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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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TRADE LEGISLATION MAY HAVE TO WAIT FOR LAME-DUCK SESSION

Whispers are now becoming louder that Congress may have to return after the November elections for a lame-duck session to deal with a logjam of legislation, including several key trade-related measures. With both Republicans and Democrats afraid to vote on any bill that might hurt them in the elections, the need for a post-election session is getting more probable.

Among the trade bills likely to be put off until after the election is legislation to repeal and replace the Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) tax law. Congress also faces trouble getting to vote on the free trade agreement (FTA) with Australia before adjournment. There is little hope it will touch the more controversial FTAs with Morocco, Central America and the Dominican Republic. Other bills that attempt to bring the U.S. into compliance with World Trade Organization rulings also might do better after the elections.

Even if the Senate can get its FSC/ETI bill (S. 1637) unstuck the week of May 10, the House version (H.R. 2896) remains dead in the water (see story, page 2). With time running out, it's unlikely both house of Congress can complete work on their competing measures and get a compromise report out of a House-Senate Conference Committee before Congress adjourns.

INCREASED ENFORCEMENT SEEN FROM STATE COMPLIANCE OFFICE

Firms subject to the International Traffic in Arms Regulations (ITAR) could see an increase in enforcement actions as a result of State's reorganization and enhancement of the compliance staff inside the Directorate for Defense Trade Controls (DDTC). As part of the general expansion of staff and resources that Congress has approved for State's export licensing responsibilities, DDTC has increased the number of people assigned to its compliance office, created a career track to enhance the professionalism of employees and planned to expand the number of compliance visits to exporters.

DDTC's compliance office has been reshuffled into divisions covering enforcement, compliance and registration and research and analysis. With State now regularly handing out multi-million dollar fines for ITAR violations, the compliance office has been given a new impetus to make cases. The main assignments of the enforcement division include working with Justice in the prosecution of criminal cases against violators, handling administrative and debarment cases and settling voluntary and directed disclosure cases. Working in the compliance division are 10 government employees plus two civilian contractors who were former Customs investigators. The compliance division deals with voluntary disclosures and registration, which is scheduled

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to go electronic this summer. It also has created special compliance teams that will be conducting site visits to follow up on voluntary disclosures, inspect new exporters and target firms that export items of particular concern to State, including aircraft and missile parts.

The research and analysis division has responsibility for DDTC's Blue Lantern end-use monitoring program. A key source of future cases, the program completed 413 end-use checks in the fiscal year that ended Sept. 30, 2003. The division plans to increase the number of checks by 25% to 500 this year. In 2003, the agency reported a record 76 unfavorable checks, and if the current pace continues, State officials say they expect to set another record this year.

FSC/ETI STUMBLES NEAR SENATE FINISH LINE, BUT MAY GET UP AGAIN

After moving relatively smoothly for three days through a series of sometime contentious amendments and debates over provisions in the FSC/ETI legislation (S. 1637), the Senate May 6 hit a stonewall over Republican objections to voting on an amendment sponsored by Sen. Maria Cantwell (D-Wash.) to extend unemployment benefits for jobless workers. To get the legislation back on track, Senate Majority Leader Bill Frist (R-Tenn.) file a cloture motion May 7 to limit continued debate on the bill and to bring it to a final vote on either May 11 or 12.

Before work halted, the Senate voted on 20 amendments, eight sponsored by Democrats and eight by Republicans plus four Finance Committee amendments. One of the committee amendments was another substitute measure that included 64 amendments sought by senators.

The Senate adopted a controversial amendment sponsored by Sen. Tom Harkin (D-Iowa) to block the Labor Department from implementing new overtime rules. It rejected, however, an amendment to extend the Trade Adjustment Assistance (TAA) program to service workers. Senators also turned down an amendment to strip tax benefits from firms that move manufacturing offshore and then import their goods back into the U.S. Sen. Max Baucus (D-Mont.) told the Senate May 7 that he will vote for cloture.

MEXICO SEEN USING NAFTA LABOR DEAL TO PRESS IMMIGRATION ISSUES

Mexico may be using the mechanism of the NAFTA side agreement on labor to put pressure on the U.S. to improve conditions for migrant workers in the U.S. and to act on proposals to ease the entry of temporary workers. A pending complaint filed with Mexican officials targets North Carolina's treatment of Mexican migrant workers, claiming they that North Carolina officials have failed to enforce laws to protect the freedom of association, length of contracts and pay for migrant workers holding H2-A visas.

Labor Department officials say their own investigation of the charges has found the state to be enforcing its labor laws properly, the only issue open to review under the NAFTA labor deal. The department provided Mexico with requested information in February but has not heard back from the Mexicans, Lewis Karesh, director of Labor's National Administrative Office, which coordinates NAFTA labor disputes, told the National Advisory Committee on the North American Agreement on Labor Cooperation (NAALC) May 4.

Committee members cautioned that Mexico has a separate agenda in its investigations of the treatment of migrant workers. Rather than just the enforcement of current laws, Mexico wants to see changes in those laws. Karesh conceded the complaint against North Carolina went way beyond the objectives in the NAFTA accord. Labor has bilateral cooperation programs with Mexico to help Mexican workers in the U.S. understand their legal rights. Other cooperative programs are aimed at improving health and safety conditions for workers in Mexico and the U.S. and to establish better worker training and job placement programs in Mexico. In addition

to the complaint against North Carolina, Mexico is also investigating a complaint against New York State's enforcement of its worker's compensation and health law. The U.S. has responded to Mexico's request for information, but as of April, Mexico was still reviewing the material. These cases follow previous Mexican complaints about the treatment of migrant Mexican workers in Maine and Washington state. The number of H2-A workers in North Carolina has increased 700-800% in recent years, worker representatives claim.

The NAALC advisory committee's meeting was its first since the Bush administration took office. Its charter is already up for renewal in June. Due to its late formation, the committee said it would not offer advice to Labor on the latest four-year review of the NAFTA labor pact. Labor was supposed to submit the U.S. report to the NAFTA trilateral secretariat in April, but won't make its submission until this summer. The last four-year review was completed in 1998. Labor Deputy Assistant Secretary Arnold Levine told the committee the department may ask it to broaden its role and serve as advisors on the labor provisions of all FTAs.

ITA LAUNCHES REVIEW OF POLICIES ON NONMARKET ECONOMIES

The International Trade Administration (ITA) May 3 launched a two-prong review of its policies dealing with the treatment of nonmarket economies (NME) in antidumping cases and the individual treatment of companies in NME states that claim to be market-oriented industries (MOI). In response to an agreement with China during the recent meeting of the Joint Commission on Commerce and Trade (JCCT), ITA published a Federal Register notice seeking comments on China's NME status and announcing a public hearing on the issue for June 3

In a separate Federal Register notice the same day, ITA called for comments on 10 different issues it faces in addressing MOI requests. In particular, it admitted that it anticipates "an exceptionally large number of requests" for separate MOI rulings in the pending investigations of shrimp from China and Vietnam and wooden bedroom furniture from China (see **WTTL**, May 3, page 1). Separately, Court of International Trade Senior Judge Nicholas Tsoucalas May 6 remanded (Slip Op. 04-47) to ITA its antidumping ruling on crawfish from China on technical issues, but generally upheld agency's wide discretion in applying NME rules

PANAMA DOESN'T WANT TO DOCK WITH CAFTA-DR FTA

During the first round of negotiations on a U.S.-Panama free trade agreement (FTA) in Panama City, Panamanian officials made it clear they want a separate bilateral deal with Washington and don't want to be linked into the Central American FTA (CAFTA)-Dominican Republic (DR) accord. The Panamanian government's position "is that they would prefer a bilateral agreement," Assistant U.S. Trade Representative Regina Vargo told reporters May 5. "Both sides have said we could leave all options open, but we have indicated that we are willing to work with them on the basis of a bilateral agreement," she said.

CAFTA not only establishes general trade rules between the U.S. and the five countries of Central America – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua – but also among those countries, which belong to the Central American Common Market. The Common Market also has a FTA with the DR, which also will be covered by the same rules.

U.S., Central American and DR lawyers spent the week of May 3 in Washington doing "a legal scrub" of the final CAFTA text to make sure it accurately reflected and implemented the agreements that have been reached. Vargo denied rumors that changes were being made to the labor and environment provisions of the accord. "We believe that the approach we adopted in the CAFTA was the approach that was agreed upon by the Congress and we negotiated the agreement on that basis," she declared. USTR officials continue to refuse to announce any date for the signing of the CAFTA and DR deals or sending them to Congress for adoption. Vargo

earlier told a Chamber of Commerce meeting that she had an “excellent week” of talks with Panama. She noted that market access issues with Panama will be significantly different than those addressed in the CAFTA talks because Panama is a much more service based economy, with significant intermediary trade and finance services. The Panamanians presented their own draft text of what they want in an FTA. There was a “high degree of commonality” in what Panama and U.S. are seeking, Vargo reported.

Meanwhile, talks starting May 18-19 with Colombia will also include Peru and Ecuador, the USTR’s office announced. Bolivia will attend as an observer for now. “Early next year is the operational goal” for completing talks with Panama and the Andean nations, Vargo said. The aim is to finish the accords so Congress can vote on them before fast-track negotiating authority must be renewed in June 2005. While it’s unlikely lawmakers would reject renewal of the authority, there is enough uncertainty to warrant getting the deals done before then.

VIOLATION OF DEEMED EXPORT RULES DRAWS CRIMINAL CONVICTION

As part of a global settlement that included civil and criminal charges and penalties, a now-defunct Newark, California, firm, Suntek Microwave has become the first firm ever criminally prosecuted for violating “deemed export” licensing requirements. The deemed export charges stem from Suntek training of Chinese nationals from 1996 to 2000 in the technology to manufacture detector log video amplifiers (DLVA) without obtaining a required license from the Bureau of Industry and Security (BIS). The Chinese intended to use the technology in China for Suntek’s primary shareholder, Chengdu Jeway Microwave Telecommunications Co., Ltd., which BIS claimed was controlled by the Chinese government.

Suntek pled guilty April 26 in the San Francisco U.S. District Court to criminal charges that it violated the Export Administration Regulations (EAR) and was fined over \$339,000. Its former president, Charlie Kuan, had pled guilty to similar charges in September 2002 and is awaiting sentencing.

In the settlement with BIS announced May 7, Suntek agreed to pay a civil fine of \$275,000 and accept a 20-year denial of exporting privileges. Kuan agreed to pay a \$187,000 fine and be denied export privileges for 20 years. Since Suntek is out of business and Kuan is unemployed, BIS suspended the monetary portion of the settlement.

*** * * BRIEFS * * ***

COMPUTERS: Hewlett-Packard May 6 filed unfair trade complaint under Section 337 at ITC against allegedly patent-infringing personal computers and server computers imported by Gateway.

AUSTRALIA: U.S. will sign FTA with Australia May 18, USTR’s office announces.

AFRICA: House Ways and Means Committee by voice vote May 5 approved bill (H.R. 4103) to extend African Growth and Opportunity Act (AGOA) until 2015, to clarify interpretation of certain provisions and extend provisions allowing some use of third-country fabrics.

EAR: BIS has published series of amendments to export controls in Federal Register. Changes apply to commodity jurisdiction for protective equipment (May 6), MTCR controls (May 4), chemical precursors (May 4) and Wassenaar rules for microwave amplifiers (May 6).

SPECIAL 301: USTR May 3 issued annual report on foreign enforcement of intellectual property rights (IPR). USTR Robert Zoellick said he was “encouraged” by progress but “need for significant improvement remains.” Report produced no new trade complaints against offenders.

LIVE SWINE: In preliminary ruling, ITC May 7 voted 6-0 that imports of allegedly dumped and subsidized live swine from Canada may be injuring U.S. industry.

FTAA: After meetings April 29-May 3 in Washington, co-chairs of Trade Negotiating Committee didn’t find enough progress to warrant reconvening TNC (see **WTTL**, April 5, page 1).