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EAA Renewal Faces Uncertain Chances in Senate

As House Foreign Affairs Committee Chairman Howard Berman (D-Calif.) moves towards drafting and introducing legislation to renew and revise the Export Administration Act (EAA), chances for action on a bill in the Senate are doubtful. An EAA bill in the Senate will face the double hurdle of the Senate Banking Committee's focus on financial reform legislation and continuing fears that an export control bill could attract numerous amendments on the Senate floor, including proposals targeting trade with China and trade transshipment countries in the Middle East such as the United Arab Emirates.

"We'll get to it," Banking Chairman Chris Dodd (D-Conn.) assured WTTL Jan. 21. "But we have been so preoccupied with financial reform stuff and the different jurisdictions here," he added. "We have to prioritize. We have to get through this process first. I have a monumental bill in front of us," said Dodd, who has announced that he will retire from the Senate at the end of 2010.

Congressional sources also are concerned that a new EAA bill could face the same resistance as legislation that Sen. Mike Enzi (R-Wyo.) tried to get approved in 2001. Many of the senators who opposed that bill are still in the Senate, including Banking's Ranking Republican Richard Shelby (R-Ala.) and Sens. John McCain (R-Ariz.) and Jon Kyl (R-Ariz.). Kyl reportedly has placed a "hold" on Senate confirmation of Eric Hirschhorn to be under secretary of the Bureau of Industry and Security (BIS). Kyl apparently believes Hirschhorn is too close to the exporting community from his days as a lawyer in D.C. and head of a coalition that argued for export control liberalization (see **WTTL**, Jan. 4, page 2).

Meanwhile, Berman Jan. 15 held the first of his promised hearings on export controls in Palo Alto, Calif. "There is a growing consensus among security experts as well as academics and industry leaders that our current system of export controls needs to be updated in order to continue protecting sensitive technologies while also maintaining U.S. technological leadership," Berman said in his prepared statement at the start of the hearing. He said the hearing was intended to help the committee prepare for the complete revision of EAA and to contribute to congressional oversight of President Obama's export control policy review.

U.S. Isolated in Drive to Get Better Doha Deal

The U.S. is not likely to have support from the European Union (EU), its strongest ally in the Doha Round negotiations, in its effort to wring greater concessions from advanced developing



countries, particularly China, Brazil and India, a EU trade official indicated Jan. 20. The U.S. has made the demand for more market opening in these countries its key negotiating stand in talks on non-agriculture market access (NAMA). The EU is concerned that pressing for more concessions in NAMA would lead to reopening talks in areas where the U.S. and EU have already won protection for their sensitive industries, said David O'Sullivan, the European Commission's director general for trade.

"The idea that there can only be a discussion about what is on the table in NAMA and what we are asking the Indians or Chinese or Brazilians eventually to contribute something extra and not talk about some of the areas where U.S. and EU sensitive issues have also been taken care of is not realistic in a negotiating stance," O'Sullivan told the Washington International Trade Association. "We, and also the United States, have defensive sensitivities that we would not wish to see interfered with as part of that package," he said.

"The European perspective on this is that we felt that the package that emerged in July 2008 at the end of the ministerial represented a solid achievement and we were prepared to support it," he said. He acknowledged that the EU has some reservations and regrets about that package, "but to be frank this was the deal that was doable and possible and we felt there was enough economic value in it for us to approve it," he added. O'Sullivan said if he could send a wish list to Santa Claus, he would ask for more in NAMA, but he questioned what other issues would then be opened for negotiations.

O'Sullivan also said it was important to complete the Doha Round to allow negotiators to prepare for talks on 21st Century issues such as nontariff barriers and standards. He said the U.S. and EU should stop arguing about whether U.S. or EU standard should be adopted and focus more on adoption of international standards. "Maybe we should start to think less about the differences between us and more about what would happen when we would both face standards imposed by others," O'Sullivan said.

FCPA Sting Snags 22 Executives of Arms Exporting Firms

In a scene more reminiscent of a Mafia crime family takedown than of corporate wrongdoing, a nationwide undercover operation by federal agents resulted Jan. 19 in the arrest of 22 executives on charges of violating the Foreign Corrupt Practices Act (FCPA). The multiple indictments against the individuals accused them of agreeing to pay a "commission" to a consultant who was willing to arrange the sale of small arms and ammunition to a foreign defense ministry in Africa. None of the companies for which the defendants worked were identified in the indictments filed in the D.C. U.S. District Court, and none of their companies were charged, but further legal action against them may be in the works.

In connection with 21 of the arrests at a conference in Las Vegas, the Justice Department said some 150 FBI agents executed 14 search warrants in locations across the country at companies where the defendants worked, including Bull Shoals, Ark., San Francisco, Miami, Ponte Vedra Beach, Fla., Sarasota, Fla., St. Petersburg, Fla., Sunrise, Fla., University Park, Fla., Decatur, Ga., Stearns, Ky., Upper Darby, Pa., and Woodbridge, Va. Police in London were also executing search warrants as part of their own investigation. Of those arrested, 18 were based in the U.S.; three were from the United Kingdom; and one from Israel.

The sting operation involved a former vice president of international sales (Individual 1) for a company that manufactured and supplied law enforcement and military equipment to law enforcement and military customers around the world. Also participating was one undercover Special Agent with the Federal Bureau of Investigation who posed as a representative (UA-1) of the minister of defense of a country in Africa and a second FBI agent (UA-2), who posed as a procurement officer for that country's defense ministry. The wording of the indictments could raise claims that the defendants were the subject of entrapment by the FBI. One indictment

says the defendant “would participate in meetings and have discussions in which Individual 1 said that a friend of his, who was a self-employed sales agent, was tasked by Country A’s Minister of Defense with obtaining various defense articles for outfitting Country A’s Presidential Guard and that Individual 1 was brokering the deal.” In this case, the defendant was offering to sell Corner Shot accessories, which allow weapons to shoot around a corner. The indictment claims the defendant agreed to add a 20% “commission” to the sales price, with those funds divided between Individual 1 and UA-1.

Industry Offers More Advice on Export Control Reforms

There appears to be no shortage of ideas about how to fix the U.S. export control system, and a group of 15 trade associations Jan. 19 sent the White House a list of 54 suggestions that the interagency export control reform task force should consider in its current review. The advice in some cases overlaps with suggestions made a week earlier by the Coalition for Security and Competitiveness, but also delves deeper into the day-to-day mechanics of export licensing and enforcement, especially for dual-use items (see **WTTL**, Jan. 18, page 1). The interagency task force reportedly will meet with industry representatives and brief congressional staffers the week of Jan. 25 in advance of its Jan. 29 deadline to present its recommendations to senior Obama administration officials.

The newest recommendations comes from the Export Control Practitioners Group, an ad hoc group of export compliance executives, lawyers, consultants and trade association staffers who have been meeting periodically in Washington for several years to discuss trade issues. Their advice was spelled out in a letter signed by 15 trade associations and sent to National Security Advisory James Jones and National Economic Council Director Lawrence Summers.

While the group’s suggested reforms mirror many of those in the recommendations issued by CSC, two coalition members, the National Association of Manufacturers and the Aerospace Industry Association, were conspicuously absent from the list of signers of the letter. It appears some of the same turf battles that divide government policies on export controls also divide industry. The group’s recommendations focus on six principles of reform, covering 11 areas of export controls and 54 specific changes. Two of the most important areas of concern are the need for updating the Commerce Control List (CCL) and the U.S. Munitions List (USML) and clarifying Commodity Jurisdiction (CJ) policies. Industry contends the lists are out of date and capturing technologies that should no longer be controlled.

Clinton Urges U.S. Business to Resist Internet Censorship

In what the State Department billed as a major speech, Secretary of State Hillary Clinton Jan. 21 urged U.S. companies to resist efforts by foreign governments to impose censorship on their Internet and communications activities. In addition to lauding Internet freedom, Clinton’s speech signaled the administration’s recognition that new social networking communications have become a key diplomatic tool in circumventing oppressive governments in countries such as Iran and China. Clinton, however, did not address the restrictions the U.S. imposes on exports of the equipment and software that citizens in those countries need to access the open communications she advocates.

Clinton’s speech follows complaints that Google raised about censorship in China and the hacking of its systems in China (see **WTTL**, Jan. 18, page 2). While State has issued a “demarche” to Beijing asking for a response to Google’s complaints, Google executives Jan. 20 indicated that the company intends to stay in China, which suggests that its threat to leave was just a bluff.

“Censorship should not be in any way accepted by any company from anywhere,” Clinton declared in her speech. “And in America, American companies need to make a principled

stand. This needs to be part of our national brand. I'm confident that consumers worldwide will reward companies that follow those principles," she said. Clinton said State is reinvigorating its Global Internet Freedom Task Force to address threats to Internet freedom. "We are urging U.S. media companies to take a proactive role in challenging foreign governments' demands for censorship and surveillance. The private sector has a shared responsibility to help safeguard free expression. And when their business dealings threaten to undermine this freedom, they need to consider what's right, not simply what's a quick profit," Clinton said.

World Bank Sees Slow Rebound in Global Trade

The decline in foreign direct investment in 2008 and 2009 contributed to the sharp drop in world trade in 2009 and the prospects for continued slow growth in investment in 2010 and 2011 are likely to impede trade growth for the next two years, the World Bank said Jan. 20 in its "Global Economic Prospects" report. The decline in investment and the eating up of existing inventories reduced demand for capital goods and materials that are a large component of international trade.

"The lag in the trade rebound does not appear to be wholly a reflection of weak trade finance (although doubtless it has played some role)," the report noted. "Rather, the lag appears to reflect the still-depressed level of investment activity (investment goods generally are heavily traded)," it said.

After plummeting 31% from August 2008 to its low point in March 2009 in dollar value, world trade is projected to grow just 4.3% in 2010 and 6.2% in 2011, the World Bank forecast. "As a result, even two years into the recovery, the overall volume of goods and services trade is forecast to be 5 percent lower than its 2008 peak," it said. The report also warns that the global recession may have permanently changed production patterns around the world, with some industries unlikely to return ever to their former level even with strong government intervention.

"The sharp scaling back of global production may result in permanent and long-lasting adjustments in global production patterns," it said. "Firms and regional specializations may fail and disappear in a way that they would not have had adjustment occurred more gradually. Global trade patterns may be irrevocably altered and the depth of the recession in some regions and countries relative to others may change the future pattern of growth in the world," it advised.

* * * Briefs * * *

COMMERCE: Senate Banking Committee Jan. 21 held confirmation hearing on nominations of Kevin Wolf to be BIS assistant secretary for export administration, David Mills to be BIS assistant secretary for export enforcement and Suresh Kumar to be assistant secretary and director general of U.S./Foreign Commercial Service. No date yet for committee vote on nominations.

SMALL BUSINESS: USTR Ron Kirk Jan. 21, as part of new push to help small and medium-size enterprises (SMEs) increase exports, added responsibility for helping small business to assignment of assistant USTR (AUSTR) Jim Sanford, who will now have title of AUSTR for Small Business, Market Access, and Industrial Competitiveness. Separately, at USTR's request, ITC Jan. 19 issued report on role of SMEs in exporting. Report, which acknowledges gaps in data, indicates that SMEs' small share of exporting is due to their small share of U.S. manufacturing. Although these firms contributed \$4.7 trillion to U.S. GDP in 2004 or roughly 50% of nonagriculture GDP, 79% of that contribution came from retailing, real estate and services, while only 11% came from manufacturing. Put another way, SMEs manufacturing accounted for about 5% of nonfarm GDP, while their share of goods exports averaged about 30% in last 10 years.

PLASTIC BAGS: WTO dispute-settlement panel Jan. 22 ruled that U.S. use of "zeroing" in antidumping case against polyethylene retail carrier bags from Thailand was inconsistent with WTO rules and said U.S. should bring its ruling into conformity with WTO antidumping agreement.

FIREARMS: DDTC Jan. 19 posted revised guidance on in-transit imports and exports of firearms.