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BIS WEIGHS VERIFIED END-USER PLAN FOR INDIA

The Bureau of Industry and Security (BIS) is considering the idea of creating the same verified end-user (VEU) program it has proposed for Chinese companies for Indian entities, according to BIS Deputy Assistant Secretary Matthew Borman. "When the president went to India in the spring he told the Indians that they would be likely to get the same treatment," Borman told the BIS Sensors and Instrumentation Technical Advisory Committee (SITAC) July 25. "So at some point India will be a destination where Verified End User will be available," he added.

> Borman's statement came in response to questions that suggested Chinese firms would be getting better treatment under VEUs than buyers in countries that are close allies of the U.S. Borman said there are few items that are subject to global controls. For thermal imaging products, some of that discrepancy will be corrected by a proposal BIS has drafted to amend current Regional Stability (RS) controls, he said (see **WTTL**, May 1, Page 4).

Borman also clarified that the purpose of the proposed extension of requirements for obtaining end-use certificates from China's Ministry of Commerce (MofCom) is to allow BIS to conduct pre-license checks and post-shipment verifications of Chinese consignees on export licenses. Under a 2004 U.S.-China agreement to speed up these checks, MofCom already provides end-use certificates for U.S. exports subject to National Security (NS) controls. The China proposal would extend this requirement to items subject to multilateral export control regimes, primarily chemicals and biologicals covered by the Australia Group, Borman indicated.

SCHWAB LAUNCHES EFFORT TO REVIVE DOHA ROUND

On the day Doha Round talks collapsed July 24, the Dow Jones Average surged 182 points. In a summer that has seen wide swings in daily stock prices, the jump wasn't unusual, but it suggests that the smart-money types on Wall Street either didn't think the breakdown was as worrisome as some professional negotiators and business lobbyists thought or they had written off the round months ago. It may be a little bit of both.

The big question now facing the round is whether the suspension of talks announced by World Trade Organization (WTO) Director General Pascal Lamy will last for months or years. After the Uruguay Round broke down in December 1990, it took three years to reach a final deal even though informal talks continued throughout the hiatus. Right now it looks like a stab at restarting the talks or at least undertaking a WTO ministerial level assessment of the situation won't come before late November or early December. After the talks shut down in Geneva,

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U.S. Trade Representative (USTR) Susan Schwab said she was embarking on a multi-month global travel schedule to find a way to get the talks restarted. She left for Brazil July 27 for talks with Brazilian Foreign Minister Celso Amorim. In August, she will meet with trade ministers from the Association of Southeast Asia Nations (ASEAN) in Kuala Lumpur. In September she will attend a meeting of the Cairns Group of agricultural exporting nations in Australia, and in November, Schwab will go to Vietnam to a meeting of trade ministers from the Asia- Pacific Economic Cooperation Forum (APEC).

> Lamy also wasted no time before holding talks personally with Schwab, Amorim, Indian Commerce Minister Kamal Nath and European Union (EU) Trade Commissioner Peter Mandelson, among others. The general theme of those discussions was: "restarting the Doha Development Agenda," an official said. To get things going again, Lamy suggested the time off should be used to discuss and test ideas, the source noted. "From Monday's discussion, it is clear that no one wants to give up on our collective effort here," Lamy told the WTO General Council July 27. "We must now ensure that this progress does not unravel," he said.

A revival of Doha this year becomes even more imperative given the expiration of the president's fast-track negotiating authority or trade promotion authority (TPA), July 1, 2007, and the strong likelihood that the Congress elected in November will have fewer Republicans, if not an outright Democratic majority in at least one house. Successful renewal of talks might prompt the White House and GOP leaders to seek an extension of fast-tract during a possible lame-duck session of Congress in December. The American Farm Bureau Federation has called for an extension of both TPA and the Farm Bill. "The current situation dictates that it is time for the United States to move forward for the sake of the economic health of America's farms, and that path leads us directly to at least a one-year extension of our current farm program and extension of trade promotion authority," said AFBF President Bob Stallman.

"It's too early to have that conversation," Schwab told reporters July 26. "I think none of us are in a position to predict what Congress will and will not do," she said. But Schwab also said she was "sitting down actually this afternoon with some of our lawyers to see exactly what the timelines are in terms of TPA and what's doable." The extension of TPA also might be needed to complete several bilateral trade talks currently underway and others that are planned, she suggested. "I do think that if, say by the spring of 2007, we have the outlines of a Doha Round that is an attractive package that we could recommend to the president and we could ultimately recommend to the Congress, it would seem much more likely that we'd get a positive reception to TPA extension," Schwab said.

The failure of the G-6 – the U.S., EU, Brazil, India, Australia and Japan -- to reach a deal on key modalities in agriculture and industrial tariffs was caused by a combination of politics and economics. With elections looming in the U.S., France, Brazil, Japan and other countries in the months and year ahead, political leaders felt uncertain what impact a Doha deal would have on constituents, especially in the farm sector. Economically, many of the advanced developing countries are seeing strong growth, with GDPs rising 5-10% in some cases. They are also lowering trade and investment barriers at their own pace for their own sake. For some, the potential pain from a new agreement, which might mean increased imports of farm products and Chinese manufactured goods, might seem to outweigh the potential pain of not reaching a deal.

SUSPENSION OF DOHA TALKS SEEN AS NEEDED PAUSE FOR REFLECTION

After the announced suspension of talks there was an atmosphere of resignation and disappointment in Geneva among diplomats and WTO delegates. There was also a sense that negotiators needed time off to rest and think about how deals could be cut to get the things mounted again. "I don't think we can revive the entire Doha Round by taking certain specific actions by a certain member...It is a question of time," one ambassador to the WTO told WTTL. Sources said again that negotiators can't fix the problem with the round and any movement would have to come from political leaders in national capitals. "Given the domestic political situation in the U.S., in Brazil and some others, I'm not that optimistic," another diplomat said. Other diplomats said they believed the talks would resume at some time because WTO members, especially agriculture exporters and the poorest countries, recognize that they can only achieve their trade goals through multilateral negotiations. Brazil for example, "has a major stake in bringing down domestic support in this round," one diplomat noted. "These subsidies are difficult to negotiate bilaterally. The Americans are not going to make a deal bilaterally with Brazil or in the Americas or in the free trade area and say, 'Oh, by the way, I'm going to bring down domestic subsides.' No, this is something that has to be done in the WTO." he said.

> These sentiments also surfaced at a WTO General Council meeting July 27. "The poorest countries -- the LDCs, the ACP, the Africa Group, the Cotton 4 -- were the ones most downcast by what has unfolded this week," reported WTO spokesman Keith Rockwell. "There's a lot of acceptance [in the WTO membership] that the bilateral and regional forums for the poorest countries do not offer the same possibilities for advancing positions for the poorest countries nor would negotiations -- often with much more powerful entities -- enable them to secure the sort of leverage they can through their work here at the WTO," he said.

Earlier in the week many of these small and middle size countries met with Lamy to state their opposition to proposals to spin off parts of the Doha agenda, such as trade facilitation, to go forward even while other talks are stalled. Members said they want to maintain the "single undertaking" approach to the talks, assuring that nothing is agreed to until everything is agreed to and all individual concerns and demands are accommodated.

DEAL AIMS TO EXTEND WASSENAAR CONTROLS ON AMORPHOUS SILICON

The Wassenaar Arrangement's temporary controls on focal plane arrays made of amorphous silicon are likely to extended permanently under a proposed deal that would require an annual review of the regime's controls on these devices. Wassenaar in 2005 adopted a Validity Note that extended a previous short-term control until December 2007. A Wassenaar working group has drafted the proposal to present to the regime's annual Plenary Meeting in December for adoption (see **WTTL,** May 9, 2005, page 4).

> Before the new controls on amorphous silicon equipment were imposed last year, industry representatives and BIS officials had expected the restrictions to cause a surge in new export license applications. That hasn't happened. "There was a very, very small amount of amorphous silicon licenses after the rule was enacted," Bernie Kritzer, director of the BIS Office of National Security and Technology Controls, told the Sensors and Instrumentation Technical Advisory Committee (SITAC) July 25.

SITAC members, however, complained that the low level of licenses for amorphous silicon actually represents the loss of U.S. market share in this segment of the thermal imaging industry. "Amorphous silicon is probably where we are getting beaten up," one SITAC member said. Kritzer acknowledged that "the biggest market development [is] offshore."

GAO CRITICIZES BIS SCREENING OF PARTIES ON LICENSE APPLICATIONS

BIS urges exporters to screen potential customers against various denied party lists before exporting to them as part of their "Know Your Customer" due diligence, but a Government Accountability Office (GAO) report on BIS claims the agency's own internal screening of customers on export applications is "questionable." BIS maintains a "watchlist" of some 50,000 names of parties that raise export control concerns. A GAO investigation, however, found the list was missing the names of 147 parties that had committed export control violations or had been identified as suspect for other reasons. "Further, a technical limitation in BIS's computer system results in some parties on license applications not being screened against the watchlist," the GAO said in a report (GAO-06-638) released July 26. BIS Under Secretary David McCormick sharply disagreed with the GAO findings. In comments on a draft of the report, he said there was a "large gap between the draft report's findings and the facts as understood by the Commerce Department." McCormick said the report's findings were "unwarranted and unsupported." In particular, he defended BIS' use of the watchlist as only one layer of several lists the agency uses to check names on export licenses. It also screens names against lists maintained by other agencies and the intelligence community. "This built-in redundancy helps minimize the possibility of an entity slipping through the cracks," said a section-by-section BIS response to the GAO, which is the investigative arm of Congress.

The GAO also criticized BIS for not conducting systematic evaluations of the dual-use export control system. "BIS has not systematically evaluated the overall effectiveness and efficiency of the system to determine whether its stated goal of protecting U.S. national security and economic interests is being achieved," the GAO complained. It specifically cited the evaluation BIS conducted after 9/11 to determine if current export controls were adequate to deal with the new terrorist threat. "According to BIS officials they did not produce a report or other documentation," the GAO noted. As a result, it said it could not assess the validity of the review.

BIS TO ISSUE NOTICE ON HIGHER PENALTIES FOR EAR VIOLATIONS

BIS will issue a Federal Register notice in August to announce the higher fines that will be imposed for violations of the Export Administration Regulations (EAR) based on amendments to the International Emergency Economic Powers Act (IEEPA). The revised statute raised the maximum fine for each violation to $50,000 from $11.000 (see **WTTL**, March 20, page 4). The notice will clarify that violations of all EAR provisions will be subject to the higher penalty.

Meanwhile, BIS is reviewing its policy of making multiple charges in enforcement actions to raise the total potential fine imposed on violators. BIS has needed to included multiple charges for the same offense, because of the relatively low fines available under IEPPA. "Probably we are not going to be doing that in quite the same way," BIS Office of Export Enforcement (OEE) Director Mike Turner told the BIS Information Systems Technical Advisory Committee July 26.

"The practice we want to follow is that there is equity to penalty actions that we're pursuing, and that the penalties we propose to assess are commensurate with the underlying conduct," he explained. Another BIS official told WTTL that the new policy probably won't be seen until the agency has an actual case to which to apply it, which might be a year away.

* * * BRIEFS * * *

<u>LIBYA</u>: DDTC posted notice on its website July 24 to remind exporters that formal lifting of Libya's status as terrorist-supporting country has not changed licensing requirements. "Libya remains proscribed for the export of defense articles and services," DDTC said. "Until there is a FederalRegister notice announcing a change in Libya's status as a proscribed destination under Section 126.1 of the ITAR, it will continue to be the policy of the United States to deny all export applications for defense articles and services to Libya," it declared (see **WTTL**, June 19, page 4).

<u>BIS</u>: Kevin Kurland has been named first chief of newly created office of technology evaluation. He will report to Matt Borman, deputy assistant secretary for export administration.

<u>TRADE PEOPLE</u>: Former BIS OC Chair Carol Kalinoski reached settlement with Commerce July 21 over her sex discrimination suit (see **WTTL**, May 29, page 4). Government will pay her undisclosed amount to settle case plus her legal fees, but she will not have right to return to her old BIS post.

<u>PERU</u>: Assistant USTR for Latin America Everett Eissenstat told Senate Finance Committee July 27 that Bush administration would not implement U.S.-Peru FTA until Lima keeps promise made in side letters to open its market to U.S. beef. Finance vote on informal markup of Peru deal put off until week of July 31.

<u>JAPAN</u>: Tokyo July 28 announced resumption of imports of U.S. beef under 20 months of age.