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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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HOMELAND SECURITY IG CALLS FOR MERGER OF CUSTOMS, ICE

There's no way to sugar coat the findings in a new report from the Department of Homeland Security's (DHS) Inspector General on the current separation of border and investigative authority between Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE): It's a mess. The IG's just released report looks at what has happened since the creation of DHS and the decision to reshuffle the old Customs Service and Immigration and Naturalization Service (INS) into the current bureaus. It says the best solution to the problems it found is to merge the two organizations together with one single head and chain of command.

As part of the second-stage review of DHS, Secretary Michael Chertoff in July said he would not merge the two bureau but would eliminate the Border and Transportation Security (BTS) directorate to which they report and have them report to the department's deputy secretary. "Our report has not been rendered moot by the secretary's decision not to merge ICE and CBP," the IG asserts.

The IG's investigation found problems in three main areas: apprehensions and detention, investigations and intelligence. The two bureaus are not coordinating their efforts well or sharing information. "Shortfalls in operational coordination and information sharing have fostered an environment of uncertainty and mistrust between CBP and ICE personnel," the report states. Due to this lack of coordination and trust, CBP is creating its own investigative staff, adding duplication and redundancy to the problems plaguing the two agencies, it says.

"More broadly, we encountered bitter and vocal frustration from many DHS employees over basic questions, such as mission confusion, operational frustration at dependency on now remote bureaucracies for services and cooperation they once were able to take for granted, and a skepticism over whether DHS leadership was attentively engaged in finding answers for them," the report declares. "When we met with CBP and ICE headquarters officials to discuss our observations from our extensive field work, we noted an apparent disconnect between headquarters' perceptions of what was occurring and what we observed," it adds.

LICENSING TIMES FOR CHINA CASES DROP 30% IN LAST TWO YEARS

Although the number of licenses the Bureau of Industry and Security (BIS) handles annually for exports to China has grown almost 17% in the last two years, the average number of days taken to process them has dropped 30%, according to agency data. In fiscal year 2005, which ended Sept. 30, BIS took an average of 56 days to complete action on China cases compared to 80 days in 2003. In the last year, it completed action on 1,624 applications v. 1,393 in 2003. In

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FY 2005 it approved 1,218 cases with a value of \$2.4 billion compared to 902 cases worth \$309.7 million in 2003. The approvals included 339 “deemed export” licenses (v. 334 in 2003). BIS returned without action 364 applications valued at \$527.3 billion (v. 317 in 2003 valued at \$5.5 billion). Most cases that were RWA’d were sent back because no license was needed. Last year it denied 42 applications worth \$10.7 million (v. 72 valued at \$5.4 million in 2003).

“As we have worked with engagement with China, the business community has provided us with excellent license applications and supporting documentation, and the interagency has worked hard, we’ve seen that license times have come down in Executive Order days to 56 days in the most recent fiscal year,” said Bernard Kritzer, head of BIS’ office of national security and technology transfer controls.

In terms of number of cases, the most active sector has been deemed exports of telecommunications technology. Deemed exports cases comprised a large share of licenses for semiconductor technology and computer technology. Based on value, the leading sectors have been electronic devices, semiconductor manufacturing equipment, and precursor chemicals and chemical manufacturing equipment. BIS has also approved special comprehensive licenses and technology agreements for China, Kritzer told the BIS Update Conference in October.

“What’s important to note here is that when one looks at sales to China, there is always a tendency to look at it as a homogeneous market, that every export is going to a budding entrepreneur or there is a worry that there could be diversion,” he said. “Many of the license applications we see going to China go to either subsidiaries or affiliates of U.S. or foreign corporations that, in turn, work on an item, and then it is reexported and shipped to other countries, particularly in the high-tech sector,” Kritzer observed. Many are for joint ventures between Chinese and U.S., Japanese or Taiwanese firms. “So depending upon the region of China, the specific economics, there are a whole variety of transactions out there that make it very hard to take one approach and say this is unilinear and defines all licenses,” he added.

CUSTOMS TO STEP UP PHYSICAL INSPECTIONS OF TEXTILE SHIPMENTS

Customs Assistant Commissioner for Field Operations Jayson Ahearn has ordered his staff to develop plans for increasing the number of physical examinations of textile and apparel imports to stem an allegedly increasing amount of smuggling and misstatement of cargo contents. Customs officials claim that container inspections have found goods that were not reported on the import manifest, as well as items marked with the wrong country of origin, fabric content or Manufacturer Identification (MID).

“I had a meeting with my assistant commissioner last Wednesday, and he is not very happy about that,” Janet Labuda, director of the Customs textile enforcement and operations division, told the U.S. Association of Importers of Textiles and Apparel (USA-ITA) Nov. 15. “Obviously from my perspective and his perspective, and it should be from your perspective, the supply chain is broken,” she said. “It’s a security issue as well as a trade issue; it’s a revenue issue.”

“I can assure you that over the next year or so, he has asked me to create and implement various types of enforcement programs that will increase the number of examinations of high-risk shipments,” Labuda told USA-ITA. “That’s the only way we can find this stuff,” she said.

The inspection program will also address concerns about attempts to circumvent the new U.S.-China safeguard agreement (see **WTTL**, Nov. 14, page 1). It also will focus on imports from NAFTA and trade preference partners where high levels of manifest information errors have been found. With 24% of textile imports claiming some type of duty-free treatment under a trade preference or free trade agreement, Customs has found a high level of mistakes on import documents, including a 48% error rate on goods entering from NAFTA countries. Labuda also said the U.S. and China are still discussing how to handle the release of Chinese goods that have been embargoed since previous safeguard quotas were filled earlier this year. The release

of those shipments from warehouse was part of the bilateral safeguard deal. She emphasized that only goods shipped and held before Nov. 8, when the agreement was signed, would be eligible for quota free entry. Labuda said China plans to establish a parallel visa system which will issue a hard-copy visa and a country of origin certificate for Chinese textile and apparel exports. It also will send Customs an electronic version of the visa.

BIS ISSUES NEW RULES TO LIBERALIZE EXPORTS TO LIBYA

U.S. companies, particularly oil firms, that have returned to Libya to do business won't have to wait months anymore to get Bureau of Industry and Security (BIS) approval for licenses for basic office and operating equipment such computers, electric generators or telecommunications gear. After a year-long interagency battle, BIS prevailed in getting agreement on the creation of a new License Exception for exports to U.S. persons in Libya (USPL) of certain items that otherwise would require licenses because they are subject to Anti-Terrorism (AT) controls.

The new interim rules were published in the Nov. 16 Federal Register, the same day they became effective. They cover a wide range of products, including certain encryption hardware, portable generators, information security, diesel engines, electronic devices, test and inspection equipment, computers, and telecommunications equipment.

U.S. firms in Libya have complained about the lengthy approval process for basic equipment they need to set up operations in the country ever since the U.S. reopened trade with Tripoli in 2004. The new License Exception applies to goods exported to U.S. persons, which includes companies. "Items exported or reexported to Libya pursuant to the new License Exception USPL may only be used by U.S. persons or by non-U.S. person employees within the scope of their employment and must remain under the control and supervision of the U.S.-person employer," BIS explained (see **WTTL**, Sept. 26, page 4).

WTO PANEL SAYS YES; NAFTA PANEL SAYS NO; LUMBER DISPUTE GOES ON

Okay, get out the matrix chart you use to keep track of the Hydra-headed litigation over U.S. antidumping and countervailing duty orders on softwood lumber from Canada and make the following updates. A World Trade Organization (WTO) dispute-settlement panel Nov. 15 finally released decision declaring U.S. has complied with previous panel rulings against the International Trade Commission's (ITC) injury determination in the case. Canadian Trade Minister Jim Peterson said Canada will appeal the ruling to WTO Appellate Body.

On Nov. 16, NAFTA binational panel rejected International Trade Administration's (ITA) request for clarification of previous decision that required it to recalculate CVD margins on Canadian lumber and for delay in deadline for revising the margins (see **WTTL**, Nov. 14, page 4). It ordered ITA to issue new order by Nov. 23. ITA Under Secretary Franklin Lavin said U.S. "is closely reviewing the panel's response and will respond by the date set by the panel."

The WTO panel ruling, which was widely publicized even before being released officially, upholds the Section 129 process under which the TC reevaluated its earlier injury ruling and issued a new one that the U.S. claimed brought the earlier determination into compliance with WTO rules. "We consider that the United States has implemented the decision of the panel, and the DSB [Dispute-Settlement Body], to bring its measure into conformity with its obligations," the panel ruled.

In announcing appeal of the WTO ruling, Peterson acknowledged how difficult it has become to keep track of the complicated legal challenges and rulings to the lumber orders. "However, let's be clear on one thing, the NAFTA is what we need to keep our attention focused on. Will we stop advocating this position to our American neighbors? No, we won't," he declared.

* * * BRIEFS * * *

USTR: As expected, President Bush Nov. 17 nominated Richard Crowder, who was Agriculture under secretary for international affairs in Bush I administration, to be USTR chief agriculture negotiator (see **WTTL**, Oct. 2, page 4). Most recently he was president of American Seed Trade Association. In separate announcement, USTR Rob Portman named Congressional Quarterly trade reporter Steve Norton to be speechwriter. Norton has over 20 years experience covering trade and Congress.

EXPORT ENFORCEMENT: Other shoe has dropped on Marine Biological Laboratories of Waterville, Maine. In agreement with BIS, firm will pay \$100,000 civil fine in five equal payments over next 12 months to settle charges related to unlicensed export of vaccines to Syria. BIS also imposed five-year denial of export licensing privileges but agreed to suspend order for 18 months and waive it after that if Maine stays in compliance. Company and several executives were already hit with criminal fines and jail sentences for violations of export rules and other laws (see **WTTL**, Aug. 22, page 3).

MORE EXPORT ENFORCEMENT: Another air carrier has gotten caught allegedly doing business with Tetrabal Corp., denied party tied to criminally convicted Elashi brothers. Salinas International Freight Co. of Dallas has reached settlement with BIS under which it will pay \$11,600 civil fine for shipping computers and related equipment for denied party and filing SED claiming items were eligible for License Exception NLR (no license required).

STILL MORE EXPORT ENFORCEMENT: BIS published notice in Nov. 17 Federal Register imposing five-year denial of licensing privileges on Performance Medical Supplies of Victoria, Australia. Agency and company reached settlement agreement under which firm accepted denial order for allegedly conspiring to export physical therapy equipment to Iran via Australia without approval of OFAC. BIS charging letter charged firm with conspiracy, aiding, acting with knowledge and acting to evade regulatory requirements.

STILL, STILL MORE EXPORT ENFORCEMENT: Medical Equipment Specialists of Worcester, Mass., has agreed to pay \$37,500 civil fine in settlement with BIS on charges that it attempted to export x-ray film processors to Cuba via Canada. On SED, firm had claimed ultimate destination was Virgin Islands.

ANTIBOYCOTT: BIS antiboycott enforcement efforts seem to have awakened with six settlements in five months. Latest settlement was with Oceanic Container Line, Inc. of Staten Island, N.Y. Firm will pay \$8,500 civil fine to settle agency charges that it provided prohibited information to customer in Qatar, failed to report request in timely manner and failed to maintain required records.

ANTIDUMPING: Senate Nov. 16 approved by unanimous consent bill (S. 695) which amends new shipper requirements in antidumping cases for three-year period. Under measure, new shippers would have to post full cash deposit of antidumping duties instead of being able to post bond. Bill also directs Commerce to submit report in two years on whether to extend suspension.

BYRD AMENDMENT: House approved repeal of Byrd Amendment Nov. 18 as part of broader deficit reduction legislation (H.R. 4241). Chances for similar measure in Senate are slim.

PENCILS: ITC Nov. 15 voted 6-0 in "sunset" review case that revoking current antidumping order on cased pencils from China would likely lead to recurrence of injury to U.S. industry.

TRADE PEOPLE: Customs Commissioner Robert Bonner will join law firm of Gibson, Dunn & Crutcher in D.C. and LA when he makes previously announced departure from Customs on Thanksgiving....Former BIS Assistant Secretary for Export Enforcement Amada DeBusk has moved to Hughes, Hubbard & Reed in Washington from Miller & Chevalier. She will chair firm's international trade practice.

CORN: USTR Rob Portman and USDA Secretary Mike Johanns issued statement Nov. 16, saying they were disappointed that Canada has decided to initiate antidumping investigation on unprocessed corn from U.S.

BAHRAIN: On Nov. 18, House Ways and Means Committee by voice vote and Senate Finance Committee by 20-0 vote, approved legislation (H.R. 4340/S. 2027) to implement U.S.-Bahrain FTA (see **WTTL**, Nov. 14, page 4). President Bush sent bill to Congress Nov. 17. "We don't have an indication of when full Senate will take up the bill," one congressional source said.

UREA: By 3-3 vote, which is considered affirmative, ITC Nov. 17 determined that revoking antidumping orders on solid urea from Russia and Ukraine would likely lead to recurrence of injury to U.S. industry.