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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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AIDING AND ABETTING 'DEEMED EXPORT' VIOLATION DRAWS \$55,000 FINE

Persons or firms that assist foreign nationals to be in a position to obtain unlicensed controlled technology can be in violation of "deemed export" regulations even if they don't directly release the technology, a Bureau of Industry and Security (BIS) enforcement action shows. Inviting foreigners to the U.S., helping them arrange visas, or providing room and board could "aid and abet" the violation of the regulations, BIS claimed in a decision by Under Secretary Kenneth Juster to impose a \$55,000 civil fine and 20-year denial order on Jason Liao.

Based on the findings and recommendations of an administrative law judge, Juster imposed the sanctions on Liao for five violations of the Export Administration Regulations (EAR). Four of the charges related to the export of detector log video amplifiers (DLVAs) to China without licenses. The fifth was for aiding and abetting in release of U.S. origin technology. BIS noted, however, that it had not charged Liao with improperly transferring the technology.

The case against Liao, who is a U.S. citizen, was the third leg of the criminal and administrative prosecution of Suntek Microwave of Newark, Calif., for the export of the DLVAs to China and the training of Chinese nationals in the production of the equipment (see **WTTL**, May 10, page 4). In October 2000, the U.S. Attorney in San Jose, Calif., filed felony charges against Liao at the same time charges were filed against Suntek and its president, Charlie Kuan. Liao then fled the U.S. and his location is unknown, BIS reported. The agency didn't issue its charging letter against Liao until December 2001.

According to the ALJ's ruling published in the May 28 Federal Register, Liao and his company, JFD International, invited three Chinese engineers to the U.S. to work with Suntek. "At the time Liao issued the invitation letter, he knew or had reason to know that Suntek would release United States-origin technology to them," the ALJ found. JDL organized their travel, helped them obtain visas and paid their expenses for the three months they were in the U.S.

ITC ASKS NAFTA PANEL TO RECONSIDER LUMBER REMAND

The International Trade Commission (ITC) May 27 lashed out at the NAFTA binational panel which disagreed with its threat-of-injury ruling in the Canadian softwood lumber cases, claiming the panel "manifestly and repeatedly overstepped its authority." Forced to respond to a second remand, the ITC asked the panel to reconsider its decision or, in the alternative, to allow the commission to reopen the record to obtain more evidence. The panel had rejected an earlier ITC plea for an extension of time until July to respond to its last remand order and to

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reopen the record. "The panel violated U.S. law and basic tenets of fairness in setting the procedural deadlines in this proceeding," the commission complained. It also asked the panel to reconsider its request for an extension of time to respond (see **WTTL**, May 24, page 2).

In its 34-page replay to the remand, ITC attempted to explain again how the evidence in the record supported its finding. It restated its analysis of the volume of imports, the likelihood of increased shipments from Canada, excess production capacity in Canada and the impact of imports on prices. "The panel disregards the interrelatedness between the factors, the record of evidence and, most importantly that the likely effects being assessed are interrelated and should not be considered and analyzed as isolated fragments," the commission argued.

The commission pointed to U.S. court rulings which give the ITC the discretion to make a reasonable interpretation of this evidence. "Unfortunately, the panel has paid lip-service to the standards described above; it has on repeated instances....done exactly what it is not permitted to do in clear violation of U.S. law and the NAFTA," it said. "The commission simply cannot allow its clearly defined authority under U.S. law to be overridden by the panel," ITC declared.

DEMOCRATS BET ON KERRY VICTORY TO HELP BLOCK CAFTA DEAL

Democrats in Congress are pinning their hopes on Sen. John Kerry (D-Mass.) winning the presidential race in November to reinforce opposition to approval of the U.S.-Central American Free Trade Agreement (CAFTA). Ahead of the formal signing of the CAFTA in Washington May 28, Democratic members of the House Ways and Means Committee cited prospects for a Kerry victory and his promise to renegotiate the deal as reasons to block action this year.

CAFTA opponents say the White House can't find the 20-30 Democratic votes it relied on to provide the margin of victory for previous trade legislation. In addition, they say Republican support for trade isn't as solid as in the past, so the administration would actually need more Democrats to pass a trade accord.

While Democrats are solidly opposed to CAFTA, U.S Trade Representative (USTR) Robert Zoellick admits some Republican don't want to vote on CAFTA before the election. "We've got people who are worried to support trade, particularly in an election year, and so we lose some of our party, although we'll certainly get the majority of support there by far," he said.

Hence, the Bush administration has all but conceded that CAFTA won't get voted on before November and the pact's only chance for action this year would come if Congress returned for a lame-duck session after the election. Zoellick told reporters May 27 that he still hopes Congress will act on the Australia and Morocco FTAs before it adjourns.

But in addition to the political opposition, Zoellick cited the legal and legislative procedures that will delay congressional action on the CAFTA. First of all, CAFTA will have to wait until the signing of the FTA with the Dominican Republic because the administration wants Congress to act on both FTAs as one package. Then, the administration and Congress have to go through the process of a non-mark-up mark up of proposed implementing legislation. "Frankly, one is running out of time for that, and that's why we're trying to press Australia through that window given the widespread support for it and I hope Morocco too," Zoellick said.

Zoellick said he has talked to Ways and Means Committee Chairman Bill Thomas (R-Calif.) and Senate Finance Chairman Chuck Grassley (R-Iowa) about combining several FTAs together. "There may be some possibility that some of these become grouped together too," he said.

Even before the CAFTA signing, Kerry had told a Teamster convention that he would renegotiate the deal if he were elected president to address what he claims are shortcomings in the labor and environment provisions of the accord. After the signing, he issued a statement saying he would oppose the agreement as currently written. "Unfortunately, the free trade

agreement that was signed today marks a disappointing and unnecessary step backwards in our nation's effort to ensure that opening markets results in higher living standards on all sides and not a race to the bottom on worker rights and environmental protection," he declared.

U.S., BAHRAIN REACH QUICK DEAL ON FREE TRADE AGREEMENT

Trade partners who are negotiating free trade agreements with the U.S. may be reading the current election polls that raise uncertainties about the outcome of the presidential elections. That may be one reason Bahrain completed its FTA talks with the U.S. May 27, nearly six months ahead of schedule, and why other FTA talks may speed up in the coming months.

The U.S.-Bahrain accord reflects the island nation's unique trade and investment position. It has virtually no domestic agriculture and is striving to become a major services center in the Middle East. Compared to the FTA with Morocco, which had many sensitive agriculture sectors but few restricted service sectors, the Bahraini pact will give immediate duty-free access to 98% of its agriculture tariff lines and to 100% of goods already being traded between the two countries.

The U.S. will maintain some restrictions on products, particularly dairy and sugar, not currently traded to avoid setting a precedent for other trade talks. These restrictions will be dropped in 10 years. Bahraini textiles and apparel meeting "yarn-forward" rules of origin will become tariff-free immediately, and the U.S. will provide a duty-free tariff preference level (TPL) for up to 65% of textiles and apparel that don't meet those rules. Bahrain will keep restrictions on alcohol and tobacco for religious reasons. With a population of 670,000, of whom only 63% are Bahraini citizens, Bahrain will open most of its service sectors to U.S. providers.

BAHRAIN NOT OPPOSED TO U.S. FIRMS DOING BUSINESS WITH ISRAEL

Although the new U.S.-Bahrain Free Trade Agreement (FTA) announced May 27 doesn't include specific provisions dealing with Bahrain's enforcement of the Arab League boycott of Israel, Bahraini Finance Minister Abdulla Hassan Saif said his country doesn't object to U.S. companies doing business with Israel. "The boycott process has been receding," Saif told a May 27 press conference following the conclusion of FTA talks. "Bahrain does not object to have a business relationship with United States companies and corporations that [have] any relationship with Israel or any other country," he stated (see story above).

The number of Bahraini companies seeking boycott information from U.S. exporters and banks has dropped sharply. In the fiscal year that ended Sept. 30, 2003, only 38 requests from Bahraini firms were reported to BIS, a decline of 42% from the year before, the agency reported (see **WTTL**, March 22, page 3).

USTR Robert Zoellick said the boycott of Israel was a subject he raised during talks with the Persian Gulf country. "When I visited Bahrain, that was a point that I raised and discussed with the minister and other officials so there would be no application of any boycott against any of the U.S. firms," he said. "Of course, since Bahrain and Israel are also both members of the WTO, there's also restrictions on any boycott in a global sense," he added.

FIRMS STILL BATTLE OVER SURROGATE FOR CHINA IN FURNITURE CASE

Chinese makers of wooden bedroom furniture continue to protest the International Trade Administration's (ITA) proposed choice of India as the surrogate country it will use in the antidumping case against imports of these Chinese products. During a meeting with ITA staffers May 19, attorneys representing Chinese respondents provided more information which they claimed showed Indonesia to be the better surrogate, according to an ITA memo of the meeting. Attorneys from Steptoe & Johnson and Wilmer, Cutler & Pickering presented the ITA

staff with new data showing that Indonesia is a slightly larger producer of wooden bedroom furniture than India, but a much larger exporter of furniture to the U.S. Indian furniture production in 2002 was \$1.68 billion v. \$1.93 billion in Indonesia in 2000, according to their data. In 2002, however, India exported only \$2.1 million worth of bedroom furniture to the U.S. compared to Indonesia, which exported \$124.8 million worth in 2000.

“No major U.S. producer, importer or retailer relies on imports from India for any bedroom suite,” stated a handout presented by the lawyers. “In short, wood furniture production in India is largely the business of craftsmen,” they argued.

The continuing debate over surrogates comes as the Court of International Trade (CIT) has weighed in on the subject in a ruling (Slip Op. 04-53) May 18 on ITA’s surrogate selection process in a case involving taper roller bearings from China. In his ruling, which granted in part and denied in part various cross challenges to ITA’s administrative review of its anti-dumping order, Senior Judge Nicholas Tsoucalas affirmed the agency’s broad discretion to select surrogates in nonmarket-economy (NME) cases and to reject claims of market-oriented price inputs as long as it is not arbitrary. “If Commerce’s determination of what constitutes the best available information is reasonable, the Court must defer to Commerce,” Tsoucalas wrote.

Nonetheless, he remanded part of the case to ITA to explain why it selected certain prices for wooden cases and steel. “The Court recognizes that Commerce has wide discretion to determine what surrogate values constitute such ‘best available information,’ however, the record must reasonably support the agency’s determination,” Tsoucalas wrote. He noted an appellate court ruling which said ITA must determine antidumping margins “as accurately as possible.”

WTO AWAITING NEW PROPOSALS ON AGRICULTURE, MARKET ACCESS

A report now being drafted on four key issues deadlocking World Trade Organization (WTO) Doha Round talks could determine whether the negotiations will remain alive this year or get put on the back burner until 2005. The report, which will spell out options for dealing with non-agriculture market access (NAMA), agriculture, Singapore issues and cotton, will be floated in late June or early July and will be the key subject of the WTO General Council meeting at the end of July. If the Council can’t reach agreement on these four issues, sources in Geneva expect the Round to grind to a halt for the rest of the year.

At press time, WTO negotiators were awaiting the distribution of a proposal from the so-called G-20 countries on a formula for providing market access in agriculture. The paper will be the topic of talks in the agriculture committee June 2-4. The willingness of the G-20, which includes Brazil, India, China and Egypt, to open their farm markets and the willingness of the U.S. and the European Union (EU) to cut domestic agriculture subsidies and export subsidies are seen as the crucial bargain that must be struck to have the Doha Round succeed.

The emerging compromise in agriculture appears to be a deal that would create a “composite” formula for market access, mixing straight line tariff cuts with deeper cuts for products with high tariff peaks. That would be combine with many escape valves that would allow continued protection for some sensitive products and special safeguards and snap-back provisions to prevent social and economic disruptions. In addition, there is the general expectation that most least-developed WTO members would be exempt from major commitments.

* * * BRIEFS * * *

TRADE TASK FORCE: ITA in May 27 Federal Register asked public to recommend unfair foreign trade practices in manufacturing sector that should be priority for new task force.

APO: In annual report published in May 26 Federal Register on operation of administrative protective orders, ITC warns that some electronic transmissions of public versions of documents can be breached using software that manipulates codes to uncover deleted business proprietary information.