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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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DEFENSE BARS PROCUREMENT FROM CHINESE MILITARY SUPPLIERS

The Pentagon revised the Defense Acquisition Regulation Supplement (DFARS) in the Sept. 8 Federal Register to implement a law that bars the military from buying any items on the U.S. Munitions List (USML) from a Chinese communist company. The new rules define a communist Chinese military company as “any entity that is -- (1) A part of the commercial or defense industrial base of the People's Republic of China; or (2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.”

The changes implement provisions in the 2006 National Defense Authorization Act. Waivers of the restrictions can be obtained on a case-by-case basis when the items being sought are needed for national security reasons. The procurement prohibition “does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML,” DoD said.

Defense noted that the regulation was not reviewed by the White House Office of Management and Budget (OMB). “Therefore, DoD has not performed an initial regulatory flexibility analysis,” it said. “A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment,” it added. Nonetheless, Defense said it invites comments from small business and other interested parties on the regulations.

Given the Chinese People’s Liberation Army’s (PLA) widespread role in commercial businesses in China, the rules could add new due diligence burdens on U.S. companies that sell Chinese-made goods to Defense. “DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq., because the rule affects only those entities that are a part of the industrial base of the People's Republic of China or that are owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China,” the notice said.

SHORT CONGRESSIONAL SESSION COULD PRODUCE LIMITED RESULTS

Congress returned from its August recess with a lot to do and little time to do it. Lawmakers have scheduled only a short session that is supposed to last through the end of September or the first week in October. This will leave a stack of legislation, including several key trade votes, for a lame-duck session that might be called right after the November elections. In the coming rush, several trade bills may fall by the wayside until after a new Congress convenes next January. Looming over all trade legislation is the prospect that the new Congress in 2007

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might have a Democratic majority in one house or at least a smaller Republican majority. The only trade bill likely to get passed in September is the still pending legislation to implement the U.S.-Oman Free Trade Agreement (FTA). The House approved the measure in July and the Senate also voted to support it. Because of constitutional requirements, however, the Senate has to vote on it again formally after the House action (see **WTTL**, July 24, page 3).

While there is bipartisan support for granting Vietnam permanent-normal-trade-relations (PNTR) when it joins the World Trade Organization (WTO), a vote on implementing legislation is likely to come during the lame-duck session, both Republican and Democratic congressional sources agree.

A vote on the U.S.-Peru FTA is more problematic. The White House hasn't yet sent the implementing legislation to Congress. While the measure doesn't face the same opposition from sugar growers as the U.S.-Central American FTA, Democrats in the House strongly object to it and are likely to try to block its approval. Action on the U.S.-Colombia FTA this year is impossible, congressional sources also agree. The Senate is still trying to put together another miscellaneous tariff and trade bill (MTB). Even though the Pension bill that Congress approved in August included more than 200 tariff and trade amendments, there are several hundred more miscellaneous amendments being considered for a separate package. A Senate Finance Committee mark-up of another MTB is possible in September, Senate sources say.

Although the business community has launched a campaign in support of the Generalized System of Preferences (GSP), Senate Finance Committee Chairman Charles Grassley (R-Iowa) still opposes its renewal. Sources say he is not even entertaining discussions with administration officials on the legislation. This means the law probably will lapse at the end of the year. Senate sources, however, point out that the law has lapsed before, even for months, and then been reenacted, granting duty-free benefits retroactively to goods that came in during the lapse.

If the Peru and Colombia FTAs can't be approved this year, sources suggested that Congress may vote to approve a modified extension of the Andean Trade Preferences Act (ATPA) which is set to expire at the end of year. The extension might temporarily continue ATPA benefits for Peru and Colombia but not for Bolivia and Ecuador, which, in the case of the former, has not entered FTA talks or, with the latter, has broken off talks. Two other items that might get voted on during the lame-duck session are measures to extend the foreign fabric provisions of the Africa Growth and Opportunity Act (AGOA) and to grant new trade preferences to Haiti.

SEC FILES COMPLAINT AGAINST TWO FOR FCPA VIOLATION IN AFRICA

The Securities and Exchange Commission (SEC) filed suit Sept. 6 in the Newark U.S. District Court against two ex-employees of the former ITXC Corp. for violating of the Foreign Corrupt Practices Act (FCPA) in connection with payments to government officials in Nigeria, Rwanda and Senegal. In addition to the bribery charges, the SEC claimed that Steven Ott and Roger Michael Young aided and abetted in causing ITXC to violate the bookkeeping and records requirements of the Securities Exchange Act by claiming the bribes were legitimate expenses.

According to the charges, Ott, who was fired by ITXC from his position as vice president for global sales, and Young, who resigned as managing director for the Middle East and Africa, were responsible for \$267,468.95 in bribes ITXC paid between August 2001 and May 2004. The SEC claims the firm made \$11,509,733 in net profits from the contracts and is seeking disgorgement of these profits along with civil penalties and an injunction to bar future violations of the act.

The SEC claims Ott and Young "approved, and in some cases negotiated, bribes that ITXC paid to senior officials of government-owned telephone companies in Nigeria, Rwanda and Senegal, in order to obtain contracts that were necessary for ITXC to be able to transmit telephone calls to individuals and businesses in those countries." The alleged bribes were made to officials of Nigerian Telecommunications Limited (Nitel), Rwandatel, S.A., and La Societe Nationale des

Telecommunications du Senegal (Sonatel). ITXC, which was based in Princeton, N.J., merged in 2004 with Teleglobe International Holdings Ltd., which was later acquired by Videsh Sanchar Nigam Ltd. in 2006. The SEC brought related FCPA charges in September 2005 against another ITXC employee, Yaw Osei Amoako, who was its regional director for Africa.

KUWAIT MAY HAVE TO WAIT FOR FTA NEGOTIATIONS

Kuwait is likely to be the next Persian Gulf country to enter free trade agreement (FTA) talks with the U.S. but not in the near future. After the second meeting of the U.S.-Kuwait Trade and Investment Framework Agreement (TIFA) Council in Washington Sept. 5, Kuwaiti Trade and Commerce Minister Falah al-Hajiri told the U.S. Chamber of Commerce that he hopes to “sign soon” an agreement to start FTA talks. U.S. Trade Representative (USTR) Susan Schwab, however, carefully avoided making such a commitment in her remarks to the Chamber.

Schwab said the U.S. “looks forward to broadening and deepening commercial ties” with Kuwait. She also said Kuwait is “a critical part of our vision for MEFTA.” the U.S.-Middle East Free Trade Area President Bush has proposed.

Speaking to reporters later, Schwab admitted it would be difficult to get an FTA with Kuwait negotiated before the president’s current fast-track negotiating authority or Trade Promotion Authority expires next July. “It would be really very hard to get it done within this time-frame,” she said. Nor would Schwab say when the U.S. might even start FTA talks with Kuwait. “We’ve got a ways to go,” she said. “Keep in mind the MEFTA timeframe is 2013,” she said. She also said FTAs are not the only way the U.S. will increase trade with the Middle East, suggesting that TIFAs and Bilateral Investment Treaties (BITs) also will be used.

Al-Hajiri said Kuwait has taken or is working on several measures to bring itself into compliance with World Trade Organization (WTO) rules and to prepare for FTA talks. It has amended its foreign investment law to allow 100% foreign ownership of businesses in Kuwait. It has also sent draft proposals to its National Assembly to cut the tax rate on foreign firms to 15% from 55%, to allow foreign banks to open branches in the country, and to amend its labor law. Other pending proposals would partially open its insurance sector to foreign firms.

SCHWAB HEADS TO G-20 MEETING TO MAKE PITCH FOR DOHA TALKS

Despite widespread skepticism about the prospects for getting Doha Round talks restarted, U.S. Trade Representative (USTR) Susan Schwab isn’t giving up. She flew off to Rio de Janeiro, Brazil, for a Sept. 10 meeting of the so-called G-20 group of advanced developing countries in an effort to find new openings for resuming the talks that broke down in July. “I am actively seeking a new way forward for the Doha Round,” Schwab said in a statement before departing for Latin America. “Frankly, the G-6 has not been able to deliver a solution,” she added.

The G-20, which is led by Brazil and India, has become an effective bloc that has put pressure on both the U.S. and the European Union (EU) to improve their offers in the Doha talks, while limiting the offers from its own members. Hopes of driving a wedge between G-20 members because of their different positions on some portions of the negotiations have been unrealized.

Meanwhile, EU Trade Commissioner Peter Mandelson again complained that there is a lack of “realistic ambition” in the negotiations, pointing primarily at the U.S. Speaking to the European Parliament Sept. 5, he repeated his call for the U.S. to agree on cutting its domestic support cap below what he calculated would be \$22.7 billion under the last U.S. proposal. “Without a change in this position, advanced developing countries like Brazil and India will not be ready to offer access to their markets for industrial goods and services – and that is the crux of a deal,” he asserted. Mandelson claimed a less ambitious agreement doesn’t mean what some call “Doha Lite.” A deal would still “capture deep structural changes in farm policies

and create new trade flows in goods and services on a scale that has not been matched before in the history of previous rounds,” he said. Mandelson also indicated that the EU is looking at expanding its sphere of free trade agreements. He said the EU is considering new talks with Ukraine, India, Korea, and the ASEAN group of Southeast Asian nations.

* * * BRIEFS * * *

COMMERCE: James Leonard, deputy assistant secretary for textiles and apparel, will leave Commerce at end of September to return to his home in North Carolina. He has been commuting to Washington for several years. Leonard has headed ITA office for four years, one of most difficult periods in history of textile and apparel trade rules and negotiations.

TRADE PEOPLE: Former Assistant USTR for the Americas Regina Vargo has joined law offices of Greenberg Taurig in Washington as senior director for global trade.

ITC: President Bush Sept. 7 nominated Dean Pickert and Irving Williamson for seats on International Trade Commission. Pickert is currently senior attorney at Commerce and is former aide to Sen. Robert Byrd (D-W.Va.). Williamson was USTR deputy general counsel in mid-1980s and currently heads Williamson International Trade Strategies in New York.

LIBYA: BIS has posted additional guidance and FAQs on its website on its licensing policies for Libya following amendment of EAR to lift antiterrorism controls on Libya (see **WTTL**, Sept. 4, page 2).

USTR: USTR Susan Schwab shuffled office assignments Sept. 6, giving new Office of Intellectual Property, which is headed by Victoria Espinel, responsibility for issues involving innovation in pharmaceutical and medical technology industries. Area previously was handled by Southeast Asia Office.

WASSENAAR ARRANGEMENT: BIS in Sept. 7 Federal Register finally amended EAR to implement changes in multilateral export controls adopted at December 2005 Plenary Meeting of Wassenaar Arrangement. Changes take up 24 pages in Federal Register. Amendment adds Croatia, Estonia, Latvia, Lithuania, South Africa and Malta to Wassenaar membership list.

PORT SECURITY: Senate is expected to approve port security legislation (H.R. 4954) week of Sept. 11 following introduction of compromise substitute bill as amendment Sept. 7.

TRADE ASSISTANCE: Gas-Tech Engineering Corp., of Tulsa, Okla., which pleaded guilty to conspiracy to violate Iranian Transactions Regulations and paid \$50,000 criminal fine and \$33,000 civil fine, is among companies that have filed for Trade Adjustment Assistance, according to Commerce notice published in Sept. 7 Federal Register (see **WTTL**, Jan. 16, page 4).

WAL-MART: Chamber of Commerce’s National Chamber Litigation Center has filed amicus brief in L.A. U.S. District Court in support of Wal-Mart which is facing suit by groups trying to hold retailer accountable for labor conditions in foreign factories that supply it. “If claims such as plaintiffs’ were actionable, companies operating in the United States will face new burdens in doing business overseas,” NCLC said in brief in *Doe v. Wal-Mart*. “Dissatisfied with the efforts of the political branches of the federal government in this area, plaintiffs attempt to use state law causes of action unilaterally to influence U.S. foreign relations,” NCLC said.

LINED PAPER: Sharp division marked final ITC injury determinations Sept. 6 in antidumping and countervailing duty cases against imports of lined paper school supplies from China, India and Indonesia. In CVD and dumping cases against India and Indonesia, ITC voted 3-3, with tie going in favor of injury. On China, commissioners Aranoff, Koplman and Lane voted affirmative on injury, while commissioners Pearson, Hillman and Okun voted affirmative on threat of injury.

FURFURYL ALCOHOL: In “sunset” ruling Sept. 1, ITC voted 6-0 that revoking antidumping orders on furfuryl alcohol from China and Thailand would likely lead to recurrence of injury to U.S. industry.

EXPORT ENFORCEMENT: General Electric Nuclear Energy has reached settlement agreement with BIS to settle charges that it exported NT-controlled radiation hardened cameras and accessories to Taiwan without approved licenses and filled in wrong ECCNs on SEDs for temporary exports. Firm made voluntary self-disclosure and will pay civil fine of just \$56,000 for 17 alleged violations.

MORE EXPORT ENFORCEMENT: BIS in Sept. 6 Federal Register added nine more entities to General Order it issued in June against Mayrow General Trading of United Arab Emirates.