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DEAC MEMBERS DELVE INTO MECHANICS OF DEEMED EXPORTS

The second public meeting of Commerce's Deemed Export Advisory Committee (DEAC) in Santa Clara, Calif., Jan. 22-23 gave members a detailed look into the mechanics of how the deemed export rules actually affect high-tech companies and how they are mostly ignored by the academic community. Questions raised by DEAC members indicated that they are well aware of the problems created by the rules and are interested in finding practical, narrow solutions to them. Members showed no interest in seeking sweeping changes in controls applied to exporters or to the "fundamental research" exemption for universities.

> Speaking privately, DEAC members expressed skepticism about the threat that foreign nationals pose because of their access to controlled technology. They said they believe the desire of individual companies to protect their own intellectual property and trade secrets probably imposes greater restrictions on technology transfer to foreign or domestic employees than export controls.

They said they recognize that most university researchers know little about export regulations, while others think they are exempt from them because of the fundamental research exemption in the Export Administration Regulations (EAR) and National Security Defense Directive (NSDD) 189, which was issued by President Reagan. During the public presentations by business and academic speakers, committee members asked numerous and detailed questions about the impact current rules have on research and development activities, the reliance on foreign employees, teachers and students, and measures companies take to protect their technology.

Industry speakers, including Steven Kott of AMD, and Kathleen Gebeau of Qualcomm, expressed concern about the delays they face in hiring foreign nationals because of the time it takes to get deemed-export licenses approved. Attorney Donald Weadon of Weadon & Associates, said the deemed export rules impose a disproportionate burden on small companies. Dr. Arthur Bienenstock, special assistant for federal research policy to the president of Stanford University, warned that changing the "use" definition in the EAR would create serious problems for universities. He said there was weak justification for changing these controls, citing an FBI agent who admitted that export controls are a blunt instrument to deal with the small number of cases involving illegal diversion of controlled technology through universities.

AUGUSTINE SAYS DEAC WILL SEEK "REASONABLE BALANCE" IN CONTROLS

In an exclusive interview with WTTL, Norman Augustine, chairman of the Deemed Export Advisory Commitee (DEAC), said the committee will seek a balance between maintaining the

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U.S. advantage in research and development and creating loopholes that would allow the release of technology that might come back to harm Americans. "The challenge of the committee will be to find some reasonable balance where you permit two of the things where this nation has its advantages: one being a strong economy and the other being the finest research-academic institutions in the world," Augustine said. "We want to continue to strengthen those things, but on the other hand, nobody on this committee wants this committee to be guilty of creating a loophole that allows somebody to take a terrible action against our country," he added.

> Augustine, a former CEO of Lockheed Martin and now chairman of its executive committee, emphasized the great reliance the U.S. has on foreign born scientists and their large role in both industry and academia. "I have the personal view that our nation's science community would almost cease to function without the involvement of foreign born individuals," he said.

The DEAC chairman said most of the testimony the committee heard at its California meeting didn't reveal anything the panel didn't know before. "Most of us have lived with these issue for a long time or have done a lot of reading," he told WTTL. "I'm not sure there was anything that I would characterize as a totally new perspective," he continued.

"One thing that did strike me was the different manner in which today's regulatory process appears to be impacting academia as opposed to industry," he noted. "It would seem that industry has set up large numbers of controls to assure that they abide by their understanding of the rules. Whereas academia is dependent more upon the so-called exemption for basic research to let them treat everybody who is accepted as a member of the academic community to be treated equally,"Augustine said. "You have the sense that industry has decided that we're going to solve this problem of controls; academia has decided they're going to go the other direction."

The DEAC isn't likely to propose any sweeping changes in current deemed export policies, he suggested. "I think that we have been given a rather specific issue to address, problem to solve, if you will, and we will focus on that. But so many of these things are connected that I don't think we would be bashful if we saw something, [and] we thought we had a contribution to make, that we would share our views," he said. "But our focus will clearly be on the charter that we were given," he added. The committee, however, may take a look at the current definition or application of the "fundamental research" exemption from export controls. "I think that particular issue is part and parcel of the whole question of the deemed export policy, so I think that would be a part of what we are talking about," he said.

FORGOTTEN DOHA TALKS ON SERVICES GET REVIVED

With top trade negotiators focusing on the agriculture and non-agriculture market access (NAMA) legs of the Doha Round, talks on the services leg have languished since last spring. A new attempt to focus on this forgotten area started in Geneva the week of Jan. 22 with representatives of some 30 countries participating in the beginning of a two-week "services cluster" during a special session of the Doha negotiating committee on services.

> The talks are aimed at reviving the pluralateral approach to the services negotiations under which some 15 countries that are considered "demandeurs" in the service talks presented requests to some 15 targeted countries for new offers to open key services to foreign firms and to bind those commitments. Just after the requests were presented last spring, the Doha talks were suspended and the targeted countries never got to give their response to these requests. But "everybody knows what everybody wants," one source said.

No new offers are expected to emerge during the current services talks, but industry sources say they hope the meeting will keep the issue on the Doha agenda. "Getting ministers to focus on services has been a hard row to hoe," one industry representative said. Meaningful services offers aren't likely to emerge until after breakthroughs come in agriculture and NAMA, he

suggested. The U.S. services industry is continuing to lobby Congress to keep attention on the services leg in the Doha talks and to emphasize that it would oppose a final trade pact that didn't offer significant new market access in services. "The administration knows it is going to need help from the services industry to sell whatever it comes home with, because there will not be a lot of enthusiasm in the farm community," the representative said.

HOUSE PANEL TO LOOK AT EXPORT LICENSE DELAYS

Exporters may have a new friend on the House Foreign Affairs Committee. Rep. Brad Sherman, (D-Calif.), who was named Jan. 23 to be chairman of committee's expanded sub-committee on terrorism, nonproliferation and trade, said one of his early priorities will be an examination of the delays in the export licensing process. Sherman's subcommittee will have jurisdiction over issues involving international economic policy, including the promotion and restriction of trade and the Export Administration Act.

> He said an early focus of the subcommittee will be costly delays in the licensing of sensitive goods. "Obviously, we want to ensure that overseas sales of items that can harm our national security are heavily scrutinized, but long delays are not the result of thorough review by vigilant government employees," Sherman said in a statement. 'Instead, applications languish because there are too few analysts. This serves neither national security nor the interests of our exporting businesses," he said.

Sherman also said he was concerned about Iran and North Korea developing nuclear weapons. "Preventing Iran from obtaining nuclear weapons should be the primary objective of American foreign policy," he said. Sherman represents the Northridge section of Los Angeles and part of the San Fernando Valley.

CHINESE OPPOSE CHANGE IN CVD RULES WITHOUT CHANGE IN DUMPING POLICY

Support or opposition to applying the countervailing duty (CVD) law to imports from China depends mostly on whether an industry is on the petitioner or respondent side of a CVD case. Comments that have been submitted to the International Trade Administration (ITA) in response to its notice seeking views on a possible change in CVD policy fell into predictable patterns, with trade coalitions and law firms that have filed complaints against Chinese imports urging the agency to apply the rules to China, but respondents and the Chinese government opposing the change without ending China's status as a nonmarket economy (NME) under the antidumping law.

> A group of 23 senators also weighed in with comments. "The countervailing duty statute on its face in no way limits the application of the CVD law to any country," they wrote. They noted that legislation to clarify this point was introduced in the last two sessions of Congress.

China's Bureau of Fair Trade for Imports and Exports, which is part of the Ministry of Commerce, submitted comments prepared by the law firm of Vinson & Elkins. It argued that Commerce doesn't have the legal authority to initiate a CVD case against China as long as China is considered a NME. "Application of countervailing duties to China, while continuing to treat it as an NME for antidumping purposes, will result in impermissible double counting of domestic subidies," it said. It noted that CVD law has remained mostly unchanged since it was first enacted in 1897 and Congress didn't revised the rules after the *Georgetown Steel* case established the policy that the CVD law could not be applied to NMEs.

Attorneys at Williams Mullen argued that congressional statements indicate that the *George-town Steel* ruling is a "reasonable" approach to application of the CVD law but not the only one. General Motors told ITA that treating China as a NME in antidumping cases has balanced

not applying the CVD law. "Any advantage gained by such economies because of the reluctance of the U.S. to persue subsidy cases has clearly been offset by the disadvantage that non-market economies experience in antidumping cases," wrote GM economist Mustafa Mohatarem. The notice drew 47 comments from a wide range of industries, including steel, shrimp, lumber, furniture, plastic bags, cement, magnesium, copper, brass, honey and paper.

ITA PUTS OFF CHANGE IN ZEROING POLICY AGAIN TO CONSULT CONGRESS

Congressional concern about proposed changes in the "zeroing" methodology used in antidumping cases has prompted ITA to extend again the effective date for changes in the rules for calculating dumping margins in initial dumping investigations (see **WTTL,** Jan. 18, page 3). ITA delayed implementation to Feb. 22 from Jan. 23 after lawmakers told the agency they want more time to consult on the issue and to consider legislation that might affect the change.

> Finance Committee Chairman Max Baucus (D-Mont.) and House Ways and Means Committee Chairman Charlie Rangel (D-N.Y.) wrote to Commerce Secretary Carlos Gutierrez Jan. 19 seeking the delay. They said the 60-day consultation period, which is required by statute, began in November but didn't give their committees enough time to consider the issue because of the short time Congress was in session and the organizational and legislative matters that took time when the new Congress convened in January.

The two chairmen said they were "highly concerned" that the World Trade Organization (WTO) Appellate Body ruling which prompted the change in the zeroing method is an attempt to impose new obligations on the U.S. without consent. "The dispute giving rise to this proposed modification is extraordinary," they wrote. "At a minimum, this circumstance requires the ability of members of this committee to consider and evaluate the best approach," they said.

* * * BRIEFS * * *

BIS: Mike Turner, who has spent last two years as director of BIS Office of Export Enforcement and 27 years in government, is retiring April 1...Scott Kamins, director BIS congressional and public affairs, moving to State Feb. 5 to head House side of its congressional affairs office.

SHRIMP: CIT Judge Timothy Stanceu Jan. 23 rejected (Slip Op. 07-11) U.S. shrimp industry motion seeking order to have ITA add "dusted shrimp" to scope of antidumping order on non-canned shrimp from several countries. "The primary relief that plaintiffs seek is beyond the power of the court to grant," he ruled. "Because plaintiffs did not appeal the [International Trade] Commission's final injury determination, a court order directing Commerce to include dusted shrimp within the scope of the investigation and reissue its less than fair value determination would be futile should the Commission refuse to act voluntarily to modify its final injury determination," he explained

CHINA: USTR's office in Jan. 24 Federal Register asked for public comments on protection and enforcement of intellectual property rights at provincial level in China as part of review of Chinese IPR policies.

CHANGED CIRCUMSTANCES: ITA issued notice in Jan. 24 Federal Register asking for comments on whether it should change its policy on how it applies "successor in interest" policy to existing duty deposit requirements on products subject to countervailing duty order when its manufacturer merges or is acquired by another firm whose products are not subject to CVD order. ITA generally considers new company to be successor to predecessor company in antidumping cases. CVD cases, however, raise special issues related to whether new company benefits from new or old subsidies.

BERRY AMENDMENT: Defense amended DFARS in Jan. 22 Federal Register to implement 2007 National Defense Authorization Act provisions that revised Berry Amendment and imposed additional restriction of foreign components used in clothing and uniforms purchased by military. Notice said Defense bought $1.868 billion worth of clothing from 1,110 contractors under Berry Amendment rules in fiscal 2005. "This rule may have a positive impact on small businesses that manufacture clothing materials and components by reducing foreign competition. However, the rule could have a negative impact on small businesses that have been using foreign components in the manufacture of clothing products," it said.