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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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BIS IMPOSES \$647,500 IN CIVIL FINES ON ROHM AND HAAS UNITS

Three subsidiaries of Rohm and Haas, including two located overseas, agreed to pay \$647,500 in civil fines to settle Bureau of Industry and Security (BIS) charges they exported, reexported or attempted to export controlled chemicals without approved licenses. The high fines were imposed even though the firms had self-disclosed the violations and had cooperated with BIS.

Because six of the 149 shipments occurred while the Export Administration Act (EAA) was still in force, BIS imposed bigger fine for them than it could for the rest of the exports. The other charges were made under the International Emergency Economic Powers Act. "As is evident from the settlement here, exporters run the risk of substantially higher penalties for violations committed when the EAA is in effect," said Assistant Secretary for Export Enforcement Julie Myers.

The BIS charges were aimed at 1997 to 2000 shipments of various organo-inorganic compounds and thiodiglycol, which is used inkjet cartridges. Morton International of Chicago paid a \$239,500 fine for 12 unlicensed exports and one attempted export of controlled chemicals to Mexico, Taiwan and Singapore. Morton International, SAS, of Semoy, France, paid a \$57,000 fine for 19 unlicensed reexports to Israel, Poland and Tunisia. The BIS charging letter to Rohm and Haas Japan K.K., which paid \$351,000 fine, included 117 charges for unlicensed reexports, including 116 shipments to Taiwan and one to India.

Morton International was acquired by Rohm and Haas in June 1999. "These unintentional compliance exceptions, many of which occurred prior to Rohm and Haas Company's acquisition of Morton International, Inc., were promptly and fully disclosed to the government, and the requisite licenses were subsequently obtained for all of the compounds at issue," Rohm and Haas said in a statement. The company said it voluntarily disclosed the exports to BIS in 2001.

NAFTA PANEL POSES TOUGH QUESTIONS ON ITC LUMBER REMAND

Parties on both sides of the dispute over softwood lumber from Canada faced tough questions Feb. 25 from the bilateral NAFTA panel reexamining the International Trade Commission's (ITC) "threat-of-injury" determination in the antidumping and countervailing (CVD) cases against these products. At the request of the respondents, the panel is reviewing the ITC's remand determination in the cases to see whether the commission adequately revised its original ruling to satisfy the panel's claim that the threat finding did not comply with U.S. trade law requirements (see **WTTL**, Dec. 22, page 4). A key issue debated during the oral arguments was whether the evidence on the record could be used to predict that imports of lumber from

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Canada would rise and prices in the U.S. would fall absent the imposition of duties. Elliot Feldman of Baker and Hostetler, which represents Ontario, also challenged the ITC application of the continuum rule in its like-product determination.

Panelists questioned ITC reliance on a 2001 Bank of America study which said overproduction of lumber in Canada remained a problem even though the authors of the report cautioned about drawing conclusions from their survey. Panelists also questioned whether the increase in demand would offset the potential price suppression caused by increased imports; whether consumers, especially "big box" retailers, differentiated between various species of lumber; and how much Canadian production was going to pulp and paper production and not lumber.

Mark Moran of Steptoe and Johnson, representing the Canadian Lumber Trade Alliance (CLTA), pointed to other data in the ITC staff report which showed Canadian production declined more than U.S. production during the period of investigation. Without the Bank of America study, the ITC's "whole house of cards collapses," he told the panel

John Ragosta of Dewey Ballentine, lawyers for the Coalition for Fair Lumber Imports, argued that there was sufficient evidence in the record to show that import volume would increase and prices would be suppressed without import restraints. "The CLTA doesn't want to talk about that," he told the panel. Moreover, the U.S. softwood lumber industry was a vulnerable industry and was threatened by an expected increase in Canadian lumber's market share, he asserted.

SUPACHAI URGES COUNTRIES TO PUT OFF BILATERAL TRADE TALKS

World Trade Organization (WTO) Director General Supachai urged countries not to pursue individual bilateral free trade agreements (FTA) until the Doha Round is completed. Speaking in Washington Feb. 26, Supachai said. "While we are intensively involving ourselves with the end game of this negotiation in the Doha Round, we need all hands on deck," he told the National Press Club Feb. 26. "My recommendation is to concentrate, for the time being, to give primacy to the multilateral solutions," he said, noting that he understands that it is "politically expedient" to seek bilateral deals.

Supachai noted the proliferation of bilateral agreements and voiced concern about the WTO's ability to monitor them. Several trade experts have complained that many of these trade pacts don't meet WTO rules requiring them to cover a significant amount of trade between the parties. "The problem is that there is no one, no authority, who can monitor this," he said. "Although the WTO has been assigned to be in charge, we did not have the opportunity to do this, because there is no officially recognized procedure to do so," he added.

OFAC ISSUES GENERAL ORDER LIFTING BAN ON TRAVEL TO LIBYA

Treasury's Office of Foreign Assets Control (OFAC) moved simultaneous with the White House Feb. 26 to implement President Bush's decision to lift the ban on travel to and within Libya by U.S. persons. OFAC issued a general license allowing unrestricted travel to Libya but maintaining restrictions on how payments may be made for travel and accommodations in Libya.

A U.S. person may pay a U.S. travel agency to book travel to and within Libya, but for travel within Libya, payments for transactions "must be in cash or by debit or credit to accounts held in banks that are not in Libya and not entities of the government of Libya," the general license stated. "Any such payments that are routed through the U.S. financial system should reference this general license to avoid the blocking or rejection of payment," OFAC advised. "In addition, U.S. persons may not use U.S.-issued credit cards to pay for these transactions, with the exception of transactions with non-Libyan carriers," OFAC said. A U.S. person traveling to Libya can open an account in a Libyan financial institution to pay for maintenance, residence

and travel in Libya, but these accounts “may be funded only in cash or from accounts maintained at banks that are neither U.S. persons nor entities of the government of Libya.” U.S. air carriers are still prohibited from flying to Libya or offering code sharing with Libyan air carriers. Any travel expenses cannot involve the use “a blocked account or transfer of blocked property,” OFAC said. At the same time that OFAC was issuing its general license, State was following the president’s order to lift passport restrictions for travel to Libya.

A White House statement said U.S. companies “with pre-sanctions holdings in Libya will be authorized as of today to negotiate the terms of their re-entry into operations in Libya, subject to the requirements of a further U.S. approval for implementation of any agreements, if sanctions have not otherwise been lifted.”

GAO REPORT CALLS FOR TIGHTER CONTROLS ON MISSILE TECHNOLOGY

The always critical General Accounting Office (GAO) issued another report Feb. 23 hitting Commerce, State and Defense for inadequate controls on dual-use items that could be used in the construction of cruise missiles and unmanned aerial vehicles (UAV). Although the U.S. participates in the Missile Technology Control Regime (MTCR), items not controlled by the regime could be used to produce missiles and UAVs, the GAO claimed. This has produced a gap in controls that allows legal exports to potential terrorists. In addition, non-MTCR states, such as China and Israel, “continue to acquire, develop and export” missiles and UAV, it said.

BIS Under Secretary Kenneth Juster disagreed. “We do not agree with the GAO that there is a gap in U.S. export controls, if this term is intended to imply that U.S. export control regulations do not address some subset of transactions that clearly ought to be controlled,” he wrote to the GAO. “A more accurate characterization would be to state that the limited scope of the catch-all provision raises the question of whether it ought to apply more broadly,” he added.

MYERS SAYS BIS WANTS TO ENCOURAGE VOLUNTARY DISCLOSURE

Although recent BIS enforcement actions haven’t shown particular leniency to firms that have voluntarily self-disclosed export violations, BIS Assistant Secretary for Export Enforcement Julie Myers claims the agency’s new penalty guidance are intended to encourage such confessions. “One thing that we definitely highlighted in the initial rule and again in the final rule is how important we value self-disclosure, how important voluntary disclosures are and that they will be given great weight and they are given great weight,” she told the PECSEA Feb. 25. Myers also stressed the importance of post-violation improvements in export compliance.

“We want to encourage that,” she said of voluntary disclosures. But she also admitted that dealing with these case is a difficult process for BIS.

Myers, who just returned from China, said BIS is working with Beijing to improve its ability to conduct post-shipment verifications (PSVs) and to get China to join the Nuclear Suppliers Group. Deputy Under Secretary Mark Foulon will be going to China the week of March 1 to continue to talks on PSVs, she reported..

HELP FROM MANUFACTURER WAS KEY TO EXPORT ENFORCEMENT CASE

Without mentioning Perkin-Elmer Optoelectronics by name, BIS Assistant Secretary for Export Enforcement Julie Myers praised the firm Feb. 24 for the role it played in helping stop the alleged effort to export trigger spark gaps, which can be used in medical lithotrippers as well as nuclear weapons, to Pakistan via South Africa without required export licenses. Although the company, formerly EG&G, initially agreed to the sales before being contacted by BIS agents, it later cooperated in what became a BIS sting operation by intentionally sabotaging the items that

were shipped so they became inoperable. The company's help led to the arrest on Jan. 1 of Asher Karni, who allegedly arranged the exports to Pakistan. According to court documents, Karni bought the trigger spark gaps through a broker in Secaucus, N.J., Giza Technologies, Inc. The broker shipped the goods to Top-Cape Technology of Cape Town, South Africa. Top-Cape then shipped them to Pakistan via the United Arab Emirates.

“What has not been given enough public attention is how helpful the U.S. manufacturer was in not only spotting the red flags, but also working with us to keep Karni from sending the nuclear bomb triggers to Pakistan,” Myers told the President's Export Council Export Administration Subcommittee (PECSEA).

“We are so grateful for this cooperation and effort. This is the kind of partnership we depend on,” she added. According to court papers, the shipping firm, DHL Danzas, also cooperated in tracking the shipments for BIS. Karni was released on bail Jan. 28.

U.S. TRIES TO PUT POSITIVE SPIN ON WTO LOSE ON 1916 DUMPING ACT

One reason the public may be getting skeptical about trade is the way trade officials try to spin trade policies and actions to make them sound more positive than they are. For example, after a WTO arbitration panel Feb. 24 ruled against the U.S. on the 1916 Anti-Dumping Act, USTR spokesman Richard Mills hailed the decision as a victory. “We're pleased that a World Trade Organization arbitrator agreed with the United States today that the EU has no current right to retaliate against the 1916 Act,” he said in statement.

What the arbitrators said was “we do not accept the argument of the United States that the level of nullification or impairment in the present case is ‘zero’.” Such a view “is contrary to the clear findings of the original Panel that the 1916 Act nullifies or impairs benefits accruing to the European Communities,” they added.

Mills based his statement on the fact that there has been no judgment under the 1916 Act. The panel, however, said the EC could retaliate, if “there are future applications of the 1916 Act – such as future U.S. court decisions against EC entities, or future settlement awards involving European Communities entities.”

* * * BRIEFS * * *

EXPORT ENFORCEMENT: BIS Feb. 27 announced settlement agreement with Dunmore Corp. of Bristol, Pa., which agreed to pay \$27,000 civil fine to settle agency charges that it exported metallized polyimide films to India four times without approved licenses.

MORE EXPORT ENFORCEMENT: Polytrust Technologies of Singapore agreed to pay \$5,000 civil fine to settle BIS charges it sold optical gun sights to civil end-user even though its export license limited sales to government or police.

STATE: DDTC issued three-year debarment order in Feb. 24 Federal Register against Kam-Tech Systems of Tel Aviv, Israel, and its manager David Menashe, who pled guilty in June 2003 to shipping package to U.S. containing AIM-9 Missile Seeker, which was intended for reexport to China.

COMMERCE: President Bush Feb. 26 nominated Commerce General Counsel Theodore Kassinger to be deputy secretary of Commerce.

CAFTA: President Bush disregarded advice from lawmakers and sent Congress notice Feb. 20 of U.S. intent to sign CAFTA in 90 days (see **WTTL**, Feb. 9, page 4).

OUTBOARD ENGINES: ITC Feb. 23, on 6-0 vote, made preliminary determination that allegedly dumped imports of outboard engines from Japan may be injuring U.S. industry.

DEEMED EXPORTS: Number of “deemed export” licenses received by BIS in Oct.-Dec. 2003 quarter was up 25% from same period year earlier, agency officials report. More than 225 applications were submitted.