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Ros-Lehtinen Continues to Block Export Control Reform

The Obama administration's push to get Congress to go along with its export control reform initiative and transfer of U.S. Munitions List (USML) items to the Commerce Control List (CCL) still faces a major roadblock from House Foreign Affairs Committee Chairman Ileana Ros-Lehtinen (R-Fla.). "We are ready to work with the executive branch to reach an agreement. However, we will not accept unilateral actions that substantially infringe on or ignore congressional oversight over these important national security matters," she said in her opening statement at a committee hearing Feb. 7 on satellite export controls. Her challenge to the reform effort rebuffs a plea from Chairman of the Joint Chiefs of Staff General Martin Dempsey for Congress to speed up approval of the reforms (see **WTTL**, Jan. 30, page 1).

> Ros-Lehtinen questioned a proposal to transfer USML items into what Commerce officials have called the Commerce Munitions List (CML). "This proposed arrangement raises a number of questions, including: the lack of a statutory basis for the proposed CML; the relationship of the CML to U.S. security assistance authorities; and the elimination of congressional notification and reporting requirements for the export or retransfer of such defense articles," she said.

She also objected to some CML items being eligible for export under the new License Exception Strategic Trade Authorization. "To be effective, however, country exemptions for the export of defense articles must incorporate critical safeguards, including agreement on which foreign parties can have access to controlled items and on foreign cooperation in enforcement. These appear to be missing from the process set out by the administration," she stated.

GAO: Domestic Content Rules Restrict Ex-Im Competitiveness

More and more U.S. firms may become ineligible for financial aid from the Export-Import Bank (Ex-Im) as they fail to meet the bank's domestic content requirement, a Feb. 7 report from the Government Accountability Office (GAO) suggests (GAO Report 12-294). Current rules require bank-backed exports to contain at least 85% U.S. content, but with globalization of the global supply chain, many U.S. exports contain less than that level. "Given varying levels of domestic content by product and industry, Ex-Im may be unable to provide full financing for exports in certain industries if trends continue," GAO declared. The report also noted that numerous congressional imposed mandates on Ex-Im financing make the bank less competitive compared to the export credit agencies (ECAs) of other major industrial countries, known as the G-7. In addition to less flexible domestic content rules, Ex-Im financing is also restricted by mandates

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on carbon-content, environmental impact, small and medium enterprise lending goals, economic impact analysis and congressional notifications, GAO said. It recommended that Ex-Im conduct a systematic study of its domestic content policy to ensure that it meets the goal of creating U.S. jobs while remaining competitive against other ECAs.

> While G-7 countries have agreed to export financing rules through an Organization for Economic Cooperation and Development (OECD) Arrangement, major emerging market countries haven't and are increasing unrestricted financing, a finding also reached by Ex-Im's own competitiveness analysis (see **WTTL**, May 23, 2011, page 1). "Official export credits from emerging economies such as China, India, and Brazil have experienced rapid growth," GAO said.

"As nonparticipants in the OECD Arrangement, these countries can offer terms more favorable than terms under the Arrangement," GAO added. It recommended that Treasury work with other coun-tries to discuss export financing with these emerging nations.

New Iranian Sanctions Increase Risks for TSRA Exports

U.S. exporters that receive licenses from Treasury in the future to sell medical and agriculture products to Iran will face greater risk of not getting paid as a result of new sanctions President Obama imposed on Tehran and the Central Bank of Iran Feb. 6. Licenses issued by the Office of Foreign Assets Control (OFAC) before Feb. 6, including those authorized by the Trade Sanctions Reform and Export Enhancement Act (TSRA), are exempted from the new sanctions under a general license OFAC issued the same day. Nonetheless, it may become increasingly difficult for exporters to find Iranian banks that are not prohibited financial institutions.

> "General License A does permit payment for exports under pre-existing TSRA licenses and other licenses through banks that were previously permitted," a Treasury official told WTTL. "Licenses will continue to be issued. Specific licenses under TSRA after Feb. 6 will continue to exclude authorization for payment through a bank designated under OFAC authorities," he added.

Obama's executive order implements the 2012 National Defense Authorization Act (NDAA), which he signed Dec. 31 (see **WTTL**, Dec. 5, page 1). Compared to sanctions under the Iranian Sanctions Regulations (ISR), which require U.S. financial institutions to reject unauthorized transactions with Iran, the new order requires them to block such transactions. It implements NDAA Section 1245(d)(1), which will bar transactions after Feb. 28 with foreign correspondent financial institutions that knowingly do non-oil business with the Central Bank or other designated Iranian banks and after June 29 with any correspondent banks handling Iranian oil transactions. The president can waive this provision if he determines the country in which an institution is located "has significantly reduced its volume of crude oil purchases from Iran."

The State Department "is on the hook for determining" those targeted banks, the Treasury official said. "I think something should be coming out this month," he added. In addition to screening their proposed transactions against Treasury's designated nationals lists to ensure no prohibited Iranian banks are involved, firms that apply for TSRA licenses for Iran will have to determine whether any non-named banks might have a link to prohibited banks or individuals, the official explained. Despite the repeated imposition of tougher sanctions on Iran in recent years, Treasury continues to approve about 1,200 TSRA licenses annually for Iran. In its quarterly report on TSRA cases from July to September 2011, OFAC said it approved 332 licenses, including 90 for agriculture products, 22 for medicines and 210 for medical devices.

Pace of Trade Growth Slowed in 2011

After the steep jump in U.S. exports and imports in 2010, reflecting the bounce back from the 2009 recession, the pace of trade growth slowed in 2011, with U.S. goods exports increasing

16% compared to 23% in 2010 and imports rising 15% v. 23% the year before (see table). Prospects for 2012 suggest an even slower pace, especially with the uncertainty about European economic conditions. While U.S. exports to China continued to grow faster than imports, they grew just 13% last year compared to 32% in 2010. Imports from China increased just 9% v. 23% in 2010.

Preliminary 2011 vs. 2010 U.S. Merchandise Trade Figures
(in billions)

	2011 Exports	2010 Exports	% Change	2011 Imports	2010 Imports	% Change
Total	$1,498	$1,289	16%	$2,235	$1,936	15%
BY COUNTRY/REGION						
Canada	281	249	13%	317	276	15%
Mexico	198	163	21	263	230	14
European Union (27)	269	240	12	368	320	1%
Germany	49	48	2	98	83	18
France	28	27	4	40	39	3
United Kingdom	56	48	17	51	50	2
Japan	66	61	8	129	120	8
China	104	92	13	399	365	9
NICs: HK, Singapore, Taiwan, Korea	137	121	13	121	107	13
South/Central America	169	139	22	173	131	32
BY SECTOR						
Agriculture	126	108	17	107.4	91.7	17
Aircraft, parts, engines	80.1	71.8	12	35.4	31.3	13
Autos, parts, engines	132.5	112	18	254.1	225.2	13
Clothing	3.3	3.2	3	85.5	78.5	9
Chemicals-Organic	43.5	37.5	16	54.2	45.8	18
Chemicals-Inorganic	13.3	11.9	12	17	13.8	23
Petroleum, total categories	113	70.8	60	439	336	31
Iron & Steel	18.5	15.7	18	32.9	24.4	35
Metalworking Machines	7.7	6.5	18	9.7	6.4	52
Pharmaceuticals	45.4	46.6	-3	91.9	85.5	7
Semiconductors	43.8	47	-7	37.9	29.5	28
Telecommunications	35.8	31.9	12	48.5	47.6	2
Wood Products	2	2	0	6.8	6.9	-1

The trade balance with South/ Central America went from an $8 billion surplus in 2010 to a $4 billion deficit in 2011. The major cause was an increase in the trade deficit with Venezuela and Colombia due to increased prices for oil and raw materials.

The increase in the 2011 U.S. trade deficit for manufactured goods to $737 billion reflects both the growth in U.S. manufacturing, which drew in more industrial supplies and capital goods, as well as a return to shopping by U.S. consumers, especially for autos.

The American drug industry, which 40 years ago was a major contributor to the U.S. trade surplus, continues to be a major cause of the trade deficit, as it moves more production offshore, and generic drug imports rise. In 2011, the industry registered a $46.5 billion deficit. For services, the 2011 surplus of $179 billion was the highest on record. Services exports in 2011 grew 10.2% from 2010 to $604.9 billion. For 2011, services imports totaled $425.9 billion, up $22.8 billion or 6% from 2010.

"Zeroing" Deal Keeps Prospective Application of Tariff Changes

Faced with the prospect that a World Trade Organization (WTO) arbitrator was prepared to authorize millions of dollars in retaliatory tariffs against American exports, the U.S. agreed Feb. 6 to eliminate the use of "zeroing" in antidumping administrative reviews. The agreement with the European Union (EU) and Japan settles their long-running WTO complaints against the practice and sets the stage for settlements of similar complaints by Brazil, Mexico, South Korea and China. Washington agreed to a strict timetable for Commerce to sign by Feb. 13 a final rule of a regulation it proposed in December 2010 to stop using zeroing in administrative review cases and for the U.S. Trade Representative (USTR) and Commerce to complete within four months the Section 129 process for recalculating and publishing new dumping margins for EU and Japanese imports that were the subject of the WTO disputes. Based on previous WTO rulings, the U.S. had already ended zeroing in original investigations.

> In bowing to repeated WTO rulings against "zeroing," the U.S. was able to win the concession that any cash deposit revisions would only apply prospectively. This provision won grudging acceptance of the deal by United Steelworkers President Leo Gerard. "One count of our core objectives has been met with these announced agreements – a prospective application of any change – meaning no retroactivity – while avoiding retaliation is certainly a very positive outcome," he said.

While the deals promise that Commerce will issue a final regulation ending zeroing, they don't say whether the department will address objections to its 2010 proposal (see **WTTL**, March 21, 2011, page 1). In particular, the accords don't mention how zeroing with be treated in "sunset" reviews, an issue in the EU and Japanese complaints. Nor did they mention exceptions to the end of zeroing that Commerce had included in the proposal. A senior USTR official said answers to these questions will have to await Commerce's publication of a final rule.

The official said the final rule will apply to some pending reviews. Except for a court challenge to the order on ball bearings from Japan, the agreements don't address how litigation might affect the subject cases. "I will continue to pay close attention to the implementation of the U.S. new regulation so as to ensure the abolishment of zeroing and the compliance with the WTO recommendations and rulings," pledged Japanese Trade Minister Yukio Edano.

The four-month deadline for Commerce to complete the Section 129 process for subject imports seems like a tough schedule to meet, but a USTR official told WTTL the department can achieve that goal. "Commerce has indicated that they are prepared to do that," he said. "The list of cases and reviews was discussed and worked out in advance with Commerce," he added.

The U.S. dragged its feet in complying with WTO rulings against zeroing because of strong objections from import-sensitive domestic industries and unions. It had also hoped to get the WTO to amend its rules to allow zeroing as part of the Doha Round negotiations. The U.S. found that there was absolutely no support for such a change among the majority of WTO members, and the collapse of the round ended that path to resolution of the disputes. Nonetheless, the USTR's office said: "The United States will continue to press in ongoing WTO negotiations for affirmation that zeroing is consistent with WTO rules."

* * * Briefs * * *

<u>OFAC</u>: <u>Teledyne Technologies</u> in Thousand Oaks, Calif., and its subsidiary, <u>Teledyne RD Instruments</u> in Poway, Calif., agreed Feb. 7 to pay $30,385 to settle OFAC charges of violating Sudanese Sanctions Regulations (SSR) on two occasions in 2007. OFAC alleged Teledyne indirectly exported Acoustic Doppler Current Profilers (ADCP) to Sudan valued at $122,766. OFAC said Teledyne voluntarily self-disclosed matter and alleged violations constituted non-egregious case.

<u>FCPA:</u> <u>Smith & Nephew PLC</u> in London, and its U.S. subsidiary, <u>Smith & Nephew Inc.</u> in Memphis, Tenn., Feb. 6 settled SEC and Justice FCPA charges that medical device company's subsidiaries bribed public doctors in Greece. Smith & Nephew PLC agreed to pay $5.4 million in disgorgement and prejudgment interest to SEC, and Smith & Nephew Inc. will pay $16.8 million fine to settle parallel criminal charges as part of deferred prosecution agreement with Justice.

<u>NEGOTIATIONS</u>: National Foreign Trade Council issued report Feb. 8 urging U.S. to seek plurilateral deals in trade facilitation, services, health care, clean technologies and cross-border data flows. It identified four WTO-consistent paths for achieving such deals, citing as examples several past plurilateral accords.

<u>TPP</u>: U.S. and Japan held first "senior-level bilateral consultation" Feb. 7 on Japan's interest in Trans-Pacific Partnership (TPP) negotiations. Japanese underscored Tokyo's readiness to engage on range of issues, USTR reported. Follow-up working-level meeting will be held Feb. 21-22 in Washington.