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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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INTELLIGENCE AGENCY WARNS AGAINST ESPIONAGE THROUGH INTERNET

As the Bureau of Industry and Security (BIS) learned last year when someone in China tried unsuccessfully to hack the agency's licensing system, the Internet has become a prime vehicle for the theft of commercial and defense-sensitive information. "The CI Community believes that the Internet will be a tool increasingly relied on to help acquire sensitive U.S. technologies," says the latest report from the National Counterintelligence Executive (NCE) to Congress on Foreign Economic Collection and Industrial Espionage.

The NCE report, which has been used in the past to justify tougher controls on technology, also cites a sharp increase in visits by foreign nationals – particularly from China and Russia – to defense contractors, military installations and national laboratories as a potential source of stolen technology. "The large number of foreign visitors each year from the major collecting nations indicates, in our view, that these visits continue to yield useful information for collectors."

"The fact is, intellectual thieves are eating our lunch – eating your lunch," NCE Joel Brenner told a business meeting in December. "The public and private sectors are both leaking badly," he said. "I'm talking about significant technologies that are walking out of our laboratories on electronic disks, walking onto airplanes bound for foreign ports, and re-entering the country as finished products developed by foreign entrepreneurs," he said. What is worse, he continued, is the loss of defense technology "that in wartime could cost many lives of our fellow citizens."

The report, which covers data from fiscal year 2005, cites the lack of enforcement of deemed export rules. "In our view, the reason so few cases have been prosecuted under the deemed export law is the difficulty in observing deemed exports," it notes. "With no observable movement of goods, the transfer is virtually impossible to detect, let alone prosecute. The absence of prosecution, in turn, may be a factor in lowering the awareness of the U.S. scientific community to the extent of the problem," the report declares.

U.S., EU MAY BE READY TO MAKE NEW OFFERS TO SAVE DOHA ROUND

The U.S. and European Union (EU) appear to be on the verge of making new agriculture offers in the Doha Round on domestic support and market access in an effort to save the talks before President Bush's fast-track negotiating authority expires July 1. But they may have to make those offers knowing they won't get much more from the rest of the world in the negotiations. Rather than getting major improvements in the current offers on the table from other countries, the greater challenge facing U.S. and EU officials will be the political task of convincing key

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business constitutes, EU member states and the U.S. Congress that whatever Doha deal comes out will be worth supporting (see story below). While nothing specific came out a Jan. 8 meeting between President Bush and EU President Barroso, both U.S. Trade Representative (USTR) Susan Schwab and EU Trade Commissioner Peter Mandelson told reporters the session revealed a “sense of urgency.” It now appears likely that formal Doha talks will resume in February. “I think we would be in real danger, if we did not achieve the breakthrough that we’re seeking in the first quarter of this year,” Mandelson said.

Schwab now faces the same situation that confronted then-USTR Mickey Kantor during the Uruguay Round in July 1993 when it became apparent that Washington’s ambitious zero-for-zero plan for cutting industrial tariffs wasn’t going to succeed. At the same time that Congress was approving an extension of President Clinton’s fast-track powers, Kantor met with key trade ministers in Tokyo during the annual G-7 Economic Summit and accepted a market access deal that was far short of the original U.S. proposal (see **WTTL**, July 12, 1993, page 1).

Kantor had to make additional concessions over the next six months, including on agriculture, services, and audio-visual services, to reach a deal before fast-track expired. In the end, a main U.S. achievement was stripping provisions from the “Dunkel Draft” agreement that would have weakened U.S. trade laws. The final Uruguay Round agreement left an “unfinished agenda” that became the subject of additional negotiations on telecommunications, information technology, and financial services, and finally the kindling for launching the Doha Round

U.S. and EU technical experts are still crunching potential numbers for a new offer. At the same time, Schwab and Mandelson are accelerating contacts with other players in the talks. Schwab met with Brazilian Foreign Minister Celso Amorim Jan. 3. They’ve both met with Japanese trade and agriculture ministers, and Mandelson met with French Prime Minister Dominique de Villepin on Jan. 11. Schwab flew to Geneva for talks with WTO Director General Pascal Lamy and other negotiators on Jan. 12. A host of trade ministers are expected to attend the annual World Economic Forum in Davos, Switzerland, Jan. 24-28.

A special effort also will be made to reach out to India, which has been the most resistant to market opening proposals in both agriculture or industrial goods. Indian WTO diplomats in Geneva were especially quiet about the state of talks. “We are keenly watching what is happening between EU and U.S.; what is happening between EU and Brazil; what is happening between U.S. and Brazil. And we are looking forward to some offer, if it is coming our way, from these discussions,” an official said. Lamy is headed to New Dehli the week of Jan. 15. A U.S. source said Washington also will be talking with Indian officials.

In Geneva, Schwab tried to dampen reports that suggested a breakthrough was near. “We’ve got a long way to go for a breakthrough,” she told reporters after meeting with Lamy. “Are we making progress? Absolutely, we’re making progress,” she declared. She described the talks that are going on as trying “to get behind some of the bumper sticker numbers that hung us up in July.” Moving to another metaphor, Schwab said negotiators had to “dig down” and, shifting to a third metaphor, “see whether we can move up the ladder” in the technical talks.

NEGOTIATORS IN GENEVA ARE WAITING FOR U.S., EU TO ACT

Since the start of the new year, U.S. trade officials have been suggesting that “quiet diplomacy” is starting to make progress in Doha Round negotiations in Geneva, but their statements don’t reflect what is happening in Switzerland (see story above). According to several trade diplomats and sources in Geneva who have been actively engaged to the round, American representatives to the World Trade Organization (WTO) have been holding bilateral talks with other governments but no deal is in sight. “I’ve seen these news reports, which are pretty upbeat, about the EU and the U.S. saying they are much closer, but I haven’t seen anything concrete,” one well-placed diplomat in Geneva told **WTTL**. Another source said he was aware of bilateral activity in various parts of the world, “but that’s not Geneva activity.” Another

diplomat suggested that the publicity about the meeting between President Bush and EU President Barroso Jan. 8, was used by EU Trade Commissioner Mandelson to gain leverage in the talks. "Mandelson was saying 'we have to engage President Bush personally in order to make progress.' That is kind of pushing the U.S. into a corner. In my view, that was kind of a press tactic by the EU," the diplomat said.

Several sources agreed that most of what the U.S. and EU will get out of the round is on the table already "Whenever people say 'Doha light' or 'Doha heavy', there is going to be – after the fact – we are going to present whatever result as being a great thing," one source stated.

Sources say the U.S. and EU need to get other key players in the talks, especially Brazil and India, to show some compromises at the same time. No sign of such willingness emerged from the talks Schwab held with Brazilian Foreign Minister Celso Amorim in New York Jan. 3. "It was a good conversation but nothing like we're close to clinching a deal," one source reported.

"Unless the U.S. and EU are becoming desperate to reach agreement, it's unlikely they would move on their own," another source in Geneva said. "They would want some kind of simultaneous movement from India and Brazil as well, certainly in agriculture," he added. A diplomat from one developing country told WTTL: "Clearly we need a starting point, and the deal between the EU and the U.S. will be a starting point, not an ending point."

FCPA OPINION ALLOWS HIRING FIRM TO HELP GET FOREIGN CURRENCY

The Justice Department has told an unnamed company that it can hire a foreign law firm to help it get better access to foreign exchange in an unnamed country without violating the Foreign Corrupt Practice Act (FCPA). In an FCPA advisory opinion issued Dec. 31, the department said it would not take any legal action under the statute against the company based on the facts that were presented in the request for the opinion. The requestor said it was a subsidiary of another U.S. company that is subject to FCPA rules. It explained that it was having difficulty obtaining foreign currency from an agency in a country where it had operations. The exchange is needed to convert U.S. dollars to local currency to do business in the country.

"The process has slowed considerably and has become unpredictable in recent months," the company told Justice, according to the advisory opinion. One problem is the lengthy documents that must be submitted to the exchange agency. It said its applications have been returned for minor reasons. Hiring a local law firm is aimed at eliminating technical errors in the applications. The firm will help prepare the applications, file them and shepherd them through the process.

"There has been no suggestion by anyone that an improper payment is necessary or desirable to solve this problem, and the Requestor represents that it has no reason to believe that any of the fees paid to the Firm would be used for that purpose," Justice noted. The requestor did say the law firm has acted as an external advisor to the foreign country's central bank. The bank, however, is independent from the agency and has no role in its decisions on exchange applications. The requestor described safeguards it was putting in place to assure compliance with FCPA rules, including signed agreements on compliance, signed statements that no members of the firm or relatives work for the exchange agency, auditing rights and employee training.

LATEST WTO RULING ON "ZEROING" GIVES U.S. LITTLE LEEWAY

A WTO Appellate Body ruling Jan. 9 will eliminate the ability of the International Trade Administration (ITA) to use its "zeroing" methodology for calculating margins in administrative reviews of antidumping orders. The ruling is the latest in a series of panel and Appellate Body decisions that have found the zeroing practice to violate the WTO Antidumping Agreement and closes the door on the last area where the U.S. claimed the method could still be used. Earlier

rulings had declared the method inconsistent with WTO rules when used in new investigations. The ruling still must be approved by the WTO Dispute Settlement Body on Jan. 23, but its adoption is almost certain. The U.S. will then have 30 days to declare whether it will comply with the decision. It also must negotiate with other parties in the case what will be a reasonable period to implement the Body's opinion.

In December, ITA published a change in its zeroing methodology when used in investigations to come into compliance with previous WTO rulings against the practice (see **WTTL**, Jan. 1, page 4). ITA has issued a notice saying it will delay the implementation of that policy until Jan. 23 to provide more time for briefing members of Congress on the changes. The new methodology, ITA said, will not make average-to-average price comparisons between import and home market prices without taking into account nondumped goods.

Under the zeroing approach, ITA had dropped or zeroed nondumped prices so only below cost import prices were used in calculating dumping margins. If the U.S. complies with the new ruling, which declared the zeroing methodology illegal "as such," it will have to decide how to apply that new methodology in administrative reviews, sunset reviews, and new shipper reviews. With new antidumping cases trickling into ITA in the last two years, most of the trade law action has been in administrative reviews and sunset cases.

* * * BRIEFS * * *

CANADA: Ottawa has asked U.S. for WTO consultations on its complaint that U.S. corn subsidies are unfair and inconsistent with U.S. WTO obligations. Complaint also targets certain export subsidies.

MISCELLANEOUS TARIFFS: Part of new ethics rules House adopted Jan. 5 are provisions that treat miscellaneous tariff bills same as "earmarks" in appropriations bill. Tariff measure sponsors will need to disclose who specifically will benefit from tariff suspension and purpose of benefit. Miscellaneous tariff bills are already subject to ITC review before consideration and dropped when there is any opposition, but critics of system say process has been abused in recent years as number of bills has surged.

EXPORT ENFORCEMENT: Olympiad Line, LLC, of Allentown, N.J., has agreed to pay \$14,000 civil fine in four equal installments over 12 months in settlement with BIS which charged firm with aiding and abetting export of food canning equipment to Iran. BIS reached separate settlement with Malvina Can Machinery Co on related charges (see **WTTL**, Nov. 27, page 4).

ITA: Ira Kasoff been named deputy assistant secretary for Asia. He is foreign service officer who was commercial officer in Shanghai before appointment and has also served in Tokyo and Hong Kong. His wife, Ellen Eliasoph, is managing director of Warner Brothers Pictures in China.

SOFTWOOD LUMBER: NAFTA binational dispute panel Jan. 5 accepted U.S. and Canadian motions to terminate softwood lumber case because bilateral Softwood Lumber Agreement (SLA 2006) moots case.

TRADE FIGURES: U.S. goods exports in November surged 15% above last November to \$89.1 billion. Services exports were up 9.7% from year ago to \$35.7 billion. With lower oil prices, goods imports rose just 4.5% to \$153.8 billion, as services imports gained 9% to \$29.2 billion.

EU: Trade directorate plans briefing on proposed changes to EU export control rules in Brussels on Jan. 26. For more details, contact Dangis.Verseckas@ec.europa.eu.

CHILE: After "out-of-cycle" Special 301 review, USTR's office elevate Chile to "priority watch list" country from "watch list" because of Santiago's unwillingness to address concerns of U.S. drug firms who say Chile has allowed marketing of patent-infringing pharmaceuticals.

D-TRADE: DDTC Jan. 11 reported that new electronic licensing system crashed when new software was being installed. "Applications submitted or processed between January 8 and January 10 may have been impacted," it said. Firms may have to resubmit applications for that period.

MALAYSIA: Talks week of Jan. 8 put negotiators "in striking distance" of FTA deal in next few months, reported Assistant USTR Barbara Weisel. Main hurdle is preferences Malaysia gives indigenous peoples.