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PADILLA SAYS HE SUPPORTS BIS CHINA CATCH-ALL PROPOSAL

Incoming Bureau of Industry and Security (BIS) Assistant Secretary for Export Administration Chris Padilla told a Senate hearing Sept. 27 that he supports the agency's proposed China catch-all regulation, but he also said BIS has to do a better job telling exporters who are the trusted customers in China and who are suspect. "I strongly support that policy," Padilla said at his Senate Banking Committee confirmation hearing. The China proposal "reflects our broader foreign policy toward China, which is one of encouraging legitimate civilian trade while hedging against concerns about rapid military modernization," Padilla said

> At press time, Padilla was still waiting to find out if the Senate would be able to approve his appointment before it left for its election recess. If the Senate didn't get to his nomination, a vote is likely when lawmakers return for a lame-duck session the week of Nov. 13.

Padilla said when he worked for AT&T "it was sometimes difficult for us to know whether your customer had links to the military." He said one of his goals would be to strengthen the U.S.-China agreement on end-user visitors. "We also need to cooperate more with the intelligence community," Padilla said. "We need to be able to tell exporters as much as we can without revealing sensitive information, who the trusted and suspected end users are.

Padilla said dealing with "deemed exports" would be one of his highest priorities. "There is a clear threat from the loss of sensitive technology to foreign nationals in U.S. companies or U.S. academic institutions," he said. While noting concerns about Chinese researchers in the U.S., Padilla also warned that "we've seen in recent months, some people with passports from friendly countries can pose a threat. We've seen concerns about terrorism from the United Kingdom and Canada." Padilla acknowledged that unilateral sanctions sometimes impose costs on U.S. exporters, but said they are sometimes warranted despite those costs. "Just because someone else is selling something doesn't automatically mean that we should too," he testified.

WTO PANEL DECLARES EU GMO POLICIES VIOLATE TRADE RULES

The U.S. Sept. 29 won a long sought ruling from a World Trade Organization (WTO) dispute-settlement panel against the European Union's (EU) moratorium on the approval of genetically modified organism (GMOs). The panel ruled that procedures used by the EU Commission and six member states are inconsistent with WTO trade rules. The U.S. has been fighting the EU over the GMO issue for eight years. Because of the complexity and political sensitivity of the issue, it took three years for the panel to be formed and to investigate the complaints raised by

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the U.S., Canada and Argentina. The panel's final report was 1,139 pages long with appendices comprising another 1,290 pages, making it the longest panel report in WTO history. "The WTO has ruled in favor of science-based policymaking over the unjustified, anti-biotech policies adopted in the EU," said U.S. Trade Representative (USTR) Susan Schwab. "After eight years of legal wrangling and stalling by Europe, we are a step closer to clearing barriers faced by U.S. agricultural producers and expanding global use of promising advances in food production," she said in a statement. An EU appeal to the WTO Appellate Body is certain.

> Initially, the panel found that GMO review procedures of the EU and its members are measures subject to the WTO Sanitary and Phytosanitary (SPS) Agreement. It noted that complaining nations didn't questioning the EU's right to review GMOs for safety. It also agreed that a moratorium imposed on GMO approvals wasn't necessarily a violation of the SPS Agreement. Nonetheless, "the general *de facto* moratorium resulted in a failure to complete individual approval procedures without undue delay, and hence also gave rise to an inconsistency with Article 8 and Annex C of the SPS Agreement," the panel ruled.

"We examined the record of consideration of 27 applications identified by the Complaining Parties," the panel said. "We have found that there was undue delay in the completion of the approval procedure with respect to 24 of the 27 relevant products. We therefore concluded that, in relation to the approval procedures concerning these 24 products, the European Communities has breached its obligations under Article 8 and Annex C of the SPS Agreement."

In addition to EU procedures, the U.S. also objected to specific safeguard measures imposed by six individual EU members – Austria, Belgium, France, Germany, Italy and Luxembourg – to block GMO approvals. The Panel considered whether any risk assessment had been provided by these states to support the moratoria. "Although some of the member states did provide scientific studies, in no case did they provide an assessment of the risks to human health and/or the environment meeting the requirements of the SPS Agreement," the panel ruled. "The Panel likewise examined whether the risk assessments undertaken by the EC scientific committees could provide reasonable support for a prohibition of the biotech products at issue, but considered that this was not the case," it added.

SENATORS AGREE TO POSTPONE CHINA CURRENCY LEGISLATION

Sens. Charles Schumer (D-N.Y.) and Lindsay Graham (R-S.C.) backed off again Sept. 28 from their threat to force a Senate vote on legislation to impose a 27.5% tariff on Chinese imports to protest Beijing's manipulation of its currency (see **WTTL,** Sept. 18, page 4). The two lawmakers said they would put off any legislation until next year and will work with Senate Finance Committee Chairman Charles Grassley (R-Iowa) and Ranking Member Max Baucus (D-Mont.) on a compromise bill.

> "The bottom line is that this bill was designed as a wake up call, and in that it has been a rousing success," Schumer said in a joint statement with the other three lawmakers. "Now it is time to craft a bill with a real chance of becoming law," he added. Grassley and Baucus had introduced a milder China currency measure in March. Their bill would have dropped the language currently in law which requires Treasury to identify countries that manipulate their currencies. Their legislation would have called for the department to identify currencies that are "misaligned" and to require consultations with those countries.

Meanwhile, China Sept. 28 boasted that its currency, the renmimbi, has appreciated to 7.90 to the dollar, a rise of 2.66% since Beijing promised to let the currency fluctuate a year ago. The Chinese said the renmimbi has reached five new highs in nine days. The rise followed a visit to China by Treasury Secretary Henry Paulson. Paulson has asserted control over Sino-U.S. trade and finance issues. While in China he announced the creation of a Strategic Economic Dialogue, which a Treasury statement said is aimed at providing "an overarching framework for ongoing productive bilateral economic dialogues and future economic relations." The dialogue is to be held semi-annually, with the first session planned by the end of 2006.

ADMINISTRATION OFFERS TO SELF-INITIATE DUMPING CASES ON VIETNAM

In a move to unblock objections to granting Vietnam permanent-normal-trade-relations (PNTR) status, USTR Susan Schwab and Commerce Secretary Carlos Gutierrez Sept. 28 promised to monitor and, if warranted, self-initiate antidumping cases against textile and apparel imports from Vietnam. In letters to Sens. Elizabeth Dole (R-N.C.) and Lindsay Graham (R-S.C.), who had placed a "hold" on a Senate vote on Vietnam's PNTR status, Schwab and Gutierrez said Commerce "will self-initiate antidumping investigations with respect to relevant products" when its monitoring program indicates that dumping exists. The monitoring program will issue monthly reports on imports from Vietnam and review the data every six months.

> Dole and Graham lifted their hold on the legislation in response to the letters. If the White House can also satisfy the objections of Sen. Mel Martinez (R-Fla.), who has concerns about religious freedom in Vietnam, a vote on Vietnam could come when lawmakers return for a lame-duck session in November.

The administration's promise to self-initiate cases would eliminate the need for the domestic textile industry to prove its standing in an antidumping case or that it has the support of the majority of the industry. Most of the U.S. apparel industry would be expected to oppose dumping cases. "The administration has pulled the rug out from under Vietnam, but this is much bigger than Vietnam," said Laura Jones, executive director of the U.S. Association of Importers of Textiles and Apparel. Another industry source warned that the move on Vietnam could set a precedent for similar action against China. The source said that the threat of antidumping cases is likely to drive many apparel importers and retailers away from sourcing in Vietnam.

CONGRESS PASSES AND BUSH SIGNS LAW TO TIGHTEN SANCTIONS ON IRAN

The Senate Sept. 30 voted to approve legislation (H.R. 6198) to extend and increase U.S. trade sanctions on Iran before it rushed to the doors for its election recess. President Bush signed it into law the same day. The House passed the bill Sept. 28 by unanimous consent. The measure drops Libya from the Iran-Libya Sanctions Act (ILSA), while mandating trade sanctions on any company that helps Iran develop weapons of mass destruction (WMD).

> The measure requires the president to impose sanctions on any person that exports, transfers or provides Iran "any goods, services, technology, or other items knowing that the provision of such goods, services, technology, or other items would contribute materially to the ability of Iran to (1) acquire or develop chemical, biological, or nuclear weapons or related technologies; or (2) acquire or develop destabilizing numbers and types of advanced conventional weapons."

The legislation, which puts new focus on Iran's petroleum industry, would make it harder than under current law for the president to waive these sanctions. Compared to current law which allows a waiver if the president says a waiver is "important to the national security," H.R. 6198 would require him to claim the waiver is "vital to the national security." The bill, called the Iran Freedom Support Act (IFSA) would extend sanctions on Iran until Dec. 31, 2011.

U.S., INDONESIA AGREE TO CURB TEXTILE TRANSSHIPMENTS

With U.S. textile and apparel quotas imposed now on only two countries, Vietnam and China, Washington's fight against transshipments has become more a matter of politics than law enforcement. The latest effort to stem transshipments was the signing of a memorandum of understanding between the U.S. and Indonesia Sept. 26. The MOU provides for the customs agencies of the two countries to cooperate on investigating potential transshipments, for the identification of textile and apparel manufacturers, and for joint inspections of factories in Indonesia to confirm that they are legitimate manufacturers and not fronts for transshipments.

> Although the end of the Multilateral Fiber Arrangement (MFA) in 2005 was expected to eliminate the need for Customs and Border Protection (CBP) to devote as much attention to textile quota enforcement as it did in the past, the bureau is still maintaining some of its old textile enforcement programs. In the last 12 months, CBP has seized more than $100 million in misrepresented, smuggled or transshipped textiles and apparel imports, CBP recently reported.

The Indonesian MOU reestablishes a relationship that existed before the end of the MFA when Jakarta was required to cooperate with Customs as a condition of its bilateral textile agreement. The MOU apparently had an immediate impact on imports from Indonesia. An apparel industry source said shipments from Indonesia were blocked within days after the accord was signed. With quotas either lifted or liberalized, transshipment has primarily become a method for duty avoidance. Exporters from China and Vietnam seek to have their goods mislabeled as coming from FTA countries, such as Singapore or Mexico, or mislabel the content of their products.

Ironically, the fact that any transshipped or mislabeled textile or apparel enters the U.S. raises broader questions about the effectiveness of CBP's Container Security Initiative and 24-hour advance notice rules. If these systems can't detect mislabeled underwear how can it catch more dangerous cargo. "It's reasonable to draw that conclusion," one U.S. trade official told WTTL.

SEN. BAUCUS CALLS FOR REGIONAL TRADE DEALS IN ASIA

Sen. Max Baucus (D-Mont.) Sept. 28 called on the Bush administration to stop negotiating free trade agreements with small economies and to focus on consolidating already reached FTAs and developing closer trade ties with the EU and Japan. "We must end our current practice of negotiating free trade agreements with small economies. Such agreements may have foreign policy benefits. But they add little value to America's long term competitiveness," he told the Washington International Trade Association.

> Baucus said the U.S. "should stitch current agreements together into a coherent network." He urged the melding of existing deals in Asia with Singapore and Australia with a proposed deal with Malaysia into one U.S.-ASEAN-Pacific Free Trade Agreement. "Then we can open it to include future candidate countries like Vietnam, Indonesia, and New Zealand," he added.

"Likewise, U.S.-Korea FTA negotiations could establish the bedrock for a future U.S.-Northeast Asia FTA," Baucus suggested. "That FTA could later include Taiwan, Mongolia, Japan, and maybe, down the road, even China," he said in his prepared speech.

Baucus said deals with EU and Japan would have greater potential but conceded that an FTA with those economies is currently impossible because of differences over agriculture. "But we should lay the foundations for a better relationship by focusing on what we can accomplish now," he said. "Let us start with services. Let us conclude a U.S.-EU-Japan Services Free Trade Agreement," Baucus proposed. "A trilateral services FTA is the logical next step with two of our most important trading partners. And it is also an essential tool to shore up a highly competitive segment of the U.S. economy," he said.

* * * BRIEFS * *

EX-IM: Sen. Wayne Allard (R-Colo.) agreed to lift his "hold" on confirmation of Bijan Rafiekian to seat on Ex-Im Board after getting assurance from White House that it will name inspector general for Bank.

OMAN: President Bush signed Oman FTA implementing legislation into law Sept. 26.