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## Trade Groups Urge Obama to Address Export Controls

Fourteen trade groups, which have joined together as the Coalition for Security and Competitiveness, urged President Obama July 13 to put his weight behind a new effort to reform U.S. export controls. Their letter to Obama reflects feelings in the exporting community that the time is ripe for a new push to update U.S. export controls. “From our experience with previous efforts at export control reform, we are convinced that only presidential leadership and continuing engagement by senior government leaders will lead to meaningful and lasting improvements,” the coalition wrote.

“We seek a new initiative to fundamentally reform U.S. export controls, initiated under your leadership and managed by senior officials who are committed to translating your reform goals into a new national export control policy and modernized regulatory and administrative systems.” the letter stated. “To begin that process, we would welcome the opportunity to meet with the appropriate senior advisor to discuss our recommendations,” it added.

“Our increasingly out-of-date export controls on American-origin dual-use and defense technologies are adversely affecting our country’s leadership and competitiveness in several fields, as a committee of the National Research Council recently concluded,” the letter noted. “There is mounting evidence of a resulting impact on national defense, according to several Defense Department reports,” it said.

The coalition had initiated a similar effort during the Bush administration and had presented a comprehensive set of recommendations for improving the management of export controls on dual-use and defense items. Those changes could be implemented through regulatory changes without the need to amend underlying statutes, the coalition argued. Many of those proposals were included in directives President Bush issued in January 2008. Many of the changes Bush ordered have not yet been implemented.

## Russia’s WTO Plans Unclear Despite Medvedev Statement

Trade diplomats in Geneva are still confused about Russia’s plans for joining the World Trade Organization (WTO) despite statements Russian President Dmitry Medvedev made at the G-8 meeting in L’Aquila, Italy, July 11. Medvedev said Russia would continue to seek accession to



the WTO, thus reversing course on an announcement Russian Prime Minister Putin made just a few weeks earlier that Russia would drop its own accession process and apply as part of a customs union with Belarus and Kazakhstan (see **WTTL**, June 22, page 2). But Russia's plans still may depend on how quickly the customs union can be implemented.

“Last year, when we met with the President of Kazakhstan, Nursultan Nazarbayev, we agreed to accelerate the creation of a customs union, and that our decisions will depend on whether we join the WTO by, say, the summer of this year,” Medvedev said at the G-8. Russia “can join the WTO in one of two ways - and that remains our goal, there should be no doubt about that,” he said. “Having agreed on some common standards and positions within the tripartite customs union, we could accede separately,” Medvedev continued.

Russia “is realizing more and more” that joining the WTO as a customs union “is not feasible,” one ambassador told **WTTL**. “I think they hit a brick wall with that,” he added. WTO members “have made it clear to them that they don't see it as a feasible option,” the ambassador said. Marching toward accession in lock step with Kazakhstan and Belarus “would slow everything down for the Russians,” he said.

The contradictory messages from Putin and Medvedev may be due to “some normal miscommunication” between the two political heads and bureaucrats, one diplomat suggested. Top people made declarations without knowing exactly the situation on the ground, he said. At the same time, he said, Russian leaders may not like the accession deal and “they're happy to let it lag or not make any more concessions,” he said. Russia also may be backtracking from its accession package as a way to adopt more protection in the current economic downturn, he added.

## **State Skirts Double Jeopardy in Air Shunt Settlement**

The government's ability to extract multiple penalties for the same export control violation without violating the constitutional bar against double jeopardy is seen in the Directorate of Defense Trade Controls (DDTC) consent agreement July 8 with [Air Shunt Instruments, Inc.](#), of Chatsworth, Calif. The firm agreed to pay a \$100,000 civil penalty to settle four DDTC charges that it had attempted to export jet engine parts to the United Arab Emirates and a gyroscope to Thailand without licenses. Just a year ago, Air Shunt pleaded guilty and paid a \$250,000 criminal fine for making a false statement on a Shipper's Export Declaration for those same exports. There is no bar to separate civil and criminal penalties for the same violation.

In May 2006, the government had filed a criminal information against Air Shunt on charges of violating the Arms Export Control Act (AECA) with the export of the same items. Justice withdrew that complaint less than 30 days later after talks on a plea agreement broke down. Then in July 2008 it got the plea deal from the firm on the SED charge (see **WTTL**, July 21, 2008, page 4). DDTC conceded that it “became aware of the issues only after an information was filed in federal court charging respondent with an AECA violation.”

All of the charges stem from actions allegedly taken by Air Shunt's former vice president, John Nakkashian, who is the brother of the firm's founder. He was the target of a separate four-count indictment in May 2008, charging him with violating the AECA by arranging the export of the products. Nakkashian has been a fugitive from the law ever since the indictment.

“This vice president knew that it was illegal to export defense articles covered by the USML from the United States without first obtaining an export license from the Department,” DDTC's proposed charging letter stated. “However, from September 2003 until January 2004, he arranged several foreign sales without obtaining the proper approvals prior to exporting,” it added. As part of the consent agreement, DDTC said it would suspend \$70,000 of the fine because the firm “has already applied this amount to self-initiated, pre-Consent Agreement remedial compliance measures.” The agency said it is suspending the remaining \$30,000 on the

condition that Air Shunt spends that amount of money on remedial compliance measures specified in the consent agreement. Air Shunt agreed to give DDTC an itemized accounting of how the money is spent. It also said it would ensure adequate resources are dedicated to ITAR compliance and implement strengthened compliance procedures within 12 months. It then will hire an outside consultant to conduct an audit of its implementation of measures it has promised to take. The agreement also assures Air Shunt continued sales to the U.S. military, its largest customer.

## Kirk Puts New Ribbon on Old Enforcement Package

U.S. Trade Representative (USTR) Ron Kirk July 16 sent a bouquet to Democrats in Congress and labor groups in a speech promising to step up enforcement of U.S. trade agreements, including provisions on labor rights. But the measures Kirk said he would implement are the same ones the USTR's office has applied for decades. At the same time, he revealed no increase in USTR staff or resources to undertake the promised enforcement actions. Nonetheless, Kirk's speech drew raves from congressional Democrats. "Ambassador Kirk's statements today signal a new, more assertive approach, one that will help to restore faith among the public that we are standing up for U.S. businesses and workers in the global marketplace," said a statement by Ways and Means trade subcommittee chairman Sander Levin (D-Mich.).

Kirk's speech wasn't the big Obama administration trade policy speech everyone has been waiting for. While it addressed enforcement, it said nothing about plans and positions for bilateral or multilateral trade negotiations. "A comprehensive trade policy needs more than one leg," said National Foreign Trade Council President Bill Reinsch. "We also need to be actively promoting American products and pursuing trade agreements," he added. "We look forward to hearing about the other legs of the administration's trade policy soon," Reinsch said in a statement.

"I can tell you with no reservations: the Obama Administration is both willing and able to enforce our trade agreements," Kirk said at the Mon Valley Steelworks outside Pittsburgh. "American workers deserve no less. Today, on behalf of President Obama, I am here to affirm this administration's commitment to trade enforcement," he said in his prepared remarks.

Several of the actions Kirk announced are already mandated by Congress. For example, he said, "one of the best ways we guarantee America's trade rights is by consistently monitoring our partners' trade practices." The USTR's office has been issuing the annual National Trade Estimate (NTE) report on foreign trade barriers ever since Congress required it 25 years ago. This year's report was 547 pages long (see **WTTL**, April 6, page 5).

"The trade reports that go to Congress will be more than paperwork," Kirk promised. "We will use them in new ways to spur real actions with real impact for American workers and businesses," he declared. Kirk said he also would use the annual reports on telecommunications trade and intellectual property rights – the Special 301 report – as targeted tools for enforcement.

Kirk also said the USTR's office will work closely with Commerce's Foreign Commercial Service (FCS), which has offices in 75 countries, to identify and address trade barriers. "When a USTR report identifies trade barriers threatening American jobs, our agencies will spring into action together," Kirk said. That is not new. The FCS has fed information on trade barriers into the NTE for years, and FCS officers work on those issues on a daily basis already.

On labor, Kirk noted all U.S. free trade agreements include labor rights requirements. "Now, we will insist that our trading partners hold up their end of the bargain. American workers should not be expected to compete against substandard labor practices," he said. "To date, we have enforced our trading partners' labor obligations only on a complaint-driven basis. Well, no longer," he said. "In close partnership with Labor Secretary Hilda Solis, Secretary of State Hillary Clinton, and their staffs, we will immediately identify and investigate labor violations

before they can disadvantage American workers,” he pledged. Most past complaints under NAFTA or the Generalized System of Preferences have failed to produce any U.S. sanctions. The Labor Department office that handled those reviews, the International Labor Affairs Bureau, has been allowed to wither in recent years and may not have the staff to do much.

## Rising Unemployment May Spur Protectionism, Report Warns

The latest WTO report on the state of global trade and actions countries are taking to deal with the economic crisis warns against using protectionist measures to fight a forecasted rise in unemployment. “The world economy remains fragile and the economic outlook is still uncertain,” WTO Director General Pascal Lamy told the Trade Policy Review Body June 13. “The latest WTO Secretariat forecast is a contraction of merchandise trade of 10 percent in 2009 in volume terms, down from our previous estimate of 9 percent; a 14 percent decline for developed economies, and a 7 percent decline for developing countries,” Lamy said. The figures covered the period from March 1 to June 19.

New trade restricting and distorting measures have generally been limited to individual products, the report said. “Trade in agricultural products, in particular dairy products, and in iron and steel products, motor vehicles and parts, chemical and plastic products, and textiles and clothing, has been most affected by these new measures,” it noted. Some new restrictions have emerged on trade in services, particularly in the energy services sector, while some countries have postponed planned liberalization of financial services, the report said.

One reason for the magnitude of the recent declines is the comparison of trade to 2007 and 2008 when global trade values reflected spikes in energy, transport and food prices, according to one ambassador who reviewed the report. Lower prices now give the impression of a collapse in international trade, although volume has not declined as much in those sectors, he suggested. Corrections in the prices for energy, transport and food could reasonably account for about 50% of slumping trade values, the ambassador said. Another factor in the decline is the prevalence of global supply chains in total trade. Goods and component parts are tallied numerous times as they cross borders during the production process.

“The report is a warning to policy makers to beware that you’re going to face more protectionist pressures in the near future,” one trade diplomat said. Although G-20 countries pledged to refrain from protectionist measures and to rectify any such measures, “to date, the WTO Secretariat has not been informed by any G-20 member that it has rectified any measure,” report said.

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

EXPORT ENFORCEMENT: Former Boeing and Rockwell engineer Dongfan “Greg” Chung, 73, who played role in directing Chi Mak’s illegal export activities, was found guilty July 16 of economic espionage and acting as agent of China. He was charged with stealing restricted technology and Boeing trade secrets, including information on Space Shuttle and Delta rocket for benefit of foreign country. Chung was not charged with exporting the technology. Chi Mak was sentenced to 24 years in prison in 2008 for providing controlled defense technology to the Chinese (see WTTL, March 31, 2008, page 1).

FCPA: Federal jury in Manhattan July 10 convicted Frederic A. Bourke Jr., 63, of conspiracy to violate Foreign Corrupt Practices Act (FCPA) and the Travel Act, and making false statements to the FBI. Bourke. During six-week trial, evidence was presented to show Bourke was knowing participant in scheme to bribe senior government officials in Azerbaijan to ensure that those officials would privatize State Oil Company of the Azerbaijan Republic (SOCAR) in rigged auction that only Bourke, fugitive Czech investor Viktor Kozeny and members of their investment consortium could win.