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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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REPORT FINDS NO FOREIGN EMPLOYEES STEALING CONTROLLED TECHNOLOGY

Despite increased government emphasis on enforcing “deemed export” licensing requirements, investigations by federal law enforcement agencies in 2004 found no cases where foreign employees were responsible for stealing controlled U.S. goods or technology. According to the recently released annual report from the Office of National Counterintelligence Executive (NCIX), 68 % of the reports that the counterintelligence (CI) community investigated last year of suspicious attempts to acquire U.S. products and know-how involved simple requests via e-mail, phone calls, faxes, letters or in person.

None of the suspicious incidents investigated in fiscal 2004 by the Defense Security Service (DSS) involved foreign employees of U.S. companies, the report reveals. In addition to direct requests, 13% of investigated cases involved foreigners offering marketing services to U.S. companies; 5% involved the exploitation of personal relationships, 5% were visits to U.S. plants, facilities or laboratories, and 3% were contacts at conventions, expos or seminars.

The annual NCIX report is intended to alert U.S. companies and institutions to the type of espionage that is being used to obtain sensitive U.S. goods and technology, as well as to the specific sectors that foreign entities are targeting in their acquisition strategies. “Most of the foreign entities attempting to acquire U.S. technology last year employed tools and techniques that were easy to use, inexpensive, low risk, and sometimes legal,” the report notes.

The report suggests that some foreign individuals who try to transfer sensitive technology after being hired by U.S. firms, attending U.S. universities or working in national laboratories come to their illegal enterprises after they are hired and find there is a lucrative market for the technology to which they have access. They discover “while resident in the United States, that the trade secrets and proprietary information that they have access to can easily be converted into profits when transferred to their home countries,” the report says. **[Editor’s Note: A detailed article on the NCIX report appears in the June issue of our affiliated publication, *The Export Practitioner*. A free copy will be sent to WTTL subscribers on request. Call Tami Gilston at 202-463-1250, ext. 2 for copy.]**

WHERE ARE THE SWEETENERS TO HELP DR-CAFTA?

House and Senate lawmakers have come out of meetings with Bush administration officials frustrated by their unwillingness, so far, to make any concessions on sugar or other trade issues to win extra votes for the Dominican Republic-Central American Free Trade Agreement (DR-

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CAFTA). Having succeeded in getting the Senate Finance Committee June 14 and the House Ways and Means Committee June 15 to approve the trade pact's implementing legislation with no significant changes, the administration appears to be saving any needed concessions and sweeteners until it gets closer to House and Senate floor votes on the agreement.

Speculation on potential deals the White House might need to offer to attract votes for DR-CAFTA, especially in the House, includes support for legislation to apply U.S. countervailing duty law to China, backing for a bill to require country of origin labeling on beef, continued protection for sugar in next year's Farm Bill and revision of pending energy legislation to cover sugar-based ethanol. So far, the White House hasn't given any hint that these proposals are acceptable.

At a June 15 meeting with Agriculture Secretary Mike Johanns, Sen. Craig Thomas (R-Wyo.) didn't hear any new offers on sugar. "He was flabbergasted that they [the administration] haven't been considering what to do about sugar," one source told WTTL. Thomas had voted to approve the draft DR-CAFTA bill during Finance's "mock markup" of the measure June 14 after U.S. Trade Representative Rob Portman had delivered a letter to him from Johanns, who wrote that he was "receptive to discussing any reasonable proposals" to address sugar growers' concerns. But in the one-hour meeting, which was also attended by several House members and Sens. Saxby Chambliss (R-Ga.) and Norm Coleman (R-Minn.), Johanns "just rehashed things they have talked about before," the source reported.

Speaking to reporters after the Finance vote, Portman also showed no willingness to consider sugar industry demands to take sugar off the table in future trade talks or to reopen the DR-CAFTA. "It's a good agreement," he said. "I'm not sure what we can do in the context of the agreement," he added. Portman also rejected the idea of not including sugar in future trade talks. "That is not our policy to exclude anything," he said, noting that his has been the policy of both Democratic and Republican administrations.

The administration's hard line may stem from its perception that it can get DR-CAFTA passed in the Senate without any concessions on sugar. Even in the House only a few votes are tied solely to sugar and members from farm states with sugar are getting pressure to support the deal from other agriculture groups that would benefit from the agreement. Thomas has faced that counterbalancing pressure from beef producers in Wyoming.

Protection for the U.S. sugar industry dates back to the first tariff bill Congress ever enacted in 1789. When the tariff rate rose in the mid-Nineteenth Century, the Kingdom of Hawaii entered a free-trade deal with the U.S. to allow Hawaiian sugar to enter duty free. When the sugar tariff was eliminated by the otherwise protectionist McKinley Tariff Act in 1890, the Hawaiian sugar industry collapsed, leading, according to some historians, to the revolt that overthrew the Hawaiian monarchy. The end of the tariff, however, helped boost the Cuban sugar industry. But when the tariff was restored by the Dingley Tariff Act in 1894, Cuba was seriously hurt, fueling a peasants' revolt that drew the U.S. into the Spanish-American War in 1898.

FIRM AND SUBSIDIARY FINED FOR ABUSING EXPORT LICENSES

Repeated violation of the conditions imposed in export licenses obtained for thermal imaging cameras led to a \$330,000 civil fine being imposed on E.D. Bullard Co. of Cynthiana, Ky., and a \$36,000 fine on its German subsidiary, Bullard, GmbH. The fine was part of a settlement agreement the firms reached with BIS to resolve 55 violations the agency included in a charging letter to Bullard and six charges in a separate charging letter to its subsidiary.

Among the charges was the allegation that Bullard exported cameras subject to Export Control Classification Number (ECCN) 6A003.b.4 to Israel from the U.S. under a license number that was issued for the export of the cameras from Germany. On 10 other occasions, Bullard exported cameras in quantities that exceeded the number allowed under approved licenses, BIS charged. Other charges claim the company violated the conditions on licenses by exporting

cameras from Germany to Austria and Switzerland even though the license allowed only for the reexport to NATO countries. Another license did approval the export of cameras to Switzerland but Bullard violated the conditions of that license by exporting the equipment through an intermediate consignee in Germany who was not listed on the license. Such a change in routing required a "replacement" license, BIS said. In another charge, the agency complained that the company had a license for shipping cameras to a distributor in Brazil, but the distributor sold the cameras to the police in Rio de Janeiro without authorization.

As part of the agreement, BIS will allow the two firms to pay their fines in four equal payments over the next nine months. Bullard also agreed to conduct an audit of its internal compliance program and to submit a copy of its findings to the BIS Office of Export Enforcement.

NUMBER OF "DEEMED EXPORT" LICENSE APPLICATIONS DECLINES

Based on applications that have come in during the first eight months of fiscal 2005, which began Oct. 1, 2004, BIS officials expect almost a 20% decline in the number of deemed export licenses they will receive. While the reason for the decline is not entirely clear, BISers speculate that there are fewer applications because of clarifications that have been issued about the deemed export requirements, some offshore outsourcing of work previously done in the U.S. and the consolidation of several cases that covered a couple hundred foreign employees.

So far this fiscal year, BIS has completed action on about 500 deemed export cases and is on track to handle 700 to 800 for the whole year, Bernie Kritzer, director of the BIS Office of National Security and Technology Transfer told the agency's Regulations and Procedures Technical Advisory Committee. In fiscal 2004, BIS handle about 1,000 deemed export applications.

The average processing time for these cases has been 44 days compared to over 60 days in FY 2003, he reported. Nationals from China and Russia account for over 70% of deemed export cases, with the number of Chinese applications rising as Russian applications have declined slightly. Another 5% are for Indian nationals. Kritzer said his National Security Office has completed action on about 4,500 applications so far in this fiscal year and expects to process 7,000 for the whole year. Night vision products make up the largest share of cases, with some 3,000 applications expected in fiscal 2005 for items in Category 6.

Processing of night vision applications has taken an average of 29 days; electronic cases, 36 days, and encryption cases, 37 days, he noted. These times only count days of active consideration and don't include time before acceptance of cases into the BIS system or days licenses are held without action waiting for more information from applicants.

Norman LaCroix, director of BIS' information technology controls division, said his staff has completed 732 technical reviews for non-mass market encryption products as of June 1. This is an 8% increase over this time in 2004. Processing time for these reviews has averaged 36 days. At the same time, there has been a 19% decrease in the number of mass-market technical reviews, he noted. This decline may be due to a decrease in the number of new products coming to market or introduction of products that contain the same encryption elements as older products. Based on these submissions, 85% of reviews result in license-free outcomes, he said.

BIS has closed license reviews on 463 encryption applications, 40% more than the same period last year. There have been no denials except for exports to terrorist-supporting countries. The increase in applications has been driven by more exports of network infrastructure products to government end users, telecommunications products with encryption and encryption technology for the fabrication of products abroad, especially in China, LaCroix noted. With BIS having issued a major revision to its encryption rules last December, "there's no sea change on the horizon for the U.S. government" for additional changes to the regulations, he told the committee. But BIS is interested in getting information on the cost of compliance, he said.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Lufthansa Airlines will pay \$18,000 civil fine to settle BIS charges that on three occasions in 1999 its Lufthansa Cargo division based in Boston aided and abetted in the shipping of Cobalt-57 and other materials to India's Department of Atomic Energy's Directorate of Purchase and Stores without approved licenses. Indian agency was on BIS Entity List at that time.

MORE EXPORT ENFORCEMENT: Minneapolis U.S. District Court Judge James Rosenbaum added extra sanction on Vladimir Alexanyan during May 17 sentencing for violation of export control regulations with unlicensed export of metalized polyimide film to China. In addition, to three-years probation and \$12,000 criminal fine that was part of Feb. 2 plea agreement, judge barred Alexanyan from doing any international business during probation period (see WTTL, March 7, page 4). As provided in plea deal, Alexanyan's firm, Valtex was sentenced to pay \$250,000 criminal fine and placed on five-years probation.

ANTIBOYCOTT: In settlement agreement with BIS, Hord Crystal Corporation of Pawtucket, R.I., has agreed to pay \$12,500 civil fine for violation of antiboycott regulations. Firm told customer in Dubai, United Arab Emirates, that its goods were "neither of Israeli origin nor do they contain Israeli materials, nor are they being exported from Israel." Hord also failed to report request for this information to BIS.

SWITZERLAND: Swiss Federal Council June 10 instructed its Department of Economic Affairs to start "exploratory talks" with U.S. on free trade agreement. U.S. is second largest export market for Switzerland after Germany and number one foreign destination for Swiss investment.

USTR: USTR Rob Portman June 16 said Deputy USTR Peter Allgeier will move to deputy USTR and ambassador post at WTO, replacing Deputy USTR Linnet Deily who has resigned. Allgeier, who has been chief U.S. negotiator in Doha Round, will retain that position when he moves to Geneva in fall.

RUSSIA: U.S. and Russia June 15 signed agreement confirming 2003 deal that allowed Russia to establish tariff-rate-quota to restrict surging imports of U.S. pork, beef and poultry. Russia has been abiding by accord since then, but signing makes deal formal.

LIQUIDATION: In two separate rulings, Court of Appeals for Federal Circuit upheld CIT decisions that found flaws in Customs procedures for liquidation of imports subject to antidumping orders. In *NEC Solutions v. U.S.*, court June 10 said e-mail notice from Commerce to Customs was sufficient to lift suspension of liquidation. In *International Trading v. U.S.* June 16, it ruled that period for deemed liquidation was triggered when results of final administrative review were published in Federal Register.

CARBOXYMETHYLCELLULOSE: ITC June 16 voted 5-1 in final determination that imports of dumped purified carboxymethylcellulose from Finland, Mexico, Netherlands and Sweden are injuring U.S. industry.

CHINA VISAS: U.S. and China June 15 announced agreement to revise visa requirements for students (F-1), exchange visitors (J-1) and vocational students (M-1). U.S. will extend visa period to 12 months from six months and allow multiple entries. Same policy will apply to family members.

RUBBER: In "sunset" review determination June 14 on 3-2 vote, ITC decided that lifting antidumping order on polychloroprene rubber from Japan would likely lead to renewed injury to U.S. industry.

SUDAN: OFAC published revisions to Sudan Sanctions Regulations in June 13 Federal Register. One change clarifies that reexportation of U.S. goods or technology by non-U.S. person is permitted if it is incorporated into another product outside U.S. and constitutes 10% or less of value of product exported to Sudan or has undergone substantial transformation. BIS export licensing requirements may still apply. Other changes ease rule on financial transfers to individuals in Sudan and revise penalty procedures.

AIRCRAFT SUBSIDIES: U.S. and EU June 13 both blocked each other's first formal request to WTO Dispute Settlement Body to establish panels to hear their mutual complaints against support given their large commercial aircraft manufacturers (see WTTL, June 6, page 2)

WASSENAAR: Multilateral export control regime has posted changes to its control list that were adopted by Experts Group and Working Group in April, including 30 month extension of Validity Note extending controls on amorphous silicon (see WTTL, May 9, page 4).

ITAR: State revised several parts of ITAR rules in June 15 Federal Register, including licensing requirements for exports to Canada. It also updated dollar values for notifications to Congress of exports to reflect changes Congress adopted in 2003 authorization legislation.