

House Panel to Examine Domestic Sales of Controlled Items

A House panel will hold a hearing June 4 to publicize what it considers to be a loophole in U.S. export controls that allows sales of controlled dual-use and defense items to domestic customers in the U.S. without confirming that they are legitimate businesses. The hearing by the House Energy and Commerce Committee's oversight subcommittee will highlight an investigation conducted by the Government Accountability Office (GAO), which set up phoney front companies to buy a wide range of controlled products from U.S. manufacturers.

Committee Chairman Henry Waxman (D-Calif.) and subcommittee chairman Bart Stupak (D-Mich.) have sent letters to several U.S. companies asking for information on their export control compliance programs and particularly how they make sure domestic customers won't export controlled items without approved licenses. They also asked for data on sales and profits, especially for controlled products. The committee also wants briefings on these policies.

The hearing is expected to showcase the final GAO report, which is still confidential. The bogus GAO buyers acquired a wide range of controlled items. Among the products reportedly acquired were trigger spark gaps, oscilloscopes, body armor vests, power amplifiers, night vision goggles, gyro chips and F-16 jet computers. All of the sales were legal within the U.S.

The hearing and GAO report come just as many exporters were starting to become optimistic that Congress might be ready to support export control reform legislation (see **WTTL**, April 6, page 3). Waxman is a master of congressional publicity, so the hearing is likely to garner broad attention and could trigger new calls for tougher regulation of controlled goods.

Obama Risks Splitting Democrats Over Trade

There are growing signs that President Obama will have a tougher time than expected in winning broad support within the Democratic Party for his moderate approach to trade. The progressive wing of the party and organized labor are voicing stronger opposition to his plans to move forward with the Panama Free Trade Agreement, but also to his general approach to trade, which they see as mimicking Bush administration policies. While a majority of Democrats were never expected to vote for the Panama accord, efforts to unite the opponents of the deal are likely to make the White House cautious about moving forward quickly on trade initiatives (see story page 2). In a May 20 letter to President Obama, Sen. Carl Levin (D-Mich.) and Rep. Lloyd Doggett (D-Texas) complained that the U.S. has been in talks with Panama on a



tax information exchange agreement (TIEA) since 2002 with no progress. “Accordingly, we strongly urge that the United States require Panama to sign a TIEA prior to entering into an FTA, and that the implementation of any FTA should not take effect until Panama adopts enabling legislation to amend Panama’s domestic laws to allow for sufficient transparency and access to financial and corporate information,” they wrote.

On May 21, the House Populist and Progressive caucuses and the House Trade Working Group organized 55 lawmakers to sign a letter to Speaker Nancy Pelosi (D-Calif.) repeating a call for the Panama pact to be renegotiated to address remaining labor issues and tax-haven concerns. “President Obama campaigned effectively on changing the trade model and his message resonated with the American people,” they told Pelosi. “We believe the Panama FTA falls far short of that commitment and it is not in the best interests of the American worker, our economy, or our country,” the letter stated.

Organized labor is also becoming disenchanted with the early signs it is seeing of Obama trade policies, as well as statements being made by U.S. Trade Representative (USTR) Ron Kirk. “We don’t have a lot of evidence from his personnel or speech at Georgetown [University] that things are going our way,” AFL-CIO Policy Director Thea Lee told WTTL. “If this administration is going to have a different trade policy than the Bush administration, we don’t see it in the headlines,” she said. “This is a real problem for us,” Lee added.

“There are some confidence building things they could do that they aren’t doing; China currency was one,” she said, referring to Treasury’s decision not to name China a currency manipulator. Promises made by the administration to step up enforcement of trade agreements is a move in the right direction, she acknowledged. “But they have to do that before they start giving speeches about how quickly they want to move all the FTAs,” Lee said. Stronger enforcement and Obama’s domestic agenda will help, if it’s done right, she indicated. “If you do better than George Bush, that’s not hard,” Lee stated.

Kirk gave one of those speeches May 18 to the U.S. Chamber of Commerce. His broad statement in support of completing work on pending FTAs and in Doha Round negotiations drew favorable comments from business groups, including the Chamber, the National Foreign Trade Council and the National Association of Manufacturers. Those endorsements probably underscore the concerns of progressives and unions.

India Expected to Take Fresh Look at Doha Round Talks

In addition to waiting for the Obama administration to take office and set out its trade policy, Doha Round negotiators have been waiting for elections in India to determine whether there would be any shift in Indian policy toward the talks and if New Delhi would have more flexibility to make a deal. Prime Minister Manmohan Singh’s ruling Congress Party won a major victory in the May elections, but Indian sources caution against expecting any significant change in the country’s stand in the negotiations. Other sources, however, say they expect India to take a fresh look at the talks, especially if Commerce Minister Kamal Nath is replaced.

Singh’s victory should be “very reassuring” to the international community, one Indian official told WTTL. “It should give a boost to everyone psychologically,” the source added. Nonetheless, the “basic position of India will not change....the essentials are not going to change,” the source added. While there may be some ability for India to give more in the manufacturing sector, it cannot change its stand on agriculture. “No democratic party, even with a big majority, can be seen taking positions that would lead to more suicides of farmers,” the source said.

Singh’s government does “have a little bit of policy space, but it’s a matter of having the right package,” the source added. Nath, meanwhile, was reappointed to Singh’s new cabinet May 22, but at press time, there was no news on whether he would return to the commerce post or get a

new job. There are strong expectations that he will be replaced. Another name mentioned in Indian press reports as possible commerce minister is S.M. Krishna, the former chief minister of Karnataka state, which includes Bangalore, one of India's major trade and manufacturing cities. Nath had a rough relationship with former USTR Susan Schwab starting in 2006.

Although the relationship warmed slightly, it took another nosedive after Schwab essentially accused Nath of killing a possible Doha deal in July 2008. The tension between Nath and Schwab could be overstated, but a change in trade spokesmen "may make things better," one source said. Nath appeared to have gotten off to a better relationship with new USTR Ron Kirk. Nath wrote Kirk a note of congratulations after Kirk took office and invited him to India. Kirk called Nath to thank him for his well wishes.

Obama Will Delay Panama FTA Until Framework Issued

President Obama wants to wait until he has all his domestic and economic ducks in order before asking Congress to approve the U.S.-Panama Free Trade Agreement. Assistant USTR Everett Eissenstat put it more diplomatically in his May 21 testimony to the Senate Finance Committee. "The administration wants to make sure that any new trade agreements, including with Panama, reflect this broader framework," he said. This broader framework includes a new framework for trade that addresses labor and environment issues and trade-agreement enforcement plus domestic policies that help Americans succeed in a dynamic economy, he said.

Eissenstat didn't elaborate on what those necessary domestic policies would be. Many observers expect they include health care and environment legislation, as well as signs that the economic recovery and financial bailout programs are making progress. "The president looks forward to outlining this framework in the very near future," Eissenstat said.

The fact that Finance held a hearing on the accord drew cheers from the business community and supporters of the pact in Congress. Committee Chairman Max Baucus (D-Mont.) urged the Obama administration to move quickly to bring the deal to Congress for a vote. "I urge this administration not to hesitate too long at this crossroads," Baucus said. "The current Panamanian government leaves office in a few short weeks. And it is not clear that the next government will go as far. If we wait much longer, we may end up with a worse deal," he stated.

Eissenstat tried to assure the committee that the incoming Panamanian government of president-elect Ricardo Martinelli will support the FTA and continue to negotiations on a tax agreement addressing Panama's bank secrecy rules and its status as a tax haven. Eissenstat cited statements from Panama's incoming vice president, Juan Carlos Varela, who will also serve as foreign affairs minister. "We will be negotiating during this year a legally binding instrument to facilitate the exchange of information related to tax matters based on the values and principles of public international law and pursuant to Panama's OECD commitments," Varela said.

While Baucus and Ranking Republican Charles Grassley (R-Iowa) urged the president to move quickly on the Panama deal, the hearing also heard concerns about remaining labor and tax-haven issues that are likely to be the focus of opposition to the accord. "We believe it is premature for Congress to consider passing the U.S.-Panama Trade Promotion Agreement at this time," testified AFL-CIO Policy Director Thea Lee. "The administration urgently needs to lay out a coherent and principled overall international trade strategy before proceeding in haste to implement a patchwork policy left over from the previous administration," she said.

BIS Trying to Ease Backlog of Waiver Requests

The Bureau of Industry and Security (BIS) is working on plans to cut the growing backlog of requests for waivers from exporters seeking to export goods after they have learned about

previous violations of the Export Administration Regulations (EAR), Acting Assistant Secretary for Export Administration Matt Borman told an American Conference Institute meeting May 10. Under EAR Prohibition 10, exporters are barred from dealing in an export that would involve a known violation of the regulations. When firms make voluntary self-disclosures (VSDs) involving the discovery of past violations, that can prevent them from providing services or replacement parts for the violative exports. BIS regularly issues waivers to allow the continued servicing and repair of these items.

While most waiver requests can be handled expeditiously, the number coming in has overwhelmed the office of exporter services, Borman said. Office Director Bernie Kritzer is now reorganizing the office to speed up review and approval of the waivers. The goal will be to bring the turnaround time for responding to requests to a week or two, Borman said. The criterion for approving a waiver will be whether BIS would have licensed the violative export if a license application had been submitted originally, he noted.

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OCTG: ITC by 6-0 vote May 22 made preliminary determination that imports of allegedly dumped and subsidized oil country tubular goods from China may be injuring U.S. industry.

NIGHT VISION: BIS in May 22 Federal Register issued final rule amending controls on uncooled thermal-imaging cameras (see **WTTL**, May 4, page 1). New rules lift licensing requirements for exports to major U.S. allies and impose new reporting and reexport requirements.

INTEGRATED CIRCUITS: BIS May 22 released report into availability of integrated circuits in U.S., particularly to meet defense requirements. "Overall, companies reported broad capability in the United States to manufacture and design both conventional and radiation resistant ICs across almost all technology nodes, materials, wafer sizes, and device types. Based on projections through 2011, this core capability reportedly will be maintained despite some increases in outsourcing to non-U.S. locations," report stated.

SOFTWOOD LUMBER: CIT Judge Richard K. Eaton May 20 rejected suit contesting distribution of \$500 million to members of Coalition for Fair Lumber Imports under Softwood Lumber Agreement. Plaintiffs, who were not members of Coalition, claimed they were entitled to share of funds. CIT doesn't have jurisdiction to decide issue, Eaton ruled (slip op. 09-48). "As stated previously, plaintiffs' sole basis for invoking the jurisdiction of the court is that the SLA was negotiated and entered into pursuant to 19 U.S.C. Section 2411(c)(1)(D). Because they have failed to meet their burden of pleading facts from which the court could conclude that the SLA was indeed the product of 2411, the court cannot accept plaintiffs' argument that it has jurisdiction under the arising under provisions of Section 1581(I)," he wrote.

ZEROING: In first ruling on application of Section 123 of the Uruguay Round Agreements Act (URAA), CIT Judge Judith M. Barzilay May 18 dismissed suit by United States Steel, Arcelormittal USA, and Nucor seeking to overturn ITA's change in regulations on application of zeroing in antidumping decisions (slip op. 09-45). Plaintiffs claimed change, which brought U.S. into compliance with WTO ruling on zeroing, violated Administrative Procedure Act. "The court's decision here should not be read to suggest that an agency action under Section 123 of the URAA is free from judicial review," she wrote in footnote. "It may be the case that, under certain facts where none of the other subsections of Section 1581 provides a plaintiff with adequate relief, Section 1581(I) will be the most appropriate avenue to challenge a general change in agency practice as it is adopted by the United States in a Section 123 determination. However, because the remedy provided by Section 1581(c) will address the relief sought by Plaintiffs, the facts of this case do not permit the court to assume jurisdiction under Section 1581(I)," Barzilay ruled.

CUBA: Sen. Max Baucus (D-Mont.) and 15 co-sponsors introduced bill May 20 to ease travel and trade restrictions on Cuba especially for agriculture and medical product sales.

ANGOLA: U.S. and Angola May 19 signed Trade and Investment Framework Agreement (TIFA) that will provide a forum to address trade issues and help enhance trade and investment relations.

EXPORT ENFORCEMENT: Joseph Piquet, who was convicted March 5 on seven counts of conspiracy to evade the Arms Export Control Act, was sentenced May 15 to 60 months in jail by federal judge in Miami. Court documents showed he purchased high-tech, military-use electronic components from Northrop Grumman Corporation, then shipped items to Hong Kong and People's Republic of China without first obtaining required export licenses.