

Vol. 31, No. 38

September 26, 2011

Industry Presses for Hirschhorn's Senate Confirmation

The business community is concerned that Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn will lose his job by the end of the year unless the Senate votes on his confirmation. Hirschhorn holds his post on a recess appointment that expires at the end of the current session of Congress in December. His confirmation allegedly has been blocked by Sen. Jon Kyl (R-Ariz.), who reportedly has objected to Hirschhorn's appointment because of his previous legal work on behalf of exporters and Kyl's apparent concern that Hirschhorn would not be a strong enforcer of U.S. export controls (see **WTTL**, March 22, 2010, page 1).

In a Sept. 15 letter to Sen. Richard Shelby (R-Ala.), ranking member of the Senate Banking Committee, 13 trade associations sought his support for Hirschhorn's confirmation. "We see no basis for delaying his confirmation further and believe that failure to confirm him would represent a significant setback to U.S. national security (as well as to our exporting community)," the letter stated.

The letter also addresses concerns about Hirschhorn's commitment to export enforcement. "Mr. Hirschhorn has an established record of strongly supporting export enforcement," the letter said. "He helped secure the enactment of permanent statutory law enforcement authority for BIS, has filled more than fifty enforcement positions at BIS locations around the world, and has instituted an important initiative to prosecute culpable individuals as well as companies," it said.

Senate Action on GSP-TAA Puts Focus on FTAs

The Senate gave House Speaker John Boehner (R-Ohio) what he wanted Sept. 22, approving a "clean" bill renewing the Generalized System of Preferences (GSP) with an amendment extending Trade Adjustment Assistance (TAA) without any additional amendments. Supposedly, the Senate vote should clear the way for the House to pass the amended Senate version and then for President Obama to send Congress the free trade agreements (FTAs) with Colombia, Panama and South Korea for approval (see **WTTL**, Sept. 12, page 1). According to Senate Majority Leader Harry Reid (D-Nev.), however, Boehner may keep an ace in the hole.

Reid told the Senate after the GSP-TAA vote that the House doesn't have to enroll its version for Obama's signature immediately. "As I have said many times, we have to make sure the House also passes this. I have been told by the Speaker and others in the Republican leadership in the House that they will do that. I am hopeful and confident they will," Reid said. "Once that is done--and they have ways of making sure through a rule they can issue, it would



not be sent to the president. They do not have to enroll it until the trade bill is passed. Once the trade bill is passed, of course, they would send the trade adjustment assistance to the White House,” the Majority Leader said. “I do not support any of those trade agreements, but I am going to live up to what I said I would do and do what I can to move those through the Senate as quickly as possible so there are fair votes on all of them,” he added.

The GSP-TAA bill moved fairly smoothly through the Senate after Democrats and Republicans reached a deal to require any amendment to have a 60-vote majority. As a result, all amendments except one introduced by Sen. Bob Casey (D-Pa.) to add TAA to the bill failed mostly along party lines. Democrats voted against them and GOPers voted for them. In the end, the TAA amendment passed on a bipartisan vote of 69-28 and the final measure cleared easily by a 70-27 vote.

Republican senators offered a variety of amendments that failed to reach 60 votes, including one sponsored by Sen. Orrin Hatch (R-Utah) to renew fast-track trade promotion authority, another offered by Sen. John McCain (R-Ariz.) to waive the Jackson-Vanik Amendment and grant Moldova permanent trade relations status, and one by Sen. Marco Rubio (R-Fla.) to limit TAA only to workers who lose their jobs because of trade with an FTA country.

Industry Doesn't Want WTO Action on Rare Earths

While Congress keeps pushing U.S. Trade Representative (USTR) Ron Kirk to file a complaint against China at the World Trade Organization (WTO) over Beijing's export restraints on rare earth minerals, U.S. industries that produce and use the minerals aren't convinced that will help the problem. At a Sept. 21 hearing of the House Foreign Affairs Committee subcommittee on Asia and the Pacific, Chairman Don Manzullo (R-Ill.) said China's control of 97% of the rare earth world market means Beijing's "ability to dictate market terms to the rest of the world is particularly worrisome given its unwillingness to follow established international trade rules."

The USTR's office has been contemplating a trade case against China for over a year (see **WTTL**, June 21, 2010, page 1). After a WTO ruling in July 2011 on raw materials, Rep. Manzullo and 12 congressional colleagues renewed their request to open a case on rare earths. The July 8 letter said the ruling "affirms that such trade policies go against its membership obligations."

Mark Smith, CEO of Molycorp, a Colorado producer of rare earth minerals, disagreed with the need for a WTO complaint. "By aggressively going after China through the WTO, we may end up accelerating the shift of manufacturing operations, and manufacturing jobs to China," he testified. Other witnesses agreed with the need to invest in the domestic industry while maintaining good relations with China in the short-term. "In the interim, we need to ensure access to Chinese sources at reasonable prices while U.S. manufacturers develop alternative solutions," said John Galyen, president of Danfoss North America.

U.S. Eases Sanctions on Libya Following UN Action

After the United Nations (UN) Security Council agreed Sept. 16 to ease international sanctions on Libya, Treasury's Office of Foreign Assets Control (OFAC) followed suit, issuing two additional General Licenses Sept. 19 that will allow U.S. companies to engage in "all transactions involving the Libyan National Oil Corporation (NOC) or entities owned or controlled by the NOC, provided that such transactions do not involve any other persons whose property and interests in property are blocked."

General License No. 7A unblocks all property and interests in property of the NOC and entities owned or controlled by the NOC subject to a requirement to report to OFAC on the release of any blocked funds, including cash and securities. General License No. 8 "authorizes U.S. persons to engage in all transactions involving the Government of Libya, its agencies,

instrumentalities, and controlled entities, and the Central Bank of Libya, provided that (1) all property and interests in property, blocked pursuant to E.O. 13566 or the Libyan Sanctions Regulations as of September 19, 2011, remain blocked.” The UN resolution modified the freeze on Libyan assets, the no-fly zone and the arms embargo on Tripoli. It exempted NOC and Zueitina Oil Company from the asset freeze and eased measures against the Central Bank of Libya, the Libyan Arab Foreign Bank (LAFB), the Libyan Investment Authority (LIA), and the Libyan Africa Investment Portfolio (LAIP). “The Council urged States to give due consideration to the use of international financial mechanisms to promote transparency and prevent misappropriation in Libya,” the UN said.

Panel Urges Adoption of New Trade, Investment Initiatives

The U.S. should adopt a more ambitious policy for negotiating trade agreements and attracting foreign investment, while taking a tougher stand against violations of trade agreements, a Council on Foreign Relations (CFR) task force recommends in a report Sept. 19. “Unless the U.S. government can devise and implement trade and investment policies that benefit more Americans by sparking greater investment and jobs in the United States linked to the global economy, it will be impossible to rebuild public support for trade policy,” the report asserts.

Co-chaired by Andrew Card, former chief of staff to President George W. Bush, and Thomas Daschle, the former Democratic Senate Majority Leader, the report proposes seven pillars for a new U.S. trade policy. It calls for special attention to be paid to emerging markets such as China, Brazil and India.

Its seven pillars are: (1) an ambitious trade-negotiations agenda; (2) a National Investment Initiative; (3) a robust and strategic trade enforcement effort; (4) greater efforts to promote exports through more competitive export financing and a more active government role in supporting U.S. overseas sales; (5) expanded use of trade to foster development in the world’s poorest countries; (6) a comprehensive worker adjustment and retraining policy; and (7) a new deal with Congress to give the president trade negotiating authority and assure fast-track consideration of a deal by Congress.

At a program releasing the report, Daschle said the U.S. government should self-initiate trade complaints against violations, especially by China, without waiting for companies to seek action. “We’ve counted on corporations and businesses to come forward with their concerns, and they are increasingly reluctant to raise a level of concern to the federal government. I think the federal government should be more active, or more proactive,” he declared.

U.S. Takes China to WTO over Trade Duties on Chicken

When China rushed to impose antidumping (AD) and countervailing duties (CVD) on chicken broiler products from the U.S. in 2010, it violated WTO rules for conducting trade investigations, the U.S. claims in a request filed Sept. 20 for WTO consultations with China. While some sources say Beijing targeted U.S. poultry in retaliation for Washington’s safeguard restrictions on Chinese tire imports, a former official of Tyson Foods in China contends the retaliation was aimed at refusal of the U.S. to meet a promise to open the U.S. market to cooked chicken from China. An amendment to the Agriculture Department’s funding sponsored by Rep. Rosa DeLauro (D-Conn.) has blocked USDA inspections of Chinese food plants.

Rather than retaliation over tires, “the real connection is to Chinese access to the U.S. market,” explained James Rice, former head of Tyson’s business in China. China believes 13 of its poultry plants meet USDA standards but need to be inspected by USDA before they can export to the U.S. Because of DeLauro’s amendment, “USDA could not spend any of its funds on inspecting Chinese plants, so that stopped the process,” said Rice, who is now CEO of CSM, a food products firm in Shanghai. “This case will be there until the Chinese get access to the U.S. market,” he argued. The U.S. contends Chinese authorities failed to calculate the cost of

production of U.S. chicken based on records kept by U.S. producers, failed to review evidence objectively, failed to explain their findings and conclusions properly, and failed to define properly the domestic industry, a USTR attorney explained. China had imposed AD duties of 50.3% and 53.4% on two named respondents and an “all others” rate of 105.4%. It imposed CVDs of 4% and 12.5% on participating U.S. producers and an “all others rate” of 30.3%. The main U.S. exports were chicken parts, including feet and wing tips that have little market in the U.S. Sources close to the Chinese case say those parts are sold for 4 cents a pound in the U.S. and 80 cents a pound in China, making dumping impossible. They also say Beijing’s subsidy charge is based on payments to corn and soybean growers, not chicken producers.

U.S. Firms in China Discount Need for Currency Legislation

As House and Senate Democrats push for legislation to declare China a currency manipulator and make its currency subject to countervailing duties, U.S. companies in China told lawmakers the week of Sept. 19 that currency isn’t their main problem and urged Congress to support increased trade promotion efforts and enforcement of market access rules. A delegation of the American Chamber of Commerce (AmCham) in Shanghai met with members of Congress and the administration to press for help combatting competition from other countries, such as Germany and Japan. They noted that Germany has about 100 trade offices in China.

“Our position is that currency, although it’s interesting, it’s politically beneficial to those using it [as an issue],” AmCham Vice Chair Robert Roche told a press briefing sponsored by USA-Engage Sept. 21. “Even if they get what they want, it is not necessarily going to help America and it is not going to create jobs, because the jobs that left, if they are going because of the price of currency, are going to go to Vietnam. They are going to go to India,” Roche asserted.

“By us not doing the things we should be doing to get ready to export more, if the exchange rate changes, then Germany is going to ship in, Japan is going to ship in, and all the countries that are doing push-ups while we talk about currency are going to take advantage of the new equilibrium price,” Roche said. James Rice, CEO of CSM in Shanghai, said lawmakers think “currency is a silver bullet, a one-shot solution to the entire U.S.-China trade issue.” If you talk with U.S. business people in China about their problems in China, “currency is not one of the things we would put on the table,” he added. AmCham President Brenda Foster said: “What we would really be interested in is a market-based exchange rate and convertible currency.”

* * * Briefs * * *

WORLD TRADE: WTO economists reduced their trade forecast for 2011 Sept. 23, revising their estimate of export growth down to 5.8% from 6.5%. “Developed economies exports are expected to rise by 3.7% and their output to go up by 1.5%. Meanwhile, shipments from developing economies are estimated to increase by 8.5% and GDP by 5.9%,” WTO reported.

ARMENIA: U.S. waived discriminatory purchasing requirements for eligible products and suppliers of Armenia effective Sept.15, when its accession to WTO Government Procurement Agreement went into effect, USTR published in Sept. 22 Federal Register.

TUNA: WTO dispute-settlement panel issued mixed report Sept. 15 on Mexico’s complaint against U.S. “Safe-Dolphin” labeling requirements. Panel concluded Mexican tuna products are not afforded less favorable treatment than tuna products of U.S. under label law, but agreed with Mexico that rules are more trade-restrictive than necessary to fulfill legitimate objectives. It also found label provisions don’t violate provisions of agreement on nontariff technical barriers (NTB), which requires technical regulations to be based on relevant international standards where possible.

EX-IM BANK: Temporary extension of charter was included in Continuing Resolution (CR) passed by House Sept. 23 to keep whole government funded through Nov. 18, but fate of CR in Senate and final congressional adoption was still pending when WTTL went to press (see **WTTL**, Sept. 12, page 1).