

# Washington Tariff & Trade Letter<sup>®</sup>

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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## BUSH NOMINATES IRAQ WAR VETERAN FOR BIS UNDER SECRETARY

President Bush Jan. 18 nominated Mario Mancuso, current deputy assistant secretary of Defense for special operations and combating terrorism and a veteran of the war in Iraq, to be the Bureau of Industry and Security (BIS) under secretary. Mancuso, 37, formerly served as special counsel to the Pentagon's general counsel, and was one of the prime public defenders of the Bush administration's detention policies for captured foreign combatants at Guantanamo.



**Mario Mancuso**

Mancuso spent nine months in Iraq in 2003 as an Army captain and leader of a special operations unit. He joined the Defense legal team in 2004 and became deputy assistant secretary in August 2005. His post at the Pentagon is part of the office of the under secretary for policy, which also oversees the Defense Technology Security Administration (DTSA).

Mancuso graduated from Harvard in 1991 magna cum laude and New York University Law School in 1995. He had been in ROTC at Harvard during a period when the program was under attack at the school because of its policy on gays in the military. He entered the Army after law school and returned to the service after 9/11. Mancuso clerked for Brooklyn, N.Y. U.S. District Court Judge Thomas Platt and also worked at the Boston law firm of Ropes and Gray before joining the Pentagon. The BIS nominee grew up in the Howard Beach section of Queens, N.Y., where his parents, who immigrated from Sicily in the 1960s, operated a pizza parlor in Elmhurst.

Mancuso has appeared frequently on TV discussing the war in Iraq and the administration's policies on foreign combatants. While in the general counsel's office, he defended the administration against charges that its detainee policy violates the Geneva Convention. "Extending this kind of privileged status to them as well perverts the incentives of the Geneva Convention," he was quoted by the Armed Forces Press Service. "In an age of unconventional weapons, in an age of fanatic terrorists, non-state actors – including...fanatical individuals – have the capability of mounting existential threats to the United States, either using conventional weapons or using conventional weapons in unconventional ways," he said.

## ADMINISTRATION READY TO RENEGOTIATE LABOR PROVISIONS IN FTAs

The U.S. is willing to renegotiate the labor rules for the free trade agreements (FTAs) it negotiated with Colombia and Peru in an effort to win Democratic support for the deals, but will stop short of reopening the text of the accords. The Bush administration may seek agreements

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on side letters on labor as it did with the FTAs with Bahrain and Oman. Since the FTA with Panama is still not signed, the new labor provisions could be added to the text of that deal. Deputy U.S. Trade Representative (USTR) John Veroneau initially told reporters Jan. 17 that the U.S. would renegotiate the labor chapters in the Peru and Colombia pacts, but the USTR's press office sent out a note after he made those statements to clarify that he did not mean the Peru and Colombia accords would be reopened. "In the case of the agreements that the U.S. has already signed, but which have not yet been approved by our Congress, we believe these adjustments can be made through some binding instrument and it is not necessary to reopen the text of the agreement," said USTR spokeswoman Gretchen Hamel.

Veroneau said the U.S. has told Peru, Colombia and Panama "that we expect that before the agreements are taken up by Congress there will be the need to make some substantive adjustments to those texts." Before talking with those countries, however, the administration wants to talk to congressional Democrats to find out exactly what would be acceptable to get their support for the trade pacts.

"We have said privately and publicly that we are open to a dialogue with Congress regarding the labor chapters in those agreements," he said. "It appears that some adjustment to that chapter will be made before Congress takes those up," he added. Veroneau also said the template set out in the 2002 Trade Act, which granted the president fast-track negotiating authority, for the labor and environment provisions in FTAs, needs to be revised. "We need to find a new template for those agreements," he said.

Veroneau expects the talks on revising the labor provisions to be completed in time to send all three trade pacts to Congress for votes before July. The White House has to notify Congress of its intent to sign the Panama FTA before March 31 so the deal can be voted on under fast-track rules. "I think we should be able to reach accommodation with Congress on the labor chapters well before that," he said.

## **INDUSTRY RAISES CONCERNS ABOUT EXPORT SANCTIONS IN H.R. 1**

The business community is raising concerns about new trade sanctions that might be imposed on exporters under legislation (H.R. 1) that the House passed Jan. 9 as part of its "100-hour" marathon to fulfill promises made in 2006 election campaigns. The measure is intended to implement recommendations of the 9/11 Commission that weren't enacted in the last Congress. Title XIII, however, includes provisions that weren't part of the Commission's report and are aimed at curbing a "black market" in nuclear materials, equipment and technology.

Industry representatives are objecting to the broad language in the section, which could hit legitimate trade in the nuclear field. A group of some 60 industry executives met Jan. 18 to map plans for seeking changes in the legislation when the Senate acts on it. The Bush administration had opposed these provisions in a Statement of Administration Policy (SAP) when the bill was pending in the House. H.R. 1 passed the House on a 299-128 vote, with 68 Republicans joining 231 Democrats in support of the measure.

Section 1311 of Title XIII targets the nuclear activities of foreign persons. As written, it directs the president to impose sanctions on foreign nationals who export, transfer or trade in nuclear enrichment or processing equipment, materials or technology, as well as nuclear explosive devices or design information. The president can waive these mandatory sanctions but must make a determination that the waiver is needed for national security.

The mandatory sanctions include a ban on foreign assistance, a denial of both Munitions List and Commerce Control List licenses for exports to such persons, the termination of existing licenses, a ban on U.S. government procurement from them, and a bar to their imports to the U.S. The sanctions must be imposed for two years, although the president can suspend them for one year. Industry sources say the provision was added to H.R. 1 by new House Foreign

Affairs Committee Chairman Tom Lantos (D-Calif.). They say they don't object to legislation to restrict illegal nuclear trade but contend the provisions could be better targeted with greater discretion given to the president. Some of the activities identified in the bill are legal, they argue. In addition, the ban on foreign aid could prevent funding for programs the U.S. supports, such as Nunn-Lugar Act financial aid that is helping Russia decommission old nuclear facilities. Senate Majority Leader Harry Reid (D-Nev.) has indicated he wants the Senate to act on the legislation in February.

Importers are also organizing to fight provisions in H.R. 1 which would impose a 100% scanning requirement for cargo containers before they leave foreign ports en route to the U.S. The White House SAP on the bill also opposed this provision. "Such a requirement is neither executable or feasible," it declared.

## **LAWMAKERS WILL TRY AGAIN TO EASE TRADE WITH CUBA**

With Republicans no longer in charge of Congress and unable to block consideration of measures aimed at easing trade and travel sanctions on Cuba, lawmakers say they expect to make renewed efforts to attach Cuba amendments to legislation moving through Congress. While the illness of Cuban President Fidel Castro has increased speculation about potential changes in U.S.-Cuban relations, members of Congress don't think President Bush will change his stand on Cuba as long as Castro's brother Raul remains in control of the country.

Some members of the trade community are still not optimistic about the chances for such bills. They say getting Cuba legislation passed will be difficult as long as both Democrats and Republicans are vying to win elections in Florida. Having lost previous efforts to lift restrictions on Cuba trade, business community representatives say they are waiting to see how strong support for change is among lawmakers before launching another try.

Reps. Jo Ann Emerson (R-Mo.) and Jim McGovern (D-Mass.), who just visited Cuba, told reporters Jan. 16 that they see improved chances for getting Cuba legislation enacted. Emerson said she and Rep. Jerry Moran (R-Kan.) are considering new legislation that might be added to the Farm Bill to force Treasury to drop current restrictions that require Cuban payments for U.S. agriculture products to go through third countries and bar sales on credit.

Other bills could seek to ease restrictive rules on travel to Cuba and on other types of exports. The strategy would be to attach these measures onto other "must-have" legislation to make it more difficult for President Bush to veto them.

"As a Republican, I'll say there is a much better opportunity in the House side. Obviously, the Senate is always different," Emerson said. "As far as bringing bills to the floor as opposed to always having to do something in an appropriations bill, it's going to be a lot easier," she added. "How much we can get done with this president remains to be seen," Emerson said. McGovern, who serves on the House Rules Committee, also expects Cuba legislation to have a better chance. "We need to pick our battles carefully and prioritize them," he said. If the House and Senate pass a Cuba amendment, "I would like to think it would get on the president's desk and it would not disappear in the middle of the night in some conference committee," McGovern stated.

## **CONGRESSIONAL HEARINGS WILL SCRUTINIZE U.S. TRADE POLICIES**

If Doha Round talks remain stalled, U.S. trade officials won't have to worry about finding something else to do. They will be able to spend their idle time testifying in Congress. Both the House Ways and Means Committee and the Senate Finance Committee are planning a long string of hearings on U.S. trade policies over the coming two years. After the formal assignment of Ways and Means subcommittee chairmanships Jan. 18, Rep. Sander Levin (D-Mich.),

who will chair the panel's trade subcommittee, announced plans for some dozen hearings by his subcommittee. He said the subcommittee intends to hold hearings on: fast track, FTAs with Korea and others, trade preference programs, Haiti, World Trade Organization (WTO) negotiations, improving U.S. trade laws, China, Europe, trade with developing countries, and trade and employment. The full committee plans additional hearings, including at least one on the Bush administration's trade agenda.

Ways and Means assigned the following Democrats, along with Levin, to the trade subcommittee: John S. Tanner (Tenn.), John B. Larson (Conn.), Earl Blumenauer (Ore.), Bill Pascrell Jr.(N.J.), Shelley Berkley (Nev.), Joseph Crowley (N.Y.), Chris Van Hollen (Md.), and Kendrick Meek (Fla.). The ranking Republican will be Rep. Wally Herger (R-Calif.). The other GOPers will be Jerry Weller (Ill.), Ron Lewis (Ky.), Kevin Brady (Texas), Thomas M. Reynolds (N.Y.), and Kenny C. Hulshof (Mo.).

\* \* \* BRIEFS \* \* \*

D-TRADE: DDTC has confirmed crash of D-Trade system will require some exporters to resubmit licenses (see WTTL, Jan. 15, page 4). "Due to the problems noted with the data that was received between January 8 and 10, D-Trade license applications submitted during that time frame must be resubmitted to DDTC," agency said in notice on its website. "As stated in previous updates, D-Trade remains functional, utilizing the previous software," it added. New D-Trade software is still being repaired. DDTC plans to upgrade to new software on Saturday, January 20, to minimize the impact on business, it explained.

USTR: USTR Susan Schwab has named veteran trade lawyer and former presidential trade assistant Warren Maruyama to be general counsel, succeeding James Mendenhall who is leaving government. Maruyama is partner with D.C. law firm of Hogan & Hartson. He previously served as USTR associate general counsel in 1980s and in White House policy development office during administration of President George H.W. Bush...Also at USTR, Deputy Assistant USTR for Agriculture Jason Hafemeister is leaving Feb. 2 to join consulting firm of ex-USTR ag negotiator Allen Johnson. He will be succeeded by Barbara Chattin.

EXPORT ENFORCEMENT: El Salvador Network of San Salvador, El Salvador, reached settlement with BIS and will pay \$6,000 civil fine for allegedly exporting U.S.-origin telecommunications hardware and software to Cuba on one occasion without approved license. It neither admitted nor denied charge

ANTIBOYCOTT: New York branch of National Bank of Egypt agreed to pay \$22,500 civil fine to settle BIS charges that it provided boycott related information to clients in Syria on four occasions and failed to maintain records of transaction for required five-year period. Firm neither admitted nor denied charges.

VIETNAM: ITA has provide advance notice of proposal it will publish in Federal Register seeking comments on monitoring program for apparel imports from Vietnam (see WTTL, Jan. 8, page 3). ITA says it will limit monitoring to five product categories, trousers, shirts, sweaters, underwear and swimwear, but doesn't give details on subcategories. It said it will use 3-digit apparel categories and 10-digit HTS numbers to track imports, although it may add other categories later. All data will be collected from existing trade data sources and importers won't be required to file additional information. It vaguely says it will determine production templates to analyze impact of imports on an "on-needed" basis. "Any self-initiation of an antidumping investigation arising from this program will be fully consistent with U.S. law as set forth in statute and the Department's regulations and with the applicable WTO rules," ITA declared.

GSP: USTR Jan. 17 said it will investigate alleged worker rights' violations in Niger during next GSP eligibility review. It said it was ending investigation of worker rights' violations in Uganda.

OCTG: Two NAFTA binational panels issued separate reports on ITA rulings on oil country tubular goods from Mexico. On Jan. 16 one panel sustained ITA's remand determination in administrative review of OCTG produced by Hylsa, SA. On Jan. 17 second panel sent back to ITA its second remand on sunset review of OCTG imported by TAMSA. ITA "continues to be disrespectful of panel's review authority," panel declared. Panel said ITA needs to reconsider decline in sales and firm's financial conditions.

TAA: GAO report Jan. 18 found number of new and recertification petitions from farmers and fishermen for Trade Adjustment Assistance declined from 2004 to 2006 due partly to requirements for showing 20% price decline and increase in imports. USDA has received 101 petitions for aid since TAA was extended to these groups in 2002. Of 64 cases for which reviews were completed, 30 were certified and 34 denied.