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CHINESE QUESTION PADILLA ON PROPOSED END-USE CERTIFICATES

During a Jan. 24-30 trip to China, Bureau of Industry and Security (BIS) Assistant Secretary Chris Padilla heard Chinese complaints about provisions in the agency's proposed China catch-all rule to expand requirements for exporters to obtain end-use certificates from China's Ministry of Commerce (MofCom) to export a wider range of controlled goods. In an exclusive interview with WTTL, Padilla said the Chinese told him they considered the proposal to be an expansion of the scope of the Memorandum of Understanding (MOU) that allows the U.S. to conduct pre-license checks (PLCs) and post-shipment verifications (PSVs) in China.

"They argued that what we are trying to do is expand the scope of the end-use visit understanding, which is not what we are doing," Padilla told WTTL. Current end-use certificate requirements are a condition of the MOU. China requires a facility to have a certificate in order for U.S. officials to conduct a visit.

"What I said was, 'Look, if you're concerned about issuing more end-use certificates, we're perfectly happy to do the end-use checks without the certificates'," he recounted. "We don't ask for MofCom end-use certificates because we want to paper our walls with them. We ask for them because the Chinese require them for us to be able to do an end-use visit," he said.

"The reason why in the proposed rule we have said that such certificates will be required for a broader range of products, basically expanding from NS-controlled items to nonproliferation items, is because we believe we will be able to select such checks from the broad universe of items that are exported to China," Padilla explained. The Chinese, however, gave no indication that they would allow end-use visits without the certificates. The issue will be addressed again during a bilateral high-tech working group meeting this spring in Beijing, Padilla said.

The Chinese also raised concerns about the proposed verified-end user program and the list of 47 Export Control Classification Numbers (ECCNs) that would be subject to new military end-use controls under the catch-all rule. "I would say broadly what I heard was similar to what I heard from American business here," he said. The number one Chinese concern was the foreign availability of the 47 ECCNs in China. Their second was making sure the verified end-user program was not be too onerous or burdensome in its application, Padilla reported.

U.S. LAUNCHES WTO COMPLAINT AGAINST CHINESE SUBSIDIES

The Bush administration Feb. 2 moved to salve congressional and public angst over the ballooning U.S. trade deficit with China by formally requesting World Trade Organization (WTO)

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consultations with Beijing on nine specific Chinese programs that Washington contends violate WTO subsidy rules. Under WTO procedures, if these talks fail to resolve U.S. complaints, it may be months before the case is presented to a WTO dispute-settlement panel and years before the issues are finally settled. While U.S. business has long complained about subsidies Beijing gives to its industries, the case against China crystalized last April when the Chinese formally notified the WTO on the details of its subsidies. That filing led to months of informal talks between the U.S. and China, and when the last round of talks the week of Jan. 22 failed to show any movement by the Chinese, the USTR's office decided to request WTO consultations.

The U.S. complaint targets six programs Washington claims are prohibited export subsidies and three that are prohibited because they are intended to encourage domestic substitution of imports. The benefits of these programs are available to a wide array of industries, but the USTR's office specifically identified support of the steel, wood, and paper sectors as areas of particular concern. It also cited the benefits of the subsidies that go to foreign-investment enterprises.

ISRAEL UNILATERALLY IMPOSES DUAL-USE EXPORT REGIME

Israel Jan. 1 began to impose export controls for the first time on dual-use goods and technology. Even though the Jewish state doesn't belong to the Wassenaar Arrangement, it will base its controls on the regime's control lists. Licensing for these dual-use items will be handled by Israel's Ministry of Trade and Commerce, which has already begun issuing licenses.

Israel's existing controls on military exports are administered by the Ministry of Defense. The country also has had controls on encryption products. The Ministry of Defense reports that Israel's military exports reached over \$4.4 billion in 2006. This accounts for 75% of the industry's sales. The ministry also reported that it approved 1,786 licenses for encryption products through November of last year. The average processing time was 3.63 days, it said.

CUSTOMS BODY WILL CONSIDER EXPORT CONTROLS ON COUNTERFEITS

The World Customs Organization (WCO) will consider amending its framework of standards to give national customs agencies responsibility for preventing the export of counterfeit and pirated goods. The new framework will initially target "60 countries that have no legislation whatsoever" on combating counterfeiting and piracy, said Michel Danet, secretary-general of the WCO. The WCO will begin work in June on an amendment specifically aimed at protecting intellectual property rights (IPR) on the export side of the global market place.

The WCO's current "Framework of Standards to Secure and Facilitate Global Trade" was a response to concerns following the attacks of Sept. 11, 2001, and focus mainly on preventing the global supply chain from being used by terrorists to smuggle weapons of mass destruction or other items that could threaten civilian populations. Although it mentions IPR, the WCO has now decided to develop specific IPR provisions, WCO officials announced during the Third Global Congress on Combating Counterfeiting and Piracy, which drew more than 1,200 people from 102 countries to Geneva, Jan. 30 - 31.

"There'll be standards for customs, standards for rights holders, and we all agree to cooperate and implement these standards," one official said. The framework is expected to include 60 or 70 provisions addressing legislative, regulatory, training and administrative measures to protect IPR, including recommendations for export controls, Danet said. Extending controls to transit operations and transactions -- which Switzerland has already done -- is also being considered. A capacity building fund will be established and new legal avenues will continue to be explored, he indicated. The International Criminal Police Organization (Interpol) also plans to establish a global operations hub to fight counterfeiting and piracy, the agency announced at

the conference. Interpol will collect and share counterfeiting and piracy data among 185 countries, Ronald Noble, secretary-general of Interpol said.

CAUTIOUS REACTION TO ADMINISTRATION'S PROPOSED FARM BILL

The quinquennial U.S. Farm Bill has more mysteries and secrets than the 32nd Degree Masons, so it's not surprising that the Bush administration's release Jan. 31 of its proposal for the 2007 legislation received a cautious reaction from members of Congress and foreign trade negotiators. The Agriculture Department (USDA) intentionally avoided tallying the total cost of all the elements of its proposal so there would be no clear way to determine how various spending plans would fit into the different WTO Green, Blue and Amber boxes, one source noted.

"This is a 183-page document, which will need careful study before we reach definitive conclusions," said an EU statement on the proposal. "And this is not the final word, but the administration's first steer to Congress. So far, where Doha is concerned, it is not possible for us to form a clear view from this proposal of what the administration's negotiating approach will be," it added.

Administration officials insist the proposal isn't intended to be a negotiating chip in the Doha Round, but instead is aimed at domestic agriculture and budget issues. Nonetheless, one USDA source conceded that a "symbiotic relationship" exists between the Farm Bill, the Doha Round and efforts to renew fast-track negotiating authority. "Everything has a role to play," he said. Although not aimed exclusively at Doha talks, USDA officials believe the plan will support the U.S. aims in the negotiations. Rather than tying the U.S. to particular numbers, the proposal "is a directional" and attempts to steer the next Farm Bill in "the right direction," the USDA source said. "It's not yet about individual dollars and cents. That will come later," he said.

"There is intense interest in these numbers among our trading partners. We know that," the USDA source told WTTL. "Are other trade negotiators putting in their own numbers [in the proposal]? Absolutely. We know that," he said. "But the clear message is that this is a Farm Bill that stands on its own," he added. Yet he conceded that "if there were no Doha negotiations, no fast-track, this proposal might have looked different."

BUSH ADMINISTRATION CALLS FOR EXTENSION OF FAST-TRACK AUTHORITY

The Bush administration has given itself a narrow window in which to get the president's fast-track negotiating authority, which expires July 1, extended. President Bush Jan. 31 officially asked for the trade law to be extended. "I ask Congress to renew it," Bush said in a speech in New York. "I know there's going to be a vigorous debate on trade, and bashing trade can make for good sound bites on the evening news. But walling off America from world trade would be a disaster for our economy. Congress needs to reject protectionism, and to keep this economy open to the tremendous opportunities that the world has to offer," he stated.

Administration officials say they have not decided whether to send Congress their own bill or wait for the trade-law writing committees to propose legislation. "I look forward to engaging in a conversation with key members of Congress about how to proceed going forward," U.S. Trade Representative (USTR) Susan Schwab told reporters Feb. 2. "We are looking forward to pursuing trade promotion authority and are gratified by the response of Republicans and Democrats, House and Senate members," she said.

Senate Finance Committee Chairman Max Baucus (D-Mont.) and House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) issued a joint statement saying they would work for fast-track renewal but with changes in the legislation. "I see reauthorization as an opportunity to address Americans' legitimate concerns on trade, with more vigorous enforcement of laws and agreements, greater congressional consultation – so we can fight for workers and businesses

back home – and better labor and environmental standards,” Baucus said. Rangel said, "Trade negotiating authority is a valuable tool for the administration, but it requires a great deal of trust, and Congress must have some key assurances before it is willing to extend this leverage."

DAVOS MEETING PRODUCES NEWFOUND OPTIMISM IN DOHA TALKS

Optimism swept down from the mountains of Davos, Switzerland, after the World Economic Forum meeting the week of Jan. 29 and settled over WTO negotiators in Geneva. At Davos, trade ministers called for restarting Doha Round talks, but no specific dates have been set for the resumption of negotiations. Sources say WTO Director General Pascal Lamy is expected to get the Doha talks “back to full negotiating mode” in the next couple of weeks.

While ministers called for the restart of talks, there was no new breakthrough on the toughest issues and they gave little guidance to working-level negotiators. “The ministers in Davos said, ‘Yes, let's resume, let's resume,’ but resume on the basis of what,” one developing country diplomat told WTTL. “We still don't have what they call the breakthrough, so in some ways, it's difficult for some of these negotiating groups to do much work,” he added.

The chairmen of the negotiating groups are expected to begin soon to set dates for formal meetings, which have been held on an informal basis for the past several months (see **WTTL**, Jan. 15, page, 2). The Trade Facilitation Committee met informally Jan. 30 - 31 and got down to substantive issues, an official involved in the work said. The mood after Davos is positive, he noted, adding: “They had seen the signal and were ready to go,” he said.

President Bush’s call for renewal of fast-track negotiating authority “is very, very important,” one developing country ambassador said. Negotiators, however, are still concerned about how long it will take Congress to act and say they worry the talks might get pushed into 2008, an election year. A Jan. 31 meeting of the Doha Round Trade Negotiations Committee (TNC) heard concerns about the need to move bilateral talks into the formal committee negotiating. The concerns stated in the TNC reflected those some ministers cited in Davos about the need for transparency and inclusiveness as deals begin to take shape.

Sources in Geneva say the resumption of formal talks will put pressure on advanced developing countries, especially Brazil and India, to prepare new offers. Other countries “are waiting for the preparedness of the major developing countries to hint or give the shape of their move... Everyone must be engaged in technical work to see what's the final shape,” one diplomat stated.

*** * * BRIEFS * * ***

TRADE PEOPLE: Former Commerce and State export control official Bill Clements left Foley & Lardner Feb. 1 to set up his own trade law firm. He can be reached at 202-822-8002 or wcclements@wlc-law.com.

KOREA: BIS issued final rule in Jan. 26 Federal Register amending EAR to impose licensing requirements – with presumption of denial – on exports of luxury goods to North Korea (see **WTTL**, Dec. 4, page 4).

PRINTING PRESSES: ITA has authority to launch changed circumstances review in antidumping cases when a respondent is found to have committed fraud, CIT Judge Judith Barzilay ruled Jan. 24 in case involving large printing presses from Japan (Slip Op. 07-12). “Under such circumstances, Commerce has the inherent authority to self-initiate a review of prior determinations to purge them of fraudulent data,” she wrote. Even though fraud may have led later to revocation of dumping order during subsequent “sunset review”, ITA doesn’t have authority to change a sunset determination, she ruled, remanding case back to ITA. Under sunset provisions in trade law, “a review cannot occur without an existing order,” Barzilay wrote. “Commerce, though, fully revoked the order it hopes to review on September 4, 2001, and it lacks the power to resurrect a revoked order,” she declared.

STATE: President Bush Feb. 2 said he intends to nominate John Rood, currently assistant secretary of state, to be under secretary of state for arms control and international security, post that oversees DDTTC.