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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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DDTC SAYS 50% OF REGISTRATION REQUESTS CONTAIN FLAWS

State's Directorate of Defense Trade Controls (DDTC) will stop trying to help defense firms complete faulty new and renewal requests for registration because of the large number of flawed submissions and the drain such help causes on agency resources. In a notice posted on its website, DDTC Compliance Director David Trimble said a survey of requests submitted over the last six months found 50% "did not meet the minimum standard of acceptance, let alone subsequent analysis and final action by the compliance and registration division."

> He said DDTC in the past has worked with registrants to obtain corrected documentation. "Such efforts, however, were a drain on limited personnel resources, added steps to the review, and created opportunities for further error with supplementary faxes and phone calls," he said. "Final action on registration requests was often delayed by weeks or even months. The end result was added confusion and frustration on the part of industry and government," Trimble asserted.

"The Office has adopted a policy of rejecting registration requests that do not meet basic criteria for acceptance," he said. "Those requests (and the check payment) will be returned via certified mail with the reason(s) for rejection." he added.

Trimble identified several common problems on registrations. These include: Form DS-2032 were not properly completed or blocks on the form were either left blank or the information provided was wrong; the transmittal letter required under International Traffic in Arms Regulations (ITAR) section122.2(b) was not provided, not on company letterhead, not signed by an authorized senior official or did not fully address information on foreign ownership in ITAR section122.2(b)(2); a copy of certificate of incorporation or authorization to do business was not provided or the copy did not meet acceptance criteria; and check payments had incorrect dollar amount, were not drawn on a U.S. financial institution, which is not required for foreign brokers, or were not from a corporate account.

RANGEL HITS NAM FOR DISTORTING DEMOCRATIC TRADE GOALS

House Ways and Means Committee Chairman Charles Rangel reacted quickly and sharply to a letter from the National Association of Manufacturers (NAM) criticizing the labor provisions in the recently released Democratic trade agenda. "This letter is a gross distortion of the facts that does a disservice to the continuing effort to reach a bipartisan consensus on the future of trade policy," Rangel said in an April 19 press release. "I am astounded that NAM would go to such lengths to jeopardize the hard work of so many in Congress and the administration who

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are negotiating these issues," Rangel said (see **WTTL**, April 2, page 3). In an April 19 letter to Rangel, NAM President John Engler raised concerns about Democratic calls for requiring adherence to International Labor Organization (ILO) standards in bilateral free trade agreements (FTAs), such as those with Colombia, Peru and Panama. "We are willing to look at provisions to obtain high labor standards in other countries, but subjecting our labor system to foreign challenge is simply not something to which we can agree," Engler wrote. "If that were the price of obtaining new trade agreements, we would not be able to be supportive." he warned.

> Congressional sources were surprised by Engler's letter and were not certain what prompted it. "It is not helpful to the process," one source said; adding, "It seems stupid to do it" because it did upset Rangel.

"Trade agreements that applied an ILO standard to U.S. labor laws would allow trading partners to challenge our laws through bilateral dispute settlement proceedings," Engler wrote. "We believe that our nation's labor laws must not be put at risk as efforts are made to improve our trade opportunities through additional free trade agreements," he told Rangel. "In Michigan, where I served as governor, state law forbids public employees from striking. For state constitutions or laws to be subject to a foreign nation's challenge would be unacceptable," he wrote.

Rangel claimed the NAM letter was filled with inaccuracies. "If outside groups are serious in their desire to shape and support future trade policies, they need to understand that it does not help at all to issue press releases distorting the facts and misrepresenting the views of those negotiating the policy," Rangel declared. He noted that the U.S. signed on to the ILO Declaration in 1998. "We have simply asked that future trade agreements include these standards. We are not seeking to raise the bar and incorporate the ILO conventions, but the Declaration we have already signed - this is a critical distinction," he said.

Rangel also pointed out that only governments can challenge compliance with an FTA not individual unions as Engler suggested. In addition, complaints would have to link the labor policy to trade, which would not affect labor laws dealing with public employees, he added.

While NAM was playing the "bad cop", the U.S. Chamber of Commerce was playing the "good cop". "Legitimate concerns have been expressed about how addressing labor issues in trade agreements could affect U.S. federal and state labor laws. However, we hope this issue can be addressed to mutual satisfaction," said Chamber executive vice president Bruce Josten in an April 20 statement. "Just a few years ago, many people would have rejected the notion that we should discuss International Labor Organization principles in the context of international trade. Today, they are viewed as a reasonable reference point in our free trade agreements," he said; saying, "A deal on trade and labor is within reach."

CIT APPLIES BRATSK IN REMAND OF ORANGE JUICE CASE TO ITC

It wasn't a taste test pitting Coke v. Pepsi, but Court of International Trade (CIT) Chief Judge Jane Restani sided with Pepsi in remanding to the International Trade Commission (ITC) its March 2006 affirmative injury ruling on orange juice from Brazil (slip op. 07-55). Restani ordered the remand on several grounds, including the ITC's failure to apply the federal court ruling in *Bratsk Aluminum*, which requires the ITC to consider the impact of non-subject imports of commodities on relief for a domestic industry (see **WTTL**, Nov. 13, page 3).

The challenge to the ITC ruling was filed by Tropicana, which is Pepsico's brand of orange juice. Coca-Cola, which produces Minute Maid orange juice, was a defendant-intervenor defending the ITC's decision. The original ITC ruling came on a split 3-3 vote, which under statute goes in favor of the petitioner. Since then, Commissioner Stephen Koplan, who voted affirmative, and Commissioner Jennifer Hillman, who voted negative, have left the commission. "Although the existence of competitive non-subject imports of a commodity product does not necessitate a finding of no causation between the subject imports and injury to the domestic industry, the Commission is obligated to address whether non-subject imports would have

replaced subject imports 'whenever the antidumping investigation is centered on a commodity product and price competitive non-subject imports are a significant factor in the market'," Restani wrote, citing an earlier CIT ruling. "Although the non-subject imports in this case comprised a smaller portion of total imports than non-subject imports in *Bratsk* did, it is not so small a portion as to be an indisputably insignificant factor in the market," she declared.

> Restani told the ITC to reconsider the opposition of the majority of orange juice processors to the petition. "Although opposition to the petition by the majority of domestic producers does not preclude an affirmative present material injury determination, the Commission must explain its rationale for discounting the opposition of the majority of the domestic industry," she wrote. In addition to examining the flaws cited in her decision, the judge advised the ITC to consider the totality of evidence anew. "In so doing, the Commission must not seize upon bits of evidence to reject what the bulk of the evidence dictates," Restani stated.

NEW DEBATE LOOMS OVER POTENTIAL CHANGES IN TRADE LAWS

The contradictory pictures of a rising U.S. trade deficit and a sharp decline in unfair trade complaints may provide fuel for changes in U.S. trade laws to make it easier for domestic firms to win antidumping and countervailing duty (CVD) complaints. A legislative package that might extend the president's fast-track negotiating authority and reform the Trade Adjustment Assistance (TAA) program for workers could also become the vehicle for these changes.

> Changes in the trade law are needed to deal with the role of multinationals in international trade and their ability to move production from one country to another to avoid trade remedy orders, attorney Terry Stewart of Stewart & Stewart, told the Washington International Trade Association (WITA) April 18. Stewart also said Congress needs to address the impact of the court ruling in *Bratsk*, which has made the trade law "unnecessarily weak" (see story above).

Lewis Leibowitz of Hogan & Hartson, said Congress should amend the trade law to give consumers a say in potential import relief. Current trade cases "ignore the vast majority of workers in downstream industries that use the products" that are subject to import duties, he argued. Leibowitz said the decline in trade cases "is temporary...when the economy turns down, the cases will increase," he asserted.

Former ITC Commissioner Jennifer Hillman saw a broader set of problems causing the sharp decline in new antidumping and CVD cases in the last two years. She said it is getting harder to show that a petitioner represents the majority of producers of like products in a case. She said a shift in the views of one furniture manufacturer would have caused the case against bedroom furniture from China to be rejected. There has also been a change in the ownership of U.S. industries that formerly brought many trade cases. In the steel industry, for example, India's Mittal is now the largest steel firm in the U.S., she noted. Hillman also cited the great difficulty in handling agriculture cases because prices are set on commodity markets, growing seasons and government intervention.

DOHA COMMITTEE CHAIRS SET TO PRODUCE "CHALLENGE" TEXTS

With the G-6's setting of a new end-of-2007 deadline for completing the Doha Round, the next step in the negotiations will depend on "challenge" papers the chairmen of negotiating committees on agriculture and non-agriculture market access (NAMA) plan to come up with in the next few weeks, diplomats in Geneva say (see **WTTL**, April 16, page 1). These challenge papers are aimed at drawing out the latest positions from World Trade Organization (WTO) members and then will be used eventually to produce new draft texts. Agriculture Committee Chairman Crawford Falconer, who is New Zealand's ambassador to the WTO, told reporters he hopes to have his challenge paper out by the end of the week of April 23. He admitted, however, that it

is too soon to put out a new draft text, even with brackets, of what a potential farm deal might look like. "They're not ready for that right now," he said. "They're ready for it but they need to be given a few challenges, because you can't invent something out of nothing," he said.

> At a Trade Negotiations Committee (TNC) meeting April 20, WTO Director General Pascal Lamy welcomed the G-6 goal, but said multilateral talks must make progress as well. "It is clear today that the multilateral process can no longer be made to wait for the contribution of smaller groups," said Lamy, who will be in Washington April 23-25 for talks with U.S. officials and members of Congress.

"The proof of the pudding will be in the eating and the eating will be in the next few weeks - first, in how countries react to the papers by the agriculture chairman, and secondly, whether the G-4 meetings which will be intensified will really come up with results," one G-4 diplomat told WTTL. But another diplomat was more skeptical. "Setting a date by the end of the year really only serves internal American needs to get a new TPA [Trade Promotion Authority] for six months, because setting a date at the end of the year is about as meaningful as nothing because it's either too far or too close," he said. "It's just not credible to put an end date without intermediate dates when we all know we need to have a breakthrough on some part so that we can actually work for six months to finish at the end of the year," he added.

"I think we'll probably see a continuation of the G-4 process and the multilateral process and I guess the significant thing now is it seems we're definitely moving towards chairs' texts, with agriculture probably coming out first," said former Canadian trade official John Weekes, who is now a senior advisor to Sidley Austin in Geneva. "That will put the negotiations in a new situation because people are then going to need to react to specific language," he told WTTL.

Meanwhile, there was a negative reaction in Geneva to a letter that 58 senators sent to President Bush April 12 opposing any new U.S. offer on farm subsidies. "We urge you to direct your negotiators not to make further concession on domestic support but instead to insist that our trading partners put forward ambitious market access proposals that will produce sufficient market opening to ensure that any final deal will generate increased net income for America's farmers and ranchers," they told Bush. Diplomats in Geneva said they are looking for more flexibility not less from the U.S.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Robert Abreu, senior director of strategic sales for Supermicro Computer, Inc. of San Jose, Calif., has agreed to pay $60,000 civil fine to settle BIS charges related to his personal role in export of computer motherboards to Iran without licenses and making false statements to government officials. Supermicro had paid $125,400 civil fine in separate settlement with BIS and $150,000 criminal fine in settlement with Justice (see **WTTL**, Sept. 18, 2006, page 4).

STATE: President Bush April 17 nominated Reuben Jeffery III to be under secretary of State for economic, energy, and agricultural affairs. He currently is chairman of the Commodity Futures Trading Commission. Previously, he was at Defense and served as representative and executive director of the Coalition Provisional Authority in Iraq.

BYRD AMENDMENT: EU April 17 added 32 new products to list of U.S. exports that are subject to retaliatory tariffs due to failure of U.S. to repeal Byrd Amendment fully. Included on list are numerous apparel and textile products, photocopiers, hand drills, mobile homes and sweet corn.

ENDANGERED SPECIES: CIT Judge Richard Eaton April 16 dismissed complaint by several environmental groups seeking ban on imports of bigleaf mahogany from Peru to enforce Convention on International Trade in Endangered Species (CITES). He said CIT lacked jurisdiction (Slip Op. 07-57).

TRADE PEOPLE: Christopher Parlin, one of lead U.S. negotiators in Uruguay Round, and David S. Christy Jr., who were with Loefler Group, have moved to Miller & Chevalier. Separately, ITC named Judge Carl Charneski to be ALJ. He was ALJ with Environmental Protection Agency since 1995.

NOTE TO LIBRARIANS: **WTTL** April 16, 2007 had wrong issue number. It was Vol. 27, No. 16.