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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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ECUADOR WANTS ANDEAN PREFERENCES EXTENDED BUT NOT FTA

Ecuadorian Foreign Minister Maria Espinosa came to Washington June 7 to urge Congress to extend the Andean Trade Preferences Act (ATPA) for two years, but she made it clear her country doesn't want to reopen talks on a bilateral free trade agreement (FTA) with the U.S. "That's not the option for the Ecuadorian government," she told reporters before meeting with Senate Finance Committee Chairman Max Baucus (D-Mont.), House Ways and Means Chairman Charles Rangel (D-N.Y.) and Ways and Means Ranking Member Jim McCrery (R-La.). U.S.-Ecuador FTA talks were suspended in 2006 due to U.S. concerns about Ecuador's treatment of U.S. investments and Ecuador's resistance to U.S. demands to open its agriculture market.

Democrats in Congress and the Bush administration support extending ATPA, but the debate is over whether to extend it just for six or eight months to allow Congress time to vote on the FTAs with Colombia and Peru or for a longer period. The current act expires June 30. In the past, there have been short extensions of ATPA, and it has even lapsed and had its benefits restored retroactively.

Instead of an FTA with the U.S., Espinosa said Ecuador would prefer a "managed trade" relationship. "We are seeking a long-term framework," she said. "When we are talking about trade with the United States we are talking about managed trade," Espinosa said. Ecuador wants the two-year extension of ATPA to allow time to negotiate that arrangement, she added.

Ecuadorian diplomats deny reports that Ecuador has given the U.S. notice that it wants to terminate the 10-year-old Bilateral Investment Treaty (BIT) between the two countries. "Our intention is updating it" to cover issues that were not addressed when the BIT was first negotiated, one official told WTTL. Ecuador is undertaking a similar process with all 22 investment treaties to which it is a party, he explained.

ITC TRIES TO BALANCE INTERESTS IN RULING ON QUALCOMM CHIPS

In a Solomon-like but split 4-2 ruling, the International Trade Commission (ITC) June 7 tried to satisfy both cellphone makers who use of Qualcomm communications chips and the patent rights of Broadcom. The commission's remedy ruling on an earlier finding that certain Qualcomm chips were infringing Broadcom patents will grandfather the continued import of Qualcomm-chip-containing phones that are already on the market but bar the import of new models. For an industry where the fast-paced introduction of new models is crucial, the ruling will give only a short-term reprieve for wireless manufacturers that use the patent-infringing chips and plan on expanding the use of new technologies on smart phones (see **WTTL**,

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March 26, page 4). Qualcomm quickly said it will file suit in federal court to block implementation of the ITC decision and also will ask President Bush to use his authority to reverse the decision. "We believe the Commission has not afforded manufacturers and operators, who will bear the brunt of this order, an adequate opportunity to defend their interests," said a statement by Qualcomm CEO Paul E. Jacobs.

While Broadcom was obviously pleased with the ITC order, it left open the door for a negotiated settlement with Qualcomm. Such negotiations have been ongoing for several years in the context of other litigation in federal courts over the disputed patents. "As noted previously, we have been forced to seek redress in the ITC and the courts because Qualcomm has repeatedly refused to recognize the value of Broadcom's patented technology," said statement by David A. Dull, Broadcom's senior vice president and general counsel. "To that end, we have made it clear to Qualcomm that we are open to discussions regarding the potential for licensing of our patent. The ball is in Qualcomm's court," he said.

"The Commission reached its decision after careful consideration of the appropriateness of an order excluding from importation the 'downstream products', that is, handheld wireless communications devices incorporating the infringing chips," an ITC press release said. "The Commission found that an order excluding all downstream products would impose great burdens on third parties, given the limited availability of alternative downstream products not containing the infringing chips," it continued.

"However, as the infringing chips are not imported in significant quantities outside of downstream products, the Commission also found that an exclusion order covering only the chips and chipsets, and not downstream products, would afford little or no relief to the patent holder, Broadcom," the ITC release explained. "The Commission determined that barring importation of downstream products, with an exemption for certain previously imported models, will substantially reduce the burdens imposed on third parties while affording meaningful relief to the patent holder," it stated.

CHI MAK'S FAMILY ENTERS GUILTY PLEAS IN ITAR EXPORT CASE

Although attorneys for California engineer Chi Mak said their client intends to appeal his conviction for attempting to export defense data to China without a license, other members of Mak's family who were facing related charges have decided to plead guilty for their role in the export scheme. Chi Mak's wife, Rebecca Laiwah Chiu, pleaded guilty June 5 to failing to register as a foreign agent. The plea agreement calls for her to be sentenced to three years in federal prison (see **WTTL**, May 14, page 4).

His brother, Tai Mak, pleaded guilty June 4 to conspiring to export defense articles. He will be sentenced on Oct. 1. Tai Mak's wife, Fuk Mak, pleaded guilty to aiding and abetting the attempted illegal export. She is expected to receive a probationary sentence on October 1. Tai Mak's son, Billy Mak, also pleaded guilty to aiding and abetting the scheme and also will get probation.

U.S. ASKS WTO TO AUTHORIZE USE OF "ZEROING" IN DUMPING CASES

Having lost repeated challenges against its use of "zeroing" in antidumping cases, the U.S. June 4 asked countries that won those disputes to agree to change the World Trade Organization's (WTO) Antidumping Agreement to accept the U.S. interpretation of the rules. The International Trade Administration (ITA) has already revoked several dumping orders based on these rulings (see **WTTL**, April 16, page 4). In a proposal to the Doha Round negotiating group on rules, the U.S. said the issue is "ripe for clarification" because members still disagree about the interpretation of the agreement despite rulings from several dispute-settlement panels and the WTO Appellate Body. The only country with "different views" about the rules, however, is the

U.S. Washington contends the Appellate Body rulings were contrary to previous understandings that permitted use of the zeroing methodology. “Where the WTO issues dispute settlement rulings contrary to the long-held understandings and practices of a wide variety of WTO members, it is important that members take up that issue in the WTO negotiations, so it is not simply left to the dispute settlement process but rather is resolved by rules actually agreed upon by members,” said a statement by USTR General Counsel Warran Maruyama.

“A prohibition of zeroing, or a requirement to provide offsets for non-dumped transactions, simply cannot be found in the text of the AD Agreement,” said a U.S. paper submitted to the negotiating committee. “The Negotiating Group on Rules needs to evaluate openly the panel and Appellate Body reports and understand as clearly as possible the reasoning adopted, whether we agree with it or not, and what that reasoning means for different aspects of the AD Agreement as well as for the different systems recognized by the AD Agreement as legitimately operating within its rules,” the paper said.

In a separate proposal to the Doha rules group June 1, the U.S. called for amending the Agreement on Subsidies and Countervailing Measures (SCM) to add five additional subsidy practices to the list of prohibited subsidies. The U.S. wants to prohibit specific aid for (1) coverage of operating losses; (2) forgiveness of government-held debt; (3) lending to “uncreditworthy” companies; (4) equity investments in “unequityworthy” companies; and (5) other financing, such as “royalty-based” financing, that is not commercially available.

GRASSLEY SAYS TAA EXTENSION MUST BE LINKED TO FAST-TRACK RENEWAL

Sen. Charles Grassley (R-Iowa) will try to retain the historic link between trade agreements and the Trade Adjustment Assistance (TAA) program, whose authorizing legislation is set to expire Sept. 30. Any effort to renew TAA “must be linked to extension of Trade Promotion Authority,” he told a Senate Finance Committee hearing June 6 on TAA.

Congressional sources question whether Grassley can block renewal of TAA, which has had bipartisan support in the past as a bulwark against opposition to new trade agreements. Even if the law were to lapse, Labor Department sources say the program would continue under other authorizations and funding.

Whether or not it is tied to fast-track, TAA faces changes, with both the Bush administration and Democrats in Congress offering proposals to improve the program which provides job training, wage benefits and health insurance subsidies to workers who have lost their jobs due to trade. At the Finance hearing, witnesses proposed improvements in the program to make it easier for workers to get training, to increase the subsidy for health insurance, to expand the program to all workers affected by globalization, to offer more support for communities hurt by job losses and to offer wage insurance to workers who are forced to take lower paying jobs.

The Labor Department, which wasn’t invited to the hearing, has its own proposals for improving the program, Labor Secretary Elaine Chao told the President’s Export Council June 7. “The program really creates a disincentive for workers to accept new employment,” she said. The department’s proposals would give workers more flexibility to start training programs before they are laid off, to take advantage of online remote training, and to seek training for different types of jobs. It also would create “portable accounts” for workers, reduce duplication with other worker programs, and provide transitional benefits.

Labor sources told WTTL that the administration opposes expansion of the program to cover globalization. “We do have concerns about industry-wide certification,” one source said. The department is examining the idea of wage insurance. “We are looking at wage insurance for lower skilled workers facing lower wage options,” the source added; stressing that this would not be for higher-level workers. He said administration has not yet taken a position on extending TAA to service workers or on increasing subsidy for health insurance.

* * * BRIEFS * * *

FCPA: Former Alcatel employee Christian Sapsizian, who is French citizen, entered guilty plea June 7 in Miami U.S. District Court to conspiracy and violating FCPA for his role in payment of \$2.5 million in bribes to Costa Rican government officials to obtain mobile phone contract (see WTTL, April 9, page 4).

ITAR SENTENCING: Federal judge in Santa Ana, Calif., sentenced Reza Tabib, who is U.S. citizen who was born in Iran, to 24 months in prison and three year probation for attempting to export maintenance kits for F-14 Tomcat fighter jet to Iran without State license. Tabib had pleaded guilty to one-count charge of violating IEEPA in June 2006. In earlier case, his wife, Terri Repic-Tabib, pled guilty to one count of making a false statement on SED and was placed on two-year's probation.

COMMERCE: ITA Under Secretary Frank Lavin will leave post July 13 to become chief operating officer for Cushman-Wakefield Investments Asia where he will work on real estate investment projects. Separately, name from ITA's past emerged June 8, as President Bush named former Under Secretary of Commerce J. Michael Farren to be deputy assistant to president and deputy counsel. Farren served at ITA in Reagan and Bush I administrations. When first proposed for under secretary post his nomination was nixed by White House which thought that at 35 then he was too young (see WTTL, 29, 1988, page 2). After leaving Commerce he became corporate VP and general counsel for Xerox. Bush also named former Senate Banking Committee Counsel Amy F. Dunathan to be associate counsel to the president. She recently worked at Wiley Rein & Fielding, former law firm of presidential counsel Fred Fielding.

OCTG: Frustrated binational NAFTA panel June 1 told ITA to issue new Sunset Review determination that dumping of imports of oil country tubular goods from Mexico is not likely to resume if current antidumping order is revoked. This is fifth remand panel has issued in case since 2001. "At this juncture, Commerce has proven to the panel that remanding once again to reconsider would be futile attempt to get the Department to issue a determination supported by the evidence on the record and in accordance with United States antidumping law," panel declared.

EXPORT ENFORCEMENT: General Dynamics C4 Systems, Inc., in Scottsdale, Ariz., will pay \$6,600 civil fine in settlement with BIS for exporting encryption test equipment to Malaysia without license.

MORE EXPORT ENFORMENT: BIS has imposed five-year denial of export licensing privileges on Super Net Computers, LLC of Dubai for causing reexport of computer equipment to Iran without license.

MORE EXPORT ENFORCEMENT: Data Physics Corporation of San Jose, Calif., agreed to pay \$55,000 civil fine and have its export privileges denied for trade with China, BIS said in May 29 Federal Register. Firm's president, Sri Welarama, reached deal with BIS for his role in exports. He also will pay \$55,000 civil fine and be subject to five-year denial order that BIS will suspend. In separate action, BIS imposed 180-day temporary denial order on Bill Chen, the manager of Data Physics China, for his role in alleged exports. Chen was indicted by federal grand jury in the Northern California District Court in May 2006.

MORE EXPORT ENFORCEMENT: BIS has reached settlement with Primavera Systems, Inc., of Bala Cynwyd, Pa., which will pay a \$55,000 civil fine for the unlicensed export of software to Iran.

MORE EXPORT ENFORCEMENT: BIS has imposed 10-year denial of exporting privileges on Khalid Mahmood of Beltsville, Md., for his role in conspiracy to export lift truck parts to Iran through UAE without licenses. Agency claimed he coordinated shipments.

MORE EXPORT ENFORCEMENT: Biospherical Instruments, Inc., of San Diego, has agreed to pay \$13,200 civil fine after making voluntary self-disclosure to BIS that it exported profiling radiometer system to Indian organization on BIS Entity List. Beltrans Logistics, Inc. of Torrance, Calif., which has agreed, in separate agreement with BIS, to \$6,000 fine for aiding or abetting export.

NAFTA: Former U.S. Supreme Court Justice Sandra Day O'Connor has agreed to serve on roster of current and former U.S. judges who are available to be members of Extraordinary Challenge Committees.

STEEL PIPE: Allied Tube & Conduit, IPSCO Tubulars, Northwest Pipe Company, Sharon Tube Company, Western Tube & Conduit Corp., Wheatland Tube Company and United Steelworkers filed countervailing duty and antidumping petitions June 7 at ITA and ITC against imports of quality steel pipe from China.

WOODEN BEDROOM FURNITURE: ITA May 25, on remand from CIT, issued new dumping margins on wooden bedroom furniture from China. It reduced margin for Dorbest to 2.87% from 7.87% but increased margins on Ling Dong to 2.71% from 2.32%; Starcorp to 17.50% from 15.78%; Shing Mark to 5.20% from 4.96% and separate rate firms to 7.87% from 6.65% (see WTTL, Nov. 6, page 1).