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## Commerce Agencies Split Over Aviation Export Controls

It's rare to find federal agencies within the same department washing their laundry in public over trade policy, but without political leaders in place to temper these differences, two Commerce Department agencies have split over proposed new controls on exports of certain aviation products. In comments filed on a BIS proposal to add new reexport requirements on aviation parts, Mary Saunders, deputy assistant secretary for manufacturing and services in Commerce's International Trade Administration (ITA), warned that changing the current rules in the Export Administration Regulations (EAR) would hurt the U.S. aviation industry.

BIS had asked for public comment on the possible removal of certain aviation products from current *de minimis* eligibility when the items are controlled for Missile Technology (MT) reasons. "My office is not aware of a threat to national security arising from these products' current status," Saunders wrote. "In the absence of a demonstrated threat, I would urge that BIS not change its *de minimis* rules because to do so may damage U.S. interests in international civil aircraft trade," she added (see **WTTL**, Dec. 1, page 4).

"If there is a demonstrated national security threat, I would urge that BIS consider modifying the prospect for a change to mitigate damage to U.S. trade interests," she suggested. Saunders' letter included suggestions on how to change the proposal to make it less damaging to industry. Saunders, whose office is responsible for promoting exports of U.S. aviation and aerospace products, said the proposed change could further encourage foreign buyers to "design out" U.S. components from their products because of fear of becoming subject to U.S. export controls.

## Kirk Avoids Trade War on Softwood Lumber

U.S. Trade Representative (USTR) Ronald Kirk ducked his first chance to show his toughness on trade enforcement April 3, rejecting a call from the U.S. lumber industry and Sen. Olympia Snowe (R-Maine) to impose a 10% import tax on Canadian softwood lumber for Ottawa's alleged failure to comply with an arbitration tribunal ruling. To make up for the overshipment of lumber under the terms of the Softwood Lumber Agreement (SLA), a tribunal of the London Court of International Arbitration had ruled that Canada needed to impose a 10% export tax on lumber exports from Quebec and Ontario until it collected Canadian \$68.26 million, which would be US\$54.1 million based on exchange rates April 1. On March 31, Canada said it was paying the U.S. Treasury directly a check for \$46.7 million to meet the ruling of the arbitration tribunal (see **WTTL**, March 2, page 4). Canada said it would ask the tribunal to confirm that



its payment is an adequate amount and cures its violation of the SLA. Canadian sources say the \$46.7 million was what U.S. negotiators had asked for in the arbitration hear-ings. "If the tribunal rules that a payment is not an adequate cure, and an additional charge is necessary, the Government of Canada will comply as directed," a Canadian statement said.

"Canada's claim that it has complied with the arbitration tribunal's decision regarding Canada's obligations under the SLA is unfounded," Kirk said in a statement. "Canada's offer to pay the United States Government US\$36.66 million does not cure the breach identified by the tribunal, and we are now reviewing our options and will decide soon on an appropriate response," he said. "The United States is reviewing Canada's request for arbitration and will respond at the appropriate time," a USTR press release stated.

The U.S. Coalition for Fair Lumber Imports reacted sharply to Canada's announcement. Coalition Chairman Steve Swanson said he is "shocked and appalled by Canada's provocative and contemptuous decision to ignore the tribunal's clear direction." The Coalition wants Canada to impose the 10% export tax on Canadian lumber because it believes the extra fee would actually affect market competition and help domestic producers.

Canada said its decision to pay the U.S. rather than impose a fee on its own industry was based on its judgment that it didn't want to hurt its domestic industry during the current crisis in the housing industry. "At this difficult time for the industry, Canada chose this payment alternative instead of imposing an additional export charge, which would result in further mill closures and job losses in communities," said International Trade Minister Stockwell Day.

## Few Teeth in G-20 Statement on Trade and Protectionism

The communique from the leaders of the 20 largest global economies in London April 2 added little to the group's previous statement on avoiding protectionism and merely restated half-hearted support for completion of the World Trade Organization's (WTO) Doha Round. What may be important about what is in the communique is what was left out, diplomatic sources say. While repeating calls for completing the Doha Round, the text omitted proposed language that would have directed negotiators to conclude the round based on proposed texts now on the table in Geneva. There is strong disagreement among many countries, particularly the U.S., with draft texts on agriculture, non-agriculture market access (NAMA), and trade rules.

The leaders agreed to give WTO Director General Pascal Lamy unofficial authority to continue what he is already doing to monitor and report on protectionist measures taken by member countries. They offered to enhance that process by supporting an undefined requirement for WTO members to self-disclose any protectionist measures they take. "We will notify promptly the WTO of any such measures and we call on the WTO, together with other international bodies, within their respective mandates, to monitor and report publicly on our adherence to these undertakings on a quarterly basis," the communique states.

G-20 countries also agreed to extend to the end of 2010 the commitment they made last November to refrain from raising new trade barriers that are inconsistent with WTO obligations. The communique, however, now includes a new pledge that countries "will rectify promptly any such measures." Former USTR Carla Hills told WTTL that she had hope the leaders would have agreed on a "standstill" agreement on new trade measures. "Could they have done more? Sure. But this was an appropriate compromise," she told WTTL. "I didn't have high expectations" for the meeting, but "I am pleased with this," she said (see WTTL, March 2, page 3).

The communique recognizes that certain stimulus actions that countries are taking and help being given to financial institutions are aimed at supporting domestic industries and may discriminate against foreign firms. "We will minimise any negative impact on trade and investment of our domestic policy actions including fiscal policy and action in support of the

financial sector. We will not retreat into financial protectionism, particularly measures that constrain worldwide capital flows, especially to developing countries,” the leaders agreed. A promised of \$1 trillion for the International Monetary Fund, World Bank and other multi-lateral banks earmarks \$250 million to support trade finance.

## **U.S., China Add “And” to Strategic Dialogue**

The Obama administration appears intent on putting its own imprimatur on U.S.-China economic relations, so President Obama and Chinese President Hu Jintao April 1 agreed to establish formal high-level talks to be called the U.S.-China Strategic and Economic Dialogue (SAED). This is not to be confused with the Bush administration’s plain old Strategic Economic Dialogue (SED). The AND appears to stand for Secretary of State Hillary Clinton, who will co-chair the U.S. side of the talks along with Treasury Secretary Timothy Geithner.

Under the Bush SED, Treasury Secretary Henry Paulson was the lead American official. The SED’s main goal was to prevent legislation to impose sanctions on China for manipulating its currency. Other Cabinet officials and their staffs participated in the SED talks on peripheral issues. Obama and Hu also said they would continue the high-level Joint Commission on Commerce and Trade, which is co-chaired by Commerce Secretary Gary Locke and USTR Ronald Kirk.

During a photo-opportunity with Hu, Obama said, “These high-level ministers will be charged with working in a very detailed and constructive way on issues of mutual interest to our two countries. And we are very grateful to President Hu for designating such distinguished ministers who are going to be working very constructively with Tim Geithner, my Secretary of Treasury, as well as Hillary Clinton, the Secretary of State.”

During their meeting, Obama and Hu “pledged that, as two major economies, the U.S. and China will work together, as well as with other countries, to help the world economy return to strong growth and to strengthen the international financial system so a crisis of this magnitude never happens again,” a White House statement reported. “President Hu emphasized China’s commitment to strengthen and improve macroeconomic control and expand domestic demand, particularly consumer demand,” it noted.

## **Hearing Shows Support for Revising Satellite Export Controls**

Lawmakers on Capitol Hill expressed empathy at an April 2 hearing with satellite industry representatives, who say regulations intended to keep vital technologies away from China have throttled their ability to do business in international markets. The hearing held by the House Foreign Affairs subcommittee on terrorism, non-proliferation and trade also revealed the continuing divisions in Congress over export and trade policies for China.

“We are the only country that controls satellite exports like they were armaments,” said subcommittee chairman Brad Sherman (D-Calif.). “We have, in effect, an embargo on U.S. satellites and components being launched with Chinese rockets because of the bar on exports of munitions to China,” Sherman said. What is needed, Sherman said, is a system that balances the need to protect satellite technology with the ability of the industry to conduct international trade.

Rep. Edward R. Royce (R-Calif.), the subcommittee’s ranking minority member, indicated support for exploring changes in existing laws. “The playing field is more crowded and more competitive than ever before,” he said. But he also noted that “Chinese spying is pervasive. Export control reform should be made with a clear idea of Chinese capabilities and intentions.” Concerns about China were also voiced by Rep. Dana Rohrabacher (R-Calif.), speaking as a guest of the subcommittee. “I don’t begrudge satellite operators the millions in profits they are making; in fact, their sector seems to be one of the few recession-proof industries right now,”

Rohrbacher said. "Take China off the table now, and we can get down to the business of reforming ITAR and export controls," he said.

## Professor Roth Pleads for Probation Instead of Jail

Former University of Tennessee Professor J. Reece Roth has asked a federal judge to sentence him to probation for his conviction for violating the Arms Export Control Act (AECA) and not to the 63-78 months in jail recommended in a Presentencing Investigation Report (PIR). The Justice Department told the judge it initially supported the recommendations in the PIR but after reviewing the case decided to recommend an upward variance and a sentence of 78-97 months. The opposing briefs led Knoxville U.S. District Court Judge Thomas Varlan to postpone the scheduled sentencing of Roth to May 13 from April 2 (see **WTTL**, Sept. 29, page 4).

In addition to his age, 72, and his personal and professional high standing, Roth argued that he was not the "typical" defendant in an AECA case. He also contended that there was no harm to national security from his release of defense data to a Chinese graduate student or the carrying of data to China on his laptop. "The proof at trial established that Dr. Roth's only motive was an academic pursuit, *viz.*, to advance scientific knowledge in the area of aerodynamic effects of plasma actuators," his brief asserted.

Justice claimed a longer sentence was warranted because Roth was found to be "willfully obstructing or impeding justice with regard to perjurious testimony at trial." It also said a strong sentence was needed to assure compliance with the AECA and the International Traffic in Arms Regulations (ITAR) "The significance of this case is found in the principle that both defense contractors and academic institutions, and most importantly all individuals associated with such entities, have a duty to uphold and abide by these laws and regulations," Justice argued.

## Kirk Fills USTR Staff Positions with Obama Aides

USTR Ronald Kirk April 3 announced the filling of dozen staff positions, with many of the jobs going to former aides to President Obama when he was in the Senate or those who had worked on his campaign. Also appointed to posts that don't require Senate confirmation were ex-staffers to key members of Congress. Named were:

- Julianna Smoot to be Kirk's chief of staff. She had co-chaired Presidential Inaugural Committee and was National Finance Director for the Obama for America campaign.
- Peter Cowhey as senior counselor. He is on leave from being dean of the School of International Relations and Pacific Studies at the University of California, San Diego.
- Timothy Reif to be general counsel. Reif was chief international trade counsel for the House Ways and Means Committee.
- Lisa A. Garcia as assistant USTR for the intergovernmental affairs and public liaison. She had run her own political consulting firm in Austin, Texas, and had served on staff of Sen. John Kerry (D-Mass.) and Kerry-Edwards 2004 campaign.
- Myesha Ward to be deputy assistant USTR for intergovernmental affairs and public liaison. Ward served as midwest regional political director and deputy director for delegate operations for the Obama for America campaign. She also worked on Kerry campaign.
- Daniel Sepulveda to be assistant USTR for congressional affairs. He managed trade, immigration, interstate commerce, labor, ethics and lobbying reform issues for Obama in the Senate from 2004-2008.
- Luis Jimenez as deputy assistant USTR for congressional affairs. Jimenez was legislative director for Democratic Caucus Chairman Rep. Rahm Emanuel (D-Ill.), before Emanuel moved to White House. He also advised Emanuel on Ways and Means Committee issues.
- Charles Small will be congressional affairs specialist for USTR. He was entertainment liaison for the Presidential Inaugural Committee.
- Averyl Bailey as director of scheduling and advance. She worked on Obama presidential campaign and did advance work for the Kerry-Edwards 2004 campaign and Gore 2000.

- Devorah Adler to be executive secretary. Adler served as research director for the Obama for America campaign and the Democratic National Committee.
- Stacy Koo to be confidential assistant to Smoot. She was finance chief of staff for the Presidential Inaugural Committee and worked for Sen. Charles Schumer (D-N.Y.) on Democratic Senatorial Campaign Committee.
- Brett Rosenthal will be Kirk's personal assistant. He was coordinated campaign director of the Tarrant Obama group for the Lone Star Project.
- Carol Guthrie as assistant USTR for public and media affairs. Guthrie was communications director for the Senate Finance Committee and earlier for Sen. Max Baucus (D-Mont.).
- Deborah (Debbie) Mesloh to be deputy assistant USTR for public and media affairs. She served as spokeswoman for the Presidential Inauguration Committee and Obama for America campaign.
- Nefeterius Akeli McPherson as senior media affairs liaison. She worked for Kirk during his time as mayor of Dallas and was deputy press secretary during his 2002 Senate campaign.
- Amanda Scott will be public affairs assistant. She managed the national blog and constituent blog on the Obama for America campaign.
- Trinh Nguyen as press assistant. She has worked at USTR since September 2006 and managed press and public relations during transition.

## Action on Trade Barriers Will Test Kirk's New Agenda

USTR Ronald Kirk has promised to make enforcement of U.S. trade agreements a top priority for the Obama administration, and the first test of the promise will come in how he deals with the scores of foreign trade barriers identified in the annual National Trade Estimate (NTE) of Foreign Trade Barriers to U.S. exports released March 31. His staff is reportedly already talking to union groups trying to set priorities for enforcement cases.

The NTE report, released annually for 24 years, has listed hundreds of pages of complaints against dozens of countries but only a few of those complaints have ever resulted in actual dispute-settlement cases at the World Trade Organization (WTO). Trade officials in both Republican and Democratic administrations have preferred to deal with the disputes through quiet consultations and negotiations. This year's report is 547 pages, with 56 pages devoted to China alone.

"We must work to open new markets around the world for American farmers, manufacturers, ranchers, and service providers, and at the same time ensure that American workers are reaping the promised benefits of previous agreements through strong enforcement," Kirk said in a statement. The USTR's office said it is beginning a review of the implementation of existing trade agreements, including provisions on labor and environment, and initiating a process to prioritize trade barriers enumerated in the report to address the most significant.

It also said it was "identifying new cases where market access for U.S. goods and services is in jeopardy because of disregard for the rule of law, costing our workers and businesses export opportunities and jobs." The statement from the office promised to "to prosecute those cases through multilateral and bilateral dispute resolution, so that American workers can trust that their trading system yields results." Before the release of the report, House Democrats sent President Obama a letter pressing him to take action on the barriers identified in report rather than letting the problems listed year after year remain unchallenged. "We ask you to examine not only the specific issues in this letter, but to think about ways that the United States can *systematically* improve its ability to eliminate barriers and open foreign markets to U.S. exporters," the letter stated (original emphasis).

## White House Will Find It Hard to Fix Mexican Trucking Dispute

The Obama administration may find it hard to come up with a new plan to restart a pilot program to allow Mexican trucks north of the border and to get Mexico to lift \$2.4 billion in retaliation, warns Rep. Kevin Brady (R-Texas). "Unfortunately, I think it will be more difficult

than it appears, mainly because the pilot program that was in place already encompassed so many safety provisions,” Brady told the Washington International Trade Association March 31.

“It is hard to take that farther,” he said. “I’ve read what the Teamsters are saying. I’ve read what some members of Congress are proposing. My worry is that they’re just adding provisions that they know can never be implemented in practice. So I’m worried that it won’t move as quickly as we’d like,” he added.

One thing that could help is education, Brady said. “While lawmakers have focused on this pilot program, the truth is we’ve had Mexican trucks traveling across country in the U.S. for more than two decades,” he noted. “Over 800 of them have moved across our country in the last decade. Their safety record is equal to our U.S. trucks. In some areas they look even a little better.” he said, adding “Safety concerns to some degree have been exaggerated.”

## Congress Calls for More Trade Sanctions on Iran

A group of House Democrats wrote to President Obama March 26 supporting his new approach to Iran but calling for tough new sanctions if Tehran fails to respond positively. Even with a policy of engagement, “The Iranian nuclear program must be dealt with on an urgent basis,” wrote seven lawmakers, including Democratic Majority Leader Steny Hoyer (D-Md.) and House Foreign Affairs Committee Chairman Howard Berman (D-Calif.).

Should engagement not yield results, they urged Obama to use available tools to increase economic pressure on Iran. Such measures, they said, could include: sanctioning the Central Bank of Iran; sanctioning international banks that continue to do business with Iranian Banks; denying access to U.S. ports to vessels calling at Iranian ports; sanctioning insurance companies that provide insurance to vessels calling on Iranian ports or aircraft that land in Iran; and sanctioning energy companies that invest in Iran’s oil and gas sector.

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

STATE: DDTC Compliance Director David Trimble leaving post April 10 to rejoin Government Accountability Office (GAO) where he worked before coming to State in 2000. His deputy, Daniel Buzby, will serve as acting director until permanent replacement is named.

PARAGUAY: House Foreign Affairs Committee Western Hemisphere subcommittee chairman Eliot Engel (D-N.Y.) April 1 introduced US-Paraguay Partnership Act of 2009 (H.R. 1837) to make Paraguay eligible for benefits of Andean Trade Preference Act (ATPA). Senate version (S. 780) introduced by Sens. Bill Nelson (D-Fla.) and John Cornyn (R-Texas). U.S. exports to Paraguay in 2008 were \$1.6 billion; imports were just \$78.4 million.

CUBA: Sens. Byron Dorgan (D-N.D.) and Michael Enzi (R-Wyo.) March 31 introduced Freedom to Travel to Cuba Act (S. 428) along with Sens. Christopher Dodd (D-Conn.) and Richard Lugar (R-Ind.). Legislation would eliminate directly travel restrictions to Cuba for both families and farmers who visit the island to sell agriculture goods (see **WTTL**, March 23, page 3).

BUY AMERICAN: Defense, NASA and GSA in March 31 Federal Register published and asked for comments on interim final rules implementing Buy American provisions of President Obama’s Recovery Act. Amendments to Federal Acquisition Regulation (FAR) prescribe procedures for determining value of construction materials used in projects funded under legislation and exemptions, including for compliance with U.S. trade agreements, such as Government Procurement Agreement, and FTAs. Eligible materials made in U.S. or eligible countries have to have gone through substantial transformation. Exemption from law applies to “Acquisitions under trade agreements. (1) For construction contracts with an estimated acquisition value of \$7,443,000 or more, also see Subpart 25.4. Offers of products determined to be eligible products per Subpart 25.4 shall receive equal consideration with domestic offers per Subpart 25.4,” rules state (see **WTTL**, March 16, page 2).