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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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WASSENAAR SET TO EASE EXPORT CONTROLS ON COMPUTER TECHNOLOGY

An experts' group of Wassenaar Arrangement representatives has recommended that the regime raise the licensing threshold for actual computer technology and source code exports to match the changes the Bureau of Industry and Security (BIS) implemented for deemed exports on Nov. 5 (see **WTTL**, Nov. 8, page 1). "We fully expect [the recommendation] will be confirmed at the December plenary meeting, Dec. 6-7, and we are already working on the rule that will implement those changes," BIS Assistant Secretary for Export Administration Peter Lichtenbaum told the agency's Information Systems Technical Advisory Committee Nov. 17.

"We hope very soon after the December plenary that we'll address actual exports as well," he pledged. "We'll, therefore, avoid any discrepancy between deemed and actual exports and have a unified system," he said.

When BIS revises its computer rules, it will drop the requirement for Foreign National Reviews (FNRs) for deemed exports for nationals from D:1 countries. FNRs will still be required for deemed exports under License Exception CIV for sharing microprocessor technology with D:1 nationals, because the experts' group was unable to reach agreement on revising the regime's controls on microprocessor technology. Those multilateral controls will remain unchanged.

IMPORT REQUIREMENTS FOR APPAREL WILL REMAIN IN PLACE

The end of the global system of textile and apparel quotas Jan. 1, 2005, won't eliminate Customs regulations that impose a wide array of requirements, including for filing of Textile Declarations, on importers. Customs must wait until it is directed by the Committee for the Implementation of Textile Agreements (CITA) before it can change its Section 12.130 rules, said Janet Labuda, director of the Customs Textile Enforcement and Operations Division.

"Those regulations are very quickly becoming passe," Labuda told the U.S. Apparel and Textile Imports Association Nov. 16. Customs would like to revise the rules before Jan. 1, but "our counsel has informed me that Customs cannot unilaterally change those regulations. CITA must direct us to make changes to those regulations," she explained. Continuation of these rules could become the target of a World Trade Organization dispute as a non-tariff barrier to trade.

Although textiles will remain designated a Priority Trade Issue, importers will see a change in enforcement focus after Jan. 1, Labuda advised. "I do envision more post-entry enforcement," she said. "I do envision that you will see a dramatic decrease in detentions." With quotas

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no longer in place, import issues involving valuation and classification can be handled after entry, she noted. There will also be increased attention to enforcement of rules under various free trade agreements (FTAs) and the enforcement of safeguard actions against Chinese imports and remaining quotas on Vietnamese goods, she reported.

Customs plans to replace its current electronic visa filing system with a new system to monitor FTA imports and imports under other trade preference programs. The new system is called the Electronic Certification of Eligibility for FTA/Other Legislative Preferences (eCert).

With the termination of the Multilateral Fiber Arrangement, 46 bilateral agreements the U.S. has with exporting countries also will expire. These memoranda of understanding have allowed Customs agents to visit factories in those nations to verify quota compliance. The U.S. is in negotiations with several Asian countries in an effort to reach new MOUs. Without those agreements, Customs is likely to act more unilaterally. The U.S. will ask China to continue to issue visas for its textile and apparel products, "but we don't expect they will," Labuda said.

GM TO PAY \$15 MILLION, GD \$5 MILLION FOR FAILING TO CONTROL DATA

To settle 248 charges of violating the Arms Export Control Act (AECA), General Motors has reached a consent agreement with State and the Immigration and Customs Enforcement Bureau (ICE) under which it will pay a \$10 million civil fine and spend another \$5 million over five years to improve its export compliance system. General Dynamics, which was part of the agreement, will spend \$5 million over five years to implementing a remedial compliance plan.

The charges stem from the release of controlled military technology to foreign nationals and dual-citizens who were not covered by a Technical Assistance Agreement (TAA). GM and GD were partners in a joint venture, the GMGD Defense Group, which had contracts to build several weapons systems

The violations were discovered in 2002 when GD conducted a due diligence audit of certain GM Defense operations in Canada, Australia and Switzerland that it was planning to buy. The audit revealed the disclosure of the controlled technical information to foreign workers at these plants. GM then began its own internal audits which found more extensive violations, including a lack of control over access to the firm's internal databases of defense specifications.

"GM's failure and negligence to address obvious ITAR violations at [its operations] raises serious questions as to the reliability of GM to comply with Regulations and the Act," State said in its charging letter. "Time and again, ITAR-related matters (e.g., unauthorized access to technical data by foreign nationals to include foreign nationals of proscribed countries) were raised to management level officials, including legal and compliance officials, and these matters were not resolved," the department charged. [**Editor's Note:** Copy of charging letter to GM and GD and consent agreement will be sent free to WTTL subscribers on request.]

ITT FINED \$8 MILLION ON CHARGES THAT IT VIOLATED PROVISOS

ITT Industries will spend \$8 million on civil fines and export compliance enhancements to settle State Department charges that it violated the provisos imposed on licenses it had for the export of military night vision devices, image intensifier tubes, as well as for technology exports and defense services. The 95 charges that State made against the firm were based primarily on a voluntary self-disclosure ITT made to State in May 2000.

ITT agreed to pay \$1 million toward the fine ten days after the agreement was signed Nov. 1 and \$1 million each year for the next two years. It will be allowed to apply the remaining \$5 million on remedial measures over five year to improve its compliance system according to a compliance program that was part of the settlement. Over nearly a four-year period, ITT

submitted several reports to State's Directorate for Defense Trade Controls (DDTC) identifying export violations the firm uncovered during its audits. In addition to the night vision goggles and image intensifier tubes, the company found violations of technology controls.

In January 2004, it reported the results of an audit of a Technical Assistance Agreement (TAA) that its ITT Aerospace Communications Division (ITT/ACD) had obtained for its Cross Track Infrared Sounder Program, on which it was working with two Canadian subcontractors, ABB Bomem and Telops. "ITT's disclosure and review of other information provide to DTCC indicates that ITT/ADC disclosed technical data to Bomem and Telops that was not authorized by DTCC prior to export," said the charging letter said.

"The Department recognizes that the respondent has disclosed voluntarily all of the information concerning the facts and circumstances of the alleged violation to the Department and has fully cooperated with the Department," State said. [**Editor's Note:** Copies of charging letter, consent agreement, order and annex will be sent to WTTL subscribers on request.]

WILBUR ROSS SWITCHES SIDES ON TEXTILE INDUSTRY PROTECTION

Industrial investor Wilbur Ross, who was the major force behind the founding of the American Manufacturing Trade Action Coalition (AMTAC), has apparently broken with his former colleagues in the textile and steel industries and gone international. While AMTAC has been among the leading groups opposed to the U.S.-Central American Free Trade Agreement (CAFTA), Ross says the trade pact needs to be changed to bring it closer to NAFTA.

"Please lobby for some form of CAFTA, hopefully one that is a bit more NAFTA friendly," Ross told the U.S. Apparel and Importers Trade Association (USA-ITA) Nov. 17. Ross apparently had a change of heart on CAFTA since his newly created textile manufacturing conglomerate, which bought the bankrupt operations of Burlington Mills and Cone Mills, now has production facilities in Mexico. Those plants would benefit from more liberal cumulation rules that would allow increased use of Mexican fabrics in Central American garments.

The firm also has entered joint ventures in Turkey and India and plans to open a \$30 million plant in Guatemala, if CAFTA goes through. In the next few weeks, it will announce a "very substantial denim venture in China," Ross announced. Burlington also has operations in Hong Kong with a branch in Shanghai. "We have had to revise our ideas of geography," Ross said. "I was always taught that the world was round, but many textile people seem to believe that it is flat and you'll fall off of it, if you go outside of the United States," he added.

STATE HAS REACHED ACCORD WITH LIBYA ON ISRAEL BOYCOTT REQUESTS

State Department officials say they have worked out an arrangement with Libya to stop Libyan customers from asking U.S. firms to respond to questions about their dealings with Israel. Libya's continued support for the Arab League boycott of Israel produced a surge in requests for boycott information after the U.S. lifted trade sanction on Tripoli in April and September. Despite this agreement, questionnaires "still keep popping up," a State official said. "But I think we have achieved a solution," she added.

She said she sees "significant possibilities" for American business in Libya, but she cautioned against "exaggerated expectations" of sales and investment opportunities. "The bottom line is that there is significant reason to engage in Libya, but it's going to be a tough slog," she told a State advisory group Nov. 15.

As a result of the remaining frictions, the U.S. and Libya have imposed limitations on the granting of visas to business people visiting each country. If American firms want to bring

Libyans to the U.S. for sales meetings or product demonstrations, they should plan months ahead, the official advised. Meanwhile, U.S. industry wants Washington to lift the arms embargo on Libya, which the European Union has already done. Industry representatives note that separate from any weapons, certain industrial equipment is subject to Munitions List (ML) controls. The continued embargo will prevent the export of some commercial telecommunications products, satellite ground stations, night vision equipment and radar systems for air traffic control, one industry representative pointed out.

INDUSTRY OBJECTS TO BIS PLANS FOR INTRA-COMPANY LICENSES

Even before BIS has formally proposed creation of a Special Intra-Company Technology Transfer License (SIL), industry representatives have called the plan unworkable and unlikely to be used by any companies. BIS has informally circulated a draft plan for the SIL to several exporters and trade associations before it publishes a proposal. Industry originally called for something like an SIL to allow greater flexibility in the sharing of research and development work within an individual company and among employees from many nations.

Industry objections have been raised about the possible limitations on the level of technology that might be covered by an SIL and the continued need to get clearance for specific foreign nationals whose countries of origin are subject to controls. "As presently proposed, it can't work," David Lindsey of Sun Microsystems told the BIS Information Systems Technical Advisory Committee Nov. 17.

As an example, he cited the proposed CTP limits that might be imposed on an SIL and noted that firms don't know the final CTP of a computer being designed for market five years from now. In addition, the possibility of having separate restrictions on nationals from such countries as China, Russia and India will make the license too complicated. Lindsey's concerns were shared by other members of the TAC. "I've not heard of anyone who is expecting to use it," observed TAC Chairman Henry Brandt of IBM.

* * * BRIEFS * * *

BIS: Julie Salcido, special agent in charge of San Jose field office, will serve as acting BIS assistant secretary for export enforcement to fill vacancy due to Julie Myers' departure (see WTTL, Nov. 15, p. 1).

IVORY COAST: State has stopped approving ML export licenses effective Nov. 16 in compliance with UN resolution imposing arms embargo on strife-torn African nation.

WTO: There is speculation that EU Trade Commissioner Pascal Lamy, whose last day in EU post was Nov. 19, may become candidate for WTO Director General in 2005 when DG Supachai's term ends. Sources say Lamy, who will become head of Fondation Notre Europe Dec. 1, is weighing family obligations.

DOMINICAN REPUBLIC: USTR Robert Zoellick Nov. 16 informed Senate Finance Committee Chairman Charles Grassley (R-Iowa) that he is sending Central American countries draft CAFTA that would exclude Dominican Republic because of DR's implementation of tax on non-sugar containing beverages. Letter to Grassley also said Zoellick was asking ITC for modified report on impact of DR-CAFTA without DR.

SOFTWOOD LUMBER: Sen. Max Baucus (D-Mont.) introduced bill (S. 2992) Nov. 17 which would order Customs to liquidate antidumping and countervailing duties on softwood lumber from Canada to U.S. industry under Byrd Amendment without waiting for conclusion of NAFTA and WTO disputes.

TEXTILES: WTO members were unable to reach agreement during informal talks week of Nov. 15 on proposals to study impact of end of MFA Jan.1 or on creating WTO work program on post-MFA world. Committee on Trade in Goods will meet week of Nov. 22 with no deal expected.

OMAN-UAE: USTR Robert Zoellick notified Congress Nov. 15 of U.S. intent to begin FTA talks with Oman and United Arab Emirates. Talks will begin early in 2005.

MISCELLANEOUS TARIFFS BILL: As expected, Senate Nov. 19 passed bill, which includes NTR for Laos and repeal of antidumping provisions of 1916 Revenue Act.