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VEU Deal with Chinese Could Clear Five More Applications

An agreement signed at midnight on Jan. 12 in Beijing could allow the Bureau of Industry and Security (BIS) to approve five more validated end user (VEU) applications that have been pending for over a year. Of course, the decision on approving the applications will be up to new BIS officials after the Obama administration takes office. The agreement, signed by Assistant Secretary for Export Administration Christopher Wall, will allow BIS representatives to conduct audits of compliance records of VEU holders, as well as interview their employees. The accord differs from the long-standing bilateral agreement with China on post-shipment verifications, which only allows physical reviews to determine that exported items are where they are supposed to be and used as approved.

> In a last ditch ploy, BIS officials had threatened to suspend the VEU program if they could not get the Chinese to agree to allow audits (see **WTTL**, Dec. 22, page 1). The review and interagency approval process for the pending VEU applications has been complete for some time but final approval was held up because of the stalemate in talks with Beijing on the audit issue, BIS sources report. No other VEU applications appear to be on the horizon, sources report, and BIS has mostly disbanded the staff assigned to review new applications.

"We are pleased to have reached this milestone agreement with China, one of our nation's most important trading partners," said BIS Under Secretary Mario Mancuso in a statement. Along with the five previously approved VEUs, the pending five VEUs would account for about 90% of exports subject to BIS licensing to China, one BIS source estimated.

Obama Suggests "Upgrading" NAFTA in Meeting with Calderon

President-elect Obama appears to have backed off from his campaign statements suggesting the North American Free Trade Agreement (NAFTA) should be renegotiated. Instead, in a meeting with Mexican President Calderon Jan. 12, he said the trade pact needs "upgrading" to deal with labor and environmental issues. Obama "expressed his continued commitment to upgrading NAFTA to strengthen labor and environmental provisions to reflect the values that are widely shared in both of our countries, and proposed the creation of a consultative group to work on a host of issues important to the United States and Mexico, including NAFTA, energy and infrastructure," said his press secretary, Robert Gibbs, said in a statement after the meeting. "On trade and the economy, President-elect Obama said that with both countries facing very difficult economic times, it's important to work together to maintain a constructive and com-

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prehensive dialogue," he said. The meeting between Obama and Calderon was the latest in a tradition dating back almost 30 years for the incoming U.S. president to meet with the Mexican president. During the meeting, Obama also "pledged to take more effective action from the United States to stem the flow of arms from the United States to Mexico," Gibbs reported.

Cap-and-Trade Proposals Could Lead to Trade Disputes

Unless an international agreement is reached on common rules for using cap-and-trade vouchers to cut carbon emissions, unilateral efforts could lead to complaints that the distribution of the vouchers constitutes an unfair trade subsidy. An international meeting next December in Copenhagen on cap-and-trade may provide the chance for countries to adopt rules that will prevent such trade distortions, according to speakers at a Jan. 14 program in Washington.

> House proposals and positions expressed by the Bush administration have raised concern that the U.S. would move unilaterally to implement a cap-and-trade scheme. "The House is more impatient, particularly [Reps.] Henry Waxman and Ed Markey, who has a bill that includes boarder measures," Louis Leibowitz, a partner at the law firm of Hogan & Hartson, told a program sponsored by the Global Business Dialogue. "Unilateral action in early 2010 is possible," he said.

U.S. exporters who have benefited from cap-and-trade programs could face complaints in other countries for violating World Trade Organization anti-subsidy rules. "There are no boarder measures that protect exporters who would be put at a disadvantage," said Kevin Dempsey, a partner at the law firm of Dewey & LeBoeuf. "We do not want inconsistencies and disputes with climate change schemes that do not match up," he said. "Unilateral moves should be replaced by international agreements when possible. We are going to lose in the WTO. We do not want the WTO dispute resolution mechanisms to run U.S. policy," Dempsey added.

"Any action that affects our trading partners will elicit a response," warned Jake Colvin of the National Foreign Trade Council. "Others will retaliate: Brazil, China, and India," he said. "International negotiation will upset the U.S., since China and India are treated differently. Failure in Copenhagen could force Congress into action. Yet only a successful multinational system will be able to have an effect on climate change," Colvin predicted.

BIS Expands Export Licensing Requirements for Iran

As part of the continuing U.S. effort to tighten trade and finance sanctions on Iran, BIS revised the Export Administration Regulations (EAR) in the Jan. 15 Federal Register to impose new licensing requirements under 10 Export Control Classification Numbers (ECCNs) and products not listed on the Commerce Control List (CCL). The new rules also attempt to bring the EAR into closer alignment with the Iran Transactions Regulations (ITR) and other rules imposed by Treasury's Office of Foreign Assets Control (OFAC) (see **WTTL,** Dec. 15, page 4).

> The new rules impose license requirements on items classified under ECCNs 2A994, 3A992.a, 5A991.g, 5A992, 6A991, 6A998, 7A994, 8A992.d, .e, .f, and .g, 9A990.a and .b, and 9A991.d and .e.when exported or reexported to Iran. In addition, these items will now be considered "controlled U.S. content"' when incorporated into foreign made items being exported from abroad to Iran for determining whether a foreign-made item is subject to the EAR.

This rule also adds ECCNs 1C350, 1C355 and 1C395 to the license requirements paragraph in EAR Section 742.8 to make that section consistent with BIS' policy of stating all anti-terrorism license requirements that apply to Iran in that section. The agency also has added ECCNs 0A982, 0A985, 0E982, 1C355, 1C395, 2A994, 2D994, 2E994 to the license requirements paragraph in Section 746.7. "These eight ECCNs contain license requirements that are not based on the Commerce Country Chart, but that apply to Iran either by name or as part of

Country Group E:1," BIS explained In addition, the changes add a new Section 744.8 to impose a license requirement on parties that OFAC has listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD].

USTR Restarts Fight with EU and Leaves It to Obama to Finish

In the waning hours of the Bush administration, the U.S. Trade Representative's office has reopened a fight with the European Union (EU) in the dispute over the EU ban on imports of U.S. beef treated with certain hormones, but finishing the fight will be left to the incoming Obama administration. The USTR's office Jan. 15 announced that it was ending the suspension of so-called "carousel" legislation that requires the U.S. to rotate the list of EU imports that are the target of 100% retaliatory tariffs because of the EU's failure to comply with a WTO ruling against its ban on U.S. beef. The action drew an immediate protest from the EU and a threat of a new complaint to the World Trade Organization.

> Court of International Trade (CIT) Judge R.Kenton Musgrave had ordered the USTR to complete a review the suspension policy by Jan. 14 (see **WTTL**, May 16, 2008, page 4). The EU claims it has come into compliance with a past WTO ruling against the ban, but the U.S. says those changes are not adequate. A new WTO Appellate Body ruling in October had recommended that the two sides bring the case back to the WTO for a ruling on the revised EU policy.

The revised list of EU products subject to retaliation was posted on the USTR website and will be published in the Federal Register. "The existing duties have been in place for over 9 years; the goal of these modifications is to reach a resolution of the dispute under which the EU would allow market access for U.S. beef and the United States could end its trade action," said USTR Susan Schwab in a statement. "For over a decade, we have been trying to resolve this dispute with the EU, but our efforts have gone nowhere," she stated. "In these circumstances, I have decided it is time to modify the duties to try to encourage a resolution of this long-standing dispute so as finally to provide a fair outcome to the U.S. beef industry, while addressing the economic impact of such long-standing duties on U.S. interests," she said.

"It is clear that this move by the U.S. administration means that we will have no choice but to start preparations in order to take this to the WTO," an EU statement warned. "A great deal of effort had been put into finding a mutually agreed settlement to this ongoing dispute. This task has now become much more difficult. As the WTO has not yet taken a view on our current hormone regime dating from 2003, the US sanctions are illegal," it asserted.

Status of TAA in Economic Stimulus Package Unclear

The House economic stimulus package outlined Jan. 15 claimed it would extend and expand the Trade Adjustment Assistance (TAA) for workers who have lost their jobs due to trade, but one version of the bill (H.R. 598) introduced Jan. 16 doesn't include the provisions. The bill, however, would bar use of foreign steel in school construction projects funded by the measure.

> "A local educational agency shall not obligate or expend funds received under this section for a project for the modernization, renovation, or repair of a public school facility unless all of the iron and steel used in such project is produced in the United States," the bill states. It provides three exceptions to allow foreign steel to be used when the provision would be "inconsistent with the public interest"; there is insufficient supply in the U.S., or "inclusion of iron and steel produced in the United States will increase the cost of the overall project contract by more than 25 percent." Ways and Means has set hearing on bill for Jan. 22.

Senate Republicans blocked a move to pass TAA last year, demanding that any legislation to expand the program to be linked to approval of the U.S.-Colombia FTA. GOPers now seem resigned to the fact that they won't be able to stop a TAA provision tied to the stimulus package. "We'd like to see it move separately, if not in the context of one of the trade bills that we vote on," Sen. John Thune (R-S.D.) told WTTL. "They may not need our vote on a lot of these things; we don't have a lot of leverage on some of these things," he said.

* * * Briefs * * *

TRADE FIGURES: Gloomy economic picture has hit trade hard, November trade figures released Jan. 13 show. U.S. goods exports in November were down 3.7% from last November and down 7.2% from October. Goods imports slipped 13.3% from year ago and 13.9% from October. Services trade held up better with services exports up 3% from last November and services imports growing 3.6% from year ago.

IEEPA: Lloyds TSB Bank plc of London entered deferred prosecution agreement with Justice Department Jan. 9 and agreed to forfeit $350 million for violating U.S. sanctions against Iran and Sudan. Criminal information filed in Manhattan U.S. District Court charged bank with one count of violating IEEPA through falsifying wire transfers involving sanctioned parties over 12-year period.

PERU: President Bush Jan. 16 issued proclamation bringing U.S.-Peru FTA into effect as of Feb. 1, 2009. "We have worked closely with the Government of Peru to ensure that the obligations and responsibilities of each party have been met under this Agreement," said USTR Susan Schwab in statement. Ways and Means Committee Chairman Charles Rangel (D-N.Y.) and trade subcommittee chairman Sander Levin (D-Mich.) issued statement protesting certification and saying, "Unfortunately, the Peruvian Congress has...passed legislation including provisions inconsistent with their commitments."

TAIWAN: OFAC Jan. 16 designated two Taiwanese nationals and two Taiwanese companies as proliferators of WMD for providing financial services and support to North Korean mining firm previously designated as proliferator. Targeted were Alex Tsai and his wife, Lu-Chi Su, plus his company, Global Interface Company, Inc., and its subsidiary, Trans Merits Co. Ltd.

SIEMENS: In follow up to FCPA prosecution of Siemens, Justice Jan. 8 filed complaint in D.C. U.S. District Court against Arafat (Koko) Rahman, son of former prime minister of Bangladesh, seeking forfeiture of bank accounts with nearly $3 million in bribes he received from Siemens and China Harbor Engineering Company. Funds are located in Singapore (see **WTTL**, Dec. 12, page 4).

TRADE PEOPLE: National Foreign Trade Council Jan. 16 named Richard Sawaya to be director of USA*Engage. He succeeds Susan Frank who has joined Lockheed Martin's PAE subsidiary. Sawaya has worked for Atlantic Richfield, George Washington University and Chevron.

SPECIAL 301 OUT-OF-CYCLE REVIEW: USTR's office Jan. 16 said it was taking Taiwan off Special 301 Watch List because of progress it has made in strengthening intellectual property protections.

INDIA: Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Charles Grassley (R-Iowa) asked ITC Jan. 13 to undertake fact-finding study to evaluate India's tariff and non-tariff barriers to imports of U.S. farm products.

WTO: U.S. Jan. 14 submitted proposal to WTO to give permanent employment to members of WTO Appellate Body. Originally considered part-time work, caseload has made assignment full time in practice. "Especially in light of the demands that are placed on the seven Appellate Body members to resolve disputes of crucial economic and systemic concern, we need to be sure that the Appellate Body is structured in a way that attracts the most highly qualified candidates and gives them the appropriate resources to serve the WTO membership," said USTR Susan Schwab in statement. Proposal also calls for providing each judge with law clerk and creating more formal support system to back up judges' work.

EU POULTRY: In another parting shot before leaving office, USTR Susan Schwab Jan. 16 said U.S. would ask for WTO dispute-settlement consultations with EU to complain about EU sanitary and phytosanitary rules that bar imports of U.S. poultry and poultry products that have been treated with pathogen reduction treatment processed not recognized in EU. "We have tried to address this issue through dialogue with the EU for more than eleven years, and neither the European Commission nor EU Member States have offered any legitimate, science-based reason for continuing to block our poultry," Schwab said in statement

TRADE LEGISLATION: Ways and Means Committee Chairman Charles Rangel (D-N.Y.) reintroduced legislation (H.R. 496) Jan. 15 to increase enforcement of U.S. trade laws, strengthen trade remedy law and create office of congressional trade enforcement to review foreign barriers to U.S. exports and call on USTR to initiated trade complaints at WTO.