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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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DEFENSE EXPORTS TO U.K WILL BE SUBJECT TO OFFICIAL SECRETS ACT

U.S. Munitions List (USML) exports to the United Kingdom under the recently signed U.S.-UK Defense Trade Cooperation Treaty will be subject to Britain's Official Secrets Act (OSA) so Britain can control their reexport, State's acting Assistant Secretary for Political-Military Affairs Steven Mull told a House hearing July 26 (see **WTTL**, June 25, page 1). "UK has agreed to make USML items exported under the treaty subject to the UK Official Secrets Act, which will prevent reexports and re-transfers of such items outside the approved community without U.S. approval," he testified.

The House Foreign Affairs subcommittee on terrorism, proliferation and trade hearing saw a rare display of bipartisan criticism of State's Directorate of Defense Trade Controls (DDTC). Members grilled Mull on the slow licensing process, the 7,500 case backlog, and seemingly arbitrary commodity jurisdiction rulings. They also questioned the turf battle between DDTC and the Bureau of Industry and Security (BIS) over licensing for aviation products that have been certified by the Federal Aviation Administration (FAA).

Prepared for the criticism, Mull noted steps DDTC is taking to correct its problems. Among them are a mandatory review of licenses for U.S. forces in Iraq or Afghanistan that are over seven days; the seeking of OMB advice on program assessment tools; and fixing software problems by October. "We are set to initiate a policy change that will permit employees of foreign companies who are nationals from NATO or EU countries, Japan, Australia and New Zealand to be considered authorized under an approved license or TAA [Technology Transfer Agreement]," he testified. "This will alleviate the need for companies to seek non-disclosure agreements for such nationals and recognizes the low risk of transferring technologies to nationals of these countries under an approved license or TAA," he added.

U.S. ADDS ONLINE MUSIC COMPLAINT AGAINST CHINA

The U.S. has expanded its WTO complaint against China's intellectual property rights (IPR) and market access practices to include Beijing's treatment of online music distribution. The new complaints focus on censorship rules that apply to foreign online music but not to Chinese online music providers and on foreign ownership restrictions of firms that offer music for downloading from the Internet to mobile phones and music devices. Washington has held only one round of consultations with Beijing on the original complaints about other censorship rules, enforcement of IPR laws, and customs practices regarding seized CDs (see **WTTL**, April 16, page 2). Privately, music industry sources are pessimistic about the

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chances of ever being able to stem the rampant piracy of music CDs in China. Online music distribution over the Internet, however, is seen as a still-new medium and distribution system. Just as the industry has accepted the reality of online distribution in the U.S., such as Apple's I-tunes, which doesn't operate in China, it has begun to embrace it in China. U.S. record companies have contracts with several Chinese online distributors. Given the Chinese government's tight controls on the Internet in China, U.S. industry contends Beijing has the power to prevent piracy in this medium.

The new U.S. complaints focus on China's censorship requirements, which allow Chinese firms to self-certify compliance with Chinese censorship rules, but require foreign firms to submit the music to the Ministry of Culture for review and approval. This is a costly and slow process, U.S. industry complains. The second complaint is against a Chinese rule which restricts online music distribution to 100% Chinese-owned companies.

PADILLA TELLS CHINESE FEWER END-USER CERTIFICATES MAY BE NEEDED

During a visit to China in mid-July, BIS Assistant Secretary Chris Padilla tried to explain to the Chinese how the number of end-user certificates they will have to issue under the new China rule may be less than they provided in past years. Padilla went to China to explain all the changes the agency made in the final regulation and to answer questions on how the new rules will be implemented, especially the new Validated End-User (VEU) mechanism.

Padilla told the Chinese that BIS reviewed all China licenses in calendar 2006 and, based on the new criteria for end-user certificates in the China rule, found only 542 end-use certificates would have been required. This compares to the 500-650 cases that were actually required in the last three years.

A main topic of discussion with the Chinese was how the VEU would be implemented. "I said to them that as we move forward in implementing the VEU, we would continue communications and try to take their concerns into account," Padilla told reporters July 26. "Their main concern is about insuring that their laws and sovereignty are respected, and I assured them that we will respect their laws and sovereignty," he added.

EU RAISES TARIFFS ON INFORMATION TECHNOLOGY PRODUCTS

The European Union (EU) has decided some new digital products, including some digital cameras and mobile phones with Global Positioning Satellite (GPS) functions, are not subject to the zero-tariff provisions of the multilateral Information Technology Agreement (ITA) and will raise the tariffs on the equipment. The Commerce Department "is a bit baffled why the European Union would take a step backward and approve measures that would no longer guarantee duty-free treatment for certain ITA products," said Michelle O'Neill, deputy under secretary for international trade. She said Commerce is working with the U.S. Trade Representative's office on how to address the change in EU tariffs.

The EU's Customs Code Committee nomenclature section July 12-13 said digital cameras with high-resolution video functionality will be considered video camera recorders this fall and subject to a 4.9% duty in Europe. The measures should not affect digital camera models sold to the ordinary consumer, a EU source said. Some models of low-resolution video cameras will be excluded from the video camera recorder duty. The committee also ruled that telephone personal digital assistants (PDAs) with a GPS feature are GPS products and are subject to a 3.7% duty, the EU source said.

The EU claims electronic products with new functions were never incorporated under the ITA, which was adopted in 1997. At a World Trade Organization (WTO) symposium in March,

several countries and companies called for updating the accord to address changes in technology that have occurred since then (see **WTTL**, April 2, page 4). The European Information & Communications Technology Industry Association (EICTA) will assess the nomenclature section's decisions once it has seen the new regulations, said Mark MacGann, the group's director general. Industry also is waiting for the EU to draft a proposal to suspend the duty on LCD monitors larger than 19" and wide screens below 19" that are used for information and communication technology purposes in banks, railway stations, doctors and architects offices, for example, and are not used for home entertainment, MacGann said.

U.S. HAS REBUFFED ANTIGUA'S EFFORTS TO SETTLE GAMBLING DISPUTE

Antigua and Barbuda has offered to negotiate a settlement with the U.S. to resolve the Caribbean nation's WTO complaint against U.S. restrictions on Internet gambling, but Washington has refused to hold such talks, according to Mark Mendel, the attorney advising Antigua. "Everything we have done to date has been driven by the desire to get the United States to sit down and talk to us, something to date they have refused to do," he said.

"We've had plenty of meetings with them, but all the meetings have been pretty much on the lines of 'If you drop your case, then we will be very please if you do so'," Mendel said. "But there has never been any discussion about compromise, no possible solution, despite many proposals that we put on the table," he added. "There has been a persistent refusal by the United States to discuss this case," he told a Cato Institute program July 25.

"We brought this case to get the Unites States to negotiate to some fair resolution to this issue. We have never taken the position that the United States should have to open its doors to unfettered Internet gambling from countries from around the world or even to Antigua," Mendel said. "We felt then and feel now that there is very solid middle ground for some kind of compromise whereby Antiguan companies can offer these services into America on a fair and very protected basis without impinging on fundamental objectives of the United States government," he continued.

DOHA ROUND HANGS SIGN: GONE FISHING; BACK IN SEPTEMBER

After a week-long burst of complaints about the modalities papers issued by the chairs of the Doha Round agriculture and non-agriculture market access (NAMA) committees, WTO delegates closed shop in Geneva July 27 with instructions to come back on Sept. 3 ready to start intense negotiations to bring the round to a conclusion. Nothing said at the agriculture and NAMA meetings early in the week or the WTO General Council meeting July 27 showed any sign that members are willing to move toward such a compromise in the fall.

The U.S., European Union (EU), and developing countries repeated many of the complaints they've raised before (see **WTTL**, July 23, page 2). The continuing lack of consensus suggests that WTO Director General Pascal Lamy will come under increasing pressure, probably early in 2008, to draft a com-prehensive text combining all segments of the talks similar to the one that Arthur Dunkel, then director general of the General Agreement on Tariffs & Trade (GATT), did near the end of the Uruguay Round.

Besides complaints about the texts from the two chairmen, some WTO members have started suggesting that the U.S. and EU have made a pact not to press on their mutual areas of sensitivity in the farm talks. One diplomat from Latin America said there is talk in Geneva about a U.S.-EU agreement earlier this year. "The E.C. won't press the U.S. in OTDS [Overall Trade Distorting Subsidies] and in exchange for that, the U.S. won't press the E.C. on market access in developed countries," he told **WTTL**. He said there is speculation that they plotted their negotiating ranges and determined their comfort levels. "If we accept an

ambitious proposal on NAMA, then they have the field to themselves to reach an agreement on agriculture that doesn't deliver," he said.

House approval July 27 of a Farm Bill (H.R. 2419) that maintains or expands domestic subsidies at levels authorized in the 2002 Farm Bill foreshadows the trouble the Bush administration would face trying to get Congress to approve a Doha deal that sharply cut those supports. So, not surprisingly, Deputy U.S. Trade Representative (USTR) Peter Allgeier criticized the agriculture paper for lacking balance. "Our fundamental concern with the agriculture draft text -- and with the state of play within the negotiations -- is the uneven treatment across the three pillars in agriculture," he said.

The NAMA-11 group of advanced developing countries objected to the NAMA paper's suggested industrial tariff cuts. "The draft text changes what has become the principle of the Doha Round, that agriculture should lead the ambition of the Doha Round, with the developed countries making the greatest reforms in their trade distorting policies," said a spokesman for the group. EU Ambassador Eckart Guth told the General Counsel that the EU "would have real concerns if there were any attempts to sequence the negotiations in such a way that results are sought first on agriculture before moving on to NAMA."

* * * BRIEFS * * *

USML: Idea of fees on USML license applications based on a company's sales -- first reported in WTTL June 18 -- was raised by House Foreign Affairs proliferation subcommittee chairman Brad Sherman (D-Calif.) at July 26 hearing. John Douglass, president of the Aerospace Industries Association, told the committee that, "In general, we don't like user fees." He said if the fee would solve the problems, "we'd gladly pay it, but it won't solved the problems."

TRADE PEOPLE: Melissa Mannino, who was chief of Commerce Department chief counsel's enforcement and litigation division, which handles export enforcement cases for BIS, has left to join Wilson, Sonsini, Goodrich & Rosati in Washington, D.C. as of counsel.

EXPORT ENFORCEMENT: Federal grand jury in Detroit July 25 handed up 10-count indictment of brother and sister, Darrin Hanna, 29, and Dawn Hanna, 34, charging them with conspiracy to violate Iraq trade embargo by exporting mobile GSM telecommunications and GPS equipment to Iraq from December 2001 to July 2007, including while Saddam Hussein was still in power.

FCPA: Justice released FCPA advisory opinion July 24 saying it "does not presently intend to take any enforcement action with respect to the proposal described in this request" from company that said it wants to pay expenses for six-person delegation of government officials of Asian country for tour of its U.S. operations. Requestor said it doesn't do business in country now but is interested in starting business there. It also said it didn't select officials who would take tour and those officials have no direct authority to issue contracts or licenses it is seeking.

MORE FCPA: Houston, Texas, federal grand jury indictment unsealed July 23 charges Jason Edward Steph, 37, who is U.S. citizen residing in Kazakhstan and former executive of Willbros Group, Inc., with conspiracy to violate Foreign Corrupt Practices Act (FCPA) and money laundering. Indictment alleges he conspired to make over \$6 million in bribe payments to Nigerian government officials to obtain and retain gas pipeline construction contract with Nigeria's state-owned oil company.

MORE FCPA: Steven J. Ott and Roger Michael Young, former executives of ITXC Corporation, pleaded guilty July 25 in Newark U.S. District Court to separate one-count criminal informations charging them with conspiring to violate FCPA with bribery of government officials in Nigeria, Rwanda and Senegal (see WTTL, Sept. 11, 2006, page 2). In related case, former ITXC manager Yaw Osei Amoako was sentenced to 18 months in prison followed by two years of supervised release and fined \$7,500 for conspiring to violate FCPA.

MORE FCPA: Delta & Pine Land Company, of Scott, Mississippi, and its subsidiary, Turk Deltapine, which were acquired on June 1, 2007, by Monsanto, reached two settlements July 25-26 with SEC to resolve complaint that they violated FCPA with payments to Turkish officials to obtain reports and certifications that were necessary for Turk Deltapine to operate its business in Turkey. SEC imposed cease-and-desist order on firms, which agreed to pay \$300,000 fine in separate court settlement.