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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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UNIVERSITIES COMPLAIN ABOUT BURDEN OF DEEMED EXPORTS

U.S. universities spend millions of dollars annually to screen research contracts to make sure the work won't trigger "deemed export" licensing requirements, academic representatives told the Bureau of Industry and Security's (BIS) Deemed Export Advisory Committee (DEAC) at a May 2 hearing in Atlanta. These efforts seem to be successful, because BIS receives fewer than five deemed export licenses from universities each year even though schools conduct thousands of research projects annually worth more than a billion dollars under contract.

> Speakers recommended revising current deemed export rules. They suggested: reducing the list of items on the Commerce Control List (CCL) that would require such licenses; creating a mechanism that would grant foreign students and researchers access to controlled technology when they receive their visas to enter U.S.; and harmonizing deemed export policies under the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). There were also suggestions to take a broad look at all U.S. export controls.

While universities are filing few deemed export licenses, they are submitting an increasing number of commodity jurisdiction (CJ) requests with State and commodity classification requests with BIS, speakers noted. David Brady, director of export and secure research compliance at Virginia Tech, said his school screens 2,600 proposals annually for export compliance but didn't submitted any deemed export licenses in the last year. Win Phillips, vice president of research at the University of Florida, said Florida screens some 5,000 contracts a year. Charles Liotta, vice provost of research at Georgia Tech, which hosted the DEAC meeting, said his university spends just under $1 million a year on export compliance.

"I was struck at how much of a consensus there is that we need to provide very strong controls over a much more limited body of knowledge, products and activities," said DEAC Chairman Norman Augustine in an exclusive interview with WTTL. Augustine noted that the DEAC plans to hear from security officials also. "I would again add a caution that we have not yet had in depth briefings from the people who have the other side of this problem, that is protecting America and homeland security from a national security failure," he told WTTL. "We have to weigh carefully what they have to offer," he said.

U.S. MAY NEED TO PAY BILLIONS TO "CLARIFY" INTERNET GAMBLING BAN

Foreign countries that are banned from offering Internet gambling services in the U.S. could seek billions of dollars in compensation from the U.S. under a World Trade Organization

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(WTO) procedure Washington invoked May 4. Having repeatedly lost WTO rulings against its ban on Internet gambling operations by foreign providers, the U.S. has tried a new ploy, filing a request at the WTO to withdraw commitments in made in the General Agreement on Trade in Services (GATS) in the Uruguay Round. The institution of the Article XXI process won't prevent the continuation of the separate WTO dispute-settlement action under which Antigua and Barbuda has won rulings that Washington has violated its GATS obligations by blocking Internet gambling services from the Caribbean nation (see **WTTL**, April 9, page 2).

> Under Article XXI, WTO members can request compensation in the form of other trade concessions, or as a last resort retaliation, for any trade benefit lost by the U.S. action. With dozens of countries having businesses that provide Internet gambling services, the global market has grown by some estimates to $10-14 billion annually. Some sources speculate that the U.S. market alone is $6-8 billion, which could be the level of compensation potentially sought.

The U.S. Trade Representative's (USTR) office said the U.S. was seeking this new approach "to clarify its WTO commitments with respect to Internet gambling services." But the clarification technically is a withdrawal of a commitment under the schedule of concessions the U.S. made in the Uruguay Round under the heading of "recreational services." "Back in 1993 no WTO Member could have reasonably thought that the United States was agreeing to commitments in direct conflict with its own laws," said Deputy USTR John Veroneau.

Antigua and Barbuda protested the U.S. move, saying this is the first time any country has used this process in response to losing a trade dispute. "This is going to have a very severe consequences for the global free trade movement," said Antigua's Minister for Finance and the Economy L. Errol Cort. Antigua's outside legal advisor, Mark Mendel of Mendel Blumenthal in El Paso, Texas, disputed the U.S. claim that no one considered gambling under the recreational services category. More than a dozen countries, including Senegal, Croatia, Costa Rica, and the European Union, explicitly excluded gambling from their commitment schedules. "If Senegal could figure it out, the United States should have been able to," Mendel told WTTL.

DOHA AGRICULTURE CHAIRMAN OFFERS CANDID PAPER ON OPTIONS

In a sharply critical and candid April 30 assessment of Doha Round negotiations on agriculture, New Zealand Ambassador Crawford Falconer, chairman of agriculture negotiating committee, questions whether the whole negotiating structure of the farm talks over which WTO members have stumbled for five years is wrong and should be revised. Falconer leaves no country or group of countries exempt from his knife-like suggestions for breaking the deadlock in the talks. He says it is clear the U.S. will have to cut domestic subsides more than it has already offered; the European Union (EU) will have to raise the level of tariff cuts it has offered; and all countries will have to accept limits on which products are designated as sensitive or special and allowed to avoid the full market-opening goals of various tariff-cutting formulas.

> "Let me state up-front how I intend to proceed here and in the sections that follow," Falconer says. "I do not honestly feel I would be doing anyone a favour by hiding behind the technicalities of saying everybody's position might prevail. That would be safe and bureaucratic. We are well past the need for bureaucratic safety. There is a need for calling a spade a spade rather than a digging implement tailored to certain terrestrial conditions," he opines.

Falconer recognizes that Doha negotiators have been struggling from the start trying to set the numbers that would fit into various "modalities" and "tiers" for cutting tariffs. Because this approach has targeted the highest tariffs for the most protected products, it has understandably produced the most resistance in the talks. "So here's a radical thought to discard if you choose," Falconer writes. "Would it in fact not be better to use a different approach entirely: drop the tiered approach, drop the complicated flexibilities, two-third proportionalities, all the specials debate etc. etc. all of which threatens to amount to an ever more complicated and ever-cascading exercise in stalemate negotiation and counterbalancing complications. And just go to something more simple and straightforward and, above all, clear: where everybody knows what they are doing and which, quite frankly, most developing Members could probably reasonably manage given what is going on in the real world," he says in his paper.

> He also suggests combining the "amber box" of trade distorting subsidies and "blue box" of less distorting subsidies into one box. "Although it would be a 'combined' cap, it would still have to be made up of the AMS [Aggregate Measures of Support] and blue elements," he explains. "So you would still (at least analytically) have to arrive at the component elements to make up the combined cap," he adds. "Most important, it could not be a device to simply circumvent what would otherwise be the required AMS commodity – specific caps."

On domestic subsidies, the U.S. offer "for overall trade distorting support will simply have to be less than 22 billion," he states. "My guess is that, if we end up with an agreement at all this year, the number will be in the teens," he asserts.

On tariff cutting and market access, Falconer says the most crucial issue is what will be the top band of tariff cuts for farm goods with the highest current tariffs. The EU has proposed 60% and the U.S. has called for 85%. Despite the adamant positions they have taken, Falconer contends a compromise must be reached. "Well, I can't help but observe – and this requires no special insight – that this will eventually happen, and that I will at least venture the prediction that one will have to move up and the other will have to move down or we will simply not have a deal," he states. He suggests that some method should be found to deal with products that might be disproportionately hit by the largest cuts.

FALCONER'S CHALLENGE PAPER CHALLENGES WTO MEMBERS

The agriculture "challenge" paper that WTO agriculture chairman Crawford Falconer floated April 30 is a concrete sign that Doha Round negotiations have entered a new phase, but official reaction has been muted as officials in capitals scrutinize it. USTR spokesman Sean Spicer said: "We have nothing to say beyond we are studying it." A fuller airing of reactions is expected at a May 7 informal meeting of the agriculture committee in Geneva. Falconer's paper aims to consolidate discussions he has had with members over the past few months, get member reactions, and lead to a formal draft proposal that might be used as the basis for a breakthrough preliminary deal by the end of July (see **WTTL**, April 30, page 1).

> "Either we're going to see progress in the next weeks" or one has to conclude the desire for a deal isn't strong enough, said former Canadian trade official John Weekes, who is now a senior advisor to Sidley Austin in Geneva. "I don't see any way back," he added. "I don't think the members have ever had a clearer picture of what the chairman might intend to do," Weekes told WTTL.

The report is "relatively balanced, but it's a bit soft on domestic support," a G-4 diplomat told WTTL. "It took the U.S. off the hook a bit too much," and leaves too open the possibility of a landing zone in the upper teens, he complained. Separately, the Philippine Ambassador to the WTO, Manuel Teehankee, told WTTL, "There is concern that the balance in the paper is more focused on flexibilities and pragmatism" rather than the Doha mandate, which "calls for real and effective domestic support cuts." He questioned suggested restraints on the selection of special products. "Care must be taken to abide by instructions of the ministers," who in Hong Kong, called for developing countries to self-select special products, Teehankee argued.

While Falconer said the U.S. offer on domestic support has to drop into the teens, he recognized those cuts would be linked to other concessions in the talks. "For a while, it looked like 18 or 19 [billion] might be the number," Weekes said. "I think when you read what he's talking about, he seems to be aiming for something lower," Weekes said. "It depends on what happens on the market access side," he added.

AGRICULTURE EXPORTERS CAUTIOUS ABOUT FUTURE TRADE WITH CUBA

Agriculture exports to Cuba are likely to grow if the U.S. ends trade and travel restrictions on Havana, but farm groups are trying to cool overheated predictions that have forecast major trade benefits from an end to the U.S. embargo. At a May 1 hearing before the International Trade Commission (ITC), witnesses acknowledged that trade growth with an open Cuba might be limited by the country's financial problems, inadequate infrastructure, and a government policy that intentionally avoids placing too much reliance on any one source of imports.

> U.S. farm exports to Cuba were estimated to be about $550 million in 2005 and 2006 and have accounted for nearly 33% of Cuba's agriculture imports so far in 2007, according to Kirby Jones, president of the U.S-Cuba Trade Association. Officials in Cuba's Alimport agency, which negotiates farm import deals, predict imports from the U.S. would grow by another $300 million if current restrictions were lifted, Jones told the ITC, which is conducting a Section 322 study.

Professor William Messina Jr. of the University of Florida said the usual economic models used by the ITC in such studies "are not likely to yield very meaningful results" because of Cuba's centrally planned economy and its policy of making purchasing decisions for political reasons. "The question that looms large is how much credit will U.S. firms be willing to offer to Cuba when Cuba is widely recognized as being among the very riskiest countries in the world with which to conduct credit sales and other financial transactions?" Messina said.

The lifting of trade and travel restrictions, however, would be likely to lead to investment in the Cuban tourism and hotel business. "I can see tourism travel from the United States generating significant increased demand for high value agriculture and food products for hotel and restaurant trade in Cuba," Messina testified. Because tourism would generate hard currency, past limits on Cuban buying may not apply, he suggested.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: LogicaCMG, Inc of Houston, Texas,.pleaded guilty April 25 in Concord, New Hampshire, U.S. District Court to causing export of computer server to Cuba without license from BIS. Firm, which is British, agreed to pay $50,000 crminal fine for export made by Nassua, N.H.-based CMG Telecommunications, Inc., which it acquired. Company has reached separate agreements with BIS to pay $99,000 civil fine and with OFAC for undisclosed amount. Government charged CMG with arranging export to Cuba through sister firm in Brazil and shipping equipment via Panama. [**Editor's Note**: Copy of plea agreement and information in case will be sent to WTTL subscribers on request.]

SENATE: Sen. Charles Grassley (R-Iowa) has named David Ross Republican international trade counsel on Senate Finance Committee. Ross was at USTR since 1999 and associate general counsel.

FTA CONDITIONS: Lawmakers and administration officials tried May 4 to quash reports that talks had broken down on effort to reach deal on adding labor and environment requirements to FTA deals with Colombia, Panama and Peru. Ways and Means Committee Chairman Charles Rangel (D-N.Y.) and Ranking Member Jim McCrery (R-La.) issued joint statement saying: "We are still actively negotiating on trade policy with all parties and at all levels. While there may have been rumors of misunderstandings about language on both sides, there has not been any mistrust. We will continue working into the foreseeable future to resolve any remaining differences." Rangel also reported that he spoken earlier in the day with USTR Susan Schwab and Treasury Secretary Henry Paulson. "Just this morning I spoke with both USTR Schwab and Treasury Secretary Paulson, and we reaffirmed that the talks are still wide open," said Rangel. USTR spokesperson Gretchen Hamel also issued statement. "We share the views of Chairman Rangel and Ranking Member McCrery. Ambassador Schwab and staff remain engaged in the ongoing discussion and she looks forward to a successful conclusion," Hamel stated.

SPECIAL 301: USTR April 30 released annual report on countries that are not providing adequate intellectual property rights protections. This year's report places 12 countries on Priority Watch List, 30 on Watch List (WL) and one, Paraguay on Section 306 monitoring list. Five other trading partners – Bahamas, Bulgaria, Croatia, the EU, and Latvia – were removed from Special 301 listing altogether.