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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 CHIEF McCORMICK URGES REVIEW OF EXPORT CONTROLS

Bureau of Industry and Security (BIS) Under Secretary David McCormick wants to see a fundamental examination of U.S. export controls but recognizes that such a review isn't likely in the currently polarized debate over trade controls. "The current system is not the right system," he told the BIS Sensors and Instrumentation Technical Advisory Committee April 25.

> In particular, he questioned continued reliance on the use of the International Emergency Economic Powers Act (IEEPA) to impose export controls while the Export Administration Act (EAA) remains lapsed. "I don't think that's sustainable in the long run," he said. "I think that's bad for national security. It's bad for business. It's bad for our credibility."

McCormick noted a Defense Science Board report in early 2005 which suggested that U.S. export controls were forcing the U.S. microprocessor industry offshore and hurting U.S. national security. While previous efforts to undertake a major review of exports controls have failed, McCormick said he hopes the report may lead to a "more fundamental discussion of what the export control system needs to look like in the future."

McCormick acknowledged that there is polarization over the future of export controls. "If we're not careful, ultimately in the spirit of protecting national security, we undermine it," he said. Noting the microprocessor report, McCormick said the old debate over whether "simply to tighten up or loosen up and get more or less national security just don't apply in that case." He said more technical advice is needed from industry. "I don't know what the answer is," he admitted. "The answer will require a lot of very sophisticated thinking and balancing and understanding the industry dynamics," he added.

BIS CHINA CATCH-ALL PLANS RAISING MORE CONCERNS FOR EXPORTERS

The exporting community is raising new alarms about the latest BIS plans for a new "catch-all" regulation for exports to China. The agency reportedly is circulating a draft of the proposal to its technical advisory committees, and one source said the new plans include "a good deal of unhappy surprises" for exporters. While the draft reportedly is near its final stage, sources say it is still undergoing changes, so it's not clear what the final version will look like. As expected, the latest plan calls for the publication of a separate rule for China covering both catch-all requirements to restrict exports for military end uses as well as general licensing policy for all exports to China. In addition to imposing new controls on exports to China, the draft would restrict reexports through third countries and require Beijing to issue end-use certificates for

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all licensed exports to China. A key new element would be the creation of a new License Exception for "certified end users" in China. Exports to certified end users would not need a license. To become a certified end user, a Chinese firm would have to demonstrate to BIS and other U.S. agencies that it complies with U.S. and Chinese export control rules; produces exclusively civilian products; and will allow U.S. representatives to conduct onsite inspections of its facilities and records. Even when a Chinese firm is granted certified end-user status, BIS would continue to require individual licenses for about 90 Export Control Classification Numbers (ECCNs), including composite materials, nuclear materials, lithography equipment, thermal imaging cameras, and aviation technology (see **WTTL**, March 20, page 1).

> Industry sources complain that the certified end-user proposal is too burdensome and won't attract many Chinese firms. They say it will be easier to get an individual license than to go through the certification process. They are also concerned that Chinese firms that do get certified will become a "White List" of good companies in China and U.S. export control agencies will impute a negative connotation to firms that choose not to become certified.

As previously reported, the catch-all provisions would impose new export licensing requirements on nearly four dozen ECCNs when the exporter knows or is informed that the item would be for military end use. The proposal would add controls on items that are now subject only to anti-terrorism (AT) controls and would mainly target those in the 900 series in each ECCN category. This would include technology for developing fiber materials, machine tools for making optical products, software for developing electronic equipment, computer manufacturing technology, encryption software, lasers, aviation communications and production technology.

Exporters also have raised concerns about the extension of the catch-all proposal to reexports of U.S. goods and components. They say this will require them to impose global controls to assure that even customers in third countries don't reexport U.S. items that might be used for military uses in China. Considering the triangular trade that has developed – under which U.S. components are shipped to third-countries for the production of subassemblies and components that are then shipped to China for final assembly – the reexport rule could become extremely difficult to enforce. Sources also complain that BIS apparently is not offering guidance on what due diligence is needed to comply with this requirement.

SOFTWOOD LUMBER DEAL PUTS FLOOR PRICE ON CANADIAN EXPORTS

Both the U.S. and Canada came a long way from the original positions they took in the four-year dispute over softwood lumber in the tentative deal they announced April 27. In the end, it apparently was the decision of new Canadian Prime Minister Stephen Harper to build closer ties with the U.S. and his threat to cut off aid for Canadian mills that led to the agreement.

> The deal, which is still subject to the drafting of a legal text and implementing legislation in Canada, would lead to the withdrawal of the current antidumping and countervailing duty cases against Canadian lumber, the end of all litigation before NAFTA and World Trade Organization (WTO) panels, and the termination of lawsuits in U.S. courts in exchange for the establishment of a trigger-price mechanism that would place a floor on the price of Canadian lumber imports. The deal will last for seven years with a two-year extension possible.

The U.S. Coalition for Fair Lumber Imports, which had dreamed of splitting up more than $5 billion in collected duties on Canadian lumber under the Bryd Amendment, had to accept a deal giving its members ten cents on the dollar or $500 million. It also dropped demands that Canada change its stumpage fee system for selling timber from government-owned lands.

Importers of Canadian lumber, who wanted 100% of their deposits back, will get at least $4 billion back. As an extra tweak, the U.S. and Canada agreed to give another $500 million to programs to enhance the North American lumber industries and to charities, including those helping the reconstruction efforts of victims of Hurricane Katrina. The trigger-price mechanism for lumber, which is reminiscent of the steel restraints of the early 1980s, would let Canadian provinces choose between two options if the price of Canadian lumber drops below $355 per thousand board feet random lengths. They could either impose an export tax that could increase from 5% to 15% as the price declined or impose a combination of export tax and quota. Although the current price of lumber is about $370 tbf, Canadian industry sources say the price is trending down and is expected to fall more as the U.S. housing market boom cools. They expect the trigger-price mechanism will kick in sometime during the life of the agreement. Canadian exporters now exempt from U.S. sanctions would be excluded from any export taxes.

> Although both sides agreed to end litigation, the U.S. April 27 filed a request for a NAFTA Extraordinary Challenge Committee to hear its appeal of a NAFTA panel's ruling against the countervailing duties imposed on Canadian imports. USTR Rob Portman said that appeal was filed to preserve U.S. legal rights and would be withdrawn once the bilateral deal is signed. Officials said it could take two to three months to complete all the legal and legislative steps needed to implement the agreement. All Canadian producers will have to agree to the deal, but Canadian sources expect they will.

WTO RESETS CLOCK FOR REACHING KEY DOHA DEADLINES

Little is expected from a quick trip to Geneva that USTR Rob Portman, Deputy USTR Susan Schwab and Agriculture Secretary Mike Johanns will make May 1-3. The purpose of the visit supposedly is to get the stalled Doha Round talks back on track after they missed their April 30 deadline for reaching key decisions on market-opening formulas for agriculture and non-agriculture market access (NAMA), but some sources say they suspect the real reason is to show that the Bush administration has not given up on the round even though President Bush has decided to move Portman to head the Office of Management and Budget.

> After WTO members officially conceded that they would miss the April 30 deadline, WTO Director General Pascal Lamy said the talks must aim to reach key agriculture and NAMA decisions by mid-June. Although he didn't mention a specific date, this schedule coincides with a six-week negotiating plan laid out by New Zealand Ambassador Crawford Falconer, who heads the agriculture negotiating committee (see **WTTL**, April 24, page 2).

Portman, Schwab and Johanns will meet with ministers from Australia, Japan, Brazil and possibly the European Union (EU). They also plan to meet with representatives of the G-20, G-90 and Cairns Group along with Lamy and the chairmen of various negotiating committees. "The effort will be to try to figure out ways to break the deadlock and come to a resolution," Portman told reporters. Sources in Geneva say no breakthrough is ready for an announcement.

The U.S. officials are going to Geneva even though Lamy tried to discourage such a visit. "I am not encouraging ministers to come to Geneva this week or next, and I am not planning to organize any specific gatherings at the ministerial level," he told WTO representatives. There will be a Trade Negotiations Committee meeting May 1 and "as always it is up to delegations to choose the level of their representation," he added. Portman won't be attending that session.

Meanwhile, Senate Finance Committee Chairman Charles Grassley (R-Iowa) opened the door April 24 to the possible linkage of an extension of the current Farm Bill with an extension of the president's fast-track negotiating authority, if the Doha Round talks appear unlikely to be completed in time to be voted on before the current fast-track authority expires July 1, 2007. Without such a tied package or the expectation that a good Doha deal is very close, there is general agreement that Congress won't renew fast track when it expires. Business representatives say they are concerned that some trading partners don't understand the congressional mood on fast-track and may be over confident that the negotiating authority will be extended if the talks aren't completed by the end of 2006. They also warn that the make up of Congress is likely to be significantly different next year. Even if Democrats don't win control of the House or Senate in November, the Republican margin is likely to be smaller and the White House will need more Democratic support for any trade deal or fast-track renewal, they point out.

BIS PLANS TO EASE CONTROLS ON THERMAL IMAGING CAMERAS

BIS April 20 sent a draft proposal for creating three tiers of controls on thermal imaging cameras for interagency review with the expectation that the plan would get approval, agency officials told the Sensors and Instrumentation Technical Advisory Committee (SITAC) April 25. The draft proposal would bring unilateral U.S. Regional Stability (RS) controls into closer alignment with controls imposed by European Union (EU) countries.

> BIS Under Secretary David McCormick attended a portion of the SITAC meeting and told members he supports the draft changes. "We wouldn't have gone forward as a team, if we didn't think this was the right policy," he said. McCormack said the goal of the coming rule is to reach control "performance levels that are more in line with what we see globally."

Under the draft change, BIS would amend controls on certain night vision cameras to create three tiers. In the first tier, thermal imaging cameras with a focal plan array of less than 21,000 pixels operating at 60 hertz would no longer be subject to RS 1 or RS 2 controls. In the second tier, cameras operating with less than 111,000 pixels operating at 60 hertz would be subject to RS 2 controls. There would be no change in licensing requirements for focal plan arrays at or above 111,000 pixels. In addition, for the purpose of thermal imaging cameras only, BIS will remove RS 2 controls on Austria, Ireland, Sweden and Switzerland.

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<u>SPECIAL 301</u>: USTR April 28 issued latest report on foreign IPR protection. Agency retained 13 countries on Priority Watch List and 34 on Watch List. It elevated Belize to Priority Watch List but moved Kuwait and Pakistan down from Priority Watch List to Watch List based on progress they have made. It dropped Azerbaijan, Kazakhstan, Slovak Republic and Uruguay from Watch List.

<u>EXPORT ENFORCEMENT</u>: BIS imposed $255,750 civil fine on <u>Toxin Technology, Inc</u>. of Sarasota, Fla., as part of settlement for firm's alleged 92 exports of various enterotoxins to about dozen different countries without required licenses and for not maintaining required records. Because company made voluntary self-disclosure, BIS said it could pay $30,000 in four monthly payments, with rest of fine suspended until April 2007, after which penalty will be waived if firm stays in compliance.

<u>MISCELLANEOUS TARIFFS</u>: Finance Committee Chairman Charles Grassley (R-Iowa) and Sen Max Baucus (D-Mont.) April 21 called for submission of Senate tariff requests (see **WTTL**, March 20, page 3).

<u>COMPUTERS</u>: Industry sources complain that change in computer control metric to Weighted Teraflops still leaves controls for microprocessors in old CTP terms. U.S. is seeking Wassenaar agreement at next plenary meeting in December to change controls on chips as well, but earliest implementation of change is probably a year away, sources say (see **WTTL,** April 24, page 4).

<u>IRAN</u>: House easily passed bill (H.R. 282) to impose tougher sanction on Iran by 397-21 vote April 26. Industry representatives hope they can block bill in Senate and get simple extension of current Iran-Libya Sanctions Act (see **WTTL**, March 20, page 4),

<u>SUDAN</u>: President Bush April 27 issued Executive Order imposing targeted sanctions on certain officials in Sudan for their role in violance in Darfur.

<u>CHAD</u>: Although rebel armies crisscross borders of Sudan and Chad at will, Chad has successful established textile and apparel visa program to prevent illegal transshipments and is now eligible for AGOA benefits, USTR's office announced in April 26 Federal Register.

<u>CIT</u>: Leo Gordon was sworn in April 28 as newest judge on Court of International Trade.

<u>EAR</u>: BIS published revised Chemical Weapons Convention regulations in Federal Register April 27.