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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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OFAC ADVISORY ALLOWS PAYMENTS FOR TRANSLATING IRANIAN WORKS

Treasury's Office of Foreign Assets Controls (OFAC) July 6 issued an advisory opinion which would allow U.S. parties to pay for the translation of works by Iranian authors under certain conditions. The unidentified requestor of the advice had told OFAC that it has a program to pay grants for the translation of works by authors who are insufficiently represented in English translation. This includes works by Iranian authors.

The opinion extends a similar interpretation of the "information" and informational materials" exemptions of the Iranian Transactions Regulation (ITR), which OFAC issued in April(see **WTTL**, April 12, page 3).

Works to be translated must be complete and published, and the applicant "must verify to the U.S. person that he or she has secured the rights to translate the work," the requestor told OFAC. "No financial remuneration is provided to the copyright holder when the right to translate is secured by the applicant," the opinion noted. In addition, no funds are used for publishing or marketing. In its advisory opinion, OFAC noted its earlier ruling on the editing of works by authors in Cuba, Iran, Iraq, Libya and Sudan.

If the proposed translations are of material in the public domain or the person with the rights to the work has consented to the translation, the earlier opinion would cover the payment for translations, OFAC said. "Please be advised that these activities would constitute exempt transactions pursuant to ITR 560.210(c). Accordingly, no further authorization from OFAC is required for the [U.S. person] to fund the [text deleted] as described in your letter," it ruled.

DRAFT FRAMEWORK TEXT SETS STAGE FOR LAST PUSH FOR WTO ACCORD

World Trade Organization (WTO) negotiators may feel vagueness is the key to success in keeping the Doha Round from completely collapsing. Giving members lots of room to negotiate was the essence of a new draft framework agreement circulated July 16 by the Shotaro Oshima, the chairman of the WTO General Council, and WTO Director General Supachai.

The draft, obtained by WTTL, will be the subject of intensifying negotiations before and at the July 27-29 meeting of the General Council, which is likely to make additional changes to the text. A source in Geneva, however, said members should not expect to make major changes in the draft. "If people want huge changes, then we might as well pack up and go home," he said. Even if adopted at that meeting, the framework will only serve as a roadmap for further Doha Round talks that are expected to last at least another year. In a message to ministers from least

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developed countries (LDCs) – the so-called G-90 – meeting in Mauritius July 12-13, Supachai issued a similar warning. “The end of July is not the end of the DDA [Doha Development Agenda], but if we lose impetus now, we risk losing all the important flexibilities and compromises that have so far been offered in the negotiations,” he wrote. “If we fail, the DDA will be consigned to the backburner for an indefinite time,” Supachai warned.

Before the release of the draft, some U.S. trade officials were less optimistic about the chances for agreement on a text than they were a month ago (see **WTTL**, July 5, page 1). Their concerns were due in part to demands by some LDCs to be excluded from any commitments in the round and from developed countries for broad discretion to protect sensitive agriculture sectors.

The draft by Oshima, Japan’s WTO ambassador, and Supachai includes an agriculture annex prepared by Tim Groser, chairman of the Agriculture Negotiating Group. It also has annexes on non-agriculture market access (NAMA), services and trade facilitation, the only Singapore issue left in the talks. The NAMA and services annexes are the same texts that were presented to ministers in the so-called Derbez text in Cancun.

The new framework proposal is not intended to be a ministerial declaration as was sought in Cancun. “Instead, we are aiming to take the action necessary at this stage, at the level of the General Council, in order to ensure the continued progress of the negotiations and the work programme as a whole,” Oshima and Supachai say in a cover note.

The agriculture annex calls for progress in all three pillars of the farm talks – domestic support, export subsidies and market access – based on a “tiered formula”. While proposing a cap on Blue Box support, it bows to European Union (EU) demands that the cap not be lower than current Blue Box payments. In cutting domestic support, there will be “a strong element of harmonization” among developed countries, it says. Export subsidies will end by a “credible end date,” Groser proposes. Instead of eliminating export credits or state trading enterprises, he proposes imposing disciplines on the “trade distorting” elements of the programs.

The tiered formula for market access doesn’t include straight Uruguay Round-type across-the-board cuts. Instead, it calls for deeper cuts in higher tariffs with “bands” of reductions, with products in those bands to be the subject of negotiations. While providing safeguards for sensitive products, Groser rejects leaving the selection of those products open-ended. Only products subject to out-of-quota tariffs would qualify for this treatment, he suggests. [**Editor’s Note:** A copy of the draft framework text will be sent free to WTTL subscribers on request.]

EX-OC CHAIR KALINOSKI SUES COMMERCE FOR SEX DISCRIMINATION

Carol Kalinoski has refused to take her discharge from the chairmanship of the Bureau of Industry and Security’s (BIS) Operating Committee (OC) last year quietly. She sued the Commerce Department July 16 under the 1964 Civil Rights Act, claiming she was the victim of sex discrimination and removed from the post because she is a female. Her suit also contends she was the victim of retaliation because she complained about her reassignment to the department’s Equal Employment Office (EEO). BIS did not return a call for comment on the suit.

BIS removed Kalinoski from the OC post in July 2003 and moved her to a newly created position as export policy analyst. After it refused to grant her medical leave in October, she was “constructively discharged” from government service in November. The suit claims sex discrimination because Kalinoski was replaced by a man, whom the suit claims was less qualified and less experienced than she is.

The suit was filed in the Washington, D.C., U.S. District Court. Civil rights suit can take many years to resolve. Even if the court upholds the suit against an expected government challenge, it may be two years before the case will go to trial. Kalinoski has asked for a jury trial. In her complaint, Kalinoski asks to be reappointed to the OC chairmanship, to receive back pay

for time she wasn't paid after being removed from the job; plus compensatory damages. During her years as OC chair, Kalinoski's performance was "annually rated at the outstanding level and recognized with salary increases and cash awards," the suit states. Kalinoski was popular with exporters whom she often supported during interagency disputes over licensing decisions. Those disputes, however frequently put her at odds with other agency staffers.

After she was transferred, the agency posted a vacancy announcement for her former position and began accepting applications for a replacement. Kalinoski applied for the position and "was the highest rated candidate in the competitive process," the suit contends.

"Effective November 2, 2003, defendant passed over Ms. Kalinoski for chairman of the Operating Committee in favor of Mr. [David] Flynn, despite his being less experienced than Ms. Kalinoski to serve as chairman of the Operating Committee; lower graded than Ms. Kalinoski; and less qualified than Ms. Kalinoski to serve as chairman of the Operating Committee," the suit complains. "Defendant discriminated against plaintiff on account of her sex, which is female, in not selecting her as chairman of the Operating Committee," the suit charges.

VICTORY IN ANTIDUMPING ACT OF 1916 CASE CITED IN REQUEST TO ITA

The U.S. may have trouble claiming the Antidumping Act of 1916 is nearly dormant, as it tries to fend off EU pressure to comply with a WTO ruling which found the law inconsistent with the WTO Antidumping Agreement. In a July 14 request to ITA, Goss International cited its victory in a suit under the act as justification to reopen an administrative review of the antidumping order against large newspaper printing presses from Japan.

A Bismark, N.D., U.S. District Court judge in May upheld an earlier jury ruling which found that Tokyo Kikai Seisakusho (TKS) violated the 1916 act by offering a secret \$2.2 million rebate to the Dallas Morning News to win the sale of one of its presses. "These findings are conclusive evidence that TKS misrepresented material facts to the Department, and thus, the results of the administrative review were corrupted," wrote Goss' attorneys at Wiley, Rein and Fielding.

BIPARTISAN SUPPORT OKAYS U.S.-AUSTRALIA FTA, READIES MOROCCO DEAL

Congressional approval – by wide bipartisan margins in the House and Senate -- of legislation to implement the U.S.-Australia Free Trade Agreement (FTA) shows that it may be easier than many feared to get future trade pacts approved as long as U.S. trade officials choose the right trade partner. With Australia out of the way, lawmakers are expected to move quickly to approval of the FTA with Morocco. These deals have gotten favorable treatment because Australia is a modern, industrialized nation and Morocco is too small to matter.

The approval of these accords is in contrast to the strong opposition that is likely to face the U.S.-Central American/Dominican Republic FTA. Nonetheless, a U.S.-CAFTA/DR probably would pass Congress, if the White House were willing to take the political risk to send it to Capitol Hill for approval.

Having mostly placated the sugar, dairy and beef industries' worries about the opening of the U.S. market to Australian imports, last-minute opposition to the FTA came from concerns that the drug patent provisions might prevent Congress or states from allowing the reimportation of medicines. Despite the debate over this issue, the House July 14 approved the implementing legislation (H.R. 4759) by a 314-109 vote. The Senate followed on July 15, okaying the measure 80-16. In the Senate, Sen. Kent Conrad (D-N.D.) also complained that the legislation didn't include his amendment to require the House Ways and Means Committee and the Senate Finance Committee to approve any future waiver of beef quotas. Finance declined to endorse the FTA after the amendment was added (see **WTTL**, June 28, page 2). Meanwhile, the White

House July 15 sent Congress legislation (H.R. 4842) to implement the Morocco pact. Finance gave the accord its approval by a 20-1 vote July 14 during a “non-markup markup”, and Ways and Means took similar action the same day on a 23-1 vote. Ways and Means will hold a formal markup July 19 and Finance will consider the bill July 20.

While supporting the Moroccan accord at the markup, Ways and Means Democrats still had concerns about how the provisions on drug imports might affect the availability of lower-cost generic drugs in Morocco and application of the WTO agreement on TRIPS and health. In a 7-page letter to U.S. Trade Representative (USTR) Robert Zoellick July 15, they asked for a detail explanation of how the FTA would affect drug trade.

WTO PANEL ISSUES SPLIT OPINION ON U.S. ACTION IN SUNSET REVIEW

A WTO dispute-settlement panel has upheld the way the International Trade Commission (ITC) judges the potential injury that might come from terminating old antidumping or countervailing duty (CVD) orders but found that U.S. Trade Act provisions governing these Sunset Reviews and International Trade Administration (ITA) regulations implementing the law are inconsistent with the WTO Antidumping Agreement. The panel’s decision, released July 16, responded to a complaint by Argentina to a sunset ruling on imports of oil country tubular goods (OTCG).

The panel agreed with Argentina that U.S. trade law and ITA regulations violated WTO rules because they, among other reasons, allow ITA to find the likelihood of continued dumping without the required analysis. It rejected the complaint that ITC’s injury determination was not based on an “objective examination of the record.” The U.S. is likely to appeal the panel ruling.

* * * BRIEFS * * *

FSC/ETI: Deal between Senate Democratic and Republican leaders on Senate participants in House-Senate Conference Committee on FSC/ETI legislation cleared way for Senate to vote July 15 on FSC/ETI bill. Senate amended House version of measure with Senate-passed bill and asked for conference. Adoption of amendment supporting tobacco buy-out and giving FDA authority to regulation tobacco also helped.

USTR: Assistant USTR Ralph Ives, who negotiated U.S.-Australia FTA, has retired from government and will start Aug. 16 at Advamed, medical device trade association, as VP for global strategy. He succeeds Margery Searing who has joined Pfizer as VP for Asia/Japan.

UNVERIFIED LIST: BIS in July 16 Federal Register added five Hong Kong firms to Unverified List: Jetpower Industries, Onion Enterprises, Lucktrade International, Litchfield and Sunford Trading.

CUSTOMS: CBP July 12 issued new guidelines on posting of bonds for agriculture and aquaculture imports subject to antidumping or CVD orders to assure collection of duties. “In general, CBP will determine continuous bond amounts for agriculture/aquaculture antidumping cases based on a company’s potential antidumping liability using the value of import for the previous year,” agency explained.

MONGOLIA: U.S. and Mongolia July 15 signed Trade and Investment Framework Agreement.

AFRICA: President Bush July 13 signed Africa Growth and Opportunity Acceleration Act.

BAHRAIN: USTR July 15 released advice from industry advisory committees supporting Bahrain FTA. Labor advisors opposed deal because of inadequate labor protections, noting that two-thirds of workers in Bahrain are foreign workers who are subject to abuse. Environmental advisors had split opinion of accord.

TRADE FIGURES: U.S. merchandise exports to China in first five months of 2004 are up 37% over same period in 2003, Commerce reported July 13. Overall, goods exports in May hit record \$68.7 billion, up 19% over last May. Imports increased 16% to \$119.5 billion. Services export grew 15% to \$28.4 billion.

PLASTIC BAGS: ITC July 15 made final determination, on 6-0 vote, that dumped imports of certain polyethylene retail carrier bags from China, Malaysia and Thailand are injuring U.S. industry.