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Industry Groups Urge Senate Support for Satellite Bill

A group of 16 organizations and trade associations urged Senate leaders Oct. 22 to act on a bill (S. 3211) that Sen. Michael Bennet (D-Colo.) introduced in May to give the president authority to transfer licensing jurisdiction for satellites back to Commerce from State. Bennet's bill parallels one (H.R. 3288) sponsored by Rep. Howard Berman (D-Calif.), which was included in the National Defense Authorization Act (NDAA) (H.R. 4310) the House passed in May. Bennet said he based his measure on the recommendations in the Section 1248 report that State and Defense issued in April on satellite controls.

> The Senate Armed Services Committee reported out its own NDAA bill (S. 2467) in April, but the Senate has not yet acted on it. The committee's bill doesn't include any language of satellites. While Congress consistently passes NDAA measures every year, the fate of the legislation this year is in jeopardy because lawmakers would have to act on it during the coming short and agenda-packed lame-duck session of Congress.

Obama administration officials and industry representatives have criticized the House version of the NDAA because it would impose restrictions on how the administration could implement its export control reform initiative (see **WTTL**, July 30, page 3). How Bennet's bill or any satellite provisions would fit into a final NDAA measure remains uncertain.

"Ensuring that America's space industrial base is able to meet the needs of our warfighters as we enter an increasingly complex and demanding global security environment, is more important than ever," the industry groups wrote in a letter to Senate Majority Leader Harry Reid and Minority Leader Mitch McConnell. "Satellites are the only category of products mandated by Congress for blanket treatment as munitions," the letter said.

Presidential Candidates Divided over Trade Policy

With just over a week to go before the presidential election, trade has gotten more attention from the candidates than any time since the 1992 contest when Ross Perot warned that NAFTA would produce a great "sucking sound" of jobs moving to Mexico. In their debates and speeches, President Obama and Governor Romney have disagreed mainly over how to deal with China, but two representatives of their campaigns revealed other sharp distinctions between the two candidates at an event the Washington International Trade Association (WITA) sponsored Oct. 23. Romney representative John Herrmann, a partner with Kelley Drye and Warren in

D.C. and Obama surrogate Nelson Cunningham, managing partner, McLarty Associates, expressed differences not only over China but also about free trade agreement (FTA) talks with Latin America, fast-track negotiating authority and bilateral investment treaties. Gov. Romney has mentioned increasing trade with Latin American countries as one of his goals.

> Herrmann cited Brazil and Uruguay as being at the top of the list for potential new FTAs. He said a Romney administration would work to build consistency and coherence in existing FTAs and rationalize country-of-origin rules. In contrast, Cunningham said he can't think of a single country in Latin America that wants an FTA with the U.S. "It feels like an empty talking point" aimed at the Latino vote, he said.

Romney has said he will label China a currency manipulator on day one of his administration. "Contrary to some of the points Nelson was making, I don't think that necessarily leads to a trade war," Herrmann said. During the third debate with President Obama, Romney may have misstated current law when he said, "I will label China a currency manipulator, which will allow me as president to be able to put in place, if necessary, tariffs where I believe that they are taking unfair advantage of our manufacturers." The authority to impose tariffs in retaliation for currency manipulation is part of pending legislation (S. 1619) that has passed the Senate but hasn't seen action in the House. "I don't believe Gov. Romney has taken a position on the currency bill that's currently before the Congress," Herrmann noted.

Labeling China a currency manipulator would be "irresponsible" and will damage the U.S. relationship with Beijing, especially at a time when a new leader, Xi Xinping, who has reformist and internationalist tendencies, is about to take office, Cunningham said. "We're not going to poke them in the eye," he said. Cunningham argued that China would take such action as overtly hostile and would respond "in kind plus."

Both candidates have closer views in favor of talks on a Trans-Pacific Partnership, World Trade Organization (WTO) talks on services and information technology, and a possible U.S.- European Union trade agreement. If Romney wins, Cunningham said he hopes his administration would take "substantial pause" and review all current trade negotiations. Herrmann said he didn't think Romney had the opportunity to review the specifics of those talks, but observers "wouldn't see anything like a nine-month delay" in evaluating the status of those negotiations.

Brazil Renews Specter of Sanctions for U.S. Cotton Aid

A senior Brazilian diplomat told U.S. trade and agriculture officials Oct. 24 that neither the Senate-passed version of a new Farm Bill nor a pending House version corrects programs that the WTO has found to be illegal subsidies in a case brought by Brazil. Nonetheless, Brazil's ambassador to the WTO, Roberto Azevedo, told a program in Washington Oct. 25 that Brazil would be willing to accept a "degree of distortion" to the world market for cotton, although he would not say how much. Azevedo said there is not a lot of time for the U.S. to fix the cotton program to avoid Brazilian retaliation against U.S. goods and intellectual property in Brazil.

> In June 2010, the U.S. and Brazil reached a framework agreement under which Brazil put off WTO-sanctioned retaliation in return for the U.S. agreeing to pay Brazil $147.3 million in compensation annually and pledging to address the subsidies issue in the 2012 Farm Bill, which was to replace the Farm Bill that was to expire Sept. 30 (see **WTTL,** June 21, 2010, page 2).

With Congress unable to reach agreement on a bill before it recessed in September, there is some hope a measure might get passed during the coming lame-duck session of Congress. But there is also speculation that lawmakers might just pass a short extension of the current law or a one-year extension to give the new Congress a shot at resolving differences between the House and Senate. Neither the current Senate nor House provisions on cotton "accommodate us or would be acceptable to us," Azevedo said. Some sources say those provisions aren't likely to be changed to Brazil's liking, which would put Brazil in a position of either finding a way to accept what it gets or going the retaliation route, which it claims it doesn't want to do. "The Farm Bill as far as cotton is concerned is a black box that spills out distortion," Azevedo said. "What we are looking at is the output of that box, the degree of distortion that is coming out of that box," he said. Azevedo said Brazil doesn't expect Congress to change its total approach to farm aid. "What we are looking at is a degree of distortion that will allow us to close this chapter of the issue, which is not in the interest of anyone," he stated.

> In his talks with officials from the U.S. Trade Representative's office, including Chief Agriculture Negotiator Islam Siddiqui, and from the U.S. Agriculture Department, Azevedo explained the problems Brazil has with the current congressional proposals. While Azevedo said Brazil has accepted a short-term extension of the framework agreement, he would not say what short-term means but expects the issue to be resolved early next year to avoid retaliation. He said Brazil doesn't want to retaliate. "Brazil wants a solution," he declared.

U.S.-Panama FTA Goes into Effect Oct. 31

Six years after the U.S. and Panama launched negotiations on a free trade agreement (FTA), five years after it was concluded and one year after Congress enacted implementing legislation, the bilateral accord will finally go into effect Oct. 31. The deal was able to move forward after U.S. Trade Representative (USTR) Ron Kirk and Panamanian Commerce Minister Ricardo Quijano exchanged letters Oct. 22 confirming that Panama has taken steps to adopt new labor and tax laws that have delayed implementation for five years (see **WTTL,** April 16, page 1).

> The Panama FTA was part of a three-way legislative package that saw the accords with Colombia and South Korea also approved. The Panama deal faced the least opposition in Congress of the three.

Even after Congress acted, the Obama administration delayed implementation of the accord until it could certify that Panama had adopted legislation to crack down on tax evasion and money laundering, signed a new Tax Information Exchange Agreement in April to come into compliance with OECD standards that prevent countries from becoming tax havens, and enacted strict new reforms to protect core labor rights.

Industry Calls for Changes in Basel III Implementing Proposals

Proposals by U.S. banking authorities to implement the international banking standards known as Basel III will have a negative impact on trade financing, a trade group representing banks involved in foreign trade and financial services companies told the Federal Reserve and the Comptroller of the Currency Oct. 22. In comments on the implementing rules proposed by the two bodies, BAFT-IFSA warned that their proposals "could have an adverse effect on the availability and affordability of trade finance and could result in reduced trade flows at a time when they are essential to support economic recovery."

> In particular, the association called for revisions in the proposals that deal with off-balance sheet (OBS) exposures, asset value correlation (AVC), and clarification of the waiver of the one-year maturity floor for trade finance instruments. "The Agencies' proposals do not fully take into account the intrinsically safe structure of trade finance instruments and overlooks the fact that, by design, trade finance products do not contribute to excessive leverage as they are tied to client transactions," the association wrote.

"The current calculation of the AVC increases the cost for the industry in providing trade finance to the end user and its application is disproportionate to the nature of these instruments, as demonstrated by the ICC [International Chamber of Commerce] register data on trade finance," it argued. "As such, BAFT-IFSA believes that as short-term, self-liquidating instruments, trade finance products warrant a separate AVC from other types of corporate banking products," it recommended. In addition, a clarification on the waiver of the maturity floor for short-term, self-liquidating trade finance instruments "will provide greater certainty to market participants on the trade finance products covered by the waiver," it said. "Without these important changes, the net impact of the Capital Proposals will lead to higher pricing and less bank support for trade finance, which in turn will have a negative impact on global trade and global GDP," the association contended.

EBay Seeks Simplification of Customs Rules for Small Exporters

Online e-commerce site eBay, which has become a major channel of trade for small exporters, wants the U.S. and other countries to simplify customs rules to make it easier for small companies to export. In a proposal released Oct. 24, which it calls "Toward Commerce 3.0," eBay included recommendations to raise the *de minimis* level for filing import documentation above the current $200 threshold. It endorsed the effort of the Asia-Pacific Economic Cooperation Forum (APEC) to negotiate a baseline *de minimis* rule for all APEC countries.

> "Increasing the de minimis threshold is a policy change that could greatly ease the burden on small exporters attempting to offer returns," it noted. Current rules also make it difficult for small exporters to take advantage of customs duty drawback rules because they are unable to provide original import documents to prove that the goods were imported within the previous three years.

* * * Briefs * * *

FCPA: Nonprofit adoption agencies' funding of trip to U.S. by foreign government officials is "a reasonable and bona fide expenditure that is directly related to the promotion, demonstration, or explanation of the Requestors' products or services. Therefore, the Requestors' proposed funding of the trip may go forward without enforcement action," Justice said Oct. 18 in opinion procedure release (12-02).

EXPORT ENFORCEMENT: Littelfuse, Inc. of Des Plaines, Ill., agreed Oct. 23 to pay $180,000 fine to settle 37 charges of unlicensed exports of item controlled for national security reasons. Between February 2006 and January 2008, Littelfuse allegedly exported liquid crystal polymer under ECCN 1C008.b to Philippines, BIS charged. Littelfuse filed voluntary self-disclosure, and neither admitted nor denied charges.

MORE EXPORT ENFORCEMENT: Susan Yip (aka Susan Yeh), Taiwanese citizen, was sentenced to two years in prison Oct. 24 in San Antonio U.S. District Court for helping to obtain dual-use and military parts for Iran in violation of sanctions. Yip pleaded guilty July 20 to conspiracy to violate ITR.

OFAC: Brasseler USA, medical supply company in Savannah, Ga, agreed Oct. 19 to pay $18,900 to settle alleged violations of Iranian Transactions Regulations for exporting "goods or services to a person in a third country with knowledge or reason to know that such goods or services were intended specifically for transshipment to Iran, without authorization," OFAC said. Three alleged transactions were worth $5,241. Brasseler did not voluntarily self-disclose matter to OFAC.

AIR CARGO: Customs issued notice in Federal Register Oct. 24 that it is formalizing and expanding its Air Cargo Advance Screening (ACAS) pilot for reporting cargo before loading at foreign locations. Instituted in December 2010 after explosives were discovered concealed in packages on U.S.-bound aircraft from Yemen, ACAS initially included four express air couriers, but program has expanded to include three passenger carriers, one all-cargo carrier, and one freight forwarder.

LAOS: WTO General Council Oct. 26 agreed to terms of Laos' WTO membership, which now go to Vientiane for ratification, 30 days after which it will become member (see **WTTL**, Oct. 8, page 4).

EXPORT-IMPORT BANK: Ex-Im announced agreement Oct. 22 with trade credit insurer Coface North America Insurance Company to provide reinsurance as part of Ex-Im reinsurance program introduced in 2010. Under agreement, Ex-Im will reinsure export-credit insurance policies written by Coface and Coface Group, which provide trade receivables management, business intelligence and insurance services in 66 countries and with 35,000 insurance clients.