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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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COMMERCE IG URGES TOUGHER CONTROLS ON CHINA, HONG KONG

Just as the Bureau of Industry and Security (BIS) is backing away from recommendations the Commerce Inspector General (OIG) offered on deemed exports, the OIG has issued a new report recommending tougher licensing reviews for exports to China and Hong Kong. BIS Under Secretary David McCormick has already responded to the recommendations, saying he plans to adopt many of them, including upgrading the BIS Office of Enforcement Analysis (OEA) and improving staffing and procedures for conducting post-shipment verifications (PSVs) in China and Hong Kong. He also noted BIS plans for proposing a military China "catch-all" rule.

> "We determined that BIS is not aggressively enough monitoring potential diversions of export-controlled items from Hong Kong to China," the OIG noted. "In addition, BIS was not adequately targeting PSVs for shipments that can be exported to Hong Kong without a license but would require a license to China," it said.

The OIG also criticized BIS for requiring firms to submit technical documentation after an approved shipment to China as a condition for the approval of the license but not requiring licensing officers to review the documentation. "Without a substantive, technical review of the documentation, BIS cannot determine whether the exporter (and/or end user) is complying with the intent of the license conditions," it asserted.

The lack of coordination between the Office of Export Administration and Export Enforcement Analysis has delayed or prevented PSVs, the OIG claimed. Due to a delay between the receipt of shipping documentation and its sharing with Enforcement Analysis, "OEA was not able to initiate a PSV request" under the terms of the U.S.-China agreement on post-license checks.

McCormick noted the OIG's findings concerning problems with the Automated Export System (AES). "The report highlighted a limitation BIS faces in targeting and selecting meaningful post-shipment verifications (PSVs) in Hong Kong due to the lack of sub-paragraph Export Control Classification Number information in the Automated Export System," he noted. McCormick said BIS intends to consult with the Census Bureau on this issue.

LAMY BUILDS IN ONE-MONTH BUFFER FOR DOHA DEAL DEADLINE

As many as four dozen trade ministers are expected to attend a meeting starting the week of June 26 at the World Trade Organization (WTO) in Geneva with hopes of ironing out an agreement on the key trade-liberalizing modalities or formulas in Doha Round talks on agriculture

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and non-agriculture market access (NAMA). In setting new deadlines for draft texts in mid-June and the ministerial at the end of the month, WTO Director General Pascal Lamy has built in a one-month safety valve to allow WTO members to reach key agreements before the end of July, which is seen as the make-or-break deadline for saving the Doha Round from collapse.

> With a new deadline in sight, jockeying among WTO members and interest groups for a rhetorical advantage has intensified. U.S. trade officials are publicly emphasizing tariff cutting in the agriculture negotiations to put pressure on the European Union (EU), while the EU stresses reductions in domestic support to squeeze the U.S. Twelve U.S. farm groups wrote to President Bush June 1 to warn him that they would oppose any proposal to cut American farm supports deeper than already proposed unless there was a commensurate increase in market access abroad for U.S. agriculture.

Trade ministers from countries belonging to the Asia-Pacific Economic Cooperation (APEC) forum met in Ho Chi Minh City, Vietnam, June 2 and issued a statement saying a "strong market access result, among others, is a prerequisite for successful conclusion of this round." They said they agreed on the need for effective cuts and disciplines on trade-distorting farm supports and noted that market access in agriculture "lags behind" other parts of the negotiations. On NAMA, the APEC trade ministers agreed to pursue a Swiss Formula and said they support "a formula with two ambitious coefficients applying to developed and developing members, delivering real and meaningful market access improvements."

DOHA ROUND IS MORE THAN AGRICULTURE AND INDUSTRIAL TARIFFS

While public and political attention has focused primarily on the agriculture and non-agriculture market access (NAMA) elements of the Doha Round negotiations, nearly a dozen other parts of the talks are still unresolved, and any of them could present last-minute roadblocks to a final deal. Progress in all these sectors has been stalled waiting for a breakthrough in the farm and NAMA talks. This has led many observers to voice concern that the delay may not leave enough time for reaching comprehensive deals in these talks by the end of the year.

> [**EDITOR'S NOTE**: This week, WTTL presents the first of a three-part series examining the state of play for key Doha Round negotiations outside of agriculture and NAMA. WTTL's correspondent in Geneva, R. Scott Billquist,, filed this sector-by-sector analysis of the major problems and issues facing these talks.]

SERVICES: Even if agreement is reached on agriculture and NAMA modalities by the end of June or July, the complexity of services talks and cliff-hanging games played by member states may result in a least ambitious outcome in services, sources in Geneva warn. Time is the key factor now, they say. Unlike agriculture and NAMA where agreement on a formula for trade liberalization would open the way for individual country offers, services talks involve a long and tedious task which requires consultations with non-trade ministries in home capitals, the drafting of service-by-service offers, and negotiations with countries that are requesting extensive market opening in services.

> Some 70 initial offers of services openings have been submitted and 39 improved offers. The chairman of the services negotiating group has generally condemned the offers submitted so far as being inadequate, sources report. "In many cases, they are well below the level of access which the law already allows," says one attorney in Geneva who is following the talks. "There are many countries where there aren't any particular restrictions on the supply of a service, but the country hasn't chosen to make a binding commitment on it," he says. One of the round's objectives is to bind current levels of access. For the U.S. and European Union (EU), improved services offers from advanced developing countries, particularly India and Brazil, are essential to any final Doha deal.

A major concern for many developing countries is the lack of legal and administrative structures to regulate newly open service sectors. In many countries, services have either been controlled by monopolies or the governments themselves. "The problem is that in many services sectors, the situation is evolving," notes a diplomat from one developing country. "In order to make a commitment, the country would want to make sure it knows exactly how it wants to regulate a sector. If it's still not exactly sure about what it will do, then it will not undertake a commitment," he adds. "The gain for those who want access in terms of predictability would be much smaller than the loss to the country in terms of the need to regulate a sector in which the country still doesn't know how to do things," the diplomat asserts. "The financial services sector, for instance, is changing everywhere," he states.

> Even if countries can meet all the deadlines for agreements to open specific services sectors, a final battle still looms over how to address liberalization in what is called Mode 4 of the services talks, the movement of individuals across borders to perform services. Countries that have extensive ex-patriot work forces, such as India, want to see the easing of restrictions on foreign workers, but developed countries, such as the U.S. and those in the European Union, face strong political opposition at home to a trade agreement that is seen as dictating national immigration policies.

"Countries will have to have their revised offers on the table by July 31," the chairman of services negotiations, Ambassador Fernando de Mateo of Mexico, told WTTL. "The better the results in Ag and NAMA, the better the services offers will be," he added. Recent important negotiating activity is reported, including consultations between WTO negotiators and authorities and regulators in their home countries. The July 31 deadline will be followed by two months of negotiations after an August recess. The next deadline is on October 31, when final schedules of commitments have to be tabled. There is enough time to improve offers on market access in June and again in September and October, followed by any revision, but services negotiations are resource intensive, de Mateo said.

TRIPs: Talks on amending the Agreement on Trade-Related Intellectual Property Rights (TRIPs) face a difficult dispute between developed and developing countries over how to deal with the Convention on Biodiversity (CBD) and so-called traditional knowledge. At issue is the effort of developing countries to retain rights to drug and chemical discoveries derived from indigenous fauna and flora in their countries but synthesized and developed in industrial counries.

> Brazil and India have united on a draft proposal to amend the TRIPS agreement to include elements of the CBD in it. This proposal has moved the debate "to a different level," says one diplomat from a developing country. WTO Deputy Director-General Rufus Yerkxa will hold consultations on the proposal. "We're going to see reactions to the proposal on Tuesday, June 6," the diplomat says.

Discussions are taking place at the technical and political level. "The U.S. has raised concerns of a technical nature saying a disclosure requirement would be impractical and burdensome," one diplomat explains. "At the technical level, developing countries say they have moved significantly in moderating their ambitions on the disclosure requirement to meet the concerns of the pharmaceutical and biotechnology industry including of the U.S.," he adds. The U.S. would prefer to have the issue dealt with at the national level without multilateral rules through a contract-based, private-sector approach. According to one diplomat, this approach doesn't solve the issue of bio-piracy of genetic resources. The resulting intellectual property could be patented in the developed country, which would no longer be in the jurisdiction of the originating country, he notes.

DRESSER DISCLOSES WORLD-WIDE EXPORT VIOLATIONS

Dresser, a major manufacturer of oil-industry equipment and services, and six of its overseas subsidiaries have agreed to pay nearly $1.1 million in civil penalties as part of a settlement with BIS based on the company's self-disclosure of unlicensed exports to countries subject to U.S. trade sanctions, including Iran, Iraq, Cuba, Sudan and Libya. Dresser also made a self-disclosure to Treasury's Office of Foreign Assets Control (OFAC), and additional fines from OFAC are expected. A Dresser spokeswoman said the company launched its own investigation of these exports after being alerted to potential violations by employees in its Dubai office.

Dresser hired an outside law firm to conduct an independent investigation of these allegations and in 2005 submitted the full results of that audit to BIS and OFAC, the spokeswoman told WTTL. The law firm examined all Dresser operations around the world, she said. The uncovered violations date from 2000 to 2004 and include the time when Dresser was still part of Halliburton. Dresser also disclosed the internal investigation and its findings to the Securities and Exchange Commission. In its report to the SEC, the firm said it has implemented "a comprehensive remedial program that is designed to prevent further unlawful transactions by our foreign subsidiaries and branches, and unlawful facilitations by U.S. persons." The company also reported that under a "recently adopted company-wide policy they will no longer be permitted to accept new business (other than such business as they are contractually obligated to undertake in compliance with U.S. laws) intended to or for Iran or Sudan."

> Dresser said it has also reorganized its export compliance functions. It has created corporate officer position titled Executive Vice President, Ethics and Compliance, which reports directly to the Chief Executive Officer and to the Audit Committee. It also established the position of Corporate Export/Import Compliance Director, reporting directly to the new Executive Vice President.

The divisions and fines involved in the settlements were: Dresser ($110,000), Dresser International ($6,600), DI Canada ($6,600), DI UK ($122,000), Dresser Europe ($19,800), Dresser Instruments, SA, Mexico ($12,000), and Dresser Italia ($820,000).

MANDELSON SEES STEP-BY-STEP PROGRESS IN U.S.-EU RELATIONS

EU Trade Commissioner Peter Mandelson has proposed including a statement on the importance of an open transatlantic investment climate in the declaration that will come out of the June 21 U.S.-EU Summit in Vienna. In light of the Dubai Ports World controversy, the investment issue requires "careful handling," Mandelson told European Parliament members May 31. "This should send a strong message to the U.S. Congress which is currently debating the [Sen. Richard] Shelby bill on the tightening of the Exon-Florio statute," he said. Mandelson reported that the U.S. and EU have formed a "contact group" to address investment issues.

> Mandelson said he disagreed with the recommendations from a European Parliament committee that called for a more visionary and strategic approach to creating a barrier-free transatlantic market under the Transatlantic Partnership Agreement. "In my view, the EU-U.S. economic initiative has shown that we are getting there step by step," he said.

"In reality there is no U.S. appetite, either in the administration or in Congress, for any 'big-bang' EU-U.S. scheme," Mandelson said in his prepared statement. "On issues like investment and public procurement, which you rightly identify as areas of enormous potential, the U.S. has not, so far, shown interest to tackle bilateral barriers," he report.

* * * BRIEFS * * *

DEEMED EXPORTS: BIS in May 31 Federal Register formally withdrew notice of proposed rulemaking on deemed exports and, as expected, restated its current policies (see **WTTL**, May 22, page 1).

IPOD: Even Apple Computer has joined parade of high-tech firms that have turned to Section 337 for import relief. It filed 337 complaint at ITC June 1 against allegedly unfair imports of portable digital media players, naming Creative Technology of Singapore and Creative Labs of California as respondents.

TRADE PEOPLE: Former BIS Deputy Assistant Secretary for Export Enforcement Lisa Prager has switched law firms, moving to Miller & Chevalier from DLA Piper Rudnick Gray Cary in Washington.

Washington Tariff & Trade Letter Marks 25th Anniversary

With this issue of WTTL, we celebrate the 25th anniversary of its launch in June 1981. This past quarter century has seen major changes in U.S. trade policies, laws and international agreements. From the Uruguay Round and NAFTA to the end of the Cold War and the rise of terrorism, the terms have changed but the age-old debates over trade remain the same. We have been proud to be a witness and reporter of these events. As we do annually when we mark the passing of another year, we gratefully thank all of our subscribers, supporters, news sources and friends who've made these years so rewarding, successful and fun. We could not have done it without you.