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

Vol.27, No. 18 April 30, 2007

EXPORTERS COMPLAIN ABOUT RISE IN "DEEMED REEXPORT" REQUIREMENTS

Bureau of Industry and Security (BIS) "deemed export" licensing requirements have spread outside U.S. borders and are now being applied to foreign nationals overseas, industry representatives complain. Although the deemed export policy was intended to apply to the release of controlled technology to foreign nationals from controlled countries inside the U.S., industry representatives say they are now being required to get licenses for controlled foreign nationals who have access to U.S. technology in third countries even when the technology was exported under a license exception. Industry executives are calling these type of licenses "deemed reexport" licenses. Exporter complaints were raised at the April 25 meeting of the BIS Information System Technical Advisory Committee.

> One executive told WTTL that his company had to get a license for a Chinese national who went to work at the firm's Japanese research facility. The technology was eligible for export to Japan under License Exception TSR.

Although BIS has cut the license review times for deemed export license to under 60 days, industry executives say it takes months to prepare the paper work and conduct the background checks that are needed for an application. In addition, the granting of a license usually comes with requirements for compliance plans to isolate the foreign national from unlicensed technology and with the need for extra controls restricting the individual's access to information not covered in the license. As a result, managers are increasingly reluctant to hire foreign nationals either in the U.S. or abroad who would require a deemed export license.

MORE THAN SIX-MONTH EXTENSION NEEDED FOR FAST-TRACK

If Congress agrees to extend the president's fast-track negotiating authority to complete the Doha Round, it will need to provide negotiators more than six months to get the job done. Under a best-case scenario, in which a breakthrough agreement is reached on the agriculture and non-agriculture market access (NAMA) segments of the talks by the end of July, negotiators might not be able to finish all the product-specific and service-specific technical work that would be needed to be done by the end of the year.

"We need roughly seven or eight months, working backwards from the conclusion of the round to the adoption of modalities," said World Trade Organization (WTO) Director General Pascal Lamy April 25. Although Lamy said he doesn't use the word deadline any more, an expected goal for reaching agreement on modalities is the end of July, which would make February or March 2008 the target for a minimum extension of fast track. Lamy said the parallel work of

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Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail is $647 a year. Combo subscription of print and e-mail is $747. Additional print copies mailed with full-price subscription are $100 each. Circulation Manager: Elayne F. Gilston

the G-4 countries and the multilateral work in Geneva will need to intersect at some point for the process to move into the final stage of talks. Earlier in the week he said he might call for a "green room" meeting of trade ministers at the end of July if that intersection appeared near. The aim would be for an agreement on modalities to come out of that session and allow countries then to use the modalities to complete their schedules of concessions for agriculture, industrial goods and services (see **WTTL**, April 23, page 3).

> Lamy's projection came after he spent three days in Washington in meetings with U.S. Trade Representative (USTR) Susan Schwab, Agriculture Secretary Mike Johanns and Democratic and Republican leaders and members of the House and Senate Agriculture Committees, the House Ways and Means Committee and the Senate Finance Committee, as well as with business groups. He told reporters his message to lawmakers was that the Doha Round talks "are nearing crunch time" and renewal of the president's fast-track negotiating authority would be "extremely helpful" in maintaining momentum in the talks.

Ways and Means Committee Chairman Charles Rangel (D-N.Y.) has suggested Congress might pass a fast-track extension specifically for the Doha Round if progress in the talks is seen. Congressional sources, however, say it is premature to discuss a fast-track bill for the round until an agreement is reached on how to deal with labor and environment issues in bilateral free trade agreements, especially pending deals with Colombia, Peru and Panama. House and Senate committee staffs are putting all their energy into those FTA negotiations and no attention will be paid to Doha until these issues are resolved, one source told WTTL. "It's a matter of trust," the source said. If Democrats and the administration can't agree on the FTA conditions, there won't be a Doha bill, the source warned.

EAA PROPOSAL: SAME BILL; SAME REACTION; SAME DEADLOCK

The legislation the Commerce Department proposed April 24 to renew the Export Administration Act (EAA) is the same bill that then-BIS Assistant Secretary Peter Lichtenbaum drafted in 2005 with congressional staff help. The new bill received the same negative reaction it did a year ago and is just as unlikely to get enacted. While industry representatives criticized the proposal's narrow enforcement focus, congressional staffers say there is no interest among key lawmakers, particularly in the House, to expend effort on an EAA bill (see **WTTL**, Jan. 16, 2006, page 1). So far, Commerce hasn't found any member to introduce the measure.

> At an April 26 meeting in Washington, industry representatives agreed not to take any official position in opposition to the legislation for now. No one at the meeting supported the measure and the discussion was primarily over how vigorously to oppose it in the future, one source reported. There was general consensus among industry executive that the bill isn't likely to go anywhere in Congress.

Some participants were concerned that a campaign against the Commerce proposal would detract from an effort by a coalition that is seeking administrative changes to U.S. export licensing procedures (see **WTTL**, March 12, page 3). Trade bar lawyers also complained that the Commerce bill doesn't reflect proposals that have been made to establish a graduated civil penalty system that would impose varying fines based on whether violations were merely negligent, grossly negligent or willful. Such a system is used in Customs enforcement.

The reproposed EAA bill is aimed primarily at increasing potential fines for export violations. It would increase the maximum criminal fine per violation for corporations to $5 million or 10 times the value of the export from $1 million or five times the value. For individuals, the potential fine would rise to a maximum of $1 million and 10 years in jail from $250,000 and 10 years in jail per violation. Maximum civil fines would increase to $500,000 per violation. The proposal would add several statutes, including conspiracy, to the list of laws for which BIS could deny export privileges following a conviction. It also would give BIS agents additional law enforcement powers, including authority to investigate violations outside the U.S.

USERS SEE CHANCE TO REFORM SUGAR QUOTA PROGRAM

Sugar using industries think they have found a chink in the armor of the U.S. sugar program and may be able to exploit it to get the program reformed in the next Farm Bill. Sugar growers have been able to defend the program, which had its roots in the 19th Century when U.S. sugar growers were fighting imports from Russia, because it operates on a "no-net-cost-to-government" basis. Because of an expected increase in sugar imports from Mexico starting Jan. 1, 2008, the government may have to start buying U.S. sugar to keep the price up. Sugar users say those costs, which have been forecast to reach $1.3 billion over 10 years, will compete with other farm support programs and force lawmakers to reform the sugar program to avoid having to share the thinning pool of federal subsidy money with another commodity.

> A newly formed coalition, the Sugar Policy Alliance, with the backing of 75 companies and trade associations, called April 23 for reform of the sugar program to ease import quota restrictions and to allow freer trade of sugar within the U.S. without current allocation caps. The group has gained the support of Sen. Richard Durbin (D-Ill.), who is the Democratic Majority Whip. Their efforts, however, face strong opposition from House Agriculture Chairman Collin Peterson (D-Minn.), who represents a beet sugar growing district in Western Minnesota.

BAKER HUGHES PAYS $44.1 MILLION FOR FCPA VIOLATIONS

In another sign of tougher enforcement of the Foreign Corrupt Practices Act (FCPA), Baker Hughes, the oilfield service company, has agreed to pay $44.1 million in civil and criminal fines and disgorgement of profits for bribes it paid foreign officials in Kazakhstan and for FCPA recordkeeping violations related to dealings in Nigeria, Angola, Indonesia, Russia, Uzbekistan and Kazakhstan. In an agreement with the Securities and Exchange Commission (SEC), the firm agreed to pay more than $23 million in disgorgement and prejudgment interest for these violations and a civil penalty of $10 million for violating a 2001 SEC cease-and-desist order. The SEC also charged Roy Fearnley, a former Baker Hughes manager, with violating and aiding and abetting the FCPA violations. He is still in talks with the SEC on a settlement.

> In a separate deal with Justice, a Baker Hughes subsidiary, Baker Hughes Services International, Inc, pled guilty in Houston U.S. District Court to three FCPA violations and agreed to pay an $11 million criminal fine. Justice and the firm also signed a two-year deferred prosecution agreement under which Baker Hughes will hire a monitor to review and assess its FCPA compliance for three years.

Baker Hughes said it had previously revealed the violations in various SEC filings. "The company has terminated employees and commercial agents that it believes were directly involved," said Baker Hughes chairman and CEO Chad Deaton. "In addition, we have further strengthened the compliance culture within the company by making extensive improvements and enhancements to our compliance program," he said in a statement. The SEC charged Baker Hughes with paying approximately $5.2 million to two agents who it knew would use the money to bride officials of state-owned companies in Kazakhstan. The company later won an oil services contract in the Karachaganak oil field in Kazakhstan and earned more than $219 million in gross revenues from 2001 through 2006, the SEC claimed.

MONITORING IS HURTING VIETNAM APPAREL EXPORTS, INDUSTRY SAYS

The import monitoring program that the Bush administration instituted in January on apparel imports from Vietnam is achieving its intended goal of dampening imports from the Southeast Asian nation. At an April 24 Commerce Department hearing on the program, which was initiated to fulfill a promise made to textile-state lawmakers to win votes for the CAFTA-DR free trade agreement in 2005, apparel and retail industry representatives said U.S. buyers are either cutting back or leveling off their apparel orders from Vietnam because of their concerns

that the monitoring program will lead to Commerce's self-initiation of antidumping cases against Vietnamese goods. The downturn in trade is not yet apparent in trade figures for the first two months of 2007 because orders for current imports were made before the monitoring program began. The change is likely to be seen in the second half of the year, witnesses told Commerce officials. Textile and apparel imports from Vietnam grew 17.9% in 2006, but that growth rate will drop sharply this year, they predicted. The monitoring program has targeted five apparel categories, but actually collects data on 180 different tariff classifications.

> "In response to this system, many U.S. importers have reduced their orders with apparel manufacturers in Vietnam," testified a representative of Vietnam's Trade Ministry. "Many foreign and Vietnam investors had to suspend their expansion/ construction of new facilities in Vietnam," he added. Wilbur Ross Jr., a prime mover in consolidating the steel industry and now chairman of International Textile Group, said the program "has neither created nor saved one American job. It has merely diverted volume away from Vietnam to other low-cost countries."

The hearing was intended to collect public views on the program and the criteria Commerce might use to institute antidumping cases. Stephen Lamar, vice president of the American Apparel and Footwear Association, urged the department to limit monitoring to products for which there is domestic production and where U.S. producers support monitoring and can demonstrate injury from the imports. "In other words, monitoring should occur only in those products where all the ingredients of a possible successful investigation could exist," he said.

Thomas Vakerics of Sandler, Travis and Rosenberg, said his law firm has begun to conduct antidumping audits of apparel producers in Vietnam in anticipation of the possible initiation of cases. The firm is using the International Trade Administration's dumping questionnaires and computer programs to analyze costs and prices in Vietnam and will recommend price changes if it finds potential dumping margins.

CANADIAN WHEAT BENEFITS FROM SOFTWOOD LUMBER PRECEDENT

Court of International Trade (CIT) Judge Richard Eaton April 24 (Slip Op 07-61) cited the precedent set in the CIT's last softwood lumber ruling in his decision to impose a preliminary injunction barring Commerce from ordering the liquidation of imports of Canadian wheat. In a suit brought by the Canadian Wheat Board, Eaton agreed that Canadian producers are likely to prevail in their claim that all deposits paid on Canadian imports should be refunded retrospectively to October 2003 when the International Trade Administration (ITA) issued its preliminary antidumping and countervailing duty orders and not just prospectively, as the Commerce argued, after Jan. 2, 2007, when a NAFTA binational panel confirmed the International Trade Commission's (ITC) negative injury determination on remand.

> "The court cannot discern a substantial difference between the facts presented in this case and those faced by the court in *Tembec II*," Eaton wrote, citing the CIT decision on softwood lumber. In *Tembec II* the court ordered Commerce to instruct Customs to liquidate all of the plaintiff's entries without unfair trade duties. A three-judge CIT panel reaffirmed that ruling in *Tembec III* in February (see **WTTL,** March 5, page 4).

* * * BRIEFS * * *

TRADE PEOPLE: International trade section, including attorneys and advisors, of Kaye Scholer has moved en masse to law offices of Troutman Sanders in Washington and Shanghai. Making move were: Julie Mendoza, Don Cameron, Jeffrey Grimson, Will Planert, Brady Mills, Paul McGarr, Allison Carragher, Sara Dajani, Leanne Himmler, Judy Wang and Victor Wu.

EXPORT ENFORCEMENT: Federal jury in Pittsburgh April 19 convicted Electro-Glass Products of Norvelt, Pa., on four charges of exporting solder glass preforms, which are on USML and subject to ITAR licensing requirements, to India on four occasions without approved license from DDTC.