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Wolf “Optimistic” That Congress Will Back Export Reforms

Bureau of Industry and Security (BIS) Assistant Secretary Kevin Wolf says he is “quite optimistic” that Congress will support the administration’s plans for legislative changes to implement the final phase of its export control reform initiative. Export reform is not a partisan issue, and the administration’s goals are the same as some Republicans’, he told the agency’s Materials Technical Advisory Committee (MTAC) Feb. 10.

“I don’t know how things are going to work with the Hill, good or bad,” he said. “I’m not saying I’m pessimistic; quite the contrary, I’m quite optimistic about ultimate dealings with the Hill,” he added.

Many aspects of the export reform initiative “are some of things that are front and center on some of the Republican agenda: eliminating unnecessary red tape, increasing national security, encouraging job growth, eliminating redundant and unnecessary regulations,” Wolf stated. “Those all happen to be the same objectives of this administration,” he told MTAC.

Court Says ITA Can Reopen AD Cases When Fraud Suspected

Commerce’s International Trade Administration (ITA) can use its authority to conduct “changed circumstances” reviews to reopen the record in antidumping and countervailing duty cases when there is evidence of fraud in an investigation, the Court of Appeals for the Federal Circuit (CAFC) ruled Feb. 7 in *Home Products International, Inc., v. United States*. (Case 2010-1184). The ruling contradicts the assertions of some ITA lawyers that the agency doesn’t have the legal authority to investigate fraud in trade cases (see **WTTL**, Feb. 7, page 1). It also comes the same week that ITA published new rules in the Federal Register imposing tougher certification requirements on parties that file documents in such cases.

The CAFC decision involved a challenge to the second administrative review of the AD order on metal ironing boards from China. In the third administrative review, ITA determined that certain submissions by one respondent “were unreliable and inaccurate” but did not say there was actual fraud. Nonetheless, it used “adverse facts available” to set the dumping margin. The petitioner in the case, Home Products, claimed the same inaccuracies were in submissions in the second administrative review and wanted the record in the case reopened. ITA refused that request, and Court of International Trade Judge Leo Gordan backed the agency’s decision. The CAFC disagreed and reversed Gordon, ordering him to remand the case to ITA. “As described by Commerce in the third administrative review, the evidence of misrepresentations by Since



Hardware [the respondent] in the third administrative review is quite substantial,” the CAFC decision notes. The appellate ruling cites an earlier CAFC ruling in *Tokyo Kikai* where it “established that Commerce has inherent authority to reopen a case to consider new evidence that its proceedings were tainted by fraud.” In *Tokyo Kikai*, it had acknowledged that fraud doesn’t fit neatly into the category of changed circumstances, but it said circumstances that led to the determination had “changed” because the true circumstances, previously concealed by fraud, have come to light. “Nonetheless, we held that “administrative agencies possess inherent authority to reconsider their decisions, subject to certain limitations, regardless of whether they possess explicit statutory authority to do so,” the decision states.

“Strangely, the government argues that Commerce has no authority to consider allegations of fraud. While the statute does not in terms confer such authority, it is necessarily inherent in the authority of any administrative agency, as our decision in *Tokyo Kikai* makes clear. Contrary to Commerce’s argument, the authority to reopen is not limited to cases in which a determination of fraud has been made in a separate proceeding,” the ruling declares.

Kirk Refuses to Be Pinned Down on Panama, Colombia Pacts

U.S. Trade Representative (USTR) Ron Kirk repeatedly avoided the efforts of Republicans on the House Ways and Means Committee Feb. 9 to get him to be specific about when the Obama administration will send the Panama and Colombia free trade agreements (FTAs) to Congress for approval or to say what specifically has to be fixed with those pacts to move them toward congressional consideration. “I can tell you today that the president has directed me to immediately intensify engagement with Colombia and Panama with the objective of resolving the outstanding issues as soon as possible this year and bringing those agreements to Congress for consideration immediately thereafter,” Kirk testified. He also told the committee that he was sending a team of USTR staffers to Colombia the week of Feb. 14 to begin this work.

Republican frustration with the administration’s slow action on the FTAs was clear in the questioning of Kirk. “The time for generalizations has past,” declared Ways and Means Chairman Dave Camp (R-Mich.). Rep. Wally Herger (R-Calif.) underscored the GOP skepticism about Kirk’s promise to work on the Colombia and Panama accords, quoting verbatim from statements that Kirk and President Obama have made for two years about action on the two FTAs.

Rep. Kevin Brady (R-Texas), who chairs the Ways and Means trade subcommittee, warned Kirk that the House won’t vote on permanent normal trade relations (PNTR) status for Russia – one of the administration’s top trade priorities – until after the president signs Colombia and Panama implementing legislation. “There is virtually no chance that the Russian PNTR will be moved ahead of Panama and Colombia,” he declared. Besides Russian PNTR, renewal of Trade Adjustment Assistance (TAA) and the Andean Trade Preferences Act (ATPA) have also gotten caught in the middle of the rhetorical fight over the pending FTAs. The short extensions of the programs expired Feb. 12 without congressional action. Democrats and Republicans blamed each other for the laws’ lapse. Without a commitment from the administration on specific action items and a clear deadline for resolving any issues with the pending FTAs, “other trade measures – such as TAA and ATPA, which we sought to extend this week – are now in limbo, and American workers will suffer as a result,” Camp said in a Feb. 11 statement.

2010 Saw Sharp Rebound in Exports, Imports, Deficit

On Wall Street, the sharp V-shaped recovery in U.S. exports and imports in 2010 from 2009 might be called “a dead-cat bounce.” After goods exports dropped 18% and imports slide 26% in 2009, the deepest decline since the Great Depression, goods exports in 2010 surged 21% and imports jumped 23%. The increases, however, still didn’t bring trade back to the pre-recession level of 2008. Almost every manufacturing sector enjoyed last year’s trade rebound, with the

exception of civil aircraft exports which drew total aviation industry exports down 4% from 2009 (see table). 2010 was also a strong year for U.S. services exports, which grew 8% to a

record \$542.8 billion and contributed a surplus of \$148.7 billion to the U.S. trade balance. Increases occurred in almost all major service sectors, including professional, financial and insurance services, travel, royalties and license fees, passenger fares and transportation.

A large part of trade in 2010 was driven by the post-recession rebound in global auto sales, which also helped U.S. car firms retreat from the brink of collapse. Exports of auto and auto parts rose 37% from 2009, as imports jumped 43%.

Along with more car sales, the increase in the volume and price of oil trade, saw U.S. petroleum imports surge 32%. The combined traded deficits in autos and petroleum of \$378.4 billion accounted for 76% of the total U.S. trade deficit in goods and services combined.

U.S. exports to China in 2010 of \$92 billion grew almost 50% faster than imports from China of \$365 billion but still left a goods trade deficit of \$273 billion. The growth in exports to China was led by increases in sales of passenger cars, industrial machines and soybeans. The rise in imports was spurred by imports of computers and accessories, household goods

and telecommunications equipment. At the same time, exports to key countries in Asia also outpaced imports, with the U.S. enjoying a trade surplus with Hong Kong, Taiwan, Singapore and South Korea combined.

Preliminary 2010 vs. 2009 U.S. Merchandise Trade Figures (in billions)						
	2010 Exports	2009 Exports	% Change	2010 Imports	2009 Imports	% Change
Total	\$1,289	\$1,068	21%	\$1,936	\$1,575	23%
BY COUNTRY/REGION						
Canada	249	205	21	276	226	22
Mexico	163	129	26	230	177	30
European Union (27)	240	221	9	320	282	13
Germany	48	43	12	83	71	17
France	27	26	4	39	34	15
United Kingdom	48	46	4	50	47	6
Japan	61	51	20	120	96	25
China	92	69.5	32	365	296	23
NICs: HK, Singapore, Taiwan, Korea	121	90	34	107	87	23
South/Central America	139	110	26	131	108	21
BY SECTOR						
Agriculture	108	94	15	91.7	81.6	12
Aircraft, parts, engines	71.8	74.8	-4	31.3	30.6	2
Autos, parts, engines	112	81.7	37	225.2	158	43
Clothing	3.2	2.9	10	78.5	69.3	13
Chemicals-Organic	37.5	27.8	35	45.8	42.2	9
Chemicals-Inorganic	11.9	10.2	17	13.8	10.8	28
Petroleum, total categories	70.8	49.2	44	336	254	32
Iron & Steel	15.7	12	31	24.4	18.2	34
Metalworking Machines	6.5	5.3	23	6.4	5.7	12
Pharmaceuticals	46.6	46.1	1	85.5	81.5	5
Semiconductors	47	37.5	25	29.5	21.3	38
Telecommunications	31.9	28.7	11	47.6	37.3	28
Wood Products	2.0	1.7	18	6.9	6.2	11

White House to Send Korea FTA to Congress within Month

President Obama "intends to submit the U.S.-Korea trade agreement to Congress in the next few weeks and looks forward to working with you to secure its approval this spring," USTR Ron Kirk told the Ways and Means Committee Feb. 9. Later, he agreed that a "few weeks" means

less than a month. Plans for sending the Korean agreement to Congress received a boost Feb. 10 when Kirk's office released the final legal texts spelling out the agreements the U.S. and Korea reached in December to modify the accord plus an exchange of letters between Kirk and Korean Trade Minister Jong-Hoon Kim, providing details on other parts of the agreement.

Separately, Ways and Means Chairman Dave Camp (R-Mich.) has asked the International Trade Commission to update its assessment of the impact of the motor vehicle-related provisions in the Korus FTA, including the supplemental autos agreement, on the U.S. passenger vehicle sector.

According to annual trade figures released Feb. 11, Korea was the seventh largest export market for the U.S. and seventh largest source of imports in 2010. The U.S. exported \$38.8 billion in goods to Korea and imported \$50.6 billion, resulting in a \$11.7 billion U.S. trade deficit, almost all of which was due to auto trade (-\$10.8 billion). Korea exported \$6.6 billion in passenger cars to the U.S.; \$2 million in trucks; and \$5.2 billion in parts. U.S. car exports to Korea were just \$359 million; \$49 million in trucks and \$512 million in parts.

* * * Briefs * * *

COMPUTERS: President Obama notified Congress Feb. 7 that BIS will revise computing capability threshold for required notification of exports of high-performance computers to 1.5 weighted TeraFLOPS and also will end restrictions on exports of these computers to Albania and Croatia.

EXPORT ENFORCEMENT: Sabre Defence Industries LLC, a Nashville, Tenn., firearms manufacturer, its owner and four of its employees have been indicted on AECA charges related to firearms trafficking. Indictment was unsealed Feb. 8. Sabre's offices were raided last year by ATF agents and its operations are now up for auction by Cadence Bank.

CHINA CURRENCY: Bipartisan group of lawmakers in House and Senate reintroduced legislation (H.R. 639) to make currency manipulation subject to countervailing duty rules.

FCPA: Maxwell Technologies Inc. of San Diego, Calif., Jan. 31 agreed to pay over \$14 million to settle SEC and Justice charges that it violated FCPA. Maxwell, manufacturer of energy storage and power delivery products, "repeatedly paid bribes to Chinese officials in order to obtain and retain sales contracts for high voltage capacitors from several Chinese state-owned entities," said SEC complaint filed in D.C. U.S. District Court. Firm has agreed to pay more than \$6.3 million to settle SEC charges. At same time, it reached deferred prosecution agreement with Justice, agreeing to pay \$8 million penalty.

MORE FCPA: Tyson Foods, Inc., the chicken production company, settled SEC charges Feb. 10 that it violated FCPA. Tyson's subsidiary, Tyson de Mexico, made improper payments during fiscal years 2004 to 2006 to two Mexican government veterinarians responsible for certifying its chicken products for export sales, according to SEC complaint. Tyson agreed to pay more than \$1.2 million in disgorgement plus pre-judgment interest. At same time, it reached deferred prosecution agreement with Justice and agreed to pay \$4 million criminal penalty.

EGYPT: World Customs Organization urged customs agencies Feb. 9 to increase their vigilance at borders for cultural artifacts that may be smuggled or exported illegally from Egypt using current unrest in country as cover. "I am appealing to the global customs community to be extremely vigilant at borders as Egypt's cultural heritage could be endangered," WCO Secretary General, Kunio Mikuriya said in statement.

CHINA: U.S. asked WTO Feb. 11 to establish dispute-settlement panels to hear complaints against: (1) Beijing's antidumping and CVD orders on imports from U.S. of grain-oriented flat-rolled electrical steel and (2) discriminatory and restrictive treatment of U.S. suppliers of electronic payment services.

DRILL PIPE: ITC split 3-3 Feb. 7 in final injury determination in AD/CVD cases against drill pipe and drill collars from China. Three commissioners found threat of injury to U.S. industry and three found no injury. Imports during 2009 period of investigation dropped 38% from year before.