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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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INDIAN OFFICIALS IMPLICATED IN EXPORT CONTROL INDICTMENT

Bureau of Industry and Security (BIS) plans for easing controls on exports to India may face closer scrutiny in the wake of a federal grand jury indictment that implicates an unnamed official in India's Ministry of Defense and an unnamed Indian diplomat in Washington, D.C., in a scheme to export controlled dual-use and military items to India without licenses. The activities of the two were cited in an indictment unsealed March 23. The indictment charged two executives of Cirrus Electronics of Simpsonville, S.C., with exporting electronic components to organizations in India that were on the BIS Entity List at the time.

The 15-count indictment claims the pair conspired to violate both the International Emergency Economic Powers Act (IEEPA) and the Arms Export Control Act (AECA) with exports to India and that they also aided and abetted in the violations of export controls. Parthasarathy Sudarshan, 46, and Mythili Gopal, 36, both of Simpsonville, South Carolina, were arrested on Friday, March 23, 2007, and had their initial appearances in the U.S. District Court in Greenville, South Carolina. On April 3 Sudarshan had his first court appearance in D.C. U.S. District Court and pled not guilty to the charges.

The indictment alleged that the two arranged for exports to the Vikram Sarabhai Space Centre (VSSC) and Bharat Dynamics, Ltd. (BDL), a unit of the Indian Ministry of Defense, in India between 2002 and 2006. VSSC and BDL were on the BIS Entity List and a BIS license was needed for any export to them. The exports were parts that could be used in missile guidance and firing systems, the government claimed. The two also were charged with exporting microprocessors that are on the U.S. Munitions List to India for use in the weapons system of the Tejas fighter jet that India is developing.

KOREAN FTA FACES LONG, DIFFICULT ROAD IN CONGRESS

As it is now apparently written, the U.S.-Korean Free Trade Agreement (KORUS) reached April 1 in Seoul faces a long and difficult future in Congress, some congressional sources agree. "If it is not changed, it will be in serious trouble," one congressional source told WTTL.

Trying to get ahead of the curve of expected opposition to the accord, U.S. trade officials quickly announced that the final deal won't be signed or sent to Congress for approval before the unresolved dispute over the opening of the Korean market for U.S. beef is resolved. "We will not sign this agreement without a clear path to the resolution of this, and we will not be submitting this agreement to Congress until the beef issue is resolved," U.S. Trade Represent-

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ative (USTR) Susan Schwab said on CNBC April 2. Schwab's statement was a recognition of the obvious. Senate Finance Committee Chairman Max Baucus (D-Mont.) privately warned her the deal would face trouble as long as the Korean beef market remains closed. "I will oppose the Korea Free Trade Agreement, and in fact I will not allow it to move through the Senate, unless and until Korea completely lifts its ban on U.S. beef," Baucus said in a statement.

Even if Korea keeps its promise to abide by a new international standard due in May on BSE-free beef, a debate may continue over whether adoption of the standard will be sufficient or will Koreans actually have to be eating imported American beef for the promise to be kept. "Korea will uphold the recommendations of the World Organization for Animal Health and intends to open the Korean market at a reasonable level," Korean President Roh Moo-hyun said in a national address April 2. "Korea will try to implement the agreement procedures within a reasonable time frame," he added.

Most of the comments pro and con about the agreement, of course, are based merely on USTR outlines or on oral briefings provided by USTR officials. As a result most reactions were tempered with a cautionary note that a final opinion would have to await a review of the full text. The fact that U.S. trade officials began touting the deal without releasing its details reportedly annoyed some key lawmakers and may add to the hurdles the agreement will face. With Congress out of town, a clear picture of the pact's fate may be weeks away.

While the agreement promises the broad opening of the Korean market to U.S. goods, agriculture and services, the timing for the phasing out of many restrictions and the conditions attached to these measures won't be known until the text of the agreement is released. It is very likely that some of these provisions aren't even fully described and will have to be fleshed out during the "legal scrub" of the text in the coming weeks.

Beside beef, the toughest problem KORUS faces is the negative reaction the deal got from the U.S. auto industry and auto-state lawmakers. "We are extremely disappointed with the outcome," said a Ford statement. House Ways and Means trade subcommittee chairman Sander Levin (D-Mich.) and Sen. Debbie Stabenow (D-Mich.) said they would oppose the deal. While beef is the key issue in the Senate, autos will become the big problem for the deal in the House, congressional sources predict. "Autos will be a proxy for how this looks to American manufacturing," one congressional source said. "It has the significant ability to undermine the agreement," he added.

The lukewarm reactions from the National Association of Manufacturers and the American Farm Bureau Federation didn't help prospects for the accord. NAM President John Engler praised the USTR staff for reaching an agreement. "Naturally, we need to review the entire agreement with all the annexes and side letters before determining whether it will indeed result in the benefits we all hope for," he said. "We particularly await details on the Technical Barriers to Trade chapter that is so important because of the role of non-tariff barriers. Whether the agreement tackles key concerns that have been expressed by individual manufacturing sectors requires further analysis and consultations with our members," Engler said.

Farm Bureau President Bob Stallman stressed the importance of resolving the beef issue. "We appreciate the efforts of the U.S. Trade Representative in advocating the interests of U.S. agriculture. Yet, we remain cautious on the final beef outcome and will closely monitor the actions of Korea and its regulatory process over the next 90 days," he said.

ANTIGUA WEIGHS RETALIATION OPTIONS AFTER WTO RULING ON GAMBLING

How does a fly retaliate against an elephant? That is the imbalance Antigua and Barbuda is facing as the dual-island Caribbean nation contemplates how to retaliate against the U.S. if Washington fails to comply with another World Trade Organization (WTO) panel ruling that the U.S. is not in compliance with an earlier 2004 WTO decision which found the ban on foreign-

based Internet gambling violates Antigua's WTO right to national treatment in the U.S. With a population of just 69,000 and dependent on imports, Antigua and Barbuda can't rely on the usual tariff-raising remedy to retaliate against the U.S. if the dispute isn't resolved, sources contend. As a result, sources say the Caribbean nation is considering revoking its commitments to comply with the WTO agreement on Trade Related Intellectual Property Rights (TRIPS) regarding U.S. goods. Dropping its TRIPS commitment might permit it to begin to allow the legal copying of U.S.-origin films, music and software.

The panel's report, released March 30, examined an Antiguan complaint that the U.S. wasn't in compliance with the 2004 WTO panel ruling. It said enactment in October 2006 of the Unlawful Internet Gambling Enforcement Act (UIGEA) did not change the fact that the U.S. permits electronic gambling under the 1978 Interstate Horse Racing Act and doesn't enforce the Wire Act against domestic interstate electronic gambling.

The U.S. had inadvertently failed to exclude gaming from its market-opening commitments in the WTO General Agreement on Services (GATS), the original panel ruled. The continuation of permitted or tolerated electronic gambling undercut U.S. claims that it could bar foreign Internet gambling sites on moral grounds, it ruled. Antigua had become the site of a growing Internet gambling industry, which was permitted under its laws.

CIT CRITICAL OF LABOR'S HANDLING OF TAA APPLICATIONS

Democrats in Congress are making reform and expansion of the Trade Adjustment Assistance (TAA) program for workers who lose their jobs because of trade one of conditions for renewing the president's fast-track negotiating authority. But revising TAA may be useless unless Congress also addresses problems at the Labor Department, which administers the law. A growing body of rulings at the Court of International Trade (CIT) has revealed a process that is understaffed and apparently biased against workers who apply for TAA benefits.

In a new ruling (Slip Op. 07-51) March 30, CIT Judge Dilissa Ridgway remanded back to Labor for the fourth time a request from former IBM employees for TAA benefits as "leased service workers." The workers worked for BP/Amoco, the oil firm, and then were "outsourced" to the consulting services group of Pricewaterhouse-coopers, which was acquired by IBM, which terminated the employees.

In remanding Labor's third negative remand determination in the case, Ridgway rejected the department's attempt to establish a new seven-criteria test for what constitutes "control" of leased workers. "Perhaps the most troubling aspect of the Third Negative Redetermination on Remand is the Labor Department's failure to even acknowledge – much less address – the significant body of record evidence that weighs against its negative determination," Ridgway wrote. She also criticized Labor for working closely with IBM in the case but keeping information away from the workers.

Ridgway also raised an issue that may need to be addressed by Congress – the CIT's lack of clear authority to order Labor to certify TAA benefits as a remedy in a suit. "The Court of Appeals thus far has side-stepped this issue," she noted. "A careful reading of the relevant precedent suggest that, if a case of court-ordered certification is to have any shot surviving on appeal, it must be a clear-cut case where another remand would be plainly futile. Though it may be close, this is not (yet) that case," Ridgway declared.

DEMOCRATS PRESSURE ADMINISTRATION TO ACT ON TRADE BARRIERS

Just before the USTR's office April 2 released the annual National Trade Estimate (NTE) report on foreign barriers to U.S. trade and investment, House Democrats wrote to President Bush urging him to launch consultations with eight large U.S. trade partners to resolve 18

specific trade distortions that the Democrats identified. The March 29 letter complained that the administration has not been forceful enough in challenge unfair foreign trade practices. "We hope that the administration will use the opportunity of the issuance of the NTE report to move beyond cataloguing these barriers and to begin enforcing U.S. rights," wrote 12 House Ways and Means Committee members, including Chairman Charlie Rangel (D-N.Y.). They said the Clinton administration filed 11 WTO complaints annually versus three a year for Bush.

This year's NTE runs 640 pages, including 18 pages on Korea, and identifies trade barriers in 63 countries. Many of the barriers identified have been listed in past NTE reports, which suggests the report is losing the power it originally had to coerce trading partners to resolve disputes to avoid being listed in the report. The expiration of the Super 301 provisions of the Trade Act, which mandated action, also has weakened the impact of the report.

In announcing the newest NTE results, the USTR's office also boasted of the success it has had in resolving many of the previously identified barriers. It pointed to successful negotiations with Russia and Ukraine on their accession to the WTO; China's removal of antidumping duties on kraft linerboard; Japan's action on cartels and bid rigging in the construction field; and settlement of tariff issues raised by the European Union's enlargement.

* * * BRIEFS * * *

DOHA ROUND: USTR Susan Schwab is off to India April 12-15 for another set of talks with G-4 colleagues from EU, Brazil and India in effort to find breakthrough in stalled Doha Round negotiations. After flurry of meetings and raised hopes about potential deal – which U.S. trade officials denied – in late February, talks slipped back into doldrums for last month (see WTTL, March 12, page 1). Schwab will also meet with Indian Minister of Commerce Kamal Nath on bilateral issues. In addition to Schwab, USTR team will include Deputy USTRs Karan Bhatia and Peter Allgeier, Chief Agricultural Negotiator Richard Crowder, and Assistant USTR for South and Southwest Asia Douglas Hartwick.

CUBA: In two companion settlements, BIS imposed fines on boat charter company and boat captain for sailing into Cuban waters without licences. Lethal Weapon Charters, Inc., agreed to pay \$17,000 civil fine. Captain Ted R. Baier agreed to pay \$17,000 fine for his role in trip. BIS suspended \$5,000 of Lethal Weapon's fine and will waive payment, if firm remains in compliance with export controls. Agency suspended \$12,000 of Baier's fine and will waive balance if he remains in compliance.

CRIMINAL PLEA: Alpine Armoring, Inc., of Herndon, Va., pled guilty in Alexandria, Va., U.S. District Court March 27, to exporting ballistic helmets to Suriname without approved license from BIS. Its president, Fred Khoroushi, pled guilty to making false statement on SEDs. He had claimed helmets qualified for License Exception NLR (no license required). They agreed to pay \$200,000 in fines.

CHEMICAL WEAPONS CONVENTION: BIS amended Chemical Weapons Convention Regulations (CWCR) regulations in March 28 Federal Register to raise potential fines for violation of rules to \$50,000 for each violation. Reporting rules also were revised.

VIETNAM: As expected, DDTC amended ITAR in April 3, Federal Register to open way for export to Vietnam of non-lethal items subject to the U.S. Munitions List (see WTTL, March 26, page 4)

FCPA: Two former executives of Alcatel, the French telecommunications firm, were subject of superseding 10-count indictment handed up March 20 by federal grand jury in Miami. Christian Sapsizian, French citizen, and Edgar Valverde Acosta, Costa Rican citizen, were charged with conspiracy and violating FCPA to pay bribes to official of El Instituto Costarricense de Electricidad (ICE), the state-owned telecommunications authority in Costa Rica, to obtain contract to establish wireless network in country. Ironically, opening of Costa Rican telecommunications market to U.S. providers was one of most contentious issues in negotiations with Costa Rica on CAFTA.

ITAR: Federal grand jury in Birmingham, Ala., indicted Axion Corporation of Huntsville, Ala., and its owner, Alexander Nooredin Latifi, March 30, for allegedly exporting technical drawings for UH 60 Black Hawk helicopter part without license from DDTC. Five-count indictment also charged them with making false statements on First Article Test Reports for parts contracts the firm had with the U.S. Army. Drawing went to unidentified foreign manufacturer in unnamed country.