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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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New BIS Advice on Aircraft Parts Still Draws Complaints

Revised guidance the Bureau of Industry and Security (BIS) published in the Federal Register Dec. 3 on licensing jurisdiction for civil aviation parts and components still doesn't satisfy all the questions industry has about when such items are subject to the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR). The revised language in Interpretation 9 of the EAR is intended to provide a mirror image of the changes the State Department made to the ITAR in August on the interpretation of Section 17(c) of the Export Administration Act, which supposedly gave BIS authority to regulate products that have been certified by the Federal Aviation Administration (FAA) (see **WTTL**, Sept. 15, page 3).

> The new Interpretation 9 is intended to reduce uncertainty in the aviation industry about licensing jurisdiction and the distinction between EAR and ITAR requirements. Along with the ITAR changes, they also aim to reduce the number of Commodity Jurisdiction (CJ) applications submitted by industry to clarify licensing questions. So far, some industry sources have said the ITAR changes have helped clarify these questions significantly.

There is still debate over whether BIS and State agree on the interpretation of 17(c). "The ITAR note deviates from 17(c) in eleven factors, but yesterday Commerce decided to go along with it anyways despite the eleven diversions," export consultant William Root told the Dec. 4 meeting of the BIS Transportation and Related Services Technical Advisory Committee (Transtac). BIS licensing officer Gene Christiansen said "State's 17(c) [ruling] is not ideal. Why we let State interpret our statute, I cannot publicly comment on." BIS is still working on trying to define the meaning of "specially designed", Transtac was told.

Meanwhile, concerns remain on how to apply the BIS and State rules to Full Authority Digital Engine Controls (FADEC) and engine hot sections, according to statements by industry representatives at the Transtac meeting. "We need to know what is the required technology, so we would know which portions are controlled as parts get spread out through the aircraft; unlike in the past when FADEC could be controlled in one box," said Transtac Chairman Kimberly DePew of General Electric Aviation.

Trade Ministers Expected Back In Geneva for Final Push

World Trade Organization (WTO) Director General Pascal Lamy is expected on Dec. 8 to announce formally that he is calling trade ministers back to Geneva for talks the weekend of

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Dec. 13-14 to try and reach an agreement on Doha Round modalities in agriculture and non-agriculture market access (NAMA). The chairmen of the farm and NAMA talks were preparing at press time to release new draft texts on Saturday Dec. 6, laying the ground work for the ministers' last ditch effort, which could start as ministers begin to arrive on Dec. 12. Although scheduled for the weekend, talks are likely to stretch into the week of Dec. 15, if past experience is a guide. Before the meeting, negotiators are continuing to grapple with outstanding issues in both sets of talks. Concerns over getting to lower tariffs in various industrial sectors beyond those in the NAMA formula remain a crucial outstanding issue, officials said.

> Among the remaining challenges in the NAMA talks are the sectoral initiative, preference erosion, excluded liberalization of tariff lines in some big markets, and country-specific flexibilities, according to the chairman of the talks, Luzius Wasescha, Switzerland's WTO ambassador. Highly political decisions on tariff elimination for certain sectors will go to ministers, he told negotiators Dec. 2.

Preference erosion and country-specific flexibilities may be worked out before the ministerial, said a developing country ambassador to the WTO. Another official said negotiators still have significant differences over how to help developing countries whose exports will lose many of their tariff preferences in the U.S. and Europe. Meanwhile, the U.S., European Union (EU) and Japan say they oppose special treatment from countries such as Venezuela and Argentina. The U.S., Japan and Canada also want more certainty over sectoral participation, while China, India and Brazil have said advanced commitment would be difficult or impossible, a trade official said. As a result, the ministerial may produce only a soft statement on modalities. The goal is finding language to comfort the range of positions, one trade official said. Detailed negotiations on participation and product coverage would come after agreement on modalities, he said.

Another unresolved issue is how to treat Mercosur, the South American trade group, in both the NAMA modalities and in the sectoral talks. "If the commitment is that we have to negotiate on the basis of the modalities that have been proposed" as a take-it-or-leave-it deal, then that's difficult, one South American trade diplomat told WTTL. Mercosur's common external tariff makes sectoral negotiations more complex for countries in the region, he explained. Mercosur countries, Argentina, Brazil, Paraguay and Uruguay, will tackle sectorals as a group, he added.

U.S. Agriculture Negotiator Sees Progress on Safeguards

One of the main roadblocks to a Doha Round agriculture deal, the Special Safeguard Mechanism (SSM) to thwart farm import surges, may be on the way to resolution, according to Agriculture Department Chief Economist Joseph Glauber, who has led U.S. negotiations on agriculture. "We are beginning to see fruits for SSM," he told the Washington International Trade Association Dec. 3. "Most countries agree SSM should not impede normal trade. It is very important to have price cross check as part of a safeguard, not just focus on flooding," he said "We don't want one year of bad regulation to effect trade in future years. Countries are willing to consider ways to use SSM without affecting the rates for three years," Glauber said.

> Glauber, who said he has spent 200 days in Geneva this year, said there has been "lots of progress on engagement but still lots needs to be done." He said there is no clear agreement on big ticket items such as sensitive products for developed countries or how many tariff lines of can be subject to new tariff-rated quotas (TRQ). "If you think back to where we were, I think there has been a lot of progress," he said, citing export subsidy cuts, limits on export credits and food aid.

Don't Rush Doha Deal, Lawmakers Tell Bush

Almost like clockwork before any set of major trade talks, members of Congress can be expected to issue a statement or letter warning U.S. trade negotiators not to accept a bad deal. The goal of these messages is to give U.S. trade officials some leverage in the talks by giving them the chance to warn other countries that they can't make some concessions because the agreement would be rejected by Congress. This year's bipartisan bargaining aid came in a Dec. 2 to President Bush from the chairmen and ranking members of the House Ways and Means Committee and Senate Finance Committee. "We strongly urge you not to allow the calendar to drive the negotiations through efforts to hastily schedule a ministerial meeting, without adequate groundwork having been laid," wrote Ways and Means Chairman Charles Rangel (D-N.Y.), Ranking Member Jim McCrery (R-La.), Finance Chairman Max Baucus (D-Mont.) and Ranking Member Charles Grassley (R-Iowa).

> "Developed and advanced developing countries must commit to provide meaningful new market access opportunities if Congress is to support a deal," they told Bush. "If key trading partners are unwilling to do so at this time, then negotiations on a modalities package cannot conclude. Achieving the necessary flexibility from our trading partners could require new thinking, including revisiting the modalities approach, and our negotiators should be given time to explore such options," they wrote. "Otherwise, the likely result will be a deal that Congress cannot support—an outcome that would be detrimental to U.S. farmers, workers and firms, the global economy, and the WTO itself," they warned.

Business Groups to Renew Push for New Cuba Policy

Business organizations plan to renew their efforts to get the U.S. to ease the trade embargo on Cuba next year, focusing initially on getting incoming President Obama to lift restrictions the Bush administration imposed by executive order. Industry representatives say they believe there is a chance to get Obama to shift U.S. policy toward Cuba based on statements he made during the presidential campaign and because some of his close advisors have supported a new approach to the communist island. They say they are also encouraged by political changes in Florida, which has been seen as the driving force behind tougher sanctions on Cuba for many years. They say they recognize that it will be more difficult to get changes in legislation, such as the Helms-Burton Act, which impose statutory restrictions on Cuba.

> "For the first time, Florida politics allow—and even encourage—the incoming administration to rethink the embargo," wrote Jake Colvin, vice president of global affairs for the National Foreign Trade Council (NFTC) in a new paper published by the New Ideas Fund Dec. 1.

Colvin said Obama should: (1) Remove restrictions on the ability of Cuban Americans to travel and send financial support to family in Cuba; (2) Rescind the Bush administration's counter-productive limits on people-to-people travel and trade; (3) Rely on general licenses for travel to Cuba and instruct Treasury to redeploy resources internally to focus on the urgent priorities of tracking terrorist financing and enforcing other sanctions programs; and (4) Abolish the Office of Transition Coordinator and the Commission for Assistance to a Free Cuba, which obstruct direct diplomacy with Cuba and disrupt relations with U.S. allies.

Separately, 12 trade associations, including the NFTC and the U.S. Chamber of Commerce, sent a letter Dec. 4 to Obama urging him to keep his promise to change U.S. policy toward Cuba. "Moreover, as countries like Venezuela and China invest increasing amounts of money in the Cuban economy, it is clear that the embargo is not having – and will not have – the type of economic impact that might influence the behavior of the Cuban government," they asserted.

U.S., China Pledge More Funds for Export Financing

The tables were turned on U.S. officials attending the Fifth Strategic Economic Dialogue (SED) with their Chinese counterparts in Beijing Dec. 3-4. Rather than lecturing the Chinese on trade and economic reform, U.S. Cabinet officials, led by Treasury Secretary Henry Paulson, were treated to what amounted to credit-card counseling from the Chinese, who urged the U.S. to fix its economic problems. Rather than jawboning the Chinese to let their currency, the renmimbi, appreciate, the Americans urged them not to depreciate the currency to keep exports up.

> One positive results from the talks was an agreement to increase the availability of funds to help U.S. and Chinese exporters finance exports to developing countries. Paulson said the U.S. Export-Import Bank will provide $4 billion in new short-term trade finance facilities and $8 billion in new medium- and long-term trade finance facilities for exports of U.S. goods and services to emerging markets. China, through the Export-Import Bank of China, will provide $8 billion in short-, medium-, and long-term trade finance facilities for exports of Chinese goods and services to emerging markets. The U.S. funds apparently will not be new money but will come from existing Ex-Im authorizations.

At the meeting, China also said it will allow foreign incorporated banks in China to trade bonds in the inter-bank market, both for their customers or their own accounts, on the same basis as Chinese-invested banks. It also said that in exceptional circumstances, it will allow qualified foreign banks to increase their liquidity either through guarantees or foreign currency loans from overseas affiliates on a temporary basis, notwithstanding short-term external debt quotas.

Paulson launched the SED as a way to forestall congressional action to mandate punitive action against China for its currency manipulation. With the U.S. now so dependent on China to fund the mounting cost of various rescue and stimulus packages, there appears to be less taste for such measures. Meanwhile, the future of the SED is uncertain when Paulson leaves office with the departing Bush administration. If the SED is not retained in name, the high, bilateral function it served is likely to be continued in some form by the Obama administration.

* * * Briefs * * *

USTR: No one seems to be denying report, first published by Congressional Quarterly, that Rep. Xavier Beccera (D-Calif.) is likely to be President-elect Obama's choice for USTR.

REBARS: On 4-2 vote, ITC Dec. 2 made "sunset" review determination that U.S. industry is not likely to be injured by revocation of antidumping order on steel concrete reinforcing bars from Turkey.

EXPORT ENFORCEMENT: Federal grand jury in Philadelphia issued indictment Nov. 17, charging Mohammad Reza Vaghari of Broomall, Pa., and Mir Hossein Ghaemi of Edgewood, Md., with conspiracy and violations of IEEPA. Six-count indictment claims they bought various types of machinery and lab equipment from at least nine U.S. companies and arranged to have items shipped to Iran through UAE.

MORE EXPORT ENFORCEMENT: After hearing and recommendations by ALJ, BIS Nov. 11 imposed civil penalties of $11,000 each on Key West, Florida, residents Michele Geslin and Peter Goldsmith for aiding and abetting in export of sailboats to Cuba for sailing regatta they organized in Cuba without approved license from BIS. Agency also imposed three-year denial order on them but said it would suspend order and then waive it after three years if they paid their fine and did not violate EAR during that period.

LABELING: Both Mexico and Canada have initiated WTO dispute-settlement consultations with U.S. over complaints about U.S. labeling rules. Canada Dec. 1 asked for consultations on U.S. Country-of-Origin Labeling (COOL) rules. "While Canada is firmly committed to a cooperative trading relationship, we believe that the country-of-origin legislation is creating undue trade restrictions to the detriment of Canadian exporters," said Canadian Trade Minister Stockwell Day. Mexico on Oct. 24 asked for talks on U.S. limitations on use of dolphin-safe label for tuna and tuna products.

SOFTWOOD LUMBER: Coalition for Fair Lumber Imports Nov. 26 wrote to ITA with details on 30 programs offered by Canadian provinces that group contends provide subsidies to Canadian softwood lumber. ITA asked for information to prepare report to Congress that is required by 2008 Farm Bill provisions.

SAFE HARBOR: ITA in Dec. 5 Federal Register proposed increase in fees U.S. firms pay to be certified that they comply with U.S.-EU Safe Harbor Framework agreement on data protection of personal information of Europeans. ITA proposes two-tiered fee structure, with new clients paying $200 registration fee and existing clients who renew certification paying $100. Since Safe Harbor program began, number of requested certifications has grown from six companies to nearly 1,700, ITA reported.