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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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CHINESE PROTEST STATE SANCTIONS AGAINST EIGHT ENTITIES

China has called for State to lift debarment action against eight Chinese firms, including one on Taiwan, for alleged exports of controlled items to Iran. Beijing asked the U.S. to “immediately end the sanctions,” the Chinese embassy in Washington said. The sanctions, published in the Jan. 3 Federal Register, also have raised concerns among some U.S. exporters, because the entities include trading companies that are involved in the purchase of American aircraft and aerospace products. The American companies want guidance from State and the Bureau of Industry and Security (BIS) on how these sanctions will be applied.

“The Chinese side expresses strong dissatisfaction and opposition to U.S. sanctions,” a Foreign Ministry spokesperson was quoted as saying. “We believe such action by the United States will not help expand Sino-U.S. cooperation on non-proliferation,” she said; noting China’s adoption of new anti-proliferation laws.

Some of the Chinese firms that were cited have been in trouble with State before. The sanctions bar U.S. government procurement from the entities and will suspend and block future approval of dual-use and munitions exports to the entities. State’s action hit China’s Beijing Alite Technologies Company Limited, China Aero-Technology Import Export Corp. (CATIC), China Great Wall Industry Corp., China North Industry Corp. (NORINCO), Q.C. Chen, Wha Cheong Tai Company (also known as Wah Cheong Tai Company and Hua Chang Tai Company) and Zibo Chemet Equipment Corp., which is also known as Chemet Global, Ltd. Also named were Taiwan’s Ecoma Enterprises Co., Ltd., and North Korea’s Paeksan Associated Corp.

24-HOUR RULE HAS STOPPED LOADING OF FEW SEA CONTAINERS

Despite original fears in the trade community about the potential disruption that would be caused by the 24-hours-in-advance filing requirements for sea-going cargo containers, Customs is stopping few shipments from getting loaded. According to Charlie Bartoldus, head of the Bureau of Customs and Border Protection (CBP) National Targeting Center, an average of 32,911 bills of lading are filed daily in foreign ports for some 25,000 containers headed to the U.S., but the center issues only 7 to 10 “Do Not Load” orders a week.

Most Do-Not-Load orders are issued because of paperwork problems with the information on the shipment manifests, and most are resolved quickly, allowing the loading to continue. Although the advance filing program was intended to prevent the entry of containers that might carry terrorist weapons of mass destruction or be used to smuggle in terrorists, Customs has not yet caught any terrorist activity after pre-screening some nine million containers that arrived in

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the U.S. in the last year. A few shipments – only one or two a month – are stopped because of national security concerns, but none of these were found to be linked to terrorists. For example, Customs has stopped containers carrying containing firearms, ammunition or gas masks, but Bartoldus said these shipments were not for illicit purposes.

Because the advance notice system was aimed at preventing terrorist activities, the screening process is not designed to catch other illegal activities, such as drug smuggling or textile transshipments. Thus, the program has not lead to any increase interdiction of other illegal trade. The impact of advance notice rules for air, trucks and rail has not been fully assessed yet, Bartoldus said.

CUSTOMS TO OFFER “GREEN LINE” ENTRY FOR ENHANCED C-TPAT

Firms that participate in the Customs-Trade Partnership Against Terrorism (C-TPAT) and adopt enhanced supply chain security measures, including supply chain “best practices” may be able to avoid most security inspections of their cargoes when they arrive at U.S. ports. The offer of so-called “Green Line” treatment for these shipments is part of newly released Customs strategic plan to take C-TPAT to what Customs calls “the next level.”

The plan, which sets out five strategic goals for C-TPAT, would increase the inspection of some 8,000 companies that have made the commitment to implement tighter supply chain security. In response to industry complaints that firms are not seeing the benefits from C-TPAT participation, Customs will offer to counter-balance this increased scrutiny with better treatment of validated participants.

In exchange for giving more benefits to participants, “we expect those companies that are C-TPAT partners to invest more to adopt supply chain best practices,” Customs Commissioner Robert Bonner told reporters Jan. 13 after he spoke to CBP’s annual Trade Symposium. “A big part of the plan is that key bargain,” he said. The plan also calls for increased inspections of participants to validate that they have implemented the “minimum security” commitments they made when they signed up for the program. To enhance C-TPAT, Customs will seek to have firms assure security back to the manufacturing plant or source of their goods and to provide Customs with more information about products as they enter the supply chain.

The Green Line treatment will only be given to firms that pass the validation process and have adopted supply chain best practices, Bonner indicated. In addition, their containers probably will be required to use “smart box” technology and security seals that can detect and prevent tampering. Bonner also said Customs is opening C-TPAT to foreign manufacturers. It has already approved participation by some large firms in Mexico that use the FAST program at the border and is in discussions with firms in Europe, Asia and Canada. “We want to expand to foreign manufacturers,” he said. Expansion of the program, however, will be restricted by Customs resources. “We need to be somewhat selective,” he added.

SAFEGUARD PROVISIONS COULD UNDERMINE DOHA FARM DEAL

Proposals that would allow World Trade Organization (WTO) members to use safeguard measures to protect special or sensitive agriculture products from foreign competition could undermine the trade liberalization goals of the Doha Round, according to a World Bank economist. The identification of these special and sensitive products “has to be handled with extreme care” and very limited and targeted, said Uri Dadush, director of the bank’s international trade department. The safeguard mechanisms were included in the framework agreement that the WTO General Council adopted Aug. 1 (see **WTTL**, Dec. 20, page 2).

“All it would take is for a few percentage points of the tariff lines in agriculture – somewhere between three and five percent – to be identified as specially sensitive products which could be exempted from the various disciplines that would be imposed,” he said. “If that were to

happen, that would essentially negate any effects of market access liberalization,” he added. Dadush made his comments during a Jan. 10 press conference where the World Bank released a report entitled, Global Agriculture Trade and Developing Countries.

The report attempts for the first time to look at potential winners and losers from a Doha Round agriculture agreement that eliminated farm subsidies while also providing market access for these products. In particular, it examines the impact a deal would have in trade in sugar, dairy products, rice, wheat, groundnuts, fruits and vegetables, cotton, seafood and coffee. To balance the gains and losses from any trade deal, all sectors must be included, the report contends.

The report recognizes that vested interests will oppose liberalization of their sectors. To counter this resistance, governments need to be able to show how the overall benefit from a deal outweighs the losses. In some cases this may mean higher prices for fewer producers or lower prices for consumers. It also might force some noncompetitive producers to shift to other farm products or get out of farming. “Knowing who is likely to gain or lose from reform is critical for sequencing reforms and putting in place complementary policies, including assistance to reduce the cost of adjustments in noncompetitive sectors,” the report states.

STATE SEEKS MORE INFORMATION ON ASSISTANCE AGREEMENTS

When exporters apply to the Directorate of Defense Trade Controls (DDTC) for approval of Technical Assistance Agreements (TAAs) with foreign subcontractors, they will have to provide more information about the proposed sublicensing activity. As part of an ongoing review and modification of the Guidelines for Preparing Agreements, DDTC has posted on its website a clarification of what must be submitted and a revised model Non-Disclosure Agreement (NDA).

DDTC said it is seeing an increase in sublicensing agreements where the work to be done offshore may be performed in countries other than the country of end use. “As a result of this expansive trend, sublicensing will be authorized only to identified entity(s) for which the specific technical data, defense service and purpose must be identified for each entity,” the agency explained.

The revised and expanded model NDA makes explicit the provisions of the International Traffic in Arms Regulations (ITAR) that each foreign sublicensee agree to comply with. It also includes a detailed explanation of the restrictions and limitations that apply to the agreement. A DDTC official told WTTL that the agency had been attaching many of these restrictions as provisos to approved TAAs. With their inclusion in the NDA, the provisos won’t be needed, she said. Compared to the old NDA model, which was only one paragraph, the new model is three pages long and can include up to 14 specific commitments for some contracts.

U.S., EUROPE STEP BACK FROM BRINK OF FIGHT OVER AIRBUS

The U.S. and the European Union (EU) have decided it wasn’t such a good idea after all to put the fate of their multi-billion dollar civil aircraft industries in the hands of an impartial WTO dispute-settlement panel. In a move that removes at least one stone from the shoes of his successor, U.S. Trade Representative (USTR) Robert Zoellick reached an deal with EU Trade Commissioner Peter Mandelson Jan. 11 to negotiate a new bilateral agreement on subsidies for civil aircraft industries and not to ask for the establishment of a WTO panel to resolve the transatlantic dispute over the aid given to Boeing and Airbus (see WTTL, Oct. 11, page 2).

A senior U.S. trade official claimed Washington was prepared to let a WTO panel judge the aircraft dispute. “It is not a question of having second thoughts about the wisdom of bringing this to a WTO panel. We have always been of the view to resolve this matter, if possible, through negotiations,” he said. The agreement between Zoellick and Mandelson calls for the U.S. and EU to negotiate over the next three months a new bilateral civil aviation agreement to

replace the 1992 pact, from which Washington has withdrawn. That deadline probably will need to be extended. In the meantime, there will be a freeze on new government subsidy commitments to the aircraft industry. This would apply to Airbus plans for the A350 model which would compete with Boeing's new 7E7.

The talks will seek a deal that ends government subsidies to support research, development and production of new large civil aircraft. The accord would use the definition of subsidy in the WTO Agreement on Subsidies and Countervailing Measures. It also would include a dispute-resolution mechanism based on the procedures included in various bilateral free trade agreements. After the bilateral accord is reached, the U.S. and EU will try to make it a multilateral agreement, bringing in Japan, Russia, Canada and Brazil under its restraints.

BIS UNDERCOVER AGENT HELPS FOIL EXPORTS TO IRAN

BIS Special Agent Edward Hayden, pretending to be a sales representative for a Connecticut company, helped set a trap that led to the indictment and arrest of a U.S.-Iranian dual national who attempted to export pressure transducers and sensors to Iran without licenses. In the indictment unsealed Jan. 11, 2005, Mohammad Farahbakhsh, also known as Hadi Farah, and Akeed Trading Company were charged with conspiracy and the attempted export of the items. A third unidentified individual was also indicted and is being sought by the government.

According to the indictment, Farahbakhsh, who is a naturalized U.S. citizen but who also maintains an Iranian passport, first attempted to buy the items from Omega Engineering of Stamford, Conn., in December 2003. When the company learned that the destination of the sensors was Iran, it cancelled the order.

Farahbakhsh then approached a company that used the name Overseas Export Enterprises (OEE) in May 2004 seeking to purchase the same equipment. OEE? Hmm. Hayden acted as OEE's salesman and met with Farahbakhsh in Los Angeles in September 2004. Farahbakhsh was arrested in L.A. in October on the indictment that was handed up on Sept. 9. "During the investigation, Farahbakhsh stated on a number of occasions that he knew that the pressure sensors and transducers would be shipped to Iran and that shipping the goods to Iran would be illegal," Hayden declared in a statement filed in the Bridgeport, Conn., U.S. District Court where Farahbakhsh was ordered held for trial.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Sportsman's Guide of South St. Paul, Minn., has agreed to pay \$183,500 civil fine to settle BIS charges that it exported controlled optical sighting devices on 61 occasions without approved export licenses. All but six shipments went to Canada.

LUMBER: Canada Jan. 14 asked WTO to establish panel to hear its complaint that U.S. has failed to comply with earlier WTO ruling against countervailing duty determination against softwood lumber from Canada. It agreed to suspend request for retaliation until panel rules on its argument. Separately, Ottawa asked for NAFTA panel to review ITA's final administrative review determination on lumber (see **WTTL**, Dec. 20, page 1). Canada also said it will ask CIT to review revised threat of injury ruling that ITC issued in November.

WAYS AND MEANS: Rep. Sander Levin (D-Mich.) is giving up Ranking Minority Member post on trade subcommittee to fill ranking slot on social security subcommittee left vacant by death of Rep. Robert Matsui (D-Calif.). Rep. Ben Cardin (D-Md.) is reportedly taking Levin's trade seat. Change comes as Rep. E. Clay Shaw (R-Fla.) has been selected to chair trade panel, which was lead by Rep. Phil Crane (R-Ill.) who lost reelection bid in November (see **WTTL**, Nov. 8, page 4). Michael Castellano, Levin's legislative assistant on trade, reportedly will move to Ways and Means staff to replace Vigi Rangaswami, who reportedly is going to Carnegie Endowment for International Peace.

EU REGULATIONS: U.S. Jan. 13 said it has asked WTO to form dispute-settlement panel to hear its complain against multiple EU customs laws and regulations.