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## Kerry Says State Delaying Defense Treaties

Senate Foreign Relations Committee Chairman John Kerry (D-Mass.) says he wants the Senate to ratify the pending U.S. defense treaties with the United Kingdom and Australia, but is still waiting for State to submit a draft of changes it will make to the International Traffic in Arms Regulations (ITAR) to implement the accords. “We want to get those done. We’re just waiting on language from the State Department,” he told WTTL in an exclusive interview.

At a hearing on the treaties in December, committee members had told State officials that they wanted to see draft ITAR changes and implementing arrangements before they reported the deals out of the committee (see **WTTL**, Dec. 14, page 2). They also asked for more information on how export controls would be enforced under the treaties without new legislation. Work on the ITAR changes appears to have been sidetracked by State’s intensified focus on the Obama administration’s broader export control reform plans.

“We’ve raised the issue with them. We’ve been in touch with them. They say [it’s coming] momentarily. We’re trying to get it done,” Kerry told WTTL. “It should have happened. It’s overdue, overdue. We’re waiting for the language. We’re ready to go. We’ve been pushing for it for months,” he added.

Kerry also said he has not talked with anyone in the administration about its export control reform plans, but he supports the idea. “We have not had a discussion about that. We have some strong thoughts about it, from our point of view, but we have not had a chance to discuss it with them,” he said. The Foreign Relations Committee will play a pivotal role in implementing any reforms because it has jurisdiction over the Arms Export Control Act and State, and any legislative changes that will be needed will have to go through the committee.

Kerry said the export control system has to be changed. “We have to move to reform it; it’s very clear. It’s a restraint on our trade,” he said. “We’re losing business and it’s outdated and it’s time to modernize it,” Kerry said.

## African Cotton Nations Fear Impact of U.S.-Brazil Deal

Cotton producing countries in Africa, particularly the four West African countries known as the C-4, are afraid that a deal between the U.S. and Brazil to settle Brazil’s World Trade Organization (WTO) complaint against U.S. cotton subsidies will block their chances of getting special



benefits out of the Doha Round. The focus of their concerns is Washington's plan to fix the WTO-inconsistent cotton program in the 2012 Farm Bill. African officials say they believe the U.S. Congress will be willing to make only one change in the cotton program and won't want to deal with the issue a second time to address Africa's requests in the Doha Round.

The C-4 concerns surfaced ahead of June 10-11 talks in Washington between the U.S. and Brazil, which are still trying to work out the details of the settlement they reached in April to avoid Brazilian retaliation against U.S. goods and intellectual property rights (see **WTTL**, April 12, page 3). Brazil agreed to suspend retaliation until June 21 pending agreement on U.S. corrective measures.

While the Brazilians chose to take their complaint to a WTO dispute-settlement panel and won, the Africans weren't part of that complaint and won't get any compensation from the U.S. "Rather than using the dispute settlement, which concerns the past, [the Africans chose] the Doha Round, which concerns the future. So they want a change in the policy in the future," said one trade executive who has been following the issue. There are discussions, however, that could lead to Brazil giving some of the \$147 million it will receive from the U.S. in compensation payments to African countries in the form of aid.

The Africans "are worried" that the deal to settle the dispute will be "sold as the U.S. position in the Doha Round," the executive said. The fear is the U.S. "will not have much flexibility in the Doha negotiations to satisfy the African demands," he added. He said he doesn't think U.S. Trade Representative (USTR) Ron Kirk is likely to go to back to Congress asking for still more cotton concessions for the Doha Round after the deal is worked out with the Brazilians.

Brazil's complaint was aimed at Washington's failure to comply with the Uruguay Round agreement and the allocation of subsidies into so-called Amber Box or Green Box categories. While a Doha deal is supposed to prevent "box shifting," it won't necessarily apply to cotton, African officials say. At a meeting in Geneva June 7 on the cotton situation, African trade officials complained about the total lack of any negotiations in the Doha Round on cotton.

The latest round of talks between the U.S. and Brazil was needed because negotiators weren't able to agree to terms during a meeting in Brazil in early June. One of the hangups at the early June meeting was over U.S. export guarantee programs, a Brazilian official said, referring to the U.S. GSM-102 program. In addition, Brazil is still working out arrangements for an entity to receive and disburse the money from the U.S, he said. Sources claim the \$147 million annual U.S. payment to Brazil won't adversely affect the C-4, because the payments aren't going to price supports. Brazil is considering doing "disease research," one source said. The U.S. would have difficulty if it improves Brazilian production, because of the possible effect on international supply and prices, he added. The money has to be spent on projects not associated with production, the trade diplomat said

## **BIS Asks for Advice on Definitions in Export Rules**

As one of its first steps towards harmonizing the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR) and trade sanction rules, the Bureau of Industry and Security (BIS) is asking its advisory committees for advice on how to harmonize the disparate definitions of words and phrases in the rules as well as for help identifying words that are not defined at all. BIS Assistant Secretary of Export Administration Kevin Wolf presented the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) June 8 with a list of 16 sets of words and phrases that differ among the regulations and asked the committee for advice on how to come up with a single definition for each set.

Wolf has also asked other TACs for their advice and will hold a conference call with members June 15 to hear their comments. Wolf told the RAPTAC that he needs the advice of the committees by early July so he can bring their recommendations, along with those being prepared by BIS staff, to the interagency task force that has been assigned the job of harmonizing the

rules, including language in trade sanction regulations enforced by Treasury's Office of Foreign Assets Control. Wolf emphasized that the list he was presenting was not an official itemization of words that are being considered by the Obama administration's reform team, but rather that it was based on his own experience as an export trade lawyer.

Wolf said his goal would be to develop definitions "that mortals understand" and also that are consistent with standard industry usage. Although he conceded that some definitions reflect policy and export control decisions, he advised the committee to "try to do analysis that is agnostic" as to whether an item is controlled or not. He also said they should not be concerned with whether a definition comes from a statute or a multilateral export control regime, saying the administration would determine later whether to seek a change in those requirements.

Wolf's list of 16 cover:

1. Technology, Technical Data
2. Fundamental Research
3. Published, Public Domain, Publicly Available, Informational Materials
4. Software
5. Services, Defense Services, Activities
6. Good, Commodity, Item, Article, Part, Component, Accessory, Attachment, Associated Equipment, End Item
7. United States Person
8. Foreign Person
9. Export, Reexport, Transfer, Transit, Transshipment
10. All parties to the transaction: Licensee, Ultimate Consignee, Contractor, Intermediate Consignee, End User
11. General Interpretation 2 and "See-Through" Rule
12. De Minimis
13. Specially Designed or Modified, Specifically Designed or Modified
14. Deemed Export, Reexport
15. Direct Product Rule
16. Food, Medicine, Medical Devices

Changes in some definitions, such as "fundamental research," would clearly have a significant policy impact, Wolf noted. One RAPTAC member suggested the harmonization should also include the Census Bureau's Foreign Trade Regulations, an option Wolf admitted he had not considered. Wolf also acknowledged that trying to address definitions for "specially designed" and "specifically designed" presents "one of the thorniest [issues] to come up under harmonization." BIS Deputy Assistant Secretary Matthew Borman told the RAPTAC the interagency team working on criteria for harmonizing EAR and ITAR control lists is trying not to use terms like specially designed in the new classification descriptions.

## Geithner Gives Boost to Schumer's China Currency Bill

Treasury Secretary Tim Geithner appeared to encourage Congress June 10 to keep playing the "bad cop" role to the Obama administration's "good cop" when it comes to pressuring China to stop manipulating its currency. He told the Senate Finance Committee that past legislative proposals to deal with Beijing's currency policy "have been effective at decisive moments" in getting China to allow the renminbi to rise in value in response to market forces. Geithner's statement came in response to a warning from Sen. Charles Schumer (D-N.Y.), who said he intends to move a China currency bill (S. 3134), if China doesn't act on its currency.

"This is fair warning," Schumer said. "My colleagues and I, bipartisan, despite the administration asking us not to do it, are going to move forward with our bipartisan legislation to provide specific consequences for countries that fail to adopt appropriate policies," he said. "And let me just say, we are going to do it soon. Be prepared," he added. Geithner said China needs to understand the sentiment in Congress. "I recognize and I think it is very important for China to

understand that your current legislation...has very broad support, not just on your side of the aisle, but very broad, broad bipartisan support,” the Treasury secretary said. “You have been very consistent, not just in private with us, in saying that you believe that it is important for China to understand that Congress will act, if China does not act,” Geithner said.

Schumer’s legislation, which has 18 co-sponsors, is a combination of past measures he has sponsored with Sen. Lindsey Graham (R-S.C.) and a bill sponsored by Sen. Debbie Stabenow (D-Mich.) and others. He has said he would try to attach the bill to other pending legislation in the Senate to move it quickly without going through any committees.

The measure would require Treasury to issue semiannual reports on currencies that are “fundamentally misaligned” and would provide a series of mandatory remedial actions that would kick in, if the country with such a currency has not taken action to correct the situation. If no action is taken in 90 days, Commerce would be required to modify antidumping rules to adjust constructed export prices to account for the misalignment. Persistent failure to fix the currency would lead to WTO consultations and a request for action by the International Monetary Fund. A separate provision would amend the countervailing duty law to make misaligned currency a countervailable subsidy.

At the hearing, Geithner repeated statements he made during the recent Strategic and Economic Dialogue talks (see **WTTL**, May 31, page 2). He emphasized the growth in U.S. exports to China and progress that China has made, but he still said more needs to be done. He refused to say when he would issue the semiannual report on currency manipulation that he delayed before the SAED meeting. The report will be issue “at that time we decide is the right moment,” he said. When pressed to say when that would be, he said, “I haven’t decided.” The report had been delayed to see the results of the SAED meeting and a June 26-27 meeting of the 20 largest economies (G-20) in Toronto. “We said we want to take advantage of this window [between] then and the G-20 meeting to see if we can make some progress in this area,” Geithner said. “Once we get through the G-20 meeting, we’ll take some stock,” he added.

### \* \* \* Briefs \* \* \*

**TRADE FIGURES:** Although U.S. goods exports in April of \$104 billion were down inconsequentially from March, they were up 25% from April 2009. Services exports rose to \$44.7 billion, increase of 8% from year earlier. Goods imports of \$156.5 billion were up 28.2% from last April and services imports increased 6.8% from April 2009 to \$32.6 billion. U.S. trade officials are touting growth in exports to China. During first four months of this year, goods exports to China have grown by 42% to \$27.7 billion, twice 21% rate for exports overall. Imports from China have gone up only 14% this year to \$98.8 billion. Trade deficit, year to date, with China inched up by \$3.8 billion, while total U.S trade deficit jumped by \$39.6 billion, driven mostly by higher priced energy.

**EXPORT ENFORCEMENT:** Federal grand jury indictment unsealed June 8 in Greenbelt, Md., U.S. District Court charged Nader Modanlo, 49, naturalized U.S. citizen who was born in Iran but now lives in Potomac, Md., and five Iranian nationals with illegally providing satellite hardware and technology to Iran in deal to launch Iranian earth satellite equipped with camera on Russian rocket in October 2005. Indictment claims Modanlo’s firm, Final Analysis, Inc. (FAI), contracted with Russia’s Polyot to provide launch services for FAI satellites. It also says defendants formed Prospect Telecom to conceal Iranian participation as an investor/lender in FAI activities.

**WIRE:** ITC June 10, on 6-0 vote, made final determination that dumped and subsidized imports of prestressed concrete wire strand from China are causing material injury to U.S. industry.

**ENCRYPTION:** BIS officials say proposal to implement 30-minute rule for filing encryption export notifications should be published in Federal Register week of June 14 (see **WTTL**, April 30, page 1).

**CHINA:** Sens. Charles Schumer (D-N.Y.) and Sherrod Brown (D-Ohio) wrote to Commerce Secretary Locke June 8 to complain about department’s delay in making decision whether to include investigation of China’s alleged currency manipulation as part of countervailing duty investigations for coated paper and aluminum extrusion from China.