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## White House Advisor Optimistic about Export Control Reforms

Just a week after White House Chief of Staff William Daley reassured the Bureau of Industry and Security's (BIS) Update conference of the Obama administration's commitment to export control reform, another Obama advisor said he remains positive about the effort's chances for success. Despite the departure of two key Cabinet supporters, "We expect fully that we're going to keep up the momentum going forward," Michael Froman, deputy assistant to the president and deputy national security adviser, told the Hudson Institute July 25.

"I've already had conversations with Secretary Panetta about this and he's indicated he's exactly in the same place as Secretary Gates is," Froman said. Ex-CIA Director Leon Panetta has replaced Defense Secretary Robert Gates, the architect of the reform effort. Froman said he expects the same support from John Bryson, who has been nominated to be Commerce secretary to succeed Gary Locke, who was confirmed July 27 to be ambassador to China.

Despite his optimism, Froman concedes that congressional barriers to full reform remain. For example, he noted it takes 200 days on average to complete the 38(f) notification process to Congress under the Arms Export Control Act (AECA) for transferring items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). "The statutory requirement is for 30 days. We've gotten ourselves in a position where it's taken an average of 200 days or in one case, over 700 days, for them to clear," he said.

USML Category VII alone, which covers tanks and military vehicles and is likely to be the first category to see items shifted to the CCL, involves 11,000 transfers, he pointed out. "So this is clearly an issue we're going to need to revisit with Congress as to how they plan to use their 30-day statutory authority," Froman stated. Froman said draft legislation to implement phase three of the reforms and create a single licensing agency and single control list "is nearly ready to go." He also noted draft bills floating around in Congress. The White House bill "does envisage taking the licensing components from Commerce, State and Treasury and putting them in a single place, not an existing agency," he said.

## Deal or No Deal on TAA and FTAs?

Whether or not Congress has a deal for renewing Trade Adjustment Assistance (TAA) and approving free trade deals with Colombia, Panama and Korea depends on whom you talk with last. House Ways and Means Chairman Dave Camp (R-Mich.) claims there is an agreement,



while Democratic sources say talks are continuing on a deal but none has been reached yet. "I do think we have a procedure where the Senate will move first on TAA, the trade agreements will then be sent up and the House will then act on the trade agreements and TAA," Camp told a Chamber of Commerce program July 28. "This is the outline that certainly Senator Baucus and I agree on. I believe the speaker agrees on that and the Senate Majority Leader as well. We need the White House to send up the agreements and buy into this process," Camp said.

Democratic sources say Camp is getting ahead of the deal. "There are productive conversations between the White House, McConnell and Reid on a path forward in the Senate, but the deal is not yet closed," one source said. "Additionally, many Democrats believe that the House should pass TAA before the FTAs are sent up," the source added.

Camp told reporters after his Chamber talk that one of the problems in reaching a final deal is the fact that the White House staff that are needed to reach such an agreement are tied up with negotiations over raising the debt ceiling. He said he didn't expect anything to move on TAA or the FTAs until September.

Republicans complain that the White House "keeps moving the goalposts." Administration officials initially said they needed an agreement on passing TAA before the president would send the FTAs to Congress. Now they say TAA has to be passed by both houses of Congress before the pacts are sent up. Despite the high level of distrust, some congressional sources remain optimistic a deal will be reached. They point to the agreement on a slimmed-down TAA that Camp, Baucus and the White House reached as proof that a compromise can be found.

Although House Speaker John Boehner (R-Ohio) has promised to bring up a TAA bill at the same time as the FTAs, Democrats are still not certain he can deliver the votes to pass TAA. His difficulty in mustering votes for a debt-ceiling bill is seen as evidence of that. In particular, the majority of House Republicans are expected to vote against the TAA bill if it comes to a vote. Congressional sources say Boehner will need to deliver at least 38 GOP votes to go along with an expected 180 Democratic votes to pass TAA.

Camp's purported plan appears to have a couple of potential pitfalls. Democrats and Republicans in both houses will have to agree to oppose any amendments to a TAA bill. That is easier to assure in the House where tight rules restrict floor amendments, but it's harder to enforce in the ruleless Senate. Any differences in the two versions would require a House-Senate conference that could delay and possibly prevent passage. Meanwhile, once the FTAs are submitted under fast-track authority, they would be on a mandatory timetable for congressional action.

## **WTO Members Fail to Agree on Package for LDCs**

The World Trade Organization (WTO) won't be able to deliver a small package of "early harvest" benefits for least developed countries (LDC) this year, WTO members conceded during meetings in Geneva. Hopes for creating a package failed because of disagreement over its content and concern that negotiations on the package would overshadow talks planned for the WTO ministerial conference in December on the WTO's future agenda (see **WTTL**, July 25, page 5). The talks also were derailed because the small package kept getting bigger as proposals for more provisions kept getting added.

A so-called "early-harvest package" is not happening and will not happen in time for the December ministerial conference, Deputy U.S. Trade Representative (USTR) Michael Punke told an informal meeting of the Trade Negotiations Committee (TNC) July 26. "Our discussions have foundered against redlines and cross-conditionalities involving a broad range of members," he said in his prepared comments. WTO Director General Pascal Lamy is clearly frustrated with the stalemate in the talks. "What we are seeing today is the paralysis in the negotiating function of the WTO, whether it is on market access or on the rulemaking," he told the TNC. "What we are facing is the inability of the WTO to adapt and adjust to emerging

global trade priorities, those you cannot solve through bilateral deals,” Lamy said. “This risks overshadowing the achievements in other parts of the WTO functions, such as monitoring, surveillance, dispute settlement or even Aid for Trade,” he added.

Two positions became clear during the July 26 meeting, Lamy observed. One is to concentrate on the non-Doha Round part of the December ministerial conference agenda and how to proceed with the round after the conference. A second is to make some decisions for LDCs. Striving for a small LDC package at the conference will “suck the oxygen” from the other two issues, he said.

Roberto Azevedo, Brazil’s ambassador to the WTO, said the impasse stems from “apparently insurmountable difficulties” in various areas of the enlarged mini-package for LDCs. Nonetheless, he said WTO members should not make a hasty conclusion that deliverables for LDCs are impossible. An Indian representative also cautioned against concluding a deal is impossible. “We should not get disheartened” by the fact that an LDC-plus package won’t be ready before the December ministerial conference, the delegate told the TNC meeting. With or without a December package, a Chinese official told the TNC that Beijing will meet its 2005 commitment to expand duty-free, quota-free access for LDC exports from 60% of its products to 95%.

WTO General Council Chairman Yonov Frederick Agah, Nigeria’s ambassador to the WTO, told the council July 27 that his consultations have found a general sense that the ministerial should focus on systemic and institutional issues. Delegates told him the ministerial must stress that the WTO is not synonymous with the Doha Development Agenda. So far, he said, there are three items on the ministerial agenda: (1) A moratorium on e-commerce duties; (2) a moratorium on Trade-Related Intellectual Property (TRIPS) non-violation complaints; and (3) an overview of WTO activities. [Editor’s Note: Subscribers to WTTLonline.com can read more details on Geneva talks on WTTL website.]

## **Camp to Examine China’s Non-Currency Trade “Abuses”**

Although he has supported legislation in the past aimed at China’s manipulation of its currency, House Ways and Means Committee Chairman Dave Camp (R-Mich.) says the focus on the currency issue “is a mistake and misses the far larger issues we have with China.” In a speech July 28, Camp said he plans to hold hearings in the fall to examine other trade-distorting Chinese policies, but he stopped short of saying those hearings would lead to legislation.

China “flagrantly disregards its international obligations and seeks to impede fair commerce at every opportunity,” Camp told the U.S. Chamber of Commerce. “China blatantly steals the intellectual property of American businesses and grossly subsidizes domestic industries – and its list of trade abuses goes on and on,” he said. “After Congress recesses for August, I intend to have the Ways and Means Committee begin looking more aggressively at China’s abuses,” he stated.

Camp urged the Obama administration to resume negotiations with Beijing on a bilateral investment treaty (BIT). “The administration’s lack of action here is as confusing as it is damaging to the interest of U.S. businesses and their workers,” he said. Camp complained that other countries are negotiating treaties that give their investors more rights in China than U.S. investors. He noted that the European Union announced that it will negotiate its own BIT with China. “But the administration has been unable to form its negotiating position because it can’t decide how to treat labor issues,” he said.

## **USML-CCL Shift Proposal Gets Mixed Initial Reaction**

Members of BIS technical advisory committees (TACs) gave a positive, but cautious reaction to the agency’s July 15 proposal on how it plans to handle the transfer of thousands of items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). While escaping controls

of the International Traffic in Arms Regulations (ITAR) was seen as a great benefit of the proposed rules, members of the BIS Sensors TAC and Information Systems TAC, which met the week of July 25, said they need to see specifically which of their products will be moved from the USML to the CCL and how they will be treated once they are moved (see **WTTL**, July 25, page 4). Members of the Sensors TAC praised the proposal: one calling it “well written” and another saying it was “easy to follow.” One member, however, voiced concern that legislation proposed by House Foreign Affairs Committee Chairman Ileana Ros-Lehtinen (R-Fla.) would make it difficult in the future to move items that “get stuck in the wrong bin.”

A strong negative reaction to the proposal, and particularly a proposed new definition of “specially designed,” came from Bill Root, a consultant and former State official. In an oral and written statement to the two TACs, Root said “adoption of the proposed rule would be an export control calamity.”

“The specifically designed component definition in the proposed rule is much worse than I had anticipated,” Root said in his written note to the TACs. “Examples given of specially designed ground vehicle components include latches, hinges, hoses, seats, tires and batteries. Imagine the impact of this on the procurement practices of a multinational automobile company,” he wrote. While the rule recognizes that it is untenable to control these items to all countries, “the countries to which they would be controlled included nine which are not now subject to Commerce controls on such items,” Root asserted.

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

**FCPA: Diageo** of London, one of world’s largest producers of premium alcoholic beverages, agreed with SEC July 27 to pay more than \$16 million to settle FCPA charges, stemming from alleged improper payments to government officials in India, Thailand and South Korea from 2003 to 2009 in efforts to obtain sales and tax benefits for its Johnnie Walker and Windsor Scotch whiskeys, among other brands. Diageo neither admitted nor denied the charges.

**TEXTILES:** After its Section 421 China safeguard petition on upholstery fabric imports was mistakenly filed and then withdrawn at ITC July 20, National Textile Association (NTA), which represents most of U.S. upholstery fabric industry including **Milliken**, **Raxon Fabrics** and **Wearbest**, is “seriously exploring all our options for trade actions,” David Trumbull, NTA’s VP of international trade told **WTTL**. “You’re not going to see a filing in the near future; we are not on the cusp of filing,” Trumbull admitted. U.S. textile industry successfully got relief under China’s WTO accession agreement in 2003 on imports of bras, knit fabric and dressing gowns and robes (see **WTTL**, Nov. 24, 2003, page 3).

**CLEAN ENERGY:** Ten trade associations urged U.S. government July 27 to step up promotion of clean energy exports, fund technology development in sector, protect U.S. intellectual property rights for these products and modernize trade rules to reduce green trade barriers and ensure technology neutrality.

**EX-IM BANK:** Carlos L. Morano of Miami, Fla., was sentenced July 18 to 63 months in prison for defrauding Ex-Im of \$5.2 million. In addition to jail, he was sentenced to three years of supervised release and ordered to pay \$5.2 million in restitution and \$6.8 million in forfeiture. Morano, owner of **CLM Financing and Investments**, pleaded guilty on May 6 to one count of conspiracy to commit wire fraud and one count of wire fraud, admitting he assisted 17 exporters obtain fraudulent loans insured by Ex-Im. Jose Quijano, who was sentenced July 11 in absentia on related charges and who is now a fugitive, had helped government prosecution of Morano (see **WTTL**, July 18, page 4).

**TPP:** All Ways and Means Committee Democrats signed letter July 26 to USTR Ron Kirk urging Obama administration to include principles on labor and environment that were in May 10, 2007, deal between Democrats and Bush administration in any Trans-Pacific Partnership (TPP) agreement. “The May 10 Agreement is a critical basis to any successful conclusion of the TPP negotiations,” they wrote.

**NME:** In setting “all other rate” in NME antidumping case, law allows Commerce “to use any reasonable method, and explicitly states that the administering authority may average the ‘estimated weighted average dumping margins determined for the exporters and producers individually investigated,’” CIT Judge Judith Barzilay ruled July 26 (slip. op. 11-90). Nonetheless, in case on narrow woven ribbons from China, ITA “failed to support with substantial evidence how, under the unique circumstances of this investigation where the agency selected only two mandatory respondents, a simple average of a *de minimis* rate and a rate based on adverse facts available reasonably reflects Bestpak’s potential dumping margins,” she wrote in remand.