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## OFAC Taking Twice As Long to Issue TSRA Licenses

Treasury's Office of Foreign Assets Control (OFAC) is taking twice as long as it did a year ago to issue approvals or denials of export licenses under the provisions of the Trade Sanctions Reform and Export Enhancement Act (TSRA), the agency reports. In the last quarter of calendar year 2007, the average approval time for a license was 80 working days or four months. Denials also took an average of 80 working days. This compares to the numbers for fiscal years 2005 and 2006, when the average time for a licensing decision was 33.1 days and for a denial letter, 36.5 days.

Under TSRA, producers of agriculture commodities, medical devices and medicines can obtain OFAC licenses to export to Iran and Sudan. Over the last two years, the heaviest users of the TSRA process have been medical device firms.

The number of TSRA license applications has risen over the last five years, although it has not doubled. In 2007, OFAC received 965 applications. In fiscal years 2005 and 2006 together, the agency received 1,794 licenses or an average of 897 a year. In the two previous years, 2003 and 2004 together, it received 1,480 or an average of 740 a year.

OFAC blames the longer review times on other agencies that have to review the applications and have been slow in giving their advice to the agency. In a boilerplate statement that appears on each of its quarterly reports for 2007, OFAC said, "The increased complexity, volume and length of license applications (the majority of applications pertain to the export of medical devices to Iran) coupled with the more protracted scrutiny on the part of other reviewing agencies continued to affect processing time of license applications." Review times fluctuated quarter to quarter in 2007, especially for denial letters. In the January to March 2007 quarter, denials took 25 days. In the April-June quarter, denials shot up to 225 days.

## Do or Die Decisions Needed Soon for Doha Round

Senior trade officials will start meeting in Geneva June 9 for a series of negotiations that will try to break the deadlocks in agriculture and non-agricultural market access (NAMA) talks in the World Trade Organization's (WTO) Doha Round. Whether they make any progress in the next couple of weeks will determine the fate of the round. The meetings will begin at the U.S. Mission in Geneva and will focus on NAMA, a developing country ambassador to the WTO told WTTL. The European Commission also is likely to hold meetings. The sessions come in the wake of a decision by NAMA negotiating group chairman Don Stephenson to suspend his talks

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(see story below). At the same time, farm talks continue to be stalled. “A little more water needs to pass under the bridge” in bilateral talks before agriculture talks resume, likely toward the end of the week of June 9, said New Zealand Ambassador Crawford Falconer, who chairs the agriculture negotiating group.

One Latin American diplomat just back from his capital suggested that horizontal meetings had already begun. In addition to NAMA, the meetings will deal with agriculture, services and rules, another source said. Their goal will be to set the stage for a ministerial-level meeting. A decision by WTO Director General Pascal Lamy to call a ministerial meeting is likely to come at least ten days in advance of the meeting, a source said. New possible dates for the gathering are the first days of July, but that could slip to the end of the month, the source said.

Although he has made the warning before, Lamy June 5 told the annual Organization for Economic Cooperation and Development (OECD) ministerial meeting that three changes over the last year are leading to “the moment of truth” in the round. The worsening economic climate, high commodity prices and the technical maturity of the Doha talks make concluding the round “the nearest available message of confidence we can send,” said Lamy, who called for the ministers to empower their senior officials with marching orders starting June 9. The final report of the OECD meeting, however, gave only a half-hearted endorsement to the Doha talks.

Finishing the farm and NAMA negotiations is “an extremely remote possibility,” said a former diplomat involved in past WTO negotiations. Deals on services, rules and other areas are even more unlikely, he said. He cited the complexity and time-consuming nature of drafting specific, detailed schedules of concessions in each sector of the talks. Some have estimated that it will take six to seven months to conclude that work after a broad agreement is reached. How many people leave Geneva for the usual four-week August holiday “will be an interesting pointer to how much they believe in” the possibility of concluding the round, he noted.

## **NAMA Chair Tells Talks to Get out of Crib and Walk**

The suspension June 2 of NAMA talks in the WTO Doha Round is intended to force the bargaining away from the NAMA negotiating group and into bilateral and multilateral clutches. Meetings are on hold “until further notice,” said NAMA negotiating group chairman Don Stephenson. He told WTO negotiators that “it's time for the members and their senior officials to take responsibility for the negotiations in NAMA.” He said he was suspending future meetings until “some convergence” is indicated. The issues “are all unresolved,” said Stephenson, Canada’s WTO ambassador (see **WTTL**, June 2, page 2).

High-ranking trade officials will meet bilaterally and multilaterally starting June 9 at the U.S. Mission in Geneva to focus talks on NAMA issues and prepare the way for a ministerial meeting, sources reported (see story above). If trade officials “can't come to a reasonable, predictable range, it's hard to call in the ministers,” a developing country ambassador said.

“NAMA seems to be at the flash point now,” one ambassador to the WTO told **WTTL**. Meetings the week of June 9 are expected to snap the round forward or fully end the goal of reaching a deal before President Bush leaves office in January. “There's no longer any excuse for hiding behind agriculture as a way of stalling on NAMA,” he said.

Old, new and extreme positions have been aired in NAMA talks since the May 27 consensus that the draft text prepared by Stephenson had too many unresolved issues to go to ministers. The so-called NAMA-11 group of developing countries continued to argue that the coefficient should be higher, sources reported. One country in the group, Argentina, is particularly intransigent, sources said. Buenos Aires is still holding out for more flexibility and a higher coefficient than the top range of 23 to 26 currently in the text. Under Stephenson’s current proposal, a higher coefficient, which would mean a smaller cut in tariffs, would reduce

flexibility. Developed countries may accept greater flexibility, if the coefficient is “reasonably low or within the range,” one source told WTTL.

## **BIS Nominee Wall Says Unilateral Controls May Be Necessary**

Christopher Wall, President Bush’s nominee to be assistant secretary for export administration in the Bureau of Industry and Security (BIS), told the Senate Banking Committee at his June 3 confirmation hearing that he recognizes the need sometimes for imposing unilateral export controls. In response to a question on the use of unilateral controls from Sen. Richard Shelby (R-Ala.) during the hearing, Wall said “that appears to be the appropriate way to resolve the issue” when multilateral export control regimes can’t agreed on controls.

“While companies may complain that we can’t sell to a particular regime because other countries can, that doesn’t make it right,” Wall stated. He said companies he has worked with are prepared to comply with these controls to further U.S. interests. “They are not interested in subverting or undercutting any interest that would advance the interest of the United States,” he said.

Bush nominated Wall, a senior partner in the D.C. law firm of Pillsbury, Winthrop, for the BIS post on March 31, and it took two months before his confirmation hearing was held (see **WTTL**, March 24, page 3). Wall said he supports trying to harmonize the controls imposed by the various international regimes. “From the companies’ perspective, it is very important to harmonize these rules to the extent that we can, recognizing that in some cases it is simply not going to be possible. We simply share different interests and objectives,” Wall told the committee. “We might have higher standards and we should not relax those standards,” he said.

## **Oil-for-Food Cases Could Have OFAC Charges Added**

Companies that reach agreements with the Securities and Exchange Commission (SEC) and Justice to settle Foreign Corrupt Practices Act (FCPA) charges related to bribes paid to Iraqi officials under the UN’s Oil-for-Food Program could face additional charges of violating the Iraqi Sanctions Regulations (ISR). An example of this double prosecution is seen in settlement York International Corp. has reached with Office of Foreign Assets Control (OFAC). York has agreed to pay a civil fine of \$669,507 to settle allegations that it violated the Iranian Transactions Regulations, the Sudanese Sanctions Regulations, and the ISR.

OFAC claimed employees at one of York’s foreign branches sold air conditioning and refrigeration equipment to Iran and Sudan and made payments to the Iraqi government in connection with licensed sales of refrigeration equipment under the UN program. “Johnson Controls, Inc., which acquired York after the alleged violations occurred, voluntarily disclosed this matter to OFAC,” the agency said.

Last October, York reached separate settlements with the SEC and Justice to settle several FCPA charges (see **WTTL**, Oct. 8, page 1). The company agreed to pay more than \$22 million in penalties and to be enjoined from future violations of the law. The settlements resolved complaints about illegal payments to officials in the United Arab Emirates, India, China, Nigeria and countries in Europe and the Middle East, as well as in Iraq.

## **Engineering Dynamics, Officials Reach Global Settlement**

In global deals with BIS, OFAC and Justice, Engineering Dynamics Inc. (EDI) of Kenner, La., and two of its officers have settled charges that they conspired to export software to Iran without approved OFAC licenses (see **WTTL**, Jan. 28, page 3). EDI has agreed to pay identical civil fines of \$132,791.39 in settlements with both BIS and OFAC. Separately, the firm’s owners, James Angehr and John Fowler, each pleaded guilty April 24 to a one-count

criminal information charging them with conspiracy to violate the Iranian Transactions Regulations (ITR) and the International Emergency Economic Powers Act (IEEPA). In announcing its settlement, OFAC said EDI voluntarily disclosed the alleged violations.

According to the plea agreements entered by Angehr and Fowler, EDI had started selling its structural analytical computer software (SACS) to oil and maritime companies in Iran before President Clinton imposed an embargo on the country in 1995. To continue these sales after 1995 and through 2007, EDI arranged to have the software shipped to Suporte, its distributor in Brazil, for retransfer to Iran. The company worked with Suporte's owner Nelson Galgoul.

"Specifically, after the embargo, Galgoul, at the behest of Angehr, Fowler and EDI, helped mediate the first EDI post-embargo sale in Iran," the Factual Basis states. "EDI prepared a document transferring ownership of the SACS software to Galgoul's Brazilian company Suporte so that the export of SACS software to Iran could continue ostensibly as a Brazilian company selling a Brazilian product," it continues.

\* \* \* **BRIEFS** \* \* \*

CORRECTION: \$50,000 maximum criminal penalty under final Foreign Trade Regulations only applies to violations of sanctions against illicit diamond trade. Daily fine for late filing of export documentation is \$1,100 with \$10,000 maximum (see **WTTL**, June 2, page 3).

FCPA ENFORCEMENT: Justice Department June 5 enter non-prosecution agreement with Faro Technologies Inc. of Lake Mary, Fla., as part of deal to settle charges that firm's subsidiary, China Faro, violated FCPA by paying illegal bribes in form of "referral fees" to Chinese officials in Shanghai. Faro, which make measurement instruments and software agreed to pay \$1.1 million criminal penalty. In separate settlement with SEC, firm agreed to cease and desist order and will pay approximately \$1.85 million in disgorgement and prejudgment interest.

MORE FCPA ENFORCEMENT: Minnesota-based AGA Medical Corporation, privately-owned medical device manufacturer, June 2 agreed to pay \$2 million criminal penalty and to enter deferred prosecution agreement with Justice Department to settle charges that it violated FCPA with alleged payments to Chinese officials to sell its device for minimally invasive treatment of congenital heart defects. Government had filed two-count information accusing firm of conspiracy to make bribes and violating FCPA. "In recognition of AGA's voluntary disclosure and thorough review of the improper payments, its cooperation with the Department's investigation, the company's implementation of enhanced compliance policies and procedures, and the company's engagement of an independent corporate monitor, the Department has agreed to defer prosecution of AGA for three years," Justice statement said.

DEFENSE TRADE: In report to Congress posted on its website June 6, DDTC provided country-by-country, USML Category by USML Category breakdown of all defense licenses it approved in fiscal year 2007, which ended Sept. 30, 2007. During period, DDTC approved export licenses for approximately \$24.5 billion in defense articles and \$64.2 billion in defense services. Value of licenses for UK was \$3.2 billion; for Australia, \$921.8 million. Actual shipments may be less than approvals.

COTTON: WTO Appellate Body June 2 released final report upholding earlier dispute-settlement panel ruling which said U.S. has not come into compliance with previous decision which found U.S. payments to cotton farmers to be illegal subsidies. The Appellate Body agreed with panel's findings that "the effect of marketing loan and counter-cyclical payments provided to United States upland cotton producers pursuant to the FSRI Act of 2002 is significant price suppression" in world market for upland cotton, under terms of WTO Subsidies Agreement and "constituting 'present' serious prejudice to the interests of Brazil." It also said "United States has failed to comply with the DSB's recommendations and rulings" and specifically its obligation "to take appropriate steps to remove the adverse effects or ... withdraw the subsidy."

WIRE ROD: On 4-2 vote June 3, ITC determined that revoking antidumping order on carbon and certain alloy steel wire rod from Canada would not likely cause renewed injury to U.S. industry, which will result in revocation of order. ITC, however, said injury is likely to recur if existing countervailing duty order were revoked on rod from Brazil and existing antidumping duty orders on product from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

TRADE PEOPLE: Former OFAC Director Rick Newcomb has moved to D.C. office of DLA Piper law firm from law firm of Baker Donelson.