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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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CHINA TRADE REPORT SIDE STEPS IMPACT OF EXPORT CONTROLS

The U.S. Trade Representative's (USTR) "top-to-bottom" review of U.S.-China trade relations released Feb. 14 included only one line on the impact of U.S. export controls on bilateral trade (see story, page 3). While the review was aimed at creating a strategy for rebalancing the trade relationship with China though tougher enforcement of U.S. trade rights in China, it intentionally avoided discussion of self-imposed export restraints, including the expected proposal of a new "catch-all" regulation that would increase controls on exports to China.

> USTR Rob Portman told reporters Feb. 16 that export controls were discussed in the interagency process preceding release of the results. The only statement on export controls in the final report on the top-to-bottom review said a priority goal for the new China policy is "maximizing U.S. high-tech exports to China while ensuring that security concerns are appropriately addressed."

Export controls "are not within our jurisdiction," Portman said. "I'm not aware of how that catch-all would affect trade with China. I am aware that the Chinese raise this issue, and in the past, we have looked into it and not found that the Chinese strong emphasis was warranted. In other words, we did not believe that the export controls made the difference in our trade numbers that they indicated," he said. "My sense is that it may play some role, but I would have to be convinced that it plays a major role," he added (see **WTTL**, Feb. 13, page 1).

COURT UPHOLDS PRESIDENT'S DISCRETION IN CHINA SAFEGUARD CASES

There may be complaints about the president's repeated refusal to impose safeguard sanctions against imports from China under Section 421 of China's WTO accession legislation, but there is no legal right to sue the president over those decisions, the Court of Appeals for the Federal Circuit (CAFC) ruled Feb. 10. The decision came after an *en banc* review of a Court of International Trade (CIT) ruling that reached the same conclusion (see **WTTL**, July 25, page 3).

All 12 CAFC members agreed in *Motion Systems v. George W. Bush* that, "No right of judicial review exists to challenge the acts of either the president or the Trade Representative in this case." The suit was filed by Motion Systems, the manufacturer of pedestal actuators, the first products subject to a Section 421 review. The International Trade Commission (ITC) had agreed that the company was being injured by a surge of imports from China, but President Bush rejected relief citing national interests. Motion Systems claimed the president had abused his discretion in rejecting its Section 421 petition. Section 421 places restrictions on the president's discretion, "But here there is no colorable claim that the president has violated

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an explicit statutory mandate," the court stated. "The president's actions under Section 421 are still sufficiently discretionary to preclude judicial review," it ruled. The USTR's role in these cases wasn't subject to legal action because its acts "were not final action" and the CIT "also lacked jurisdiction to review those acts," it declared.

GSP RENEWAL WILL BE USED TO PUT PRESSURE ON DOHA ROUND TALKS

Congress may grant only a temporary renewal of the statutory authority for the Generalized System of Preferences (GSP), which expires Dec. 31, 2006, in an effort to put pressure on some advance developing countries to make better offers in the Doha Round negotiations. "I'm not anxious to go to work on that for quite a while," Senate Finance Committee Chairman Charles Grassley (R-Iowa) told USTR Rob Portman at a Feb. 16 hearing. "I'd like to see some reciprocity, a showing of appreciation, particularly from more developed countries," he added. "I want to make sure they have some appreciation that market access is very important for us. So I see this somewhat intertwined with negotiations in Doha," Grassley stated.

> Most of the countries belonging to the so-called G-20 countries in the Doha Round negotiations are GSP beneficiaries, including Brazil, India and Egypt. These nations have pressed the U.S. and European Union (EU) to make significant market-opening offers in agriculture and industrial goods but they have, so far, not made balancing counteroffers on market access in goods and services.

GSP renewal also might be delayed to see how the WTO implements the agreement reached at the Hong Kong Ministerial Meeting in December to grant duty-free and quota-free access to least developed countries as part of the final Doha Round package, congressional sources say.

CONGRESS WON'T RETURN TO FSC/ETI LEGISLATION AGAIN

House and Senate sources say it is unlikely that Congress will reopen the current Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) law to fix provisions the World Trade Organization (WTO) Appellate Body Feb. 13 said were still inconsistent with WTO subsidy rules. Even if the EU goes through with its threat to renew retaliation against U.S. ex-ports, lawmakers don't want to face again the tough negotiations that produced the current law.

> Many members of Congress recognized that the fixes made to the FSC/ETI law in 2004 in response to a previous WTO ruling would not meet WTO muster because of the transition period, which ends in December 2006, provided for existing beneficiaries and the "grandfathering" of some benefits. The EU said these provisions still violated WTO rules, and the Appellate Body agreed.

CHINA WILL BE TOP ITEM ON CONGRESSIONAL TRADE AGENDA

Unless China takes steps soon to improve intellectual property protection, open its market to U.S. auto parts and let its currency appreciate more, Congress is likely to pass legislation to force the Bush administration to take a tougher stand against Beijing, congressional sources warn. "Our members are getting impatient," one source said. Also high on the congressional priority list are proposals to strengthen enforcement of U.S. trade rights. "There will be a trade enforcement bill this year," another congressional source said.

Senate Finance Committee Chairman Charles Grassley (R-Iowa) Feb. 16 announced that he will intensify his efforts "to develop legislation over the next few weeks" to address the growing frustration over the U.S.-China trade relationship. He said his bill will deal with such issues as China's currency, compliance, trade enforcement and trade enhancement. Under a legislative agreement from last year, Grassley is under pressure to report out a China bill or report out the measure sponsored by Sens. Charles Schumer (D-N.Y.) and Lindsey Graham (R-S.C.), which would impose a 27% duty on Chinese imports because of Beijing's manipulation of its currency. Several other China bills are vying for Senate attention including Rep. Phil English's (R-Pa.) bill (H.R. 3283), which the House passed last year. That measure would, among several things make China subject to the countervailing duty law.

> A bipartisan trade enforcement bill (S. 2317) was introduced Feb. 16 by Sens. Max Baucus (D-Mont.) and Orrin Hatch (R-Utah). Their measure would create a new position of chief enforcement officer in the USTR's office and also require the USTR to establish enforcement priorities, initiate trade dispute action against priority cases and explain to Congress when it chooses not to take action.

Another trade agenda item, at least in the House, is enactment of a miscellaneous tariff bill. A House version of the legislation is expected to include some 700 specific tariff changes or suspensions requested by members. In the Senate, however, Grassley reportedly is still resisting calls for a tariff bill. Sources say Baucus and Democratic Leader Harry Reid (D-Ariz.) have agreed to work on collecting miscellaneous tariff bills from Democratic members.

CONGRESS UPSET WITH CFIUS OKAY OF UAE TAKEOVER OF U.S. PORTS

Just as congressional angst seemed to be declining over the functioning of the Committee on Foreign Investment in the U.S. (CFIUS), the committee's approval of the acquisition of P&O Ports, the manager of six major U.S. ports, by Dubai Ports World, which is based in the United Arab Emirates, has reignited Capitol Hill concerns. Sens. Hillary Clinton (D-N.Y.) and Robert Menendez (D-N.J.) said Feb. 17 that they intend to introduce legislation to block the sale. Separately, more than half a dozen House and Senate members wrote to President Bush Feb. 16 asking him to order a full 45-day review of the purchase. Treasury officials have defended the approval, citing DP World's past cooperation with Customs on cargo security.

COMMERCE AGREES TO GIVE UKRAINE MARKET ECONOMY STATUS

The International Trade Administration (ITA) Feb. 17 disregarded objections from domestic U.S. industries and determined that Ukraine now meets the criteria to be considered a market economy (see **WTTL**, Jan. 30, page 2). "Although department identified some areas of the Ukraine economy where specific problems remain, particularly the difficulty of its business environment, it concluded that Ukraine clearly has met the statutory requirements overall," ITA explained. Complaints about corruption in Ukraine "did not alter the fact that the Ukrainian economy is generally operating under market principles," it stated.

INDUSTRY RESISTANCE MAY WEAKEN PORTMAN'S CHINA TRADE INITIATIVE

USTR Rob Portman's top-to-bottom review of U.S.-China trade relations and his plans for creating a chief counsel for China trade enforcement drew generally positive comments from lawmakers and the business community, but questions still remain about whether the new initiatives will do anything to slowdown U.S. imports from China or the ballooning trade deficit. One major obstacle, which is out of Portman's hands, is the reluctance of U.S. companies, which are doing better in China, to bring industry-specific cases against Beijing.

An early test will be how Portman deals with China's failure to enforce intellectual property rights (IPR) and its local contents requirements for auto parts, which USTR officials say privately are circumventing Beijing's WTO commitments. USTRers say they have not asked U.S. auto firms to support a WTO case. They note, however, that such a case may have the support of U.S. parts makers who aren't affiliated with the Big Three. On the IPR issue, a team of USTR staffers is going to Beijing at the end of February to review information the Chinese have collected on their IPR enforcement efforts. The information isn't likely to satisfy the request the U.S. has made for such reports, one USTRer said (see **WTTL**, Jan. 30, page 3).

* * * BRIEFS * * *

BIS: Norman LaCroix, director of information technology controls division and main force behind rewrite of BIS encryption regulations, leaving around March 1 to join another federal agency where he will continue to work on encryption export control policies.

EXPORT ENFORCEMENT: STAT Medical of Johannesburg, South Africa, has reached settlement with BIS to pay $14,000 civil fine to settle charges that it "aided" in export of medical defibrillators that were transshipped through South Africa to Iran without approved export license.

MALAYSIA FTA: USTR Rob Portman told Senate Finance Committee Feb. 17 that he hopes "to deliver some goods news on a Malaysia launch soon." Later he told reporters U.S. and Malaysia have "had great discussions" in preparation for announcing the launching of FTA talks. "We're hopeful that in the next month we will be able to announce something with Malaysia," he said.

THAILAND FTA: After reviewing progress in U.S.-Thai talks on FTA, Washington has decided not to give up on reaching FTA deal, USTR Rob Portman told reporters Feb. 16. It was Assistant USTR Barbara Weisel's opinion that "we've made enough progress that we should continue to work hard on this one and try to bring it over the line," he said (see **WTTL**, Jan. 16, page 3).

SAUDI ARABIA: Saudi Arabia hasn't formally said it would not give Israel MFN treatment and would maintain Arab League boycott of Israel despite its WTO accession commitments, one U.S. trade official told WTTL. Press reports in December said Riyadh wouldn't end restrictions on trade with Israel. Commerce Secretary Carlos Gutierrez may raise issue during coming visit to Saudi Arabia, sources say.

EU WOOD PALLETS: U.S. and EU have reached agreement for EU to delay until Jan. 1, 2009, implementation of rules requiring debarking of wood pallets used in shipments to Europe.

EX–IM BANK: President Bush has nominated acting Ex-Im Bank Chairman James Lambright to be permanent head of agency. He received quick endorsement from exporting community.

BOOTIES: USTR is working with Customs to get classification of "baby booties" changed so they are not subject to China textile safeguard restrictions, USTR Rob Portman told Rep. Bob Beauprez (R-Colo.) Feb. 15. Importers claim there is no production of booties in U.S. They also complain that baby sox are covered by restrictions even though there is no U.S. source.

SOFTWOOD LUMBER: Interim WTO Article 21.5 dispute-settlement panel report reportedly supports U.S. position that it has complied with previous panel ruling on "zeroing" in dumping case against softwood lumber from Canada. After earlier panel said ITA's method of applying zeroing violated WTO rules, agency revised its method to apply zeroing on transaction-specific basis. Meanwhile, during courtesy call from USTR Rob Portman to new Canadian Trade Minister David Emerson, softwood lumber was discussed, but no movement was reported on resuming talks on lumber deal.

PANAMA: U.S. is "on a very tight time schedule with Panama to meet what I think is a realistic deadline of getting something moving in March" toward completing FTA talks, USTR Rob Portman said Feb. 16. "I think if we don't, it's difficult to make the deadline this legislative year which is important for TPA reasons," he added. Panamanian health officials are in U.S. inspecting meat plants to see if they meet Panama's standards so Panama could accept U.S. inspections for U.S. meat imports.

PERU: U.S. and Peru have reached side agreement, which may be added to final FTA accord submitted to Congress, under which Peru has agreed to establish independent secretariate to received and review public complaints that Lima is not enforcing its environmental laws, USTR Rob Portman told House Ways and Means Committee Feb. 15. Agreement is model on DR-CAFTA side agreement.

RUSSIA: Industry complaints about Russia's lack of IPR enforcement are likely to delay Washington's agreement to bilateral deal that would open way for Russia to join WTO. Members of Congress are warning that they would oppose granting Moscow permanent-normal-trade-relations (PNTR) status, which would be prerequisite to its WTO membership, if the IPR situation isn't improved

SUGAR: Bush administration appears ready to take on sugar interests in future fights over FTAs and possible Doha Round deal. Although it was mandated by statute, ITA didn't candy-coat report Feb.14 on impact of U.S. sugar program. It said 6,400 jobs have been lost in confectionary food industry due to companies moving offshore, mostly to Canada and Mexico, because U.S. tariffs and quotas raise U.S. sugar prices to twice world market price. Sugar program maintains 2,260 jobs in sugar-producing industry.