the amendments in the appropriations bill didn't change the language in TSRA, so it was maintaining the policy instituted by the Bush administration. In a separate letter to the Senate Finance Committee March 5, Geithner also said Treasury would maintain the Bush-era policy.

"This is contrary to the intention of the provisions included in the Omnibus legislation to halt this use," the senators wrote. "We are troubled to see OFAC continue this practice," they added. The letter quoted a written statement Geithner made in his response to questions during his confirmation process. Geithner said he was committed to "taking great care to follow congressional intent and working closely with members of Congress to ensure that OFAC's activities with regard to Cuba are achieving its important objectives without unnecessary hurdles or unreasonable administrative delays." The senators' letter said: "We urge you to stand by that pledge."

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

EXPORT ENFORCEMENT: Laura Wang-Woodford, who served as director of Monarch Aviation Pte, Ltd., in Singapore, pled guilty March 13, in Brooklyn U.S. District Court to conspiracy to violate U.S. trade embargo by exporting controlled aircraft components to Iran (see **WTTL**, Feb. 11, 2008, page 4). She has been in jail since arrest in December 2007. Her husband, Brian D. Woodford, a U.K. citizen, was indicted with her, but remains fugitive, Justice Department reported.

MORE EXPORT ENFORCEMENT: Federal agents March 14 arrested Hossein Ali Khoshnevisrad, 55, at San Francisco Airport on criminal complaint charging him with purchasing helicopter engines and advanced aerial cameras for fighter bombers from U.S. firms and illegally exporting them to Iran using companies in Malaysia, Ireland and the Netherlands. Helicopter engines were bought from Rolls-Royce in Indiana, government alleged. He and his Iranian company, Ariasa, AG, were formally charged in San Francisco U.S. District Court March 16.

MORE EXPORT ENFORCEMENT: Infineon Technologies Industrial Power, Inc., of Lebanon, N.J., March 6 agreed to pay \$70,000 civil fine to settle BIS charges that on three occasions it exported switching devices classified under ECCN 3A228 to Chile without approved export licenses. Infineon neither admitted nor denied BIS allegations.

CENSUS: Dale Kelly has been promoted to assistant chief of foreign trade division. Joe Cortez named chief of regulatory outreach branch.

USTR: Senate confirmed Ronald Kirk to be USTR March 18. He was sworn in informally same day and formally by Vice President Biden March 20.

COMMERCE: Nomination of former Washington Gov. Gary Locke to be secretary of Commerce was approved by Senate Commerce Committee March 19. Committee, which includes several ex-governors who had worked with Locke, gave him warm reception at his March 18 confirmation hearing. Most questions, as usual with Commerce candidates, dealt with Census, digital tv conversion, Weather Service, and fisheries. Senate action expected week of March 23. Locke reportedly held meeting March 20 with White House staff to begin process of selecting candidates to fill various political posts in department.

GAMBLING: EU staff report on investigation to determine whether U.S. violated WTO rules by selectively prosecuting European online gambling executives for violation of U.S. gambling laws is due to be released week of March 23, EU Trade Commissioner Catherine Ashton said March 19. Report is supposed to include recommendation on whether or not EU should file WTO complaint against U.S.

STEEL: Commerce in March 18 Federal Register said it was extending Steel Import Monitoring and Analysis (SIMA) system to March 21, 2013. Steel industry urged extension (see **WTTL**, Jan. 26, page 3).