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A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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N.C. STATE SENATOR DENIED EXPORT PRIVILEGES FOR VIOLATIONS

Bureau of Industry and Security (BIS) denied export licensing privileges of John Carrington, a North Carolina State Senator, for five years for 181 alleged violations of Export Administration Regulations controlling the export of crime control equipment and supplies. The charges against Carrington involved his personal role in the exports, which were made by his company, Sirchie Finger Print Labs of Youngsville, N.C. The company has reached a separate settlement with BIS under which it will pay a civil penalty in excess of \$400,000. BIS had posted the settlement with Sirchie on its website and then removed the information without an explanation.

According to the settlement, Carrington was charged with conspiracy to export fingerprinting equipment subject to Export Control Classification Number (ECCN) 3A981 and fingerprint ink subject to ECCN 1A985. BIS claims that starting in September 2000 Carrington and Sirchie sought to evade export licensing restrictions by exporting the equipment and supplies to Hong Kong through Italy, filing false statements on Shipper's Export Declarations and in the Automated Export System, and having knowledge that a violation was occurring.

Carrington has served as a Republican member of the North Carolina Senate since 1995. He is president and chief executive of Sirchie and owns 69% of the company. In 2001, Sirchie and another company Carrington owned, Law Enforcement Associates, merged with Academy Resources Inc., which also makes security products, under the Law Enforcement Associates (LEA) name, according to an LEA filing with the Securities and Exchange Commission. As a result of the merger, Sirchie owns 41.8% of LEA. BIS published the denial order for Carrington, who is a director of LEA, in the Sept. 28 Federal Register.

BRAZIL LOOKING BEYOND DOHA TALKS FOR DEAL WITH U.S.

Like the samba, the Brazilian dance in which dancers rhythmically step back and forth without going anywhere, Brazil's negotiating strategy in the Doha Round appears aimed at moving as little as possible while waiting for the next dance. Speaking in Washington Sept. 27, Brazilian Foreign Affairs Minister Celso Amorim made it clear that Brazil is looking beyond the Doha Round with the expectation that the real trade deal will be negotiated directly between the U.S. and the four Latin American countries, Brazil, Argentina, Paraguay and Uruguay, which make up the Southern Cone trade group known as Mercosur. Such a strategy would by-pass negotiations on a Free Trade Area of the Americas (FTAA), which Brazilian leaders have publicly written off. The U.S. and Mercosur started "four plus one" talks a couple of years ago, but

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those discussions went nowhere because the U.S. wanted to focus on the Doha Round and the FTAA. Amorim stressed the importance of the Doha Round and joint efforts Brazil is making with the U.S. to develop a compromise deal. He also claimed Brazil still was interested in the FTAA. "I would certainly take issue with those that think we give less priority to FTAA. That is not the case," he said. But he also noted the difficulty the FTAA talks have had trying to balance the needs and capacity of small and large Western Hemisphere countries.

Amorim said he sees the WTO creating global trade rules and disciplines but just a "baseline" for bilateral talks on market access. He also wants to use the Doha Round to get the U.S. and EU to cut their domestic farm subsidies significantly. But on market access, the route for Brazil is bilateral.

"What I think is that we might go faster if we put more emphasis on a Mercosur-U.S. understanding," he declared. "Certainly we cannot get what we need in the multilateral trade negotiations; we need bilateral," he added. In particular, Mercosur would do better getting access to the U.S. beef, footwear and ethanol markets in a bilateral deal, he suggested.

Amorim has been the cleverest negotiator in the Round, outmaneuvering USTR Robert Zoellick and EU Trade Commissioner Pascal Lamy. By organizing a group of advanced developing countries into the so-called G-20, he succeeded in creating a negotiating bloc that can stand up to the U.S. and EU. One result has been the inclusion of G-20 members Brazil and India in the inner circle of five parties that are the central force in the Doha talks. Amorim also has used his new leverage to play the U.S. against the EU, which is negotiating an FTA with Mercosur.

U.S.-CHINA TEXTILE TALKS STALL OVER DURATION

Sept. 26-28 talks between U.S. and Chinese negotiators on a comprehensive deal to restrict Chinese textile and apparel exports to the U.S. left more unresolved issues than officials of either country were willing to admit. This was the third meeting of American and Chinese textile officials, and they were still unable to resolve the key issue of how long the agreement would last, which products would be covered and how products that are not included in the initial accord will be treated if future safeguard cases are filed by the U.S. textile industry.

"Time is on the Chinese side," one apparel industry source told WTTL. The longer these talks go on, the higher the base from which future restraints will be calculated and the more goods not already subject to safeguard action will be imported. "We were able to make progress, particularly with product coverage and quota levels," said USTR Special Textile Negotiator David Spooner. A fourth round of talks is expected to be held the third week of October.

Commerce Sept. 30 said it was delaying until Nov. 30 a decision on whether to request consultations on four more categories that were the subject of textile industry safeguard petitions: sweaters, dressing gowns, wool trousers and knit fabric. The industry has also asked for renewal of current safeguard restrictions that will expire early next year. Auggie Tantillo, executive director of the American Manufacturing Trade Action Coalition, said China's proposed growth rates for the quotas to be imposed under the expected deal are "unacceptable to the U.S. industry in terms of breadth of coverage and in number of years covered."

The U.S. is asking for the comprehensive deal to extend through the end of 2008, when the special safeguard provisions in China's WTO accession agreement expire. "Our preference is to seek a longer-term solution that will permit the orderly development of textile and apparel trade," Spooner said. Beijing wants the accord to last until the end of 2007, which is the end of a similar deal it reached with the EU. Both sides agree that all products already subject to safeguard actions should be covered, as well as several likely to be targeted in the future.

The U.S. apparel and retail industry supports a longer period for the agreement to provide some predictability on import levels, one source said. The industry has already adjusted to the

safeguards that have been imposed so far and the expected new ones, the source noted. It has shifted sourcing for the spring season to other countries, but it is getting anxious about 2006 summer and fall lines for which production decisions must be made soon, the source noted.

LAMY STILL SEARCHING FOR RIGHT NUMBERS FOR DOHA DEAL

World Trade Organization (WTO) Director General Pascal Lamy was in Washington Sept. 26-27 to provide U.S. officials and members of Congress an assessment of the state of the Doha Round negotiations and also to listen to American concerns about the talks. Speaking to reporters after meeting with members of the House Ways and Means Committee, Lamy reiterated his earlier statements that not all the numbers in the agriculture texts need to be agreed upon at the Ministerial Meeting in Hong Kong in December. "We need enough numbers in Hong Kong to finish the negotiations by the end of 2006," he said.

The important numbers needed in Hong Kong include "tariff reductions for the Europeans, the date for [ending] export subsidies and the numbers on the reduction of domestic support for the U.S. and EU," he said. The chairman of the Doha negotiating group on agriculture, New Zealand's WTO Ambassador Crawford Falconer, has stressed the need for negotiators to make progress in the farm talks during the week of Oct. 4 so they will have something to present to a "mini-ministerial" that is expected to meet in Geneva the week of Oct. 17.

Despite the public image of cooperation that marked U.S. talks with European, Brazilian and Indian trade officials in Washington and Paris, an informal meeting of agriculture negotiators in Geneva Sept. 30 found wide differences over the progress being made. An EU official reportedly criticized the U.S. for "backsliding" on the formula for cutting tariffs in the market access pillar of the talks. He said a new proposal from the U.S. would seek a sharper cut in tariffs than the Swiss Formula Washington had originally proposed to cut higher tariffs more than lower tariffs. The new offer, which clearly would hit many high EU tariffs, would use a higher "coefficient" which would cut tariffs even more than earlier formulas.

The U.S. put the new plan on the table during the talks in Paris Sept. 22-23 (see **WTTL**, Sept. 26, page 2). It would divide all tariffs into four tiers, as proposed by the G-20, but would seek tariff cuts of 85% to 90% for the highest tariffs and would use a sliding scale of percentage cuts in each tier rather than a fixed percentage. These cuts would apply only to developed countries. Developing countries also would have their tariffs cut by tiers but by a much lower percentage. On export subsidies, the U.S. plan calls for no restrictions on emergency food aid or food for poor countries, but disciplines on other aid to prevent "commercial displacement."

CONGRESSIONAL VOTE ON BAHRAIN FTA AWAITS CHANGE IN LABOR LAWS

A Sept. 28 House hearing on the U.S.-Bahrain Free Trade Agreement (FTA) showed again that congressional support for trade deals is directly proportional to the distance the FTA partner is from U.S. shores; the further away it is, the more support it will get. It also helps when a country hosts a major U.S. naval base. Despite opposition to the deal from the AFL-CIO, Democrats on the House Ways and Means Committee praised the agreement and most indicated they intend to vote for it when implementing legislation comes to Congress for approval.

A vote on the accord, however, isn't likely to come before the Bahrainian government submits new legislation to its parliament to amend the country's labor laws to address several issues that weren't resolved when Bahrain adopted major labor law reforms in 2002. Shaun Donnelly, who became Assistant USTR for Europe and the Mediterranean in August, told the committee the U.S. has been working on these issues with Bahrain. The U.S. is still pressing Bahrain to amend the labor law to deal with such questions as which unions workers must join, the right to strike, pay for foreign workers, and compliance with International Labor Organization (ILO) standards which were made part of Bahrain's law in 2002. "It is our hope that these changes

will be submitted by the Bahrainian government to parliament within a matter of weeks and that it will be successfully enacted by the parliament before we complete the consideration here of the Bahrain agreement,” said Rep. Ben Cardin (D-Md.), noting Ways and Means Committee Chairman Bill Thomas’ (R-Calif.) support for that position (see **WTTL**, Sept. 12, page 4).

LACHMAN SCHEDULED FOR SENTENCING ON “SPECIALLY DESIGNED” EXPORTS

The 10-year struggle of Walter Lachman to fight BIS charges that he violated export control rules by exporting allegedly “specially designed” isostatic presses to India without a license appears to be coming to an end. Boston U.S. District Court Judge Douglas Woodlock has set Oct. 7 as the sentencing date for Lachman, indicating that he has rejected Lachman’s motion for a new trial to reexamine BIS’ interpretation of its controls (see **WTTL**, April 4, page 3).

Lachman was convicted of violating the Export Administration Act (EAA) in 1995. The First Circuit Court of Appeals upheld that conviction in October 2004. The appellate court rejected his arguments that “specially designed” was too vague a legal standard. The circuit court’s ruling gave BIS broad discretion to apply the language in licensing and export enforcement cases.

“The Lachman case is, from the perspective of present export practices, a disaster,” says Don Weadon, an attorney in Washington who advised Lachman’s defense team. “The First Circuit decision spawned by this case and supported by the government now stands for the incredible proposition that ‘specially designed’ means ‘capable of’, which is a frightening thought as it essentially renders most commodities and all components export controlled,” he contends.

*** * * BRIEFS * * ***

ANDEAN FTA: Negotiators from U.S. and three Andean nations are pushing to complete talks on FTA by mid-November, which they call “window of opportunity” before elections in Peru and Colombia. Talks week of Sept. 19 made progress but there are “still significant differences,” said Assistant USTR Regina Vargo. Talks have no deadline, she said. Tough negotiations on agriculture and textiles remain ahead.

WESTERN RED CEDAR: BIS has revised its export control policy on western red cedars poles to allow exports without licenses for treatment with preservatives and for return to U.S. As of Aug. 18, 2005, such exports can claim License Exception NLR (no license required), BIS officials say. New policy came too late for Bell Lumber and Pole Company, which reached settlement agreement with BIS to pay \$10,400 civil fine for 25 shipments of unprocessed poles to Canada between 2000 and 2003.

FSC: WTO dispute-settlement panel ruling released Sept. 30 says transition and grandfathering provisions of JOBS Act, which was supposed to eliminate illegal export subsidies found by previous WTO ruling, “continues to fail to implement fully the operative DSB recommendations and rulings to withdraw the prohibited subsidies and to bring [U.S.] measures into conformity with its obligations.”

USTR: Richard Chriss, senior counsel to ITA under secretary and ex-trade aide to Sen. Charles Grassley (R-Iowa), is expected to become USTR chief agriculture counsel. Speculation remains that former USDA Under Secretary Richard Crowder will be name chief agriculture negotiator (see **WTTL** Sept. 26, page 4).

LIBYA: President Bush issued two presidential determinations Sept. 28 granting authority to State to approve licenses for exports to Libya of equipment and services to dispose of or refurbish C-130H aircraft Tripoli owns and to aid in destruction of chemical weapons.

EXON-FLORIO: GAO report recommends legislation to change law allowing Committee on Foreign Investments in U.S. (CFIUS) to review foreign investments affecting national security to clarify factors to consider in reviews, allow full 75 days for reviews and change criteria for congressional notifications.

BYRD AMENDMENT: Even as U.S. faces trade retaliation for not repealing Byrd Amendment, GAO report says Customs has had problems implementing law because handling claims is labor intensive, agency can’t verify claims of companies seeking funds and it also has had trouble collecting unpaid duties.

SULFUR DIOXIDE: Calabrian Corp. filed antidumping complaints at ITA and ITC Sept. 30 against imports of liquid sulfur dioxide from Canada.