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Sherman Suggests Export Controls “at the Factory Gate”

At a July 9 hearing on the lapsed Export Administration Act (EAA), Rep. Brad Sherman (D-Calif.) said a renewed statute should decontrol some items but also impose new controls “at the factory gate” on other items even in the domestic market because of their sensitivity. Sherman, who chairs the House Foreign Affairs Committee’s subcommittee on terrorism, nonproliferation and trade, suggested the possible change to the EAA to address a Government Accountability Office (GAO) investigation which found it easy to buy many controlled dual-use and defense items domestically and export them without licenses (see **WTTL**, June 8, page 1).

“When you’ve got the GAO proving that they can ship these trigger spark gaps abroad; when you have Taliban wearing the exact protective patches we are supposed to put on our uniforms, then you ought to change things,” Sherman told **WTTL** after the hearing. He said he wants to “control fewer things but to control them a lot better.”

At the start of the hearing, Sherman said the session was intended to be the first step toward EAA reauthorization. He said he intends to introduce two bills. The first is another version of one he introduced last year to renew the Bureau of Industry and Security’s (BIS) law enforcement powers, require a link between BIS license information and the Automated Export System (AES) and to authorize new controls on countries that are transshipment hubs for diversion. The second one “will aim for something comprehensive with a goal of rationalizing that which has to be controlled at the factory gate and that which has to be controlled when exported and that which should not be controlled at all,” Sherman told **WTTL**. He said his goal was to introduce a bill in the “winter”, which could mean late this year or early in 2010.

The hearing heard testimony from Owen Herrstadt of the Machinist and Aerospace Workers union who criticized the use of offsets in foreign defense sales and said the EAA should include provisions that would require an assessment of an export’s impact on employment in the U.S. Arthur Shulman of the Wisconsin Project on Nuclear Arms Control urged Congress to require the administration to conduct a complete review of current dual-use exports controls.

World Leaders Call for Finishing Doha in 2010

Another summit. Another declaration on the Doha Round. This one came July 9 after a meeting in L’Aquila, Italy, between the G-8 industrialized countries and a group of advanced developing countries. The joint statement was issued by participants in the Major Economies



Forum, which included the G-8 plus Brazil, China, India, Mexico and South Africa. It called for completing the round in 2010 and directed trade ministers to meet before the G-20 meeting in Pittsburgh Sept. 24-25 to come up with plans for how to get the talks moving again.

The leaders said they “are committed to seek an ambitious and balanced conclusion to the Doha Development Round in 2010, consistent with its mandate, building on the progress already made, including with regard to modalities.”

Without specifically saying they support a return to a “request-offer” or “scheduling” approach to negotiations, they said they “regard enhancing the transparency and understanding of the negotiating results to date as a necessary means to facilitate the conclusion of an agreement.”

“The significance of this statement was to try and break the deadlock that has plagued the Doha Round for the last couple of years and try and get beyond the deadlock and focus on making sure there’s meaningful market access to create an ambitious agreement,” Deputy National Security Advisor Mike Froman told reporters. “There are a number of different elements in there for those who follow trade closely,” he said.

“This is an effort to get the Doha development round on a more constructive track towards conclusion -- building on the progress that’s been made, not throwing out any concessions or agreements that had been previously locked in, but at the same time getting to a stage where countries would engage directly with each other, bilaterally, pluralaterally, as well as multilaterally, to get transparency around what the market access offers are that are on the table, and then a sense of urgency that ministers should meet between now and Pittsburgh to try and progress this agenda and report back in Pittsburgh,” Froman explained.

“I think it’s a reflection, frankly, of the pragmatic fact that it takes a while to complete these rounds,” he added. Froman noted progress made already in agriculture and market access talks, but recognized that “negotiations over services has not really begun yet.” Work also needs to be done in negotiations on rules and environmental products. “So there’s still a lot of work to do between now and the conclusion of a balanced, ambitious Doha agreement,” Froman said.

Summit statements have had little impact on Doha talks over the last eight years, and there is no certainty that this one will have any greater affect. If countries are serious about concluding talks next year, the World Trade Organization (WTO) ministerial meeting planned for Nov. 30-Dec. 2 in Geneva may take on more importance. The ministerial would be the place where trade ministers from all WTO countries will have to refine and revise the Doha mandate to set goals that could actually be achieved.

Senate May Temper Border Measures in Climate Bill

While Senate action on a climate-change bill to match the measure (H.R. 2445) the House passed June 26 has been put off until September, comments from senators indicate that the Senate is likely to change provisions on potential border measures on imports from countries that don’t reduce carbon-emissions (see **WTTL**, June 29, page 2). Sen. John Kerry (D-Mass.), one of the Senate negotiators on the bill, told a hearing July 8 that the Senate version would “come up with rules” for how the Environmental Protection Agency (EPA) would determine the carbon footprint of an import to set any import duties. One complaint about the House bill has been its lack of clarity on how border measures would be determined and applied.

Kerry also said the Senate bill would deal with verification of how foreign countries are implementing any international agreements on climate change. The Senate’s decision to delay action on a climate-change bill reflects the difficulty lawmakers face trying to reconcile the sharp differences over the legislation, including the border-measure provisions. Testimony by Loren Yager of the Government Accountability Office (GAO) at the Senate Finance Committee hearing underscored why members of Congress from steel producing states are so strongly in favor of border measures to protect high-carbon emitting industries that also face strong foreign

competition and adverse competitiveness effects from cap-and-trade emissions pricing. Based on an assessment of the energy intensity and trade intensity of various industries, the GAO found steel mills to be the largest vulnerable sub-industry.

Attorney Gary Horlick warned the committee that anything the U.S. imposes as a border measure might be adopted by other countries and could hurt U.S. exporters. With a conference scheduled for Copenhagen in December to negotiate an international agreement on climate change, Horlick said “it’s tactical issue” whether it would be better for Congress to pass legislation before the meeting or to have it pending to use as leverage in the talks. Having a House passed bill but not a Senate bill would give U.S. negotiators “more flexibility,” he said. Kerry, who just returned from China, said the Chinese would not support an agreement in Copenhagen unless the U.S. took steps to reduce emissions. “Then we have an opportunity to get an agreement in Copenhagen,” he said.

BIS to Tighten Edit Requirements on AES Filings

BIS has alerted U.S. Principle Parties in Interest (USPPI) in export transactions that it is tightening editing requirements for Electronic Export Information (EEI) filed in the Automated Export System (AES) to ensure that AES filers are correctly certifying the use of a license or a license exemption. Effective Oct. 1, filing of incorrect license information in AES could result in the return of the filing with a fatal error message. The agency also has reminded exporters that the AES record containing the EEI “is an export control record under Section 758.1(f) of the Export Administration Regulations (EAR).”

To avoid a fatal error message, BIS says the Export Control Classification Number (ECCN) on the EEI must be a valid 5-position ECCN as listed on the Commerce Control List; a Special Comprehensive License (SCL) number reported in AES under license type C31 must be a BIS approved SCL; license exceptions LVS(C35), GBS(C36), CIV(C37), and TSR(C38) must designate an eligible ECCN and country, and in accordance with the EAR Section 740.17, License Exception ENC(C50) must only be used with ECCNs 5A002, 5B002, 5D002 and 5E002.

The BIS notice comes as complaints have been raised about advice the Census Bureau is allegedly giving freight forwarders on the treatment of “routed transactions.” At a recent meeting of the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC), member Catherine Thornberry of Export Procedures Company, Inc., identified problems exporters are having obtaining copies of their AES records when they are not the exporter on the EEI because a freight forwarder has incorrectly recorded a shipment as a routed transaction. She said Census is telling the freight forwarders to identify the shipment as a routed transaction even when the freight forwarder is filing on behalf of the Foreign Principle Party in Interest (FPPI) but doesn’t have written authorization from the USPPI. As a result, USPPIs can’t get a copy of the filing from Census to maintain the records BIS is requiring them to maintain, she argued.

U.S. Officials Claim Progress on Japanese Regulations

Year after year, administration after administration, U.S. trade officials slog through efforts to open the Japanese market with little to show for their efforts. In a report released July 6 on the latest talks with Japan, U.S. trade officials claimed extensive progress under the umbrella of the U.S.-Japan Regulatory Reform and Competition Policy Initiative. U.S. officials say the main benefits of this work are coming in U.S. service exports to Japan rather than goods exports. Among the market-opening steps lauded in the report was enactment of a new framework for licensing 3.9G mobile services that will open this market to U.S. device and service providers. It also noted steps to provide nondiscriminatory treatment in next generation networks for NTT East and NTT West. Tokyo also appears to be speeding up the process for approving new drugs and medical devices by hiring more staff for the Pharmaceutical and

Medical Device Agency. Japan has also passed legislation to open the market for non-bank e-payment services. U.S. officials say there are still problems ensuring that the privatized insurance services of the Japan Post Service operate fairly with foreign competition. Japan Post is “not fully in compliance” with requirements imposed on other private insurers, one official noted. “Insurance remains an area of major concern for the United States,” he said.

* * * **Briefs** * * *

TSRA: Latest report from OFAC – for period of January to March 2009 – on licenses handled under Trade Sanctions Reform and Export Enhancement Act for sales of food, drugs and medical devices to Iran and Sudan says agency received 353 license applications in quarter – twice as many as in previous quarter. Largest share was for medical devices going to Iran. With increased load, average licensing time was 99 days for approval, 51 days for denial and 7 days for return without action.

TRADE FIGURES: Goods exports in May inched up slightly from April to \$82 billion but were still down nearly 25% from May 2008. Goods imports are still falling and were off almost 35% from year ago. Services exports of \$41 billion and imports of \$29.9 billion were both down about 10% from same month in 2008. Dramatic fall in trade has produced some remarkable trade facts, such as: May goods and services deficit of \$26.0 billion was lowest since November 1999; goods deficit with Canada was lowest since March 1994; goods deficit with EU was lowest since March 1999; and goods deficit with Japan was lowest since February 1984. Goods imports from Japan were lowest since January 1987.

ANTIBOYCOTT: Treasury Department notice in July 9 Federal Register identified eight countries that are participating in Arab League boycott of Israel: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen. “Republic of Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury,” notice said.

AUSTRALIA GROUP: BIS in July 6 Federal Register issued final amendment to EAR to implement changes Australia Group adopted at its October 2008 meeting to export controls on chemical and biological materials. Among changes are new rules on ceramic-lined valves, detecting components for toxic gas monitoring systems, flow filtration equipment, and Australia Group-related software. Final rule amends list of State Parties to add Bahamas, Dominican Republic, Iraq and Lebanon, which are now eligible for treatment as Chemical Weapons Convention (CWC) states. “However, because of the special EAR controls that apply to Iraq, items controlled under the EAR for CW reasons continue to require a license for export or reexport to Iraq, or for transfer within Iraq,” BIS said.

ELECTRIC BLANKETS: Jarden Consumer Solutions June 30 filed antidumping complaints at ITA and ITC against imports of woven electric blankets from China.

WOVEN RIBBONS: Berwick Offray July 9 filed antidumping petitions at ITC and ITA against imports of narrow woven ribbons with woven selvedge from China and Taiwan and countervailing duty complaint against imports from China

IRAN: OFAC July 1 announced settlement of two cases involving alleged violations of Iranian Transactions Regulations. In first, Oxbow Carbon and Minerals LLC of West Palm Beach, Fla., agreed to pay \$276,250 civil fine to settle allegations that it facilitated transaction involving vessel owned by Islamic Republic of Iran Shipping Lines in Tehran without OFAC license. In second settlement, National Marine Consultants, Inc., paid \$42,075 fine for allegedly outsourcing to Iranian entity inspection services. Neither company made voluntary disclosure, OFAC reported.

D-TRADE: Beginning July 6, DDTC will permit “selected” applicants to submit TAA and MLA agreements and amendments electronically via D-Trade 2, agency said in notice posted on its website. “Dependent upon the success of pilot electronic agreement submissions, DDTC anticipates making the submission of electronic agreement applications available to all U.S. applicants on or about October 1, 2009, followed by making the submission of electronic agreements applications mandatory for all applicants in Spring 2010,” DDTC said.

CUBA: Philips Electronics of North America, which paid \$9,000 fine in settlement with BIS for alleged unlicensed exports to Cuba, has reached separate settlement with OFAC to pay \$128,750 fine for Philips employee who traveled to Cuba in connection with sales of medical equipment from 2004 to 2006 (see WTTL, June 8, page 4). Philips made voluntarily disclosed, OFAC reported. “This matter was resolved according to the prior enforcement guidelines published by OFAC at 68 Fed. Reg. 4422.” agency noted.