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A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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JUDGE DISMISSES ARMS EXPORT CASE AGAINST AXION

Birmingham, Ala., U.S. District Court Judge Inge Johnson Oct. 31 dismissed all federal charges against Axion Corporation and its president, Alexander Nooredin Latifi, who were the subject of a 12-count indictment claiming they violated the Arms Export Control Act (AECA). After a seven-day bench trial, during which a government witness claimed that blue prints Axion sent to a firm in China contained controlled technology, Johnson dismissed all charges, “finding that the evidence was insufficient to sustain a conviction” (see **WTTL**, April 9, page 4).

A federal grand jury had indicted Axion, which is based in Huntsville, Ala., and Latifi March 30 for allegedly exporting technical drawings for a UH-60 Black Hawk helicopter part without a license from State’s Directorate of Defense Trade Controls (DDTC). A subsequent grand jury added additional charges. Along with violating the International Traffic in Arms Regulations (ITAR), the indictments claimed Axion made false statements in test filings as part of a defense contract.

Government briefs in the case claimed Axion had a contract with a firm in San Jose, Calif., EcoTungsten, to obtain tungsten for a part it was making under a defense contract. Axion provided EcoTungsten with technical drawings, requirements and other information needed to produce parts for a bifilar weight assembly. EcoTungsten then forwarded those drawing to an engineering firm in China that provided the tungsten. Axion, which was represented by the firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, argued successfully that there was no intent to violate the AECA and intent was needed for a criminal conviction.

MANDELSON URGES U.S. NOT TO TAKE ITA DISPUTE TO WTO

European Union (EU) Trade Commissioner Peter Mandelson Nov. 8 urged the U.S. to avoid a World Trade Organization (WTO) dispute over Washington’s complaints about recent EU tariff changes that the U.S. claims violated the 10-year-old Information Technology Agreement (ITA). The U.S. reportedly is considering a request for WTO dispute-settlement consultations with the EU to protest the increase in EU tariffs on certain digital cameras and other consumer electronic products (see **WTTL**, Sept. 10, page 1).

As this dispute evolves, talks on revising the ITA are underway in Geneva. Mandelson said U.S. Trade Representative (USTR) Susan Schwab has raised the dispute with him more than once. “I think there is a legitimate difference of interpretation or opinion and I think we have to iron out that difference. I certainly think it would be better to negotiate it,” he told reporters while in Washington for the first meeting of the Transatlantic Economic Council. “I hope

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Ambassador Schwab sees that the same way," he added. "But we have to make sure these agreements keep track of technological developments," Mandelson said. "Technology changes so fast that these classifications quite quickly become either out of date or difficult to apply given the combination of the divergence of technologies of different products which we see increasingly. So let's talk about it, let's negotiate on it; let's not litigate," the EU official stated. While the U.S. hasn't said whether or not it would take its complaint to the WTO, Mandelson indicated that he expects talks to continue. "I expect them to realize that negotiation is always better among consenting adults," he said.

PERU FTA VOTE SIGNALS TROUBLE FOR OTHER TRADE PACTS

Even with the support of House Speaker Nancy Pelosi (D-Calif.) and Ways and Means Committee Chairman Charles Rangel (D-N.Y.), the U.S.-Peru Free Trade Agreement (FTA) failed to muster a majority of Democratic votes when it passed the House Nov. 8. Democrats split 116 v. 109 against the legislation (H.R. 3688) to implement the deal, making it less likely Congress will approve the FTAs with Colombia, Panama and South Korea (see **WTTL**, Nov. 5, page 3).

Back in May when congressional Democrats reached an agreement with the Bush administration on the labor and environment provisions for FTAs, House sources said Rangel could collect as many as 90 Democratic votes for a trade deal, if he backed it. The Peru vote showed that prediction to be pretty accurate.

The final vote of 285-132 in favor of the Peru accord required a strong Republican margin of 176 to 16 to win the deal's approval. Rangel was able to deliver the votes of the Democrats on his own Ways and Means Committee, but he gave a free pass to other Democrats who still opposed the agreement. "I would suggest for any member that has campaigned against trade, that said it over and over that trade is bad, or any person who's campaigned against NAFTA or CAFTA, or all of those things which this is not, then you owe it to yourself and you owe it to your constituents to vote against this bill," Rangel said during the debate on the floor. "But don't you challenge my integrity, and don't do it for the Speaker, because I won't challenge your 'no' because you're doing what you think is the right thing," he added.

Two days before the vote, President Bush held a trade rally at the White House for top business leaders and gave an impassioned speech in favor of the pending trade deals and the WTO Doha Round. "I urge the members to pass our agreement with Peru quickly by a large bipartisan majority, and then bring our agreements with Colombia and Panama up for votes as soon as possible," Bush said. "It's not acceptable to pass one trade agreement and let the others languish," he added. The president said U.S. workers need to know the benefits of trade. "We need to do a better job of educating our people about the benefits of free and fair trade -- and your companies and associations can lead the way," he said. Bush urged industry to: "Help educate the members of the United States Congress. Help them understand that free trade is a vital national interest. Help them make the right decisions when these votes come up."

BIS IMPLEMENTS WASSENAAR CHANGES FROM 2006

Every category on the Commerce Control List (CCL) saw some revision in export licensing requirements in the changes the Bureau of Industry and Security (BIS) made to the Export Administration Regulations (EAR) in the Nov. 5 Federal Register to implement new rules adopted by the Wassenaar Arrangement in December 2006. BIS officials concede this is almost the longest the agency has ever taken to implement new multilateral controls. The EAR update comes just about a month before the next Wassenaar plenary in December is expected to make further changes to regime's controls.

Among the major changes in the CCL is a broad revision of controls on laser products (see **WTTL**, Dec. 18, 2006, page 3). "The changes in ECCN 6A005 are made to move the laser controls from technology based categories to performance based criteria," BIS said. "The

categories are restructured, where possible, to remove specific references to types of lasers and characterize the laser on the basis of wavelength, power, mode, energy, pulse length, mass, and efficiency,” it explained. A change in Category 1 for materials clarifies the size of fabric made from “fibrous or filamentary materials” that are not controlled for the repair of civil aircraft structures. BIS added a new paragraph for Export Control Classification Number (ECCN) 5A001.g to control specially designed Passive Coherent Location systems or equipment.

BIS added controls on accelerometers in Category 7 under ECCN 7A001. “With the constant development of accelerometers, there are now products on the market which can be used for inertial navigation and guidance, but that were not necessarily designed for that purpose,” BIS explained. “Therefore, these changes are being made to 7A001 to control these new products,” it added.

EXPORT GROWTH DOESN'T SHOW UP IN LICENSING LOAD

As U.S. merchandise export jumped 12% in the last 12 months, the number of export licenses processed by BIS edged up only 2%, according to agency officials. The slower pace of license growth may be a leading indicator of growing competition for high-tech U.S. manufacturers. For the first nine months of 2007, U.S. exports in a broad category known as “advanced technology products”, grew only 8%, while imports in this category rose 12%. The trade deficit in advanced goods rose to \$37.7 billion.

In the fiscal year that ended Sept. 30, 2007, BIS processed 19,296 export license applications, the agency reported at its BIS Update 2007 conference Nov. 1. This was just a 2 percent increase over its license load of 18,841 in fiscal year 2006.

BIS approved 16,539 licenses (85.7%) in fiscal 2007 v. 15,982 (84.8%) in 2006. It denied 172 (.009%) in 2007 compared to 189 (1%) the year before. In 2007, it returned without action (RWA) 2,797 (14.5%) applications compared to 2,763 (14.7%) in 2006. Only 147 cases were referred to the Operating Committee (OC) when interagency review wasn't able to reach agreement on a license. Of those referrals to the OC, only 25 were kicked upstairs to the assistant secretary level ACEP. Those 25 included 16 that revolved around the same issue. The average time taken to review export licenses in 2007 was 33 days, the same as the year before.

Meanwhile, strong economic growth abroad and a weak dollar continued to drive U.S. exports to new record highs in September, Commerce report Nov. 9. Merchandise exports in September were up 14% over September 2006, topping \$100 billion for the first time. Services exports rose 12.5% to \$39.9 billion, also a record. Goods imports grew only 4.5% compared to last September to \$165.9 billion, as services imports gained 6.5% from a year ago to \$30.6 billion. “Continued strong export growth is providing considerable support to the U.S. economy right now,” USTR Susan Schwab said in a statement on the latest trade figures. “Recent data for the third quarter of this year shows that nearly half of the 3.9% growth rate of the economy was attributable to export expansion,” she pointed out.

MANDELSON SEES DOHA DEAL TAKING SHAPE

There is a Doha Round deal “taking shape on the table,” EU Trade Commissioner Peter Mandelson asserted Nov. 8, saying the draft texts offered by the chairmen of the agriculture and non-agriculture market access (NAMA) talks will be the basis of an agreement after they are further revised. The timing for a possible conclusion of the round, however, seems to be slipping with a new goal for around March 2008. Rather than seeing recent calls from advance developing countries for more flexibility in NAMA commitments as negative, Mandelson contends they show a willingness on the part of those countries to keep negotiating.

“I haven't seen a mad rush, I haven't seen a stampede of developing countries racing to the exit in the NAMA negotiations, saying ‘We want to get out of this for free’,” he said. The EU

official remains confident there will be a final agreement. "It will not provide everything the United States wants. It will, no doubt, have a bit more in certain respects than the EU has hitherto been willing to offer," he said.

Earlier, speaking to the Carnegie Endowment, he warned about China's growing global trade imbalance. "China has become such a difficult issue in our politics that it is important, though, and I want to stress this to you at the outset, it's important to stop and recall the basic fact that openness to China's growing economy is, in general, a good thing for us, both in the U.S. and the EU," he said.

He said the EU's trade deficit with China is growing at \$20 million an hour. "We want an end to a managed currency in China that's hurting us," Mandelson declared. "Even if revaluation would not, in itself, solve our trade deficits – and by the way, it wouldn't – it would help cool an overheating, heavy industry sector, which is swollen with overcapacity in China," he said.

Mandelson also noted concerns about the growth of sovereign wealth funds that are controlled by foreign governments and hold huge amounts of money that could be invested in the U.S. and EU. "I believe there is a place for oversight of sovereign investment in the genuinely strategic parts of our economies although determining which sectors might be genuinely strategic is a hard enough thing to do," he said. "I think that we can legitimately expect those who want to invest in our economies through these sovereign wealth funds to reciprocate by giving access to our capital in their own markets. And that is where I think the rub, that's where the tension and the dispute, is going to come," he noted. Mandelson called for establishing "a set of principles agreed internationally, a sort of code of conduct for investors and recipients of investment that will establish the ground rules for the global investment of sovereign wealth."

* * * BRIEFS * * *

QRS-11 SENSORS: BIS in Nov. 7 Federal Register finally revised EAR to pick up its side of deal with State to take over licensing authority for QRS11-00100-100/101 and the QRS11-00050-443/ 569 Micro-machined Angular Rate Sensors when QRS11-00100-100/101 "is integrated into a primary instrument system for use on civil aircraft or is exported solely for integration into such a system, or when the QRS11-00050-443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates such systems, or are exported solely for integration into such a system." State dropped controls in June (see **WTTL**, June 25, page 4).

FCPA: Jason Steph, former executive of subsidiary of Willbros Group Inc. pled guilty Nov. 5 in Houston U.S. District Court to conspiracy to bribe Nigerian government officials with more than \$6 million in violation of FCPA. Sentencing is set for Jan. 25, 2008 (see **WTTL**, July 30, page 4).

SODIUM NITRITE: General Chemical LLC, Nov. 8 filed antidumping complaints at ITC and ITA against sodium nitrite from Germany and China and countervailing duty complaint against imports from China.

DENIAL ORDER: In rare withdrawal of export denial order, BIS Under Secretary Mario Mancuso issued notice in Nov.8 Federal Register setting aside 10-year denial of export privileges of S.P. Equipamentos de Protecao ao Trabalho Ltda. of Sao Paulo, Brazil and remanding case to administrative law judge. BIS imposed denial in February 2007, but counsel for Brazilian firm filed notice that it was never served with motion for default order (see **WTTL**, March 5, page 4).

CANADA: Canada Nov. 8 said it would ask WTO Nov. 19 to establish dispute-settlement panel to hear its complaint against U.S. farm subsidies. Request supersedes one it filed in June and does not include challenge to export credit guarantee measures that are already subject of Brazil-U.S. cotton dispute. "Canada believes that the United States has breached its international obligations by providing agricultural subsidies that exceed the levels allowed by the WTO," said International Trade Minister David Emerson.

SECTION 337: In divided 2-1 ruling, Court of Appeals for Federal Circuit Oct. 31 issued rare opinion reversing ITC ruling in Section 337 patent-infringement case and remanding case to ITC for further review (case 2006-1282). ITC had denied complaint of Osram GmbH and Osram Opto Semiconductors GmbH that its patents for converting luminous phosphor particles of light-emitting diodes (LEDs) to light of a different wavelength to produce white light was being infringed. Majority of court ruled ITC "erred in its claim construction, and that on the correct claim construction the Particle Size Patent claims are infringed and the domestic industry prong of Section 337 is satisfied."

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