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A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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CHURCH INQUIRIES ABOUT ISRAEL DON'T TRIGGER ANTIBOYCOTT RULES

Companies receiving requests from various religious organizations or church groups about their investment and business in Israel and on the West Bank can respond to them without violating the antiboycott requirements of the Export Administration Regulations (EAR), Bureau of Industry and Security (BIS) officials say. BIS has received nearly a score of calls from companies asking about the requirements related to letters they are getting from church organizations that have adopted policies not to invest in companies that are doing business in Israel.

This “grassroots” boycott is intended to protest the continued Israeli occupation of Palestinian territories. While BISers wouldn't identify who has asked companies for their Israeli information, the Presbyterian USA church is on record supporting disinvestment in Israel and Episcopalian groups and the World Council of Churches have also indicated support for the boycott.

Because BIS has found no link between these actions and the official Arab League Boycott of Israel, it is telling companies they don't have to report the inquiries. BIS has given the same answer to several members of Congress who wrote to Commerce last fall about efforts of Palestinian Student Solidarity Movement to bolster the boycott of firms doing business in Israel. A similar spurt of grassroots boycott efforts occurred in 2002. At that time, BIS cautioned companies about these activities but also conceded they don't fall under the EAR.

CENSUS ASKS BIS, CUSTOMS TO DRAFT AES PENALTY GUIDANCE

The Census Bureau has asked BIS and Customs to work together to draft penalty guidance on mitigating and aggravating factors that will be used to enforce the revised rules for the filing of export documentation through the Automate Export Systems (AES). With penalties for AES violations raising to \$10,000 per violation from \$1,000 and use of AES becoming mandatory for all exports, the potential liability for filing false or fraudulent export information can become very costly. Census is aiming to publish a final mandatory AES rule in September, with full implementation expected in the first quarter of 2006, according to Harvey Monk, director of the Census Foreign Trade Division (see **WTTL**, May 9, page 2).

Census has given BIS and Customs the lead in drafting guidance that would be consistent with their existing penalty guidance and procedures. “Our goal is to make sure the effort that they put forth in terms of enforcement are consistent between the two agencies,” Monk told the BIS Regulations and Procedures Technical Advisory Committee June 7. The guidance will “recognize that CBP will be the agency at the border, with the primary enforcement effort, and BIS

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will be looking at the violations they uncover as part of their work and as a part of referrals they may receive from Census,” he added. “One of the things that has concerned Census in recent months has been the failure of a number of freight-forwarders and USPPIs [U.S. Principle Parties in Interest] to respond to fatal errors,” Monk reported.

Census is working with Customs to develop tools that will identify fatal errors of incorrect or missing data on AES filings that have not been responded to, he said. Census is getting about 4,000 fatal errors a month, which is a small number compared to the 1.1 million AES filings monthly. “But that means 4000 shipments were exported without documentation being submitted,” Monk pointed out.

BIS SEEKS MORE FACTS ON COST ON REQUIRING LICENSES FOR CANADA

BIS officials are urging exporters to provide more specific information on the expected extra cost and burden they would face if the agency’s May 24 proposal to require licenses for exports of Missile Technology (MT) items to Canada were implemented as proposed. “Now that we have an actual proposed rule out, we’re hoping to get another level of detail, especially on quantification of expected licensing volume and also the impact on technology transfers to subsidiaries in Canada and in the United States with Canadian nationals,” BIS Deputy Assistant Secretary for Export Administration Matt Borman told RAPTAC June 7. “We would also be interested in views on the cost of setting up compliance programs to deal with that if needed,” he added (See **WTTL**, May 30, page 2).

WHITE HOUSE REACHES OUT TO DEMS FOR HELP WITH DR-CAFTA

The Bush administration has belatedly realized it must win more Democratic support if it wants to get congressional approval of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). On June 9, President Bush met with several Democrats, including House Ways and Means Ranking Member Charles Rangel (D-N.Y.). That meeting came just hours after U.S. Trade Representative (USTR) Rob Portman offered to work with critics of the accord to find more money to help the region improve the enforcement of its labor laws and Commerce Secretary Carlos Gutierrez met with members of the Congressional Hispanic Caucus.

So far, no Democratic lawmakers have indicated a change of heart or new commitment to DR-CAFTA based on the administration’s outreach. Potential but unannounced Democratic supporters of the accord are trying to keep a low profile to avoid a barrage of lobbying from opponents. It has even been hard to get a complete list of the Democrats who went to the White House.

In addition to Rangel, attendees included supporters of DR-CAFTA, such as Reps. William Jefferson (D-La.) and Henry Cuellar (D-Texas), as well as uncommitted members such as Susan Davis (D-Calif.) and Bob Etheridge (D-N.C.). Etheridge apparently is being wooed because DR-CAFTA supporters think they may be able to sway some North Carolina lawmakers due to the split in the textile industry over the agreement. To exploit that split, Gutierrez was in North Carolina June 10 speaking to a business group on the pact.

Speaking to the Hispanic Alliance for Free Trade, Portman conceded “there is a labor rights issue in Central America.” To help get more votes for the accord from Democrats, who have made the labor provisions of DR-CAFTA their chief reason for opposing the deal, Portman offered to reach out to Democrats to support “a long-term, sustained commitment to labor capacity-building” in the region through new congressional appropriations and the convening of an international donors conference before the end of July. He also offered to “explore an ongoing way to benchmark and verify” the progress of labor enforcement in the region.

Portman’s offer was brushed off as “nothing new” by one congressional source, who said proposals for more funds and a donors’ conference have been suggested before. Critics also noted

that the Bush administration has significantly cut the budget for Labor's International Labor Affairs Bureau (ILAB), which was doing most of the technical assistance to the region, over the last three years. Moreover, Portman didn't say how the benchmarks would be used. Another source, however, said Portman showed he was listening to Democratic concerns, although "no one seems to know what his offer means" since no details were provided.

After meeting with Bush, Rangel issued a statement complaining that "the Bush administration ignored virtually all Democrats when it negotiated this CAFTA." He said he would support a "right free trade agreement" but this isn't it. Meanwhile, former President Jimmy Carter June 8 sent Ways and Means Committee Chairman Bill Thomas (R-Calif.) a letter expressing his "strong support for this progressive move." Senate Finance will hold its "mock markup" of the DR-CAFTA implementing legislation June 14, and Ways and Means is expected to follow soon afterward. There is still no assurance that Finance has the votes to approve the deal, but an expected amendment on sugar may bring in a couple of dissident Republican members.

GERMANS HELP IN EXPORT ENFORCEMENT CASE

BIS in the June 6 Federal Register imposed a \$143,000 civil fine and a 20-year denial of export privileges on Petrom GmbH of Munich, Germany, following the recommendations of an administrative law judge (ALJ) who had examined the case. The ALJ's findings of fact and recommendations relied heavily on a report provided to the U.S. government by the German Customs Authority, known as the Zollkriminalamt (ZKA).

According to the ALJ's report, Petrom, which is owned by an Iranian, Majid Rashmanifar, had set up a front company in the U.S. for the purpose of obtaining various products for export to Iran. The company, Sunshine Technology and Supplies, Inc., of Miami, Florida, arranged with several U.S. companies to have goods shipped to Germany. From there they were reexported to Iran.

The shipments included check valves, regulatory valves, test kits, electrical equipment, ship tire cutting bladders and spare parts. They were made between 1999 and 2000 without approved licenses from Treasury's Office of Foreign Assets Control. Several U.S. firms sold the items to Sunshine with the expectation that they were going to Germany or Latin America, according to the ALJ's report. Two firms, however, DIFCO Laboratories and Danza AG, refused to do business with the company when they discovered the destination of the goods was Iran.

WHITE PAPER OPPOSES PROPOSAL TO TIGHTEN DEEMED EXPORT RULES

A leading think tank in Washington has issued a new White Paper that opposes BIS' proposal for imposing new requirements for deemed export licenses and criticizes the Commerce Inspector General's report on which the call for comments was based (see **WTTL**, May 2, page 3). "The mere possibility that certain researchers may necessitate export licenses will introduce delays and uncertainties that may discourage the best foreign researchers from coming to the United States," said the paper issued June 9 by Center for Strategic and International Studies (CSIS) Commission on Scientific Communication and National Security.

U.S. export controls on research should remain based on a National Security Decision Directive (NSDD-189) that President Reagan issued, which exempted "fundamental research" from export controls, the commission recommended. NSDD-189 recognized that "to the maximum extent possible" the products of fundamental research should be unrestricted and any restrictions on government-based research should rely on national security classification.

The IG's recommendations and the March 28 BIS proposal are inconsistent with NSDD-189, the report contends. The IG recommendations on tightening controls on the "use" of controlled equipment "could have serious implications for fundamental research undertaken at academic

institutions,” it states. The proposal to base deemed export requirements on a person’s nation of birth rather than current citizenship could pose “serious difficulties,” it notes. “Moreover, many leading research universities have made it clear that they have neither the human resources nor the will to selectively segregate their research facilities in this fashion,” it said.

FURTHER LIBERALIZATION OF LIBYA CONTROLS COMING

BIS is drafting a regulation to liberalize further U.S. controls on exports to Libya by this summer but still won’t take Tripoli off the list of terrorist-supporting countries. Being called Libya III, the new rules would be the third revision of U.S. policies toward Libya since the North African nation renounced its intention to acquire weapons of mass destruction (see **WTTL**, March 28, page 1). “The U.S. government is looking to continue our discussions with Libya, and it is a process of give and take,” Karen Nies-Vogel of BIS’ Office on National Security Controls told the Regulations and Procedures Technical Advisory Committee June 7.

The U.S. is looking to see “what we can give in response to what they are giving us,” she added. “We are still a very long way from taking Libya off the terrorism list, but we are looking for a series of steps that we can take in the meantime.”

BIS has been receiving a steady stream of license applications for Libya under rules that have already been revised, she reported. These licenses mainly cover telecommunications equipment and items being used by companies that are setting up operations in Libya. She said the agency is expecting a big jump in the value of exports because of several pending “big ticket” applications. License review times for Libya have been declining “as the interagency process has become familiar with these licenses,” she noted.

* * * BRIEFS * * *

SOFTWOOD LUMBER: Binational NAFTA panel June 9 again remanded antidumping ruling on softwood lumber from Canada back to ITA with instructions to revoke order on West Fraser Mills and to recalculate final dumping margins for other firms without using “zeroing” methodology. Panel recognized appellate court ruling in *Corus Staal* permitting zeroing but said CAFC “did not dispose of the *Charming Betsy* issue occasioned by the WTO softwood lumber decision.”

WHEAT: ITC must provide better explanation of its injury determinations in antidumping and countervailing duty cases against hard red spring wheat from Canada, NAFTA binational panel ruled June 7 in divided decision, remanding cases back to ITC

ARGENTINA: WTO arbitrator gave ITA until Dec. 17, 2005, to change its regulations and issue revised “sunset review” decision on antidumping order on oil country tubular goods from Argentina.

EXPORT ENFORCEMENT: Three divisions of ExxonMobil have reached settlement agreements with BIS to pay total of \$49,500 in civil fines for their role in exporting Dell laptop computers and servers from U.K. to Egypt and then to Sudan without approved licenses.

TRADE FIGURE: Trade is booming. U.S. goods exports in April were up 12.7% from year ago to record \$74.5 billion. Services exports were record \$31.9 billion, up 12.5%. Merchandise imports surged 15% from year ago to record \$136.7 billion, as services imports gained 11.3% from last year to \$26.6 billion.

WTO: House June 9 voted 86-338 to rejected resolution (H.Res. 27) to withdrawn U.S. from WTO.

TRADE PEOPLE: President Bush said he intends to nominate veteran US/FCS official Charles Ford to be U.S. ambassador to Honduras...Arthur Dunkel, who served as director general of GATT from 1980 to 1993 and during most of Uruguay Round, died June 8 in Geneva at 72.

OFAC: Treasury has issued warning that firms have been receiving fraudulent documentation claiming to be issued by OFAC and seeking “small initial investment” to participate in contract with agency.

DEPORTATION: Jinghua Zhuang, Chinese national who operated Maytone International in Thousand Oaks, Calif., was deported to China June 4 after serving 30-month prison term for exporting jet and missile parts to China. His wife and co-defendant, Xiuwen “Jennifer” Liang, will be deported after her sentence ends.