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HOUSE ARMED SERVICES COMMITTEE EXAMINING DEFENSE OFFSETS

House Armed Services Committee Chairman Duncan Hunter (R-Calif.), who has championed Buy-American provisions in defense legislation, has turned his sights on the use of offsets in defense trade. Saying the use of offsets has "grown to an unacceptable level," he has launched a series of hearings to examine the impact of offsets on the U.S. defense industrial base.

> "Today we begin to delve into this issue in earnest as we pursue possible changes in policy to halt this unfair practice that accelerates the erosion of the critical portions of the U.S. industrial base," Hunter said in a statement at the first hearing June 17. "We face a very complex problem that once was small but has now reached a level that demands that it be brought under control," he declared.

Offsets usually involve shifting some production, component purchases or technology transfer for a defense contract to the country buying the equipment. In recent years, however, purchases and deals not related to the sale are demanded. As an example, Hunter cited Lockheed Martin's the sale of 48 F-16 fighters with a value of $3.5 billion to Poland. The offset part of the sale required buying $9.7 billion in goods and services from Polish suppliers, including the purchase of 22 roll-on, roll-off ships from a Polish shipyard.

Hunter acknowledged that offset deals are up to individual firms to arrange based on their own self-interest and the government can't stop it. The irony, he noted, is that the WTO prohibits such offsets in commercial transactions. "The irony continues. Our close allies and trading partners cry foul when the Congress seeks to ensure the capability of our defense supply base with a 50% domestic source requirement in the Buy American Act and then disingenuously ignore the fact that they apply 200% offsets to their own purchases," he said.

BIS TIGHTENS CONTROLS ON PERSONAL EXPORTS TO CUBA

As part of the Bush administration's multi-pronged crackdown on trade and travel with Cuba, the Bureau of Industry and Security (BIS) issued new rules in the June 22 Federal Register restricting the use of License Exception GFT for the sending of gift packages to Cuba. On June 16, Treasury's Office of Foreign Assets Control (OFAC) issued separate regulations tightening restrictions on travel to Cuba. Both agencies were implementing policy decisions President Bush announced in May to implement the recommendations of the Commission on Assistance to a Free Cuba. The BIS changes to the Export Administration Regulation (EAR) will limit eligibility for GFT treatment to such items as food, medicines, medical supplies and receive-only radios. The revision eliminates clothes and personal hygiene products from GFT

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eligibility and limits the number of packages that can be sent each month and the people who can receive them. All other packages will be subject individual export license requirements. The presidential commission had found that gifts sent to Cuba by U.S. citizens "directly benefit" the Castro regime by providing basic needs for the Cuban people and enabling the government to use its limited resources "to strengthen its repressive apparatus," the BIS notice stated. Havana also makes money by charging fees for delivery of these packages.

> Even without GFT, large volumes of licensed goods go to Cuba annually. In the fiscal year ending Sept. 30, 2003, BIS approved 528 licenses with a value of $2.8 billion for Cuba. In 2002, it approved 581 licenses worth $2.5 billion, the agency reported. Not all these exports actually go, BIS officials have said in the past.

SENATE FINANCE COMMITTEE ACTION COULD DELAY AUSTRALIA FTA

The schedule for a congressional vote on legislation to implement the U.S.-Australia Free Trade Agreement (FTA) has been thrown into disarray as the Senate Finance Committee flip-flopped on what it wanted to do with the draft bill proposed by the Bush administration. On June 23, the committee -- by an 11-10 vote -- added an amendment that Chairman Charles Grassley (R-Iowa) and U.S. Trade Representative (USTR) Robert Zoellick called unconstitutional. Then on June 24, it voted 14-7 not to recommend the amended bill to President Bush.

> With no Finance-supported measure, the White House will use the version reported out of the House Ways and Means Committee June 23 with no amendments. Under fast-track trade rules, Finance and Ways and Means are supposed to hold informal "non-markup markups" of proposed FTA implementing measures, which the president then submits formally to Congress for up or down votes.

Finance's rejection of its legislation was the result of the committee's adoption of an amendment addressing the concerns the U.S. cattle industry has about a potential increase – nine years from now – in beef imports from Australia. Sponsored by Sen. Kent Conrad (D-N.D.), the amendment would require Finance or the House Ways and Means Committee to approve any waiver of the safeguard measure which otherwise would go into place automatically when the level of Australian beef imports reached levels specified in the pact.

During the markup, Grassley objected strongly to the amendment and quoted from a Congressional Research Service legal opinion that said a requirement for approval of an executive branch action by congressional committees alone is unconstitutional. The opinion cited the Supreme Court's ruling in *INS v. Chadha*, which said a single-house veto of an executive action violates the balance-of-power requirements of the Constitution. Despite this ruling, Congress has enacted such provisions on numerous occasions and presidents have ignored them.

GRASSLEY CAUTIONS USTR ON CUTTING FOOD AID IN DOHA TALKS

The price tag the European Union (EU) has placed on its offer in the World Trade Organization (WTO) Doha Round to end its agriculture export subsidies by a fixed date may be too high for the U.S. farm community to accept. Senate Finance Committee Chairman Charles Grassley (R-Iowa), echoing views expressed by other lawmakers, fired an early warning shot in the coming debate in a June 22 letter to USTR Robert Zoellick.

"While I believe that nothing should be off the table during the coming WTO negotiations, the ability of the United States to provide legitimate humanitarian assistance should not be threatened," Grassley wrote. The EU says it is willing to end its farm export subsidies, if other countries end their export subsidies or programs that disguise export subsidies as food aid. It has specifically targeted U.S. food aid programs, such as the PL 480 program, which buy large amounts of surplus U.S. food production to give away to poor countries (see **WTTL**, June 21, page 4). Grassley told Zoellick he is "concerned by proposals at the WTO by some of our negotiating partners that would threaten U.S. food aid programs and the individual projects that result from them, such as current projects that provide high protein soy-fortified foods to HIV/AIDS victims." He noted that his own Iowa soybean farmers are among those who supply food for export. He painted these sales as being motivated by the desire "to contribute to the alleviation of suffering around the world" and not anything crass like selling unsellable crops.

> "I urge that U.S. negotiators work to ensure that needed flexibility in providing food aid is not lost as a result of current WTO talks," Grassley wrote. He particularly objected to proposals that would require food aid to be given through cash assistance only. Grassley's views clash with the EU position that extremely tight rules are needed to control food aid to prevent the creation of any loopholes.

Meanwhile, the latest talks in Geneva, which concluded June 25, made small progress toward agreement on a "framework" for moving the farm talks forward. Officials expect the chairman of the talks, Ambassador Tim Groser, to circulate a draft accord by mid-July to get reaction and make alterations before the WTO General Council meeting July 26-29. At the start of the talks, Groser complained that the political-level committment to progress in the agriculture negotiations hasn't been translated fully to the working level. It looks increasingly likely that no final deal on agriculture will be made until the General Council meeting, which is expected to be attended by senior trade ministers from several countries, including the U.S. and EU

CITA CLARIFIES POST-QUOTA RULES FOR TEXTILE VISAS

The interagency Committee for the Implementation of Textile Agreements (CITA) issued a Federal Register notice June 25 confirming its longstanding policy that imports of textiles and apparel are charged against quotas based on the date of export from their originating country. Thus, even after the Multifiber Arrangement (MFA) expires Jan. 1, 2005, goods exported during 2004 in excess of quota limits won't be allowed entry. Notice dispels concern that there might be a surge of imports in January, if goods were waiting offshore to enter after the MFA ends.

> Notice also gives assurance that goods exported after Jan. 1 by WTO members and formerly subject to MFA quotas will not require visas, ELVIS transmission, GAL certificates or exempt certificates to enter U.S. Some importers and retailers were concerned CITA would require exporting countries to get formal approval to lift visa requirements. Visa requirements will remain in place for non-WTO members, such as Vietnam.

USTR RELEASES SIDE LETTERS WITH BAHRAIN ON GAMBLING

Having lost a WTO ruling against its restrictions on Internet gambling, the U.S. wanted to be sure its free trade agreement (FTA) with Bahrain clearly gives it the power to regulate or prohibit these practices under the accord (see **WTTL**, March 29, page 3). The U.S. and Bahrain, therefore, have exchanged side letters recognizing the U.S. position that the General Agreement on Trade in Services (GATS) allows members to regulate gambling.

> "During the negotiations, the delegations of both parties discussed the objective of protecting public morals, preventing fraud and deterring crime that underlies much regulation of gambling and betting services at the central and regional levels," USTR Robert Zoellick wrote to Finance Minister Abdulla Hussan Saif.

The USTR's office released the letter, and others covering other parts of the FTA, when it released the text of the Bahrain accord June 21. "I have the honor to confirm the shared understanding of the parties that such regulations will generally fall within the exceptions provided under subparagraphs (a) and (c) of Article XIV of the GATS, as incorporated in the agreement," the letter said. "It was further noted that in Bahrain all gambling and provision of gambling services is prohibited and treated as a criminal offense," it added. In another set of side letters, the two trade officials confirmed that Bahrain's Telecommunications Regulatory Authority has granted licenses to only two mobile telecommunications services. "Unless the two current operators exhibit anti-competitive conduct, the government of the Kingdom of Bahrain intends to maintain this duopoly for commercial mobile services until December 31, 2005," the letters stated. No later than the end of 2007, Bahrain will "complete a consultative process to decide whether to issue additional licenses," it added.

BIS ANNOUNCES FIVE SETTLEMENTS TOTALLING OVER $900,000

In burst of house cleaning, BIS June 25 announced reaching settlement agreements with five exporters to resolve alleged export control violations. In largest settlement, Saint-Gobain agreed to pay $697,500 civil fine for unlicensed export made by Furon Corporation, which it acquired in 1999. BIS, citing "successor liability," claimed Saint-Gobain was responsible for Furon's 189 exports of Teflon-coated valves and pumps to Israel and Taiwan without licenses.

> In other settlements, Pratt & Whitney paid $150,000 fine for 42 unlicensed exports, including deemed exports, of gas turbine engines and technology; Sentry Company paid $25,000 fine for unlicensed export to Bharat Dynamics, which was on BIS Entity List; Caliber, Inc., paid $20,700 fine for unlicensed exports of shotguns to Costa Rica; and Helka, GnbH., of Dietzenbach, Germany, paid $15,000 fine for unlicensed exports of photo-digitalizing system to Iran.

* * * BRIEFS: * * *

BIS PEOPLE: Deputy Assistant Secretary for Export Enforcement Lisa Prager leaving government after 22 years, including last three at BIS, to become partner in DC office of GrayCary, Silicon Valley law firm. Her last day in office will be July 2. Prager is latest BIS enforcement officials to leave in last two months, following departures of OEE Chief Mark Menefee and Antiboycott Office Director Dexter Price. She was last original member of BIS compliance review board. All three vacancies will be handled on acting basis by enforcement staff as BIS begins recruitment effort for replacements.

SOFTWOOD LUMBER: USTR's office has asked ITC to provide advice under Section 129 of the Uruguay Round Agreements Act on whether its injury ruling in antidumping and countervailing duty cases against softwood lumber from Canada could be revised to be "not inconsistent with WTO Dispute-Settelement Body's findings" on these cases.

BIS PROGRAMS: Agency has renamed its 10-year-old Nonproliferation Export Control Cooperation Program, which has fostered development of export controls rules and systems in other countries, into Office of International Programs. Office has stepped up activities as part of its participation in State-run Export Control and Related Border Security Assistance Program, BIS Assistant Secretary for Export Adminstration Peter Lichtenbaum told Senate hearing June 23.

WHITE HOUSE: President Bush June 23 announced promotion of Faryar Shirzad to be deputy assistant to the president for international economic affairs and deputy national security advisor. He replaces Gary Edson who has returned to private sector. Before joining White House staff as special assistant to president, Shirzad was assistant secretary of Commerce for import administration and earlier served as trade counsel on Senate Finance Committee

MEXICO: U.S. June 22 asked WTO Dispute Settlement Body to form panel to review Washington's complaint that Mexico's 20% tax on beverages and syrups containing non-sugar sweeteners violates WTO rules. Mexico was able to block WTO action, so request will be reconsidered at next DSB meeting

BARIUM CHLORIDE: In "sunset review" ruling June 22, ITC voted 6-0 that revoking existing anti-dumping order on barium chloride from China would likely lead to recurrenc on injury to U.S. industry.

STATE: DDTC June 23 issued new rquirements for filling out license applications, mandating submission of multiple names and addresses in electronic and hard copy forms.

AFRICA: By voice vote June 24, Senate approved House-passed version (H.R. 4103) of African Growth and Opportunity Acceleration Act (AGOA), setting stage for quick presidential signature.