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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 TIGHTENS LICENSING RULES FOR FREIGHT FORWARDERS

State's Directorate of Defense Trade Controls (DDTC) has issued licensing officers new guidance in the last month reminding them that license applications filed by freight forwarders must include a purchase order to the freight forwarder from the foreign customer in order to be processed and the freight forwarder must be the exporter of record. A DDTC official told WTTL the guidance isn't a new policy but has been issued because some new licensing officers weren't aware of the policy and had approved licenses without enforcing this requirement.

One industry source said the claim that this is an old policy is "bogus." State "is trying to put in a new policy to deal with a real problem without publishing a formal regulation," the source said. Whether new or not, the policy has resulted in several license applications being returned without action (RWA).

State sources say these cases mainly involve small freight forwarders who don't apply for many licenses. Larger freight forwarders have usually followed these rules. The policy also applies to consultants or middlemen who offer to handle license applications on behalf of customers. This policy is not explicitly written in the International Traffic in Arms Regulations (ITAR), so firms first applying for a license would not be aware of the policy, the State official conceded. The first time they will learn about it is when they get their applications RWA'd.

"We've seen instances where freight forwarders don't know what is in the boxes they are exporting," one State official told WTTL. "They apply for the license based on what the customer tells them is in it," he added. In some cases, insurance policies bar freight forwarders from opening containers. In addition, freight forwarders may hand-off cargo to foreign consignees and not know where the goods ultimately go, the official explained. Export consultants who obtain licenses for customers "are more troublesome than the freight forwarders," the State source complained. "Some are only in business to obtain licenses. They prey on smaller manufacturers who don't know how to get an export license," he added.

INDUSTRY BEATS BACK NEW SANCTIONS ON TRADE WITH CHINA

In a rare victory against lawmakers who want to tighten U.S. export controls and sanctions, the export community July 14 defeated a bill (H.R. 3100) that would have imposed new sanctions on European Union (EU) and other foreign firms that export defense or dual-use goods and services to the Chinese military. Industry sources give the credit for the victory to Reps. Don Manzullo (R-Ill.) and Jim Kolbe (R-Ariz.) who dramatically convinced 126 House members to switch their votes after the five-minute time limit for the vote on the floor had expired. Co-

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sponsored by House International Relations Committee (HIRC) Chairman Henry Hyde (R-Ill.) and the committee's ranking member, Rep. Tom Lantos (D-Calif.), the East Asia Security Act of 2005 is similar to provisions added earlier in the year to the National Defense Authorization Act (NDAA). Both measures are aimed at deterring EU plans for lifting the arms embargo on China. Industry sources say the provisions in H.R. 3100 is far worse than those in the NDAA.

Hyde and Lantos moved their bill with surprising swiftness, introducing it June 29, winning HIRC approval June 30, and getting House leaders July 8 to agree to bring it to the floor under suspension of the rules on July 13. Once they learned about the scheduled vote, over 40 industry representatives and trade lawyers held an emergency meeting July 8 and drafted a letter to House Speaker Dennis Hastert (R-Ill.), urging him to withdraw the bill and spelling out the impact the bill would have on U.S. industry and American allies, including NATO members, Israel, Australia and Canada. The letter was signed by 13 trade associations.

When the bill came up for a vote July 14, it quickly reached a tally of 341 to 70 by the time the five-minute vote was over. Then in a normal procedural gesture, Hastert asked if any members wanted to change their votes. Almost instantly, a steady stream of lawmakers came forward to hand in cards changing their votes from yea to nay. According to industry sources, the vote switches came because Manzullo and Kolbe went from member to member showing them the industry letter and explaining the damage the bill would do to U.S. trade. With a final vote of 215 to 203, the bill was far short of the two-thirds needed for passage under the special "suspension-of-the-rules" procedures under which it was brought to the House.

'Nobody knew what was in the bill,' one industry representative told WTTL. The first time many lawmakers had heard about it was Monday, July 11, and copies of the text wasn't available until July 12. Some members may have thought the measure was similar to a nonbinding resolution they passed in March to warn the EU against lifting the arms embargo. There also may have been support because of concerns about China National Offshore Oil Corporation's (Cnooc) effort to buy Unocal (see WTTL, June 27, page 1). Hyde and Lantos "decided they could take a blunt instrument like this and it would pass," one source said, warning that the two lawmakers still might try to get the legislation attached to other pending bills in the future.

ROAD TO CENTRAL AMERICA GOES THROUGH CHINA

In an effort to win a few more votes for the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), House Republican leaders are expected to move a new bill (H.R. 3283), which would make imports from China subject to U.S. countervailing duty (CVD) rules, before they take up the trade pact the last week in July. Sponsored by Rep. Phil English (R-Pa.) and endorsed by House Ways and Means Committee Chairman Bill Thomas (R-Calif.), the China bill also would establish a system to monitor Beijing's compliance with its trade obligations, authorize more funds for U.S. agencies monitoring China trade, and require cash deposits instead of bonds for new Chinese shippers of goods subject to antidumping orders.

Plans for giving lawmakers a chance to vent their displeasure at Chinese trade and currency practices came just days after Bush Cabinet officials ended their annual meeting of U.S.-China Joint Commission on Commerce and Trade (JCCT) in Beijing. As usual in this annual ritual, the U.S. officials left the talks with new promises from China, including pledges to increase prosecution of intellectual property rights (IPR) violations, to set up a bilateral law enforcement IPR working group, to delay software procurement rules that would hurt U.S. sales in China, and to step up fight against piracy of movies and audio-visual products.

U.S. Trade Representative (USTR) Rob Portman, Commerce Secretary Carlos Gutierrez and Agriculture Secretary Mike Johanns, who co-led U.S. side, have learned it's not wise politically to express too much enthusiasm for Chinese promises. "I would sum up the outcome of this year's JCCT as measured progress," Gutierrez told reporters. Portman echoed that view. "We

believe the steps that are outlined here, which include increased criminal prosecution, a commitment from the Chinese to do that, are important, but we need to see outcomes,” he said. “We are not satisfied with process. We need to see results,” he added.

In addition to the China legislation, DR-CAFTA backers are gearing up for a two-week drive to garner the margin for winning the vote in the House. President Bush took the pact’s cause into the heart of textile country July 15, giving his most detailed defense of the accord in a speech in Dallas, N.C. Meanwhile, the Democratic Leadership Conference, which has represented centrist Democratic Party interests, issued a paper July 15 supporting the trade agreement.

DOMESTIC FIRMS OPPOSE DROPPING NME STATUS FOR UKRAINE

Domestic U.S. industries that have antidumping orders in place against imports from Ukraine are concerned that Commerce has already decided to end Kiev’s nonmarket economy (NME) status and declare it a market economy. In comments filed with the International Trade Administration (ITA) July 11 on Ukraine’s NME status, the Rebar Trade Action Coalition cited press reports that quoted Commerce Secretary Carlos Gutierrez telling an audience that the U.S. would recognize Ukraine as a market economy.

“While we certainly recognize the historic nature of the Orange Revolution, and the remarkable, historic events that ushered in President Yushchenko, these events should not unduly influence the department’s analysis of Ukraine’s market status, nor should they preclude the department’s typical analysis,” the coalition wrote.

Most comments pointed to the six factors ITA must evaluate by statute in deciding to switch a NME to a market economy. Ukraine fails to satisfy those six requirements, comments argued. Kiev has failed to meet the first criterion which requires the convertibility of its currency, the hryvnia, stated the Ad Hoc Committee of Domestic Nitrogen Producers. Unlike other former communist countries that have discarded their NME status, “Ukraine has failed to date to attain a level of currency convertibility that permits the operation of supply and demand forces that are necessary to ensure domestic prices are truly market-based,” the committee stated.

In addition, Kiev continues to maintain significant ownership and control over Ukrainian industries. The new government, rather than implementing reforms, is considering rolling back some of the privatization deals of the previous government. There is general belief that many of these sales were corrupt and went to friends of the former regime. “The newly elected government has pledged to review, and potentially reverse, privatization deals,” noted Eramet Marietta, a firm which filed the antidumping case against siliconmanganese from Ukraine.

MINI-MINISTERIAL SEEKS COMPROMISE ON DOHA FARM TALKS

World trade ministers have given up hope of having a draft agreement on the agriculture wing of the Doha Round negotiations by the end of July. Negotiators had hoped to have a draft ready by the end of the World Trade Organization’s (WTO) General Council meeting July 27-29 in preparation for the December ministerial in Hong Kong.

Despite discussion of proposals for a “tiered approach” to cutting tariffs on farm imports, including one offered by the so-called G-20 countries, officials at a mini-ministerial in Dalian, China, July 12-13, didn’t fully endorse any concept. “I’m happy to report that there were some very helpful indications of negotiating flexibility that the ministers expressed,” said Deputy USTR Peter Allgeier. But regarding prospects for a draft in July, he said, “I don’t think that one should expect a full package of detailed modalities. That really isn’t realistic.” European Union (EU) Trade Commissioner Peter Mandelson offered the same assessment after the meeting. “We have to accept lower expectations for July, but that doesn’t mean to say that we are reducing our ambitions for Hong Kong,” he said. A joint statement by the Chinese and

Hong Kong trade ministers who co-chaired the meeting said, "We have asked our negotiators to continue work on the basis of the status report submitted by the chairman of the negotiating group on 27 June 2005, using the recent G-20 proposal as a starting point for the work on the structure of the MA [market access] formula, recognizing that some members have reservations about certain aspects of that proposal." The G-20 plan would create five tiers with different tariff-cut levels in each tier plus an overall cap on tariffs.

DEFENSE PROCUREMENT RULES WILL REQUIRE EXPORT COMPLIANCE

A proposed change in the Defense Federal Acquisition Regulations (DFAR) would make compliance with deemed export licensing rules a condition universities and research laboratories would have to meet to qualify for Defense research contracts. The July 12 Federal Register proposal is aimed at "preventing unauthorized disclosure of export-controlled information and technology under DoD contracts." It would advise Pentagon contracting officers to make sure contractors know that they will be dealing with technology that is subject to either the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

The proposal would require contractors to comply with applicable export regulations, maintain active compliance programs, conduct training on export controls and perform periodic compliance assessments. The specific compliance steps contractors would have to take include controlling physical access to research facilities and segregating areas where controlled technology is used.

* * * BRIEF * * *

EXPORT ENFORCEMENT: In settlement with BIS, BJ Services Co. of Tomball, Texas, will pay \$142,450 civil fine for 37 alleged violations related to export of CXB-6, chemical mixture containing triethanolamine and ammonium bifluoride, to China without licenses. Firm also agreed to conduct audit of its compliance program. Because it voluntarily self disclosed exports, it received 65% reduction in potential fine.

EX-IM BANK: Board will be able to continue operating with President Bush's appointment of Bank Executive Director James Lambricht as acting president and chairman following Chairman Philip Merrill's July 13 announcement that he would step down before his current extended-term expires July 20 (see WTTL, June 27, page 3). Industry sources say they expect Bush to name current vice chairman April Foley to replace Merrill and also to reappoint board member Joseph Grandmaison.

WASSENAAR: Members of export control regime in June agreed to admit five new members: Croatia, Estonia, Latvia, Lithuania, and Malta. It accepted Slovenia's membership in December.

TEXTILES: CITA July 14 agreed to accept domestic industry request to open safeguard investigation of imports from China of curtains in categories 369/666. On July 11 textile groups filed four more safeguard action requests covering nonknit shirts (categories 341/641), skirts (categories 342/642), pajamas/nightwear (categories 351/651) and swimwear (categories 359S/659S).

EAR: BIS in July 15 Federal Register finally revised Export Administration Regulations to reflect changes in multilateral export controls that Wassenaar Arrangement adopted in December 2004 plus new unilateral controls. Changes affect most categories, but most especially sensors, machine tools and computers.

ITAR: State in July 12 Federal Register issued final rules to clarify requirements for export of defense technology and services to Canada, revise chemical controls and implement statutory changes that require it to provide expedited review of licenses for Australia and United Kingdom.

SAWBLADES: Voting 6-0 July 14, ITC made preliminary determination that allegedly dumped imports of diamond sawblades and parts from China and Korea may be injuring U.S. industry.

SUNSET: Lifting current antidumping order on petroleum wax candles from China would likely lead to recurrence of injury to U.S. industry, ITC decided July 12 on 6-0 vote.

TRADE FIGURES: Goods exports hit another record in May, rising 9.3% from last May to \$74.5 billion. Services exports were also record at \$32.4 billion, 14.8% above year ago. Goods imports were \$135.3 billion, up 12% from May 2004. Services imports increased 10.7% from year ago to \$27 billion.