

# Washington Tariff & Trade Letter®

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

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Vol. 25, No. 26

June 27, 2005

## CHINESE BID FOR UNOCAL COULD TRIGGER EXON-FLORIO AMENDMENT

A Chinese firm's bid to buy Unocal, the major U.S. oil company, has prompted Senate Finance Committee members to consider legislation that could allow the government to block such deals earlier in the proposal stage. It has also stirred calls for amending the Exon-Florio Act to make "economic security" and not just "national security" a reason to stop foreign acquisitions of U.S. companies. "We're looking at the law where the secretary of the Treasury steps in, whether or not there is a possibility of [a sale], even at this stage, for the secretary to make a judgment," Senate Finance Committee Chairman Charles Grassley (R-Iowa) said June 23.

China National Offshore Oil Corp.'s (CNOOC) offer to buy Unocal has raised sharp concerns in Congress. Grassley said he and Sen. Ron Wyden (D-Ore.) plan to write to Treasury Secretary John Snow to ask for a review of any CNOOC-Unocal deal by the interagency Committee on Foreign Investment in the U.S. (CFIUS), which is charged with implementing Exon-Florio.

At a June 23 hearing held by the U.S.-China Economic and Security Commission, Rep. Donald Manzullo (R-Ill.), who chairs the House Small Business Committee, called for reforming the CFIUS process to consider economic security as part of national security. "The rise of China demonstrates that the loss of key manufacturing assets quickly devolves into a question of national security," he told the commission. In addition, he said there needs to be more transparency and accountability in the CFIUS process and consultation with Congress.

## PLANNED CATCH-ALL RULE WON'T BE BASED ON "CAPABLE OF" MILITARY USE

A planned Bureau of Industry and Security (BIS) proposal to impose a "catch-all" requirement on all exports to China won't be applied just because an item is "capable of" military end-use, BIS acting Under Secretary Peter Lichtenbaum said June 23. The proposal, which is still being debated within the interagency process, would require U.S. exporters to seek an export license even for items not subject to controls now whenever they know the item is going to an end-user or end-use that could make a material contribution to the Chinese military capability.

Testifying before the U.S.-China Economic and Security Commission, Lichtenbaum responded to concerns raised by commission member Bill Reinsch that the proposal could bring many uncontrolled items under licensing requirements, especially aerospace products. "Clearly, I do want to draw a line there, that we're not talking about whether or not it is capable of military end-use," Lichtenbaum said. "Merely because a plane is clearly capable of military end use doesn't, in our view, give the exporter knowledge that it will be used for a military purpose,"

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Published weekly 50 times a year except last week in August and December. Subscription in printed or electronic form is \$597 a year in U.S., Canada & Mexico; \$627 Overseas. Additional copies with full price subscription are \$75 each.  
Circulation Manager: Elayne F. Gilston

he said (see **WTTL**, May 2, page 1). “Therefore, we would be happy to make that clear to the exporting community. It is not a capability.” The exact procedure for imposing the coming rule is still being discussed with other agencies, Lichtenbaum said. “Our task is to identify those items that would make a material contribution,” he said.

Lichtenbaum disagreed with the contention that the proposal would significantly increase the burden on exporters. “We do have precedent for this in our regulations,” he said, citing the current Enhanced Proliferation Control Initiative (EPCI) rules. “I think U.S. companies are used to screening transactions against end users” to be sure they comply with export rules, he said.

“China is certainly a very significant market for U.S. industry. We do have to be careful in proposing additional controls in respect to that market and not inadvertently catching items that under no scenario would make a material contribution to the Chinese military,” he added.

Some firms, however, claim BIS is already imposing the catch-all rules on exports to China or threatening to impose them. Lichtenbaum told the commission BIS has a policy of denial for exports to Chinese aircraft firms, such as Chengdu Aircraft, for exports of composite materials if there is information of diversion to military use. Rep. Donald Manzullo (R-Ill.) told the commission that a company with a plant in his district, Gleason-Pfauter-Maag, which produces machine tools that make gears, has been told by BIS officials that equipment it has been able to export to China without a license would require a license under the coming regulations. Lichtenbaum later told **WTTL** that he wasn’t aware of such advice. “Nobody has told anyone that they would be subject to anything,” he said.

## **FUGITIVE ARRESTED ON SIX-YEAR-OLD SEALED INDICTMENT**

In the “wheels-of-justice-grind-slowly-department,” Arif Ali Durrani was arrested June 15 by agents from Immigration and Customs Enforcement (ICE) on a warrant issued in 1999 based on a sealed, two-count indictment that charged him with exporting General Electric J-85 jet engine parts in 1994 without an approved license from State. Durrani was arrested at the Los Angeles Airport on a plane that stopped en route from Mexico City to Pakistan. In 1987, he was convicted of exporting Hawk missile parts to Iran without a license and was sent to prison in 1992. After his release, the government tried to deport him, but he left the country voluntarily in 1998, according to ICE. The newer charges relate to activities after he left prison.

## **BUSH SENDS DR-CAFTA TO CONGRESS, FAST FAST-TRACK ACTION POSSIBLE**

Supporters of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) apparently believe they have the votes – at least in the Senate – to pass the implementing legislation (S. 1307/H.R. 3045) which President Bush sent to Congress June 23 without firm deals on sugar or labor. “My guess is they are smart enough not to send it up if they don’t have the votes,” Senate Finance Committee Chairman Charles Grassley (R-Iowa) told reporters. Finance is set to begin markup of the measure June 28, and Senate leaders may try to get a floor vote on the deal before lawmakers leave for their July Fourth recess on Friday. Timing for House action is still uncertain but unlikely before the recess (see **WTTL**, June 20, page 1).

A proposal from Agriculture Secretary Mike Johanns to cap sugar imports at limits set in the 2002 Farm Bill and to offer compensation in cash or concessions to countries that might get reduced access to the U.S. market has gotten a cautious response from the U.S. sugar industry and sugar-state lawmakers.

During a teleconference June 23, several senators and representatives heard objections to the proposal from cane and beet sugar growers, who reportedly consider it to be too short-term, since it would extend through only one crop year. The limit on imports also didn’t deal with long-term concerns about future trade agreements. A proposal by Sen. Norm Coleman (R-

Minn.) to allow in sugar-based ethanol in replacement for raw sugar, reportedly received extensive discussion on the call. With no sugar deal yet, Sen. Craig Thomas (R-Wyo.), who voted for the DR-CAFTA deal during Finance's mock-markup of the implementing legislation, may change his vote during the coming formal markup, his spokesman said. Thomas "will need to see something definitive on sugar to vote for the agreement," the spokesman said. As a privileged bill, DR-CAFTA would get to the Senate floor even if it fails to get Finance approval.

The DR-CAFTA bill sent to Congress does not include an amendment added by Finance to expand the Trade Adjustment Assistance (TAA) worker-training program to cover service workers who lose their jobs due to trade agreements. The bill does include a provision added by the House Ways and Means Committee to monitor labor progress in the region but not language Ways and Means added to require a report on the deal's impact on the services industry.

DR-CAFTA backers say they expect a few members of the Congressional Hispanic Caucus and the Black Caucus to break with their colleagues who are opposed to the deal and to vote for it. But Rep. Ben Cardin (D-Md.), ranking Democrat on the Ways and Means trade subcommittee, says there are still not enough votes in the House to pass the legislation. "The numbers I have seen show that if the vote were taken today, based on the current view of members of the House, there are not 218 votes to pass this DR-CAFTA," he asserts. "Now, does this mean they can't get 218 votes? I'm not ready to say that," he adds. "But if they had 215 or 213 votes they could always pick up a few more, so my guess is they are well below that."

## U.S. INDUSTRY OPPOSES CHANGE IN UKRAINE'S NME STATUS

The International Trade Administration (ITA) decided to review Ukraine's nonmarket economy (NME) status despite objections from domestic petitioners, according to comments filed with the agency (see [WTTL](#), May 2, page 4). Attorney's at [Collier Shannon Scott](#), which represents petitioners, claim Ukraine failed to serve them with a copy of its changed circumstances request as required by ITA regulations. This is "more than a matter of form," they told ITA. The lack of notice denied petitioners the opportunity to comment on the request, they argued. In addition, the review should be rescinded because of "the complete absence of any evidence supporting the GOU's request," they wrote. ITA ignored this appeal and initiated the review anyway. It has extended the comment period on the review until July 11.

## EX-IM MIGHT HAVE TO SUSPEND ACTION ON MAJOR FINANCIAL DEALS

The Export-Import Bank Board may soon have to suspend action on major financing deals because it will lack a required quorum unless the White House moves quickly to reappoint three current members or to nominate their replacements. The terms of current bank President and Chairman Philip Merrill, Republican Vice Chairman April Foley and Democratic Member J. Joseph Grandmason expired in January and their extended terms expire July 20.

Ex-Im rules require a three-member quorum to conduct business. Without new appointments for these three seats, the board would have only two members.

While the bank staff can continue to handle most smaller financing deals, any aid above \$10 million requires board approval.

There has been no word from the White House on the Ex-Im jobs. Sources say President Bush could make a recess appointment to fill one or all the posts without having to go through the long nomination and Senate confirmation process. Such a recess appointment could be made during the congressional July Fourth recess, or, more likely, during the longer August recess. The reappointment of Merrill, however, could face strong opposition due to criticism that has arisen over his refusal to consider a request from [Applied Materials](#), the U.S. maker of semiconductor manufacturing equipment, for support for a multimillion dollar sale of equipment to China's [Semiconductor Manufacturing International Corp. \(SMIC\)](#). U.S. chipmaker [Micron](#)

objected to the lending aid, claiming it would help its Chinese competition. In a letter to House Speaker Dennis Hastert (R-Ill.) in March, Merrill said Ex-Im “concluded that the deal as structured was unlikely to satisfy our charter requirements and obtain Board approval.” He said he expected Applied Materials, which was not named in the letter, and SMIC to “pursue an industry-wide solution,” which sources say means reaching a deal with Micron.

Opposition to Merrill’s reappointment was voiced by House Small Business Committee Chairman Donald Manzullo (R-Ill.). Merrill “should not be reappointed,” he said June 23. “He’s a nice guy but that is not the job for him.”

## WTO FINDS ITA “SUNSET” REVIEW PROCESS VIOLATES TRADE RULES

U.S. trade law and ITA’s implementation of the “sunset” requirements of the Uruguay Round Antidumping Agreement are inconsistent with the accord and should be brought into conformity with its requirements, a World Trade Organizations (WTO) dispute-settlement panel ruled June 20 in a complaint Mexico filed against a U.S. antidumping order imposed on oil-country-tubular goods from Mexico. The panel, however, said the International Trade Commission’s (ITC) ruling on injury in the case was consistent with the agreement.

The ruling coincided with a new report from the free-trade minded Cato Institute, which analyzed 335 antidumping sunset cases between July 1998 and May 2005. In 80 cases, the domestic industry sought no review and the orders were revoked. Of the remaining 255 cases, ITA found dumping likely to continue or recur in every case, Cato reported. The ITC found injury likely to continue or recur in 194 of those 255 cases. “These statistics seem to contravene the intended reform negotiated during the Uruguay Round,” Cato analyst Daniel Ikenson wrote.

## GAO REPORT QUESTIONS BENEFIT OF APPLYING CVD LAW TO CHINA

The justification, if not the wind, has been taken out of the sails of congressional proposals to change U.S. trade law to apply the countervailing duty (CVD) law to nonmarket economies, especially China. In a report (GAO-05-474), the General Accountability Office (GAO) questions the benefits that might come from such a change and warns that new rules could reduce the remedy provided by current rules for applying antidumping law to NMEs.

“It is unclear whether, on a net basis, applying CVDs would provide greater protection than U.S. producers already obtain from antidumping duties,” the GAO concludes. “CVDs alone tend to be lower than antidumping duties. If Commerce grants China market economy status, both CVDs and antidumping duties could be applied simultaneously, but required methodology changes could well reduce antidumping duties,” it declares.

### \* \* \* BRIEFS \* \* \*

CUSTOMS: U.S. was among first 52 countries pledging to implement Framework of Standards to Secure and Facilitate Global Trade that World Customs Organization adopted June 23.

CEMENT: NAFTA binational panel June 24 remanded back to ITC its injury determination in “sunset” review of antidumping order on gray Portland cement and cement clinker from Mexico. Panel said ITC should bring its definition of “likely” into conformity with CIT ruling in *Siderca* which said likely means “probably” or “more likely than not.” Panel also told ITC to explain why order should stay in place for “highly profitable regional industry, given the continuing solid demand in the region and a substantial increase in non-Mexican imports.”

APPLES: WTO panel June 23 agreed with U.S. that Japan has failed to comply with earlier WTO ruling which found its restrictions on apple imports to violate on Sanitary and Phytosanitary measures.