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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 AND FBI TO WORK CLOSER ON EXPORT ENFORCEMENT CASES

Bureau of Industry and Security (BIS) enforcement efforts could get extra muscle with the help of the Federal Bureau of Investigations (FBI), which has been given a new legislative mandate to prevent terrorist groups and rogue nations from acquiring U.S. goods and technology that could be used in developing weapons of mass destruction. The FBI has asked BIS to help train its agents on export control matters and to find foreign nationals who are targeting U.S. technology, acting BIS Assistant Secretary for Export Enforcement Wendy Wysong told the President's Export Council's Export Administration Subcommittee (PECSEA) March 8.

The joint enforcement work and sharing of intelligence stem from new counter-terrorism enforcement authority given to the FBI in legislation enacted last year to reform the U.S. intelligence system. The FBI is reaching out to several federal agencies to increase cooperation on proliferation and counterterrorism investigations. It has asked Congress for money to expand its staff devoted to these cases.

One area of BIS-FBI cooperation will be in identifying small companies that are exporting but not complying with licensing rules. "We will be partnering with the FBI to identify some of these non-public, non-participating companies to try to reach out to them," Wysong said. "We are going to look at companies in industries that manufacture products that are sought after by the bad actors for bad purposes and somehow fly under our radar, the mom-and-pop operations that work on the kitchen table exporting and don't come to our seminars," she said.

Separately, Wysong told the PECSEA that she will try to do a better job of explaining to industry the process BIS uses to decided administrative enforcement actions and settlements. In particular, she wants industry to understand how the Administrative Case Review Board (ACRB) in BIS works. "Somehow the impression developed that it's a Star Chamber," she noted. Even though the ACRB doesn't hold formal hearings on cases, firms still have the opportunity to provide written comments to its members or to meet with them, she said.

CANADIANS OFFER TO SWAP EXPORT TAX FOR REFUND OF LUMBER DUTIES

The U.S. and Canada will make a last-ditch effort to resolve the bilateral dispute over softwood lumber before Commerce Under Secretary Grant Aldonas leaves office at the end of March. If the two sides can't settle the dispute in the next three weeks, it may be months before his replacement, who hasn't been named yet, can be confirmed and ready to step into the talks. The signal for renewal of the talks came March 8 when Canadian Trade Minister Jim Peterson sent Aldonas a detailed four-page proposal for resuming talks and resolving the dispute. The

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heart of Peterson's proposal is an offer to impose an export tax on Canadian lumber in exchange for Washington refunding with interest more than \$4 billion in antidumping and countervailing duty (CVD) deposits the U.S. has collected in the last two years. The plan comes under the heading of *deja vu* all over again, mirroring a December 1986 memo of understanding which settled Lumber I, the first of four bilateral disputes over lumber.

The export tax would remain in place until Canadian provinces change their stumpage-fee policies to meet an as-yet-to-be agreed upon standard for eliminating the subsidy element of the fees, Peterson proposed. He also called for establishing an independent mechanism to judge the adequacy of those changes.

Without accepting any of the conditions Ottawa offered, the U.S. lumber industry welcomed the offer as a basis for renewing talks on resolving the dispute. "We welcome this as a positive step and a show of good faith that confirms a desire to return to the negotiating table," wrote W.J. "Rusty" Wood, chairman of the Coalition for Fair Lumber Imports, in a letter to Aldonas.

Some Canadian lumber producers, especially in Ontario, are still cautious about resuming talks with the U.S. They argue that Canada has been winning the legal challenges against the U.S. antidumping and countervailing duty decisions on Canadian lumber and Ottawa should not negotiate away its victories. Most important, they want a full refund of the duty deposits. "The forest industries cannot emphasize enough that the money must be returned and the illegal duties dropped before we enter into negotiations," wrote Jamie Lim, president of the Ontario Forest Industries Association, in a letter March 4 to Peterson.

L-3 COMMUNICATIONS AGREES TO AUDIT OF EXPORTS IN DEAL WITH BIS

As part of a settlement agreement, L-3 Communications of New York has agreed to conduct an audit of all exports made by eight of its divisions to ensure they complied with U.S. export control requirements. The agreement, which also includes the payment of a \$33,000 civil fine, resolves BIS charges that the company on one occasion exported a mobile cargo x-ray system to the Netherlands without obtaining an export license from BIS. The agency claimed L-3 knew an export license was needed.

The charging letter issued to L-3 also contended that the firm filed a false Shipper's Export Declaration (SED) for the export. BIS said the company had stated that the item was eligible for license exception NLR, no license required, which it was not. The company had also listed the wrong Export Control Classification Number (ECCN) on the SED, claiming the item came under ECCN 2A993 when it actually came under 3A101, BIS charged.

As part of the settlement, L-3 agreed to "conduct transaction-by-transaction based audits of all exports involving items subject to the regulations that occurred during the time period of January 1, 2005, through December 31, 2005" for each of eight company divisions in seven states. L-3 also agreed to provide a copy of these audits to the Office of Export Enforcement's Herndon, Va., office no later than Feb. 1, 2006. L-3 did not respond to a call for comment.

CARDIN WARNS GOP AGAINST MAKING CAFTA-DR VOTE PARTISAN

Rep. Ben Cardin (D-Md.), the new ranking Democrat on the House Ways and Means trade subcommittee, made a forceful debut appearance before the Washington trade community March 10, warning the Bush administration and Republican leaders not to make the coming congressional vote on the U.S.-Central American-Dominican Republic free trade agreement (CAFTA-DR) a partisan issue. Speaking to the Washington International Trade Association, Cardin claimed Democrats had not started to "whip" the issue among their members. "In my conversations with the administration I am going to urge them to avoid that," he said. While admitting that Democrats might have to organize to collect votes against the deal, he said

he still hoped such maneuvering wouldn't be necessary. "It would be a huge mistake if the Republican leadership puts us into a partisan position where we are forced to try to deal with it on a partisan basis," he said. Later, speaking to reporters, Cardin said the Democratic Party has not taken a position on CAFTA-DR although some groups within the party have.

The battle over CAFTA-DR may move soon to the congressional agenda following the enactment of legislation in Guatemala March 9 repealing a decree that would have limited the protection of data from pharmaceutical clinical trials (see **WTTL**, Jan. 31, page 3). As long as that decree was in place the White House had held back from asking lawmakers to begin hearings on deal and the non-markup markup process for the FTA implementing legislation.

CHANGE IN MTCR RULES EASES RESTRICTIONS ON BRITAIN, FRANCE

BIS has moved to limit last November's overly broad extension of Missile Technology Control Regime (MTCR) rules (see **WTTL**, Nov. 16, page 4). In the March 10 Federal Register, the agency revised the Export Administration Regulations (EAR) to carve out an exception from new licensing requirements for Missile Technology (MT) exports to missile programs in the United Kingdom and France. The rules issued in November imposed licensing requirements on exports to all rocket system programs in all countries. The revision says this rule applies to all destinations except nuclear weapons states that also belong to NATO. Only the UK and France meet that definition.

The new rule also implements changes the MTCR regime adopted to its export control list at its October 2004 plenary meeting in Seoul, including a change in country group lists to reflect Bulgaria's entry into the regime. In addition, the notice adds four Syrian research and laboratory centers to the BIS Entity List.

BIS CLARIFIES LICENSE DENIAL POLICY FOR STATE-SANCTIONED ENTITIES

When State imposes sanctions on any party under U.S. laws restricting trade with Iran or Iraq or because of missile proliferation violations, BIS will make a case-by-case decision on whether to add the party to its Entity List. Once the party is placed on the Entity List, however, the agency will impose a license-denial policy for any trade with it, the agency advised in amendments to Export Administration Regulations (EAR) published March 7 in the Federal Register.

The new rules amend Section 744 of the EAR to say BIS may add foreign policy controls on State-sanctioned entities. "In determining whether to impose license requirements pursuant to Section 744.20, BIS will consider the nature of the action that led to the State Department sanction and whether, because of that action, such sanctioned parties would not be reliable parties to export or reexport transactions subject to the EAR," BIS stated. The first entity hit by the new rule is Russia's Tula Instrument Design Bureau.

MISSILE CONTROLS ON EXPORTS TO CANADA EXPECTED

Canada's special exemption from U.S. export controls will be curbed for exports subject to Missile Technology Control Regime (MTCR) requirements, acting BIS Under Secretary Peter Lichtenbaum told the agency's Regulations and Procedures Technical Advisory Committee (RAPTAC) March 8. The agency has put off for several years implementation of provisions in the National Defense Authorization Act (NDAA) which mandate export licenses for all Missile Technology (MT) products to all destinations, but that delay may no longer be possible. "While there was some prospect for legislation that would modify the NDAA requirement to carve out Canada from the requirement, we did not want to create a disruption given that it was possibly going to go away," he said. "But at this point we do not see any legislation on the

horizon nor does any such legislation seem to us to have a reasonable prospect if it were introduced,” he added. Although Lichtenbaum didn’t say when the new controls would be issued, he indicated that he hoped the new requirements would be written in a way that would not interfere with the close long-running ties between the U.S. and Canadian aerospace industries. “I believe that we ought to do that in a way that allows for appropriate transition, ensures that licenses will be expedited, but absent some legislative change we’ll have to conform with the statute and move toward a licensing requirement of some sort,” he said.

* * * BRIEFS * * *

DEEMED EXPORTS: There has been 25% reduction in number of deemed export license filed with BIS in first five months of fiscal 2005 compared to same period last year, reports Alex Lopes head of BIS staff that handles these licenses. Lopes says he has no explanation for decline.

TEXTILES: Dualing press releases between importers and textile industry over meaning of rise in Chinese apparel imports in January were probably meaningless since some imports in January were still subject to visa requirements and restrictions on 2004 over-quota entries under old MFA quota system. Imports in February and March will reflect more accurately quota-free world.

EXPORT ENFORCEMENT: Stoelting Co. of Wood Dale, Ill., was sentenced to pay \$20,000 criminal fine and 2 1/2 years of probation for exporting polygraph machines to China without licenses. Its president, LaVern Miller, was sentenced to 2 1/2 years probation, six months of electronically monitored home detention and 500 hours of community service. He will have to pay \$18,000 to cover monitoring and probation costs. They reached separate civil settlements with BIS last June (see **WTTL**, June 14, page 4).

CHROMIUM: Eramet Marietta filed antidumping petitions at ITA and ITC against imports of superalloy degassed chromium from Japan. Petition is first in three months (see **WTTL**, Feb. 28, page 1).

TISSUE PAPER: While divided on definition of “like product,” ITC March 8 agreed in final determination that U.S. industry is being injured due to dumped imports of bulk and consumer tissue paper from China.

CANADIAN SWINE: Canada isn’t subsidizing exports of live swine to U.S., ITA said in final ruling March 7. It found swine dumped, however, with rates ranging from de minimis to 18.87%.

FTA TALKS: U.S. and UAE began FTA talks March 8. Talks with Oman were set for March 12.

IBM: CFIUS will allow IBM to sell its PC business to China’s Levono Group without restrictions, IBM announced March 9 (see **WTTL**, Feb. 7, page 1).

STEEL MONITORING: Commerce in March 11 Federal Register issued rules extending steel import monitoring and analysis system until March 21, 2009.

SHIPBUILDING: WTO Dispute Settlement Panel issued split opinion on EU’s complaint that Korea is providing subsidies to its shipbuilding industry. While finding prohibited subsidies for some individual ships, panel rejected EU’s more important claims that broader Korean Export Import Bank programs constitute prohibited subsidy and that they caused serious prejudice to EU interests.

CANADIAN WHEAT: NAFTA binational panel March 10 rejected portion of ITA’s CVD ruling on hard red spring wheat from Canada, saying ITA’s finding that comprehensive financial risk coverage constituted subsidy was not in accordance with law. Panel remanded ruling back for reconsideration. Panel agreed with ITA, however, that subsidy is provide by use of certain government-owned or leased railcars.

TRADE FIGURES: Declining value of dollar v. euro starting to affect transatlantic trade, as U.S. deficit with EU in January declined to \$8.1 billion from \$10.3 billion in December, Commerce reported March 11. Overall, U.S.goods exports in January were record \$72 billion; imports were record \$133.2 billion.

CHILE: Customs issued rules in March 7 Federal Register on customs-related provisions of U.S-Chile FTA.

WTO: Reps. Bernie Sanders (D-Vt.) and Ron Paul (R-Texas) have introduced H.J.Res. 27 calling for Congress to withdraw approval of Uruguay Round Agreement (see **WTTL**, Nov. 8, page 3). Often misunderstood, resolution would not withdraw U.S. from WTO.