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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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AGENCIES AGREE TO MEET ON COMMODITY JURISDICTION REQUESTS

Representatives of the Bureau of Industry and Security (BIS), the Directorate of Defense Trade Controls (DDTC) and the Defense Technology Security Administration (DTSA) are starting to meet weekly to share information on the products and technologies that are the subject of Commodity Jurisdiction (CJ) requests. Officials from the three agencies agreed in November to start holding the meetings after they recognized that some agencies, particularly DTSA, have information about these items that the other agencies don't have.

BIS first raised the idea for an ad hoc process for sharing information, but it was only after DTSA threatened to escalate a dispute over two CJ determinations to the political level that the agencies agreed to hold the meetings. State and BIS wanted the two items classified under the Commerce Control List (CCL), but DTSA reviewers said they had information that warranted placing them under the Munitions List (ML).

A meeting was called where DTSA Director Beth McCormack, State Deputy Assistant Secretary Greg Suchan and BIS Deputy Assistant Secretary Matthew Borman agreed to establish the weekly meeting. "When we talked through it, we recognized that we probably needed to put in place some type of a process where we meet periodically and have greater transparency and make sure that we all have the same information," McCormack told a Practicing Law Institute conference in December. "The three of us...are committed to having a more predictable and a more transparent process where we all at least have the same information," she added.

BUSINESS OPEN TO DISCUSSING LABOR CHANGES IN LATIN FTAs

The business community may be willing to accept changes to the labor provisions in the pending free trade agreements with Colombia, Panama and Peru to match those already in the Jordan FTA, a U.S. Chamber of Commerce executive says. "As you know, there have been side agreements that we and the rest of the business community supported in NAFTA on labor and Jordan," Chamber Vice President Bruce Josten told reporters Jan. 4.

"So clearly if they lift the same language from them, I don't know how we couldn't but support them. The question is what language are they going to try and put in them," he said. Josten added a caveat that business support for any changes will depend on the actual wording of any new labor provisions. "What I can't predict is what this looks like when its written down," he said. "The devil's in the details.. It's not like we knee jerk opposed this in the past. We have a history of supporting some of these. The reality is, that no country in the world is going to

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tell us how to establish standards on anything. We have the same problem in reverse,” he said. Josten made a distinction between the Colombia and Peru agreements that have already been signed and the Panama accord for which the labor section is still under discussion (see **WTTL**, Jan. 1, page 2). He noted Democratic objections to the current deals with Colombia and Peru. “We have to look and see what exactly they want to put in them,” Josten said.

Earlier, Chamber President Thomas Donohue told a press conference that his group would launch a grassroots education and communication program in communities around the country to explain the benefits of free trade. “On Capitol Hill, the Chamber will not back away from an expansive trade agenda, including a Doha agreement, bilateral free trade agreements, and temporary renewal of presidential Trade Promotion Authority,” he said. Donohue said a temporary extension would not be difficult to get, if a Doha agreement seemed close to conclusion.

BAUCUS, COLEMAN OFFER TRADE ADJUSTMENT ASSISTANCE AMENDMENTS

On the first day of the new 110th Congress, newly installed Senate Finance Committee Chairman Max Baucus (D-Mont.) and Sen. Norm Coleman (R-Minn.) introduced legislation (S. 122) to revise the Trade Adjustment Assistance (TAA) program to extend its benefits to service workers who have lost their job due to foreign competition and to allow workers of an entire industry to be certified as eligible for benefits when the industry is the subject of an anti-dumping, countervailing duty or safeguard trade action. A previous attempt to extend TAA to service workers failed during the enactment of the 2002 Trade Act.

Under the bill, the Labor Department also would be able to certify workers of an entire industry for TAA aid if Congress adopts a resolution authorizing the extension or the department receives three or more petitions for relief. The bill also would lower to 40 years of age the threshold for receiving wage insurance benefits. In addition, it would streamline TAA procedures for farm workers under the program.

Service workers could become eligible for TAA benefits under three circumstances: (1) If the service work faces import competition, such as when a hospital uses foreign doctors to review x-rays at a lower cost; (2) If a service job moves offshore, such as when a call center is moved abroad; and (3) If the workers are secondary providers of services to a primary firm that has been granted TAA designation.

LOCKHEED MARTIN PAYS \$3 MILLION ITAR FINE AFTER SELF-DISCLOSURE

Lockheed Martin Corp. has agreed to pay a \$3 million civil fine to settle charges from State’s Directorate of Defense Trade Controls (DDTC) that one of its subsidiaries, Sippican, Inc., violated the terms of a Technical Assistance Agreement (TAA) by sharing controlled technology with Australian government representatives. The alleged violations occurred before Lockheed acquired Sippican from the Carlyle Group in December 2004. Sippican discovered and self-disclosed the alleged violations during an internal audit before the acquisition.

The acquisition agreement between Lockheed and Carlyle included an indemnification provision under which Carlyle agreed to reimburse Lockheed for any fine leveled by State due to Sippican’s actions. The money has been held in an escrow account since the acquisition, a Lockheed spokesman told **WTTL**.

Sippican is a major subcontractor to BAE Systems Australia on a joint U.S.-Australia program, known as NULKA, which has been constructing a ship-launched anti-missile decoy system. The TAAs that DDTC issued to Sippican for the project allowed sharing of controlled and classified technology with BAE but not with the Australian government. A subsequent TAA issued in November 2004 allowed it to share the information with the Australian government. DDTC

charged Lockheed with providing controlled technology to the Australians during a period when the initial TAA had lapsed. It also said Sippican did not control plant visits as required under the provisos in the TAA. Sippican had claimed it was operating under conditions established in its contract with the U.S. Navy. "Sippican also failed to recognize that contractual obligations, even with U.S. Government agencies, do not take precedent over the Regulations and the Act," DDTC said in its draft Charging Letter.

Lockheed paid \$1 million after the signing of the consent agreement with DDTC and will pay the balance in two annual payments. In a change from many other agreements, Sippican will appoint a Special Compliance Officer (SCO) from its own senior management rather than have to bring in an outsider. The SCO will submit semi-annual reports to DDTC and to Lockheed's deputy general counsel.

Lockheed also agreed to strengthen the export compliance program at Sippican with a special focus on training the unit's employees on the International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act (AECA). Lockheed will conduct an audit of Sippican and will provide the results to DDTC. The term of the consent agreement is two years. At the end of that time, Lockheed's general counsel and director of export compliance will be required to submit a written certification that all aspects of the agreement have been implemented.

APPAREL IMPORTERS PROTEST VIETNAM MONITORING PROPOSAL

Apparel importers and retailer want Commerce and the U.S. Trade Representative's (USTR) office to stop their double talk about how they intend to implement a proposed monitoring program on textile and apparel imports from Vietnam and what they will do with the data the program collects. Comments on a Commerce notice seeking advice on the monitoring program complained that government officials are telling importers one thing and textile manufacturers -- and members of Congress who support the two sides -- something else and have refused to speak about their intentions on the record (see **WTTL**, Dec. 4, page 3).

To win votes for permanent-normal-trade relations status for Vietnam, Commerce Secretary Carlos Gutierrez and USTR Susan Schwab promised Sens. Elizabeth Dole (R-N.C.) and Lindsey Graham (R-S.C.) in a September letter that they would establish the monitor system and consider self-initiating trade cases if there were a surge of imports from Vietnam. On the Senate floor Dec. 8, however, Sen. Gordon Smith (R-Ore.) said the two Bush administration officials had told him and Sen. Dianne Feinstein (D-Calif.) that "any investigation would only cover those textiles and apparel products from Vietnam which are like or identical to a product also produced in the United States."

"We believe the department should confirm this commitment publicly so importers understand and can rely on this interpretation," commented the American Apparel and Footwear Association (AAFA). "We believe the department should endeavor to hold several public and 'on-the-record' discussions or briefings with all parties so that all parties can simultaneously hear the department's explanations to common questions and concerns," it added.

AAFA and other comments challenged Commerce's legal authority to establish a monitoring system when there hasn't been an antidumping case and the makers of "like products" haven't requested such a system. AAFA also urged the department not to penalize importers that refuse to supply requested data, since supporting the program would be opposite to their position on a case. AAFA also urged Commerce to limit the monitoring to the five categories cited in the Dole/Graham letter and to use the Harmonized Tariff Schedule as the basis for collecting data.

The American Manufacturing Trade Action Coalition (AMTAC), which represents textile firms, supported the monitoring program and said Commerce should not limit the categories to be monitored. It called for using current textile and apparel categories for collecting data. AMTAC urged the department to use Central American and Caribbean countries as surrogates

for Vietnam in any antidumping cases under rules for nonmarket economies. In particular it suggested using Honduras and the Dominican Republic.

The Vietnamese ministry of trade filed comments also objecting to the proposed monitoring system and raising the specter that Hanoi might challenge the program at the World Trade Organization (WTO). The program “constitutes an overt discrimination against Viet Nam and runs contrary to the WTO’s most fundamental principles of nondiscrimination,” the Vietnamese wrote. “This program is a violation of Article XXIII of the GATT 1994 as it causes nullification and serious prejudice to the interests of Viet Nam,” they added. It is also inconsistent with the bilateral agreement Washington and Hanoi reached last May on Vietnam’s accession to the WTO, the comments declared.

* * * BRIEFS * *

BIS: Steve Goldman, director of BIS Office of Nonproliferation and Treaty Compliance, is retiring as of March 2 and will join MK Technology, Inc., in Washington as partner on March 5. Goldman has worked in government since 1974 and has been at Commerce since 1983.

ITAR DEBARMENT: Security Assistance International, Inc., and its president, Henry Lavery III, reached consent agreement with DDTC in December to settle four charges related to firm’s submission of licenses for unregistered exporter, aiding and abetting export of generation III night vision equipment, failing to maintain required records and failing to submit required documentation of export. Firm agreed to one-year debarment from Munitions List exporting. DDTC imposed but waived \$75,000 civil fine. SAI was subject of previous debarment in 1999 for ITAR violations but then regained privileges. DDTC discovered alleged violations when it checked on firm’s compliance with earlier consent decree.

SYRIA: OFAC Jan. 4 place three Syrian research institutions on its Special Designate Nationals list. They are Electronics Institute, Higher Institute of Applied Science and Technology, and National Standards and Calibration Laboratory.

EU: Bulgaria and Romania lost their GSP benefits Jan. 1, 2007, upon their accession to EU membership, President Bush declared in executive order.

ITAR DEPORTATION: ICE agents escorted Tomer Grinberg out of country and back to Israel Jan. 3 after he completed six-month jail term on conviction of attempting to export night-vision goggles and infrared aiming scopes to Hezbollah in Lebanon. His codefendant, Naji Antoine Abi Khalil, is still serving three concurrent sentences totalling 60 months. BIS issued 10-year denial of export licensing privileges for Khalil in Nov. 17, 2006, Federal Register.

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