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Obama Orders Comprehensive Review of Export Controls

President Obama Aug. 13 ordered the White House staff to conduct a comprehensive inter-agency review of both dual-use and defense export controls. The review will be led jointly by the National Security Council (NSC) and National Economic Council (NEC). Obama's order came at the same time that he issued an order renewing for another year a presidential directive that has maintained export controls under the International Emergency Economic Powers Act (IEEPA) since the expiration of the Export Administration Act (EAA) in 2000.

Obama's decision to undertake the review reportedly followed a meeting he held recently with Defense Secretary Robert Gates who briefed the president on Pentagon reports that claim current controls pose a risk to national security because they are impeding U.S. scientific and technological competitiveness. Along with Gates, the review was pushed by National Security Advisor Jim Jones and Under Secretary of State for Arms Control and International Security Ellen Tauscher.

The inclusion of the NEC in the review suggests it will consider the impact controls have on the competitiveness of U.S. industries. Deputy Economic Advisor Michael Froman will co-lead the review with Jones. "The aim of the review is to consider reforms to the system to enhance the national security, foreign policy, and economic security interests of the United States," said a statement by White House Press Secretary Robert Gibbs. "The U.S. has one of the most robust export control systems in the world. But, it is rooted in the Cold War era of over 50 years ago and must be updated to address the threats we face today and the changing economic and technological landscape," he added.

According to sources, Obama personally asked both the NSC and NEC advisors to undertake the review. Jones has already become heavily involved in export control issues, issuing new guidelines recently for State's procedures in making Commodity Jurisdiction determinations (see **WTTL**, Aug. 3, page 1). "The announcement is truly the first step," one source said. At this stage, no deadline has been set for completing the review or the structure for conducting it. "The idea is to look at comprehensive reform, rather than process improvements," the source indicated. The first interagency meeting on the review is scheduled for the week of Aug. 17.

The White House review will be closely coordinated with key congressional committees. House Foreign Affairs Committee Chairman Howard Berman (D-Calif.) has said he wants to start work this fall on rewriting and reauthorizing the EAA, along with hearings on the legislation. Berman has hired Edmund Rice, who was president of the Coalition for Employment through Exports and a veteran congressional staffer from previous efforts to write EAA legislation, to



head his committee's work on a bill. While work on redrafting the Arms Export Control Act is not planned right now, the results of the White House review may prompt consideration of some changes in that statute as well, sources say. Berman praised Obama's decision to launch the review of export controls. "I am very pleased to see the Obama Administration will undertake this thorough review," Berman said in a statement.

"Effective export controls are critical to U.S. national security, but they must be responsive to the challenges of the modern globalized world," he added. "That is why I have launched a congressional review of U.S. export controls on U.S. goods that have both commercial and military applications – so-called 'dual-use' items. I hope to introduce a new Export Administration Act in the beginning of next year that will overhaul the dual-use export control system," he stated.

Just a month ago, 14 trade associations sent a letter to Obama urging him to get involved in export controls reform. "We are convinced that only presidential leadership and continuing engagement by senior government leaders will lead to meaningful and lasting improvements," they wrote. Obama's order also comes after Commerce Secretary Gary Locke directed the Bureau of Industry and Security (BIS) to begin a review of export controls under the Export Administration Regulations (EAR) (see **WTTL**, July 27, page 1).

June Trade Deficit May Be Good Omen for U.S. Jobs

The leveling off of the U.S. trade deficit seen in June trade data released Aug. 12 may be a harbinger of good news for U.S. unemployment numbers. Past studies have found an ironic – some might say perverse – relationship between rising trade deficits and lower unemployment. Imports tend to grow with the economy and may be an early sign of recovery.

The June deficit reconfirms a three-month trend showing an end to the decline in the trade balance, with both imports and export growing. After peaking in July 2008 at \$77.2 billion, the merchandise deficit declined steadily for seven months to \$37.2 billion in February. It picked up again in March and has ranged between \$37.2 billion and \$39.9 billion from March to June when it was at \$38.4 billion.

June goods exports edged up from May to \$84 billion, which was still 26.6% below June 2008. Imports, driven mainly by higher prices for crude oil, also rose from May to \$122.4 billion, a 34.8% decline from a year ago. Services exports of \$41.8 billion were down 11.5% from June 2008, as service imports of \$30.4 billion eased 11% from last June. In addition to petroleum products, two-way trade showed growth from May to June in several areas that may signal a rebuilding of inventories. Among sectors showing growth were autos and auto parts, clothing, computers, iron and steel mill products, medicines, power-generating machines and TVs.

Roth's Fellow Researcher Sentenced to 14 Months in Jail

Although he pleaded guilty to conspiracy and was the government's star witness in the prosecution of former University of Tennessee (UT) Professor J. Reece Roth, Daniel Sherman was still sentenced to 14 months in prison and two years of supervised release Aug. 10. Knoxville, Tenn., U.S. District Court Judge Thomas Varlan rejected the government's request for a 28-month sentence, which Justice Department briefs argued would be a 40% reduction of the time recommended under the U.S. Sentencing Guidelines.

Sherman worked with Roth at the UT plasma lab and at Atmospheric Glow Technologies, Inc., which had developed the technology Roth and Sherman were working on for the U.S. Air Force. Roth was sentenced July 1 to 48 months in jail but is appealing his conviction (see **WTTL**, July 6, page 1). Varlan didn't impose a fine on Sherman but did assess him a \$100 court fee. "The Court finds that the defendant does not have the ability to pay a fine and therefore will waive the fine," the minutes of the Aug. 10 sentencing hearing stated. Justice sources say

Sherman is likely to spend less than 14 months in jail because he may become eligible for time off for good behavior. Atmospheric Glow will be sentenced for its role in case on Aug. 27.

“The Defendant has provided substantial assistance to the government by cooperating in the investigation and prosecution of John Reece Roth and Atmospheric Glow Technology, Inc. (AGT),” the Knoxville U.S. Attorney’s office acknowledged in a sentencing memorandum. “The Defendant cooperated by submitting to extensive debriefings, providing numerous documents corroborating his statements and testifying before the grand jury and at the trial of Roth,” it added.

Sherman’s attorney, William Taylor, had argued for a 50% reduction in sentencing to either 10 to 14 months or 10 to 16 months. “Without Mr. Sherman’s assistance, the government would have been severely hampered in presenting this narrative, and in establishing a clear chronology of events that established Dr. Roth’s guilt,” he wrote. Taylor also noted that Sherman is broke and faces debarment from future government contracts. “He has been all but bankrupted, and has substantial debts, that he likely will be unable ever to repay,” Taylor said. “There is nothing left of the life or future Mr. Sherman worked so hard to create for himself,” he added.

U.S. Wins WTO Case against Chinese Restrictions on Imports

A World Trade Organization (WTO) dispute-settlement panel, in a report released Aug. 12, zig-zagged through some 60 complaints the U.S. leveled against Chinese import restrictions on films, DVDs, music and books, agreeing with the U.S. on 29 charges but saying Washington did not establish its case on 30 charges. Nonetheless, U.S. trade officials claim the U.S. won on the important issues, particularly on the opening of film distribution rights in China.

The WTO panel “handed a significant victory to America’s creative industries,” U.S. Trade Representative (USTR) Ron Kirk said a statement. The panel agreed that several Chinese regulations governing imports of these products are inconsistent with China’s obligations under Beijing’s WTO accession protocol and the national treatment and market access requirements of the General Agreement on Trade in Services (GATS) and General Agreement on Tariffs & Trade (GATT).

Before the ruling is adopted by the WTO Dispute Settlement Body, both China and the U.S. could appeal the decision. But China chose not to appeal a January 2009 panel ruling against its lack of protection for intellectual property rights (see **WTTL**, Feb. 2, page 2). U.S. officials say China has decided not to appeal that ruling and has agreed with the U.S. to come into compliance with the decision by March 2010.

A Chinese Ministry of Commerce spokesman was quoted by Xinhua, China’s official news agency, saying Beijing regretted the latest panel ruling. “China has always fulfilled its obligations on market access for publications, and the channels for foreign publications, films and audio-visual products entering Chinese market are extremely open,” said spokesman Yao Jian. “China will evaluate the panel’s report and has not ruled out the possibility of appealing the ruling,” he said. The U.S. is also considering an appeal of the points on which it lost.

A key victory for the U.S. came even before the panel issued its ruling. In its complaint the U.S. had argued that China maintained a “duopoly” that allowed only two Chinese distributors to distribute foreign films in China. During panel hearings, China said it would no longer limit distribution channels. A USTR official said the U.S. will monitor Chinese actions to see if Beijing follows through with that promise. “This decision, coupled with the recent announcement from the State Council that the Chinese government intends to lower market access thresholds for the cultural industry, may be an opening we have been seeking,” said a statement by Dan Glickman, president of the Motion Picture Association of America. If the panel ruling is adopted without appeal or is sustained by the WTO Appellate Body, the benefit for the U.S. film and music industries could be quicker, less expensive access to the Chinese market. That in turn is seen as likely to reduce piracy of these products, because the delay in access has

enabled pirates to bring illegal copies of these works to the Chinese markets long before legitimate copies. “This decision promises to level the playing field for American companies working to distribute high-quality entertainment products in China, so that legitimate American products can get to market and beat out the pirates. To me, that is a clear win,” Kirk said.

GAO Finds Benefits to U.S. from FTAs

A Government Accountability Office (GAO) evaluation of U.S. free trade agreements (FTAs) with Chile, Jordan, Morocco and Singapore found that the four accords have provided economic benefits for the U.S. but also that the benefits were not all related to the trade deals. The report was submitted in July to the Senate Finance Committee, which requested the study, but released publicly Aug. 10. It said, “The four selected FTAs have largely accomplished U.S. commercial objectives.” Since they went into effect, overall merchandise trade between the U.S. and those countries has substantially increased, generally exceeding pre-FTA trade and giving U.S. exporters larger shares of the import markets in those countries.

The report, however, criticized implementation of the labor and environmental provisions of the accords. It noted labor abuses in Jordan but acknowledged that “Jordan has since begun to correct these problems.” The GAO also pointed out improvements in Morocco’s labor laws. The Labor Department was suppose to offer aid to the four countries, but “appropriations for technical cooperation on labor issues (excluding those elated to the elimination of child labor) were mostly eliminated just as the FTAs with Chile and Singapore entered into effect,” it said.

For three FTAs, U.S. export growth has exceeded import growth. Only in the case of Jordan have imports grown more than exports due mainly to the establishment of a garment exporting industry in Jordan’s Qualified Industrial Zones (QIZs). Imports from Jordan have grown 397% compared to a 167% increase in U.S. exports since the inception of the FTA. For Singapore, U.S. exports were up 72%, imports rose only 10%; for Chile, exports surged 365%, as imports grew 106%; and for Morocco, U.S. exports increased 190% while imports gained 87%.

While the FTAs contributed to the U.S. advantage in two-way trade, other factors may also have been important, the GAO suggested. In the case of Morocco, U.S. exports were aided by (1) a drought in 2007 that caused its government to lift tariff-rate quotas on its own, (2) higher worldwide commodity prices and (3) an exchange rate favorable to the U.S. After the Chile agreement, the U.S. “steadily regained its overall market share in the Chilean market that it had lost prior to the FTA,” the GAO said. “Other trading partners had secured FTAs there first, notably countries in the Mercosur regional trade agreement, as well as Canada and the EU,” it added. Imports from Singapore have grown slowly since 2003 because “they have faced intensified competition from Asian suppliers such as China and India,” it noted.

* * * Briefs * * *

CRIME CONTROLS: BIS in Aug. 11 Federal Register proposed revisions to EAR provisions on Crime Control items. Proposal would “update and clarify export and reexport license requirements on striking weapons, restraint devices, shotguns and parts, optical sighting devices, and electric shock devices. It would also add equipment designed for executions to the Commerce Control List,” BIS explained.

ELECTRIC BLANKETS: ITC on 6-0 vote Aug. 13 made preliminary determination that U.S. industry may be suffering injury due to allegedly dumped imports of woven electric blankets from China.

AGOA: GAO report Aug. 12 (GAO-09-916) said U.S. trade preference program for sub-Saharan Africa could be improved by extending duration of third-country fabric provision for least developed AGOA countries beyond 2012 and extending duration of overall AGOA benefits beyond 2015. It said region would be helped through funding of regional trade hubs, focusing on market promotion and business linkages, and aligning U.S. trade capacity building and development assistance with AGOA objectives.

SYRIA: There is no change in export licensing policy for Syria, note on BIS website reaffirms.