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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'S NOMINATION STALLS IN BANKING COMMITTEE

The nomination of Mario Mancuso to be the Bureau of Industry and Securities (BIS) next under secretary has hit a snag in the Senate Banking Committee because of concerns committee chairman Chris Dodd (D-Conn.) and his staff reportedly have about statements Mancuso made in support of the Bush administration's detainee policy in Guantanamo Bay. It has been over two months since President Bush nominated Mancuso, who is currently a deputy assistant secretary of Defense, for the BIS post. Mancuso has made the usual rounds of meetings with committee members and staffers, but those meetings apparently haven't resolved questions about his past statements (see **WTTL**, March 5, page 1).

Because of Dodd's questions, no confirmation hearing has been scheduled yet for Mancuso's nomination, and congressional sources say none is on the horizon. Besides concerns about Mancuso past statements, sources say there may be doubts about his qualifications for the post, as well.

An industry source who has been following the nomination said the questions raised about Mancuso are probably serious, but don't necessarily mean his nomination is in trouble. His nomination "is not hopelessly dead in the water, but it clearly has a problem," the source noted. "I don't think they have decided what to do yet," he added. "He clearly will not get waived through. There will be plenty of questions," he observed.

LAWMAKERS SEND STRONG MESSAGE TO KOREAN FTA NEGOTIATORS

House Ways and Means Committee members March 20 sent Deputy U.S. Trade Representative (USTR) Karan Bhatia off for the last week of talks, which start March 25 in Seoul, on a potential U.S.-Korean Free Trade Agreement (KORUS) with advice similar to the old admonition attributed to a Spartan mother: "Come back with your shield, my son, or on it." With a bipartisan voice, both Democrats and Republicans warned Bhatia that an agreement that didn't significantly open the Korean market to U.S. automobiles, rice, beef, telecommunications and other services would be rejected by Congress.

The spine-stiffening hearing was probably intended more for the ears of Korean negotiators than for Bhatia and meant to give Bhatia leverage in the talks, which must be concluded by March 31 to allow President Bush to notify Congress of his intent to sign a KORUS deal that would be eligible for fast-track congressional consideration. Skepticism about the chances that any deal would be reached by the March 31 deadline grew after three days of talks March 19-21 in Washington between Assistant USTR Wendy Cutler and chief Korean negotiator Kim Jong-

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Hoon made little progress. Almost every tough issue in the talks will have to be resolved in less than a one week. “Even a successful agreement undoubtedly will not meet the high expectations of some groups both in the United States and Korea,” Cutler told reporters at the end of the talks in Washington. “But, in a negotiation, not everyone gets everything they want. What is important is that both sides are confident that the final agreement will offer broad benefits to the people they represent,” she added.

Cutler didn’t attend the Ways and Means hearing but acknowledged the message got through. “We think the hearing and the comments by our lawmakers and other stakeholders underscore the importance they attach to a very comprehensive and high quality agreement,” she said. “Let me assure you that we are pressing very hard to achieve a deal that will be comprehensive and high quality and receive the support of our stakeholders and Congress,” she said.

DDTC WILL AMEND ITAR REQUIREMENTS FOR BROKERING LICENSES

As part of a major rewrite of provisions in the International Traffic in Arms Regulations (ITAR) on brokering, State’s Directorate of Defense Trade Controls (DDTC) is developing an electronic application form that will be accessible through the agency’s D-TRADE system. The form is awaiting approval by the White House Office of Management and Budget (OMB), which is responsible for reviewing all new government paperwork requirements.

More details on the changes State plans to make to Part 129 of the ITAR were revealed March 21 in a presentation to the Defense Trade Advisory Group by DDTC compliance chief David Trimble. The proposed changes have been discussed for nearly a year and originally were to be issued merely as guidance (see **WTTL**, June 26, 2006, page 1). Now they will be made as a formal amendment to the ITAR. The new rules will need OMB review and might not be ready for publication until this summer, Trimble indicated.

Among the expected changes will be the creation of a single definition of who is a broker in Part 129.2 and clarification of the scope and coverage of brokerage registration requirements in Parts 129.3 and 4. The “meat” of the changes, Trimble said, will be in Parts 129.6 and 7 which deal with license exemptions. “Our basic approach was to try to restructure this chapter to more closely mirror the process in the rest of the regulations concerning how we handle authorizations,” he told DTAG. “So, whereas today you have exemptions and things you need a license for and a prior notification process for certain categories and activities, we basically rejiggered the whole thing so it will either be a license or it will be exempt,” Trimble said.

“We’re getting rid of the notification provision or process entirely to clean it up,” he added. “So the chapter will start off by simply saying that you need a brokering license unless an exemption applies,” Trimble continued. The section also will collect all the exemptions that apply in one place to make it easier to follow. The end result, however, of what exemptions apply will not change much, he indicated. [**Editor’s Note:** A detailed report on Trimble’s complete explanation of the expected changes to the ITAR brokering rules will appear in the April issue of our affiliated publication, *The Export Practitioner*. A copy of the issue will be sent free to WTTL subscribers on request.]

U.S., EU TAKE AIRBUS SUBSIDY DEBATE TO WTO PANEL

U.S. and European Union (EU) officials accused each other of trying to rewrite history as they laid out their arguments March 20-21 for why or why not EU aid for Airbus, the European aircraft manufacturer, comes under World Trade Organization (WTO) subsidy rules. Representatives for the two trading partners battled over the subsidy rules during four hours of oral statements before a WTO dispute-settlement panel. The WTO “Airbus Panel” is hearing the U.S. complaint that the EU support is an illegal subsidy under world trade rules. A separate

WTO panel is scheduled to hear an EU counter-complaint against U.S. aid for Boeing, the U.S. aircraft producer. U.S. representatives argued that \$15 billion in EU launch aid to Airbus unfairly helped Airbus overtake Boeing as the premier large civil aircraft (LCA) manufacturer. The launch aid is a “financial contribution” that confers a benefit within the Subsidies and Countervailing Measures Agreement (SCM) and is therefore a subsidy, the U.S. said. Since the subsidy is based on export performance and causes adverse effects, it is inconsistent with the SCM, U.S. lawyers contended.

“The EC talks about agreements that are no longer in effect, such as the Tokyo Round Subsidy Code and the 1992 Agreement [concerning the application of the GATT Agreement on Trade in Civil Aircraft],” the U.S. said. U.S. representatives claimed a fierce debate during the Uruguay Round over aircraft subsidies was resolved with a decision to include aircraft subsidies under the SCM.

The EU, however, said the 1979 Agreement and the 1992 Agreement are the backdrop for the case. It accused the U.S. of trying to rewrite history by denying the relevance of the 1992 Agreement. The EU also claimed Boeing was not suffering material injury because it had exceptional sales in 2005 – 2006 and generated a record-setting \$174 billion backlog of orders, which is six times current production. A second hearing is scheduled for June 5-6.

The EU’s complaint against U.S. help for Boeing claims U.S. federal, state and local governments lavished more than \$23 billion in benefits on Boeing from 1987 to 2024. The EU has already filed its first written submission to the WTO Boeing Panel. The U.S. will present its written defense by June 14. The first hearing of the second panel will take place on July 11-12. Looming behind the Airbus v. Boeing dispute are Chinese plans to compete with both of them with a 150-plus seat aircraft of its own and the potential subsidies Beijing may provide.

STATE WANTS TO EASE CONTROLS ON RADIATION HARDENED CHIPS

State’s Directorate of Defense Trade Controls (DDTC) is ready to move some radiation hardened semiconductors from the U.S. Munitions List (USML) to the Commerce Control List (CCL), but is waiting for informal approval from Congress before publishing a change to Chapter XV of the USML. DDTC and other agency officials have been talking with congressional staffers for 14 months on the change. “We are hopeful that in the near future that this is something we will be able to carry out,” Deputy Assistant Secretary of State Gregory Suchan told the Defense Trade Advisory Group March 21.

Semiconductor manufacturers have been trying for five years to get the USML changed and some industry representatives are skeptical that the shift will come sooner than the end of the year (see **WTTL**, Dec. 2, 2002, page 1). Because of the increasing quality and density of semiconductors, the industry has warned that many chips now made for commercial purposes only will meet the radiation hardened criteria in Chapter XV in the future and get caught under the USML.

In early March, Suchan, BIS DAS Chris Padilla and Beth McCormack, director of the Defense Technology Security Administration (DTSA), met with House staff members to answer questions on the proposed change. Although House staffers reportedly are comfortable with the move, Senate staffers, who didn’t show up for the meeting still have concerns about the change, sources report. Under the Arms Export Control Act, DDTC must notify Congress 30 days before making any change to the USML. Until these staff concerns are addressed, DDTC isn’t expected to start the 30-day notification clock.

The expected change to the USML was described as “preventive medicine” by one State source because it won’t affect any chips on the market now but will ease controls on semiconductors in the design stage and expected on the market in three to five years. While State hasn’t publicly said what the change will be, industry sources expect DDTC to change the single event upset (SEU) rate or time to failure rate now in Chapter XV to 10^{-10} from 10^{-7} . Chips that are

specially designed or modified for military use will remain subject to USML requirements regardless of SEU. The SEU metric is just one of five criteria that determine whether a chip comes under the USML or CCL. The other four criteria won't change.

PHONE MAKERS, CARRIERS AND USERS OPPOSE ITC SANCTIONS ON QUALCOMM

During a rare International Trade Commission (ITC) public hearing March 21-22 on the remedy in a Section 337 unfair trade case, wireless telephone manufacturers, carriers and public agencies were the main opponents of a proposed exclusion order and cease-and-desist order against imports of Qualcomm chips that have been found to infringe on patents held by Broadcom. Investigators in the ITC Office of Unfair Import Investigations (OUII), however, defended their proposed remedy, emphasizing its limited nature and exemptions.

“While you will hear much testimony to the effect that the proposed remedy will impose immense burdens upon untold numbers of U.S. customers and businesses, OUII’s proposed exclusion order is relatively narrow in scope,” said ITC attorney Karin Norton in her prepared testimony. She said the OUII recommendations applied the ITC precedent in the *EPROM* case and found the factors “weigh in favor of an exclusion order covering both EV-DO and GSM/W-CDMA handsets.”

Executives from Sprint/Nextel, Motorola, Verizon, LG Electronics and Samsung testified against the proposed order. Verizon Vice President Richard Lynch said his firm has invested \$2 billion in deploying EV-DO. “Only Qualcomm makes these chips,” he asserted.

Officials from the Federal Emergency Management Agency (FEMA) and local emergency services also testified on their need for handsets using Qualcomm chips. “If the Commission were to issue an order banning the importation of handsets, FEMA believes there would be an adverse effect on the public in general and on FEMA’s ability to accomplish its mission,” FEMA said in a state-ment. But former ITC Commissioner Paula Stern, who testified on behalf of Broadcom, noted that a “public interest” override of an exclusion order is rare, having been invoked by the ITC only three times. “Protection of patents is fundamental to the national interest,” she testified. [**Editor’s Note:** Copy of available testimony will be sent to WTTL subscribers for charge of \$75 to cover copying and postage.]

* * * BRIEFS * * *

OIL COUNTRY TUBULAR GOODS: Binational NAFTA panel March 22 upheld ITC sunset determination that lifting antidumping order on OCTG from Mexico would lead to renewed injury to U.S. industry.

VIETNAM: State’s DDTTC plans to amend ITAR soon to remove Vietnam from Part 126 list of terrorist countries and place it in new section that would continue to bar defense exports to Hanoi but would open way for case-by-case review of licenses for non-lethal USML items. Change in rules would be similar to recent change in rules for Libya (see **WTTL**, Feb. 12, page 4).

COUNTRY GROUP C: Dubai Chamber of Commerce was among those who sent comments to BIS on proposal to target nations considered transshipment hubs. Proposal “is not likely to be effective,” it said. “It will merely change sourcing patterns away from U.S. goods. Unilateral tightening on U.S. exports, therefore, will not serve the purpose of enhanced security,” it wrote (See **WTTL**, March 5, page 3).

EXPORT ENFORCEMENT: Vonberg Valve, Inc. of Rolling Meadows, Ill., agreed to pay \$21,000 civil fine to settle BIS charges that it exported flow regulator cartridges and flow limiters to Iran through Germany without approved license and that it had knowledge that violation would occur.

DOHA ROUND: Agriculture Committee Chairman Crawford Falconer March 23 said he intends to circulate new “reference paper” in mid-April unless bilateral talks produce results. He said paper will be designed to focus negotiations in what he described as “grindthrough” rather than “breakthrough.”

NME: While near decision on instituting CVD case on coated paper from China, ITA in March 21 Federal Register asked for comments on how it selects surrogate countries in NME cases and how NME exporters can show independence from government control and get separate rate (see **WTTL**, March 19, page 3).