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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 WANTS TO EASE NIGHT VISION EXPORTS TO NATO-PLUS ALLIES

The Bureau of Industry and Security (BIS) is examining ways to speed up export licensing for night vision and thermal imaging products to NATO and other U.S. allies. “We are working with the interagency process to explore if it is possible to ease the licensing burden with regards to NATO-Plus countries, especially to government users and military users, and certain civil end-users,” said Peter Lichtenbaum, BIS assistant secretary for export administration. BIS also has “circulated for interagency review a regulation to relax controls on commercial video cameras that reflect existing technology levels and marketing conditions,” he said.

“I want to stress, though, that strong internal compliance programs will be a key aspect of any reform,” Lichtenbaum told the Sensors and Instrumentation Technical Advisory Committee Jan. 27. He noted a parallel BIS effort to draft guidance for export management systems specifically for the night vision industry.

BIS handled almost 2,900 applications for these devices in the year ending Sept. 30, 2003. Over 90% were approved, 1% were denied and almost 6% were returned without action. Exports to NATO-Plus countries represented about 65% of those approved licenses last year.

“Our licensing load for night vision doubled from the year before that year and it is projected to double again this year,” Lichtenbaum noted. “That kind of exponential growth is difficult for any regulatory agency,” he added. “We are aware of the burden that places on industry and the burden it places on us, since those licenses were over 25% of the licenses we processed in the last fiscal year.” Despite this growth, license reviews still took just over 50 days on average.

The planned rules for NATO-Plus exports may help address the disparity in licensing review times between the U.S. and other Wassenaar Arrangement countries, Lichtenbaum suggested. “I have to be candid here, that I think night vision equipment is an extremely sensitive area for our war fighters and their commanders at the Department of Defense. I don’t question their judgment that this is a very, very significant national security concern,” he cautioned. Separately, the BIS Office of Strategic Industries and Economic Security plans to launch a study of the economic health of the U.S. night vision industry, including an examination of the foreign availability of this equipment, Lichtenbaum told the committee

U.S. OPPOSES EU PUSH TO EXPAND PERMITTED STEEL SUBSIDIES

American trade officials have rejected a European Union (EU) proposal – based on demands from the European steel industry – that would permit governments to provide subsidies to help

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steel firms meet new environmental controls required to bring them into compliance with the Kyoto Agreement on global warming. The EU proposal has come as part of the negotiations on an Organization for Economic Cooperation and Development (OECD) agreement to bring discipline to government subsidies in the global steel marketplace.

As part of planned agreement, participants are trying to identify government subsidies that would be permitted and not be subject to countervailing duty complaints. A general category of allowed subsidies would cover aid to help industries meet environmental protection requirements.

“What they are trying to do is broaden something that was designed to get rid of all the subsidies except things related to shut-down,” said Commerce Under Secretary Grant Aldonas. The proposed exception is intended to allow governments to “subsidize some of the environmental remediation that was consistent with the idea of shutting down capacity,” he added. But adding costs of compliance with Kyoto is going too far, Aldonas suggested.

“The Kyoto Agreement doesn’t exist,” he told reporters Jan. 29. European steel firms are not yet subject to any restraints because of Kyoto, but because they expect to face restraints, they want the exception broadened to cover compliance costs. “It won’t work for the rest of the guys in the system. It won’t work for our guys either,” Aldonas insisted. He said he expects the issue to come up at the February meeting of the OECD working group on disciplines in the steel sector and again at a high-level meeting on steel in May before annual OECD Ministerial.

STATE READY TO TAKE JURISDICTION OF AMORPHOUS SILICON

State reportedly is giving up waiting for the Wassenaar Arrangement to impose multilateral controls on amorphous silicon materials used in focal plan arrays and is preparing a Commodity Jurisdiction (CJ) ruling that would put the material on the Munitions List (ML). Sources say the department is weighing a CJ request from BEA Systems on the status of the materials. Last August, Defense asked BIS to impose unilateral controls on amorphous silicon in advance of a decision from the Wassenaar Arrangement, but BIS has resisted taking such an action.

After 18 months of debate over a French proposal to control amorphous silicon and six other materials, representatives of Wassenaar member states were unable to agree on new controls at their plenary meeting in December (see **WTTL**, Aug. 18, page 1). Defense wants the U.S. to bring another proposal to control the materials to the next round of Wassenaar list review, which begins in March.

In addition to State’s CJ, Defense has again asked BIS to consider imposing anti-terrorism (AT) controls on these products, which are excluded from control under Export Control Classification Number (ECCN) 6A002. At the time when controls were established, amorphous silicon was excluded because it was considered too low performance for equipment with military usefulness. Technology advances since then have made the materials more useable.

While failing to agree on these materials, Wassenaar members did agree to ease controls on high-resolution digital cameras for commercial uses. The change would lift controls on cameras in ECCN 6A003 unless they also include controlled optics that are controlled elsewhere on the Commerce Control List (CCL) or have built-in stabilization equipment. BIS has drafted an implementing regulation, but when it will be published is uncertain. Wassenaar also adopted changes to control parameters for semiconductor lasers.

COSTA RICA GETS ON BUMPY CAFTA BANDWAGON

American and Costa Rican officials Jan. 25 completed negotiations to bring Costa Rica into the Central American Free Trade Agreement (CAFTA), which four of its neighbors approved in December. With Costa Rica now on board, the U.S. Trade Representative’s (USTR) office

release the draft text of CAFTA Jan. 28. Trade officials said they will soon start consultations with Congress to determine when to give lawmakers formal notification of their intent to sign the accord. It appears increasingly likely the administration will push for a vote on the deal this year, despite strong political opposition. Ahead of that fight, the USTR's office released a fact sheet defending the extra sugar quota being given to CAFTA participants.

The extra month of talks gave Costa Rica the chance to negotiate longer transition periods to help protect sensitive services and agriculture sectors, but didn't help it improve its access to the U.S. textile and apparel markets (see **WTTL**, Dec. 22, page 1). As part of the accord, Costa Rica will come under the same textile rules as its neighbors, with no special Trade Preference Level for its goods.

The Costa Rican insurance market will open in stages, with some foreign participation coming immediately, more by Jan. 1, 2008 and full opening by Jan. 1, 2001. In the telecommunications sector, the U.S. will give Costa Rica several years to open its current monopoly to competition in three sectors. The first step, however, will be for Costa Rica to establish a regulatory framework for overseeing telecommunications competition. Only after that regulatory system is in place at the beginning of 2006 will it open competition for private network and internet services. Later it will open its market to foreign mobile wireless services.

The opening of the Costa Rican market for U.S. onions, potatoes and rice will be long and slow, taking 20 years for full opening. The initial steps will involve creation of a tariff-rate quota for these products, with the quota level growing over that period. The U.S. agreed to give Costa Rica an extra 11,000 tons of sugar quota in the U.S. market, of which 2,000 will be reserved for organic sugar, which is a niche market in the U.S.

AUSTRALIA FTA TALKS REMAIN BOGGED DOWN ON KEY ISSUES

At press time, Jan. 30, U.S. and Australian trade negotiators were still deadlocked on the same key issues that have prevented them from completing a bilateral free trade agreement (FTA) after two weeks of almost steady talks. Negotiations were expected to continue into the weekend and perhaps into the week of Feb. 2 (see **WTTL**, Jan. 26, page 3). Progress in the talks remained stalled even though Australian Trade Minister Mark Vaile spent all of last week in Washington and met every afternoon with USTR Robert Zoellick.

Agriculture, especially sugar and dairy products, plus Australia's Pharmaceutical Benefit Scheme (PBS) remained among the main roadblocks. "Our position on sugar has not changed," Assistant USTR Chris Padilla told a conference in Washington Jan. 29. Citing previous comments by Zoellick, Padilla said, "There will be no increase in sugar from Australia as part of this agreement."

Speaking to reporters earlier in the week, Vaile said Australia's objective "is a comprehensive outcome right across all sectors, particularly in agriculture. By comprehensive we mean that we need to cover the critical areas of sugar, beef, and dairy, and that means as we've always said that sugar must be part of the deal."

Ways and Means Committee Chairman Bill Thomas (R-Calif.) weighed in on the issue in a Jan. 28 letter to President Bush. Without mentioning sugar or any sector specifically, he urged Bush to "resist any pressure to exclude any sector or product from liberalization" in the FTA.

U.S. ASKS CHINA FOR CONSULTATIONS ON IRON FITTINGS SAFEGUARD

The day after it received advice from the International Trade Commission (ITC) and a month before it asked for public comments, the USTR's office Dec. 5 asked China for consultations on how to stem the surge of its exports to the U.S. of ductile iron waterworks fittings (see **WTTL**, Dec. 8, page 4). In a notice filed with WTO Jan. 16, the U.S. reported that it had requested

the consultations “with a view to seeking a mutually satisfactory solution regarding market disruption to U.S. domestic producers caused by” those imports. This is the first time the Bush administration has agreed to pursue a case under the anti-surge safeguard provisions of China’s WTO accession accord and under Section 421 of the U.S. Trade Act.

In its Jan. 6 Federal Register, the USTR’s office asked for comments on the “appropriateness” of the ITC’s proposals to impose a tariff-rate quota on the imports for three years to help the U.S. industry and “whether they would be in the public interest.” The notice to the WTO suggests the USTR’s office reached a conclusion before it received the comments.

* * * BRIEFS * * *

ENCRYPTION: BIS is drafting proposal to modify current encryption regulations to provide same license treatment given to EU+8 to all countries joining EU May 1. Already among “8” are incoming members Czech Republic, Hungary and Poland. Additional new members are Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia.

WTO: USTR Robert Zoellick plans to embark in early February on two-week round-the-world tour of foreign capitals to build support for his call to get Doha Round negotiations back on track (see **WTTL**, Jan. 12, page 4).

ITA SANCTIONS: ITA in Jan. 26 Federal Register published notice calling for comments on whether it should establish regulation for imposing sanctions on parties that file false statements in antidumping and countervailing duty cases, and, if so, what those rules should be.

SEMICONDUCTORS: WTO has agreed to form dispute-settlement panels to hear Korea’s complaints against antidumping and countervailing duties that U.S. and EU have imposed on DRAMS from Korea.

TEXTILE TRANSSHIPMENTS: GAO report Jan. 26 (GAO-04-345) criticized Customs methods for preventing transshipment of textiles that avoid duty and quota restrictions. “CBP has not effectively monitored movements of textiles in its in-bond system, due to weak internal controls that enable cargo to be illegally diverted from the supposed destination,” GAO charged. Overseas inspection program has been ineffective, and Customs will lose its authority to conduct foreign factory inspections when WTO quota system ends in 2005, GAO said.

BAHRAIN: U.S.-Bahrain FTA talks started Jan. 26 in Bahrain. Goal is to complete them by end of 2004.

BYRD AMENDMENT: U.S. asked WTO Jan. 23 to establish arbitration panel to review level of retaliation EU, Canada, Japan and four other countries have proposed to impose, if Washington fails to comply with ruling that Byrd Amendment violates WTO subsidies and antidumping agreements. U.S. objects to levels of retaliation proposed because parties have failed to specify levels of suspension of concessions.

IRAQ: Iraq Jan. 23 asked WTO to give it observer status. Country was signatory of original GATT Havana Agreement in 1947 but had only observer status up to creation of WTO in 1995. In request, it noted that current tariff-free policy will end April 1 when 5% ad valorem tariff will be imposed on most goods except food, medicine, humanitarian aid and items under Oil-for-Food program. Iraq also pointed out that it is member of Greater Arab Free Trade Area and has completed 80% of phased tariff reductions. It also has FTAs with Turkey and Iran and is discussing new ones with Jordan, Kuwait and Saudi Arabia.

GMOs: EU Commission Jan. 28 took steps to push EU members to end ban on approval of genetically modified organisms (GMOs). It sent Council of Ministers proposal to approve GM sweet cord BT11 for food use and agreed to submit draft authorization to EU Regulatory Committee to approve GM maize NK603. Commission said “a blanket ban of all GMOs that could not be justified in terms of protection of human health and the environment would not be in conformity with EU law.” With adoption of regulatory and traceability requirements, Commission said “it is necessary and possible to move ahead with the authorization process now.” Action could help delay U.S. complaint against EU ban.

ANTIDUMPING 1916: House Judiciary Committee Jan. 28 on voice vote passed H.R. 1073, which would repeal provisions of Antidumping Act of 1916, which WTO ruled was inconsistent with trade rules. Bill has been sent to House floor for action, with scheduling of vote up to House leadership, sources say.