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COMMERCE TOUTS CHINA RULE TO CHINESE IN SED TALKS

Commerce Secretary Carlos Gutierrez presented the Bureau of Industry and Security's (BIS) pending China catch-all rule as a trade promotion tool rather than a trade restriction in his portion of the Cabinet-level meetings between top Bush administration officials and their Chinese counterparts during the Strategic Economic Dialogue (SED) in Washington May 22-23. Technology, trade, and transparency were high on the SED agenda, Gutierrez told reporters after the meeting. "U.S. high technology exports to China were up 44% in 2006 to \$17.7 billion. We explained steps that we will take to facilitate such exports to trusted civilian customers in China while maintaining our national security guidelines," he added.

Chinese Vice Premier Wu Yi, who led the Chinese delegation to the SED, did not seem persuaded by Gutierrez's characterization of the catch-all rule. At several appearances during her meetings in Washington, she raised U.S. export controls as a factor restricting the growth of U.S. exports to China and contributing to the bilateral trade imbalance.

During the SED meeting, Commerce officials reemphasized the benefits of the proposed China rule to validated end-users (VEU), who they now call trusted customers. "We told them what we've been telling everyone according to the published draft rule, that it's an opportunity for customers to be able to get certain technologies without an individual license requirement," acting BIS Under Secretary Mark Foulon told WTTL. "It's not a new explanation. It's continuing to explain the benefits to customers that will be able to get certain items without going through an individual license process," he added.

Foulon declined to comment on the Chinese reaction to this explanation. He said the Chinese objections to the proposal are not going to change the final rule, which BIS officials say will be published by the end of June. "The Chinese don't write our regulations," Foulon declared.

PAULSON'S STRATEGY ON CHINA AIMS TO KEEP CONGRESS OFF BALANCE

Treasury Secretary Henry Paulson is betting a combination of strategic, long-range thinking and tactical, short-term trade maneuvers will keep Congress from passing legislation imposing tough sanctions on China. So far, the bet is paying off. The long-range view is seen in the May 22-23 meeting of the Paulson-sponsored Strategic Economic Dialogue (SED) between top U.S. and Chinese officials in Washington. The tactical side has produced World Trade Organization (WTO) complaints against Beijing and Commerce's revision of its countervailing duty policy for China. While lawmakers complained about the modest achievements of the SED there is no

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indication that Congress has the stomach to take on another legislative battle with President Bush when other larger issues are still on the table, including the war in Iraq, immigration, taxes, and the budget. At the same time, Paulson has built a close relationship with Ways and Means Chairman Charles Rangel (D-N.Y.), in part from his days as an investment banker in New York and also from the trust established in talks on new labor and environment conditions for free trade agreements. One weak spot in Paulson's plan may be the administration's hopes for getting a six-to-12 month extension of fast-track negotiating authority or trade promotion authority (TPA) to complete the Doha Round talks.

Fast track could be held hostage to tougher action on China's undervalued currency, an area where no progress was seen from the SED meeting. The administration doesn't understand the consequences of not dealing with the currency issue, said Sen. Jim Bunning (R-Ky.) at a Senate Banking Committee hearing May 23. The administration may have "problems with TPA that they were not expecting," he warned.

While the SED meeting produced agreements on opening air routes between the U.S. and China and easing restrictions on foreign financial services, one U.S. official told WTTL that the talks weren't aimed at solving specific disputes. One of the most important results of the meeting was having 15 ministerial level officials from China in one room with other Chinese ministers so they could hear what other Chinese ministers were saying. "The Chinese ministries are very stovepiped," the U.S. official said. They often don't understand how disputes other ministries have with the U.S. are affecting their interests, he added.

CIT REJECTS CANADIAN LAWYER'S APPEARANCE REQUEST

Court of International Trade Judge Thomas Aquilino Jr. May 11 rejected a request from a Canadian lawyer from British Columbia for permission to appear before the court, citing a lack of reciprocity for the treatment of American lawyers in that province (slip op. 07-71). Attorneys for Jackpine Forest Products had asked the court to allow Canadian attorney Palbinder Shergill to appear as counsel for the Canadian lumber firm in a case involving allegations of false statements on import documentation.

Jackpine's U.S. attorney's claimed British Columbia met CIT rules for the extension of privileges to foreign lawyers. The firm's motion, however, "offers no support for this representation," Aquilino wrote. The judge said he had to do his own research into the requirements for foreign lawyers to appear in courts in British Columbia. He found one text that stated that practitioners of foreign law are not permitted to appear as counsel before any British Columbia court. "If this actually means what it seems to say, then the reciprocity contemplated by USCIT Rule 74(c), *supra*, does not exist," Aquilino ruled.

U.S. TO PRESS OPENING OF BEEF MARKETS FOLLOWING OIE RULING

The U.S. will use an international ruling on the safety of U.S. beef to press China, Korea and Japan to reopen their markets to American imports. On May 22 the World Organization for Animal Health, which is still known by its old acronym, OIE, classified the U.S. as a controlled risk country for bovine spongiform encephalopathy (BSE). Agriculture Secretary Mike Johanns cited the OIE report in talks with Chinese officials attending the bilateral Strategic Economic Dialogue (SED) meeting. "With the OIE backing up the safety of our beef, what we are asking China to do, and for that matter, all of our trading partners, is to embrace the OIE standard and allow for the trade in beef based upon that standard," Johanns told reporters.

The Chinese didn't make any commitment on reopening their market. "I can't announce a breakthrough but we had a good week this week because of the OIE decision," Johanns reported. He said the U.S. will take the OIE report to other countries that stopped U.S. beef

imports. "China happens to be here this week, so we made that request to them, but I can tell you, we are dispatching information across the globe to our trading partners on the OIE decision," he said. "So it won't just be China that will receive this request; it will be Japan; it will be Hong Kong; it will be Korea; it will be all of our trading partners in beef," he added.

Opening of the Korean market to U.S. beef is one of the main hurdles that will have to be overcome for the U.S.-Korean Free Trade Agreement (KORUS) to have any chance of getting congressional approval. "The Koreans know what is going on in the OIE," Deputy U.S. Trade Representative (USTR) Karan Bhatia told WTTL. "We have been very clear with the Koreans and the Koreans have been clear, and President Roh has indicated that they intend to respect international practices," Bhatia added (see WTTL, April 9, page 1).

DEMOCRATIC OPPOSITION NOT LIKELY TO STALL FTA DEAL

Strong opposition voiced by some Democrats at a May 22 meeting of the House Democratic Caucus isn't expected to stop a deal between the Bush administration and congressional leaders to add labor and environmental provisions to pending and future free trade agreements (FTA). A group of members, who may represent the majority of the party, objected to the agreement at the meeting where Ways and Means Chairman Charles Rangel (D-N.Y.) and trade subcommittee chairman Sander Levin (D-Mich.) defended the deal.

Exactly how many Democratic votes the dissidents represent is the subject of disagreement. Rep. Jim Moran (D-Va.), who has consistently supported U.S. trade deals and fast-track legislation, told WTTL that he expects about one-third of the 232 Democrats in the House to oppose trade deals with Peru and Panama even with the proposed new provisions. Other congressional sources say they expect only 80-90 Democrats to vote for the agreements.

Moran said he foresees no problem in getting the Peru and Panama FTAs passed. "Colombia is going to be tougher but still conceivable. I think South Korea is going to be a real tough pull. I don't know if South Korea is going to get through," he said. "There are some Democrats whose principle base constituency is organized labor and they ran against trade," Moran told WTTL. "They can't shed their skin rapidly enough to vote for this trade deal even though the deal has been done with the full concurrence of labor," he said.

Moran's optimism about the outcome of the vote is based on his admiration for Rangel and Levin. "I just told [Rangel] I don't know if Rosti could have pulled this off," he said, referring to former Ways and Means Chairman Dan Rostenkowski (D-Ill.). Praise for Rangel, Levin and the deal also came from members of the New Democratic Coalition who spoke for an hour on the House floor May 22. "Unless you have served in the House for the past few years, you may not have the same appreciation for the dysfunctionality of the Ways and Means Committee and how it was or was not working in the past," said Rep. Joe Crowley (D-N.Y.).

House staffers are now in the process of fleshing out the details of the agreement and putting it into legal form. While congressional sources say the FTAs with Panama and Peru won't have to be renegotiated, they do expect the legislatures of two countries to adopt the new language formally. U.S. legislation to adopt the two FTAs also will include the new conditions. Work on the legal texts is likely to be completed in June, and House and Senate votes on the Peru and Panama accords is expected to occur before Congress recesses for its August vacation.

LDCs QUESTION U.S. PROPOSAL ON REMANUFACTURED GOODS

A U.S. proposal in the Doha Round to lower trade barriers to remanufactured and refurbished industrial goods has drawn questions and concerns from less developed countries (LDCs) who say the proposal is unclear and ambiguous. During the last set of talks on non-agriculture

market access (NAMA) May 9, most speakers from developing countries objected to the proposal because of concerns that products that claim to be remanufactured are often merely used or junk and get dumped into the developing world where they become environmental hazards.

Remanufacturing has become a larger business for many U.S. original equipment manufacturers, as well as thousands of small firms that refit and resell used products. Companies such as Caterpillar and Hewlett-Packard are among companies involved in these activities. A wide range of products may be remanufactured, including earthmoving equipment, automotive parts, medical devices and information technology, U.S. officials point out.

Some countries treat remanufactured goods as used item, which can mean they face such barriers as outright import bans, higher tariffs and fees, and overly stringent regulation, certification, and inspection requirements. Remanufactured goods are more like new goods than used goods, so they should be afforded better market access, a U.S. Commerce official said speaking on background. The U.S. first floated a concept paper on remanufactured good in 2005 and on Feb. 28, 2007, formally proposed language for the NAMA text calling for the WTO to deal with this issue at the end of the Doha Round.

There are two basic problems with the U.S. proposal to reduce non-tariff barriers (NTBs) for remanufactured goods, said a developing country trade diplomat involved in trade facilitation talks in the WTO Doha Round. He said U.S. intentions are ambiguous because officials say they don't want changes made in the Doha agreement but rather want to establish a work program for post-Doha negotiations. That isn't in the text of the U.S. proposal. "Many of the delegates are not yet clear what the purpose of this proposal is," the diplomat said.

Secondly, delegates aren't clear who would do the remanufacturing because the proposal doesn't adequately define what goods will be treated, the trade diplomat said. An original manufacturer that refurbishes a good according to its own standards gives more assurance the product will be backed by service commitments and warranties, he said. The accuracy of the refurbishing is an important issue, he said. Independent certification by the importing country only adds more NTBs, he suggested.

* * * BRIEFS * * *

SOMALIA: DDTC in May 22 Federal Register amended ITAR Section 126.1 to provide for case-by-case review of U.S. Munitions List licenses for exports to Somalia and to implement UN Resolution 1744.

ANTIBOYCOTT: Cooper Tools Industrial Ltda. wholly-owned Brazilian subsidiary of Cooper US, Inc., will pay \$27,000 civil fine to settle BIS charges that it committed 15 violations of antiboycott rules. Firm voluntarily disclosed transactions and cooperated fully with subsequent investigation, BIS said.

ITAR CONVICTION: Hadianto Djoko Djuliarso, 41, of Jakarta, Indonesia, was sentenced May 11 in Detroit U.S. District Court to 48 months in prison and two years supervised probation for violating the Arms Export Control Act. He also waived all rights to \$600,693 in proceeds obtained during investigation. Djuliarso and three other foreign nationals pleaded guilty to attempting to buy and export firearms and air-to-air missiles. When they complete their jail sentences, all four will be deported, Justice said.

NME: ITA in May 25 Federal Register ask for comments on possible change in antidumping regulations to grant market-economy treatment to market-oriented-enterprises in nonmarket economies besides current policy of giving such treatment to market-oriented industries.

ORANGE JUICE: Tropicana has asked ITC to conduct changed circumstances review of dumping order on orange juice from Brazil. ITC already reconsidering order on CIT remand (see **WTTL**, April 23, page 2).

EXPORT CONTROLS: Defense has contracted with Center for Strategic and International Studies to study export controls applied to friendly and allied governments. Study, which should take eight months to complete, will focus on relationship between globalization, technology innovation, defense relationships, export controls and national security.