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Senate Panel Approves UK, Australia Defense Treaties

With the Senate Foreign Relations Committee having recommended their ratification Sept. 21, the pending U.S. defense treaties with the United Kingdom (UK) and Australia could get Senate approval before the Senate adjourns for the elections in early October. The committee's support for the pacts relied on its passage of an amended version of legislation (S. 3581) that the committee's Ranking Republican Sen. Richard Lugar (R-Ind.) introduced to provide the legal authority to continue to enforce defense export controls (see **WTTL**, July 19, page 4).

"Senator Lugar and I crafted these resolutions, and the accompanying implementing legislation, to ensure that our law enforcement officials will have the tools they need to catch and prosecute anyone who might try to abuse the treaty regimes," Committee Chairman John Kerry (D-Mass.) said in a statement after the voice vote approval of the treaties and the implementing bill. "These measures will also fully preserve long-standing congressional prerogatives in the oversight of military assistance and cooperation," he added.

"I urge the Senate to promptly approve these treaties and the legislation needed to implement them," he said. Kerry said he will work with lawmakers in the House to get the implementing legislation approved. The two trade treaties were negotiated by the Bush administration and have been awaiting Senate ratification for almost three years. The initial hearing on the accords was held when Vice President Biden chaired the Senate committee. Concerns were raised then about the ability of Justice to prosecute parties who violate the treaties.

The treaties will allow the export of certain defense items to members of the defense "community" in the two countries for specific programs. The treaties have been criticized by some in industry because of the large number of defense articles excluded from their coverage, the limited number of defense programs eligible to receive articles license-free and the hurdles that firms in the UK and Australia face in becoming designated members of the "community."

Daley Warns of Impact of Tea Party on Trade Legislation

The expected arrival of more Republicans in Congress after the November elections will not necessarily improve chances for trade legislation, because many of the new GOPers are Tea Party backers who oppose trade deals just as some Democrats do, former Commerce Secretary William Daley told **WTTL** in an exclusive interview Sept. 22. The idea that more Republicans, especially in the House, will help pass pending free trade agreements "is totally wrong," he



said. “They are not Republicans who will buy into this trade agenda,” said Daley, who is now vice chairman of JP Morgan Chase. “The Tea Party people are as vehement generally against globalization as the liberal Democratic union people are,” Daley said. “So there’s a coalition that is going to come together,” he said. “We know where the Democrats are, the vast majority of them. So this change that is coming is not necessarily good for trade,” he told WTTL.

Even a Republican majority won’t assure passage of the FTAs with Korea, Panama and Colombia, he suggested. He noted the one-vote margin for the Central American FTA when both the House and Senate were in Republican hands. Daley said part of the problem is the lack of moderates in the Republican Party.

The key to getting these deals approved will be presidential commitment, he argued. “If the president doesn’t truly believe it and fight for it and run the risk of losing, it will never pass,” he said. He noted that Obama has “put the marker down” on the Korean FTA and the administration will come out strong for it in the spring. Daley, who was called in by President Clinton in 1993 to honcho the administration’s push in Congress for passage of NAFTA, said the focus of the debate on the FTAs has to change. “It has to change from the economics of these deals to the foreign policy; the importance of Korea to us and our security and their security,” he said. “We have to get more foreign policy people in this,” he added.

EU Decides Not to Appeal WTO Ruling on Its ITA Compliance

Because it thinks a World Trade Organization (WTO) panel ruling in August on its compliance with the Information Technology Agreement (ITA) endorsed its interpretation of the pact, the European Union (EU) decided Sept. 21 not to appeal the panel’s decision and allowed the WTO Dispute-Settlement Body (DSB) to adopt the panel’s report. “There are certain aspects where we would have preferred the panel to rule differently,” said EU trade spokesman John Clancy. The EU, instead, will focus on implementation, he said (see **WTTL**, Aug. 23, page 3). The EU in October likely will ask the DSB for a reasonable period of time to come into compliance.

At first glance, the ruling appeared unfavorable to the EU, and the U.S. claimed victory in the dispute. The panel, however, confirmed that the ITA does not automatically grant tariff-free status to all new products. It was not as simple a trade matter as the U.S., Japan and Taiwan had hoped, a trade expert said.

A more careful reading of the panel report reveals that the key EU argument was accepted, the expert argued. The panel confirmed the need for a case-by-case analysis of products, he noted. For example, not all flat-panel display devices necessarily fall within the scope of the EU concession, he suggested. Similarly, the addition of new functionality to set-top boxes may in the future result in a product not meeting the description of a covered set-top box.

Not a single new product has been added to the agreement since it came into force, the EU said. “The parties should therefore expand the product coverage, and not leave the development of the agreement or its update to the WTO adjudicatory bodies,” it said. “Such review would increase transparency and predictability,” it added. Nontariff barriers should also be tackled because tariff barriers are no longer the largest burden for manufacturers, the EU said. The EU is working to come into compliance for two of the disputed products because of a European Court of Justice ruling challenging its policies. Most of the work on flat panel displays is done, one source said. Other contested measures are no longer enforced or have been revoked. The EU is in the process of amending legislation for multifunctional printers and evaluating what the ruling requires for set-top boxes with a communication function.

Revised China Currency Bill Heads to House Vote

Legislation to give Commerce authority to declare China’s undervalued currency a counter-vailable subsidy is expected to be voted on and passed by the House probably on Sept. 29 or 30

following Ways and Means Committee approval Sept. 24 of an amended version of the bill (H.R. 2378). Despite some testy colloquy between Committee Chairman Sander Levin (D-Mich.) and Rep. Kevin Brady (R-Texas) over the politics behind the measure, the committee approved the bill by a voice vote. That allowed GOP members to avoid having to go on the record against it. But Ranking Republican Rep. David Camp (R-Mich.) said the changes made in the bill addressed his concerns about the measure and prompted him to support it now.

Levin's staff, in consultation with administration trade lawyers, produced a substitute amendment that significantly changed the original version of the legislation introduced by Reps. Tim Ryan (D-Ohio) and Tim Murphy (R-Pa.). The main goals of the changes were to make the bill consistent with WTO rules and to give Commerce discretion to decide when a country's currency should be counted as a subsidy that would be subject to a countervailing duty (CVD). "Importantly, the bill, as amended, preserves Commerce's authority – and responsibility – to consider each case on its facts and make a determination as to whether all the necessary legal elements of an export subsidy are met," Levin said.

While the bill is likely to win House approval, its future remains in doubt because of uncertainty about Senate consideration of it or separate legislation sponsored by Sen. Charles Schumer (D-N.Y.). The Obama administration has carefully avoided taking a public stand on any currency legislation, and veto of a bill still looms as a possibility.

According to Ways and Means staff, Commerce would still be able to apply current CVD law to determinations on currency, but would not be able to use the general availability of a subsidy as a reason to refuse to consider currency in a case. In this regard, the measure would contravene the department's recent rulings in CVD cases against aluminum extrusion and coated paper (see **WTTL**, Sept. 6, page 3). In an effort to be WTO-compliant, the revised bill drops original language to use currency in the calculation of antidumping rates and the mandatory application of the bill to Commerce. It provides a four-part test Commerce must use to determine that a currency is "fundamentally undervalued."

Doha Round Impasse Reflects Lack of Interest, Punke Says

Insufficient motivation and interest in the entire Doha Round process have been major contributors to the current impasse in negotiations, Deputy U.S. Trade Representative (USTR) Michael Punke reportedly told a luncheon in Geneva Sept. 22, according to attendees at the supposedly off-the-record gathering. Punke, they reported, said the rising stock and clout of China, Brazil and India since talks started almost 10 years ago have changed the negotiating landscape.

Most of Punke's talk was the standard USTR stump speech, but he expressed frustration in particular with China, one source reported. He also gave limited examples of what the U.S. wants in the round, participants said. The U.S. wants China to apply the same tariffs on chemicals as the U.S. applies; Brazil to join the Information Technology Agreement, and India to adhere to Uruguay Round agreement on pharmaceuticals, they reported.

Punke's comments reflect a common theme U.S. officials are taking toward the Doha Round and in particular their effort to put the onus on Brazil, China and India to offer greater concessions in the talks. USTR Ron Kirk followed the same script speaking Sept. 22 to the Global Services Summit in Washington. "You can't conclude many things about trade over the last 10 years, but it has been really good for these three economies," he said.

As he has before, Kirk suggested that the mandate of the Doha Round might no longer apply. "I don't think it makes sense to try and conclude the Doha Round on 10-year-old data that really looks nothing like the world looks like now," Kirk said. Kirk and Punke both tried to sound tough on China. Kirk said U.S. business has told him "it ain't a fair fight" with China. In regard to the U.S. request for WTO consultations with China on its restrictions on foreign

credit card providers, Kirk said, “All we’re asking China to do is play by the rules; get your thumb off the scale; let us go in, compete equally, and don’t create competitive advantages.”

Russia’s WTO Accession Bid Regains Legs

The first substantive talks in more than a year on Russia’s bid to join the WTO showed new momentum and energy but also continuing concerns about Moscow’s agriculture and tariff policies, according to sources close to the talks. “The mood is good,” one official said after informal consultations between Russian officials and members of the accession working party Sept. 21. He noted that the Russians were open, engaged and objectively responded to questions. They also committed to provide future responses in writing.

Despite continuing friction between the U.S. and Russia over Moscow’s restrictions on imports of U.S. poultry, American officials appear to be keeping President Obama’s promise to Russian President Medvedev in June to help move the accession talks forward (see **WTTL**, June 28, page 2). The U.S. urged Russia to show transparency as the accession process gains momentum, another official reported. The officials also reported that Washington is working with Russia on sanitary and phytosanitary measures.

The Russians also clarified how their trade policies will be affected by Russia’s customs union with Belarus and Kazakhstan. Part of the reason for the one-year stall in the talks was a Russian announcement that it wanted to join the WTO with its two former republics and then its withdrawal of that announcement. “It is an individual accession,” one trade official said.

The Russians submitted a new draft negotiating text that explains the impact the customs union’s rules, legislation, procedures, practices, customs and common external tariff will have on the August 2008 draft report of the WTO working party. The new text covers quantitative import restrictions including prohibitions, import licensing systems, customs valuation, balance of payments as well as free trade and customs union agreements. Russian Deputy Minister for Economic Development and Trade Maxim Medvedkov said the draft text hasn’t changed the substance of the country’s previous commitments to the WTO, one source reported.

The talks revealed continuing objections to Russia’s trade policies. EU officials reportedly expressed concern about Russian trade measures, including substantial tariff increases on imports of live pigs and cars, and new export duties on copper and nickel. Japan shared European concerns on car tariffs, saying the tariffs went against the spirit of the G-20 statement to avoid protectionism and also a Japan-Russia bilateral agreement. The Japanese also said they are concerned about Russia’s wheat export restrictions. Canada, Taiwan, Saudi Arabia, Colombia, Argentina, Brazil and Australia also raised objections to various Russian trade measures, while Georgia questioned a provision in the customs union that allows a member to impose a unilateral import restriction for six months.

* * * Briefs * * *

TRADE PEOPLE: World Bank has appointed Selina Jackson to be special representative to UN and WTO in Geneva. She has been VP for international public affairs for UPS and was rated one of most effective lobbyists in Washington by *Washingtonian Magazine*. She starts in Geneva in mid-October and can be reached at sjackson2@worldbank.org or +41 22 748-1010.

ANTIBOYCOTT: Three foreign subsidiaries of Thermon Manufacturing, producer of heat-tracing technology in San Marcos, Texas, have settled BIS charges of violating U.S. antiboycott laws. Thermon UK, Thermon Europe and Thermon Far East agreed pay a total of \$32,500 for 13 violations, while neither admitting nor denying allegations. Last year, these companies and two other subsidiaries settled BIS and OFAC charges of exporting without licenses (see **WTTL**, Sept. 28, 2009, page 3).

EDITOR’S NOTE: Effective Jan. 1, 2011, price of **WTTL** will increase to \$697 for print or electronic edition. Additional copies remain \$100 each. Combination print and electronic subscription will be \$797.