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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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NEW NATO MEMBERS STILL TREATED LIKE COMMUNIST STATES

The seven East European nations that became members of NATO March 29 will have to wait until at least this summer before they get the same treatment as their allies under Bureau of Industry and Security (BIS) export licensing policies. Although the agency has been working for over seven months to revise the current Country Group listing in the Export Administration Regulations (EAR), which still impose Cold War treatment on several European countries, BIS officials say a change in the rules isn't likely until this summer (see **WTTL**, Dec. 15, page 4).

“The status of those countries is one aspect of the Country Group proposal and is an important rationale for reviewing whether any changes in the Country Groups is appropriate,” a Commerce official told **WTTL**. Since BIS staffers are still drafting the EAR amendment to revise the list and the new regulation would need to go through the interagency review process again, a longer wait is very possible.

Five of the new members of NATO, Bulgaria, Estonia, Latvia, Lithuania and Romania, are listed under Country Group D1, subjecting them to some of the same national security licensing requirements they faced when they were still communist members of the Warsaw Pact or part of the Soviet Union. Two new members, Slovenia and Slovakia, are under Country Group A, but not for all commodities. Estonia, Latvia, Lithuania, Slovakia and Slovenia also will become members of the European Union (EU) May 1.

BIS has gotten interagency approval for the concept of revising the Country Groups but not to do away completely with the Country Group approach to categorizing countries. “We are of the view that the Country Groups, from a regulatory standpoint, are redundant of the information that can be easily conveyed in the Country Chart,” the Commerce official said. “Therefore, our proposal is to eliminate the concept of Country Groups and to convey that information by other means that would be less duplicative and simpler for exporters,” he explained.

Until the new regulations go into effect, the new NATO members will continue to be subject to the same rules and policies as before. “Since we are a creature of our statute and our regulations, we follow our regulations, so any licensing requirement for any country under our regulations would require a license,” the official said.

EFFORT FAILS TO GET FTAA TALKS BACK ON TRACK

Prospects for progress this year on a Free Trade Area of the Americas (FTAA) continue to dim, as vice ministers from nine Western Hemisphere countries failed again to agree on a plan for

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moving negotiations forward. After an informal meeting March 31-April 1 in Buenos Aires, Argentina, the officials said they would have to go back to their national capitals to get further instructions on their next step. In the meantime, plans for a full Trade Negotiations Committee (TNC) meeting in Puebla, Mexico, have been postponed again.

A communique issued by the two TNC co-chairs said participants at the meeting in Argentina “needed to consult further with their capitals.” This statement is similar to one they issued after a March 10 meeting in Buenos Aires that also tried to get the talks on track (see **WTTL**, March 15, page 4). The need for further consultations has become code language for deadlock.

“Obviously, we would have liked to complete our work, but it has proven more difficult,” Deputy U.S. Trade Representative (USTR) Peter Allgeier told reporters after the meeting. Negotiators failed to make progress in all four of the major FTAA areas: market access, agriculture, services and intellectual property rights, he indicated. Participants apparently rejected a U.S. proposal for dealing with the new mandate for the FTAA talks that trade ministers adopted in Miami in November. As in the WTO Doha Round, trade officials are still talking about the framework for what will be negotiated and have not even gotten to the question of specific liberalization commitments.

In Miami, trade ministers approved a new two-track approach to a final FTAA, proposing a broad agreement with general liberalization commitments and a separate pluralateral deal for countries willing to take on higher levels of obligations. Negotiators in Buenos Aires were seeking a formula for implementing that directive. The delay in reaching agreement on this roadmap further supports predictions that FTAA talks won't meet key milestones for progress this year and that the goal of completing the entire accord by January 2005 will be missed.

LACK OF VOTES STYMIES MAJOR TRADE LEGISLATION

Congressional enactment of recently negotiated free trade agreements (FTA) or legislation to replace the Foreign Sales Corporation/Extraterritorial Income Tax Act (FSC/ETI) remains stuck on the plain statistical fact that there aren't enough Republican votes to pass them. The White House, for now, appears to be leaving the vote gathering task to GOP leaders in the House and Senate, but until President Bush gets personally involved by signing the FTAs and pressing for their approval and a for FSC/ETI measure, no movement is likely. With trade and outsourcing potential election year issues, it isn't clear yet whether the president will take the lead.

When asked when Congress will act on the FTAs, House Rules Committee Chairman David Dreier (R-Calif.) said: “We want to address every single one of them as soon as we have the votes to win.” Speaking March 31 to the Business Coalition for Capacity Building (BCCB), he said, “We don't bring things up in the United States Congress until we have the votes to win.” But it appears the president won't sign and send the FTAs to Congress until he gets a signal from congressional leaders that they have the votes (see **WTTL**, March 29, page 4).

In building support for the FTAs, Dreier said he wants “to do it in a bipartisan way.” That brought a quip from Rep. Charles Rangel (D-N.Y.), who was also addressing the BCCB. “When he says we have to work toward a bipartisan coalition, he means we don't have enough Republican votes to pass a trade bill,” Rangel said. The search for a bipartisan approach “will be a long, hard search,” Rangel told the BCCB, a new coalition of multinational firms that supports the building of the social and economic infrastructure in developing countries.

After his presentation, Dreier told **WTTL** that he had hoped the House would have taken up the FSC/ETI bill the week of March 29. “When we have an opportunity to have the votes together we move things and we are not there yet,” he said. “We need obviously to address the concerns that are there because we don't have the votes at this point,” he conceded. “Trying to put that together is something I hope will take place over the break,” Drier said, referring to

the coming congressional spring recess. He acknowledged that the differences over the bill (H.R. 2896) proposed by House Ways and Means Chairman Bill Thomas (R-Calif.) are not just partisan. "There are a lot of regional concerns," Dreier said.

Later Rangel told WTTL that he has told EU Trade Commissioner Pascal Lamy that "he should not really believe that the problems Democrats are having with the Republican leadership is going to cause us not to have a major problem with the WTO and him, if they have severe tariffs against our exports." EU trade retaliation against U.S. exports because of FSC/ETI ratcheted up April 1 to 6%.

TRADE BARRIERS REPORT SPARKS CALL FOR TRADE COMPLAINTS

House Democrats have tried again to put the Bush administration's trade policy on the defensive, calling for the White House to use the National Trade Estimate of Foreign Trade Barriers, released April 1, to launch trade complaints at the World Trade Organization (WTO) against the trade practices of five trading partners. But USTR General Counsel John Veroneau dismissed the advice, saying U.S. industries and workers have not asked the trade office to raise the complaint to the official dispute-settlement process.

The Democrats urged the Bush administration to seek WTO consultations with China, the EU, India, Japan and South Korea. They proposed cases against China's limits on foreign trading rights and technology transfer mandates, EU support for Airbus, India's barriers to U.S. textiles and its lack of copyright and trademark protections, Japan's currency manipulation and nontariff barriers to U.S. autos and auto parts, and South Korea's discriminatory taxes on foreign cars.

Ever since the USTR's office began publishing the NTE after enactment of the 1988 Trade and Competitiveness Act, the annual report has sparked an advance rush of negotiations by foreign countries trying to avoid having their trade practices cited in the tome. But the original expectation that the report would become a catalyst for trade retaliation has rarely been met. Over the years, the NTE has often repeated the same allegations of unfair trade practices over and over again with no formal complaints ever filed. This year's NTE did much the same.

TRADE BAR DIVIDED ON NEED FOR ITA VERACITY SANCTIONS

As with most issues related to application of U.S. trade laws, lawyers representing petitioners and respondents in antidumping and countervailing duty investigations have provided the International Trade Administration (ITA) with opposing views on the need for changing the trade law or ITA regulations to establish a mechanism for imposing sanctions on parties that submit false statements during a trade case (see **WTTL**, Feb. 2, page 4). Both sides appear to agree, however, that some clarification of current rules against fraud may be needed.

While saying no change is needed in the law, comments sent to ITA by attorneys at Collier, Shannon Scott proposed changes to the ITA rules to "add transparency to the agency process and make more clear to participants the consequences of failure to follow the statute and regulations."

One set of changes they proposed would add additional wording to current certification forms to make it clear to non-lawyers that there are federal laws against making false statements to the government and that company executives who certify submissions must be in a position to know that the information is complete and accurate. "We believe it is not necessary for the Department to adopt separate standards of conduct from those already adopted by state and federal bars," the law firm's attorneys told ITA. They suggested that ITA amend its regulations to state that not only will the agency conduct its own review of alleged fraud but that when appropriate it will refer cases to the Commerce Inspector General, Customs or Justice. A joint comment from attorneys from four other law firms objected to the promulgation of new

regulations that might impose new sanctions for false statements to ITA. "There has certainly been no indication of a flood of incidents necessitating such drastic and far reaching regulations," wrote attorneys with Kaye Scholer, Hogan & Hartson, Weil, Gotshal and Manges and Willkie Farr and Gallagher. "One obvious risk to the creation of an additional set of regulations is that opposing counsel would turn to those regulations as procedural weapons," they noted. The attorneys also pointed to the several federal statutes, such as 18 USC, which make it a crime to file false statements with the government.

They were also concerned that the balance of sanctions would be against respondents who could get hit with an adverse facts available ruling that would exclude them from the U.S. market. "Were the department to establish a new set of rules directed at the content of information filed with the department, we would suggest that the department include, at a minimum, a pre-initiation comment period on the quality and reliability of information contained in the petition and flexibility to verify that information prior to initiation," they wrote.

BIS IMPOSES UNILATERAL SANCTIONS ON EX-WASSENAAR ITEMS

Getting an item off the multilateral Wassenaar Arrangement control list doesn't guarantee its decontrol, a new BIS regulation published in the March 30 Federal Register shows. Because Wassenaar has removed controls on certain power controlled searchlights, bayonets and certain marine boilers, BIS has had to drop National Security (NS) justification for controlling them and imposed new Regional Stability (RS) controls on these items.

Under the Export Administration Act and BIS regulations, the president can retain unilateral NS controls on items for extra six-months periods, if he determines there is no foreign availability for them or that there are active negotiations to end such foreign availability. "No such determinations have been made and no such negotiations are being undertaken," the BIS notice stated.

*** * * BRIEFS * * ***

CUBA: Latest OFAC list of penalty settlements released April 2 includes \$198,711 civil fine imposed on three pharmaceutical firms in Mexico and Panama for importing and export goods to Cuba from 1998 to 2002. Those fined were Alpha Pharmaceuticals, Laboratories Grossman, and ICN Farmaceutica, which is subsidiary of U.S. drug firm, Valeant. Astar Air Cargo was fined \$28,073 for making payments to Cuban entity on behalf of DHL Airways. In separate settlement involving funds transfers to Iraq in 1999, Bank of New York agreed to pay \$137,000 civil fine.

TISSUE PAPER: ITC April 1 voted 6-0 in preliminary decision that allegedly dumped imports of tissue paper and crepe paper products from China may be injuring U.S. industry.

AGOA III: Bipartisanship broke out in Congress April 1, as House Republicans and Democrats joined to announce introduction of legislation (H.R. 4103) to extend the African Growth and Opportunity Act (AGOA) until 2015, add technical assistance for African countries, fix certain classification disputes with Customs and allow continued use of third-country fabrics.

STATE UNSANCTIONS: In April 1 Federal Register, State terminated sanctions imposed on Anatoliy Kuntsevich because "reliable information indicated that [he] has ceased to aid or abet any foreign government, project or entity in its effort to acquire chemical and biological weapons capability." In same Federal Register, State removed sanctions on four Russian entities: Europalace 2000, Grafit, MOSO Company, and Scientific Research and Design Institute of Power Technology.

STATE LICENSING: Directorate for Defense Trade Controls (DDTC) has established DDTC Response Team to handle inquiries from Munitions List exporters about procedural issues and license status. Exporters can call 202-663-1282 or email to DDTCResponseTeam@state.gov to get advice. DDTC cautions, however, that new team is not substitute for regular advisory opinion or commodity classification process.

SILICON METAL: Global Metallurgical, Electronic Workers and United Steel Workers filed antidumping and countervailing duty case March 31 at ITA and ITC against silicon metal from Brazil and South Africa.