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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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RESTRICTIONS ON MT EXPORTS TO CANADA DELAYED AT WHITE HOUSE

A final regulation to extend controls on Missile Technology (MT) items on the Commerce Control List (CCL) to Canada remains stalled at the White House Office of Management and Budget (OMB) because of "a little political issue in the National Security Council," a Bureau of Industry and Security (BIS) official says. OMB has classified the regulation as "significant," which could require a review by the Small Business Administration.

BIS officials concede the rule could generate an extra 500 deemed export license applications a year, a 66% increase over 1st year's number. The agency is still trying to develop a plan for approving "bulk" licenses to cover more than one transaction and to draft licensing conditions that would allow Canadians who become subject to deemed export licenses to have access to an increasing level of technology without having to come back for a new license. A separate proposal for "expedited processing [of licenses] didn't get very far," another BISer reports. Defense objected to the idea, he says (see **WTTL**, March 13, page 4).

PORTMAN'S TRIP TO GENEVA BRINGS REASSURANCE BUT NO PROGRESS

The visit of U.S. Trade Representative (USTR) Rob Portman and high-level meetings in Geneva the week of May 1 reassured World Trade Organization (WTO) diplomats that the major players haven't given up on the Doha Round despite missing the April 30 deadline for key agreements, officials in Geneva told **WTTL**. Participating in the talks were ministers from Japan, Brazil and Australia. The Americans came with a full troop display which included Deputy USTR Susan Schwab and Agriculture Secretary Mike Johanns.. The notable absence was European Union (EU) Trade Commissioner Peter Mandelson.

The presence of the large U.S. delegation was reassuring, an ambassador to the WTO told **WTTL**. "They're showing lots and lots of commitment to getting something done," he said. Although Portman was gracious in his praise for Schwab, he made it clear that he will continue to lead U.S. negotiations through June. Schwab, who was formally nominated for the USTR post May 3, attended all the meetings in Geneva, but was careful about what she said before her Senate confirmation, an ambassador to the WTO said. "She's just cautious," he observed.

Nothing specific came out of Portman's trip to Geneva, which was clearly intended to calm fears among trade ministers that his move to the Office of Management and Budget signaled a reduction in Washington's commitment to the round (see **WTTL**, May 1, page 3). Schwab

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told reporters that White House interest in trade has been strengthened with “USTR alumni” Portman at OMB, the naming of Josh Bolten to be the president’s chief of staff, and former USTR Robert Zoellick as deputy secretary of State. Bolten is a former USTR general counsel and was trade counsel for the Senate Finance Committee in the early 1980s.

One diplomat said the Americans pushed hard in the meetings because they are afraid that if they show any weakness, the EU could become too comfortable thinking that a final compromise or “landing zone” for cutting agriculture tariffs will be smaller than proposals made by the U.S. or the G-20 group of developing. “It is very clear that the Europeans must consider, at a minimum, the G-20 proposal, which represents the true middle ground given this very delicate state of affairs,” one ambassador said. The EU has proposed farm tariff cuts in the range of 20-60%, while the G-20 has proposed 45-75% and the U.S., 55-90%.

Other countries are firming up their positions as well, one diplomat said: “We are almost at the point where the ministers have to go into the room for some ministerial negotiations. It would be surprising given what has happened in the last few weeks and months if they came here and made a major gesture at this point” with a unilateral move, he added. Even if one party were ready to make a move now, it would hold back as a matter of symmetry, he suggested.

Several countries, including the U.S., have submitted so-called “non-papers” in the various negotiating groups, exploring possible approaches to such issues as the treatment of “special products” that are exempt from full liberalization and the operation of the special safeguard mechanism. If the talks make further progress in the coming weeks, there is a possibility for another ministerial meeting, one diplomat said. Such a meeting is expected after June 5. “We are going to see a lot of moves or declarations as crunch time approaches,” he said

Meanwhile, there is growing pessimism in Washington about the state of the Doha talks. The business community’s American Business Coalition for Doha (ABCDoha) May 3 said it “is profoundly disappointed at WTO Members’ failure to meet yet another critical deadline.” The group cautioned against proposals that would seek to reduce the ambition of the round and come up with a “Doha Lite”. “To be clear, ABCDoha considers a minimalist deal to be a failure.” it said. “A final package that misses the mark would draw little support from agriculture, business or consumer interests, making it likely to fail in Congress,” it warned.

Separately, the Government Accountability Office (GAO), the investigative arm of Congress, issued a report April 27 warning that lack of progress soon may make it impossible to complete all the steps necessary to bring any Doha agreement to Congress under the president’s fast-track negotiating authority. With Trade Promotion Authority (TPA) expiring July 1, 2007, a deal by Dec. 31, 2006 is almost imperative, it suggested. “Despite indications of an outline for a ‘grand bargain,’ the negotiations to date have centered on agriculture and remain deadlocked on this issue,” it noted. “Breaking the impasse over agriculture remains key to reaching agreement on the whole of the Doha agenda. However, the political will to liberalize and make the quality of offers and concessions necessary to break the impasse is not yet evident,” it said.

INDUSTRY FEARS POLITICAL DEAL ON RUSSIA’S WTO ACCESSION

U.S. business groups are worried the White House will put pressure on USTR negotiators to reach a bilateral deal with Moscow on Russia’s accession to the WTO so that President Bush can announce it at the G-8 Summit July 15-17 in St. Petersburg. At a May 2 press conference, nine trade associations raised specific concerns about the intellectual property rights (IPR) provisions in the accession protocol and said they have urged USTR officials to get strong enforcement provisions on IPR before they sign any bilateral agreement. Industry sources say they learned a lesson from China’s WTO accession and don’t want to see a repeat of China’s implementation problems in Russia. The trade groups were heartened by the USTR’s identification of IPR shortcomings in Russia in the Special 301 report issued April 28 (see **WTTL**, May 1, page 4). The trade groups warned that they would not support legislation to end trade

restrictions on Russia under the Jackson-Vanik Amendment and grant Russia permanent-normal-trade-relations (PNTR) status, if the final protocol doesn't assure strong IPR protection.

In addition, they want a date-specific commitment from Moscow to join the WTO Government Procurement Agreement plus language to assure market access for agriculture and to prevent the use of sanitary and phytosanitary measures to block farm imports. Another area of concern is market access for financial services.

It's unclear whether the business community would carry out its threat to oppose Russian PNTR, if the White House asked for its support. There are growing concerns in Washington about Russia's move away from democratic principles and free markets, and many in Congress could see the PNTR vote as a way to express their dissatisfaction with Moscow's direction. Vice President Cheney's May 4 speech in Vilnius, Lithuania, where he openly criticized Russia, suggests there is division even in the White House over the future of Russo-American relations.

WORKING GROUP TO EXAMINE CONTROLS ON COMPOSITE MATERIALS

Two BIS technical advisory committees have agreed to form a joint technical working group to examine current Commerce Control List (CCL) controls on composite materials used in aircraft. The Transportation TAC and the Materials TAC plan to bring together industry, government and academic experts to review controls which some in industry claim are out of date and too restrictive. BIS officials are backing the effort and have suggested the examination also look at the "food chain" of industries that use or handle composite materials, including machine tools.

TAC members say the current controls on composite materials are not keeping up with technology advances. The working group will examine changes in technology, as well as the growing foreign availability of these materials.

EXTENSION OF ITAR CONTROLS ON AIRCRAFT GETTING BACK ON TRACK

BIS staffers say they have been ordered by agency managers to stop foot-dragging in sending comments back to State's Directorate on Defense Trade Controls (DDTC) on DDTC's draft Federal Register notice extending its licensing jurisdiction to certain L-100 commercial planes (see **WTTL**, March 6, page 1). BIS officials "told us we couldn't hold it hostage anymore," one BIS staffer said. "A 50-year precedent has been turned on its back," the staffer said. The draft notice has been under review since December.

DDTC in March posted a notice on its website of its intent to require ITAR licenses for certain L-100 planes that share parts and components with the military C-130 plane. State issued a Commodity Jurisdiction (CJ) ruling to Lockheed Martin in 2003 and has already required the firm to obtain Munitions List licenses. Under the coming notice, State licenses will be needed to export to or fly over 22 countries identified in ITAR Section 126.1.

CARIBBEAN NATIONS MUST GET SEPARATE INJURY TEST, COURT SAYS

The Court of Appeals for the Federal Circuit (CAFC) is moving quickly to apply its precedent-setting decision on "causation" in *Bratsk Aluminum* in other trade cases. In a May 4 decision, the court vacated a Court of International Trade (CIT) ruling in *Caribbean Ispat v. U.S.* and remanded the case back to the International Trade Commission (ITC) to conduct a separate injury determination on steel wire rod from Trinidad and Tobago. In light of *Bratsk* "we cannot uphold the Commission's decision," said the ruling written by Judge William Bryson. As a beneficiary of the Caribbean Basin Economic Recovery Act (CBERA), Trinidad and Tobago is entitled to a separate injury determination rather than having its goods cumulated with the other 11 countries involved in the case, the CAFC ruled. "The Commission did not specifically

address whether Trinidad and Tabago's imports could or would be replaced by other imports so that the domestic industry would not benefit from the removal of Trinidad and Tobago imports from the U.S. market," it declared (see **WTTL**, April 17, page 3).

"Because CBERA required the Commission to treat Trinidad and Tobago's imports separately from all other imports, our holding in *Bratsk* indicates that, in the present case, the 'Commission is required to make a separate causation determination and in that connection to directly address whether (other LTFV imports and/or fairly traded imports) would replace (Trinidad and Tobago's) imports without any beneficial effect on domestic producers," it said.

* * * BRIEFS * * *

BIS: BIS has named Catherine (Randy) Pratt, who has worked in Commerce general council's office, to be new head of information technology control division which handles encryption cases. She succeeds Norm LaCroix, who has moved to other federal agency (see **WTTL**, Feb. 20, page 4).

STATE: David Trimble, DDTC compliance chief, reassigned to White House National Security Council staff. Daniel Buzby is his acting replacement. Licensing staff director Peter Berry will become special assistant to DDTC Director Greg Suchan. Berry's post will be handled on acting basis by Sue Clark.

PALESTINE AUTHORITY: BIS is interpreting President Bush's executive order barring "transfers" to Palestinian Authority as prohibition on approving export licenses (see **WTTL**, April 17, page 4). Any license applications will be returned without license with advice to file with OFAC, BISers say.

EAA INDICTMENT: Federal Grand Jury in New Haven, Conn., handed up two-count indictment charging Andrew Huang, owner of Mac Andrew's Inc., of conspiring to export telecommunications equipment to Iraq through China. Indictment charges him with conspiring with China Electronics Systems Engineering Corporation, which is part of Chinese People's Liberation Army, to export equipment to China for reexport to Iraq from July 1999 to June 2001. Accompanying affidavit filed with indictment indicates that government agencies used Foreign Intelligence Surveillance Act (FISA) warrants to wire tap calls and search Huang's home. [**Editor's Note:** Copy of indictment and affidavit will be sent to subscribers on request.]

ANTIDUMPING FRAUD: ICD Group Metals of New York pleaded guilty April 25 in Detroit U.S. District Court to aiding and abetting Canadian firm, Ni-Met Resources of Ontario, evade antidumping duties on imports of silicon metal from China by claiming shipments came from South Africa. Under terms of plea, ICD will pay \$890,000 in restitution to Customs and \$110,000 in forfeiture to Treasury.

EXPORT ENFORCEMENT: Hexcel of Salt Lake City, Utah, will pay \$203,400 civil fine as part of settlement with BIS to resolve charges that it provided controlled technology to Taiwanese national without deemed export license and exported carbon fabric to several countries, including China, Singapore and Saudi Arabia, on 20 occasions without licenses. Company had made voluntary self-disclosure.

MORE EXPORT ENFORCEMENT: National Institute for Truth Verification of West Palm Beach, Fla., has agreed to pay \$77,000 civil penalty to settle BIS charges that it exported voice stress analysis equipment and software to several countries without approved license.

MANTEN SENTENCES: Three executives with Manten Electronics in Mount Laurel, N.J. were sentenced to jail terms ranging from 18 to 44 months plus home detention May 1 for unlicensed exports to China. A fourth defendant was sentenced to probation and home detention. Foursome had pleaded guilty to conspiracy to violate EAA and AECA in September (see **WTTL**, Sept. 19, 2005, page 4).

SHRIMP: Thailand and India have asked U.S. for WTO consultations on antidumping orders on shrimp.

USTR: Ex-Kellogg government affairs executive Tiffany Moore named assistant USTR for intergovernmental affairs and public liaison.

IRAN PLEA AGREEMENT: David S.C. Tatum, who worked with Robert Quinn at Clark Material Handling Corp. in Lexington, Ky., pleaded guilty May 4 in D.C. U.S. District Court to making false statements to BIS and ICE agents investigating illegal export of forklift truck parts to Iran. Quinn was convicted separately in December for his role in exports (see **WTTL**, Feb. 27, page 1). D.C. U.S. Attorney said Tatum had told agents he had instructed Quinn to stop exports, but he had not given such instructions.