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BIS OFFICIAL PROMISES TO TAKE ROLE IN DEFENSE ACQUISITION RULE

Commerce and State officials privately admit that they were not consulted in advance about a Defense Department proposal to change to the Defense Federal Acquisition Regulations (DFAR) to make compliance with export control rules a condition for getting Pentagon contracts. Publicly, Acting Bureau of Industry and Security (BIS) Under Secretary Peter Lichtenbaum told the President's Export Council Subcommittee on Export Administration (Pecsea) Sept. 22 that he didn't want to discuss the interagency consultation process, but he said "we do intend to participate in the development of the final regulations" (see **WTTL**, July 18, page 4).

Lichtenbaum said he was aware of industry concerns about the proposal, which would amend DFAR rules that apply to contractors, universities and federal labs. It would require contractors to comply with applicable export control laws, to maintain an effective compliance program and to conduct periodic audits.

The proposal has stirred broad concerns among companies and institutions conducting Defense research. "The proposed revisions could severely affect the ability of universities to carry out research in the open environment currently enjoyed by academia," commented James Fill of the Johns Hopkins University's department of applied mathematics and statistics. "The suggested language could lead to the need to acquire export licenses before allowing foreign students and faculty access to what most of us in academia consider routine instrumentation," he added.

EADS North America questioned how the Pentagon would enforce these rules, noting that BIS and State's Directorate of Defense Trade Controls (DDTC) have the enforcement expertise. "The export control laws and regulations are extremely complicated and difficult," EADS said in its comments. "Technical violations are easily committed by the best intentioned and the best compliance oriented companies," it added. "Making export compliance a contractual term introduces an unexplored and not well understood risk of contractual breach," EADS cautioned.

DOHA ROUND TRADE FACILITATION TALKS START TO MOVE

Despite their late start and the concerns developing countries have about taking on new obligations, Doha Round talks on trade facilitation made progress in meetings the Negotiating Group on Trade Facilitation held in Geneva the week of Sept. 19. The group received five new proposals from member and began debating the sixty others submitted since the group first began work in November 2004. According to diplomats who participated in the meetings, any progress in this area will depend on the outcome of agriculture negotiations and the amount of technical assistance and capacity building aid developed countries will give developing

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countries. India was the most vocal critic of the proposals submitted so far, objecting to some and raising reservations about others. It said some proposals were either impractical or impossible to apply. The Philippines and Brazil also expressed concerns, especially about the cost of the proposed measures. As in the WTO farm talks, no one expects a final agreement on trade facilitation to be reached at the WTO Ministerial Meeting in Hong Kong in December.

"It's quite reasonable to expect we'll have the bones of an agreement on trade facilitation by Hong Kong," one diplomat told WTTL. "Negotiations are advancing quite well," he added. "There's not great opposition. Developing countries are worried about the depth and scope of the commitments," he said. The negotiating group is "finding the right tone between what is proposed and what is feasible and what the technical assistance and capacity building will be."

Trade facilitation talks are aimed to modifying current rules on the free transit of goods, import and export fees and formalities and the publication and administration of customs regulations. The new proposals submitted to the group cover such issues as the ethical conduct of customs staff, electronic data interchange, technical assistance and capacity building and the international standards for customs paperwork. Cuba also submitted a proposal calling for the strengthening of WTO non-discrimination principles and Most-Favored Nation treatment.

VOLUNTARY SELF-DISCLOSURES TO BIS INCREASED THIS YEAR

BIS efforts to sell the advantages of making a voluntary self-disclosure (VSD) of a violation of export control regulations appear to be succeeding, with the agency receiving 175 VSDs so far this year compared to 75 in fiscal 2004, reported Wendy Wysong, acting assistant secretary for export enforcement. After examining VSD data for the last five years, the BIS enforcement staff found that of the 75 VSDs in 2004, only five resulted in an administrative settlement, 28 cases are still open, and the rest either got only a warning letter or no action was taken.

Of the 136 received so far in fiscal year 2005, which ends Sept. 30, 100 cases are still open and no cases have produced a charging letter, Wysong told the President's Export Council subcommittee on export administration (Pecsea) Sept. 22. No VSD led to a criminal case, she reported. Seeking criminal action after getting a VSD "would be a rare case," she said.

Looking at administrative settlements that came from VSDs, all but three had fines imposed that were 50% or less than potential fines, Wysong noted. In the three cases where fines were higher than 50% there were significant aggravating factors or bigger problems than the company revealed to BIS, she explained.

CONGRESS SETS HIGH BAR FOR DOHA AGRICULTURE TALKS

U.S. Trade Representative (USTR) Rob Portman Sept. 21 gave the Senate Agriculture Committee only vague news on the status of Doha Round farm talks, but he got an earful of warnings from senators about the goals that must be achieved and the concessions that must be avoided to get congressional support for any new trade agreement. Farm groups testifying at the hearing also warned that their support for a Doha deal depends on getting more access to foreign markets. The hearing reflected the growing sense of doom many are expressing about the Doha Round farm talks, the prospects for the Hong Kong Ministerial, and for the round in general.

Among the key concerns of lawmakers is the European Union's (EU) demand that the U.S. convert its food aid programs, including the PL-480 Food for Peace program, to a cash donation to needy countries instead of a food donation. "While I agree that there may be some room for disciplines on food aid, the EU's proposal is unnecessarily draconian," said Sen. Tom Harkin (D-Iowa). While voicing support for providing food aid when needed, Portman tried to leave the door open to a deal that would place conditions on food aid to assure it doesn't

replace commercial sales. Portman said the problem with cash donations is that they often get siphoned off by corrupt officials and the help doesn't reach those who need it.

Members also pressed for treating counter-cyclical payments to farmers, a key provision of the 2002 farm bill, in the so-called Blue Box of permitted but limited non-trade distorting domestic subsidies. Blue Box treatment of these payments supposedly was part of the framework agreement the WTO reached in July 2004. In a statement submitted for the record, Sen. Charles Grassley (R-Iowa) said that if the EU insists on excluding counter-cyclical payments from the Blue Box, the U.S. "should revisit the issue of whether the Blue Box should exist at all."

The senators also insisted that the reduction of tariffs and market barriers to U.S. farm exports was essential to getting support from Congress to reduce domestic subsidies and to open protected agriculture sectors. Testimony by the National Cotton Council warned that a tariff-cutting plan proposed by the G-20, which calls for creating tiers of tariff cuts with different levels of cuts for developed and developing countries, would not open developing country markets sufficiently to warrant the concessions the U.S. is being asked to make. "The proposed structure ensures that the highest tariffs will not be cut the most and would mark a windfall for developing countries," the group said in its prepared testimony.

After the hearing, Portman flew to Paris for talks Sept. 23 with trade and agriculture ministers from the EU, Brazil and India. EU Trade Commissioner Peter Mandelson said the group agreed to establish "a core group of WTO members to take forward discussions on services and to move this part of the negotiations out of its current stalemate." He said similar efforts are needed in the non-agriculture market access (NAMA) talks. Most of the meeting focused on agriculture. "Today we have identified areas where we need to do further homework," he said.

BIS DELEGATES DEFENSE PROCUREMENT POWERS TO FEMA

Non-defense firms supporting recovery efforts after Hurricane Katrina may be able to have the same priority treatment in getting supplies that Pentagon suppliers receive under the Defense Priorities and Allocation System (DPAS) provisions of the Defense Production Act. BIS, which usually administers DPAS, has delegated the authority to implement the program to the Federal Emergency Management Administration (FEMA), which has made a determination that supplying the hurricane recovery task is an essential civilian need supporting national security.

DPAS gives the government the power to order suppliers to give priority contracts for materials, services and facilities to post-Katrina reconstruction efforts. BIS, however, still is monitoring defense industry needs to make sure these firms, especially in the Gulf coast region, have needed supplies and materials.

"If you have a facility down there that is a national security supplier, supplying DoD, we have the ability to prioritize inputs that may be needed to get plants up and running again. We have already done that," said BIS Acting Under Secretary Peter Lichtenbaum. "Generally, we would like to hear about any defense works that have been disrupted by the hurricane," he added.

CHINA'S CUSTOMS SERVICE IS GETTING MODERNIZED

There has been "major progress in the way Chinese customs does business," says Stuart Seidel, an attorney with Baker & McKenzie. Speaking to a conference in Washington Sept. 21, Seidel said China is attracting more competent customs agents because it is paying higher salaries and conducting better training. It has also centralized control of all customs offices so they report to the State Council in Beijing rather than to each provincial governor. A former U.S. Customs official, Seidel said China has adopted many reforms of its import and export system to come into compliance with its World Trade Organization (WTO) obligations. It has adopted the WTO agreement on customs valuation, although it has had problems applying the specifics of

the rules. As part of its crackdown on fraud and corruption, China has begun conducting aggressive audits and investigations of imports. One result has been an increase in tariff revenue even as China has cut tariff rates. More regulations are being published and posted on the Chinese customs website, including new rules on the treatment of royalties and software.

The Chinese keep a "Black List" containing the names of some 60 companies that been found to be smuggling or repeatedly undervaluing or mismarking goods. All entries by these firms will be examined. About 50 Chinese and U.S firms are on a "Red List" of importers who are well-known and trusted. Their shipments will get minimal examinations and occasional audits, Seidel noted.

Paul Vandevent, an attorney with Ford Motors, recommended that everything involving Chinese customs should be in writing. "Customs officials like paper," he told the conference, which was sponsored by the American Conference Institute. He also recommended that firms go in and talk with Chinese customs officials before they start importing and exporting to explain the kind of trade they will be doing and the products that will be crossing the border.

RICE SUPPORTS DEEPER TIES WITH LIBYA BUT EXPORT RULES REMAIN STALLED

In a joint statement Sept. 17 with Libyan Foreign Minister Abd al-Rahman Shalgam, Secretary of State Condoleezza Rice said the U.S. is committed "to working to broaden and deepen the relationship between Libya and the U.S. as Libya implements its undertakings" to eliminate weapons of mass destruction and cooperate on counter-terrorism. The statement came as BIS efforts to ease controls on Libya remain bogged down. BIS has been trying to get interagency approval to amend the Export Administration Regulations (EAR) to make License Exceptions available for exports to U.S. persons, including individuals and U.S. companies, in Libya.

Because Tripoli is still subject to Antiterrorism (AT) controls, most license exceptions are not available for exports to Libya. While BIS Acting Under Secretary Peter Lichtenbaum has been pushing for a broad reopening of the license exception rules for Libya, State and Defense have insisted on a narrow liberalization of the rules (see **WTTL**, June 13, page 4).

The joint statement noted that U.S. companies are returning to Libya. "Increased economic and cultural ties benefit both countries," it said. As those firms have tried to set up offices and operations in Libya, they have faced delays in getting licensed equipment and technology. One factor delaying licenses is the lack of U.S. government personnel in Libya to conduct pre-shipment checks and post-shipment verifications, BIS officials explain. As a result, the average processing time for licenses to Libya is in the upper 40 days range, BISers report. Some easy licenses can get cleared in 30 to 35 days, but more difficult ones can take 90 to 100 days.

*** * * BRIEFS * * ***

EXPORT ENFORCEMENT: LPPAI, Ltd., of Houston, Texas, which agreed to pay \$50,000 civil fine to settle BIS charges of export violations, pled guilty in D.C. U.S. District Court Sept. 15 to one count of attempting to export alloy pipe to Iran without license. It agreed to pay \$50,000 criminal fine and to be placed on probation for three years (see **WTTL**, Sept. 5, page 4).

EXPORT CONVICTION: Jury in Milwaukee, U.S. District Court Sept. 21 convicted Ning Wen of nine counts of conspiring to export controlled electronics to China without licenses, money laundering and making false statements to FBI. His wife had previously pled guilty to her role in exports, as did two Chinese nationals who were co-conspirators (see **WTTL**, May 9, page 4).

ANTIBOYCOTT: BIS export enforcement officials are working on penalty guidelines for enforcing antiboycott regulations similar to guidance issued last year for export violations.

USTR: After giving notice of his intent to leave several months ago, Chief Agriculture Negotiator Allen Johnson left USTR's office Sept. 23. He is setting up his own farm and trade consulting firm.