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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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MANCUSO PROMISES TO TEMPER USE OF HIGHER EXPORT PENALTIES

To forestall legislation that would mandate consideration of an exporter's size and accidental violation of U.S. export controls in enforcement cases, Bureau of Industry and Security (BIS) Under Secretary Mario Mancuso has promised to take those factors into consideration. In a Sept. 26 letter to Rep. Don Manzullo (R-Ill.), Mancuso said penalties "must not bear disproportionately on small businesses that may have committed a minor inadvertent violation."

Mancuso's letter and a similar one from Treasury's Office of Foreign Assets Control (OFAC), prompted Manzullo to withdraw amendments he was prepared to offer during the House Foreign Affairs Committee's Sept. 26 mark up of legislation (S. 1612) to increase the fines available under the International Emergency Economic Powers Act (IEEPA)(see **WTTL**, July 2, page 4). Manzullo's amendments would have required BIS to conduct outreach events for small business on export controls and to assess impact of sanctions on small business.

BIS "is focused on ensuring that penalties for violations of the dual-use export control laws and regulations are appropriate," Mancuso wrote. "Our intent is not to punish any business unfairly for minor, accidental violations," he added. Mancuso noted that BIS has issued penalty guidance that "ensures that the penalty assessed is commensurate with the infraction."

PERU FTA MOVES, BUT OTHER PACTS SET TO LANGUISH

President Bush wasted no time following the House Ways and Means Committee's Sept. 25 pre-approval of legislation to implement the U.S.-Peru Free Trade Agreement (FTA). Bush Sept. 27 formally sent Congress the Peru bill, starting the clock for fast-track approval of the deal probably in October or early November. A draft of new legislation to expand the Trade Adjustment Assistance (TAA) program for workers displaced by trade is expected to be circulated the week of Oct. 1, and the Peru and TAA bills are likely get merged into one package.

After Peru, however, the fates of FTAs with Colombia, Panama and Korea are more problematic. "As it relates to the remaining three, I would say the ball is in the administration's court," Ways and Means Chairman Charles Rangel (D-N.Y.) told reporters following the committee's action on the Peru pact. The Korean deal is far off the radar screen. Rangel said the administration might fix the beef issue and pick up some farm state votes but won't satisfy Detroit and trade subcommittee chairman Sander Levin (D-Mich.) on autos. The Panama accord now faces a roadblock over the Panamanian Assembly's election of Pedro Miguel Gonzalez-Pinzon as president. Gonzalez-Pinzon is the subject of a U.S. indictment and arrest warrant

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for allegedly killing an American soldier in 1992. Although he was acquitted of the charges by a Panamanian court, the State Department protested his election. State's reaction hasn't satisfied lawmakers. "The administration is utterly confused," Rangel charged. "They have an 800 pound gorilla with Panama right in the middle of the living room," he declared.

The status of Gonzalez-Pinzon isn't the only problem facing approval of the FTA. Ways and Means members have had two meetings with Panamanian officials to discuss alleged shortcomings in their labor laws and a report that claims Panama does not meet the standards of the International Labor Organization's (ILO) Declaration. "I have been encouraged," Levin said. "We had some constructive discussions last Friday" [Sept. 21], he said. "There need to be a number of legal changes. They need to figure out how to do it and talk with us," he added.

On Colombia, Levin cited House Speaker Nancy Pelosi's previous statements that more needs to be done on worker rights in the country. "We await further actions to make real worker rights and their protection against violence and also impunity," Levin said. "They said they were going to move on a couple of hundred cases, and we're waiting to see movement," he added.

LEGISLATION WOULD MANDATE DEADLINES FOR USML LICENSES

House members are preparing to introduce legislation in the next few weeks that would impose mandatory deadlines on State's Directorate of Defense Trade Controls (DDTC) to review and reach decisions on export licenses for items on the U.S. Munitions List (USML). Rep. Brad Sherman (D-Calif.), chairman of the House Foreign Affairs subcommittee on terrorism, proliferation and trade, revealed plans for a broad bill to deal with licensing problems at DDTC during the full committee's Sept. 26 mark up and approval of legislation (S. 1612) to increase penalties available under the International Emergency Economic Powers Act (IEEPA).

"We expect that sometime in October we will mark-up a bill dealing with all of these issues that arise when we license the export of munitions and dual-use items," Sherman told the committee. Members of Sherman's subcommittee criticized DDTC's licensing record at a July 26 hearing (see **WTTL**, July 30, page 1). In addition to Sherman, the bill is likely to be co-sponsored by Reps. Don Manzullo (R-Ill.), Joe Crowley (D-N.Y.), and other subcommittee members.

Congressional sources say the bill will call for an increase in the number of licensing officers in DDTC and will propose means for paying for the extra staff. While the funding details have not been worked out, an increase in registration fees for heavy license users may be one approach, sources say. Another likely provision will adopt language Manzullo has proposed in other legislation to clarify licensing jurisdiction for civil aviation parts (see story page 3). The bill is expected to provide for quicker action on licenses for USML items going to allies participating with U.S. forces in military or peacekeeping actions. Also, State would be under a mandate to keep the backlog of licenses below a set number. The legislation would amend current policies for the use of Program Licenses to make them more attractive to exporters.

U.S. DOESN'T THINK TIME IS RIPE FOR LAMY TO OFFER DOHA DRAFT

The growing call for World Trade Organization (WTO) Director General Pascal Lamy to offer a comprehensive draft Doha Round agreement is getting a cool reception from U.S. trade officials who don't believe the time is ripe for such a move. The idea that Lamy should offer a text that would cover all the needed concessions and compromises in agriculture, non-agriculture market access (NAMA) and services got a boost in an article by former Under Secretary of Commerce Stuart Eizenstat and former European Union (EU) trade negotiator Hugo Paemen in a Sept. 24 article in the *Washington Post*. The two former trade officials urged Lamy to follow the example of the late Arthur Dunkel, who was director general of the General Agreement on Tariffs & Trade (GATT) during the Uruguay Round. Dunkel proposed what became known as

the “Dunkel text” in an effort to get that round restarted after talks collapsed in 1990. Lamy “is the only one who can force the recalcitrant countries to bridge the remaining gaps” in the Doha Round, Eizenstat and Paemen wrote. “After many failed initiatives in the Doha Round, it is time for Lamy to guide members to a middle ground,” the two ex-trade officials asserted.

“It would be a huge mistake” for Lamy to offer a draft text now, one Bush administration official told WTTL. When the Dunkel text came out “enough work had already been done,” he noted; adding, “We are not at that point now.” A Lamy text may be appropriate in a few months when issues have been narrowed, but right now it would be counterproductive, administration sources say. “You get one bullet and you can’t miss,” one official told WTTL.

LAWMAKERS WANT 17(c) DISPUTE RESOLVED BY YEAR’S END

The Bush administration will need to get State and Commerce to resolve their long-running dispute over licensing jurisdiction for civilian aircraft parts by the end of the year or face the prospect of Congress taking legislative action to settle the issue. The deadline for clarifying licensing jurisdiction was set by House Foreign Affairs Committee Chairman Tom Lantos (D-Calif.) Sept. 26 when his committee approved legislation (S. 1612) to increase fines under the International Emergency Economic Powers Act (IEEPA). With the deadline set by Lantos, Rep. Don Manzullo (R-Ill.) agreed not to offer an amendment to the IEEPA bill to reassert Commerce’s jurisdiction of these products under Section 17(c) of the Export Administration Act (EAA) (see **WTTL**, Sept. 17, page 1).

Manzullo has been leading an effort to resolve the jurisdiction dispute and has been meeting with Bush administration officials on the issue for several months. He introduced a stand-alone bill (H.R. 3633) Sept. 24 that is similar to his withdrawn amendment to clarify the jurisdiction issue.

“I agree with the gentleman that the licensing jurisdiction of aircraft components that are wholly or predominantly civilian needs to be clarified by our administration,” Lantos said during a colloquy with Manzullo at the markup. “I am prepared to commit to work with him and the administration to clarify the licensing jurisdiction of civil aircraft components to promote both the better competitiveness of the U.S. civil aviation industry and the safeguarding of U.S. national security, taking into account the original congressional intent,” he continued. “We will seek to achieve this before the end of the current session of Congress by all appropriate means, including legislation should that be necessary,” Lantos declared.

DOHA SERVICES CHAIR EXPECTED TO DRAFT TEXT FOR TALKS

The chairman of the Doha Round’s services negotiations appears ready to bow to pressure to produce a comprehensive text similar to those drafted by the chairs of committees negotiating on agriculture and non-agriculture market access (NAMA) in order to get the long stalled services talks back on track. Consensus on the need for a working text in services emerged Sept. 28 at the meeting of the WTO Services Council. Services Chairman Ambassador Ferdinand De Mateo of Mexico will work with NAMA Chairman Don Stephenson, Agriculture Chairman Crawford Falconer, ministers and officials in capitals to come up with a text, WTO officials said. The contents and timing of a services text haven’t been worked out.

The text isn’t likely to be as comprehensive as the agriculture and NAMA papers but more general in nature because the services talks cover numerous separate sectors. Services need to find a higher place in the negotiations, said Sergio Marchi, chairman of the Canadian Services Coalition. A services text will signal the importance of the negotiations, he said; adding “It will signal the reverse if there is no text.” The text will likely revise the missed deadlines that were set in Annex C of the 2005 Hong Kong Ministerial Declaration. The annex provided a schedule for countries to make requests to other countries for opening services sectors and for

those countries to table offers to open up services sectors. Most of those goals have been missed, and services talks have been languishing, waiting for progress in agriculture and NAMA. "From a date perspective, we need a revision," said Marchi, who was in Geneva with a delegation of the Global Service Coalition, which represents service industries in Canada, the U.S., and Europe. "We also would like the level and a statement of ambition without having that meaning benchmarks," he said. The paper is likely to address rules and safeguards. "There is considerable scope to the revising and adding to the previous statements," Marchi said. It will likely reaffirm the declaration's objectives, but significant change is unlikely.

CHINESE STATEMENT MAY REQUIRE VEUs TO GET BEIJING'S APPROVAL

A statement issued by China's Ministry of Commerce (MofCom) may put a significant hurdle in front of BIS hopes for widespread use of the Verified End User (VEU) mechanism in its new China rule. The ministry has posted a statement on its website reminding all Chinese firms that they need MofCom approval before entering into any agreement to allow foreign government agents to visit their plants. An agreement to allow BIS visits is a key VEU condition.

"In accordance with related regulations of the state, Ministry of Commerce reiterated that without approval by Ministry of Commerce, any enterprise or institution registered in China shall not promise to accept or accept scene interview or investigation concerning export control carried out by representatives of foreign government," MofCom said in its Sept. 11 statement.

* * * BRIEFS * * *

ITA: President Bush Sept. 25 named Chris Padilla acting under secretary for international trade pending his Senate confirmation (see **WTTL**, Sept. 10, page 4).

MAGNETS: Magnum Magnetics, Sept. 21, filed antidumping and countervailing duty complaints at ITA and ITC against imports of raw flexible magnets from PRC and dumping petition on imports from Taiwan.

DEFENSE TREATIES: After **WTTL** press time Sept. 21, President Bush sent Senate United Kingdom and Australia defense trade cooperation treaties for ratification (see **WTTL**, Sept. 24, page 3).

FCPA ENFORCEMENT: Paradigm, private limited liability company headquartered in The Netherlands with its principal place of business in Herzliya, Israel, until July 2005, and in Houston, since July 2005, has agreed to pay \$1 million penalty in agreement with Justice to settle charges that it violated FCPA in illegal payments made to government officials in Kazakhstan, China, Mexico, Indonesia, Mexico and Nigeria. Paradigm made voluntary disclosure. In addition to monetary penalty, firm has agreed to take remedial steps, including adoption of rigorous internal controls and retention of outside compliance counsel. "As a result of these significant mitigating factors, the Justice Department has agreed not to prosecute Paradigm for the making of and agreement to make improper payments, provided Paradigm satisfies its obligations under the agreement for a period of 18 months," Justice statement said.

MORE FCPA ENFORCEMENT: EDS has entered consent decree with SEC to cease-and-desist from future violations of FCPA and to pay disgorgement and prejudgment interest of \$490,902 to settle commission charges that it failed to disclose illegal payments made by employee of its A.T. Kearney India (ATKI) subsidiary and to report other transactions properly. In separate action, SEC reached settlement with Chandramowli Srinivasan, former president of A.T. Kearney India for his role in illegal payments to senior employees of state-owned enterprise in India. He agreed to pay \$70,000 fine.

IMPORT FRAUD: Senior CIT Judge Nicholas Tsoucalas Sept. 25 imposed \$7.5 million civil fine plus costs, fees and interest on Inn Foods, Inc., for making fraudulent statements on import documents for imports of frozen produce from Mexico (Slip Op. 07-142).

URANIUM: Domestic industry has lost court rulings at CIT and Court of Appeals for Federal Circuit. CIT Judge Donald Pogue (Slip Op. 07-143) Sept. 26 remanded to ITA its "sunset" ruling that dumping of uranium from Russian Federation is likely to recur. Appellate Court rejected industry effort to allow ITA to suspend liquidation of future uranium imports despite earlier ruling that imports of low enriched uranium were product of service and not subject to dumping law.