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Emerging Technology Committee Gets Aggressive on Controls

Members of the Bureau of Industry and Security's (BIS) Emerging Technology and Research Advisory Committee (ETRAC) got more aggressive in their questioning of U.S. export controls at their third meeting Feb. 10. Committee members grilled representatives from both State's Directorate of Defense Trade Controls (DDTC) and BIS, complaining about the lack of clarity in the International Traffic in Arms Regulations (ITAR) and suggesting the deemed export rules in the Export Administration Regulations (EAR) should be done away with entirely.

Not used to facing challenges to State's policies, DDTC commodity jurisdiction (CJ) officer Denzil Tice bristled under the committee's questions. One from Seth Marder of Georgia Tech University questioned the clarity of the phrase "specially designed" as it is used in making CJ determinations. In response to several similar questions, Tice said, "I don't have a PhD". To that, Marder shot back, "Well I have a PhD, and I still don't understand the regulations."

Eileen Albanese, director of the BIS Office of National Security and Technology Transfer Controls, gave a review of deemed exports rules. She told ETRAC that "Commerce has a different view of publically available" than State. "Unfortunately, you are dealing with two control regimes," she said. BIS licensing officer Gene Christensen told the committee "Industry has gotten used to the controls that exist. They work around them, instead of pushing for changes."

After the most of the top agency officials had left the room, ETRAC member Claude Cainzares of MIT proposed that ETRAC "have a discussion with our friends at Commerce" about the deemed export rules. "There seems to be large machinery at a high cost for a negligible national security benefit," he said. "We should discuss getting rid of deemed exports altogether," Cainzares suggested. The BIS liaison to the committee, Mark Crawford, defended the deemed export controls and purpose for the creation of ETRAC. "If we did away with deemed exports, then we wouldn't need to create a methodology for deemed exports," he said. "I don't know if your brains understand the threat level that exists out there, and the lengths countries will go to to access restricted U.S. technologies," Crawford argued.

Congress Has Lengthy List of Trade Issues on Its Agenda

The bipartisanship that lawmakers showed in reaching a compromise on the Trade Adjustment Assistance (TAA) provisions in the final version of President Obama's economic recovery bill (H.R. 1) is likely to continue on many of the trade issues the 111th Congress will address in



the next two years. But not all. Several of the issues on the congressional trade agenda have historically been bipartisan, but deep divisions remain over other topics, including the future of bilateral free trade agreements (FTAs) and changes to U.S. trade law. Legislative issues that Congress probably will address include:

1. Customs Reauthorization: There appears to be bipartisan support among many members of the trade-law writing committees – House Ways and Means and Senate Finance – to reauthorize Customs and Border Protection (CBP) with the goal of bringing it back to its traditional role in trade facilitation. This goal could face objections from lawmakers who want to keep CBP focused on its high-profile missions dealing with antiterrorism, immigration and security.

2. Miscellaneous Tariff Bill: This perennial package of bills to reduce, suspend or amend individual tariff line items in the Harmonized Tariff Schedule (HTS) failed to move in the 110th Congress. Some 800 HTS amendments were left pending at the end of 2008. Each will have to be reintroduced to get into a new MTB, and the vetting process will have to begin again. The always complex legislation was made more complex with new rules that characterized MTB bills as “earmarks” that need to meet special rules. The work done in the last Congress should speed up the process this year, but divisions in the Senate over procedures have hampered progress in the past and could again.

3. Trade Preference Programs: Congress merely extended the Generalized System of Preferences (GSP) and Andean Trade Preferences Act (ATPA) in 2008, and there is talk again of attempting to enact a comprehensive reform of all preference programs. This would also include the Africa Growth and Opportunity Act (AGOA). One goal of revamping the laws would be to shift their benefits from advanced developing countries such as India and Brazil to least developed countries.

4. Trade Enforcement: Ways and Means Chairman Charles Rangel (D-N.Y.) has already reintroduced one bill to improved trade law enforcement, and Finance Committee Chairman Max Baucus (D-Mont.) is likely to resubmit one he co-sponsored in the last Congress. Many other lawmakers are expected to offer measures to toughen enforcement of trade agreements and trade laws. Any effort to open the Trade Act to amendment, however, risks inviting a host of riders that could reignite a partisan fight over trade. Such bills could deal with China’s currency manipulation, NAFTA and WTO dispute-settlement rulings.

5. Trade Agreements: Bipartisanship will face its greatest strain trying to address pending FTAs with Colombia, Panama and South Korea. There appears to be a chance that the Panama accord, the least controversial of the three, could move to the front of the line, but opposition remains strong among Democrats to the deals with Colombia and South Korea.

Trade in 2008 Turned from Boom to Bust

Twenty years from now, trade economists may look back at 2008 as another record year for trade for U.S. exporters and importers. But a closer look at the trade figures shows trade

Change in Goods Trade by Quarters 2008 v. 2007 (in billions)						
	Exports 2008	Exports 2007	% Change	Imports 2008	Imports 2007	% Change
First Quarter	\$317	\$270	17.5%	\$530	\$473	12%
Second Quarter	337	279	20.6	554	485	14.3
Third Quarter	346	295	17.2	562	496	13.3
Fourth Quarter	290	303	-4.2	464	512	-9.2

peaking at mid-year and declining steadily after that. Most forecasts now expect global trade to decline in 2009 and not begin to grow again until 2010 (see **WTTL**, Dec. 15, page 1). The first and second quarters of 2008 saw record growth in trade. Exports in the first quarter were up 17.5% compared to the same time in 2007.

Imports in the first quarter rose 12 % versus the same period a year earlier. The second quarter also saw strong growth, with exports up 20.6% from 2007 and imports up 14.3%. In the third quarter growth rates

started to decline and by the fourth quarter the year-over-year comparison shows exports dropping 4.2% from 2007 and imports plunging 9.2% (see table page 2). Trade growth in the first half of 2008 was fueled by fuel and food prices. This helped carry U.S. farm exports to a

record level of \$108.4 billion, a 29% increase over 2007, and petroleum imports up 37% to \$331 billion. The trade deficit in petroleum products accounted for 47% of the total U.S. trade deficit in manufactured goods (see table page 3). The strong growth of exports in the first half of 2008 was also due to a decline in the value of the dollar against the currencies of major trading partners in Europe, Canada and Japan. By year end, the dollar began to rise again, reducing the exchange rate benefit.

In contrast to goods, exports of services continued to grow throughout the year, reaching a record \$552 billion and a surplus of \$144 billion. Services imports also reached a record of \$408 billion.

The political debate over China continued in 2008, but trade figures showed U.S. exports to China growing at nearly twice the rate (9%) as imports (5%). At the same time, trade with other major Asian nations, particularly Japan, Korea, Hong Kong, Taiwan and Singapore declined by 4%. These figures reflect a pattern that has been developing for several years, with the growth of U.S. imports from Asia slowing overall but shifting to China at the expense of its neighbors. Supporters of free trade agreements with Central and Latin America should be

cheered by figures showing a 29% surge in U.S. exports to the region and only a 19% increase in imports. Exports to Colombia jumped 34% even without the U.S.-Colombia FTA.

Doha Round Talks Resume Without Conviction

New concerns over the Obama administration's posture in the World Trade Organization's (WTO) Doha Round have cast a shadow over plans to restart negotiations on services and

Preliminary 2008 vs. 2007 U.S. Merchandise Trade Figures (in billions)

	2008 Exports	2007 Exports	% Change	2008 Imports	2007 Imports	% Change
Total	\$1,291	\$1,148	12.5%	\$2,112	\$1,968	7.3
BY COUNTRY/REGION						
Canada	261	249	5	336	317	6
Mexico	151	136	11	216	211	2
European Union (25)	275	247	11	367	354	4
Germany	55	50	10	98	94	4
France	29	27	7	44	42	5
United Kingdom	54	50	8	59	57	6
Japan	67	63	6	139	145	-4
China	71	65	9	338	321	5
NICs: HK, Singapore, Taiwan, Korea	111	107	3	107	111	-4
South/Central America	138	107	29	160	135	19
BY SECTOR						
Agriculture	108.4	84.3	29	89	81.7	9
Aircraft, parts, engines	86.2	87.3	-1	35.4	34.4	3
Autos, parts, engines	120.9	121.0	--	233.6	258.9	-10
Clothing	3.2	3.2	-1	78.9	81.2	-3
Chemicals-Organic	34	33	1	47.7	42.2	13
Chemicals-Inorganic	12.8	10.8	19	16.8	13.3	26
Petroleum, total categories	67.0	37.7	77	453	331	37
Iron & Steel	18.5	14.0	32	38.9	30.9	26
Metalworking Machines	7.4	6.7	11	9.6	8.7	10
Pharmaceuticals	40.3	35.2	15	79.4	71.7	11
Semiconductors	50.5	50.4	--	25.7	26.6	-4
Telecommunications	32.9	30.3	9	44.8	44.1	2
Wood Products	2.3	2.1	7	8.4	10.4	-19

agriculture, while growing fears about the rise of protectionism haven't been calmed by reports that have found little evidence so far of such measures (see **WTTL**, Feb. 9, page 2). Talks and meetings in Geneva the week of Feb. 9 showed diplomats just trying to keep people busy with no real conviction while they wait to see which direction their leaders instruct them to take, one diplomat told **WTTL**. Amidst these talks, there was even discussion about the possibility of calling a full ministerial meeting, which is already two years past the normal time for convening such a meeting under WTO agreements.

Worries about U.S. trade policy have increased due to the delay in the confirmation of former Dallas, Texas, Mayor Ron Kirk to be the next U.S. Trade Representative (USTR). A hearing on his nomination in the Senate Finance Committee isn't expected until mid-March. Obama's trouble finding and keeping a nominee to be Commerce secretary also adds to the anxiety, as well as statements from Obama administration officials suggesting the U.S. may reassess its stand in the round.

At a Feb. 12 meeting, agriculture negotiations group chairman Ambassador Crawford Falconer of New Zealand said he will try to reconvene smaller meetings of about 30 representative delegations. He said he also plans to hold two more rounds of meetings with individual countries and group representatives during the next 30 days to flesh out reactions to the draft text he released in December and to determine where work can restart.

Ten days of talks on "clusters" of services are also expected to begin March 30. These talks will be held at the same time as regular WTO meetings on trade and financial services, specific commitments and domestic regulations. Talks on sectorals are not expected immediately, but nontariff barriers (NTB) to trade may be discussed, one trade diplomat reported.

Meanwhile, an informal meeting of the WTO Trade Policy Review Board Feb. 9 heard mixed but generally positive reviews of Director General Pascal Lamy's report on trade-related developments emerging from the global economic crisis. Representatives of several developing countries told the session that they don't think tariffs are the biggest concern. More important to them are the billions of dollars developed countries are pouring into distressed industries, they said. Lamy's report showed "a clear unequivocal pattern: one of emerging protectionism," Brazil told the meeting. Speakers from developed countries said tariffs are the biggest concern. In particular, they said they are worried about the difference between bound tariff rates and applied rates and the possibility that countries might snap back rates to their higher bound levels. This has raised "the value of water", the spread between the bound and applied tariff rates, in the non-agriculture market access (NAMA) negotiations, one diplomat noted.

* * * Briefs * * *

FCPA: As Halliburton previously revealed in advance, its former subsidiary, KBR, Inc., pleaded guilty Feb. 11 to violating FCPA with bribes paid to Nigerian government officials and agreed to pay \$402 million criminal fine (see **WTTL**, Feb. 2, page 3). Under indemnity agreement between Halliburton and KBR, Halliburton will pay fine. In separate settlement with SEC, KBR and Halliburton jointly agreed to pay \$177 million in disgorgement of profits.

MORE FCPA: Second ex-executive with valve maker CCI has pleaded guilty to violating FCPA. Richard Morlok pleaded guilty in Santa Ana, Calif., U.S. District Court to one-count information charging him with conspiring to bribe officials in China, Korea, Romania and Saudi Arabia. His former colleague, Mario Covino, pleaded guilty to related charges in January (see **WTTL**, Jan. 12, page 4).

BROKERS: CIT doesn't have jurisdiction to review Customs decisions to revoke customs brokers' licenses for administrative reasons, Court of Appeals for Federal Circuit ruled Jan. 27 in *Schick v. U.S.* "While section 1581(g)(2) refers to, and permits review of, the revocation or suspension of a customs broker's license for disciplinary reasons under section 1641(d)(2)(B), it neither refers to, nor permits review of, a revocation or suspension for failure to file a triennial report under section 1641(g)(2). Thus, a claim arising under section 1641(g)(2) is not a claim arising out of a law providing for the administration and enforcement of matters referred to in section 1581(g)(2)," court ruled.