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FEDERAL TASK FORCES FORMED TO INCREASE EXPORT ENFORCEMENT

More criminal prosecutions for export control violations could result from a Justice initiative announced Oct. 11 to form counter-proliferation task forces around the country. The task forces will be established in the offices of U.S. Attorneys and will comprise representatives of law enforcement and export control agencies. Justice lawyer Steven Pelak, who was named National Export Control Coordinator in June, will oversee the work of the task forces from Washington (see **WTTL**, July 2, page 1).

Creation of the task forces and the appointment of Pelak are part of Justice's response to a report last year by the Government Accountability Office (GAO), which criticized the government's lack of cooperation and coordination on export enforcement cases. The new task forces are intended to enhanced cooperation among various agencies with the goal of bringing more prosecutions but also to help educate U.S. Attorneys on export control issues and to conduct outreach to the business and academic communities where the task forces will operated.

Participating in the task forces with local U.S. Attorneys will be representatives of the Bureau of Industry and Security (BIS), the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), Directorate of Defense Trade Controls (DDTC) and the Defense Criminal Investigation Service (DCIS). Officials from those agencies were on the podium when Assistant Attorney General Kenneth Wainstein announced the program.

Although there are other joint task forces, including efforts run by the FBI and ICE, Wainstein said the new counter-proliferation task forces are "a different animal." The types of investigations they will conduct are different from existing cases, he added. Moreover, "you have to institutionalize coordination," he argued. Although Justice will oversee the new effort, each task force will tailor its own work. "Every district, every city has a different situation when it comes to export violations," Wainstein said. "There is not going to be a lead agency. This is going to be a collaborative effort," he explained. The Washington, D.C. area may be one of the targeted areas because of the large number of defense firms and contractors, one source noted.

COSTA RICO STILL FACES LEGISLATIVE BATTLE OVER CAFTA

Victory in the Oct. 7 national referendum for supporters of Costa Rica's participation in the U.S.-Central American Free Trade Agreement (CAFTA) still leaves a legislative battle ahead in the Costa Rican Legislative Assembly over required implementing legislation. The preliminary results of the vote, which found 51.5% of voters in favor of joining CAFTA v. 48.4% opposed,

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confounded pundits and pollsters who had predicted popular rejection of the accord (see **WTTL**, Oct. 8, page 2). The vote, although close, also refutes claims of anti-trade groups who say trade deals are undemocratic because citizens can't vote on them. This was a democratic popular vote in favor a trade agreement.

Officials in Costa Rica credit the win to several factors, including the popularity of President Oscar Arias, support from the Costa Rican business community, including a public statement by Intel which has a chip plant in the country, and public fear that rejection of the pact would lead to the loss of Caribbean Basin Initiative trade preferences. The vote for CAFTA was carried by a strong yes vote around the capital of San Jose and the neighboring city of Cartago.

Opposition to the trade accord was fueled by the Catholic church in Costa Rica as well as some American lawmakers who visited the country to support critics of the deal. Some priests during church services Sunday reportedly had urged parishioners to vote against the trade deal, claiming it would be a sin to vote yes. Despite the protests and strong debate over the accord before the vote, sources say the atmosphere on the day of the vote was cheerful, with Costa Ricans celebrating a "democratic demonstration," one source noted.

The referendum served to ratify Costa Rica's role in CAFTA. Once a manual count of the votes is completed by Oct. 20 and certified to the Legislative Assembly, a decree bringing the pact into force will be issued. But there are still 13 separate implementing bills that must be enacted by the Assembly to change Costa Rican laws to apply provisions of the trade pact.

Consideration of the pending bills was suspended awaiting the outcome of the referendum. Some of the measures can be passed by a simple majority of the 57 members of the Legislative Assembly, while others need a super-majority of 38. The problem for the Arias government is its lack of a majority in the Legislative Assembly. His National Liberation Party (PNL) has had to build a coalition with other parties to get to the 38 needed votes to cut off a filibuster and pass all the bills. Some in the government are concerned that the tension that surrounded the referendum and continuing opposition to the pact might have weakened the coalition.

Arias has had several meetings with other political parties in the Assembly in an effort to reach a consensus on how to move the 13 bills forward. Sources suggest the government may have to support supplemental legislation to help firms and workers that might be hurt by the lifting of some trade barriers as mandated under the CAFTA deal. Costa Rican sources say it is unclear how long it will take to get the legislation enacted, but they note that they have a Feb. 29 deadline to implement the provisions of the trade pact under its terms.

BIS HAS BUSY EXPORT ENFORCEMENT SEASON

The Bureau of Industry and Security (BIS) finished the summer with a bushel of export enforcement settlement agreements covering a wide range of products and destinations subject to export controls. Several of the settlements involved goods that are classified as EAR99 and would not normally need a license unless they were being exported to countries of concern. For all the settlements, targeted parties neither admitted nor denied the BIS charges.

In the third leg of a case against Henry Schein, Inc., BIS reached a settlement with Jennifer Reul-Marr, the former vice president for international sales at Schein's export division. She agreed to pay a \$7,700 civil fine for her role in the exports of dental equipment to Iran. She faced one charge of conspiracy for actions in her "individual capacity." In a separate earlier settlements, Schein had agreed to pay a \$165,000 civil fine, and David McCauley, the firm's export administration manager, agreed to pay a \$6,380 fine (see **WTTL**, Sept. 10, page 4).

In a second case involving dental equipment exports to Iran, the agency imposed a \$175,000 civil fine on Zimmer but will allow the firm to pay \$100,000 of the fine and said it would

suspend the balance and then waive the remaining fine if Zimmer remains in compliance with export control regulations for one year. Zimmer, as successor in liability, was charged with exporting dental equipment to Iran on 52 occasions without approved licenses. The exports were made by Centerpulse Dental, Inc., which Zimmer acquired in October 2003. Zimmer made a voluntary self-disclosure of the alleged violations.

The BIS focus on exports of valves that can be used in either chemical production or oil exploration was seen in a settlement with Cole-Palmer Instruments, Inc. of Vernon Hills, Ill. The firm agreed to pay a \$55,000 civil fine to settle BIS charges that it exported valves to China and Pakistan without approved licenses. Invitrogen Corporation of Carlsbad, Calif., agreed to pay a \$30,000 civil fine after it made a voluntary self-disclosure that a firm it had acquired in February 2006, Dynal Biotech LLC, exported HLA Tissue Typing Trays to Syria without approved licenses before it was acquired by Invitrogen.

Daisy Manufacturing Company, Inc., of Rogers, Ark., has reached a settlement agreement with BIS to pay a \$20,400 fine to settle charges that it exported or attempted to export rifle scopes and other items to several countries, including Hong Kong and Panama, without approved licenses. BIS also reached a settlement with B&S Aircraft Alloys, Inc. of Syosset, N.Y., to settle charges that on two occasions in 2001 and 2002 it shipped titanium alloy rods to India without approved export licenses. BIS will allow the firm to pay a \$31,000 civil fine in 12 monthly payments of \$2,583.33 each. Development Alternatives, Inc., of Bethesda, Md., has agreed to pay a \$7,500 civil fine to settle a single BIS charge that it attempted to export concealable vests, body armor and bomb blast blankets to Iraq without an approved license from the Office of Foreign Assets Control (OFAC).

EIGHT CHARGED WITH DEFRAUDING EXPORT-IMPORT BANK

In a rare case of fraud against the U.S. Export-Import Bank, eight individuals, including five who have already pleaded guilty, were charged with numerous counts of conspiracy, mail fraud, destruction of evidence and perjury. All the defendants were involved in various schemes apparently organized by a loan broker in Manila, the Philippines, to obtain loan guarantees from the Bank, to prepare false export invoices overstating the value of the exported goods, and then to renege on the loans. The government claims the fraud involved \$80 million in loans.

The alleged masterminds of the fraud were Marilyn Ong and her nephew Ildofonso Ong Jr., of Manila who solicited family members in the U.S. to arrange the Ex-Im loans and the exports to the Philippines, while they found willing parties in the Philippines. The Ongs are the subject of a 19-count indictment.

Pleading guilty in plea agreements unsealed Oct. 11 in the D.C. U.S. District Court were Daniel Curran, 52, of Boynton Beach, Fla.; Edward Chua, 55, of Montebello, Calif.; David Villongco, 51, of San Mateo, Calif.; Jaime Galvez, 51, of Redondo Beach, Calif. Robert Delgado, 46, of Fremont, Calif. pleaded guilty on Nov. 17, 2006, and has been cooperating with the government in its investigation.. Also charged with conspiracy is Christina Song, 49, of Whittier, Calif.

DEVELOPING COUNTRIES PUSH BACK ON DOHA TARIFF CUTTING DEMANDS

Doha Round negotiations seem to rotate between a hot tub and a cold shower. Just as some progress started to appear in agriculture, the talks got a splash of ice water from a group of developing countries that issued a paper the week of Oct. 8 rejecting calls for negotiating on non-agriculture market access (NAMA) on the basis of modality ranges proposed by the chairman of the NAMA negotiations, Don Stephenson (see **WTTL**, Oct. 8, page 1). Reportedly orchestrated by the NAMA-11, a group of advanced developing nations that includes Brazil and India, the developing country paper also rejected the U.S. and European Union (EU) position that NAMA and agriculture negotiations have to make parallel progress. "Centrality of agri-

culture in the Doha Ministerial Declaration cannot be wished away,” the paper declared. “Agriculture determines the ambition of the Round. NAMA modalities have to be built around and lead to a result comparable to what is achievable in agriculture,” said the paper, which was submitted to Doha negotiators by the NAMA-11, the countries of the Africa, Caribbean and Pacific (ACP) Group, the Africa Group and the Small, Vulnerable Economies Group.

The paper repeated demands that tariff cutting has to be based on less than full reciprocity, with developed countries making larger cuts than developing countries. It also stressed the need for developing countries to be given flexibility that would exempt them from some formula cuts. In particular this flexibility has to allow groups of countries with a common external tariffs, such as South America’s Mercosur, and countries with economic and labor concerns to retain some tariffs above required cuts. Another point in the letter raised concerns about trade-preference erosion for countries that rely on trade preferences from developed countries. The developing countries also said they need 10 years to implement any tariff cuts, while developed countries need to make their reductions in five years.

AFTER PLEA DEAL, GOVERNMENT GETS PENALTY INCREASED

Pittsburgh U.S. District Court Judge Nora Barry Fisher Sept. 27 agreed with a government motion to increase the fine imposed on Spares Global, Inc. to \$40,000 from the \$5,000 that had apparently been part of the company’s agreement last February to plead guilty to one count of conspiracy to make a false statement on export documents. Fisher, however, allowed the firm to pay the fine in 10 monthly payments. In its motion for an “upward variance” in sentencing, the Pittsburgh U.S. Attorney’s office claimed the company “stonewalled the government” during its investigation and a company representative lied to investigators.

Based on this behavior, “the recommended fine range is an absolutely absurd \$4,000 to \$8,000,” the motion argued. The government charged Spares Global with providing false information on its Shipper’s Export Declaration (SED) by saying the graphite it exported to the United Arab Emirates came from a different supplier than the actual supplier.

* * * BRIEFS * * *

EU: European Union and China Oct. 9 set up “joint import surveillance” system to track exports of apparel from China to EU in 2008. Arrangement covers eight of 10 most sensitive products that are subject of 2005 import restraint agreement that expires this year. System will monitor trade in tee shirts, pullovers, men's trousers, blouses, dresses, bras, bed linen and flax yarn. “The 'double checking system' will track the issuing of licences for export in China and the importation of goods into the EU,” EU explained.

BIS: Agency advisory opinion, which sounded close to Commodity Jurisdiction decision, to unnamed requester reminded firm that Wassenaar Arrangement Munitions List (WAML) controls “target acquisition, designation, range-finding, surveillance or tracking systems; detection, data fusion, recognition or identification equipment and sensor integration equipment in WA ML5.b.” It also advised the firm that software specially designed to enable items on ML to perform military functions is controlled by the ML. “Software for the development, production or use of this equipment or software that provides this capability would likely fall under the export control jurisdiction of the Department of State,” the BIS opinion stated.

CHINA: With bilateral consultations having failed, U.S. Oct. 11 asked WTO Dispute Settlement Body to form panel to hear U.S. complaint against Chinese restrictions that allegedly are barrier to getting U.S. music, DVDs, books and journals copyrighted in China (see **WTTL**, July 30, page 1)

CFIUS: Treasury in Oct. 11 Federal Register asked for advance public comments on how department should write regulations to implement legislation signed into law July 26, revising procedures and standards for review of foreign investments in U.S. by Committee on Foreign Investment in U.S. (CFIUS). Treasury said it will hold public hearing to get advice on Oct. 23.

OFAC: Agency imposed \$481,983 fine on Zeromax, LLC, of Annapolis, MD, for allegedly violating Iranian Transaction Regulations. Firm, which filed voluntary self-disclosure, apparently closed down in 2005, but it was part of larger group still in business involved in gas production in Uzbekistan.