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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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GAO ANALYSIS FINDS LESS THAN 1% OF CCL ITEMS GET LICENSES

Exporters may have less ability to complain about the burden of export licensing in light of a new report from the Government Accountability Office (GAO), the investigatory arm of Congress. According to a GAO report (GAO-07-197R) released Nov. 17, less than 1% of goods and technologies subject to the Commerce Control List (CCL) or subject to EAR99 controls actually got licenses from the Bureau of Industry and Security (BIS) in 2005. Licenses weren't needed for a variety of reasons. In all, the dollar value of unlicensed subject exports was about $624 billion, while the value of licensed exports was about $1.2 billion, the GAO said.

> The new report supplemented one issued in July which criticized BIS for not conducting better analysis of the effectiveness of U.S. export controls. "The insight we gained from analyzing these data further supports our prior recommendation to Commerce that it use available data to evaluate the effectiveness of its export control system," the GAO said (see **WTTL,** July 31, page 3).

"The data could aid in determining the economic impact of current regulations and in evaluating whether exporters are complying with regulations," the GAO said. "BIS officials told us they periodically use portions of the data for enforcement activities but currently do not use the data to evaluate the system's effectiveness," it added. The GAO based its analysis on a review of data filed through the Automated Export System (AES) and doesn't include exports to Canada for which the U.S. relies on Canadian import statistics for trade figures. It also doesn't cover trade with U.S. territories or data filed on paper Shipper's Export Declarations (SEDs), which accounted for less than 4% of export documentation in 2005.

CCL items, whether licensed or unlicensed, mainly went to Asian countries, such as China, Taiwan, and Singapore, and to European countries, such as France and the United Kingdom. In dollar terms, aircraft, computers, semiconductor manufacturing equipment, telecommunications equipment, and chemicals were the top CCL exports. For EAR99 items, Mexico was the largest recipient of unlicensed exports in dollar terms, while Cuba and Syria were the top two recipients of licensed exports. Top EAR99 exports by value were industrial machinery, chemicals, computers, and semiconductors, while farm commodities dominated licensed EAR99 exports.

DEMOCRATS AND ADMINISTRATION SET TO CLASH ON PERU, COLOMBIA PACTS

The first confrontation between the new Democratic majority in Congress and the Bush administration on trade has arisen even before the new Congress has gotten seated, putting the U.S. free trade agreements (FTAs) with Peru and Colombia at risk. In a Nov. 20 letter to U.S. Trade

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Representative (USTR) Susan Schwab, leading Democrats from the House and Senate complained that the Bush administration hasn't addressed their concern that the Peru and Colombia deals fail to require those countries to meet International Labor Organization (ILO) labor standards or to make the labor provisions of the deals subject to dispute-settlement procedures. The letter came just before the U.S. and Colombia formally signed their bilateral pact Nov. 22.

> "Specifically, we are dismayed that the administration has consistently declined to take the simple steps necessary to address our key outstanding concern, which continues to be labor standards, and to remedy serious flaws in the TPA's [Trade Promotion Authority] labor provisions," the Democrats wrote. Signers of the letter included incoming House Ways and Means Chairman Charles Rangel (N.Y.) and Rep. Sander Levin (Mich.), plus two House members who will be senators in January, Sherrod Brown (Ohio) and Ben Cardin (Md.). Four senators signed the letter, including Sens. Jay Rockefeller (W.Va.) and Richard Durbin (Ill.).

The Bush administration appears eager to take a conciliatory approach to the Democrats. Deputy USTR John Veroneau told reporters Nov. 22 that the administration has told the Democrats that it is willing to discuss their concerns about the trade pacts and TPA. "I don't want to prejudge how we're going to come out of that, but our door is open to have those discussions and see what we need to do to ensure bipartisan support for the agreement," he said.

IMPLEMENTATION OF HARMONIZED TARIFF CHANGES WILL BE DELAYED

U.S. implementation of globally adopted changes to the Harmonized Tariff Schedule (HTS-2007), which are supposed to go into effect Jan.1, 2007, will be delayed because congressional review has been interrupted by long vacations and electioneering recesses. The International Trade Commission (ITC) has posted a notice saying publication of HTS-2007 may not come until late January or February. The ITC will post other HTS changes made in 2006, but it can't implement the revisions adopted by the World Customs Organization (WCO). "By U.S. law, the president cannot proclaim the implementation of these latter amendments in the HTS until a required 60-legislative-day congressional layover period is completed," the ITC explained.

> "The congressional layover 'clock' began in late May, but was stopped each time either the House or the Senate was not in session," it said. Once the layover period ends and the president issues a proclamation in the Federal Register adopting HTS-2007, the new code can't go into effective for at least 15 days. Depending on the status of the layover at the termination of the 109th Congress in December 2006, the implementation date for the WCO amendments probably will be delayed until later in January or until February 2007, the ITC said.

ELECTION'S IMPACT ON TRADE LESS THAN FEARED, REPORT SUGGESTS

Not all the new Democrats elected to the House and Senate are raving protectionists as some in the trade community have feared. An analysis of the election by the National Foreign Trade Council (NFTC) and USA-Engage, two pro-trade industry groups, found slightly more new lawmakers are opposed to trade deals than the incumbents they will replace compare to those who support trade deals. In many cases, new members bring the same views as those departing. Trade, however, wasn't an issue in a large proportion of races and many new lawmakers will come to Congress with no expressed view on the issue, the NFTC found.

"Frankly, international trade was just not a decisive issue in most of the campaigns," said NFTC President William Reinsch. "And while we have lost a few key champions of trade and engagement, I am optimistic that there will be opportunities for Congress to support a positive international economic agenda that will benefit American companies and workers," he added. To gauge the trade views of new members, the trade groups analyzed statements candidates made on their websites. In eight of 10 Senate races, winners discussed trade. Of the eight, five are likely to be less inclined toward free trade than their predecessors and two are likely to be more free trade, in NFTC's view. The other two had the about the same views as their predecessors. Among new senators most opposed to trade deals are Sens.-elect Sherrod Brown (D-Ohio) and Bernie Sanders (I-Vt.). Even though he veered sharply to the left in his primary battle, Ben Cardin (D-Md.) is seen as likely to be more free-trade oriented than his predecessor Paul Sarbanes. So too is Amy Klobuchar (D-Minn.), who succeeds Democrat Mark Dayton,

> In the House, 29 out of 53 successful candidates mentioned international trade on their website. Of those 29, only 10 winners "appear to advocate policies that are clearly less-inclined towards free trade and engagement than his or her predecessor," the trade groups said. They also found six candidates that "advocated policies on their websites or in other statements that could be construed as more inclined towards free trade and/or international engagement."

APEC LEADERS TRY TO GIVE PUSH TO DOHA ROUND TALKS

Another meeting of world leaders Nov. 18 produced another declaration of support for resuming Doha Round negotiations and promises of more concessions, but there is no sign yet that those pledges will actually lead to new offers in the negotiations. The latest endorsement came from the heads of countries participating in the annual meeting of the Asia-Pacific Economic Cooperation Forum (APEC) meeting in Hanoi, Vietnam.

> "We are ready to break the current deadlock: each of us is committed to moving beyond our current positions in key areas of the Round," APEC leaders said in a declaration. "That means making deeper reductions in trade-distorting farm support by major players, creating new market access in agriculture, making real cuts in industrial tariffs, and establishing new openings in services trade, while dealing seriously with members' concerns and sensitivities. All APEC members are ready to lead, but others also must signal their readiness and resolve," they said.

Meanwhile, speaking in India Nov. 18, European Union Trade Commissioner Peter Mandelson called for restarting and completing the round this coming spring and said the EU is willing to improve its market access offer to bring it closer to the cuts proposed by the so-called G-20 group of developing countries. The elections in the U.S. and Brazil and new trade ministers in Australia and Japan have made new progress possible, he suggested. "There is a narrow window to resume and complete the ministerial negotiation in early 2007," he said. "Aiming below the target zone of what the G-20 is proposing is not ambitious enough. Bidding for more would commit us to failure," he said in the text of his prepared speech. The G-20 proposal in agriculture market access seeks tariff cuts of 45% to 74% among developed countries.

"Europe will renew its willingness to improve its farm tariff offer by adding substantially to the 39% it offered a year ago," he said. "We have said we are ready to add more than ten percentage points and get within close reach of the average farm tariff cut demanded by developing countries," Mandelson said. "We are ready to do this in a way that demonstrably gives new market access to the United States and other agricultural exporters," he continued.

FOREIGN POLICY CONCERNS COULD IMPEDE RUSSIA PNTR VOTE

U.S. trade officials have won the support of most of the business community for the bilateral deal they negotiated with Moscow as part of Russia's accession to the World Trade Organization (WTO), but that backing might not be enough to assure congressional approval of legislation to grant Russia permanent-normal-trade-relations (PNTR) status. Congressional and public concerns about Russia's foreign policies, particularly related to Iran, its human rights record, its move away from democratic government, and the renationalization of key industries could make a PNTR vote tougher than it should be. Unless the Bush administration decides to push for a PNTR vote before the Russia's WTO accession process is complete, the legislative battle may be at least six months to a year away. That is how long it may take Russia to complete its remaining bilateral talks and for the WTO working party on its accession to finish the multilateral report on its membership. In addition, Moscow has to overcome concerns raised by Georgia and Moldova about its treatment of them both politically and economically.

> The bilateral accession agreement signed Nov. 19 in Hanoi appears to meet the objectives of the farm community and financial services industries, as well as firms concerned about intellectual property rights (IPR) protection. In addition to fact sheets explaining the key provisions of the deal, the USTR's office also released 10 "side letters" that provide additional conditions or assurances that must be met for U.S. support for Russia's accession to the WTO.

One letter contains eight commitments Moscow has made to crackdown on music and video piracy. Russia has promised to submit legislation to the Duma by June 1 to implement some of those promises. "We certainly expect them to do so," Assistant USTR Dorothy Dwoskin told a Carnegie Endowment program Nov. 22. She also said the U.S. was watching pending changes in Russia's civil code, including Part 4 provisions on IPR. The changes are of particular concern to the IPR industry. "We have weighed in on that pretty heavily," Dwoskin said. "I think we have finally gotten the attention of leaders in the Russian government and we hope they are going look very seriously at all the work that we have done to try to help them with their Part 4 revisions in a way that actually brings them closer to WTO compliance," she added.

* * * BRIEFS * * *

USTR: Curtis Carroll, husband of USTR Susan Schwab, died Nov. 20 due to kidney and liver failure. Staff suggest letters of condolences can be faxed to 202-395-4549.

EXPORT ENFORCEMENT: BIS has reached settlement with Melvina Can Machinery Co. of Farmingdale, N.Y. on one charge of exporting canning machinery to Iran without approved license from OFAC. Firm agreed to pay $6,000 civil fine to resolve complaint.

SUDAN: OFAC Nov. 17 posted guidance on its website on how it will enforce Oct. 13 Executive Order tightening restrictions on financial assets of Sudan government, while easing sanctions on Southern Sudan.

EAR: BIS amended EAR in Nov. 20 Federal Register to impose new foreign policy controls on exports of devices in ECCN 5A980 used for surreptitious interception of wire, oral or electronic communications.

AUSTRALIA GROUP: Control list changes adopted by Australia Group, multilateral regime on chemical and biological products, at its June 2006 annual plenary meeting were implemented by BIS in change to EAR published in Nov. 24 Federal Register. Notice also adds Central African Republic and Comoros to list of countries that are parties to Chemical Weapons Convention.

EX-IM BANK: President Bush Nov. 17 kept promise to Sen. Wayne Allard (R-Colo.) and nominated Michael Tankersley, attorney in Dallas office of Bracewell & Giuliani, ex-NYC Mayor Rudolph Giuliani's firm, to be Ex-Im inspector general (see **WTTL**, Oct. 2, page 4).

INDIA: ITA Under Secretary Frank Lavin took 238 executives from 186 companies on trade mission to India that started Nov. 28.