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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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STATE CLARIFIES DEFINITION OF “FUNDAMENTAL RESEARCH” AT UNIVERSITY

In a cryptic but far-reaching advisory opinion to a Big Ten university, State’s Directorate of Defense Trade Controls (DDTC) has said a Technical Assistance Agreement (TAA) is not needed for “fundamental research” involving controlled space technology when the data to be released to foreign students isn’t classified and the school intends to publish the results of the work. The university asked for the advisory opinion to clarify controls on a student project that is aimed at testing new space technology during some future space shuttle launch.

“After consultation with the Department of Defense, the Department of State approves the project, as described in [your] letter, to be considered fundamental research,” wrote Peter Berry, director of DDTC’s licensing office, to Richard Pettler an attorney with the law firm of Fragomen, Del Rey, Bernsen and Loewy in San Francisco, which represented the unidentified school.

Berry said the school’s TAA application “will be returned without action as a TAA is not needed for the activity as described in this letter.” He noted, however, that non-public domain technical data regarding the space shuttle cannot be transferred. Since State’s response was so short, lawyers at the firm called DDTC officials to clarify the advice. They were told that fundamental research that is a delivery of a defense service to foreign persons and covered by Part 120.11(g) of the International Traffic In Arms Regulation (ITAR), doesn’t require a TAA.

The university’s request to State asked: “For purposes of the federally funded [] project, will [] require a Technical Assistance Agreement prior to furnishing defense services to certain foreign person students when all of the underlying information is considered ‘fundamental research’ as defined in ITA Part 120.11(g)?” Several of the students working on the project are foreign nationals, including at least one Chinese. The research involved technical data covered by U.S. Munitions List Category XV for space systems. In his letter, Pettler cited a 2003 speech by the Secretary of Homeland Security Tom Ridge, who said the Bush administration’s policy is to use classification – such as secret or top secret – to control federally funded fundamental research that needs to be restricted.

WTO DOHA ROUND TALKS START TO SHOW GLIMMER OF HOPE

Don’t hang the bunting from the windows yet, but talks aimed at reaching key agreements by August on the World Trade Organization’s (WTO) Doha Round appear to be showing real progress. A new initiative from the European Union (EU) and a positive tone at the May 13-14 ministerial meeting of the Organization for Economic Cooperation and Development (OECD)

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have narrowed many of the differences that caused the WTO Ministerial in Cancun to collapse last year and have kept negotiators from reaching agreements for the last five months. The main goal now is a general agreement on the main elements of the round by the WTO General Council meeting July 27-29 in Geneva. While there's no expectation the round will conclude as scheduled this year, progress by July could set the stage for intensified talks in 2005.

Progress is being seen in two of the three pillars in the vital agriculture talks, export subsidies and domestic support. The EU has now put all its export subsidies on the table and offered to cut trade-distorting domestic supports. The deadlock, however, remains over the third pillar, market access.

As movement is being seen in the farm talks, problems are becoming more apparent in negotiations on services and non-agriculture market access (NAMA). Only half of the developing countries in the WTO have submitted market-opening offers for services. Moreover, no agreement is near on a formula for cutting industrial tariffs or on how ambitious the cuts should be. The U.S. is seeking zero-for-zero tariff reductions in several sectors and is willing to make such cuts if there is a "critical mass" of countries willing to join it. U.S. Trade Representative (USTR) Robert Zoellick May 14 said a critical mass means at least 90% of WTO members.

In a letter to all WTO trade ministers released May 10, EU Trade Commissioner Pascal Lamy and Agriculture Minister Franz Fischler issued a major new EU offer covering agriculture, non-agriculture market access, services, Singapore issues, and special and differential treatment for least developed countries. In the letter, the EU officials conceded that their previous offer to eliminate farm export subsidies of concern to developing countries "has not worked."

Taking a new approach, the EU is "ready to put all the export subsidies on the table," Fischler said in a statement. While the EU didn't say it would agree to ending subsidies by a date certain, a key demand of developing countries, it said its offer was conditioned on other countries, including the U.S., Canada, Australia and Argentina, eliminating the trade distortions of their export credit programs, food aid, state trading companies and export taxes. Zoellick said the U.S. is prepared to make such concessions, but wants to be able to continue food aid for humanitarian purposes as long as it doesn't displace commercial farm goods.

EXPORTERS FACE UNEVEN HIT FROM NEW SYRIAN SANCTIONS

Nearly 40% of U.S. exports to Syria will be either totally exempt from the new trade sanctions President Bush imposed May 11 or allowable under case-by-case license approvals from the Bureau of Industry and Security (BIS). This doesn't count the potential leakage of exports to Syria from other countries through undocumented trade in non-licensed goods. At the same time, the new sanctions will hit a wide array of items subject to the Export Administration Regulations, including oil exploration and production equipment, computers, chemicals, and products normally exempt from licensing as EAR99.

Of the \$214 million in U.S. merchandise exports to Syria in 2003, more than \$71 million was accounted for by food shipments that Bush excluded from sanctions. The president's waiver of sanctions also covers drugs (\$1.9 million in 2003) and numerous products that will be eligible for licenses.

A BIS General Order, published in the May 14 Federal Register, appears to interpret Bush's executive order more strictly than the message the president sent to Congress to announce the sanctions. Whereas Bush said he was waiving sanctions on several product areas, the BIS order says those goods will require licenses and be subject to case-by-case review. Except for specifically identified sectors, all other licenses will be subject to a policy of denial, BIS declares. The new restrictions apply to exports and reexports. Depending on how BIS interprets its order, licenses will be available for medical devices, civil aviation equipment, telecommunications products and associated computers, software and technology, information materials, and publicly available software and technology. The order is confusing on "deemed export"

requirements, at one point saying no licenses are needed and at another saying they are but subject to case-by-case review.

Although a ban on exports of items on the Commerce Control List (CCL) and the U.S. Munitions List (USML) was expected ever since Congress enacted and the president signed the Syria Accountability and Lebanese Sovereignty Act (SAA) in December, Bush used the full authority of the statute to extend the ban to all exports except waived items, to block the assets of certain Syrian banks and entities and to bar Syrian aircraft from landing in the U.S. except to carry Syrian officials on government business (see **WTTL**, March 8, page 4).

The executive order and BIS General Order, which became effective May 14, provide no contract sanctity and give only a narrow window to permit the shipment of goods en route. The Executive Order went into effect at 12:01 P.M. May 12. The General Order says items “on dock for loading, on lighter, laden aboard an exporting carriers or en route aboard a carrier to a port of export as of May 14 remain subject to the licensing rules applicable to such items as of May 13.” But any items not actually exported before midnight May 28 “may be exported or reexported only if authorized pursuant to this General Order,” BIS states.

FSC/ETI LEGISLATION STILL FACES TOUGH HURDLES AFTER SENATE ACTION

The Senate May 11 proved again that any piece of legislation, regardless how controversial it might be, can be passed when it's loaded with enough sweeteners. Senate passage by a 92-5 vote of legislation (S. 1637) to repeal and replace the Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) tax laws was made possible by the addition of nearly 100 amendments that raised the price tag for the bill to about \$170 billion and gave almost every senator something he or she wanted. The cost supposedly has been offset by tax increases. Action on the measure, however, has still not assured enactment of a new international tax law this year.

Despite the Senate vote, the House remains deadlocked over differences among Republicans over the extent of benefits for domestic manufacturers compared to multinational corporations. This same division has kept the business community from mounting a united campaign in support of the legislation.

Industry sources say action in the House will depend on whether House GOP leaders, especially Speaker Dennis Hastert (R-Ill.), will be willing to bring the opposing sides of the debate together behind closed doors to force a compromise. That may be hard with House Ways and Means Committee Chairman Bill Thomas (R-Calif.) still strongly attached to his FSC/ETI bill (H.R. 2896) and Rep. Don Manzullo (R-Ill.) still leading a group of Republicans from industrial districts who want better tax breaks for manufacturers.

It seems unlikely that Hastert would force a compromise that would be a negative for Republicans in coming election, fueling speculation that Congress will put off FSC/ETI until 2005 or at least until a possible lame-duck session after the November elections (see **WTTL**, May 10, page 1). Nonetheless, some sources see Senate action as a key boost to the legislation in the House. “The House was frozen in place waiting for something to happen in the Senate,” said Philip Beram, chief tax counsel for the U.S. Chamber of Commerce. Pressure will now mount for the House to do something as well, he indicated.

By acting first, the Senate has removed much of the uncertainty about a final FSC/ETI bill, since its amendment process is more unpredictable than the House's. The wide margin of the bipartisan victory for S. 1637 may give Senate participants in a House-Senate Conference Committee a strong claim that their FSC/ETI version should prevail in the final legislation. The Senate action was mostly the result of strong bipartisan leadership from Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Mont.). They succeeded in pushing the legislation even though lawmakers have not felt strong pressure from their local industries to act on it. Pressure has been lacking because the trade sanctions the

European Union (EU) has imposed have not been felt by many firms. In fact, March trade figures released May 12 show that exports of U.S. manufactured goods to the EU in March reached a record \$15.7 billion. Imports from EU also were a record \$25 billion.

Meanwhile, EU Trade Commissioner Pascal Lamy welcomed the Senate vote. "It goes without saying that the moment WTO-compliant legislation becomes law, the EU will immediately repeal the countermeasures. That will be good news for all involved in transatlantic trade. Let's hope the time has come to put this long standing dispute behind us once and for all," he said in a statement.

* * * BRIEFS * * *

ANTIBOYCOTT: Input/Output Exploration Products (UK), foreign subsidiary of Texas-based firm, agreed to pay \$24,500 civil fine as part of settlement of BIS charges that it agreed with request from customer in Syria not to do business with companies on Arab League boycott list, responded to customer about its dealings with Israel and failed to report boycott request to BIS. Firm voluntarily disclosed action to BIS.

COLOR TVs: ITC May 14 made final determination on 5-0 vote that imports of dumped color televisions from China are injuring U.S. industry.

OFAC: Latest settlement actions reported from Treasury include \$60,500 fine that BASF agreed to pay to settle charges related to exports to Yugoslavia 1999-2000; \$35,350 fine of Carlson Marketing Group of Minneapolis for payment of travel expenses for Cuban nationals in 2001; and \$25,847.77 fine of ABN AMRO Bank in New York for funds transfers to Cuba and Sudan in 1998 and 2000.

MALAYSIA: U.S. and Malaysia signed Trade and Investment Framework Agreement (TIFA) May 10 to create bilateral forum for discussing trade issues and set stage for potential FTA talks.

CUSTOMS: Gary Shiffman was named chief of staff to Commissioner Robert Bonner May 10. He formerly was director of government affairs in Washington, D.C. office of Greenberg Traurig law firm.

CAFTA: USTR Robert Zoellick and trade ministers from five Central American nations will sign CAFTA on May 28. No date set yet for when Bush administration will send accord to Congress for approval.

URUGUAY: U.S. and Uruguay May 11 said they are launching negotiations on bilateral investment treaty (BIT). U.S. has BITs with more than 36 countries but hasn't negotiated new one in five years.

RUSSIA: Although EU and Russia reported progress in talks May 13 on Russia's accession to WTO, USTR Robert Zoellick said U.S. is still waiting for Moscow to implement agriculture agreement reached in 2003 and for better enforcement of intellectual property rights. Some of these changes will require Duma to enact legislation, Zoellick told reporters May 14. After meeting with Russian Trade Minister Gref, Zoellick said Russia has shown renewed effort to complete accession negotiations since Russian presidential elections. After Gref and EU Trade Commissioner Lamy held talks, EU issued statement saying progress was made on all accession issues across the board, including in market access and services. "Both sides agreed to hold a further meeting on 20 May 2004, on the eve of the EU-Russia summit in Moscow, with a view to concluding a final package," EU said.

TRADE FIGURES: Lost in headlines about record U.S. trade deficit in March was news that goods exports hit record \$67.2 billion, 15% over last March. Goods imports rose to record \$118.1 billion, 13% above year ago. Services exports increased 12% from last March to \$27.5 billion, as services imports also grew 12% to \$22.2 billion. Exports of industrial supplies, materials, autos, and consumer goods were records.

VIETNAM: CITA May 12 announced that it was cutting apparel quota for Vietnam in 2004 by one million garments, which represents 2.5% of volume and 4.5% of value of goods covered by bilateral textile agreement, based on Customs report which found that in 2002-2003 that amount of apparel was either transshipped or source couldn't be substantiated. Importers and retailers protested cut, claiming it was unjustified and based on "electoral politics."

EDITOR'S NOTE: 2003 issues of WTTL are now available without charge in electronic form at www.WTTLonline.com. You can receive WTTL via email each week in addition to your print edition for just \$75 extra each year. Contact Circulation Manager Elayne Gilston at tgilston@comcast.net to add WTTLonline to your subscription. Also ask her about site license so you can share WTTL with more of colleagues in your organization and more quickly.