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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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BIS TO MAINTAIN POLICY OF MULTIPLE EXPORT CONTROL CHARGES

The Bureau of Industry and Security (BIS) will continue to make multiple charges for a single transaction in export control violation cases but may adopt a formula similar to the one used in the Federal Sentencing Guidelines to reduce potential fines based on multiple charges, says BIS Deputy Assistant Secretary for Export Enforcement Wendy Wysong. Wysong says her staff is experimenting with ideas on what fines to seek in administrative settlements since the maximum fine for each export violation rose to \$50,000 from \$11,000 (see **WTTL**, Aug. 7, page 4).

Because of the low fines allowed under the International Emergency Economic Powers Act (IEEPA) before the law was amended in March, BIS used multiple charges to increase penalty levels in settlements. For example, in addition to charging a firm with an unlicensed export, it would also charge it with knowledge of a violation and filing a false statement on a Shipper's Export Declaration.

"We do plan to continue that practice even under the higher penalties," Wysong told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC). "That's the same way that criminal penalties are charged" in the Department of Justice, she added.

"We are looking at ways, so that if we do charge that way, you are going to see something more analogous to the Sentencing Guidelines," Wysong explained. "Instead of a full bump up, you'll get points assessed and a percentage of those points for each subsequent violation," she noted. "The export itself would be charged at the full rate and any other attendant charges would be discounted in some way so that the actual charges are all reflected but you wouldn't get the full penalty," Wysong continued. "But we are still experimenting with that," she said.

CANADA WILL ADVANCE REFUNDS TO SOFTWOOD LUMBER PRODUCERS

Canadian softwood lumber producers won't have to wait for the U.S. to issue refunds to lumber importers under the U.S.-Canada Softwood Lumber Agreement (SLA) signed Sept. 13 to get back some \$4.3 billion in antidumping (AD) and countervailing duty (CVD) deposits they are due under the deal. Canada has initiated a plan under which lumber producers can transfer the rights to those refunds to Export Development Canada (EDC), Canada's export financing agency, and get their money from the EDC now. The U.S. says it would not be ready to distribute funds until Dec. 1. "Under the EDC refund mechanism, cash will flow within four to eight weeks of the Agreement's intended coming into force on October 1 to companies that have returned the necessary legal and administrative documents," Ottawa said. "In order to ensure equity and fairness to all companies benefitting from the Agreement and to protect

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Canadian taxpayers from unnecessary financial burden, the Government of Canada will seek to introduce a special charge of approximately 19 percent, which would apply to all refunds.”

U.S. Trade Representative (USTR) Susan Schwab and Canadian Trade Minister David Emerson formally signed the SLA in Ottawa. Schwab said the U.S. will appoint a private non-profit organizations to distribute \$450 million from held duty deposits to “meritorious initiatives” in the U.S. Under the SLA, these funds will go for (1) assistance for timber reliant communities; (2) low-income housing and disaster relief; and (3) promotion of sustainable forest management practices.

“By turning the funds over to private non-profit organizations the U.S. government will have no role in the allocation of the funds by the organizations,” said a statement by the USTR’s office. Customs is holding approximately \$5.3 billion in AD/CVD deposits on Canadian lumber. The SLA calls for these funds to be split up with about \$4.3 billion returned to importers of record; \$500 million disbursed to members of the Coalition for Fair Lumber Imports; \$50 million allocated to a binational industry council; and \$450 million for the meritorious initiatives.

U.S.-KOREA FTA TALKS HIT IMPASSE OVER FARM TARIFFS

First it was South Korea’s discriminatory reimbursement plan for foreign prescription drugs, now it’s Seoul resistance to cutting tariffs on U.S. farm exports. Roadblocks to a U.S.-Korea Free Trade Agreement (KORUS) continue to mount, making conclusion of talks this year unlikely and raising doubts that they can be finished before President Bush’s fast-track negotiating authority expires next July. U.S. officials left the latest round of talks in Seattle the week of Sept. 4 disappointed with the failure of Korea to make any new offers to cut tariffs.

“We would have liked to have made more progress last week,” Assistant USTR Wendy Cutler told reporters. “The Korean agriculture offer is disappointing,” she said. Meanwhile, Reuters news service quoted Korean Agriculture Minister Park Hong-Soo telling reporters Korea “will not respond to any request on rice.”

The FTA talks were also on the agenda of meetings in Washington between President Bush and Korean President Roh Moo-Hyun on Sept. 12 and USTR Susan Schwab and Korean Trade Minister Kim Hyun-Chong on Sept. 12. While these officials all said they were committed to the trade talks, the meetings produced no new signs of progress. Schwab and Kim “reaffirmed their commitment to and the importance of the FTA negotiations,” a USTR spokesperson said. In the meeting, “Schwab highlighted automotive, agriculture and pharmaceutical issues as some of the key U.S. priorities in the negotiations,” the spokesperson added.

COMMERCE NAMES MEMBERS OF DEEMED EXPORT ADVISORY COMMITTEE

Commerce Secretary Carlos Gutierrez apparently read the 300-plus comments that came in on the BIS proposal to tighten deemed export controls and realized that the bulk of objections to the proposal came from the academic community. In naming the members to the Deemed Export Advisory Committee (DEAC) Sept. 12, Gutierrez overloaded the panel with members from the academic world. Of the 12 members named seven are current or former chancellors, deans or professors, while just four are from business (see **WTTL**, May 12, page 1).

Named to co-chair the DEAC were Norman Augustine, the retired chairman and CEO of Lockheed Martin, and Robert Gates, president of Texas A& M University. Gates was a CIA career officer and its director from 1991 to 1993. The other members are: Albert Carnesale, PhD, ex-chancellor of the University of California at Los Angeles; Ruth David, PhD, president & CEO, Analytic Services, Inc.; John Engler, president, National Association of Manufacturers; Anthony Frank, PhD, provost and senior vice president, Colorado State University; General John A. Gordon, former CIA deputy director; Sean O’Keefe, chancellor, Louisiana State University; Eva

Pell, PhD, senior vice president and dean of the Graduate School, Penn State University; Michael Splinter, CEO, Applied Materials; James Siedow, vice provost for research and professor of biology, Duke University; William A. Wulf, PhD, president, National Academy of Engineering and professor of computer science, University of Virginia.

Bernie Kritzer, head of the BIS office of national security and technology transfer controls, will serve as the agency's liaison to the DEAC. The administrative details on how the committee will operate, be staffed and its plans will be issued in about a month, he said. Kritzer said the committee will probably meet quarterly and will hold open meetings to get public comments on what, if any, changes are needed in current deemed export licensing policies.

MANDATORY AES REMAINS BLOCKED BY INTER-AGENCY DISPUTE

A final regulation to require the use of the Automated Export System (AES) for the filing of export documentation for all imports may be up to a year away. Further delay is possible, if the Census Bureau has to repropose revisions to the Foreign Trade Statistics Regulations to accommodate changes being demanded by Customs and Border Protection (CBP).

Census and CBP have been at odds for over six months because Customs wants the proposal changed to allow it to share some AES data with foreign customs agencies as part of its efforts to build cooperation on cargo security and anti-terrorism measures and also to end the post-shipment filing option known as Option 4 (see **WTTL**, June 19, page 4). Discussions are "going on at the highest level," said Gerard Horner, chief of Census' AES branch.

If these talks lead to a decision to change the proposal, Census will repropose the rule, he told RAPTAC Sept. 12. Census is defending the use of Option 4 because this method of filing is often used by bulk exporters, including agriculture exporters, who don't have data on final customers and values when their shipments leave U.S. ports. Option 4 allows them to file this information after departure, assures more accurate statistical data, and precludes the need for filing amendments. Meanwhile, Census will begin a company audit program at the start of 2007 to visit firms that use Option 4 as well as freight forwarders and U.S. and foreign Principle Parties in Interest who have low compliance rates in the filing of AES data, Horner reported. The visits will aim to improve Schedule B classifications, he said. CBP and BIS have been invited to join the audits but have not yet indicated whether they will.

U.S., EU, CANADA FILE WTO COMPLAINT ON CHINA'S AUTO TARIFFS

After five months of consultations couldn't get the Chinese to drop their tariff policy on imported auto parts, the U.S., European Union (EU) and Canada Sept. 15 asked the World Trade Organization (WTO) Dispute Settlement Body (DSB) to create a dispute-settlement panel to judge China's policies. "Working together with Canada and the EU, we have tried to resolve this issue through consultations as we always prefer to negotiate rather than litigate, but China has demonstrated no willingness to remove its unfair charges," USTR Susan Schwab said. The request for the panel will be on the agenda for the DSB's Sept. 28 meeting, but China is expected to invoke its right to block the first request (see **WTTL**, April 3, page 2).

The U.S. claims China's tariff policy amounts to an illegal local content requirement for parts going into cars made in China. China's Customs Administration sets the tariff on auto part imports based on the percentage of foreign content in each finally assembled car. If the number or value of imported parts in the assembled vehicle exceed specified thresholds, the regulations assess each of the imported parts a charge equal to the tariff on complete automobiles, which is typically 25%, rather than typical parts' tariff of 10%, the USTR's office explained. The U.S. exported \$681 million in auto parts to China in 2005, up 6.5% from 2004. But the \$19 billion Chinese parts market grew 16.8% at the same time, the USTR's office contends.

BAKER HUGHES UNITS FINED \$2,890,600 FOR VIOLATING LICENSE CONDITIONS

Baker Hughes, Inc. will be responsible for the payment of a \$1,965,600 civil fine as part of a settlement agreement it reached with BIS to settle charges that one of its former units, Western Geophysical Company of America, had not complied with the conditions on a license for the export of seismic mapping equipment to China. In a related settlement, Western Geco, LLC, which is 30% owned by Baker Hughes and 70% by Schlumberger, agreed to pay a \$925,000 civil fine for its role in the same alleged violations.

BIS charged Western Geophysical with 156 violations of the Export Administration Regulations, including violations of conditions on licenses and acting with knowledge. "One of the conditions stated that 24 hours per day, seven days per week supervision of the equipment was required," BIS said in its Charging Letter. The firm "refrained from engaging in conduct required" under the license, because it failed to monitor the equipment as required, BIS said.

* * * BRIEFS * * *

CHINA: Whenever BIS publishes final China catch-all regulations, it is likely also to publish first list of Chinese companies that have qualified for validated end-use (VEU) status, BIS Deputy Assistant Secretary Matt Borman said Sept. 12 (see **WTTL**, Aug. 7, page 1).

MT CONTROLS: Final regulation to impose export licensing requirements on exports to Canada of items subject to Missile Technology (MT) controls probably won't be published until next year, BIS staffers indicate. Rule remains delayed pending economic impact analysis which has not yet begun. BISers say agency is likely to hire an outside economic consulting firm to conduct analysis.

BYRD AMENDMENT: For second time, CIT finds provisions of Byrd Amendment unconstitutional (see **WTTL**, July 17, page 1). CIT Senior Judge Nicholas Tsoucalas Sept. 12 ruled (Slip Op. 06-139) against provisions limiting distribution of dumping duties to domestic firms that supported antidumping case.

GARLIC: In "sunset" review determination Sept. 12, ITC voted 6-0 that lifting antidumping order on fresh garlic from China would likely lead to renewed injury to U.S. industry.

TRADE PREFERENCE ACTS: Sen. Max Baucus (D-Mont.) and Rep. Charlie Rangel (D-N.Y.) introduced legislation Sept. 15 to extend GSP and Andean Trade Preferences Act for two years and third-country fabric rules in African Growth and Opportunity Act for one year (see **WTTL**, Sept. 11, page 1).

EXPORT ENFORCEMENT: Super Micro Computers of San Jose, Calif., has reached settlement with BIS to settle civil charges and plea agreement with Justice on criminal charges related to unlicensed export of computer servers, motherboards and computer chassis to Iran. It will pay \$125,400 civil fine.

ITAR: Federal grand jury in Fresno, Calif., Aug. 31 indicted Amen Ahmed Ali, Mohamed Al-Rahimi and Ibrahim Omer for violating ITAR and Arms Export Control Act by exporting to Yemen certain military equipment supposedly stolen by undercover agent posing as U.S. Army soldier. They were also charged with sending to Yemen certain classified documents obtained from the agent.

CHINA CURRENCY: Sens. Charles Schumer (D-N.Y.) and Lindsay Graham (R-S.C.) Sept. 14 asked Senate leaders to schedule vote before Sept. 30 on their bill (S. 295) to impose 27.5% tariff on imports of Chinese goods in retaliation for China's failure to allow its currency to float.

PASTA: Improper service of notice of request for administrative review cannot cause respondent to be excluded from dumping order, Court of Appeals for Federal Circuit ruled Sept. 13 in *Pam, S.p.a. and JCM Ltd. v. U.S.* "Recession of a completed administrative review is not a proper remedy for lack of service in this case," court ruled, reversing CIT decision.

CUSTOMS: Commissioner Ralph Basham has named Dan Baldwin to be assistant commission to head newly created Office of Trade, which consolidates under one office CBP's field and trade operations.

DOHA ROUND: USTR Susan Schwab will attend Cairns Group meeting in Australia Sept. 20-22 in another effort to get WTO talks restarted. So far, her globetrotting hasn't produced movement toward resumption.

TRADE FIGURES: U.S. goods exports in July were up 14.4% from year ago. Goods imports rose 15%.