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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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AIRCRAFT INDUSTRY GROWING ANXIOUS ABOUT EXPORT JURISDICTION

The State Department could get flooded with thousands of requests for commodity jurisdiction (CJ) rulings from producers of airplanes, aircraft engines and avionic parts who are increasingly worried that their products will get caught on the Munitions List (ML) because of State's "see-through" rule which considers products to be on the ML if any part or component is on the ML. Industry anxiety, some of which is self-generated, has been mounting since an interagency agreement in 2003 led to the transfer of licensing jurisdiction for the QSR-11 navigation system from State to the Bureau Industry and Security (BIS) (see **WTTL**, Dec. 15, 2003, page 3).

Even as the QSR-11 decision was being made, industry had called on State to clarify its see-through rule to avoid bringing thousands of avionics products under the ML just because a component was on the list. Since then, several companies, such as Airbus and Boeing, have reportedly required vendors and suppliers to certify that their products are not subject to ML jurisdiction.

Some companies are reluctant to seek a CJ because a request could put them on the ML by default until State makes a ruling. At the same time, State has been slow to issue rulings, leaving products in limbo for long periods of time. "This is a pretty significant issue for our industry," one company executive said. BIS has been fighting State on several pending CJ requests that State has proposed classifying as ML items. The aircraft industry is planning a series of conferences for suppliers and vendors to inform them about the problem, the need to get their products classified and how to avoid becoming an ML items.

State plans to publish soon on its website a new standardize form for submitting CJ requests. That form, industry executives say, might help the situation because it will ask firms to identify key factors that might determine a product's classification. Among these factors are the product's heritage, how was it developed, what is its use, whether it was developed under a Defense contract and who are its predominant customers. The notice will ask firms whether they would be willing to have their CJ determinations – with confidential information redacted – published on the Directorate for Defense Trade Controls (DDTC) website.

ZOELLICK WARNS SUGAR OF CONSEQUENCES OF DEFEATING DR-CAFTA

Deputy Secretary of State Robert Zoellick issued a thinly veiled threat to the U.S. sugar industry May 16, warning that if its opposition leads to the defeat of the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) it could face trouble when the Farm Bill comes up for renewal next year. Defeat of DR-CAFTA could affect the Bush administration's

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views on how to treat the U.S. sugar program in farm legislation and also cause the rest of the agriculture industry to abandon sugar interests in the tough fight expected over the next farm bill. “We have a farm bill coming up here and so this is going to be something the sugar industry is going to have to decide,” Zoellick told a Heritage Foundation program. “Do they want to be taken care of while letting others advance or are they going to stop the benefits for the rest of American agriculture,” he declared.

Zoellick said the rest of agriculture will have to get a message to sugar interests. “Everybody knows the sugar industry got a sweet deal....If that isn’t good enough, well then maybe the overall program structure is something all the agriculture community is going to have to look at,” he said.

Ironically, the U.S. may need to import more sugar in the future, according to USTR Chief Agriculture Negotiator Allen Johnson, who cited estimates from some agriculture economists. With sugar cane production expected to decline over the coming years, the short-fall in supply will trigger provisions in the sugar program that would allow in more sugar, he explained.

Zoellick and U.S. Trade Representative (USTR) Rob Portman appear to be playing bad cop-good cop on DR-CAFTA. Portman has been trying to use friendly persuasion with his former colleagues in Congress, including lawmakers from sugar-producing states, to win their support for the accord (see **WTTL**, May 16, page 3). Zoellick, in his usual frank manner, has been less accommodating. “We must decide whether we will sacrifice the strategic interests of the United States and the future of Central America for a spoonful of sugar,” he said in his speech. “We must decide whether we will leave hundreds of thousands of Central Americans in poverty and hopelessness because of the short-sighted protectionism of U.S. labor unions,” he added.

U.S. WILL PROPOSE “LEVEL UP” PLAN FOR SERVICES IN DOHA TALKS

To jumpstart the World Trade Organization’s (WTO) lagging Doha Round talks on services, the U.S. will call on all countries to “level up” to the services offers that the U.S. and European Union (EU) have made. The new proposal recognizes that negotiations on liberalizing trade in services are far behind talks on agriculture and tariffs and that there isn’t enough time to go through the traditional “request-offer” process to get countries to make market-opening commitments if the round is to be completed by its new deadline of December 2006.

“We are looking to supplement the request-offer approach,” Deputy U.S. Trade Representative Peter Allgeier told the House Ways and Means trade subcommittee May 17. The U.S. is working with close allies, including the EU, Canada and Japan, “in identifying a core of critical services that everybody, most developed and developing countries, should include in their offers,” he explained.

“We are looking to see if we can set a higher level of services openness in the world economy instead of just looking at it bilaterally,” he told the committee. The goal is to get “everybody to level up toward whatever the United States is offering,” he said. The U.S. will ask WTO members to offer to open all their services sectors with at least minimum commitments. Some sector exclusions would be allowed, since the U.S. has already excluded maritime services from its offer and the EU has limited access to its audio-visual services. Countries would be able to seek better offers in specific sectors from other member, but the level-up approach would at least set the starting point for negotiations, one industry representative explained.

The new U.S. approach has been advocated by U.S. service firms, including the Coalition of Service Industries (CSI). Countries such as China, Brazil, India and Malaysia are open to this new approach, but are likely to demand more liberalization in the trans-border movement of service workers – the so-called Mode 4 of the services talks – as a condition for improved commitments, Norman Sorensen, president of the Principal Financial Group and Chairman of CSI, told **WTTL**. Sorensen, who just returned from the capitals of those countries, told the hearing that he expects those countries to make revised offers in the services talks. While

immigration policy is a super-sensitive issue in Congress, Sorensen told WTTL that he believes lawmakers would support liberalization of Mode 4 entry of service workers, if the WTO agreement included specific conditions on the entry of such workers and guarantees by the companies that bring them into the country. CSI has suggested that such restrictions might include specific time limits on the stay of those workers in country, entry only for specific projects or assignments, and no renewal of temporary visas.

In addition, employers would guarantee that these workers would leave at the end of the projects. This pledge might be backed by a bond that would be forfeited, if the worker overstayed his or her visit or by the company losing the privilege of sponsoring temporary workers in the future. With Customs introducing new digital and biometric passport requirements for foreign visitors, it will be easier to track compliance with the terms of these temporary visas, Sorensen suggested.

Meanwhile, the Pentagon's supplemental appropriations bill (H.R. 1268) that Congress approved May 11 includes provision providing Australia with special reciprocal visa status for temporary specialty workers coming into U.S. The measure allocates up to 5,000 visas for these workers.

INDUSTRY, CONGRESS PUSH USTR TO ACT ON CHINA'S IPR VIOLATIONS

The U.S. has delayed taking China to the WTO for failing to meet its intellectual property rights (IPR) commitments because it wants to be sure it has the legal case to win, said Deputy Secretary of State and former USTR Robert Zoellick. Moreover, except for industries complaining about copyright infringement, other industries haven't provided the specific evidence needed to support a dispute-settlement challenge, he told an audience in Washington May 16.

"There have been intellectual property cases brought to the WTO for countries that [didn't] have the laws they were supposed to have under their WTO obligations," Zoellick told a Heritage Foundation program. "There has not been a case brought on whether people are enforcing the law. And just as if you were to bring a case to a U.S. court in a new area, you would want to make sure you had the facts in evidence to maximize your opportunities to win the case," he said.

The USTR has asked industry to identify specific IPR problems in China, but "people have been slow in coming forward with evidence," Zoellick noted. The one area where evidence was supplied was for copyright infringement. The U.S. will look seriously at a potential copyright case. "It may be good to kick off a sector within intellectual property," he said. Everyone wants to bring a good case "because that will define some of the terms in the future," he said.

A U.S.-China working group on IPR issues, set up under the Joint Commission on Commerce and Trade (JCCT), is scheduled to meet the week of May 22 to discuss Washington's complaints about IPR violations in China, Acting Assistant USTR for Intellectual Property Victoria Espinel told a House hearing May 17. The U.S. will use that meeting "to impress upon China that patience in the Administration and on Capitol Hill has run and that now is the time for results," she testified. Espinel noted that the USTR's office elevated China to a Priority Watch List country in its latest out-of-cycle review of Beijing's compliance with its WTO obligations under the Agreement on Trade-Related Intellectual Property Rights (TRIPS).

In addition to the JCCT working group, her office is considering invoking the transparency provisions of the TRIPS accord to force China to document its IPR enforcement. Eric Smith, president of the International Intellectual Property Alliance, which represents industries that rely on copyright protection, told the hearing his group is working with the USTR on a possible WTO complaint. "The process has now commenced in earnest," he said in his statement.

The hearing also examined IPR violations in Russia. "Lawlessness, physical danger, including attacks on investigators, and corruption are serious impediments to protecting our rights in Russia," said Bonnie Richardson, senior VP for the Motion Picture Association of America, in

her prepared statement. Espinel said the U.S. has raised the IPR issue in Russia's WTO accession negotiations. U.S. officials "have made it clear to the Russian government that progress on IPR will be necessary to complete the accession process," she testified.

TREASURY CONTINUES TO AVOID CITING CHINA ON CURRENCY MANIPULATION

Treasury Secretary John Snow was looking both East and West as he released the latest department report on foreign currency practices May 17, seeking positive responses from both China and Congress. The report's heightened threat against Beijing's low-peg of the yuan against the dollar didn't seem to get the reaction he hoped for. While some lawmakers praised Snow's tougher language on the yuan's valuation, there was a bipartisan complaint that the Treasury's words still needed to be followed with action against China in the WTO. Chinese officials repeated their mantra that China won't be pushed into changing its currency.

The reaction in Congress means the threat of legislation to force the U.S. to act against China still remains strong. Two Republicans, Sen. Olympia Snowe (R-Maine) and Rep. Don Manzullo (R-Ill.), issued a joint statement criticizing the new Treasury report. "I'm very disappointed that the Treasury Department has again given China and others a pass on being labeled currency manipulators," Manzullo said. "We cannot allow China to dictate the terms and the time-frame for complying with their international obligations," Snowe stated.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Laurel Industrial of San Jose, Calif., has agreed to pay \$44,000 civil fine to settle BIS charges that it violated U.S. export controls by exporting acoustic systems classified under ECCN 6A001 to China on three occasions from in 1999 and 2000 without approved licenses. Charges also included exporting with knowledge that license was needed and making false statement on SED, claiming items were eligible for License Exception NLR. In addition to fine, company has agreed to conduct audit of its internal compliance program and submitted copy of audit to OEE.

ARTIST CANVAS: Unanimous ITC May 16 made preliminary determination that U.S. industry may be suffering injury due to allegedly dumped imports of artist canvas from China.

OFAC: Nozzle Manufacturing of Wildwood Crest, N.J., which paid \$10,000 civil fine to settle BIS charges of exporting oil burner nozzles to Iran without OFAC license, has now reached separate settlement with OFAC and has agreed to pay another \$10,000 fine. Other settlements announced by OFAC include fine of \$38,035 that Fugro Seafloor Survey of Seattle paid for unlicensed export to Iran. Perot Systems paid \$21,766.94 fine for facilitating trade with Libya.

TEXTILES: CITA May 18 agreed to impose safeguard restrictions on four more Chinese textile categories based on "threat" of market disruption. Latest categories are men's and boys' shirts (340/640), man-made fiber trousers (647/648), man-made knit shirts and blouses (638/639) and combed cotton yarn (301). Commerce said it will seek consultations with Chinese by end of May (see **WTTL**, May 16, page 4).

POTASSIUM PERMANGANATE: ITC, voting 6-0 May 18, made "sunset" determination that U.S. industry is likely to be injured if current antidumping order on potassium permanganate from China were revoked.

CHINA ARMS EMBARGO: As expected, 2006 National Defense Authorization Act (H.R. 1815) reported out by House Arms Services Committee May 18 includes provision that would bar foreign firms that sells arms to China from selling to DoD, while offering incentives to those that choose not to sell such items.

ANTIDUMPING: Slowdown in use of antidumping laws isn't just U.S. phenomenon (see **WTTL**, Feb. 28, page 1. Semi-annual report from WTO May 19 says 17 members reported initiating 103 antidumping investigations from July to December 2004. This compares to 135 in same period year earlier. U.S. wasn't even in top five countries starting cases. EU was top with 17, followed by China (16), India (14) and Turkey (12). China was leading target of new complaints with 25.

UNITED ARAB EMIRATES: Second round of U.S.-UAE FTA talks ended May 11 in Washington with agreements on couple of chapters and other pieces of text. "We made a great deal of progress," Assistant USTR Cathy Novelli reported. Next round will be "virtual" meeting via video conference.