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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 WILL TRY TO EASE BURDEN OF NEW MT CONTROLS ON CANADA

Bureau of Industry and Security (BIS) officials will try to adopt administrative measures to reduce the burden U.S. exporters will face when the agency issues final rules requiring licenses for exports of items on the Missile Technology Control Regime (MTCR) control list (MT) to Canada. BISers expect to publish a final MT rule in the fall and are seeking interagency approval to give exporters 90 days after the rules are published to get licenses.

Based on the universally negative comments it received on the proposal to require licenses, BIS could receive 2,000-3,000 extra applications a year from U.S. firms shipping MT parts and technology to Canada (see **WTTL**, July 25, page 4). BIS officials say they have no option but to require licenses for these exports because of statutory requirements which they haven't been able to get amended.

Among the measures that may be adopted is an expedited review process for Canada, reported BIS Deputy Assistant Secretary for Export Administration Matt Borman. The agency also will encourage exporters to bring in "bulk" licenses covering repeat shipments of the same items to the same end-users, he told the Transportation Technical Advisory Committee (TransTAC) Sept. 7. BIS is also considering a special mechanism to allow firms doing business across the border to get technology export licenses for technology going to Canada and Canadian nationals coming to the U.S. Adoption of these administrative steps still requires interagency approval.

"I am hoping that there is a significant chunk of missile technology aerospace trade that's ...fairly predictable," Borman said. This might be the case where companies have subsidiaries in Canada that do certain production line operations that are predictable enough so firms know a year ahead what items will have to be exported. Borman said he would encourage firms to apply for licenses that cover parts for one or two years or more. "You can ask for licenses to be good for more than two years," he reminded the committee.

Regarding technology sent to Canada or where Canadian nationals come to the U.S., firms may be able "to ask for a technology license that would cover both those aspects," Borman said. "We at least at Commerce, and I think the other agencies, will be very interested in looking at that because this is a unique circumstance," he said.

PORTMAN'S DOHA AGENDA AIMS AT WTO AND HILL

U.S. Trade Representative (USTR) Rob Portman has set a dual strategy for completing the Doha Round by the end of 2006 and getting a final agreement approved by Congress in 2007. His

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first goal is to get a deal at the World Trade Organization's (WTO) Hong Kong ministerial on the formulas for cutting agriculture tariffs, eliminating export subsidies and reducing domestic supports. His second is increasing consultations with lawmakers and restoring bipartisan support for trade so a Doha deal won't face the same fight as the DR-CAFTA bill.

With time running out ahead of the Dec. 13-19 WTO meeting in Hong Kong, Portman is setting off on a heavy schedule of travel and consultations with other trade ministers. He will meet with European Union (EU) Trade Commissioner Peter Mandelson Sept. 14 in Washington. He will then fly to France to meet with Indian and Brazilian trade ministers and go on to Geneva for more talks.

Portman says the victory on DR-CAFTA has increased his ability to negotiate with other WTO members, because it showed the administration can deliver on the promises it makes. "If CAFTA had gone the other way, we would have been in a very difficult position," he told reporters Sept. 8. But winning CAFTA "gives us a little wind at our backs," Portman said. "It now enables me as a negotiator to go into these talks with a little more trust on the other side that we can work together, we can push hard on our commitments as we did with the Central American countries and we did everything we could to get that done," he added.

Portman says he has a strategy for building bipartisan support for trade. "There is a very clear strategy. It's so simple, it may sound naive. It's consultations, its listening, it's reaching out," he explained. As a former member of Congress and the House Ways and Means Committee, Portman still has a collegial relationship with members on both sides of the aisle and has begun to use that connection to mend ties that were sharply frayed during debate over DR-CAFTA.

He said he has talked with Rep. Charlie Rangel (D-N.Y.), ranking Democrat on Ways and Means, about Doha and met the week of Sept. 5 with a couple of Democrats who voted against CAFTA. "They didn't make any commitments, but these are Democrats who are very involved in trade," Portman reported. "We were in earnest discussions about Doha and how to work together to help achieve what is best for the United States. It was very refreshing," he added.

Because many Democrats represent districts where manufactured goods and farm exports would be help by a Doha deal, there is a chance to get support from them for the right agreement, Portman said. "I actually think this is an opportunity, because you don't have the same intensity on the labor side and environmental side," he said. "There are opportunities here to put together a coalition," he said.

SYRIA SANCTIONS CATCH MEDICAL DEVICES UNEXPECTEDLY

Implementation of the Syria Accountability Act (SAA) in 2004 produced an unexpected flood of licenses for exports of medical devices to Syria, according to BIS officials. U.S. trade data did not reveal the volume of medical product sales to Syria before the sanctions because many device manufacturers exported the equipment, which was classified as EAR99 and didn't require a license, to distributors in Europe who reexported the items to Syria. In the one year after the SAA went into effect, BIS handled 398 export license applications for Syria for all categories compared to 198 during the preceding 12 months. Half of the licenses now coming in for Syria are for medical devices.

Overall, 91.2 % of licenses are for food, drugs and medical devices, which accounted for just 38.1% of licenses the year before. The share of food and medical products increased because these items are among the few that can be approved for export under SAA licensing policy. The total value of U.S. exports to Syria decline 17% post-SAA to \$175.7 million.

"When we looked at Syria Census statistics, we did not know there was a whole bunch of trade that was not showing in the U.S. export statistics," Joan Roberts, director of the BIS foreign policy division, told the Transportation Technical Advisory Committee Sept. 6. "Most of the

medical industry is actually working through distributors in other countries; so when those items are exported from the United States, they go under France, England, Germany and the Netherlands,” she noted. Those exports are now the subject of license applications.

In addition to the extra volume, the BIS licensing task has been made more difficult by requirements State and Defense are imposing on licenses. “It’s been a major problem on our part coping with it and dealing with it,” Roberts said. “State and Defense have made requirements on us that have made it difficult to process this volume of license,” she added.

The main problem facing BIS license reviewers is getting third-party certification confirming that civilian hospitals that are proposed recipients of exported drugs and devices are not controlled by the Syrian military or serving military patients. Many hospitals in Syria serve dual roles for civilian and military use. Blood banking in Syria is controlled by the military. While the SAA allows for a waiver of sanctions, the criteria for a waiver are very narrow and none have been granted to date, Roberts reported.

EAR99 items, including medical devices and food, make up the largest share of exports to Syria by value, totaling \$168.2 million in the year after enactment of SAA. Exports of computers, aircraft parts and telecommunications equipment, which can still be exported under the SAA conditions, make up the bulk of other exports. Industries hurt most by the new sanctions include oil field and drilling equipment, industrial engines and cigarettes.

BIS SENDS DRAFT “CATCH ALL” REGULATION FOR INTERAGENCY REVIEW

BIS has sent its draft proposal for creating new “catch-all” controls on exports to military end-users in embargoed countries, particularly China, out for interagency review, and industry sources that have learned what’s in the draft are upset with its direction. Industry representatives say they are concerned because the BIS draft is probably the moderate version of what is likely to come out and it will get only more burdensome once State and Defense get to add their views (see **WTTL**, Aug. 15, page 1).

“Everyone has a lot of confidence in Peter and the people at BIS, if it were up to them,” one executive told **WTTL**, referring to Acting BIS Under Secretary Peter Lichtenbaum. “Less important than any particular draft is what comes out at the other end,” he said.

Industry has three major concerns about the expected BIS proposal. One is the wide scope of products – especially EAR99 items – that now don’t require a license but could under the coming rules. A second is the scope of entities that would be considered military end-users. In China, the government and People’s Liberation Army are involved in thousands of ostensibly commercial companies, exporters note. The third worry is the degree of due diligence that would be required to confirm that the export isn’t going to a military end use. The BIS draft reportedly would cover reexports from third countries, so companies would need to establish global controls to assure that consignees abroad don’t ship to prohibited entities.

BIS officials claim the coming catch-all proposal is intended to implement an understanding the Wassenaar Arrangement adopted in December 2003 to establish controls on non-listed dual-use items to countries that are the subject of arms embargoes. The plan “stems out of a Wassenaar Arrangement decision to have all the Wassenaar members have a mechanism to review exports of items that otherwise don’t require a license if they are going to military end-use in an arms-embargoed country,” says BIS Deputy Assistant Secretary Matt Borman.

“The Wassenaar statement of understanding applies to countries that are subject to either international or regional arms embargoes,” he explains. Like the U.S., “the European Union has an arms embargo on China....So that’s why China is covered,” he states. “We have been told that Wassenaar members already apply this to China. We are trying to get more information on how

they actually apply it and what the consequences are,” he adds. “Obviously by definition the catch-all will apply to items that otherwise would not need a license to China or any other country that’s covered, but would apply only to items that are going to a military end use.”

Industry sources contend BIS -- pushed by State, Defense and congressional committees -- is reading the Wassenaar understanding more broadly than the regime intended and that the restrictions will end up being a unilateral control that other members won’t apply to China. Borman says BIS is aiming to propose the rules before the next Wassenaar plenary meeting in mid-December.

The Wassenaar understanding says: “Participating states will take appropriate measures to ensure that their regulations require authorization for the transfer of non-listed dual-use items to destinations subject to a binding United Nations Security Council arms embargo, any relevant regional arms embargo either binding on a participating state or to which a participating state has voluntarily consented to adhere, when the authorities of the exporting country inform the exporter that the items in question are or may be intended, entirely or in part, for a military end-use.”

* * * BRIEFS * * *

SAUDI ARABIA: U.S. has reached bilateral agreement with Saudi Arabia on its accession agreement for WTO membership. “It’s a good agreement,” USTR Rob Portman told reporters Sept. 8. “We’re in a position to sign that agreement,” he added. Accord still needs approval from other WTO members. “Saudi Arabia has confirmed that it will not invoke the non-application provision of the WTO Agreement and thus will have WTO relations with all WTO members,” USTR statement said, indicating Saudi’s won’t block trade with Israel. “Saudi Arabia has also confirmed that it will not apply the secondary and tertiary aspects of the Arab Boycott of Israel,” statement added.

BAHRAIN: Bahrain Finance Minister Mohammed Al Khalifa sent letter to USTR Rob Portman Sept. 5 promising to work toward eliminating Arab League Boycott of Israel. Kingdom had already given assurances in its FTA with U.S. that it wouldn’t apply secondary and tertiary boycott to U.S. companies. “In the hope of advancing peace and regional cooperation, the Kingdom of Bahrain recognizes the need to dismantle the primary Boycott of Israel and is beginning efforts to achieve that goal,” he wrote. Congressional concerns about boycott issue have delayed ratification of U.S.-Bahrain FTA. Minister’s letter is expected to clear way for passage in next month or so.

SCHOOL PAPER: Association of American School Paper Suppliers and its individual members filed antidumping and countervailing duty complaints at ITA and ITC Sept. 9 against imports of lined paper school supplies from China, India and Indonesia.

TEXTILES: EU and China reached agreement Sept. 5 on plan to release tons of Chinese textiles and apparel that have been held at ports since earlier bilateral deal imposed quotas on Chinese goods (see WTTL, Sept. 5, page 1). EU members endorsed deal Sept. 7. China agreed to establish licensing system for textile exports to avoid rush to port that embargo created. Any excess goods allowed in this year will be charged against 2006 quota. U.S. textile groups opposed deal and urged U.S. not to follow same path. “The importers caught by the embargoes knowingly took a calculated business risk and got burned,” said Cass Johnson, president of National Council of Textile Organizations.

ITC: Shara Aranoff was sworn in Sept. 6 as new member of International Trade Commission.

USTR: USTR Rob Portman has named Christin Tinsworth Baker Assistant USTR for Public and Media Affairs. She was director of communications for House Ways and Means Committee. At Ways and Means, Baker’s successor is Ianthe Jackson, while Robert Vandenheuvell was promoted to press secretary.

FTA: USTR Rob Portman says he expects to reach decision by end of year on whether to pursue FTA talks with Egypt, Malaysia, Switzerland and South Korea. He has alerted Congress to possible negotiations. Whether talks go forward, however, “depends on them” and whether they are ready to take on obligations that U.S. expects in FTAs, Portman said.

INDIA: State Under Secretary for Political Affairs Nicholas Burns told House hearing Sept. 8 administration wants to move “expeditiously” to improve nuclear cooperation with India and ease legal restrictions on U.S. nuclear exports. “The administration has identified a number of options for modifying and or waiving provisions of existing law to allow full civil nuclear cooperation with India, and we look forward to working with Congress as we review these options and consider the best way to move forward,” he testified.