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BUSH NOMINATES PADILLA FOR BIS ASSISTANT SECRETARY POST

President Bush July 13 nominated Christopher Padilla to be assistant secretary of Commerce for export administration in Bureau of Industry and Security (BIS). Padilla, a veteran industry representative in Washington, served until recently as chief of staff to Deputy Secretary of State Robert Zoellick, the former U.S. Trade Representative (USTR) who has left government to join the Wall Street firm of Goldman Sachs. Before going to State in 2005, Padilla was assistant USTR for intergovernmental affairs and public liaison when Zoellick was still USTR.

Prior to joining the USTR in 2002, he spent 12 years working on international trade matters for companies such as Eastman Kodak, Lucent Technologies and AT&T where he worked in international marketing and business development.

Padilla was actively involved in industry efforts to get congressional approval for granting China permanent-normal-trade-relations (PNTR) status and for fast-track trade negotiating authority. At the USTR's office, he worked on building support and votes for the U.S.-Central American Free Trade Agreement. He holds an M.A. in international economics and foreign policy from the Johns Hopkins School of Advanced International Studies, and a B.A. in international studies from Johns Hopkins University. He will fill post that has been vacant since Peter Lichtenbaum left in February.

CIT DECLARES PART OF BYRD AMENDMENT UNCONSTITUTIONAL

A major redistribution of antidumping duties distributed under the Byrd Amendment for the past six years could be one potential outcome of a landmark ruling issued July 13 by Court of International Trade (CIT) Judge Evan Wallach, who declared a key portion of the law unconstitutional. Wallach said provisions of the Byrd Amendment that provide for the distribution of collected dumping and countervailing duties only to domestic firms that "supported" the trade cases violated the First Amendment right to free speech. Wallach reserved judgment on whether the ruling against the "support" requirement could be severable from the rest of the law and not overturn the statute completely.

Wallach's decision (Slip Op. 06-103) in *PS Chez Sidney v. U.S. International Trade Commission* faces a certain appeal to the Court of Appeals for the Federal Circuit and possibly to the Supreme Court, so it's full impact may not be known for some time. Congress passed legislation in December to phase-out the Byrd law by Oct. 1, 2007, to comply with a World Trade Organization (WTO) ruling which declared the measure to be an illegal subsidy (see **WTTL**, Jan. 2, page 1). Because Wallach wanted to expedite appellate review of his constitutionality

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judgment, he deferred action on any remedies for the plaintiff or the treatment of other firms that were denied Byrd funds because they didn't support various dumping or CVD cases. One potential outcome could require firms that supported the cases and received Byrd money to return part of it to the government to be redistributed to those that didn't support the cases.

The ruling came in response to a suit by a Louisiana crawfish producer who had been denied a share of the Byrd monies distributed to other seafood companies that had supported the antidumping case against crawfish from China. "This is a major First Amendment case and trade case," said Michael Bamberger, a partner with Sonnenschein Nath & Rosenthal in New York, which filed an amicus brief on behalf of INA USA Corp. and a group of roller bearing firms that supported Chez Sidney. "The issues are both significant and unusual," he said.

Chez Sidney's predecessor company had indicated support for the petitioners in its answers to the ITC Questionnaire at the preliminary stage of the investigation but on the ITC Questionnaire for the final investigation said it chose to "take no position." The Continuing Dumping and Subsidy Offset Act of 2000, the formal name of the Byrd Amendment, limits distributions only to supporters. Chez Sidney argued it was being penalized for expressing its opinion. It claimed the issue of support is intended to meet WTO rules to show industry support for a case and not to determine eligibility for government payments. The government argued that the law's criterion had a compelling government interest and was within the power of Congress to set rules on how it spends money. The crawfish case preceded enactment of Byrd, so participants didn't know their support or lack of support would have financial consequences.

"To the extent that the government seeks, and is required to seek, accurate information about the level of support for an antidumping or subsidy petition it can, and indeed must, make the inquiry at issue," Wallach said. "To the extent, however, that it conditions the payment of benefits to those who answer the inquiry upon the content of their opinion, it may no more do so than it may base the condition upon the color of their skin," he declared.

BIS TO DEFEND CHINA PROPOSAL AS CHINESE COMPLAIN

BIS officials are scheduled to explain and defend the agency's proposed new China licensing policy at a public hearing at the Commerce Department July 17 (see **WTTL**, July 10, page 1). Their presentation comes as China has publicly stated its objections to the proposal. Although BIS Under Secretary David McCormick claimed the Chinese had a "reserved" reaction to the proposal when he briefed them on it during his trip to China in May, the statement of Chinese Ministry of Commerce (MofCom) spokesman Chong Quan July 10 was not reserved at all.

Chong Quan said he was making his remarks after hearing opinions of relevant industries. "He said that the unreasonable barriers and additional precondition affecting the normal Sino-U.S. bilateral trade was unfavorable for benefits of enterprises in the two countries, neither for the healthy development of Sino-U.S. trade and economic relations," according to the MofCom release of his comments.

"Chong Quan pointed out that China hoped the U.S. could give up its 'cold war mentality' and take constructive measures to promote the development of bilateral hi-tech trade, relieve Sino-U.S. trade unbalance and push forward the healthy and all-round development of Sino-U.S. trade and economic relations by taking the overall Sino-U.S. ties into consideration," it said.

U.S.-KOREAN TALKS HIT SNAG OVER SEOUL'S RX PAYMENT PLANS

The U.S. shortened the second round of U.S.-Korea (KORUS) free trade agreement talks in Seoul July 14 after five days to protest Korea's decision to move forward with a pharmaceutical reimbursement plan that Washington claims will discriminate against U.S. drug companies. "On pharmaceuticals, I'm sure you're aware that things did not go as planned,"

Assistant USTR Wendy Cutler told reporters after the talks ended. "We believe that this was a balanced and measured response that appropriately reflected our level of concern," she said. Cutler stopped short of admitting that the talks have broken down. "Some groups didn't meet and clearly that was not a good situation," she said. "In the broader picture most of the groups met, and we made some significant progress," Cutler continued.

"Going into these negotiations, we had agreed to establish a dedicated working group to discuss pharmaceutical trade issues. To our surprise, upon our arrival in Seoul, we were informed that Korea was going to switch to a positive list system for the reimbursement of pharmaceutical products before we had the opportunity to have meaningful negotiations on these issues," said Cutler, who is the chief U.S. negotiator in the KORUS talks.

"In our view, the decision to proceed with this plan is inconsistent with both the mandate of the Pharmaceutical Working Group and the market-opening spirit of the FTA," she added. "In short, Korea's decision precluded meaningful negotiations at this time. Therefore, in order to ensure continued balance in the overall negotiations, we felt that it was appropriate to suspend work in two additional groups: trade remedies and services," she explained. "That said, while our differences in views in the pharmaceutical sector are challenging and difficult, they are not insurmountable," she said.

Despite the dispute over pharmaceuticals, Cutler said, "Overall, we made reasonable progress this week." The two sides agreed on the time frames for tariff phase-outs for industrial goods and are nearing agreement on the time frames for tariff phase-outs for agricultural and textiles goods, Cutler reported. This is "setting the stage for the exchange of tariff offers by mid-August," she said. Negotiators also exchanged initial offers in services and investment, and made progress in a number of other negotiating groups, she indicated.

HOUSE TO VOTE ON OMAN PACT DESPITE DEMOCRATS' COMPLAINTS

The House is expected to vote July 20 on the U.S.-Oman Free Trade Agreement (FTA) despite continuing Democratic questions about the Persian Gulf country's compliance with promises it made to reform its labor laws. Even with likely Democratic opposition, industry supporters of the accord say they believe they have enough votes to pass the enacting legislation (H.R. 5684). The Senate passed its version of the bill on June 29 (see **WTTL**, July 3, page 4).

U.S. trade officials contend that a "royal decree" issued July 9 by Sultan Qaboos bin Said, Oman's king, effectively implements many of the changes Oman promised to put into place during final negotiations of the FTA. "Although the government of Oman had committed to implement a number of changes by October 31, Oman has taken an extraordinary step in addressing many of these commitments almost four months early and clearly demonstrated that it takes labor reform seriously," said USTR Susan Schwab.

"According to the government of Oman, this decree cancels or suspends all provisions of the labor law that contravene or contradict its provisions," states a fact sheet that the USTR's office issued. Oman's Ministry of Labor still has to issue regulations, but the decree, among other things, prohibits the dismissal of workers for union activity, guarantees the right to strike, assures unions the right to carry on their activities, and raises fines for child labor violations.

SENATE ACTION ON VIETNAM PNTR SEEN BEFORE RECESS

The Senate could vote on granting Vietnam permanent-normal-trade-relations (PNTR) status before it leaves for its August recess, congressional sources say. Timing for a vote in the House is less certain. There is general agreement that Congress will approve PNTR before President Bush goes in Hanoi in November for the next APEC leaders summit. Bipartisan

support for normalizing trade relations with China was evident at a Senate Finance Committee hearing on implementing legislation July 12. At the hearing, the main opposition to giving Hanoi PNTR treatment came from the textile industry.

Auggie Tantillo, executive director of the American Manufacturing Trade Action Coalition, cited the 6,181% growth in textile and apparel imports from Vietnam from 2001 to the year ending April 2006. He also warned that China was increasingly using Vietnam to assemble apparel with components from China. In his prepared testimony, Tantillo also objected to the lack of a safeguard mechanism similar to the one imposed on China as part of its PNTR legislation.

Apparel importers issued a statement defending PNTR, noting that the 2003 U.S.-Vietnam bilateral textile agreement called for the removal of quotas on Vietnamese goods once Vietnam joined the WTO. In addition, the U.S. Association of Importers of Textiles and Apparel said the U.S. succeeded in getting Hanoi to end subsidies for the textile and apparel industries as part of its bilateral WTO accession agreement. "This is groundbreaking; no other developing country and no other industry in Vietnam has had to agree to immediate and unconditional elimination of prohibited subsidies," it stated.

* * * BRIEFS * * *

COMMERCE: Police in Fairfax County, suburb of Washington, reported that former Commerce Assistant Secretary for Market Access and Compliance William Lash III apparently shot his 12-year-old son, William Lash IV, and then took his own life July 14. "Preliminary investigation indicates this case is a murder/suicide," police statement said. Police said they had responded to call about domestic dispute on July 13 at Lash home in McLean, Va.. "Officers attempted to speak with a man inside the home and heard two gunshots from inside the house. The tactical team and hostage negotiators were called to the scene. Officers made several unsuccessful attempts to contact anyone inside. Police entered the home at about 3:50 a.m. and discovered the bodies of two people in a first floor bedroom. They had both been shot in the upper body with a shotgun that was found nearby," the statement said. Lash served as assistant secretary from 2001 to fall of 2005 and then returned to George Mason University School of Law where he was professor of law.

RUSSIA: At press time July 14 and after midnight in St. Petersburg, USTR Susan Schwab was still in talks with Russia Trade Minister Gref trying to conclude bilateral agreement on Russia's accession to WTO ahead of G-8 summit. "We are still here at the table working at this with minister Gref and his team," said USTR spokesman Sean Spicer in e-mail to WTTL. "Still no deal -- there are several outstanding issues but we are making good progress," he added.

SOFTWOOD LUMBER: Another potential stumbling block to U.S.-Canada agreement to settle softwood lumber dispute came July 14 with CIT Judge Donald Pogue's order (Slip Op. 06-104) granting Canadian industry's request for permanent injunction blocking Customs from distributing collected dumping and CVD duties on Canadian lumber to U.S. industry under Byrd Amendment. Pogue in April had ruled that Byrd distributions violated NAFTA and had asked parties to recommend remedy. When parties could not agree, Pogue issued order granting Canadian requests for injunction blocking further distributions (see **WTTL**, April 10, page 1). New order could undermine heart of newly signed bilateral accord by blocking distribution of deposited duties to U.S. industry.

CAMBODIA: Deputy USTR Karan Bhatia and Cambodian Minister of Commerce Cham Prasidh signed Trade and Investment Framework Agreement (TIFA) July 14. Under TIFA, two countries will consider ways to expand and liberalize trade and investment.

EXPORT ENFORCEMENT: BIS in July 10 Federal Register imposed \$330,000 civil fine and 50-year denial on export privileges on Ihsan Medhat Elashi, also known as Sammy Elashi, for 32 charges of illegal exports while under Temporary Denial Order. He and his brothers have been subject of extensive criminal and civil actions. Sammy Elashi is currently in federal prison in Texas (see **WTTL**, Jan. 20, page 4).

SNAP: BIS in July 13 Federal Register confirmed that it was withdrawing plans to make use of electronic license filing system (SNAP) mandatory (see **WTTL**, Feb. 13, page 2).

UNVERIFIED LIST: BIS added three more names in notice in July 12 Federal Register.