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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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STATE REVEALS ANOTHER DEAL WITH CANADA ON DUAL-NATIONALS

State's Directorate of Defense Trade Controls (DDTC) Sept. 6 revealed that it reached agreements in June with three Canadian government agencies on conditions that would give their employees, including dual-nationals, access to items controlled under the International Traffic in Arms Regulations (ITAR). The agreement and conditions are similar to those DDTC reached in May with Canada's Department of National Defense (DND) (see **WTTL**, May 21, page 2).

"Effective June 19, the Canadian Communications Security Establishment (CSE), the Canadian Space Agency (CSA), National Research Council Canada (NRC), along with the DND, agreed to restrict access to ITAR controlled items to its employees who are issued a minimum SECRET-level security clearance by the Canadian Government, consistent with the procedures established in the exchange of letters," DDTC said in a notice posted on its website.

DDTC said it will revise its export authorizations to permit Canadian citizen/dual-national employees of the four agencies access as needed to ITAR defense articles and services if they possess the required security clearance. "This applies only to the CSE, CSA, NRC and DND and is not extended to private companies in Canada," DDTC said (its emphasis).

The agency also said it will re-issue licenses to companies for export of defense articles or services to CSE, CSA, NRC, and DND where the restrictive limitations or provisos have been imposed. The re-issued licenses will include provisos reflecting requirements in the June agreement. The new policy will mitigate the need for exporters to provide specific identification of dual-nationals and the need for non-disclosure agreements. DDTC said companies won't have to apply for an amendment to existing licenses.

DISPUTE OVER INFORMATION TECHNOLOGY WILL WAIT FOR DOHA DEAL

Trade officials appear willing to put off a confrontation over the 10-year-old Information Technology Agreement (ITA) and devote their efforts instead into cutting industrial tariffs in the World Trade Organization's (WTO) Doha Round negotiations on non-agriculture market access (NAMA). The dispute over the ITA's coverage was sharpened when the European Union (EU) raised tariffs on several electronics products that other countries, especially the U.S., consider subject to the ITA (see **WTTL**, July 30, page 2). The U.S., Japan, the EU and others as well as industry have held bilateral and multilateral consultations, but these discussions have so far produced little - at least publicly, one official said. Officials in Geneva said the U.S. raised the possibility of seeking WTO dispute settlement with the EU last spring, but no case has been

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lodged. The U.S. is "considering all options to ensure that the EC lives up to its WTO commitments to bind and eliminate customs duties on these ITA products," a USTR spokesman said.

The consensus reached ten years ago on a list of products qualifying for zero tariffs under the ITA has been diluted by the convergence of IT and consumer electronic products, said Mark MacGann, director-general of the European Information & Communications Technology Industry Association. More electronic products are getting hit with duties as they enter Europe, a trade negotiator said.

The EU has classified as dutiable new models of digital cameras with advanced video capabilities, models of multifunctional printers, TV set-top boxes that can connect on the Internet, LCD monitors that can be used as TV screens and portable devices with new functions, such as a Global Positioning Satellite system.

A WTO dispute isn't likely before Doha concludes, said MacGann, whose association represents European, Japanese and U.S. manufacturers. Industry is watching for a statement on the issue from the Asia-Pacific Economic Cooperation Forum meeting in Sydney, Australia, this week, said Ann Rollins, vice president, Technology & Trade Policy at the Information Technology Industry Council (see story page 3).

The ITA is a second priority for negotiators who continue to flog Doha talks that linger but fail to die. Debate in the electronics sector of NAMA negotiations is expected this fall, but meetings aren't yet on the horizon, a trade negotiator said. The potential upside of a NAMA deal is a cut in tariffs on a wide range of products and across the full WTO membership. NAMA talks restart Sept. 10. The WTO's ITA committee is expected to meet this fall, but no date has been set for it either, an official said.

Other issues linger in the minds of negotiators. During ITA negotiations 10 years ago, the U.S. excluded fiber optics, which prompted Europe to exclude consumer electronics, a high-ranking trade diplomat said. Malaysia, Philippines and Thailand wanted to get consumer electronics covered but failed, he recalled. Although the U.S., Europe and Asia have the most at stake, India has since regretting signing the ITA, the official said. Eastern European countries, which now belong to the EU, have manufacturers that benefit from EU tariff policy on ITA-excluded products, but it's not clear if they need the protection, the diplomat added.

U.S., AUSTRALIA SIGN DEFENSE TRADE COOPERATION TREATY

Defense exports to Australia will get nearly the same treatment as defense exports to the United Kingdom under the terms of a U.S.-Australia Defense Cooperation Treaty that President Bush and Australian Prime Minister Howard signed on Sept. 6. "A similar treaty was signed by President Bush and U.K. Prime Minister Blair in June of this year," said Presidential Assistant Dan Price. "The bottom line of this treaty: better cooperation between our militaries and opportunities for our defense industries to work more closely together," Price said, briefing reporters.

"The treaty will permit the licence-free export of defense goods and services between the Australian and U.S. governments and Australian and U.S. companies that meet security and regulatory requirements," according to an Australian fact sheet on the accord. "Implementing agreements will be finalised over the coming months. Each country will also need to complete processes under their respective domestic laws to bring the treaty into force," the Australians explained.

"The Treaty creates a comprehensive framework for two way trade between Australia and the United States in defense articles, including equipment, spare parts, services and related technical data, within an 'approved community' of government facilities and private companies in the United States and Australia without the need for licences," the fact sheet said. Items eligible for export under the treaty include: (1) Mutually determined security and defense projects where the Commonwealth of Australia is the end-user; (2) Cooperative security and

defense research, development, production and support programs; and (3) Combined military or counterterrorism operations. The “approved community” will include the Australian and U.S. governments and companies in both countries that have been qualified to receive licence-free exports under the treaty, said Australia, which put out most of the information on the treaty.

“The details of the qualification program, including the qualification criteria, have still to be mutually determined,” the Australian fact sheet said. “Australian defense companies in the approved community will need to meet the required accreditation and compliance standards,” it added. Accreditation standards include areas that are currently the subject of existing arrangements such as facility clearance, business history, export licensing and compliance record and relationships to countries of concern.

U.S., ISRAEL AGREE TO SET UP HIGH TECHNOLOGY FORUM

Israel will join China and India as one of only three countries that have established a High-Technology Forum (HTF) with the Bureau of Industry and Commerce (BIS) with the aim of enhancing bilateral trade and investment. BIS Under Secretary Mario Mancuso reached agreement with the Israelis on the establishment of the HTF during an Aug. 27-30 visit to Israel. Briefing reporters on the new forum, Mancuso said the exact agenda that the forum will address will be worked out at the staff level in the coming months. The first formal meeting of the HTF isn't expected until spring 2008, he said.

Although Israel remains one of the destinations that faces considerable hurdles in export licensing for regional stability and nuclear controls, Mancuso said Israeli officials raised no specific concerns about the BIS licensing process during his visit. Israel has a free trade agreement with the U.S. and is a major exporter to and importer from the U.S. of high technology and defense products.

Mancuso praised the progress Israel has made in enhancing its export controls, including the adoption of new regulations and a reorganization of its export control administration in January (see **WTTL**, Feb. 5, page 2). “The commendable progress that Israel has made over the past couple of years in particular on implementing an export control regime really provide the opportunity to propose an under-secretary-level engagement that covers both export control issue, but more broadly, high technology trade and investment bilaterally,” Mancuso said.

High technology fora with China and India have helped lead the way to the establishment of the verified end-user (VEU) authorization in China and discussions about expanding the VEU to India. But Mancuso said there have been no discussions yet about extending the VEU program to Israel. “VEU could be an item on the agenda at the right time,” Mancuso said. “I'm not saying it is; I'm not saying it's off the table, but that is something we need to talk bilaterally with them to put on the agenda,” he added.

The HTF won't be the first bilateral high-tech program between the U.S. and Israel. The Israel-U.S. Binational Industrial Research and Development (BIRD) program has been operating for 30 years. BIRD provides financial assistance to fund U.S.-Israeli joint ventures in high-tech fields. It has invested \$245 million in such programs since 1977. At its June meeting, it approved \$13 million in new aid.

APEC LEADERS SET TO GIVE BOOST TO DOHA ROUND

At press time, before the leaders of the Asia-Pacific Economic Cooperation Forum (APEC) were scheduled to issue their final declaration, the government heads were expected to take the advice of their trade ministers and issue a strong statement pressing for completion of the Doha Round by the end of the year. Whether another statement, along with the dozens previously issued by world leaders in the last six years, in support of the WTO talks will have any impact

on the negotiations is unknown. Although APEC has been a bellwether in the past on trade issues because of its broad membership, two key players in the round, Brazil and India, are not members of the group.

“The question is, can we advance the Doha Round here at the APEC? And I believe we can,” President Bush said during a press conference with Australian Prime Minister Howard Sept. 4. “It's a hard issue to get done, but I believe, with will and determination, we can get it done,” he told Howard in Sidney, Australia, where the APEC meeting was taking place.

Speaking to a business group in Sydney Sept. 7, Bush again voiced support for completing the Doha Round this year. “The United States is committed to seizing this opportunity – and we need partners in this region to help lead the effort. No single country can make Doha a success, but it is possible for a handful of countries that are unwilling to make the necessary contributions to bring Doha to a halt,” he said. “The United States has both the will and the flexibility to help conclude a successful Doha Round, and we urge our APEC partners to join us in this vital effort,” the president declared.

“As we work to liberalize trade and investment through Doha, the United States also supports the vision of a Free Trade Area of the Asia Pacific,” President Bush said. The APEC leaders were expected to endorse the idea in their declaration. “This would be a free trade area that incorporates all APEC economies and reduces barriers to trade and investment across the entire Asia Pacific region,” he explained.

* * * BRIEFS * * *

COMMERCE: President Bush Sept. 4 nominated BIS Assistant Secretary Chris Padilla to be under secretary of Commerce for international trade and head of the International Trade Administration. Padilla, formerly at State and USTR's office, was among early names mentioned to succeed Frank Lavin for job (see **WTTL**, July 23, page 4). He joined BIS in September 2006.

EXPORT ENFORCEMENT: JSR Micro, Inc., of Sunnyvale, Calif., realized benefits of voluntary self-disclosure of 90 alleged export control violations to BIS. In settlement with BIS, it agreed to pay \$270,000 civil fine for exports of photoresists to Israel, Taiwan, and Singapore without licenses and for filing false information on SEDs. Ninety violations could have cost firm maximum of \$990,000 in fines.

MORE EXPORT ENFORCEMENT: Henry Shein, Inc., of Melville, N.Y., also got discount off full potential fine for alleged export violations even though it apparently didn't make voluntary self-disclosure. To settle 25 charges related to exporting dental equipment to Iran through United Arab Emirates, Shein will pay \$165,000 civil fine. Penalty could have been up to \$275,000. BIS reached settlement with ex-Shein executive David McCauley for his role in exports. He paid \$6,380 fine (see **WTTL**, July 9, page 4).

KAZAHKSTAN: Census Sept. 6 issued advice to exporters who are having difficulty getting cargo and merchandise into Kazakhstan, which enacted law requiring copy of original export declarations with imports. Census referred exporters to July 5, 2004, letter issued by then-Foreign Trade Division Chief Harvey Monk. The letter noted that Foreign Trade Statistics Regulations state that “information on the SED may not be disclosed to anyone except the U.S. Principal Party in Interest or their agent and only when such a copy is needed to comply with United States official legal and regulatory export control requirements. We are requesting that the information of the SED or Automated Export System record not be provided to foreign governments.”

FRED THOMPSON: Newly announced candidate for Republican presidential nomination should be well remembered in trade community. As senator from Tennessee, he led Senate effort in 2001 to block enactment of new Export Administration Act (S. 149) sponsored by Sen. Mike Enzi (R-Wyo.). He also sought amendments to China PNTR legislation to impose sanctions on Chinese proliferation activities.

MEXICO TRUCKS: Transportation Department Sept. 7 said Stagecoach Cartage and Distribution of El Paso, Texas, was approved to operate in Mexico and Transportes Olympic of Nuevo Leon, was cleared to operate in the U.S., as part of year-long cross border demonstration project aimed at implementing long-delayed open-trucking provisions of NAFTA. Launch of program got green light Aug. 31 when federal court rejected suit by unions and others to stop it.