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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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PRESIDENTIAL PANEL URGES EXPORT CONTROL CHANGES

The President Export Council (PEC) Sept. 29 agreed to send a letter to President Bush urging the administration to revise export control rules to ease restrictions on intra-company transfers of technology and to give greater weight to the foreign availability of controlled items. The PEC also called for the administration to stop classifying commercial items that might meet defense standards as Munitions List (ML) items.

The letter, recommended by the PEC's Subcommittee on Export Administration, said the administration could take these steps through regulations without having to wait for legislation to renew and revise the Export Administration Act (EAA).

The PEC said the administration should streamline current technology-transfer controls to end the item-by-item approach. "We recommend that U.S. technology export controls should rely on strengthened corporate compliance processes, rather than regulating individual transactions," the PEC said. The Bureau of Industry and Security (BIS) is working on proposal for Special Intra-Company License (SIL), but the idea is still at the discussion stage, BISers say.

Regarding foreign availability, the PEC suggested that the administration develop guidelines that industry can use to "support a claim in a license application that there is non-U.S. competition and take into account that U.S. partners quickly (i.e., in less than 14 days) and routinely license certain controlled items with minimum license conditions."

NO DISCUSSION OF TEXTILE QUOTA EXTENSION AT WTO

The U.S. textile industry's effort to get a three-year extension of global textile and apparel quotas failed to get any discussion at a key Oct. 1 meeting of the WTO's Council on Trade in Goods. Instead, the council only discussed a proposal from several small apparel producing nations for a study on the impact that the end of the Multifiber Arrangement (MFA) will have on developing countries and a work program to address those issues. No agreement was reached on the proposal, which will be discussed again at an Oct. 18 meeting.

U.S. industry representatives said they expected Mauritius to raise the subject of extending the MFA, but it didn't, and no other country broached the subject, WTO sources reported. The failure to get the WTO to address an MFA extension, leaves the U.S. textile industry with only the textile-safeguard route to stem the rise in China's share of the U.S. apparel market. Industry representatives said they plan to file their first petitions by Oct. 8 (see **WTTL**, Sept. 6, page 3). Commerce Under Secretary Grant Aldonas told reporters Sept. 29 the department

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had asked the industry to file information in their petitions based on past WTO rulings on the issue of “threat” of injury. This includes information on specific investments in expectation of increased exports, on the substitutability of production that would allow the shift to different apparel categories, and evidence that Beijing has subsidized the manufacture of specific products. “That would be evidence that people are targeting a particular category,” he said.

“On the issue of threat, what people have a tendency to misjudge is that in [our] openness to hearing the cases it really means we are willing to take a look at the evidence that people are going to put on the record,” Aldonas said. “The best evidence would be rising imports,” he added.

Aldonas said he recognized that the industry’s complaint is about a rise in China’s share of the U.S. market and not necessarily a surge in overall imports. “I would expect the other side will point out very much that this isn’t disruption of the U.S. market, because there is no further increase in imports,” Aldonas said.

VISA RESTRICTIONS LOST U.S. CITIES \$100 BILLION IN BUSINESS, PEC CLAIMS

The President’s Export Council (PEC) Sept. 29 joined the chorus of business groups that have complained that post-9/11 restrictions and visa requirements for foreign visitors have hurt U.S. companies who have trouble bringing their own employees or customers to this country. “In addition, cities are losing out on tourism, conventions and international events because of daunting travel logistics and visa demands, taking nearly \$100 billion in spending to cities outside the United States,” the PEC claimed in a White Paper sent to President Bush.

The PEC blamed the problem on several factors, including “inconsistent and opaque processes for visas.” It also complained that there is a “lack of channels for U.S. companies to consult with appropriate officials to provide input on behalf of applications for key customers or employees.” The PEC urged the president to seek adequate resources to fund visa handling by U.S. consulates abroad and to have the administration work more closely with business to find ways to assure U.S. security without weakening the economy.

LAWMAKER MAKE SECOND ATTEMPT TO GET CHINA CURRENCY 301

Eight senators and 22 House members refused to take no for an answer from U.S. Trade Representative (USTR) Robert Zoellick, making their own attempt Sept. 30 to get a Section 301 investigation launched into China’s exchange rate policies. The petition is expected to face the same rejection that was handed to the 301 petition filed by a business-labor coalition, the China Currency Coalition (see **WTTL**, Sept. 13, page 2). Rather than a quick rejection, however, USTR spokesman Richard Mills said “as a courtesy to members, we will offer to consult further with them before a final decision.”

Members of the Congressional China Currency Action Coalition, which filed the new petition, said their petition differs from the industry-labor petition because it doesn’t seek the imposition of retaliatory tariffs. Instead, it asks Zoellick to use the 301 investigation to support a complaint at the WTO against China’s policies and to take WTO-consistent action against China, if it refuses to revalue the yuan.

With all but one – Sen. Lindsey Graham (R-S.C.) – of the signers of the congressional petition being Democrats, it’s hard not to see the petition as a partisan attempt to embarrass the Bush administration. For its part, the White House has refused to take the bait and continues to insist that its approach to getting China to change its exchange rate policy is working. After the Sept. 30 meeting of U.S.-China Joint Economic Committee, American and Chinese officials issued a joint statement on the talks. “The Chinese side reaffirmed China’s commitment to further advance reform and to push ahead firmly and steadily to a market-based flexible

exchange rate, and described the steps the Chinese government has taken to create conditions to establish a more flexible exchange rate,” the statement said.

CONGRESS IN RACE TO COMPLETE FSC/ETI BEFORE ADJOURNMENT

Facing the expected session-ending adjournment of Congress on Oct. 8, lawmakers have started a last-minute dash to hold a House-Senate Conference to complete legislation to repeal and replace the Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) tax law. After the House finally named conferees to the conference, House and Senate members held their first meeting Sept. 29. They will meet again on Oct. 4 in an effort to get a measure to both houses before lawmakers leave Washington for the rest of the year.

At the opening session of the conference, House Ways and Means Committee Chairman Bill Thomas (R-Calif.) presented a 98-page “discussion draft” that reflected initial compromises that House and Senate staffers had already worked out to merge the Senate version (S. 1637) of the legislation with the House’s (H.R. 4520). “Even though the Chairman’s discussion draft was presented by Chairman Thomas, it is, in effect, my starting position as well,” said Finance Committee Chairman Charles Grassley (R-Iowa).

The emerging conference agreement would repeal the FSC/ETI law and offset the lost benefits with a big package of tax cuts for U.S. manufacturers. It would phase out the FSC/ETI benefits over two years – something that has already drawn complaints from the European Union (EU). The measure would also amend tax laws affecting international earnings. Thomas noted that EU retaliatory tariffs on certain U.S. exports to Europe have already risen to 11% because of the delay in repealing FSC/ETI. “If we do not complete our work, the legislative process must start again from scratch in the 109th Congress,” he warned. By then, tariffs could hit 17%.

PETITIONERS MUST MONITOR ANTIDUMPING ENFORCEMENT THEMSELVES

U.S. firms that win antidumping rulings against imports bear the burden to ensure that Customs is imposing appropriate duties, the U.S. Court of Appeals for the Federal Circuit (CAFC) ruled Sept. 28. Especially when duty rates change after administrative reviews, the “brunt of monitoring implementation...must by necessity fall on the other interested parties, here, the domestic producers,” the court declared in a decision (04-1058, -1080) upholding Court of International Trade (CIT) Chief Judge Jane Restani’s refusal to force Customs to reliquidate imports of gray Portland cement from Mexico, which had entered at the wrong rate.

The Ad Hoc Committee of domestic producers had succeeded in getting the International Trade Administration (ITA) to increase the dumping duty on cement exported to the U.S. by Cemex during the second administrative review. Although Restani and the CAFC agreed that the imports were improperly liquidated, they found the law bars a challenge of the Customs action at this late date.

The committee should have monitored ITA’s instructions to Customs and acted sooner, the appellate court said. “Here where Congress declined to give domestic producers protest rights, monitoring the enforcement of its court judgment fell upon Ad Hoc,” the court declared. “Unfair as that may seem, the proper forum for remedying the harshness of the statute is Congress, not this court,” it added.

INDUSTRY FIGHTS NEW EXPORT CONTROLS IN DEFENSE BILL

The annual National Defense Authorization Act (NDAA), which frequently in the past has been a back-door way to impose new export controls, is about to do it again. As a House-Senate Conference Committee rushes to complete work on the 2005 NDAA before Congress adjourns

Oct. 8, the business community is fighting to strip out provisions from the House version (H.R. 4200), which would impose new licensing requirements on items whose technology is included on the Militarily Critical Technologies List (MCTL) and restrict trade and defense alliances with foreign firms that sell defense products to China (see **WTTL**, May 24, page 1).

A group of 12 industry trade associations wrote to conferees Sept. 29 urging them to reject these provisions. Although the White House opposed these restrictions in the House bill, it's not clear President Bush would threaten to veto the bill over these sections. Other sections also drew veto warnings, but in an election year in the midst of a war, a veto of a defense bill seems unlikely.

The House bill included provisions that responded to talk in some European countries about easing export restrictions on sales of Munitions List (ML) items to China. The measure would impose licensing requirements on exports to any entity that did sell ML items to China, even if those sales were approved by their governments. Other provisions would restrict the ability of the administration to enter into agreements with allies to speed up defense transfers.

* * * BRIEFS * * *

ANTIBOYCOTT: BIS's dormant antiboycott efforts came alive Sept. 30 with announcement of two settlement agreements for alleged violations. Arab Bank, Plc., of New York agreed to pay \$9,000 civil fine for failing to report boycott request and not maintaining report records. St. Jude Medical Export, GmbH, Austrian subsidiary of Minnesota medical device maker, agreed to pay \$30,000 civil fine to settle BIS charges for failing on three occasions to report boycott information requests from Iraqi customers in 2000-2001 and on another occasion agreeing to refuse to do business with blacklisted persons.

ITC: After 37 years in government and being at ITC since 1972, Gene Rosengarden, director of the Office of Tariff Affairs and Trade Agreements, has announced plans to retire in January. He led complex effort to develop current Harmonized Tariff Schedule.

OFAC: Treasury Sept. 28 named Robert Werner to be new director of OFAC, filling vacancy after Richard Newcomb's retirement (see **WTTL**, Sept. 20, page 4). Werner currently is Treasury's assistant general council for enforcement. Earlier, he worked at Justice and was Connecticut's associate attorney general.

PIPE AND TUBE: ITC Sept. 29, on 6-0 vote, made final determination that U.S. industry is not being hurt by dumped imports of light-walled rectangular pipe and tube from Mexico and Turkey.

INDIAN ENTITIES: As expected, BIS issued correction in Sept. 29 Federal Register to clarify recent change in Entity List licensing policy for Indian entities (see **WTTL**, Sept. 27, page 3).

IRAQ: President Bush Sept. 24 issued determination dropping Iraq's designation as state-sponsor of terrorism. Separately, Treasury Sept. 27 lifted IRS foreign tax credit restrictions on Iraq.

MIRROR, MIRROR ON THE WALL: Responding to protests from furniture retailers, ITA Sept. 30 issued revised scope determination in antidumping case against bedroom furniture from China. Agency said investigation now excludes mirrors not attached to dressers and not designed to be sold with dressers.

EXPORT ENFORCEMENT: Midway Arms of Columbia, Mo., has agreed to pay \$220,000 civil fine to settle BIS charges that it exported firearm scopes and mounts without approved export licenses. Agency agreed to suspend \$80,000 of penalty and waive that amount after one year, if firm remains in compliance with export control rules. BIS claimed Midway exported scopes to Canada on 275 occasions and to 11 other countries on 93 occasions without licenses.

BIS DENIAL ORDER: In Federal Register Oct. 1, BIS issued order imposing \$22,000 fine and denial of export privileges on Chinese professor Xinjian Yi and his daughter Yu Yi for illegal exports of thermal imaging cameras to China without licenses. Both Yis are in China.

AIRBUS: After two-hour meeting on various trade issues Sept. 30, USTR Robert Zoellick and EU Trade Commissioner Pascal Lamy failed to make progress on transatlantic dispute over government subsidies to Airbus and Boeing or on negotiating new bilateral deal to replace 1992 aircraft accord (see **WTTL**, Sept. 20, page 4). Chance for cross complaints at WTO remains high.