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# Washington Tariff & Trade Letter®

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## Some in Congress Think Export Reforms Moving Too Fast

The Obama administration's push to complete export control reforms this year, including enactment of legislation to implement Phase III of the plan, is getting resistence from congressional sources who think the process is moving too fast. "There is concern that we are moving too fast on Phase III and pressing them too quickly to deliver Phase III legislation this year," Brian Nilsson, the White House National Security Council staffer who is chairing the interagency task force working on the plan, told the Defense Trade Advisory Group (DTAG) July 7.

Nilsson said the administration has spent a lot of time with Congress explaining its plans and consulting. "I have been up there 18 times since the end of January to talk about aspects of what we have in process," he said.

"When we first went up, there was skepticism from a lot of quarters because, part of it, there is not as much awareness. Export controls are very much in the weeds. There are not a lot of people who focus on this, so the initial challenge was just education about what the process is," Nilsson said. "I think it has been fairly favorably received for Phase I and II, and that we need to make reforms," he added. "Where I think there are concerns is about our focus on Phase III," Nilsson conceded (see **WTTL,** July 5, page 1).

Despite these concerns, Congress did agree to include some of the enforcement goals of the reform plan in the recently signed Iran Sanctions Act. That measure included provisions harmonizing criminal penalties for violations of the UN Participation Act, the Arms Export Control Act and the Trading with the Enemy Act. "So in that regard, we already have our first piece of export control reform legislation passed," Nilsson told the DTAG.

"The reason why we have such an aggressive timeline is because the task force reports directly to the [Cabinet] deputies...and they report to the principles," Nilsson said. "So they are driving us from the top. They think having an aggressive schedule will keep us moving," he said. "The idea is to ensure we keep the momentum going."

## Obama Boasts about Results of National Export Initiative

President Obama took some of the credit July 8 for the strong rebound in U.S. exports, saying the improved trade picture was aided by his National Export Initiative (NEI). "Our efforts are off to a solid start," he said at an event where he named the new members of the President's Export Council (PEC). "American exports grew almost 17% over the first four months of this



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year compared to the same period last year. Part of this, of course, is due to the global recovery. But we're also moving forward on improving conditions for America's exporters. And since we launched the National Export Initiative, we've made progress across its five objectives," he said. In addition to the NEI, Obama noted his decision to move forward with the Korean Free Trade Agreement (FTA) and his desire "to deepen and broaden our relations with Panama and Colombia." He said the administration is working to resolve outstanding issues with the FTAs with those two trade partners and "submitting them as soon as possible for congressional consideration."

> Obama acknowledged that one of the goals of the NEI is to deflect the public debate over trade toward a common agreed agenda. "The bottom line is this. For a long time we were trapped I think in a false political debate in this country where business was on one side, labor was on the other," the president said.

"There were partisan divides. The argument was either you were pro-trade or you were anti-trade. What we now have an opportunity to do is to refocus our attention where we're all in it together. Businesses, workers, government -- everybody is focused on the same goal," he said.

After 18 months in office, Obama finally got around to relaunching the PEC and named Boeing Chairman, President and Chief Executive Officer (CEO) Jim McNerney to chair it and Xerox Corporation Chairman and CEO Ursula Burns to serve as Vice Chair. The other PEC members he appointed are: Mary Andringa, president and CEO of Vermeer Corporation; Stephanie A. Burns, chairman, president and CEO of Dow Corning Corporation; Scott Davis, chairman and CEO of UPS; Richard L. Friedman, president and CEO of Carpenter & Company; Gene Hale, president and founder of G&C Equipment Corporation; and C. Robert Henrikson, chairman, president and CEO of MetLife, Inc.

Also named are: William Hite, general president of United Association and member of the AFL-CIO Executive Committee; Robert A. Iger, president and CEO of The Walt Disney Company; Charles Kaye, co-president of Warburg Pincus; Jeffrey Kindler, chairman and CEO of Pfizer; Andrew Liveris, president, chairman and CEO of Dow Chemical Company; Robert A. Mandell, chairman and CEO of Greater Properties; Alan Mulally, president and CEO of Ford Motor Company; Raul Pedraza, founder and president of Magno International L.P.; Ivan Seidenberg, chairman and CEO of Verizon; Glenn Tilton, chairman, president and CEO of UAL Corporation; James S. Turley, chairman and CEO of Ernst & Young; Patricia Woertz, chairman, president and CEO of Archer Daniels Midland Company.

## Treasury Currency Report Finds Many Countries Intervening

The difference between China's "heavily managed exchange rate" and the "managed exchange rate" of other countries is hard to detect in the semiannual report Treasury issued July 8 on international exchange rate policies. Nor does it make clear when currency management becomes manipulation. The report identifies several countries that have "managed floating exchange rates," some that have intervened in currency markets to prevent volatility and three, including China, that peg their currency to the dollar. Yet, according to the report, none of these measures constitute manipulation. China's currency, it says, is "heavily managed."

> While Chinese exchange rate policies have garnered the most political attention in Washington because of the huge trade deficit the U.S. runs with China, the report notes that countries such as Brazil, India and Malaysia have "managed floating exchange rates" that keep their currencies within predefined bands or prevent sharp fluctuations. It also identified countries that intervened in the last year in the exchange-rate market for their currencies for various reasons, including Singapore, South Korea, Taiwan, Russia and Switzerland.

The decision not to tag China as a currency manipulator was anticlimactic after statements by Treasury Secretary Tim Geithner praising China's decision to allow more flexibility in the renminbi and his testimony to the Senate Finance Committee (see **WTTL**, June 28, page 3). In a statement issued with the currency report, Geithner said, “What matters is how far and how fast the renminbi appreciates.” Not only did the report not call China a currency manipulator, it hedged its assessment that its currency is undervalued. It merely says various economic indicators “together suggest that the renminbi remains undervalued.”

## EU Decries Delay in WTO Ruling on Boeing Subsidies

The European Union (EU) is upset that it will have to wait until September to get a World Trade Organization (WTO) report on its complaint against U.S. subsidies for Boeing. The EU has hoped that the WTO would find Boeing getting subsidies just as it found Airbus getting aid and could use such a report in negotiations with Washington over the future of government help for civil aviation manufacturers (see **WTTL**, July 5, page 3).

> The European Commission (EC), the EU’s administrative arm, confirmed July 8 that the chairman of the WTO dispute-settlement panel hearing the complaint about Boeing has informed the U.S. and EU that the panel’s confidential interim report will be delayed until mid-September at the latest. “The European Commission is extremely disappointed to learn of this additional delay into the issuing of the interim panel report,” an EC statement said.

“The time lag between this case, and the United States' case against support to Airbus has constantly increased over the six years this dispute has been running and the gap is now at nearly a year,” it added. “It creates the wrong impression that Airbus has received some WTO incompatible support, whereas Boeing has not. Only when we have received both panel reports will both sides have a more complete picture of the dispute,” it stated.

Meanwhile, members of Congress are using the WTO ruling on Airbus as leverage to convince the Pentagon to reject a bid from EADS, the parent of Airbus, for a contract to build the next aerial refueling tanker. The battle over the tanker contract has pitted lawmakers from states that have factories supplying Boeing, which is also bidding on the contract, against those who represent states where EADS’s partner, Northrup Grumman, has operations and suppliers. Sen. Peggy Murray (D-Wash.) and 10 other senators wrote to Defense Secretary Robert Gates July 6, asking him to explain how the department will take the WTO ruling against Airbus into consideration when deciding the tanker contract.

> “While we urge you to move forward on the KC-X tanker competition without delay, the Department of Defense must provide a level playing field for all competitors and factor these subsidies into the airplane cost,” they argued. “We want to hear from you on how you intend take the WTO final ruling into consideration and bring fairness into this competition,” the letter stated.

Both Boeing and EADS claim that their version of the tanker would produce jobs in the U.S. Boeing’s plan for the KC-X tanker calls for converting its 767 model into a tanker. According to the Congressional Research Service (CRS), Boeing claims that 44,000 U.S. workers from 300 U.S. suppliers would be involved in building the KC-767. Northrop Grumman has said 48,000 direct and indirect jobs and 230 suppliers from 49 states would be involved its version, which would be based on the Airbus 330-200 and assembled at Northrup’s Mobile, Ala. facility. The CRS said both firms say they meet Buy American requirements, with Boeing claiming 85% of Boeing’s KC-X in the 2007-2008 competition would have been manufactured in the U.S., while Northrop/EADS said at least 58% of its version would be made in the U.S.

## State Plans Change to See-Through Rule, Other ITAR Provisions

Although work on the Obama administration’s export control reform plans has consumed much of its time and energy, State’s Directorate of Defense Trade Controls (DDTC) is moving ahead with plans to amend the International Traffic in Arms Regulations (ITAR). Three draft proposals, including changes to the "see-through" rule, the definition of defense services and export rules for replacement parts and components, received the endorsement July 7 of State's Defense Trade Advisory Group (DTAG) with some slight suggestions for changes.

> DDTC is also ready to propose a change that it announced last November to its brokering rules (see **WTTL**, Nov. 30, 2009, page 1). That proposal "did not die after the last meeting, I assure you," DDTC Managing Director Robert Kovac told DTAG. Changes to brokering rules "are almost ready to be published as a proposed rule and I hope to get them out before the end of summer," he said.

The change under consideration to the "see-through" rule is intended to avoid future disputes like the one over the QRS-11 sensor chip, which led State to declare commercial airplanes that had the chip inside instrument systems to be subject to ITAR. Under draft language to create a new part 126.20 to ITAR, a license would not be required for articles incorporated into commodities subject to the Export Administration Regulations (EAR) and (1) the end item would be rendered inoperable by the removal of the defense article; (2) technical data about the defense item is not subject to EAR "production" and "use" technology controls; and (3) incorporation of the item does not relate to a defense application.

The draft change to the definition of defense service would clarify that the rules only apply when "U.S. origin technical data" is involved in the service. It also would limit the definition of assistance to "integration of any item controlled on the U.S. Munitions List" into a USML controlled end item. The third change being considered would provide a special licensing exemption for exports of parts and components to foreign governments under certain conditions, including that exporter was identified as the applicant for a previously approved authorization.

## * * * BRIEFS * * *

FCPA: Snamprogetti Netherlands B.V., reached deferred prosecution agreement with Justice July 7 under which it will pay a $240 million criminal fine to resolve charges related to FCPA violations in connection with bribery of Nigerian officials to win contracts to build liquefied natural gas facilities on Bonny Island, Nigeria. Deal comes week after its partner, Technip SA, agreed to pay $330 million in fines for its role in scheme (see **WTTL**, July 5, page 4). KBR pleaded guilty in 2009 to related charges and paid $402 million in penalties. Snamprogetti and its former parent, ENI, also settled SEC civil complaint and jointly agreed to pay $125 million in disgorgement of profits relating to violations. With Snamprogetti settlements, Bonny Island scheme has produced more than $1.28 billion in criminal and civil penalties for violators and additional cases are expected.

EXPORT ENFORCEMENT: Superseding federal indictment issued July 2 has added two more charges against Irish trading company, Mac Aviation Group, and its officers for alleged exports of helicopter engines to Iran. Two additional counts pertain to procurement and export of F-5 fighter aircraft parts from U.S. company to Iran (see **WTTL**, Nov. 30, 2009, page 6).

MORE EXPORT ENFORCEMENT: Oyster Bay Pump Works, Inc., and its owner, Patrick Gaillard, entered settlements with BIS June 21 on charges that they exported items to Cuba via Germany and to Iran via UAE without approved licenses. BIS imposed but suspended $300,000 civil fine on Oyster Bay. Firm also was placed on denied party list and ordered to conduct internal compliance audit. Gaillard was fined $300,000 and will have to pay $25,000. Agency will waive balance, if he remains in compliance.

EX-IM BANK: Guillermo Mondino, president of Texon, Inc., pled guilty in Miami federal court June 23 to defrauding Ex-Im of more than $25 million in scheme to get loan guarantees for exports that were never made. He agreed to forfeit $2,718,695, "which constitutes proceeds of this conspiracy offense to which he will plead guilty." In addition, he will pay restitution of $12.5 million "to all victims of the defendant's criminal conduct, in this case, to the Export-Import Bank of the United States," the plea deal said.

ANTIBOYCOTT: BIS reached agreement with freight forwarder Plane Cargo, Inc., of Houston, Texas, June 21 to settle one alleged violation of antiboycott regulations. It imposed a $10,800 fine on company for allegedly providing boycott-related information on a Trade Links International invoice. Separately, it issued warning letter April 28 to Tate Access Floors, Inc., of Jessup, MD, for its alleged failure to report to BIS receipt of request to participate in restricted trade practice that had come from customer in Kuwait.