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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 SAYS HE WILL TRY TO BALANCE TRADE AND SECURITY

Mario Mancuso, President Bush's nominee to be Commerce under secretary for export administration, told the Senate Banking Committee May 10 that he would try to balance support for U.S. exports and protection of national security. The committee's confirmation hearing on Mancuso's nomination came four months after Bush sent his name to Congress for approval. Committee Chairman Chris Dodd (D-Conn.), who reportedly had concerns about Mancuso's past statements while at the Defense Department, was not at the hearing, so Mancuso faced mild questioning from Sens. Jack Reed (D-R.I.), who chaired the hearing, and Robert Casey Jr. (D-Pa.), who was the only other senator at the hearing (see **WTTL**, March 26, page 1).

Asked by Reed about the balance between trade and security, Mancuso said those goals are not contradictory. "They just have to be balanced very, very carefully," he said. "Which is why the efficient administration of the export control regime is so very important; which is why it's important to reach out to industry and reach out to the interagency to make them as multilateral as possible," he added.

Mancuso said a lot depends on the definition of national security. "We don't have the luxury of defining it narrowly," he said. "Economic power is critically important. The contributions of industry are very important. The challenge, as I understand the challenges that BIS is facing right now, is this careful balance," he noted. "How do you participate in a globalized and very complex economy, while at the same time minimizing the risks that come with that," he said.

"The balance is difficult to strike but the under secretary of BIS must be mindful of national security; however, at all times, the export control regime has to balance these sometimes divergent interests," Mancuso stated. In response to a questions from Casey on the role of export controls and the trade deficit, Mancuso acknowledged the impact controls have on American workers, jobs and companies. "Should I be confirmed, to the extent that the dual-use export control system implicates those interests, which it does a tremendous amount, I as under secretary...will take that into account," he pledged.

CONGRESS AND ADMINISTRATION CUT DEAL ON LABOR AND ENVIRONMENT

In reaching a compromise May 10 on the labor and environment provisions that should be in four pending free trade agreements (FTAs), the Bush administration and Congress succeeded in bridging a gap that has eluded the executive branch and Congress for nearly 14 years. The White House apparently was willing to swallow the bitter pill that Republicans and the business community have opposed since the Clinton administration because the failure to make a deal

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with congressional Democrats would have resulted in the total collapse of the Bush administration's trade agenda and all it has strived for during the last seven years. U.S. negotiators plan to move quickly to have the agreed upon conditions added to the FTAs with Peru and Panama either through an amendments to the text of the pacts or through side letters. In either case, the new labor and environment conditions would be binding. Congressional sources say most of the Democratic Caucus would then support those two deals with the new provisions.

The future of the Colombian and South Korean FTAs is more in doubt. In a May 10 letter to U.S. Trade Representative (USTR) Susan Schwab, Ways and Means Committee Chairman Charles Rangel (D-N.Y.) and trade subcommittee chairman Sander Levin (D-Mich.) said the Colombia accord "has special problems and considerations not present in the context of Peru and Panama."

In particular, they are concerned about violence against trade unionists in the country. They said they plan to visit Colombia for "first hand observations." Congressional sources say the two lawmakers also plan to draft a separate list of conditions that Colombia will have to meet for its FTA to be considered. The South Korean pact has separate problems related to the opening of the Korean auto, beef, pharmaceutical and services markets.

The comprehensive agreement reached between the administration and Congress will require the trade pacts to mandate compliance with the five basic labor standards in the International Labor Organization's (ILO) 1998 Declaration and provide for enforcement of these standards through the same dispute-settlement mechanism as trade issues. It also will require compliance with seven listed multilateral environmental agreements, plus specific provisions requiring tougher enforcement of logging controls in Peru. Another provision deals with drug testing data and the exclusive market protection given drugs after patents are issued.. [**Editor's Note:** Copy of the text of the agreement will be sent to subscribers on request.]

Throughout the talks with Congress, the USTR's office was working with business community representatives to make sure any deal would get industry backing. In the end, several major trade groups issued statements endorsing the agreement. A main business concern was making sure the deal applied to the ILO Declaration and not other ILO conventions. "Over the course of these negotiations, legitimate concerns have been expressed about how addressing labor issues in trade agreements could affect U.S. federal and state labor laws," said Chamber of Commerce President Tom Donohue. "However, we are encouraged by assurances that the labor provisions cannot be read to require compliance with ILO Conventions," he added.

EVERYONE HAS SOMETHING NEGATIVE TO SAY ABOUT DOHA FARM PAPER

New Zealand Ambassador Crawford Falconer, who chairs the Doha Round agriculture negotiating committee, heard largely critical reaction May 7 at an informal meeting of the committee to the "challenges" paper he floated a week earlier (see **WTTL**, May 7, page 2). The reception to the chairman's paper was particularly cool from the G-10 group of developed nations with high farm tariffs and the G-33 group of least developed countries. "Almost all members expressed deficiencies" in the paper, but Falconer was successful in engaging members in the multilateral process, a developing country negotiator said.

Falconer' plans to issue an expanded second installment of his paper on May 14. The next version will encompass more areas. Language on a Special Safeguard Mechanism for developing countries, green box, tropical products and preference origins may be added.

Brazil, India and other countries complained about imbalances between the non-agriculture market access (NAMA) and agriculture talks after the May 7 meeting, a G-4 trade diplomat reported. "It's not a very optimistic picture," he said (see story page 3). "Right now, we have no indication that positions in the agriculture negotiations will move," the diplomat added. "Special products is the most controversial issue," a negotiator for a developing country told

WTTL. "Most G-33 members expressed disappointment with the chairman's views," he noted. Further work is needed because the gaps between positions are so wide, he said.

At the May 7 meeting, Deputy USTR Peter Allgeier raised several objections to the Falconer paper. "Frankly, we are troubled by what we perceive as a lack of proper balance in the paper among the three pillars," he said. "In particular, we feel that there is a lack of appreciation of the primary importance of the market access pillar over the export competition and domestic support pillars," he explained. "We are also troubled by the Chair's proposed approach to developing country market access commitments," Allgeier stated. "In part, because we do not support the concept of a stand-alone 'average' tariff cut," he explained.

Allgeier praised Falconer's effort to find a compromise on domestic farm support. "What we would say at this point is that, while we recognize the need to make a further contribution in this pillar, there are limits as to what is realistic," Allgeier stated. On food aid, which has been a key area of U.S. concern, Allgeier said the U.S. has "some serious concerns regarding the suggestions about moving to cash-based aid." He conceded that cash has a place in food aid. "But that place should not be mandated by a WTO formula. We need to keep all tools in the toolbox and not arbitrarily restrict their use. In the WTO context, we need to keep the focus on commercial displacement," Allgeier argued.

FRUSTRATION SEEN ON LACK OF PROGRESS ON DOHA NAMA TALKS

While Doha Round negotiations have focused for the last 12 months on the agriculture leg of the talks, trade officials are beginning to turn their attention back to work on cutting industrial tariffs in talks on non-agriculture market access (NAMA). Trade officials are saying progress will have to be made on NAMA by the end of July or there won't be a deal on agriculture. The goal is still "to all jump in the water at the same time," one U.S. official told WTTL.

After the latest round of NAMA talks, the chairman of the NAMA negotiating committee, Canadian Ambassador Don Stephenson, said there was more frustration among members than convergence. Stephenson plans to get proposals for revising the NAMA modalities text during a series of consultations between now and the next group of NAMA meetings which start June 4.

If a revised NAMA text comes, it will arrive after the agriculture text in June. The cluster of June meetings will be the last chance to talk about the draft NAMA text before it is rewritten, sources say. The goal of the NAMA talks is create a set of tiers that will dictate the extent of tariff cuts, with bigger cuts for goods with higher tariffs and a "coefficient" or percentage that would allow less developed countries to make smaller reductions.

JAPAN AND CHINA CRITICIZED FOR CURRENCY MANIPULATION

Chances are increasing that Congress will pass some form of legislation to put pressure and potential sanctions on countries that manipulate their currencies to keep their values artificially low. While China will be the prime target of such legislation, a rare tri-committee hearing in the House May 9 showed that Japanese efforts to prevent the value of the yen from rising also could be hit. "There is not a specific timetable [for legislation], but I think this hearing has accentuated the need for a message that Paulson can take but also for us to look at legislation," Ways and Means trade subcommittee chairman Sander Levin (D-Mich.) told reporters during a break in the hearing. "I think that's going to happen in the next weeks," he said.

Among the bills that could get congressional consideration is one (H.R. 782) co-sponsored by Reps. Tim Ryan (D-Ohio) and Duncan Hunter (R-Calif.). Their proposal would declare protracted currency misalignment by government intervention to be considered a subsidy. Ryan-Hunter is one of the bills Ways and Means will look at, Levin noted. "But we're looking at

a variety of options. What we want to do is not only find the most effective way to send the message but to promote action,” he added.

Although Tokyo hasn't actively intervened to hold down the yen since 2004, it has used other methods to keep its value low, complained Mustafa Mohatarem, chief economist for General Motors. The Japanese have signaled that they might intervene if the yen rose beyond acceptable level, prompting currency traders to avoid efforts to drive up its price, he explained.

Fred Bergsten, head of the Peterson Institute for International Economics, urged the Bush administration to take several steps to get the Chinese to let their currency appreciate. If those steps fails, he suggested the filing of a complaint at the World Trade Organization (WTO). “My team at the institute and I wrote the Subsidy Code 30 years ago. We know it very well. We think the cases that would be brought under Ryan-Hunter would certainly be plausible, arguable cases to bring to the WTO,” he testified. “We're not sure they would win, because it's unprecedented; it's never been addressed,” he added. “You would have to get an IMF finding that there was a currency misalignment and then the WTO would apply its rules.”

EXPORT CONTROL CONVICTION HINGES ON TECHNOLOGY CONTROLS

Lawyers for Chi Mak, who was convicted May 10 in Santa Ana U.S. District Court on one charge of conspiracy and two counts of attempting to export defense technology without a license, say they intend to appeal the case after his sentencing in September. “We definitely will appeal,” said attorney Ronald Kaye of Kaye, McLane and Bednarski in Pasadena, Calif. Among many issues that Mak's lawyers consider appealable is a dispute over the admissibility of evidence that was “extremely prejudicial,” Kaye told WTTL.

Although the jury found Mak guilty, Kaye said he was pleased with the judge's instructions to the jury, placing the burden on the government to prove that the information Mak provided to parties in China was not “public domain.” “The government has the burden of proving, beyond a reasonable doubt, that the information contained in the QED Document and the Solid-State Document was not in the public domain,” the judge instructed. [**Editor's Note:** A copy of the judge's instructions will be sent to WTTL subscribers on request.]

* * * BRIEFS * * *

NOT-GOOD-SIGN-DEPT.: With Doha Round farm talks heading toward July 31 deadline, USTR Chief Agriculture Negotiator Richard Crowder announced May 11 that he will be retiring on May 31. USTR Susan Schwab has named USDA Deputy Chief Economist Joseph Glauber to be Special Doha Agricultural Envoy to lead U.S. agriculture negotiators. Glauber has participated in Doha talks, as well as Uruguay Round, and worked on 1991 Blair House Agreement.

STATE: DDTC Managing Director Robert “Turk” Maggi left May 7 for his second one-year tour in Afghanistan as foreign policy advisor to commanding officer of Joint Task Force 82. There have been suggestions he might retire after this temporary duty. Meanwhile, Deputy Assistant Secretary of State Greg Suchan will be retiring on May 31, according to State sources.

CFIUS: Senate Banking Committee Chairman Chris Dodd (D-Conn) and Ranking Member Sen. Richard Shelby (R-Ala.) May 11 said they will offer bipartisan bill to reform the Committee on Foreign Investment in the United States and mark up legislation week of May 21.

EXPORT ENFORCEMENT: Yamada America, Inc. of Arlington Heights, Ill. has paid \$220,000 civil fine to settle BIS charges that it exported diaphragm pumps to Taiwan, Singapore, Brazil and Ecuador without required licenses.

ITAR SENTENCE: Leib Kohn of Brooklyn, New York, was sentenced May 9 in Hartford, Conn., U.S. District Court to only 30 days in jail to be followed by two years of supervised release for conspiracy to export F-4 Phantom jet parts to Israel without license (see **WTTL**, Dec. 20, 2004, page 4). He and his now-defunct companies, L& M Manufacturing and NESCO NY, Inc., also paid \$25,000 fine.