

# Washington Tariff & Trade Letter®

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

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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## **BIS TO CUT LIST OF ECCNs SUBJECT TO CHINA CATCH-ALL**

The Bureau of Industry and Security (BIS) intends to reduce the number of Export Control Classification Numbers (ECCNs) that will be subject to military end-use controls under its coming China catch-all regulations, according to BIS Assistant Secretary Chris Padilla. The few that will come off the original list of 47 ECCNs will be those with relatively wide foreign availability, including in China, and with low military utility, Padilla told WTTL. Padilla also said he still expects the final China rule to be published this spring, meaning before June 21.

BIS has used three criteria to weigh comments from industry on the proposed list of ECCNs to be covered by the rules. They are: the relative availability of the item either in China or elsewhere, including Europe and Japan; the relative military utility of the item; and the relative level of commercial trade and exports.

“We ran each ECCN through those three,” Padilla told WTTL. “For each one of those three tests we gave a ranking. In other words, is it highly militarily useful or only moderately or not very much. And then based on that, we did a priority ranking, and we said these things can come off,” he explained. “Generally speaking what came off were things where there was a high degree of foreign availability and a relatively low nexus to military weapons,” he said.

Padilla also said the final China rule would include changes to the proposed Validated End User (VEU) mechanism which will ease export controls for Chinese entities with good export control records. The final rule will explain “how you apply [for a VEU] and how the inter-agency process will work; who gets to see it; who makes the decisions; how they are made; what the time frames are; what the escalation process is,” Padilla noted. In addition, in response to industry comments, BIS intends change the definition of military end use, he said.

## **WCO WILL TARGET TRANSSHIPMENT OF IPR VIOLATING GOODS**

The World Customs Organization (WCO) at its June Council meeting is expected to adopt a set of proposals to toughen customs practices in developing countries that are lax in interdicting the transshipment of goods that violate intellectual property rights (IPR). The recently fleshed out proposals are aimed at 60 African and Asia countries that have no customs legislation to enforce IPR rules, said an official involved in the WCO work. Although most World Trade Organization (WTO) members are obliged to implement the agreement on Trade-Related Intellectual Property Rights (TRIPs) that came out of the Uruguay Round, least developed countries (LDCs) have until 2013 to comply, the official said. The WCO proposal would help LDCs prepare for implementation of the TRIPs accord, he explained. The "Secure" proposal is a set

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of standards for customs agencies with three main parts: legislation, risk analysis and capacity building. Its goal is to build support for improving customs organizations from the bottom up, the official noted. The 171-member WCO will offer expertise on the ground and from legal experts who will go to Africa and Asia to stoke interest in making the necessary changes.

The WCO is still discussing where the resources for the project will come from, but the private sector and rights holders have been tapped because they have the most at stake, the official said. "The aim is for a sufficient budget to develop the policy, which is geared at practical matters," he said. For example, a recently implemented Interpol database allows rights holders to provide information to fight counterfeiting and piracy, but its effective use requires tougher legislation in a number of countries and implementation of targeting techniques, he noted.

## **U.S. PROPOSES TEXTILE AND APPAREL LABELING RULES IN DOHA TALKS**

The U.S. May 15 offered a proposal to the Doha Round negotiations on non-agriculture market access (NAMA) on a common, simplified approach to labeling textiles, apparel, footwear, and travel goods, such as cases, bags, and wallets, an informed source said. U.S. industry has complained about the lack of uniformity in textile labeling requirements and the need for costly relabeling to meet the different requirements of different countries. There are two kinds of labels on apparel: a permanent label, which is sewn in or printed on a product, and a hangtag which is merely attached. The U.S. wants the NAMA negotiations to agree on a maximum number of required elements on the permanent label.

The U.S. proposes limiting permanent labels on apparel and textile goods to information on the country of origin, fiber content, care instructions, and safety information. It says other elements including specific information required by a country, could be on the hangtag. Required information on the permanent tag for footwear and travel goods ought to be limited to country of origin, the U.S. said in its proposal. Other information could be allowed but not required on the permanent label, the U.S. said.

## **BIS WILL CONSIDER CHANGES TO ENCRYPTION RULES IN FALL**

Saying it is time "to look under the hood" of current export controls on encryption products, BIS Assistant Secretary Chris Padilla May 15 said the agency will begin a review of the rules this fall with a view toward clarifying them and eliminating unneeded reporting requirements. Padilla, however, cautioned against expecting major changes to current regulations. "I don't want to over promise what I can do," he told an American Conference Institute seminar on export controls. "I am only one person in the interagency process," he said.

One area that BIS is likely to examine is the reporting requirement for products and software exported under License Exception ENC. "That's the kind of thing I want to take on in the fall," Padilla said. He identified several questions that he has been asking, including: Is anybody reading them? What are we using them for? Is there a way to streamline them? Do you need to come in for every single product? He said BIS has already had some discussions on these issues with the National Security Agency and Defense.

## **BILL TO BOOST IEPPA PENALTIES MAY UNDERCUT EAA RENEWAL**

The Commerce Department's plea for the renewal of the Export Administration Act (EAA) with significantly higher fines may be short circuited by a Senate Banking Committee proposal to increase penalties under the International Emergency Economic Powers Act (IEEPA). The committee May 16 approved an amendment to IEEPA to raise the maximum civil penalty for

each violation to \$250,000 or twice the value of the prohibited export from \$50,000 and the maximum criminal penalty to \$1 million and 20 years in jail from \$50,000 and 10 years in jail. The amendment was requested by Treasury's Office of Foreign Assets Control (OFAC).

Banking has just started talking to Commerce about EAA. Banking Chairman Christopher Dodd (D-Conn.) told reporters the committee will consider EAA legislation, "but not right away." The committee's ranking Republican Richard Shelby (R-Ala.) said: "We do need to reauthorize the Export Administration Act. This will be helpful in the meantime" (see **WTTL**, April 30, page 2).

The IEEPA amendment is expected to move quickly through Congress because there is strong consensus in favor of tougher penalties for export control and foreign investment violations, especially those in Sudan, congressional sources say. But there is also speculation that the changes that Commerce is seeking in BIS law enforcement powers could be attached to the measure in the House as another amendment to IEEPA without actually renewing EAA. BIS officials contend the changes in IEEPA penalties won't affect their effort to get EAA renewed. "I have no concerns whatsoever that passage of the IEEPA bill will undermine our effort to renew the Export Administration Act," said BIS spokesman Erik Heilman.

### **MANCUSO CLEARS BANKING COMMITTEE AFTER ANSWERING QUESTIONS**

The Senate Banking Committee May 16 gave unanimous approval to the nomination of Mario Mancuso to be BIS under secretary after Mancuso submitted written answers to four questions Banking Chairman Christopher Dodd (D-Conn.) submitted about his statements on the Geneva Convention and his role in the use of irregular warfare programs (see **WTTL**, May 14, page 1). Mancuso's nomination is now on the Senate calendar for a vote but with no specific date set.

Dodd asked for an explanation of statements Mancuso made in interviews with Armed Forces Press Service suggesting that prisoner-of-war status was like earning a Gold Card. Mancuso said he used that metaphor to explain the conditions that trigger application of the Geneva Convention. "At no time did I mean to obscure one very important point: whether formally designated a POW or not, all captured battlefield persons are entitled to humane and dignified treatment," Mancuso told Dodd. He also said detainee issues were not part of his assignment when he worked in the Defense legal office.

The Connecticut Democrat also asked the BIS nominee to explain his commitment to promoting international norms in the implementation of U.S. dual-use export controls. Mancuso said the U.S. should set the example for adhering to international law and promoting global citizenship. "I can personally attest that in my dealings with senior officials of allied and partner governments throughout the world, it was their personal trust and confidence in my judgment, integrity and leadership that secured favorable outcomes for our country, even from those governments which had sharp disagreements with certain of our policies," he declared.

### **GOP DOES ABOUT FACE ON LABOR RULES IN FTAs**

The results of last November's elections and the shift of Congress to Democratic control has had a clear impact on the willingness of Republican lawmakers to accept stronger labor and environment requirements in U.S. free trade agreements (FTAs), concedes Rep. Jim McCrery, the ranking Republican on the House Ways and Means Committee. After 14 years of opposing proposals to require adherence to International Labor Organization (ILO) standards in FTAs, the majority of Republicans are expected to support the deal negotiated between Ways and Means and the Bush administration, McCrery told the Washington International Trade Associations (WITA) May 14 (see **WTTL**, May 14, page 1). "Things have changed dramatically from 10 years ago" when Republicans refused to give President Clinton fast-track negotiating authority with enforceable labor and environment provisions, McCrery said. Public support for

trade has eroded, he noted. "Lou Dobbs and the Democrats have become more in lock step in demanding that labor and environment be part of these agreements," he continued. "So you've got a very different environment than you had in 1994-1996. Then, you put on top of that the Democratic victory in '06, which in some part was fueled by public mistrust of trade...that just screamed for Republicans to take a different tack," McCrery admitted.

## **BANKING TAKES SOFTER APPROACH TO AMENDING CFIUS**

Another sign that the firestorm over Dubai Ports World has subsided is seen in a bill the Senate Banking Committee May 16 approved unanimously to change rules covering the Committee on Foreign Investment in the U.S. (CFIUS). The measure adopted many suggestions from the business community, which worked to keep the legislation from imposing too many barriers to foreign investment. While the bill appeared to have bipartisan support, sources say the measure was primarily the work of Chairman Christopher Dodd (D-Conn.) who gave harsher critics of CFIUS no chance to proposed tougher oversight and investigation requirements.

Once the Senate acts on Banking's proposal, the House-Senate Conference Committee that will resolve differences with the House's version of the legislation is expected to lean toward adopting the Senate approach. "I'm very encouraged by the Senate Banking Committee's work on CFIUS reform legislation this morning," said House Financial Service Committee Chairman Barney Frank (D-Mass.) in a statement. "It clearly shows that we are on the same track. I look forward to working with the Senate toward final passage of this legislation, and I'm confident that we will have a bill on the president's desk very shortly," he said.

## **U.S., CANADA AGREE ON RELEASE OF ITAR ITEMS TO CANADIAN MILITARY**

The U.S. and Canada May 17 reached a strange agreement to allow the export of U.S.-origin goods, technology and services subject to the International Traffic in Arms Regulations (ITAR) to personnel in Canada's Department on National Defense (DND) who are Canadian citizens, including dual nationals, who have a need to know and a minimum secret-level security clearance. The agreements covers release to Canadian Forces members, civilian employees, embedded contractors, and employees of other government departments working within DND. It's not clear, however, whether a Canadian soldier fighting in Afghanistan will need a secret clearance to get U.S. ammunition for his weapon or to use a U.S. defense item in a fire fight.

The exchange of letters signed by Deputy Secretary of State John Negroponte and Canadian Deputy Defense Minister Ward Elcock does not deal with the broader issue of release of ITAR technology to dual-national Canadian citizens working in the Canadian defense industry, including U.S. subsidiaries in Canada.

"Canada views today's arrangement as an important first phase in resolving this complex issue," said Canada's Minister of International Trade David Emerson in a statement. "Canada's high-tech, defense and aerospace sectors can rest assured that it is our priority to engage the U.S. in further discussions with respect to ITAR issues affecting these industries," he added. The Canadians said the State Department has indicated a willingness to continue these discussions.

### **\* \* \* BRIEFS \* \* \***

TRADE PEOPLE: Frank Record, former acting assistant secretary of State for international security and nonproliferation and principal deputy assistant secretary for arms control, has become partner at MK Technology trade consulting firm in Washington. Before appointment at State, Record was longtime senior professional staff member for House International Relations Committee.

DOHA ROUND: G-4 trade ministers held another round of talks in Brussels May 18 and said they are still committed to completing round by end of 2007.