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BIS Proposes Intra-Company Transfer License Exception

The ten-year, on-again, off-again effort to introduce an intra-company transfer (ICT) license exception for multinational companies finally reached fruition Oct. 3 with a Bureau of Industry and Security's (BIS) proposal in the Federal Register. "This license exception would allow an approved parent company and its approved wholly-owned or controlled in fact entities to export, reexport, or transfer (in-country) many items on the Commerce Control List (CCL) among themselves for internal company use," BIS said.

Although the ICT idea has been pushed by the exporting community for a decade, BIS gave credit for the proposal to President Bush's January 2008 National Security Presidential Directive, which adopted the proposal. BIS had been close to proposing the rule earlier this year but kept running into opposition and objections from State and Defense (see **WTTL**, March 17, page 2).

"This license exception will authorize companies with demonstrably effective internal compliance systems to ship within their corporate families a wide range of products and technology for their internal use," Christopher Wall, BIS assistant secretary for export administration, told the BIS Update 2008 on Sept. 30. "For companies with global R&D and manufacturing operations, this authorization should greatly simplify dealing with licensing issues, including deemed exports, that arise," he said.

The proposed ICT will be available for use by approved eligible applicants, eligible users and eligible recipients. Such parties will be required to establish and maintain an ICT control plan. "The eligible applicant must be incorporated in or have its principal place of business in any country listed in Supplement No. 4 to part 740," BIS states. Eligible users may be eligible applicants and their wholly-owned or "controlled in fact" entities that are included in the applications submitted by eligible applicants. Eligible recipients must meet the same criteria.

Non-U.S. national employees wherever located of eligible entities may be eligible recipients of technology and source code under an ICT if they sign non-disclosure agreements with their employers. They also must be screened against U.S. government denied party lists.

Textile Industry's Call for Monitoring China Lacks Political Clout

The textile industry's usual election year strategy of getting political commitments for new protection against imports may not play as well this year as in the past because of the changing



political and economic landscape. A new appeal from textile industry groups and unions and their congressional supporters announced Sept. 29 for the establishment of a new monitoring program on apparel imports from China is seen as not having the same success as their request for such a program for imports from Vietnam. Neither presidential candidate, Barack Obama or John McCain, have shown interest in making new promises to the textile industry for protection, sources report.

In a Sept. 26 letter to President Bush, 73 House members urged him to extend the Textile Monitoring Program now in place for Vietnam to China. They noted that the current U.S.-China Textile Bilateral Agreement, which imposes quotas on several types of apparel, expires Jan. 1. Ten national and state textile groups and UNITE HERE, the textile workers' union, sent a similar request to U.S. Trade Representative (USTR) Susan Schwab and Commerce Secretary Carlos Gutierrez.

With the presidential election tight in such traditional textile states as North Carolina and Virginia, an appeal for protection to the candidates normally would be a good strategy. Moreover, Sen. Elizabeth Dole (R-N.C.) appears to be in a more difficult race for reelection than expected. Sen. John McCain's (R-Ariz.) strong free-trade record and stand make it unlikely that he would shift to a protectionist message at this point in the campaign. This has given Sen. Barack Obama (D-Ill.) the freedom to avoid having to make new commitments to special interest groups. The congressional letter to President Bush also may lack political clout since 48 of 73 lawmakers who signed the letter were Democrats. Since Bush is not seeking reelection and has no trade bill pending an immediate vote that needs a few extra backers, his incentive to act seems low.

The last report on the existing monitoring program on apparel imports from Vietnam is due in the next few weeks and apparel industry sources say they don't expect the data to show any decline in prices that might trigger the self-initiation of an antidumping case by Commerce. Apparel makers are keeping unit prices on apparel imports from Vietnam stable by shifting higher value production there and moving lower value production to countries such as Cambodia, Bangladesh and Indonesia, one source reported.

Groups Claim Trade Is Part of Economic Problem

If the U.S. economy continues to decline, trade is likely to become a bigger political issue in the presidential election campaign and in Congress next year. At least that is the hope of trade groups, unions and companies that formed the Coalition to Fix America. At an Oct. 2, rally on Capitol Hill, coalition members called on both political parties to support a host of trade-related policies aimed at cutting the trade deficit and "requiring full reciprocity, fairness, and transparency in all U.S. trade agreements, including in such areas as labor and environmental standards." The coalition urged action to counter currency misalignment, theft of U.S. intellectual property, unfair foreign subsidies and dumping, border tax disadvantages and dependence on foreign energy.

The coalition comprises 73 companies and 35 trade groups, including the AFL-CIO. Industries represented in the coalition include steel, textiles, brass and farm groups representing corn growers and cattlemen. Charles Blum, head of International Advisory Services, called the coalition a "grassroot effort for change, using our consensus platform to raise our concerns with any candidate." He said the group is nonpartisan. "We will not endorse any candidate. We are not united on a remedy. But Congress and the president must do something," Blum said.

After the rally, Bob Baugh, executive director of the AFL-CIO Industrial Union Council, told WTTL that to keep companies in the U.S., "we need to enforce our own laws, trade laws, worker rights, and currency manipulation." He criticized current accounting rules and tax laws which encourage outsourcing. "These rules were written by the very people who are in charge of the mess we are in today, Wall Street, large transnational corporations," he asserted. George

Shuster, chief executive officer of Cranston Print Works in Cranston, R.I., focused on the need to revise the way the U.S. treats taxes on exported goods. “The border tax is a major inducement for offshoring,” he told the rally. Former Commerce Assistant Secretary Patrick Mulloy said the U.S. trade deficit is giving foreign investors the money to buy Treasury bills, corporate bonds, and now physical assets. “It’s like share cropping,” he said. “The other guys owns it, we operate it,” Mulloy stated.

Opposition Slows Costa Rica’s Entry into CAFTA-DR

Costa Rica missed its Oct. 1 deadline to enact implementing legislation to join the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) because of continuing opposition stalling tactics that have blocked the final needed bill. As a result, the U.S. and other CAFTA countries have given Costa Rica until Jan. 1, 2009, to complete the implementation process. “We don’t want Costa Rica to be left behind,” said U.S. Trade Representative (USTR) Susan Schwab.

Although a national referendum a year ago approved Costa Rica’s membership in CAFTA-DR, the government lacks a majority in the Legislative Assembly and has relied on a coalition to pass 12 of 13 required implementing bills (see **WTTL**, Oct. 15, 2007, page 1). At each stage in the legislative process, opposition members have challenged most of the bills in the Constitutional Court.

The thirteenth was blocked when the opposition won a ruling from the court that provisions related to biodiversity in the copyright protection bill violated the constitution because required consultations had not been held with indigenous peoples affected by the change in the law. The government plans to introduce a revised bill that strips the biodiversity provisions from the legislation. Officials say they hope to have the new bill voted on during the week of Oct. 6. The opposition may mount a new challenge to the Constitutional Court, however. The first challenge was directed at procedural requirements under the measure. Another challenge could question the substance of the bill. If the Assembly acts on the new bill and new appeal is filed, a court ruling could come by the end of November. Under a best case scenario, the last of the implementing bills could be enacted before the end of the year, Costa Rican sources say.

BIS Drops Reporting Requirements for DeMinimis Reexports

Foreign firms that use U.S. software, technology or hardware in their products will face fewer regulatory hurdles when they incorporate American components under a new interim final regulation the Bureau of Industry and Security (BIS) issued Oct. 1 to amend reexport requirements for the use of “*de minimis*” amounts of U.S. parts in foreign items (see **WTTL**, Sept. 15, page 2). The rule, published in the Federal Register, removes the requirement to submit a one-time report to BIS for foreign-made software that incorporates U.S.-origin software.

The requirement remains for incorporated U.S. technology. It also provides new advice on determining the value of U.S. components in foreign products and whether those foreign products are subject to the Export Administration Regulations (EAR).

Rather than needing to calculate the value of U.S. software, technology and hardware separately to determine whether the value of each exceeds the 10% *de minimis* threshold that would make a foreign item subject to the EAR, the new rules allow reexporters to combine the value of those three elements. “In the global market, products are often manufactured with embedded software. It is impossible to disentangle the value of each and unrealistic to control the two separately,” BIS Assistant Secretary for Export Administration Christopher Wall told the agency’s Update 2008 conference Sept. 30. The *de minimis* rules in the EAR have not been significantly revised since 1996. “The interested public has consistently expressed concerns about *de minimis* calculations and reporting requirements,” BIS noted. “Both U.S. exporters

and the foreign manufacturers who are their customers have said that determining the applicability of the *de minimis* rules is complicated and cumbersome,” it added. “BIS recognizes that the export control objectives of the *de minimis* rules will be best served if those rules are clarified to facilitate compliance with them,” BIS stated.

Doha Round Farm Talks Try to Move Beyond SSM Dispute

Doha Round agriculture negotiations are looking more and more like a rocking horse that rocks back and forth but goes nowhere. In the latest movement, the talks have shifted back to a larger group of members and away from the close-knit Group of Seven (G-7) countries that have failed to make progress during their resumed meetings (see **WTTL**, Sept. 29, page 4). Negotiators have also decided to expand the list of issues to be discussed to deflect attention away from the deadlock over the Special Safeguard Mechanism (SSM). “I think it's quite clear that we have no alternative then to continue the multilateral process,” agriculture committee chairman Crawford Falconer told an Oct. 1 informal meeting of representatives to the World Trade Organization (WTO).

Negotiators attending the meeting said the move back to the multilateral process was “reasonable” and “welcomed”, one ambassador told **WTTL** afterward. The mood was “okay,” he added. But he also reported skepticism about the possibility of delivering modalities in agriculture in December. The general objective remains agreement on modalities after the Indian and U.S. elections and before the new U.S. president comes into office, he said.

Informal bilateral and plurilateral consultations are needed to spur engagement, Falconer told the meeting. He said he will meet individually or in small groups during “walks in the woods” during the next week or two. A representative group of about 36 delegations are likely to meet afterward, he said. A special informal session of the committee may meet around Oct. 22. A revised draft negotiating text is the eventual aim, Falconer said.

Of the expand subjects being addressed in the talks, three were the target of discussions the week of Sept. 29: (1) tariff-quotas, (2) tariff simplification and (3) Green Box rules on purchases from poor farmers for stockholding. No agreements were reached on any of these topics. The debate over tariff quotas and the creation or expansion of quotas for farm products focused on products that are declared “sensitive”. In exchange for declaring a product sensitive and not subject to full tariff-cutting formulas, countries are supposed to enlarge their quotas. Some countries expressed concern that if members are not allowed to create new quotas, then only products currently with quotas could be considered sensitive.

The tariff simplification debate was over whether all tariffs have to be converted to “ad valorem” rates or percentages of the value rates, or whether some could be in specific values, such as, dollars per liter. The Green Box discussion was over “Footnote 5,” a provision allowing purchases from farmers. Certain delegations want these provisions clarified.

Minor Changes to Encryption Rules Leave Much Undone

BIS in the Oct. 3 Federal Register took a small bite at the complaints industry has raised about cumbersome reporting and review requirements for encryption products, issuing an interim final rule reducing some advance filing requirements for these exports and removing certain restrictions on technical assistance. The revisions to the Export Administration Regulations (EAR) are “underwhelming,” one trade lawyer told **WTTL**. “A lot of things have been left on the table,” he added; saying, the BIS requirements for encryption products “still drive everybody crazy.” The new regulation also eliminates License Exception KMI as “it has become obsolete because of developments in uses of encryption,” BIS explained. The new rule removes notification requirements for items classified under Export Control Classification Numbers (ECCNs) 5A992, 5D992, and 5E992. It also increases certain parameters under License

Exception ENC “to reflect advances in technology,” BIS said. In addition, review and reporting requirement exclusion paragraphs are added under License Exception ENC for wireless “personal area network” items and for “ancillary cryptography” items. The new regulations will permit self-classification for low-level encryption items without review and add several countries to the ENC-eligible list (see **WTTL**, Sept. 15, page 3).

BIS officials concede the new regulation doesn’t address the broader concerns exporters have identified with the encryption regulation. Assistant Secretary for Export Administration Christopher Wall told the agency’s Update 2008 conference that reform of encryption controls is a BIS priority, but it has been difficult both because of the rapidly expanding use of encryption and its highly sensitive nature. The changes “are not fundamental reforms, but they are a start,” he said.

“Still to be addressed are issues related to open cryptographic interface requirements, reporting of exports under License Exception ENC, national security controls on TSU- eligible encryption source code, and controls on chips and other encryption components and technology for mass market products,” he noted. “A more comprehensive approach to encryption simplification will take time, but we are already beginning that process,” Wall said.

Mandelson Joins Exodus of Negotiators from Doha Talks

The theme of change is becoming an element in the World Trade Organization (WTO) Doha Round negotiations. European Union (EU) Trade Commissioner Peter Mandelson announced Oct. 3 his resignation to take a position in the government of British Prime Minister Gordon Brown. Mandelson’s departure follows the return to Ottawa of Don Stephenson, the Canadian ambassador to the WTO and the chairman of the Doha talks on non-agriculture market access (NAMA). New Zealand Ambassador to the WTO and agriculture group chairman Crawford Falconer is expected to return home in December. Mandelson was expected to leave his post sometime in 2009. USTR Susan Schwab will also be departing when a new administration takes over in January.

The departure of several key players in the talks will create both problems and opportunities. The problem may be in the loss of time while new negotiators join the talks and get up to speed on the issues. The opportunity lies in the ability of new participants to break with previous positions in good faith and also to offer fresh ideas on ending the impasse in the Doha Round.

EU Commission President José Manuel Barroso named Britain’s Baroness Ashton of Upholland to succeed Mandelson. Baroness Catherine Margaret Ashton is an economist by training who is a Labour member and the leader of the House of Lords and Lord President of the Council. She previously served as Parliamentary Under-Secretary of State in the Department for Education and Skills, Parliamentary Under-Secretary in the Department for Constitutional Affairs, and Parliamentary Under-Secretary of State at the Ministry of Justice, where her responsibilities included the trade implications of legal professions, according to an EU statement. She will take over as soon as she is confirmed by the European Council of Ministers.

U.S. Proposes End of Trade Preferences for Bolivia

The escalating political and economic dispute between the U.S. and the government of Bolivian President Evo Morales now threatens Bolivia’s eligibility for the benefits of the Andean Trade Preferences Act (ATPA). After President Bush Sept. 25 issued a memorandum proposing the suspension of Bolivia’s eligibility, the U.S. Trade Representative’s office in the Oct. 1 Federal Register asked for public comments on the proposal and announced plans for a public hearing Oct. 23. Congress has also put Bolivia on notice that it risks loss of its trade preferences. In voting to extend the ATPA, the Senate of Oct. 2 and the House on Oct. 3 extended the law for Bolivia and Ecuador for only six months, while extending it for one year for Colombia and

Peru. Lawmakers at the same time also approved a one-year extension of the Generalized System of Preferences (GSP). “This markedly different treatment reflects my deep concern about Bolivia’s lack of cooperation in the drug war, as well as the continuing deterioration in the treatment of American investors in both Ecuador and Bolivia,” said Rep. Jim McCrery (R-La.) after House action on the ATPA extension.

In September, Bolivia and Venezuela expelled the U.S. ambassadors to those countries. Bolivia claimed the ambassador had aided conservative elements opposing his reforms, a charge the State Department has denied.

In a separate memorandum to the secretary of State on Sept. 12, Bush designated Bolivia and Venezuela “as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counter-narcotics agreements.” Despite this finding, Bush said the U.S. would continue bilateral aid programs in Bolivia. Since then, the Morales government has asked some of the programs to leave the country.

“The president may withdraw or suspend the designation of a country as a beneficiary country or withdraw, suspend, or limit the application of duty-free treatment to any eligible article if the President determines that as a result of changed circumstances, the country is not satisfying the statutory eligibility criteria,” the USTR notice explained. At least 30 days before taking such an action, the president is required to publish the notice of his proposal, obtain public comment and hold a public hearing.

* * * Briefs * * *

FCPA: Former Alcatel executive Christian Sapsizian, 62, was sentenced Sept. 23 to 30 months in prison for violating FCPA by paying \$2.5 million bribe to Costa Rican officials to obtain mobile telephone contract from state-owned telecommunications authority. He was also ordered to forfeit \$261,500, to serve three years of supervised release and pay \$200 special assessment. Sapsizian, a French citizen, pleaded guilty to two counts of violating FCPA in June 2007 (see **WTTL**, June 11, 2007, page 4).

EX-IM BANK: Carlos Serrano, 63, owner of Serv-Ease Office Systems Inc., in Glendale, Calif., was convicted Sept. 18 for his role in \$1.3 million scheme to defraud First International Bank of Connecticut and the Export-Import Bank. Case was part of broader investigation into \$80 million scheme to defraud Ex-Im Bank between November 1999 and December 2005. So far, eight individuals have been convicted for their involvement in scheme (see **WTTL**, May 19, page 4). Separately, on Oct. 2, Cristina Song, 50, of Whittier, Calif., was sentenced to 37 months in prison for her role in the scheme. She had pleaded guilty in November 2007. In addition to jail time, she was sentenced to serve three years of supervised release after jail, to forfeit \$300,000 and pay restitution of more than \$12 million to Ex-Im Bank.

NAFTA: Binational panel Sept. 10 upheld ITC injury determination in “sunset” review of stainless steel sheet and strip from Mexico.

COMMODITY CLASSIFICATION: BIS Sept. 25 posted notice on its website instituting policy of giving firms opportunity to allow agency to make public information on their commodity classifications (see **WTTL**, June 2, page 1). Released information or company contact person on the classification will be posted on BIS website. If company wants BIS to post its information, it must contact the agency and provide: (1) company name; (2) general description of the products/services; (3) commodity classification information website address; and (4) export control point of contact.

EXPORT ENFORCEMENT: San Diego District Judge Jeffrey Miller Sept. 26, sentenced Qing Li to 12 months and one day in prison and fined her \$7,500 based on her guilty plea in June to conspiracy to violate AECA with attempted export of defense items to China without license. Judge also ordered her to serve three years of supervised release and pay \$100 assessment (see **WTTL**, June 16, page 3).

RWANDA: State in Sept. 25 Federal Register removed Rwanda from list of prohibited destinations for USML exports based on UN resolution terminating multilateral arms embargo.

IRAN: BIS Sept. 24 posted advice on action exporters can take to prevent illegal diversions of U.S. goods and technology to Iran. BIS warns of Iran’s use of front companies and purchases through third countries.