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JUSTICE EXPORT CONTROL COORDINATOR TRIES TO CALM INDUSTRY FEARS

Justice's creation of the new post of National Export Control Coordinator isn't intended to increase the prosecution of legitimate companies involved in exporting, says Steven Pelak, who was appointed to the job June 20 (see **WTTL,** June 25, page 4). In an exclusive interview with WTTL, Pelak tried to calm industry concerns that his office will be looking for more major cases against defense and dual-use exporters such as the $100 million penalty against ITT.

> "The focus has been principally, but not exclusively, in the area of counter-proliferation," he said. "That's not going to change." The other area of his attention will be on exports that are related to and support state sponsors of terrorism. Iran and North Korea are at the top of the list along with Cuba and Syria. "The other element you'll see is high-technology and the Far East and China, particularly to benefit their military industrial base," Pelak told WTTL.

Much of Pelak's assignment will be directed at helping to train U.S. attorneys around the country about the efforts of foreign entities to obtain controlled goods and technology illicitly and on the prosecution of such cases. "To the industry, I don't think in anyway there is going to be a change substantively," he said. "It redounds to the benefit of legitimate exporters and businesses when prosecutors and investigators know more about their craft. When they are better trained, they can be a lot more efficient and they can see matters that might come in the door and see it's not a criminal matter," he said.

Pelak will help coordinate cooperation between Justice and licensing agencies, such as the Bureau of Industry and Security (BIS), State and Treasury. He will also work with the FBI, Defense and U.S. intelligence services. "We want to work with the folks that know about the technologies and who is seeking the technologies...to obtain from them where are the street corners we should be standing on, and who are the guys on the street corners that we should really be focusing on," Pelak told WTTL.

REPORT RAISES CONCERNS ABOUT BIS HANDLING ON LICENSES FOR INDIA

A recent report from Commerce's Office of Inspector General (OIG) could put some bumps in the road for the Bush administration's effort to get Congress to enact legislation that would implement the U.S.-India Civil Nuclear Initiative. The nuclear deal would allow the licensing of exports of U.S. nuclear equipment and technology to India, but the OIG report suggests that the Bureau of Industry and Security (BIS) may not be doing an adequate job in reviewing and monitoring exports that are already permitted to India. The report says BIS officials did not

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have a chance to complete their review of the report before it was released. The agency, however, indicated its belief that "India has fulfilled its commitment under the Next Steps in Strategic Partnership" which was one of the programs leading to the nuclear agreement.

> The report says BIS needs to do a better job monitoring dual-use exports to India. It points out several areas that need improvement, including the identification of Indian organizations on the BIS Entity List, pre-license checks (PLC) and post-shipment verifications (PSVs), compliance with licensing conditions and the filing of required reports. The report notes that the number of licenses for India has declined in the last two years and most licenses are approved because of the closer cooperation between the two countries.

"Some Indian entities on the list are not clearly identified, which raises the risk that U.S. exporters could inadvertently export controlled dual-use items to these entities without the required license," the OIG claims. The report also cites "several weaknesses" in the BIS end-use check program for India. While most checks of private sector customers are conducted in a timely manner, checks of Indian government entities "have not always been conducted within prescribed time frames," it complains. The OIG found cases where BIS failed to follow end-use check criteria that would have caused the end-user to get an unfavorable determination.

The report also criticizes BIS policy that requires licensing officers to review technical documentation only when the agency raises national security concerns. "As a result, 10 of 13 India licenses were not marked for licensing officer review because the technical reporting condition was placed by Defense," the report states.

INDIA REFUTES U.S. CLAIM THAT IT CAUSED POTSDAM BREAKDOWN

Indian Commerce Minister Kamal Nath June 28 refuted U.S. claims that India and Brazil caused the breakdown of G-4 negotiations in Potsdam, Germany, arguing that it was the U.S. refusal to offer a deeper cut in domestic farm subsidies and to cap aid for specific agriculture products that precipitated the collapse of the meeting. The U.S. and European Union (EU) said it was Indian and Brazilian unwillingness to make significant new offers in non-agriculture market access (NAMA) that caused the failure of the meeting (see **WTTL,** June 25, page 2).

> Nath said the U.S. shifted discussions to NAMA when it was being pressed by India and Brazil on farm subsidies. "In the conduct of negotiations when you find you are not moving elsewhere, you say let's forget it and give this up also," he said. "We started the discussion in Potsdam on subsidies. And that's when things started slowing down," he told a program at the Carnegie Endowment.

Nath said the U.S. offered to reduce official trade distorting subsidies (OTDS) to $17 billion, which is lower than the $22 billion it offered initially, but still more than the $10.8 billion it reportedly is actually paying in subsidies. "The United States said, 'We can offer 17.' 17 was put on the table in the discussions, but the United States today is applying 10.8," Nath said. He noted that the G-20 group of developing countries has called for the U.S. to cut its subsidies to $12.1 billion. "There was a big gap between 12.1 and 17," he told reporters later. "Since the U.S. wants some headroom, there are countries that will say, 'If you want headroom in your distortions, we want headroom in our tariffs'," he noted. "Of course, the United States did say after the last day that we met that, 'We may have some flexibility'," he admitted.

"Then the question came on the disciplines in Blue Box, disciplines in various boxes, it came on product specific caps in both the Blue Box and AMS," Nath continued. "Countries like Brazil are looking at market access, but if there are not product specific caps, no matter what the cuts, unless there are disciplines, it means nothing," the Indian minister explained. "They have certain products where they want product specific caps, and the United States said, 'No we can't have them'," Nath reported. He also said disagreement arose over the tiers by which farm tariffs would be cut. "I thought the G-20 bands had been accepted...There I was told the bands are not accepted," he said. The U.S. has spent less on farm subsidies in recent years than it is authorized to spend under the terms of the Uruguay Round agreement because many agriculture prices are high and haven't trigger subsidy programs.

> On NAMA, "India has flexibility," Nath claimed. "If the U.S. comes to a coefficient of five, I'll be happy to come to a coefficient of 25," he said. "The framework agreement talks of less than full reciprocity," he added. "Whatever the cuts developed countries take [in tariffs], I'll take 10% less," he offered.

"But the way they want it is for us to do double the cuts they are doing," he said. "At the end of the day, what is the reduction taking place. If they reduce by 20, I'll reduce by 10. If the reduce by 50, I'll reduce by 40 or even by 35, I may...But let them say what they are going to do. They cannot say I'll do 25 and you do 50" (see story below). At the end of the Potsdam meeting Brazil asked the U.S., "Okay, what NAMA coefficient do you want?" Nath reported. "So they said at 20. He said what OTDS are you willing to do on that. They had no answered."

Nath also said more progress was made in services than the U.S. and EU admitted. "There was a very healthy discussion. There was a movement forward in services," he said. The question became how to tie progress in services to agriculture and NAMA. "We couldn't find a way to do it, so we said we would talk to Pascal Lamy about how we can do it," he reported. "The only area in which there was visibility of movement forward was in services in Potsdam. But we couldn't freeze it, because there was no mechanics to freeze it," Nath explained.

NEW NAMA PROPOSAL GETS MUTED REACTION IN DOHA TALKS

A proposal by eight advanced developing countries June 26 for a compromise in Doha Round talks on non-agriculture market access (NAMA) has gotten a muted reaction from other developing countries. The proposal is intended to bridge the gap between the positions of the U.S. and European Union (EU) and those of Brazil and India. That gap contributed to the breakdown of G-4 talks in Potsdam, Germany, June 21 (see **WTTL**, June 25, page 2). Some of the lack of enthusiasm for the proposal stems from the view that the countries making it won't be affected as much as others by proposed NAMA tariff cuts.

> The paper offered by Chile, Colombia, Costa Rica, Hong Kong, Mexico, Peru, Singapore and Thailand represents relatively ambitious tariff-cutting coefficients for developed and developing countries, officials said. But some developing countries see it as too aggressive.

The group has proposed a coefficient of less than 10 for developed countries and a coefficient "between the upper teens and low twenties" for developing countries. Earlier in the Doha talks, developed countries had wanted only a five point spread between the coefficient they would use and the one for developing countries. A group of developing countries known as the NAMA-11 had called for a 25 point spread.

A coefficient in the high-teens or low twenties for developing countries "has always been Chile's position," said a developing country diplomat who is close to the talks. "Chile is really the one who's pushing for this paper...which is not very generous from Chile considering their applied tariffs are something like 5 or 6 across the board - not really a big effort there," he told WTTL. "I don't think it changes much because they are not the ones who are applying the formula. If you consider Mexico, for instance, Mexico has somewhat higher tariffs, but all of Mexico's trade is in FTAs with the U.S., E.C. and Japan now, and Latin America," he said.

Some of the countries making the proposal have been among those seeking the most ambitious outcome in NAMA and have sided with the U.S. in the past on tariffs, an ambassador from another developing country said speaking on background. "In Potsdam, there was already an indication that the developed countries could go below 10," he added. "The U.S. is trumpeting it [because] it's a U.S. group," he said. Other developing countries don't agree with a target in the upper teens. Malaysia, for example, has said 20 is its bottom line. The number for many other developing countries is in the upper twenties. Some countries still believe in the 30s. "So, the middle ground may settle more on the upper range of this group, or in the lower range of other developing countries who are looking for a higher coefficient," the ambassador said.

* * * BRIEFS * * *

NINESTAR: ITC June 29 agreed to review ALJ's initial determination in Section 337 case (No. 337-TA-565) involving ink cartridges from Japan. Respondent Ninestar Technology had sought review to raise legal questions stemming from recent Supreme Court ruling on patents (see **WTTL**, June 18, page 1).

FCPA: Leo Winston Smith, 71, of Newport Beach, was released on $500,000 bail June 28 after arrest June 18 on grand jury indictment which charged him with violating Foreign Corrupt Practice Act. Indictment claimed Smith, who was founder, executive VP and director of sales for Pacific Consolidated Industries LP, bribed official in UK Ministry of Defense to help win more than $11 million in contracts for company.

MORE FCPA: Si Chan Wooh, former senior officer of SSI International, Inc., wholly-owned subsidiary of Schnitzer Steel Industries Inc. until 2006, pleaded guilty June 29 to conspiracy to violate Foreign Corrupt Practices Act (FCPA) in Portland, Ore., U.S. District Court and agreed to cooperate with government. He also reached agreement with SEC which imposed $25,000 civil fine, required him to disgorge $14,819.38 in bonuses plus prejudgment interest of $1,312.52. Schnitzer reached separate settlements with government last year October, paying $7.7 million in disgorgement to resolve SEC complaint and $7.5 million in penalties to settle related criminal charges brought by Justice (see **WTTL**, Oct. 23, page 4).

FTAs: USTR rushed to revise FTAs with Peru, Panama, Colombia and South Korea to add provisions developed between Bush administration and Congress on labor, environment, medicines and security before expiration of fast-track negotiating authority June 30. It signed deal with Panama on June 28and was scheduled to sign Korean pact June 30. Despite rush, House Democrats issued statement June 29 saying they won't consider Peru and Panama deals until fall after those two countries enact implementing legislation. Democrats said they still oppose Colombian and Korean pacts for other reasons. Some have speculated that Congress won't renew fast-track until new president takes office. Senate Finance Committee Chairman Max Baucus (D-Mont.) issued statement June 29 saying, "Certainly, the status of the Doha trade talks does not demand immediate action on fast-track. The Finance Committee will turn to Trade Promotion Authority at an appropriate time in the future."

IEEPA: Senate June 26 passed bill (S. 1612) to amend IEEPA to raise fines (see **WTTL**, May 21, page 2).

USTR: Two veteran trade negotiators, with nearly 60 years of combined experience, Dorothy Dwoskin and Nancy Adams left USTR recently. Adams has become deputy vice president for Asia of Pharmaceutical Research and Manufacturers of America. Dwoskin has joined Microsoft in Washington, D.C., as senior director of global trade policy and strategy.

HILL: Warren Payne, economic advisor to ITC Commissioner Deanna Tanner Okun is moving to House Ways and Means Committee Republican staff as trade economist.

ANDEAN TPA: After agreement between House and Senate, House June 27 passed eight-month extension of Andean Trade Preference Act (H.R. 1830) by 365-59 vote. Senate passed same measure June 28 by unanimous consent. Ecuador had been seeking two-year extension (see **WTTL**, June 11, page 1).

EXPORT ENFORCEMENT: Graco, Inc. of Minneapolis, has agreed to pay $97,000 civil fine to settle 15 BIS charges related to unlicensed export of diaphragm pumps to India, Saudi Arabia and Taiwan.

GSP: USTR's office June 28 announced results of annual review of Generalized System of Preferences. It granted waivers of competitive need limitations to 115 products from 19 beneficiary countries, with import value of some $618 million in 2006. But under new conditions added to GSP law by Congress in 2006, it removed from GSP eligibility brakes, brake parts and ferrozirconium from Brazil; kola nuts from Cote d'Ivoire; gold jewelry and brass lamps from India; wiring harnesses from Philippines; gold jewelry from Thailand; and methanol from Venezuela.

PIPE AND TUBE: Allied Tube & Conduit, Atlas Tube; California Steel and Tube; EXLTUBE; Hannibal Industries; Leavitt Tube; Maruichi American Corporation; Searing Industries; Southland Tube; Vest, Inc.; Welded Tube and Western Tube filed antidumping and countervailing duty petitions June 27 at ITC and ITC against imports of light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey.