

## Inside US Trade

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### **Finance Blasts Failure to Consult On Trade Aspects of Omnibus Bill**

Efforts by retailers to strip language intended to create a monitoring program for textile imports from China and Vietnam from a joint House-Senate explanatory statement appended to the omnibus appropriations act of 2009 have failed despite a strongly worded letter from the Senate Finance Committee, according to Senate and private-sector sources.

A Senate Appropriations Committee staffer said on March 5 that no additional language for the joint explanatory statement would be offered from the Senate. Senate leadership failed to move the omnibus bill to a vote on March 5, and were poised to seek cloture yesterday (March 10) after voting on a series of amendments.

The decision to leave the explanatory language alone comes after groups opposed to the creation of the textile monitoring program at the Department of Commerce urged Senate Finance Committee members to try to strip it from any Senate report on the omnibus bill.

It also follows on the heels of a March 3 letter from Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) expressing “serious concern” to Senate Appropriations Chairman Daniel Inouye (D-HI) and Vice Chairman Thad Cochran (R-MS) over the failure to consult with Finance on trade and tax issues over which it has jurisdiction. The omnibus bill contains “substantive policy issues” that should be “heard and considered” before the committee of jurisdiction, the letter said.

On trade, the letter warned that “several provisions raise serious questions” regarding consistency with U.S. international trade obligations and “could invite billions of dollars in retaliation against U.S. exports,” but it failed to specify what provisions.

An informed source said last week that the letter is referring to three proposals contained in language in the omnibus. One proposal would block the program that allows certain Mexican trucks to make international deliveries throughout the U.S. This program was launched under the Bush administration to move toward implementing U.S. obligations under the North American Free Trade Agreement. The language was inserted by Sen. Byron Dorgan (D-ND), who said safety standard discrepancies between U.S. and Mexican trucks need to be resolved before the program is continued.

The second proposal referenced in the language defunds a program by the Food Safety and Inspection Service (FSIS) at the Department of Agriculture that would allow the importation of certain canned chicken products. The bill blocks the use of FSIS funds for developing a rule that would allow the importation of poultry from China to the United States, according to the accompanying report language. The ban was championed by Rep. Rosa DeLauro (D-CT), chairwoman of the subcommittee on agriculture, rural

development, Food and Drug Administration, and related agencies. DeLauro included a similar ban in the appropriations bill last year (Inside US-China Trade, Feb 25).

USDA “is urged” to report within a year on how changes in Chinese food safety laws affect the safety of chicken, which was not part of the appropriations process last year. Also new this year, the USDA is “directed” to submit a plan of action on how to guarantee the safety of such imports, according to the report language.

The omnibus bill also contains a funding ban for activities that would allow imports of any beef or lamb from cattle or sheep born, raised, or slaughtered in Argentina. Argentina considers the U.S. ban groundless in the case of beef and lamb from South Patagonia, a region free of Foot and Mouth Disease (FMD), and the U.S. in a January 2007 proposed rule offered to lift the ban for this region. But the appropriations language allows the Secretary of Agriculture to review the domestic animal health aspects of the proposal and issue a report of his findings to the House and Senate Appropriations committees, and lifts the funding ban once such a report is issued.

A Senate aide speculated last week that the letter’s assertion that “billions of dollars in retaliation” could be provoked may have reflected “bluster” from Finance in the face of extreme dissatisfaction over not being consulted in areas over which it clearly has jurisdiction.

The March 3 letter also argues that the omnibus “entirely fails to fund” the Trade Adjustment Assistance (TAA) for Communities program, which is “a key priority of several Finance Committee Members.”

According to an informed source, the TAA language in the stimulus bill only authorized the program and provided funding for TAA for farmers. The omnibus bill funds other aspects of the TAA program but neglects TAA for Communities, this source explained. A Senate aide said the late entry of TAA into the stimulus package and the rapid introduction of the omnibus bill shortly after the stimulus was completed made it understandable that appropriators had not funded that portion of TAA.

On the textile monitoring language, the American Apparel and Footwear Association (AAFA), National Retail Federation (NRF), Retail Industry Leaders Association (RILA) and the U.S. Association of Importers of Textiles and Apparel (USA-ITA) were among the groups telling Senate leadership and staff that inclusion of language advocating a monitoring program amounted to an infringement by appropriators upon Finance Committee jurisdiction. In a Feb. 26 letter to House and Senate leaders, these groups also argued that addition of the language infringed upon the jurisdiction of the congressional trade committees.

One informed source opposed to the language said lobbyists representing these groups had “attempted to convince the Senate to be helpful” but ultimately were rebuffed. This source said groups opposed to the program were preparing to lobby Commerce to ignore the language “as soon as someone is there.”

The decision to let the language stand was made even though a spokesman on March 4 said Baucus “has concerns about the language” and was working with Grassley and colleagues on the House Ways and Means Committee to determine the best way forward in addressing those concerns.

After learning that the Senate would not be amending the explanatory note, this source expressed the belief that Senate appropriators had likely already signed off on the language.

“One presumes they discussed [the joint explanatory statement] before it went through,” the source said. However, this source was hopeful that the Commerce Department would ignore the language because an explanatory note is not binding.

“It’s an expectation without any budget,” the source explained. “It’s not aligned with any budget line.”

Because it is not binding, this source said it was “reasonable to assume that Commerce could decide there’s no reason to act.”

This source added that the language was inserted without consultation with the trade committees and that Ways and Means had already created a China textile monitoring program at the International Trade Commission (ITC).

Any actual amendment in the Senate to the omnibus appropriations bill, H.R. 1150, would require a conference between the House and the Senate to create compromise language. But report language, which offers more detailed explanations for appropriated funds, can be altered without such a conference. House and Senate leadership have argued for identical bills to be passed to avoid a lengthy conference process, and at press time on March 10 none of the amendments being proposed by Senate Republicans had been approved.

Report language is viewed essentially as “guidance,” sources explained, and does not carry the force of law. However, these sources noted that report language does have political weight, and ignoring report language mandates can bring harsh reactions from appropriators and make future budget requests more difficult.

At issue is language contained in the explanatory statement released by House Appropriations Chairman David Obey (D-WI). The statement states that the International Trade Administration “is expected” to monitor apparel imports from China and Vietnam, and to assess “whether their state-run industries are illegally pricing products and dumping in the U.S. market,” according to the statement explaining the Commerce, Justice, Science and Related Agencies appropriations title. The language was also in the report originally drafted in 2008 for the FY 2009 appropriations title.

A Commerce monitoring program for Vietnamese apparel expired in January and no such program exists under ITA for China. -- Dan Neumann