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BIS MAY ISSUE SEPARATE CATCH-ALL RULES FOR CHINA

The Bureau of Industry and Security (BIS) is considering proposing two separate rules to implement a Wassenaar Arrangement agreement to impose “catch-all” controls on exports to military end uses in countries subject to arms embargoes – one for China and one for all other targeted countries, BIS regulations writer Bill Arvin confirmed at a Feb. 9 meeting of the agency’s Transportation Technical Advisory Committee. While Arvin stressed that no decision has been made, other sources have indicated that a separate rule is a strong possibility because the impact of the rule on trade with China has been the exporting community’s prime concern.

> Publication of the proposals reportedly has been delayed so export controls can be discussed at the annual U.S.-China Joint Commission on Commerce and Trade (JCCT) this spring (see **WTTL,** Feb. 6, page 1). That means a catch-all proposal may not be seen until this summer. If BIS goes ahead with the two-regulation approach, both rules would be proposed at the same time, sources say.

BIS officials recognize that China represents 75-80% of the trade that would be covered by a catch-all rule. The exporting community has raised concerns that any new restrictions on China would represent a unilateral control, because not all Wassenaar members consider China an arms-embargoed country that would be covered by the 2003 Statement of Understanding.

CHANGES IN EU’S GMO APPROVAL PROCESS STILL YEARS AWAY

Don’t start baking those GMO pies to send to Europe yet. An interim World Trade Organization (WTO) panel report Feb. 7, which gave the U.S. a partial victory in its fight against the European Union’s (EU) process for approving genetically modified organisms (GMOs), probably won’t be implemented for another two or three years. Even after that time, public opinion in the EU against GMOs may force Europe to accept retaliation rather than change its process.

The long road ahead for the GMO case is both technical and legal. Because the interim report was 1,050 pages long, it will take months to translate it into French and Spanish before it is sent in final form to the parties and brought to the WTO Dispute-Settlement Body for approval. Following that, both the U.S. and EU are expected to appeal portions of the ruling to the WTO Appellate Body. Further panel reviews are likely to determine whether the EU has come into conformity with the ruling or the amount of retaliation the U.S. in entitled to. In the end, retaliation may be the only resort because current EU policies on GMOs have been driven by European public opinion which is concerned about these products and the reliability of the food

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approval and regulatory process in the EU. "Public opinion isn't the standard," said U.S. Trade Representative (USTR) Rob Portman. "The standard is a rules-based system under the WTO." If the EU doesn't comply, there are remedies under the WTO, he said. "You look at the beef hormone case. It certainly isn't satisfactory, because we haven't seen the results yet, but the remedies will be available to us who brought the case," Portman said, referring to current U.S. retaliation against the EU for restricting imports of hormone-treated U.S. beef.

> The panel offered a mixed decision on the complaints that the U.S., Canada and Argentina brought against the EU and six member states that have blocked the approval of over two dozen GMO food products. "The European Communities have acted inconsistently with its obligations under Annex C(1)(a) of the SPS [Sanitary and Phytosanitary] Agreement and, consequently, with its obligations under Article 8 of the SPS Agreement by a applying a general de facto moratorium on approvals between June 1999 and August 2003," the interim report states.

The panel, however, in its confidential report said it was making no recommendations regarding this practice because it "found that the approval by the European Communities of a relevant biotech product subsequent to the establishment of this panel brought to an end the general moratorium on approvals which the panel found to have existed at the time of its establishment." EU sources have stressed the fact that the EU moratorium is no longer in place.

The panel rejected six other U.S. complaints against the EU. It agreed, however, that safeguard measures that have blocked the implementation of GMO approvals in Austria, France, Germany, Italy, Greece and Luxembourg did violated the SPS Agreement. The EU Commission has faced problems itself trying to get these countries to drop their restrictions and to accept the EU review process, so getting them to comply with the WTO ruling seems problematic.

BIS DELAYS PLANS FOR MANDATORY ELECTRONIC LICENSE FILING

Continuing problems with the development of a totally electronic system for filing export license applications have prompted BIS to delay plans for requiring all applications to be submitted electronically. BIS staffers say mandatory electronic filing won't be required until the very end of the implementation of the Simplified Network Application Process (SNAP). "We want to go to full electronic but only at the end of the process when the whole system is in place and working," said Bill Arvin of the BIS regulations writing staff.

> Instead on a single regulation mandating electronic filing by a specific date, BIS intends to issue a series of interim measures to improve the parts of the system already in place. Some of the early changes will simplify the process for assigning and using personal identification numbers (PINs).

The main problem haunting the system is finding a way to accept attachments and supplemental information in electronic form. BISers haven't overcome concerns about attachments that might contain viruses or other embedded software that might harm the system or breach government firewalls. Most export applications are now filed electronically, but exporters still must submit physical copies of attachments, specifications, blueprints and manuals.

U.S. EXPORTS HIT RECORD IN 2005 LED BY AIRCRAFT, AUTOS, HEALTHCARE

When you get passed the headlines about the record U.S. trade deficit for 2005, the export numbers for many industries look very good and many scored record sales abroad. Overall, U.S. merchandise exports increased 10.5% in 2005 from 2004 to a record $892.5 billion, not too far behind the growth rate for imports, which rose 13.7% to a record $1.67 trillion. Services exports were up 10% to $378.6 billion, as services imports increased 9% to $322.2 billion. Exports for aircraft and aircraft parts were up 29.4%, auto and auto parts exports grew 9.3%. Medical device exports jumped 14% and plastic material exports also rose 14%. Excavation equipment exports surged 31%. China trade obviously is getting a lot of attention, but the 20% increase in U.S. exports to China made it the hottest growth market for U.S. goods. The growth rate for China was just slightly better than the rate for exports to South/ Central America (see table at left).

Preliminary 2005 v. 2004 U.S. Merchandise Trade Figures
(in billions)

	2005 Exports	2004 Exports	% Change	2005 Imports	2004 Imports	% Change
Total	$892.5	$807.5	10.5%	$1,675	$1,473	13.7%
BY COUNTRY/REGION						
Canada	211.3	189.9	11.3	287.9	256.6	12.2
Mexico	120.0	110.8	8.3	170.2	155.9	9.1
European Union (25)	186.3	176.6	5.5	309.8	282.0	9.8
Germany	34.1	31.4	8.6	84.8	77.3	9.7
France	22.4	21.3	5.2	33.8	31.6	7.0
United Kingdom	38.6	36.0	7.2	51.1	46.3	10.4
Japan	55.4	54.2	2.2	138.1	129.8	6.4
China	41.8	34.7	20.0	243.5	196.7	23.8
NICs: HK, Singapore, Taiwan, Korea	86.7	83.6	3.7	102.6	105.5	-2.7
South/Central America	72.2	61.5	17.4	122.8	98.6	24.5
BY SECTOR						
Agriculture	58.8	56.6	3.9	68.1	62.1	9.7
Aircraft, parts, engines	64.7	50.0	29.4	26.0	24.3	7.0
Autos, parts, engines	97.6	89.3	9.3	240.0	228.2	5.2
Clothing	4.1	4.4	- 6.8	76.4	72.3	5.7
Chemicals-Organic	26.4	25.9	2.0	38.1	35.4	7.6
Chemicals-Inorganic	7.6	6.2	22.6	10.2	8.4	21.4
Crude Oil	0.6	0.3	100.0	182.8	136.0	34.4
Iron & Steel	10.4	8.0	30.0	24.6	22.4	9.8
Metalworking Machines	7.7	7.0	10.0	8.3	7.1	16.9
Pharmaceuticals	27.6	25.4	8.7	55.5	52.4	5.9
Semiconductors	47.2	48.1	- 2.0	25.8	26.4	- 2.3
Telecommunications	25.6	24.5	4.5	37.1	29.4	26.2
Wood Products	1.8	1.8	--	12.8	12.3	4.1

Concern that the growing U.S. trade deficit isn't sustainable isn't shared by all economists. In a recent paper published by the Institute for International Economics, economist Richard Cooper took a different view.

"The startingly large U.S. current account deficit is not only sustainable but a natural feature of today's highly globalized economy," he wrote. Moreover, "a re-valuation of the Chinese currency, far from alleviat-ing global imbalances, would run the risk of precipitating a financial crisis," he added.

The Feb. 10 release of the trade figures came a week after the Labor Department announced a decline in the U.S. unemployment rate to 4.7%.

In January, the Federal Reserve Board published figures showing industrial production increasing 2.8% in 2005, while capacity utilization, which shows how much slack there is in the economy to replace imports, at 80.7% in December. While that is below its 1994-1995 peak of 85%, it's only slightly below the 81% average from 1972 to 2004.

STATE SLOWING AIRCRAFT EXPORT LICENSE APPROVALS FOR LIBYA

State Department lawyers have delayed for months the approval of as many as six export licenses for commercial aircraft sales to Libya while they review the applications to determine if the licenses would trigger requirements to notify committees in Congress. So far, they have determined that one aircraft export didn't require such a notification, but they briefed congressional staffers anyway as a courtesy. State's lawyers say they are implementing the requirements of section 6(j) of the Export Administration Act (EAA), which requires the secretaries of Commerce and State to notify committees with jurisdiction over EAA 30 days before approving a license that would make a significant contribution to the military potential of any country on the list of state sponsors of terrorism. Libya is still on the list.

> The aircraft license are awaiting an initiate determination on whether the planes would contribute to Libya's military capabilities. BIS staffers say "certain offices at State are dragging their feet" on the review. Questions about the exports have arisen because Libya in the past has used commercial aircraft to ferry troops. The delay in the review of the Libyan licenses also may be tied to a broader State effort to expand its commodity jurisdiction for civil aircraft.

So far, since trade with Tripoli reopened in 2004, BIS has approved 334 license for Libya with a value of $1.3 billion. Of these cases, 38 licenses worth $560 million were for aviation products, including one aircraft and parts for U.S. aircraft exported to Libya before sanctions were imposed in the 1980s. BISers also report that the creation in November of License Exception USPL, which allows exports of certain items to U.S. persons and companies in Libya without licenses, has had a limited impact (see **WTTL**, Nov. 21, page 3). They note that Census didn't update the Automated Export System (AES) to accept the USPL exception until the end of the year. In addition, U.S. firms complain the rule hasn't helped ease restrictions on exports to foreign customers, such as foreign oil companies, or Libyan distributors and contractors.

AVIATION INDUSTRY CONCERNED ABOUT DEEMED EXPORTS FOR CANADIANS

While U.S. aviation manufacturers appear reconciled to the expansion of Missile Technology (MT) controls to exports to Canada, they are concerned that the application of "deemed export" licensing requirements to Canadians working for them in the U.S. could create a surge in export licenses and a sustained burden in the future. BIS officials say they recognize that imposing MT controls on Canada could increase their deemed export case load by 500-600 licenses annually compared to the 750 total handled in the fiscal year that ended Sept. 30, 2005.

> The long-promised rules, which continue to be delayed, could required deemed exports licenses for hundreds of Canadians who work full time in the U.S., those who travel to the U.S. temporarily from Canada, and employees of contractors who come to the U.S. for specific projects, industry representatives warned at the Feb. 9 meeting of the BIS Transportation Technical Advisory Committee

BIS has been warning industry about the end of Canada's current exemption from export licensing requirements for MT items for nearly three years based on an interpretation of legislation that requires export licenses to all destinations for items subject Missile Technology Control Regime (MTCR) controls. Agency officials have said they want to implement special procedures for expediting the interagency review of such licenses (see **WTTL**, Sept. 12, page 1). So far, however, they haven't been able to get a commitment from other agencies to accept specific deadlines for reviewing cases for Canada.

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<u>BIS</u>: Agency expects to conduct 46% fewer investigation actions in fiscal year 2006, which started Oct. 1, 2005, and in fiscal 2007, Bush administration revealed in 2007 budget it announced Feb. 6. BIS conducted 583 investigations in 2005, but plans to conduct just 315 this year and next, budget says. BIS also plans to cut number of assistance visits to help firms prepare for Chemical Weapons Convention inspections. Budget expects BIS to spend 6.5% less next year, with total budget allocation of $87 million v. $93 million in 2006.

<u>EXPORT ENFORCEMENT</u>: Naji Antoine Abi Khalil was sentenced separately Feb. 2 to 60 months and 57 months in prison, to be served concurrently, for illegal exports of night vision equipment to Hizballah in Lebanon and money laundering (see **WTTL**, Aug. 19, page 4).

<u>MORE EXPORT ENFORCEMENT</u>: Miami federal grand jury Feb. 9 returned nine-count indictment of Ko-Suen Moo of Taiwan and Maurice Serge Voros of France for allegedly illegal arms brokering and attempting to export jet and helicopter engines and cruise missiles to China.