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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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STATE TO EXTEND JURISDICTION TO CERTAIN AIRCRAFT PARTS

State's Directorate of Defense Trade Controls (DDTC) says it intends to issue a Federal Register notice soon to claim jurisdiction for airframe parts and components that are common to the military's C-130 aircraft (Models A through H) and the L-100 commercial airplane. "As a result of a recent commodity jurisdiction decision, any airframe parts and components common to the C-130 (Models A through H) and L-100 aircraft that have no current use on any other commercial aircraft will be subject to the jurisdiction of the Department of State 90 days after the impending publication of the Federal Register notice," it warns.

"Until the publication of this notice, exporters can complete existing transactions under existing authorizations, but should apply to DDTC for the proper export approval for new or subsequent shipments," it says. DDTC also stressed that it wasn't claiming jurisdiction over the L-100 but rather only to parts that are common to those in specific C-130 models.

"Any systems employed on the L-100 that are specifically designed, modified, configured, or adapted for a military application remain subject to the jurisdiction of the Department of State," it asserts. The determination doesn't apply to the parts and components for the C-130J model, a later model, but "all C-130J parts and components are ITAR-controlled," it says.

DP WORLD ACCEPTED MANDATORY C-TPAT TO GET CFIUS OKAY

Among the conditions Dubai Ports World accepted to get the Committee on Foreign Investment in the U.S (CFIUS) to approve its acquisition of P&O Steam Navigation was an agreement to comply with the security requirements of the Customs-Trade Partnership Against Terrorism (C-TPAT) on a mandatory rather than voluntary basis. P&O is already a participant in C-TPAT, and DPW will become one. "This means that, for these companies, and these companies alone, what was previously voluntary is now mandatory," Department of Homeland Security Assistant Secretary Stewart Baker told the Senate Banking Committee March 2.

DHS officials previously said they couldn't disclose the conditions that CFIUS imposed on DPW because they were confidential. Faced with massive congressional and public opposition to the deal, the department has found a way to tell more about the CFIUS process. "We decided we would take a step that was unprecedented in this area," Baker said. While CFIUS has imposed security restrictions on other acquisitions it has approved, especially in the telecommunications area, it had not asked for such promises in cases involving foreign acquisitions of U.S. port operations. The two firms "agreed that the programs they had entered voluntarily,

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foreign port screening, best security practices in the United States, would no longer be voluntary for those companies. They are now mandatory for those companies,” Baker testified.

In addition, the firms “agreed they would open their books to us essentially and allow us to get access to any information about their U.S. operations that we wanted without a subpoena, without a warrant, simply walking in with a written request and getting that information,” he said. “That will allow us, for example, to get current lists of employees, social security numbers, date of birth, so we can run it through our watch lists, conduct our own background investigations and the like,” Baker told the committee.

“The assurances that DHS obtained from the companies are binding and legally enforceable, so that DHS and the U.S. government could go to court to enforce them,” he said in his prepared testimony. “The companies also agreed in the assurance letters that DHS could reopen the case, which could lead to divestment by the companies by the foreign company, if the representations the companies made to DHS turned out to be false or misleading,” he testified.

MANY PROPOSALS OFFERED TO CHANGE EXON-FLORIO ACT

For years, trade pundits have bemoaned the lack of bipartisan consensus on trade. Now Democrats and Republicans are finding plenty of common ground on tightening reviews of foreign investments in the U.S., amending the Exon-Florio Act, and blocking the acquisition of U.S. port operations by United Arab Emirates-based Dubai Ports World. Proposed legislation has brought together such odd couples as Sens. Charles Schumer (D-N.Y.) and Tom Coburn (R-Okla.) on a measure (S. 2333) to require a 45-day review of the DPW deal.

In another bipartisan coupling, Ways and Means trade subcommittee chairman Clay Shaw (R-Fla.) and Ranking Member Ben Cardin (D-Md.) have cosponsored a bill (H.R. 4839) to prohibit firms owned by foreign governments to operate any U.S. seaports. Their bill would exempt existing operations, including those run by firms from China, Denmark, Hong Kong, Singapore, and Germany. It would also exempt the DPW deal, if it went through before the law was enacted.

At a March 2 Senate Banking Committee hearing, Chairman Richard Shelby (R-Ala.) questioned whether CFIUS complied with existing requirements for reviewing investments. “The manner in which the Dubai Ports transaction was handled only reinforces this committee’s earlier findings that the system is seriously flawed and corrective measures – legislative measures – are required,” he said. Shaw said the law may need changing to clarify requirements for 45-day reviews to consider their impact on critical infrastructure and for nonproliferation issues.

Sen. Chris Dodd (D-Conn.) said he is considering legislation that would: add the National Intelligence and the Central Intelligence Agency directors to CFIUS; make the secretaries of Defense and Homeland Security CFIUS vice chairs; create a CFIUS intelligence subcommittee comprising all 15 U.S. intelligence agencies; mandate that only the CFIUS chair at the department secretary level, with the concurrence of the vice chairs, can decide no 45-day review is needed and require him to put that in writing; require notice to Congress of CFIUS decisions and allow Congress on a fast-track basis to reverse that decision by a super-majority vote.

SHAW SEEKS ASSURANCES ON SAUDI ARABIA’S END TO ISRAEL BOYCOTT

House Ways and Means trade subcommittee chairman Clay Shaw (R-Fla.) has asked USTR Rob Portman to clarify the status of Saudi Arabia’s commitment to end its boycott of Israel as a condition of its membership in the World Trade Organization (WTO). Shaw questioned Portman on the issue when he testified before Ways and Means on Feb. 15 (see **WTTL**, Feb. 20, page 4). Other lawmakers have also asked about reports that Saudi Arabia has reneged on its promise. Shaw noted that a Saudi official in December had said the country was only dropping

its secondary and tertiary boycotts of firms doing business with Israel. "These comments demonstrate a difference in understanding on the Saudi commitment," he wrote in a letter to Portman. "I would appreciate your providing me your understanding of Saudi Arabia's commitment to abide by all WTO rules prior to joining," Shaw wrote. "In addition, what statements has our government made toward Saudi Arabia concerning the primary boycott? As chairman of the trade subcommittee, I believe it is tremendously important that we hold our WTO partners accountable for commitments made in exchange for United States support," he wrote.

BIS CLARIFIES WHO IS "PERMANENT EMPLOYEE" FOR TECHNOLOGY TRANSFERS

In response to questions from exporters, the Bureau of Industry and Security (BIS) has issued an advisory opinion to clarify the meaning of a condition often included on licenses allowing technology transfers. When the condition says only permanent employees may have access to the technology, that means the data can only be released to persons that are "in a long term employment arrangement with the consignee," BIS said in the advice.

"This condition is intended to exclude release of the technology licensed for export to employees of the ultimate consignee/end user who are contract employees, temporary employees, consultants and others who are not subject to all of the conditions/benefits of permanent, full-time employment," BIS said.

"In addition, unless otherwise specified, the condition limits release of the controlled technology/technical data to permanent employees of the ultimate consignee/end user who are citizens or permanent residents of the country in which the ultimate consignee/end user is located," it added. The agency pointed out that this policy on the export of technology differs from its requirements for release of technology under a deemed export in the U.S. Conditions may be added to allow release to citizens of specified other countries, BIS noted.

DEMOCRATS HAVE QUESTIONS ABOUT PERU, COLOMBIA FTAs

While the battle over proposed free trade agreements (FTAs) with Peru and Colombia isn't expected to generate the same heat as the fight over the Central American-Dominican Republic FTA (CAFTA-DR), Democratic questions about labor and human rights in the two countries are likely to keep the debate lively. One advantage the two new trade pacts will have over CAFTA-DR is the lack of strong sugar industry opposition, which cost the Central American deal a block of votes from lawmakers from sugar-producing districts. It appears possible a vote on these new FTAs might not come until a lame-duck session of Congress in December.

Democrats point out that Peruvian President Alejandro Toledo has offered to include a commitment to enforcing International Labor Organization (ILO) core labor standards in the FTA rather than just existing Peruvian laws. The U.S. has refused to accept that offer. U.S. Trade Representative (USTR) Rob Portman has reportedly told Democratic House members that he can't add such a commitment to the deal because it would lose the accord Republican votes.

On Colombia, the Democrats say they want assurances that Colombian President Alvaro Uribe will take stronger action to curb the activities of right-wing militias which have been blamed for the assassination of Colombian labor leaders, as well as journalists and social activities.

In contrast to CAFTA-DR, U.S. sugar growers had a mild response to the Peru and Colombian accords. The American Sugar Alliance issued statements supporting the Peru deal and praising U.S. negotiators for resisting Colombian demands for greater access to the U.S. market. "We are not looking for a big battle on this one," a sugar industry source told WTTL. While the deal raises Colombia's sugar quota to 50,000 metric tons with a 1.5% annual growth rate, this is far less than permitted under CAFTA-DR. The industry intends to put more focus on getting the U.S. to address the sugar issue on a global basis in the Doha Round talks, he said. Whether

the Bush administration will seek to move the Peru and Colombia deals through Congress together as one Andean trade package remains undetermined. According to one congressional source, Republican lawmakers would prefer a single package because there is “trade fatigue” among members and concern about the November elections. They would prefer not to have to vote twice on trade bills that might be controversial, the source said.

Deputy USTR Susan Schwab says the timing of congressional consideration will depend on when several steps are finished, including a formal agreement. Right now the deal is based only on a Feb. 27 “handshake” she notes. Once all the details of the accord are completed, the president has to give Congress 90 days advance notice before signing it. Then a report on its economic impact is required from the International Trade Commission, as well as comments from industry advisory groups. “So it would take us through, at the earliest, the middle of August into September to complete this process,” Schwab estimates.

COLLECTIVE SERVICES PROPOSALS TRY TO GET DOHA TALKS MOVING

The U.S. Feb. 28 joined nearly two dozen other countries and trading partners in presenting collective requests for opening trade in services in 12 different sectors as part of the Doha Round negotiations. The move came in advance of a series of meetings – called clusters – on services that were scheduled in the WTO Hong Kong Ministerial Declaration. Services, the long-neglected leg of the Doha talks, still face a complex process of pluralateral and bilateral negotiations, with 15 to 20 advance developing countries such as Brazil, Egypt, South Africa and Argentina among the primary targets for market-opening efforts.

While the U.S. and European Union (EU) have presented a common position on most of the services requests, they have each demurred on joining talks on sectors where they have specific political sensitivities. Hence, the U.S. isn’t participating in maritime services offers because of the restrictions in the Jones Act, and the EU isn’t joining in talks on audio-visual services, cultural services, education, health or water for human use.

The U.S. services industry is generally upbeat about chances for deals on services but recognizes that time is running out and a lot needs to be accomplished by the end of 2006. “It’s going to be a tough slog,” said Bob Vastine, president of the Coalition of Service Industries.

*** * * BRIEFS * * ***

EXPORT ENFORCEMENT: Chris Carter, regional sales manager for Zoll Medical in Athens, Greece, will pay \$120,000 civil fine and be denied export licensing privileges for five years for his personal role in export of medical defibrillators to Iran through South Africa. Zoll settled with BIS last year, and recently, STAT Medical, South African partner in deal, also settled with agency (see **WTTL**, Feb. 20, page 4).

MORE EXPORT ENFORCEMENT: Hittite Microwave of Chelmsford, Mass., has agreed to pay \$221,250 civil fine to settle BIS charges that it exported microwave solid state amplifiers and related equipment, including downconverters, without licenses to Russia, China and Latvia.

UKRAINE: U.S. has reached market access deal with Ukraine as part of Kiev’s WTO accession negotiations. Talks still underway with other WTO members, but U.S. deal signals WTO membership is in sight.

DRUGS/MEDICAL DEVICES: U.S. Feb. 27 joined Switzerland and Singapore in calling for elimination of all tariffs and nontariff barriers on pharmaceuticals and medical devices in Doha Round.

NUCS AND MANGOES: As part of U.S.-India deal to allow U.S. exports of nuclear products and services to India, which still needs congressional approval, India agreed to place its nuclear facilities under IAEA safeguards and join Nuclear Suppliers Group and Missile Technology Control Regime. U.S. agreed to allow import of Indian mangoes, although opening won’t come for 18 months.

CEMENT: U.S., Mexico to sign deal March 6 lifting cement dumping order (see **WTTL**, Jan. 23, page 2).