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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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DEFENSE STING OPERATION CATCHES ATTEMPTED LASER EXPORT

An undercover operation run by the Defense Criminal Investigation Service (DCIS) in Eastern Pennsylvania was responsible for the indictment of two Japanese nationals who were attempting to purchase and export infrared aiming lasers that are controlled under the International Traffic in Arms Regulations (ITAR). A one-count federal grand jury indictment, announced July 27, named Sotaro Inami and Takashi Matsubara for allegedly conspiring to buy the lasers from an undercover company that had been set up to catch individuals trying to sell military equipment.

> As of April 2004, the sting operation, known as Operation High Bidder, had identified over 150 sellers in 33 states who were trying to sell products that were intended solely for sale to the U.S. military. One of the indictments it obtained named James Fussell of Clinton, N.C., who was charged with selling protective body armor, which was made under contract for the Pentagon, on Ebay. Also caught in the operation were some civilians and former military personnel.

Inami and Matsubara apparently contacted Fussell about buying pointer/illuminator aiming lasers, Model AN/PEQ2a, which were made by an unidentified U.S. manufacturer. Fussell had directed them to the DCIS operation. Through a series of emails and phone calls, Inami and Matsubara arranged to buy five laser sights from the undercover company. Inami flew to the U.S. from Japan to the buy the lasers from a U.S. undercover agent in Los Angeles. When he arrived there in February, he was arrested and is now in jail awaiting trial. A warrant has been issued for the arrest of Matsubara, who is believed to be in Japan.

During one phone conversation with an undercover agent, Inami said he was aware that the laser he was attempting to buy could be sold only to the U.S. military. Inami told the agent he was aware the lasers "could not be shipped outside of the United States, but that he had previously shipped U.S. military items out of the United States without proper licensing," stated the indictment issued in Philadelphia. This was one of several Defense investigations that have produced indictments, arrests and criminal penalties (see story page 3).

U.S. MULTINATIONALS OFFER MIXED TRADE AND EMPLOYMENT PICTURE

U.S. multinational corporations (MNC) were adding jobs overseas at almost twice the pace as they added in the U.S. from 1992 to 2002, but they still managed to add almost 4.9 million domestic workers during that period, according to a Commerce report. MNCs and their affiliates accounted for 58% of all U.S. exports and 37% of imports in 2002, the latest year covered in the report. The picture presented in the report of MNC value-added production,

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capital expenditures and employment is certain to add ammunition to both sides of the debate over outsourcing and MNC benefits in pending legislation to repeal and replace the Foreign Sales Corporation/Extraterritorial Income tax law (FSC/ETI). The report, published in the July issue of Commerce's Survey of Current Business, shows that MNC expansion abroad was not necessarily at the cost of growth in the U.S.

> On the employment side from 1982 to 1992, MNC employment in the U.S. and abroad fluctuated up and down, settling at about 17.5 million in the U.S. in 1992 and 5.3 million abroad. From 1992 to 2002, there was a surge of job growth domestically and internationally. In the U.S., MNCs added almost 4.9 million jobs, nearly a 28% increase, while hiring 2.9 million workers abroad, a 55% jump. The increase in the U.S. came despite a 1.4 million drop in employment from 2000 to 2002. MNCs added just 12,500 jobs abroad in that two-year period.

"The weakness in MNC operations in 2002 primarily reflected large decreases in a small number of industries, and it was concentrated in the United States," noted the report, which was prepared by the staff of Commerce's Bureau of Economic Analysis. "The decrease in telecommunications services and in communications equipment manufacturing industries reflected poor business conditions in the U.S. telecommunications industry, which resulted in falling production, business divestitures, and some business failures for U.S. parents," it added. The two sectors accounted for more than the total decrease in all MNC value added that year, two-thirds of job losses and more than half of the decline in capital expenditures.

UNSATISFACTORY 1992 AIRCRAFT DEAL COMES BACK TO HAUNT U.S.

When the administration of George H.W. Bush resolved a six-year dispute with the European Union (EU) in 1992 over civilian aircraft subsidies, there was widespread dissatisfaction with the deal (see **WTTL**, April 6, 1992, page 2). Twelve years later, the administration of George W. Bush wants to negotiate a whole new agreement to fix the problems with the first one. The complexities of the aircraft industry, which made the first accord so difficult to reach, haven't gotten less complex in the last decade, so the stage is set again for another long-term deadlock.

> In July during talks in Brussels, U.S. officials informed the EU that Washington wants to negotiate a new agreement that would bar any future government subsidies to support the development or production of large civil aircraft. The U.S. indicated that it would be willing to allow subsidies already in the pipeline to continue as long as they were within the limits set by the 1992 accord.

The current President Bush gave the issue extra focus Aug. 13 when he told workers at a Boeing plant in Seattle that he thought EU subsidies for Airbus are unfair and he was ready to launch a World Trade Organization (WTO) complaint, if the EU didn't agree to end them. EU officials say they are willingness to discuss a new deal but also warn that Europe could take the U.S. to the WTO over allegations that Boeing also gets subsidies from federal, state and local governments in various forms. The U.S. and EU plan to start new talks in September.

When it was announced, the 1992 agreement drew complaints from several lawmakers, who reflected the views of McDonnell Douglas, which wasn't happy with the deal before it was acquired by Boeing. Then-Sen. John Danforth (R-Mo.) and Rep. Richard Gephardt (D-Mo.) introduced non-binding resolutions opposing the pact. Danforth, now U.S. Ambassador to the U.N., called the deal "a travesty," saying "it would be difficult to envision a worse outcome."

The main objection to the accord was to provisions that allowed European governments to continue to subsidize directly up to 33% of the development costs for new Airbus aircraft through long-term financing and to subsidize development and production costs indirectly up to 3% of industry sales. The U.S. contends this financing is an unfair subsidy because no commercial bank or investor would have put up the money for a concept as risky as the A380 super jumbo civilian airplane. That horse is out of the barn for the development of the A380. Now

Washington and Boeing want to make sure Europe doesn't start a new round of support for an Airbus version of Boeing's planned 7E7 model. Boeing "does not want Europe to add more financing for an alternative to the 7E7 or difficulties with the 380," U.S. Trade Representative (USTR) Robert Zoellick told reporters in July.

> Washington has stopped short of invoking the clause which would allow it to withdraw from the 1992 deal 12 months after notifying the EU. As long as the pact is in place, the U.S. is barred from initiating a countervailing duty case against Airbus planes sold in the U.S. Cross complaints at the WTO could prove difficult as well. A similar fight between Canada and Brazil over support for their commuter aircraft industries lead to WTO rulings against both of them.

UK EXPORT AGENCY SPEEDS LICENSE APPROVALS BUT ON LOWER VOLUME

Complaints by U.S. exporters that their foreign competition have an advantage because U.S. allies approve export licenses more quickly than the Bureau of Industry and Security (BIS) are supported by new data released by the United Kingdom's Department of Trade and Industry (DIT). According to a new quarterly report being issued by DTI's Export Control Organization (ECO), the British took a median of 13 working days to approve Standard Individual Export License (SIEL) applications during the three-month period of January to March 2004.

> That is about one-third the 44 days BIS took on average to approve applications in 2003. ECO, however, approved just 1,637 licenses, about half the BIS load. It refused approval to 51 applications.

SIELS cover Munitions List and dual-use exports. ECO separately approved 110 Open Individual Export Licenses (OIELs), which are issued to individual exporters and allow multiple shipments. The new 125-page ECO quarterly report provides details on the number of licenses issued for each destination, the total value of exports, and the goods and technology covered.

ECO has a stated goal of processing SIELs within 20 working days. While not all licenses meet that deadline, processing times still remain low. For example, during the period, ECO approved 46 SIELS with a value of £9.5 million for exports to China in a median time of 19 days. It refused approval for two. It achieved its under 20-day processing goal for 58% of those licenses. It approved 223 SIELs with a value of £35.5 for India in a median time of 15 days; rejected 21 applications and handled 73% of the applications within its deadline.

For Russia, ECO approved 14 SIELS with a value of £3.0 million, refused none, and completed processing in 14 days. It reached its processing goal for 86% of the Russian SIELS. It approved 24 SIELs for Iran with a value of £1.5 million in average time of 17 days and rejected nine applications. Processing was on schedule for 66% of those SIELS. Approval was given for 32 SIELS worth £6.5 million for Pakistan in a median time of 18 days, while three applications were refused. ECO reached its processing goal for 61% of those licenses.

FIRM PAYS $500,000 CRIMINAL FINE FOR ILLEGAL AIRCRAFT PARTS EXPORTS

The government's focus on illegal exports of aircraft engines and parts to Iran has produced a plea agreement, under which Interaero, Inc., a California aircraft parts supplier, agreed to plead guilty Aug. 17 and pay a $500,000 criminal fine for exporting jet parts to China, knowing that their ultimate destination was Iran. The firm plead guilty in the D.C. U.S. District Court to a one-count information which had charged it with making six shipments, worth about $40,000, to China of parts for the F-4 Phantom and F-5 Phantom Tiger.

"In this case, Interaero knew it was dealing with a buyer in the People's Republic of China and was also aware that the buyer intended to sell the parts to Iran," a Justice statement explained. "Nevertheless, Interaero shipped the parts to the PRC without making any effort to obtain an

export license." The case was the latest produced by a series of Defense undercover operations (see story page 1). "Today's guilty plea represents the eleventh convictions, in California and the District of Colombia, resulting from an undercover investigation targeted at aircraft parts suppliers who sell defense articles and military parts over the Internet to foreign buyers without obtaining export licenses or complying with the arms embargoes," Justice reported.

> The operation was a joint effort by the Defense Criminal Investigative Service, the Naval Criminal Investigative Service and the Bureau of Immigration and Customs Enforcement (ICE). "The military aircraft parts supplied by Interaero were advertised on the Inventory Locator Service, a subscription computer database on which aircraft parts suppliers advertise the parts they can supply," Justice said. These parts are for older military aircraft used by countries such as Iran.

CUSTOMS EXPECTS TO COLLECT $25 BILLION IN TARIFFS THIS YEAR

The debate over free trade agreements is being fought over a shrinking amount of U.S. imports subject to duties, according to a mid-year report from Customs and Border Protection (CBP). In the current fiscal year, which runs through Sept. 30, 2004, 68% of U.S. imports will enter duty free, including 21% coming in under various preference programs and 47% that are otherwise duty free. The average tariff for the remaining 32% is only 1.5%, CBP reported.

> In the first half of the year, CBP collected $12.5 billion in duties and fees. It collected $301 million in antidumping deposits and $419 million in countervailing duty (CVD) cash deposits. Softwood lumber from Canada accounted for 53% of the AD duties and 96% of the CVD duties, CBP reported. Imports of garlic, mushrooms, honey and color TVs from China provided 19% of the AD deposits.

CBP forecasts that it will handle 28 million entries during the whole year, a 6% increase over 2003. Although 772,000 individual consignees are likely to be identified on import entries this year, the top 100 consignees will import 34% of the value of imports and the top 1000, 63%.

* * * BRIEFS * * *

TRUCK RULES: Customs in Aug. 17 Federal Register announce three-phase implementation of advance notification requirements for trucks entering U.S. It has divided 99 border entry points into three groups with notice rules effective Nov. 15 for first points, Dec. 15 for second and Jan. 14 for third. Notice also puts in place interim electronic data interchange system (EDI) that will be used for filing advance notice until ACE becomes operational. Under rules, trucks entering U.S. must file manifests one hour before arrival at entry port. Carriers participating in FAST program can file 30 minutes prior to arrival.

CUSTOMS: New director of office of trade relations is Michael Mullen, who formerly was senior associate with Booz Allen Hamilton consulting firm.

EXPORT ENFORCEMENT: Gebruder Weise, Gmbh., of Vienna, Austria., agreed to pay $6,000 civil fine to settle BIS charges that it aided and abetted in export of thyroglobulin testing kits to Iran through Austria without obtaining OFAC approved license.

MOROCCO: President Bush Aug. 17 signed U.S.-Morocco FTA implementing legislation.

PANAMA: Fourth round of U.S.-Panama FTA talks in Tampa, Fla., were interrupted Aug. 12 when city had to be evacuated ahead of Hurricane Charley. Next round is scheduled for Oct. 18-22 in Panama City. Despite shortened talks, negotiators said they made progress in discussions on industrial tariffs and banking services. They also reached preliminary agreement on technical rules for customs administration, services, labor, environment, IPR and dispute-settlement.

LIVE SWINE: ITA Aug. 17 made preliminary finding in countervailing duty investigation that imports of live swine from Canada are not receiving export subsidies. Agency ruling on antidumping side of case is due in October. ITA said subsidies it found were de minimis.

EDITORS NOTE: In keeping with our regular publishing schedule, there will be no issue of ***Washington Tariff & Trade Letter*** on August 30, 2004. Our next issue will be Sept. 6.