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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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GAO REPORT CRITICIZES STATE'S ARMS EXPORT LICENSING SYSTEM

Although the target of criticism in a new General Accountability Office (GAO) report on the arms export licensing system was the State Department, exporters are likely to feel the brunt of any corrective action. In a report released April 7 in expectation of a House hearing that was cancelled, the GAO charged that State has not made any significant changes in its export control system since the Sept. 11, 2001, terrorist attacks and has not done any systematic evaluation of its controls. The report could foreshadow tougher enforcement, less flexibility on the use of license exemptions and stricter rules on Commodity Jurisdiction decisions.

The report from the GAO, the investigatory arm of Congress, was intended to set the tone for a House International Relations Committee (HIRC) hearing into State's licensing process and its implementation of the International Traffic in Arms Regulations (ITAR). HIRC staffers reportedly are considering amendments to the Arms Export Control Act (AECA), and the hearing and GAO report were seen as the kickoff to possible new legislation (see **WTTL**, April 4, page 3).

"Our current and prior reports have clearly demonstrated weaknesses and challenges in the arms export control system that point to vulnerabilities in the system and its ability to protect U.S. interests," the GAO said in a letter accompanying its report to HIRC Chairman Henry Hyde (R-Ill.). Part of the GAO report focused on State efforts to streamline the licensing process. It found that rather than shorter review times, the process is getting longer and State hasn't reviewed its initiatives to see if they are working. For some items headed for Iraq in early 2004, the median processing time was 22 days instead of the goal of four days.

GAO also interviewed officials at Justice and the Department of Homeland Security who criticized State policies that make enforcement of ITAR difficult. These officials complained about State license-exemption policies because they provided a limited "paper trail" and because "items can be more easily diverted without detection, which complicates investigations," the GAO noted. Commodity Jurisdiction decisions on whether an item is subject to ITAR or Commerce dual-use controls also drew GAO charges. "A lack of clear jurisdiction and improper decisions regarding jurisdiction create the risk that defense-related items will be exported without the proper level of government review and control to protect national interests," the GAO stated.

ITA REJECTS ISG WITHDRAWAL FROM STEEL ANTIDUMPING CASE

A curious decision by the International Steel Group (ISG) to withdraw at the last minute its request for an administrative review of the dumping order on cut-to-length carbon steel plate

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from Romania has raised questions about the company's future engagement in steel cases and its standing as a U.S. producer. The International Trade Administration (ITA) rejected the firm's request in a notice published in the March 15 Federal Register. In its final ruling on the review, ITA relied on the continued support for the review by the United Steelworkers (USW).

Briefs filed with ITA opposing ISG's withdrawal claimed the firm was changing its position because it was being purchased by the Mittal Steel Company, the global steel producer, which owns the primary Romanian steel exporter and respondent in the case, Ispat Sidex. "ISG is acting at the behest of its merger partner," argued a USW brief.

An ITA staff memorandum on the final administrative review cited the late filing of ISG's request as grounds to reject it but also recognized the firm's merger with Mittal. "The interests of ISG in making this request may not be consistent with its intent in this case as a domestic producer," the memo stated. ITA did not rule on whether ISG should be considered an "affiliated party" of the respondent, but it may face that issue in the future.

ISG reportedly filed its withdrawal notice without alerting any other domestic firms. Its short two-page filing merely said it was making the request because "ISG's circumstances have changed." Because ISG was informally the lead domestic company in the case, no other domestic firm participated in the review. "There was a feeling of betrayal and lack of coordination," one attorney told WTTL. "That's why there was such a vehement pushback," he added. A lawyer for ISG said the firm will remain active in other cases in which it is involved as a petitioner. If ISG's standing as a U.S. company is challenged in the future, it will fall to the USW in many cases to remain the key domestic party. "The union will have to play a critical role for standing purposes," another lawyer noted. "That's what this case signals."

WIDE SHIFTS IN TEXTILE TRADE SEEN IN FIRST QUARTER AFTER QUOTA

Did the elimination of the global textile quota system on Dec. 31, 2004 also eliminate the law of supply and demand? The launching of 10 textile safeguard actions against imports from China – three self-initiated by Commerce on April 6 and seven filed by the U.S. textile industry – is based on a sharp rise of imports from China during the first three months of 2005. But the preliminary data released by Commerce also show that the greatest injury from the growth in Chinese trade may be among competing exporting countries, including the nations of the Caribbean, Central America and Africa, while Chinese producers appear to be shifting major production to Mainland China from Hong Kong, Taiwan and Macau.

In addition, while there was a clear surge in Chinese imports in many categories, total imports in those categories were often far less or even a decline from previous comparable periods. Nor are American shoppers, doubling or tripling their clothing purchases. Commerce data on retail sales in January and February showed clothing and clothing accessories sales up 5% in February 2005 compared to February 2004 and up 4.5% in January from the same month a year ago.

Among the categories proposed for safeguard action, most saw imports grow faster than retail sales but not near the 200% to 500% growth for Chinese imports. For example, overall imports of cotton sweaters (category 345) declined 12% during the first quarter while Chinese imports surged 596%. Imports from Pakistan skyrocketed 1,700%, while imports from Japan, the Philippines and Sri Lanka decline 39% to 44%. Total imports for categories 638/639, covering knit shirts made with man-made fibers, increased 11% as Chinese imports jumped 331%. But imports declined from Mexico (-11%), Taiwan (-39%), and Macau (-56%).

For man-made fiber trousers (category 647/648), overall import growth was under 4% while Chinese imports were up 269%. Imports of Chinese-made brassieres (category 349/649) increased almost 35%, but the total gain in imports was 11%. Chinese bras apparently came at the expense of those from Honduras (-12%), Mexico (-19%), Bangladesh (-46%) and Hong

Kong (-82%). Underwear (category 352/652) from China grew 308% but overall imports increased just 11%. Imports, however, declined from Macau (-12%), Jamaica (-42%), Hong Kong (-53%) and Mexico (-16%).

EXPORT OF PHOTO LAB EQUIPMENT BRINGS \$555,600 IN PENALTIES

The government's crack down on exports to Iran even includes one-hour photo lab equipment. In a sentence handed down in the Philadelphia U.S. District Court April 1, BEF Corporation of Allentown, Pa., was ordered to pay \$555,600 in criminal and civil fines, forfeitures and fees for its export of the equipment in 2001 and 2002 to Iran and for making false statements about the shipments on their Shipper's Export Declarations (SED).

The court order BEF to a \$350,000 criminal fine, to forfeit \$150,000 to the Bureau of Immigration and Customs Enforcement (ICE), to pay \$11,000 in fees to Treasury and to pay a special court assessment of \$5,600. In a separate settlement agreement with the Bureau of Industry and Security (BIS), BEF agreed to pay a \$39,000 civil fine to settle charges related to the exports.

A joint BIS-ICE investigation had found the company had exported the mini-labs to Iran without obtaining licenses from Treasury's Office of Foreign Assets Control (OFAC). The company buys one-hour photo lab equipment, refurbishes it and resells it around the world. BIS claimed the company conspired with other parties known and unknown to make the exports through the United Arab Emirates (see **WTTL**, March 21, page 4).

EFFORTS TO SELL CAFTA-DR FACE RESISTANCE

Actions being taken by the Bush administration and supporters of the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) don't seem to have softened hardcore opponents of the deal. Although House Ways and Means Committee leaders claim the House Republican leadership has not done a head count to determine the number of lawmakers who will back CAFTA-DR implementing legislation, there has been speculation that backers would be 30 to 40 votes shy of passage, if the vote on the deal came up today.

Neither Commerce's the self-initiation of three safeguard actions against Chinese textile imports, the visit to Washington and Congress by trade and labor ministers from the six CAFTA-DR countries nor potential aid to sugar growers have seemed to soften the opposition of textile, labor or sugar interests to the deal. But full-court lobbying by the White House and GOP leaders hasn't begun, and the usual demands lawmakers make in exchange for their votes haven't surfaced yet.

"I would not concede any particular number because there hasn't been an in-house vote count," House Ways and Means trade subcommittee chairman Clay Shaw (R-Fla.) told reporters April 6. Ways and Means Chairman Bill Thomas (R-Calf.) said, "I don't think anybody has really done a significant, comprehensive or intensive vote count." Looking back at other trade votes, he said the process "has a rhythm to it and I'm very positive about the rhythm that we currently have."

Shaw also said that he could not recall "a single free trade agreement that has come up where we had enough votes when we first started talking." The business community will play a key role in getting the needed votes, he suggested. "Obviously, too, business interests and labor interests that will benefit by this agreement need to come and call upon the members," Shaw advised. Thomas said after a hearing on the deal April 21, he expects to move the implementing bill out of his committee at the end of April and to have a House floor vote in mid-May.

A major push for the deal came from all of the region's trade and labor ministers, who came to Washington the week of April 4 to meet with administration officials, members of Congress and to endorse an Inter-American Development Bank (IDB) White Paper. The IDB report examined

current enforcement of labor standards in the region and recommended steps to increase enforcement, improve the administration of justice, protect women workers and end child labor.

KARNI PLEADS GUILTY, PAKISTANI BUSINESSMAN INDICTED

The government late on April 8 announced the unsealing of a guilty plea that Asher Karni entered last Sept. 14 to a five-count information charging him with conspiracy to export to Pakistan items controlled for nuclear proliferation reasons. At the same time, it said a D.C. federal grand jury on April 6 had indicted Humayun A. Khan, who allegedly was the Pakistani businessman who had used Karni to buy controlled oscilloscopes and spark-gap devices which can be used as triggers for nuclear weapons as well as a component in medical lithotripters.

BIS in February had issued a temporary denial order (TDO) against Khan and his firm, Parkland PME in Islamabad (see **WTTL**, Feb. 14, page 4). Karni had been arrested in January 2004 when he arrived in the U.S. on a skiing vacation with his family. He was released on supervised bail.

The indictment of Khan charged him with conspiring with Karni to obtain the oscilloscopes from Textronix of Beaverton, Ore., and to have them shipped via South Africa to Pakistan. It also charged him with attempting to have 200 spark-gaps made by Perkin-Elmer shipped to South Africa and then onto Pakistan via the United Arab Emirates. Having been tipped to the spark-gap exports, government agents arranged to have the items disabled before shipment.

* * * BRIEFS: * * *

WTO GAMBLING: USTR's office has again claimed victory out partial defeat before WTO Appellate Body. This time, in case brought by Antigua and Barbuda, it hailed win on U.S. right to restrict online gambling and betting to protect "public morals" and "public order." But Appellate Body ruled U.S. didn't prove that ban on cross-border gambling was "necessary" measure. Also, on key issue of whether U.S. had taken exemption from opening gambling as one of its commitments in Uruguay Round services agreement, Body said U.S. had made commitment to open sector under its opening of "recreational services." Bets on U.S. compliance are now being taken.

NME: ITA in April 5 Federal Register announced publication on new Policy Bulletin amending way it will determine when to give single rates for non-investigated firms in non-market economy cases or to use combination rate (see **WTTL**, Jan. 3, page 1). Bulletin spells out details and process such firms must follow to apply to ITA for separate rates.

ARTIST CANVAS: Tara Materials of Lawrenceville, Ga., filed antidumping petitions at ITA and ITC March 31 against imports of certain artist canvas from China.

EXPORT ENFORCEMENT: BIS issued TDOs April 1 for two firms and their owner, who are suspected of exporting computers to Syria without approved licenses and of violating Syrian Accountability and Lebanese Sovereignty Act. Named were Mazen Ghashim of Houston, Texas, and two firms he reportedly owns: Ghashim Group, Inc., which also does business as KZ Results, and MNC Group International, which does business as Wearform, Sports Zone, and Soccer Zone.

MORE EXPORT ENFORCEMENT: Teledyne Energy Systems of Hunt Valley, Md., agreed to pay \$16,500 civil fine to settle BIS charges that on three occasions it exported technical information on power plants to Bharat Heavy Electrical, Ltd., of New Dehli, India without approved export license. At time of exports between 1999 and 2000, Bharat was on BIS Entity List.

SYRIA: OFAC published a final Syrian Sanctions Regulation in the April 5 Federal Register.

BYRD PAYMENTS: CIT Judge Judith Barzilay ruled April 4 (Slip Op. 05-46) in *Dixon Ticonderoga v. Customs* that firm was entitled to share of Byrd Amendment payments despite late request to receive funds because Customs was late itself in publishing notice of intent to distribute money.

LIVE SWINE: Voting 5-0, ITC April 6 made final determination that U.S. industry is not injured or threatened with injury due to dumped imports of live swine from Canada.