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Obama Officials Oppose NDAA Satellite Conditions

Now that the 2013 National Defense Authorization Act (NDAA) has moved to the Senate from the House with an amendment allowing the liberalization of controls on commercial satellites, Obama administration officials are scrambling to make sure the final legislation doesn't hamper the export control reform initiative. "The bad news is that the same amendment included unacceptable restrictions on the president's authority to conduct foreign policy and additional export control-related requirements that could cripple the entire export control reform initiative, including ironically the proposed transfer of satellites; in essence, in its current form, giving with one hand and taking away with the other," Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn told an American Conference Institute (ACI) forum May 23.

> "As the NDAA works its way through the remainder of the legislative process, the administration will be working very hard to ensure that what comes out at the end and comes to the president's desk in the fall is an acceptable set of provisions that includes satellite jurisdiction authority but also does not include crippling or potentially crippling amendments," Hirschhorn said (see **WTTL**, May 21, page 5).

Industry groups hailed the amendment in the House NDAA bill but acknowledged there's work to be done to make it right. "The passage of a satellite export control reform provision by the House of Representatives is a vital step for the U.S. satellite industry," said Patricia Cooper, president of the Satellite Industry Association (SIA) in a statement May 18. "SIA is committed to working with the House, Senate, and administration to perfect this provision," she said. Meanwhile, Sen. Michael Bennet (D-Colo.) May 22 introduced a bill (S. 3211) that parallels one (H.R. 3288) sponsored in the House by Rep. Howard Berman (D-Calif.). Bennet said he based his measure on the recommendations in the Section 1248 report that State and Defense issued in April on satellite controls.

Export Credit Talks Are "Tall Order," Hochberg Says

As President Obama was set to sign into law the reauthorization of the Export-Import Bank, Fred Hochberg, its president and chairman, admitted it will be "a tall order" to get other countries into the negotiations that Congress called for in the legislation to eliminate subsidized export financing, particularly for commercial aircraft. In an exclusive interview with WTTL, Hochberg said "there are two very strong market forces that are pushing in the other direction." One is the drive of countries to increase exports to create jobs and the other is the effort of banks to deleverage and add to their capital by making fewer loans on their own. The Ex-Im legislation (H.R. 2072), which was on the president's desk at press time, requires the Treasury secretary to "initiate and pursue" negotiations with Organization for Economic Cooperation and Development (OECD) members and non-members with the goal of eliminating subsidized export financing in general and specifically for aircraft that are subject to the OECD Sector Understanding on Export Credits for Civil Aircraft (ASU) (see **WTTL**, May 21, page 6).

> "That's been a U.S. government policy" and the goal of the last ASU update in 2011, Hochberg told WTTL. "It's in the legislation and also something the administration wants to do," he said.

In ASU talks, the U.S. tried to raise fees closer to market rates and eliminate financing for investment-grade airlines in high income countries. "When we did that in 2009 and 2010, we were largely rebuffed by other members – the Airbus countries in Europe, the Brazilians and the Canadians," Hochberg said. "I think it may be a slightly uphill battle. It certainly is not something everyone is cottoning up to," he added.

The impact of the 2011 ASU isn't being felt yet because of "grandfather" clauses in the accord, he explained. The new restraints on aircraft aid go into full force after Jan. 1, 2013. Planes delivered before December 2012 don't have to meet the new conditions. Those changes might meet some of the concerns of some lawmakers, he suggested. "The full impact is only being felt by aircraft making orders now for delivery beyond December," Hochberg told WTTL.

The effort to get non-OECD countries such as China, Brazil and India into such talks is also a problem because of the lack of transparency in their financing programs. The U.S. and China launched bilateral talks on export financing following the visit of Chinese Vice President Xi Jinping to Washington in February. "A discussion has begun. We sent two teams to China and the next step is to have them come and probably meet with other European and members of the G-20 some time over the summer or early fall," Hochberg reported.

Meanwhile, Hochberg said he doesn't expect Ex-Im financing, which has more than doubled in the last three years, to return to pre-2008 levels. In addition to the increase in U.S. exports since 2009, "more exports are going to emerging markets, which is always a challenge," he said. Also, "as banks deleverage, it is hard to get capital, and certainly long-term capital," he added. It is hard to get banks to go out more than five or seven years, Hochberg noted. "There has been much more deleveraging in Europe than here and European banks are very major players in export financing," he stated. "I don't think aircraft will go back to levels we had pre-2008; there is a lot of infrastructure going on and we are exporting at a higher level than we did in 2009. Put that all together and I don't see the demand for us reducing," he said.

U.S. Is Reluctant Bride for FTA with EU, Kirk Indicates

The U.S. and European Union (EU) are moving toward an agreement to start talks aimed at reducing barriers in their trans-Atlantic trade, but the Obama administration is still being cautious in saying such talks would be aimed at a full free trade agreement (FTA). There are suggestions that there may be equal resistance among members of the EU's trade commission. In a speech May 22 in London, U.S. Trade Representative (USTR) Ron Kirk stopped short of committing the U.S. to talks on an FTA. "We have agreed to be both ambitious and realistic as we establish our negotiating parameters and goals," he said.

> Kirk and EU Trade Commissioner Karel De Gucht head a High-Level Working Group on Jobs and Growth that President Obama and EU leaders created in November (see **WTTL,** Dec. 5, page 3). The group was told to provide an interim report on its work by June and a full report by the end of 2012 on all options for increasing U.S. and EU economic growth, jobs and international competitiveness.

While there are some sectors where U.S. and European industries are highly integrated, the prospects for a broad bilateral trade deal remain uncertain because of large differences over such issues as agriculture, non-tariff barriers and health. "Right now, American and European teams are working together to examine a wide range of possibilities, including: eliminating conventional barriers to trade in goods, such as tariffs and tariff-rate quotas; reducing barriers to trade in services, and to trans-Atlantic investment; promoting regulatory approaches that facilitate trade; reducing, eliminating, or preventing in the first place behind-the-border barriers to trade in all categories; and developing rules and principles on other global issues that are of common concern," Kirk reported.

> "From the U.S. perspective, an ambitious trans-Atlantic negotiation – were we to pursue that course – would need to achieve full liberalization of market access for all categories of goods, and expand trans-Atlantic flows of services and investment," he added. "The United States also believes an ambitious approach should identify new approaches to non-tariff barriers," he stated.

"The United States understands the need for realism in any comprehensive negotiation," Kirk continued. "Priority market access and other goals of one side often collide with acute domestic sensitivities or statutory limitations of the other side. Many in Europe have already voiced support for a comprehensive free trade agreement pursued as a single undertaking. While the United States agrees that this approach presents many exciting opportunities, we want to ensure that its outcomes could be at least as broad and ambitious as those contained in existing U.S. trade agreements," he said.

Labor to Review Worker Rights Violations in Honduras

Labor's Office of Trade and Labor Affairs (OTLA) will review charges the AFL-CIO and 27 Honduran worker organizations made against Honduras for violating the labor chapter of the Dominican Republic-Central America-U.S. Free Trade Agreement (CAFTA-DR), the agency said in the Federal Register May 14. The office will investigate allegations that Honduras has denied workers in the apparel and auto sectors, in agriculture plantations and in enterprises at the Port of Cortez their rights under Honduran labor laws, the announcement said.

> OTLA will examine whether workers have been denied the freedom of association, the right to organize and bargain collectively, as well as child labor and unacceptable work conditions. "The submitters also allege the GOH is in violation of the CAFTA-DR due to recently passed legislation which weakens workers rights and on-going deficiencies in its laws and legal system," the notice stated.

More Export Rules Before Summer, Hirschhorn Promises

Although previous predictions haven't panned out on when agencies would publish rules to implement the Obama administration's export control reform initiative, BIS Under Secretary Eric Hirschhorn claimed they are making very good progress toward issuing proposals that can be adopted without congressional legislation. In addition to the May 18 proposals dealing with Category XIII (materials and miscellaneous articles) on the U.S. Munitions List (USML), State and BIS expect in the next two weeks to issue proposals on Category IX (military training services and equipment) and X (protective personnel equipment and shelters), Hirschhorn told an American Conference Institute conference May 23 (see **WTTL**, May 21, page 3).

In addition, Hirschhorn said a transition rule that will address what to do about products moved to the Commerce Control List from the USML should be ready in two to four weeks. "There will be significant grandfathering periods. We are aware of the need to redo long lists of products and long list of technologies." Hirschhorn said. He also said he hoped to propose another definition of "specially designed" in the next two to four weeks. "We think we've finally got it. It's interesting: the rule is very short, but the explanation is very long," he noted. Hirschhorn highlighted BIS plans for increasing enforcement for products moved to the jurisdiction of the Export Administration Regulations (EAR). "The flexibility of the EAR, the availability of

STA [License Exception Strategic Trade Authorization] does not bespeak a lack of accountability for exporters," he said. "If we are going to give you a better system, we do expect you to work with us to cooperate to help ensure compliance. And we're going to be, in many ways, nastier than we have been in the past if we don't get compliance," Hirschhorn warned. He also underscored the difference between individuals who make honest mistakes and those who willfully violate export laws. "It is important to distinguish between 'oops' and 'screw you,'" he said. "If people are going to be wise guys, we're going to treat them accordingly," he added.

* * * Briefs * * *

CHINA: Treasury May 25 released semiannual report to Congress on international economic and exchange rate policies and again declined to name China currency manipulator. "Based on the appreciation of the RMB against the dollar since June 2010, the balance of payments adjustment evidenced in the decline in China's current account surplus, and China's commitments in the G-20 and S&ED that it will move more rapidly to a more market-determined exchange rate system, Treasury has concluded that the standards identified in Section 3004 of the Act during the period covered in this Report have not been met with respect to China," report noted.

BOLIVIA: Bolivia-U.S. Bilateral Investment Treaty will terminate June 10, USTR and State said in Federal Register May 23. BIT will continue to apply for 10 more years to all covered investments existing at time of termination, they noted. Bolivia notified U.S. on June 10, 2011, that it was terminating treaty.

EXPORT ENFORCEMENT: Qiang Hu, aka Johnson Hu, Chinese national and sales manager at MKS Instruments Shanghai, Ltd., was arrested May 23 in North Andover, Mass., for allegedly supplying U.S.-origin pressure transducers to end-users in China without license. He was charged in Boston U.S. District Court with conspiracy to violate EAR and IEEPA. MKS is not target of investigation, Justice said.

MORE EXPORT ENFORCEMENT: Markos Baghdasarian, president of Delfin Group USA, Russian-owned producer of synthetic motor oils in North Charleston, S.C., was arrested May 19 and charged in S.C. U.S. District Court with exporting aviation engine oils and polymer valued at $850,000 to Iran without required Treasury licenses and with making false statements on official government documents.

FCPA: Jean Rene Duperval, ex-director of international relations for Telecommunications D'Haiti S.A.M. (Haiti Teleco), was sentenced May 21 in Miami U.S. District Court to nine years in prison for scheme to launder bribes paid to him by two Miami telecommunications firms (see **WTTL**, March 19, page 4).

OFAC: Genesis Asset Managers, LLP (GAM US) May 21 agreed to pay $112,500 to settle one OFAC charge of violating Iranian Transactions Regulations in August 2007. London-based subsidiary Genesis Investment Management LLP (GIM UK) allegedly purchased approximately $3 million in shares of First Persian Equity Fund, Cayman Islands company that invests exclusively in Iranian securities.

EXPORTING: Obama administration's focus on small and medium-size enterprises as part of its National Export Initiative may be misplaced, new World Bank database suggests. New Exporter Dynamics Database launched May 24 shows large companies dominate export markets in developing and developed countries, with top 1% often accounting for more than half – and sometimes nearly 80% – of total exports. "Expansions in the average size of exporters are typically more important than the addition of new exporters for export growth in the short run," data show.

ARGENTINA: EU asked Argentina for WTO consultations on complaints against Buenos Aires import restrictions that have drawn criticism from other WTO members as well (see **WTTL**, April 2, page 4).

ALL IN THE FAMILY: Overall, 40.5% of all exports and imports go to related parties, including foreign subsidiaries and parents, Census reported May 10 in annual report. Of exports, 28.9% went to such concerns, while 48.3% of consumption imports came to related businesses.

MISCELLANEOUS TARIFF BILL: Senate Finance Committee Chairman Max Baucus (D-Mont.) May 25 opened pending MTB measures for public comment. Comments will be accepted through June 22. Texts and descriptions for 792 MTBs that have been introduced in Senate are available on Finance website.

BRAZIL: Country's agriculture sector has grown rapidly due to land expansion, natural resources and higher yields, but competition hasn't hurt U.S. exports because of growing global market for food, ITC says in May 25 report, "Competitive Factors in Brazil Affecting U.S. and Brazilian Agricultural Sales in Selected Third Country Markets" (USITC Publication 4310). It also cites limits to growth of Brazilian farm sector.