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Congressional Staff Delaying New Rules for Foreign Nationals

In a bad sign for President Obama's export control reform goals, staff of the Senate Foreign Relations Committee are delaying implementation of one of the president's first announced reforms, harmonization of export controls on foreign and dual nationals. In a March 11 speech to the Export-Import Bank's annual meeting, the president had said harmonization of the rules on foreign nationals and a change in encryption export rules would be two early steps that the administration would take toward a broader reform plan. Nearly three months after his announcement, the regulatory changes have still not been made (see **WTTL**, May 24, page 1).

State's Directorate of Defense Trade Controls (DDTC) has drafted a Federal Register notice to amend controls applied to foreign and dual nationals who will have access to defense technical data. "We've gone to the Hill twice on it now," said Robert Kovac, DDTC's managing director. "We're in the process of answering a lot of questions, trying to allay their concerns," he told an American Conference Institute program May 18. "We are targeting that for publication as soon as possible," he said; adding, "It was an export control cul de sac when we started."

The delay in the publication of the foreign national and encryption rules "is not a good sign," Bill Reinsch, president of the National Foreign Trade Council, told the program. Reinsch has been skeptical about the chances for the reforms actually being implemented. He said he has softened his view of the proposals and now gives them a 50-50 chance of being accomplished. He cautioned, however, that the reform plans have been pushed by top-level officials in the departments and there is still the need to get mid-level staff involved in the process.

Kovac said the current export control system is out of date and was created for an era when defense sales mostly involved finished weapons, there was little globalization of defense companies, there was no commercial market for defense items and defense sales were made once a year. "Applicants bring me every year increasingly large square pegs in the form of applications, and I take these increasingly large square pegs and try to drive them into that little round hole in the AECA [Arms Export Control Act] system," he said.

Kirk Says U.S. Won't Give More to Move Doha Talks

U.S. Trade Representative (USTR) Ron Kirk claims the U.S. will not offer more concessions to get countries such as Brazil, China and India to improve their market access offers in the Doha Round. After meeting with other trade ministers in Paris May 27, Kirk told reporters he rejects



suggestions that the U.S. will have make additional concessions at get other countries to go beyond a draft agreement that was presented to negotiators in July 2008. "I would tell you unequivocally that we reject the notion that we have to now make another advanced payment to have negotiations that were contemplated from the very beginning. We reject that," Kirk said.

The U.S. has been pressing advanced, emerging-market countries to improve their offers to open markets for industrial goods in talks on non-agriculture market access (NAMA) and for sectoral agreements and services. There have been conflicting reports on how well those efforts have gone in the bilateral talks U.S. officials have held with these countries (see **WTTL**, May 3, page 1).

"I want to make this clear. The United States is not going to pay a price to engage in negotiations for services and technical discussions on rules or NAMA once you consider that the Doha negotiations have at their basis two fundamental premises," Kirk said. "One, this is a developmental round; and two, it was a single undertaking. And to the degree that there are those that argue that we should stop with what we have accomplished in ag and not have serious negotiations beyond that, it puts the U.S. in an awkward position of having paid a pretty heavy price to produce what are the results in ag without having the ability to balance that with what we might be able to achieve in services and NAMA," he stated.

Kirk also pushed back at foreign diplomats who have said the roadblock to progress in the Doha Round is the lack of U.S. commitment and attention to the talks. "I came here a year ago and everybody said we're just waiting on the U.S.," he said. They said "they were waiting for Godot more times than I could stand to swallow," Kirk recalled. "Then they said well, you don't have a team. I said I've got an ambassador. Then they said well, you haven't told us what you want. So we told them what we want. Then we showed up and they said oh, my God, you've asked for too much. Then we came back and revised that offer. So I think we have proven our intent, we've proven our will, we have proven our commitment to this process," Kirk stated.

"But I want to make it plain, we are not going to negotiate against ourselves," he said. "We have tabled offers in response to every request asked of us and the reality that in a negotiation it's now time for others to be creative and put their thoughts on the table in terms of what they think is a balanced and ambitious package. We have gone far and above what is expected of any other member in terms of tabling offers to try to help break this impasse," he asserted.

U.S. Offers Action on Dumping and Export Controls to Chinese

As expected, the May 24-25 U.S.-China Economic and Strategic Dialogue (SAED) in Beijing produced loads of promises and statements of goodwill plus statements by Chinese President Hu Jintao suggesting revaluation of the Chinese currency, the renminbi, may be coming. Among the promises that the U.S. made in the talks were pledges to give fair treatment to Chinese companies seeking "market-oriented enterprises" status in antidumping investigations and to consider how to ease export controls on trade with China (see **WTTL**, May 24, page 3).

Much attention was given to Jintao's opening speech to the SAED meeting on May 24. "We will expand market access in keeping with established international economic and trading rules, support the improvement of international trading and financial systems and advance trade and investment liberalization and facilitation," he said.

"China will accelerate the transformation of its economic development pattern. We will make great effort to expand domestic demand and increase household consumption, vigorously promote sound and balanced growth of external trade, and reject protectionism in all manifestations. China will continue to steadily advance the reform of the formation mechanism of the RMB exchange rate under the principle of independent decision-making, controllability and gradual progress," Jintao declared. At the end of the two-day meeting, Treasury Secretary Tim

Geithner praised Hu's speech. "We welcome the strong commitment of President Hu to the process of economic reform to expand domestic demand and increase household consumption, to expand market access and keep with established international, economic, and trade goals, and to advance trade and investment liberalization," Geithner said. "We welcome the fact that China's leaders have recognized that reform of the exchange rate mechanism is an important part of their broader economic reform agenda," he added.

In response to questions at a press conference, Geithner declined to say when Treasury would release its delayed semiannual report on foreign currency manipulation. "That time will come," he said.

U.S. pressure on China to reconsider its indigenous innovation policies, a key complaint raised by American industry, produced an agreement to continue talking about the issue and other trade subjects. The Chinese "agreed to a set of very important, clear principles – principles of nondiscrimination – and they agreed on a very carefully designed, detailed process that'll bring all the right people to the table over the next few weeks and months to see if we can make further progress in the months ahead," Geithner said. "We have agreed to a process of dialogues in the coming weeks and months, led by my colleagues, Ambassador Kirk, Secretary Locke and Office of Science and Technologies Director John Holdren, to find ways to address our main concerns," he noted.

A final joint statement said the "United States shall seriously consider and provide fair and reasonable treatment to Chinese enterprises with respect to their requests for treatment as 'market oriented industries' in trade remedy investigations, and will consult through the U.S.-China Joint Commission on Commerce and Trade in a cooperative manner to work towards China's Market Economy Status in an expeditious manner."

It also noted that China had again raised concerns about U.S. controls on technology exports. "The United States and China commit to adhere to the consensus reached in the first S&ED to take effective measures under the Guidelines for U.S.-China High Technology and Strategic Trade Development to actively implement the Action Plan on Expansion of U.S.-China High Technology and Strategic Trade Cooperation in Priority Sectors, including reviewing by the U.S. government concerns raised by the Chinese government on export control issues," the statement declared.

The long list of other promises made during the talk includes: Beijing's commitment to submit "a robust revised" offer in July for joining the World Trade Organization's Government Procurement Agreement; continuation of talks on a U.S.-China bilateral investment treaty; China's pledge to revise its Catalogue Guiding Foreign Investment in Industries to expand areas that are open to foreign investment; a U.S. promise to assure that review of Chinese investments by the Committee on Foreign Investment in the U.S. (CFIUS) "ensures the consistent and fair treatment of all foreign investment without prejudice to the place of origin;" agreement by the U.S. Export-Import Bank to cooperate with the Export-Import Bank of China on trade finance; and a bilateral agreement on customs facilitation.

Bill Seeks Crackdown on Alleged Fraud in Yarn-Forward Rules

Legislation (H.R. 5393) introduced in the House May 25 would require creation of an electronic verification system to assure that apparel imports from U.S. free-trade-agreement partners and trade preference countries meet yarn-forward rules for receiving tariff-free treatment. In response to U.S. textile industry complaints that there is massive fraud in the preference programs for apparel, the bill would also offer rewards of up to \$20,000 to anyone who provides tips that lead to the conviction or penalties on persons who violate apparel import rules.

The measure was introduced by Rep. Larry Kissell (D-N.C.), who had also sponsored Buy-American amendments for apparel and equipment purchases in the 2009 stimulus legislation. It was co-sponsored initially by 21 other House members, mostly from textile and apparel

producing states such as North Carolina, South Carolina, Virginia and Maine. The electronic verification system for tracking yarn and fabric content in apparel claiming duty-free treatment would replace paper forms that are now used to show the goods meet content requirements. Among other provisions, the bill would create an Office of Textile and Apparel Trade Enforcement in the Justice Department, establish a Nonresident Importer Program which would require identification of a U.S. resident who would be authorized to accept service of process and has sufficient assets to ensure payment of any loss of revenue not covered by a bond or for civil penalties, and give Customs authority to seize goods that violate preference rules.

BIS Wants Advice on Voluntary Self-Disclosure Information

The Bureau of Industry and Security (BIS) wants industry's advice on standardizing the information that exporters would be expected to submit with a voluntary self-disclosure (VSD) and the format in which the information is submitted. In the May 24 Federal Register, it asked for public comments on a proposed information collection to meet Office of Management and Budget rules under the Paperwork Reduction Act.

BIS said it expects to receive 193 VSDs annually and that each submission takes 10 hours to prepare. One of the questions it asked advice on was whether this time estimate was correct.

It also asked for comments on: (a) whether the proposed collection of information is necessary for the agency to perform its functions properly and whether the information has practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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ENTITY LIST: BIS in May 28 Federal Register published results of 2009 review of Entity List. Review resulted in removal of one entity from Hong Kong, corrected address for entity in Egypt and clarified license requirement for one entity in Israel.

SOFTWOOD LUMBER: In anticipation of Ottawa's adoption of pending legislation to offset subsidies that international tribunal found in violation of Softwood Lumber Agreement, USTR's office in May 28 Federal Register asked for comment on lifting current 10% import charge U.S. imposed on Canadian lumber in 2009. Canadian bill would impose additional 10% charge on lumber exports from Ontario, Quebec, Manitoba and Saskatchewan. "In the event that the proposed bill becomes law by receiving royal assent, and if the Trade Representative finds that the law satisfactorily grants the rights of the United States under the SLA, the Trade Representative may modify or terminate the April 2009 action," notice said.

RUSSIA: In move widely attributed to deal U.S. made with Russia on new Iran sanctions, State in May 21 Federal Register removed three Russian entities from nonproliferation sanctions. They are: D. Mendeleev University of Chemical Technology of Russia, Moscow Aviation Institute and Rosoboronexport.

SECTION 337: In May 26 ruling in *Deere & Company v. ITC*, Court of Appeals for Federal Circuit (case No. 2009-1016) vacated and remanded Section 337 decision on Gray Market imports of European version of Deere harvesters, saying Commission had not properly decided whether "all or substantially all" of Deere's harvesters were made in U.S. "Those figures may be insubstantial. However, that is for the Commission, not this court, to determine on the basis of all of the relevant facts. We therefore remand for the Commission to determine whether 3.1 to 3.4% is an insubstantial percentage, such that substantially all of the authorized harvesters sold in the United States were of the North American version. The cutoff as to what is to be considered 'substantially all' is a question of fact," court stated. Based on previous case law, "as a general matter, 95.6% might well be considered to be 'substantially all'," it said.

EXPORT ENFORCEMENT: After making voluntary self disclosure, Wesco Industrial Products, Inc., of Landsdale, Pa., reached agreement with BIS to pay \$50,000 civil fine to settle charges that it exported relief valves to Hong Kong, Mexico and Singapore without approved licenses. Alleged violations occurred between 2005 and 2007 at Neptune Chemical Pump Co., which Wesco acquired in 2008.