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Export Officials Still Silent on Firearms Categories

It's the question everyone from members of Congress to gun rights advocates wants to know, but export control officials aren't talking. Will U.S. Munitions List (USML) categories I, II and III (firearms and ammunition) ever be addressed under the current administration's reform efforts?

At his agency's annual Update conference Oct. 31, Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn told reporters, "I don't have anything to report." Or put more simply, "we haven't gotten to those." When asked about legislation currently introduced in Congress, Hirschhorn said he had "no idea" as to status of those bills.

> Most recently, Sen. Steve Daines (R-Mont.) and eight Senate Republicans introduced the Export Control Reform Act of 2016 (S.3405), which would move jurisdiction for commercial and sporting (non-military) firearms from State to Commerce (see **WTTL**, Oct. 3, page 10).

Ed Peartree, policy chief of State's Directorate of Defense Trade Controls (DDTC), told the conference the next day that proposals on those categories have been drafted, but "we are still awaiting policy guidance," he said. In other rules that concern the gun industry, State is still planning on completing its version of the remaining harmonized definitions, including the controversial text for "public domain." The goal is to complete the rule "early in the new year," Peartree said. The rule has been very challenging, but State is "gung-ho to get back to it," he added. DDTC published a final, but only partial list in June, while punting the controversial ones down the road (see **WTTL**, June 6, page 4).

Reject Chinese Acquisition of U.S. Aluminum Company, Senators Say

Be wary of Zhongwang USA LLC, 12 senators wrote in a letter sent to Treasury Secretary Jack Lew Nov. 2. The letter, spearheaded by Sen. Ron Wyden (D-Ore.), urges the

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Committee on Foreign Investment in the U.S. (CFIUS) to "closely review and ultimately reject" the acquisition of Cleveland-based Aleris Corporation by Zhongwang, a U.S. subsidiary of Chinese firm Zhongwang International Group. Zhongwang is under investigation by Commerce for allegedly evading import duties.

"Zhongwang's purchase of Aleris would directly undermine our national security, including by jeopardizing the U.S. manufacturing base for sensitive technologies in an industry already devastated by the effects of China's market distorting policies, and creating serious risk that sensitive technologies and knowhow will be transferred to China, further imperiling U.S. defense interests," reads the letter.

> Aleris "operates some of the world's most advanced aluminum facilities" and produces specialized alloys with military and aerospace applications. Zhongwang is the world's second largest industrial aluminum extrusion developer and manufacturer.

Other letter signatories are: Sens. Tammy Baldwin (D-Wisc.), Al Franken (D-Minn.), Amy Klobuchar (D-Minn.), Jeffrey Merkley (D-Ore.), Rob Portman (R-Ohio), Debbie Stabenow (D-Mich.), Joe Donnelly (D-Ind.), Kirsten Gillibrand (D-N.Y.), Robert Casey (D-Pa.), Joe Manchin (D- W.Va.) and Charles Schumer (D-N.Y.).

United Steelworkers (USW) lauded Wyden's efforts. "China's leaders have pushed its major state-owned and private companies to invest overseas, acquire technologies and manufacturing know-how, and expand their market share. The country continues to build up massive overcapacity in the aluminum sector and decimate U.S. production. This transaction is part of a broader economic plan," USW International President Leo Gerard said in a statement.

Aleris announced that "it has entered into a definitive agreement to be acquired" in August 2016. The aggregate value of Aleris amounts to $2.33 billion, comprising $1.11 billion in cash for the equity to be paid by Zhongwang USA, plus $1.22 billion in net debt, the company said. It will continue to be headquartered in Cleveland and will be operated as an independent entity, it added.

CJ Statistics Surprise Export Control Officials

The prevailing wisdom when export control reform (ECR) started was that companies would be so confused, they would come to State and Commerce in ever increasing numbers for assistance in determining which agency holds jurisdiction over their product. Not so, DDTC and BIS officials told the annual BIS Update conference Oct. 31.

In fact, the numbers have been dropping off incrementally, but significantly. Agencies are a "little bit surprised" by this, DDTC Chief Brian Nilsson told the conference. In 2015, the agencies received 1,049 CJ submissions, which was down from a height of 1,367 in 2012, before ECR even began. And 2016 is on pace to be even lower. For the first three quarters of CY2016, the agencies have reviewed 817 CJ submissions.

Officials attribute this to maintaining the goal of the reform process. “The effort to make the regulations clearer has been effective,” Nilsson noted. Nilsson also highlighted examples of the opposite effect: how the CJ process brings up issues that need to be fixed in the regulations. For example, one recent case brought to the fore a “gap” in the regulations in USML Category V (explosives). The agencies are looking to fix that in a special “clean-up” rule for “unintended consequences,” Nilsson said.

> In addition to the reduction of cases, even fewer were escalated up the chain due to disagreement between agencies. Out of the 1,049 CJ submissions in 2015, only 38 (less than 4%) could not be resolved at the staff level and thus were presented to the Deputy Assistant Secretary (DAS) level, Nilsson said. Of these, 27 were decided by the Interagency Policy Committee (IPC). IPC escalations occur when the DAS decision is not accepted by an agency.

For 2016, there’s even better news: Of the 817 CJ submissions so far in calendar year (CY) 2016, only four were presented to the DAS level (in two meetings), and none referred to the IPC. As of the present, the DAS has been involved in less than 1% of submissions. By far, most of the CJ determinations find the product belongs on the Commerce Control List (CCL). In 2015, 655 (68%) were found to be CCL, while the USML accounted for 145 (15%). Another 152 (15%) were returned without action (RWA’d) and 10 (1%) were split.

Not surprisingly, USML Category XII (night vision) accounted for the largest number of USML determinations in 2015 (33). This was the last category to be published under the reform effort, and officials acknowledge it was the most challenging (see **WTTL**, Oct. 17 page 3). Next were Category XI (electronics) with 28 and Category VIII (aircraft) with 26.

Export control agencies hope the CJ numbers will be helped by an ongoing IT modernization process at DDTC. As part of this process, DDTC will unveil a new CJ form Nov. 21 on the Defense Export Control and Compliance (DECCS) system. State will no longer use the Electronic Form Submission (EFS) application to accept CJ submissions, as of Nov. 16 at 5pm.

In a presentation at Update, DDTC CIO Karen Wrege said the new DECCS form will allow for one-stop shopping. That means no more downloading a form, completing it offline and returning to EFS for submission. In addition the form will be web-based and include a digital signature, which will allow for easier back and forth with the agencies if more information is required for the submission. No more Adobe PDF forms and no more pen and ink signatures, Wrege said.

BIS Officials Highlight Positive AES Changes

At the annual BIS Update conference Oct. 31, leadership from Commerce, State, Customs and Border Protection (CBP) and Census gave largely positive updates on their respective Automated Commercial Environment (ACE) pilot programs and other updates to the Automated Export System (AES).

Gerard Horner, Director, BIS Office of Technology Evaluation, was eager to note the success of changes to AES that automatically decrements licenses approved after July 28. The balance of a license is provided back to the filer and provides a verify message if the value (license value plus a 10% overage) has been exceeded (see **WTTL**, Aug. 15, page 1).

> "Now the great thing is, if by chance you get this verify message, you ask yourself, 'What caused this? What shipment did I have in the past that caused me or caused our company to go over the tolerance of the license value?'" said Horner. "What we will do, in addition to the verify message, we will provide you the internal transaction number from the automated export system that will tell you where previously you have met your tolerance, where you have exhausted the license value at that time. Hopefully that will help you out," he added.

The other big change Horner highlighted was that BIS removed license type C32 in October with a six-month grace period (see **WTTL**, June 20, page 6). Beginning March 31, 2017, only one no license required (NLR) designation (C33) will remain. How this applies to the requirement to provide an Export Control Classification Number (ECCN), is a commonly asked question, said Horner.

"When you reported C32 in the past, it required you to have an ECCN because C32 was for export of items that were under control for reason other than or in addition to the anti-terrorism [AT] control. C33 does not do that, so you have to know the regulation and if you have an ECCN where there's no 'x' in the box and that ECCN has a reason for control other than or in addition to anti-terrorism you have to provide it to us," he said.

"My best practice and guidance to you is always give the ECCN. Don't let the government try to guess what you're trying to do here. It's helpful information for us; even [if] you don't have to give it for antiterrorism items or EAR99, we suggest you do," Horner added.

Census Official Updates AES Usage Numbers

Theresa Gordon, trade ombudsman at Census' International Trade Management Division, told Update attendees that that the refactored AES is live in ACE as of November 2015 and as of May 20, 2016, all users had been transitioned out of AES and into ACE.

"We have approximately 20,000 companies filing in the AES Direct system in ACE. That's 20,000 EINs [Exporter Identification Number]. That represents 40,000 users, so 40,000 user accounts in the system spread across 20,000 companies. The shipments thus far, there are 4.5 million shipments that have been accepted in the system, that's unique ITNs [Internal Transaction Numbers] and that represents 225,000 U.S. PPIs to-date. That's a lot of usage of the system," said Gordon.

The new system has received largely positive feedback, Gordon noted. Unlike the old system, there is no limit on profiles and templates. "Right now we have 720,000 profiles between the U.S. PPI, the ultimate consignee; those profiles are unlimited per company at the present moment. We have over 320,000 templates in the system," she noted. CBP for its part has produced multiple video tutorials for its users. But when will the ACE export manifest become a reality, one participant wanted to know? "It's in pilot right now, so that's the reality of it," joked David Garcia of CBP's ACE Business Office.

DDTC Looks to Future Modifications

Over at DDTC, automated decrementation has been the standard for a long time "and it has served us well," reported DDTC CIO Karen Wrege, so DDTC built out their system to cover DSP [forms] 61, 62, 73 and 74, she said. "What we're looking to do after the full implementation of ACE is to modify our message set to include …the amount that should be decremented or incremented based on whether it's an export or an import," Wrege said.

> Looking to the future, Wrege wants to modify units of measure. The use of the word "lots," for example, is not clear, so digging into it, DDTC found that 94% of applicants say lots are technical data. "We want to be able to decrement things based on the line item not just on the overall value of the license because that's better government and it's more secure," she said.

In an attempt to get rid of duplicative forms, Wrege said the rumor is that DSP-94 is going away because it's a duplication of data available from FMS. "We don't need it because when you transfer data over from one system to another in the government, there's no reason to have these forms," she noted.

Pass TPP or China Will Take Reins, Administration Warns

Millions of U.S. jobs will be lost if Congress fails to pass the Trans-Pacific Partnership (TPP) while China moves forward with its Asia-Pacific trade plan, administration officials told reporters on Nov. 3. The administration has not given up on the lame-duck session, but it's an uphill battle, they said.

Jason Furman, chair of the White House Council of Economic Advisers (CEA), focused on the results of a new CEA study that examined industries and jobs at risk if TPP does not pass. In particular, Furman focused on the hit industries could take if China advances with its Regional Comprehensive Economic Partnership (RCEP) that involves 16 Asian countries, seven of which are also party to the TPP. Those countries include Japan, Australia, New Zealand, Vietnam, Malaysia, Singapore and Brunei.

Specifically, the study estimates that 35 goods-producing industries accounting for $5.3 billion in goods exports to Japan are at risk of increased competitive pressure from China should RCEP go into effect. Those 35 industries account for 10% of total U.S. export of goods to Japan and account for 5 million workers and 162,000 businesses in the U.S. Without TPP, U.S. companies could face tariffs twice as high as their Chinese competitors.

Taking a wider view, the study found that 78 U.S. industries, which each export more than $1 billion in goods to TPP countries, would fail to see improved market access. "If we do not pass TPP, then other countries are going to move forward and deepen their trade with each other… [and] hurt our economy much more than just living with the status quo for another year," said Furman.

> "China has a regional strategy," said USTR Michael Froman who was also on the call. "They're executing on their regional strategy. The question is: are we going to execute ours?"

In Congress, the administration faces an uphill battle getting enough votes for TPP approval during the lame-duck session. Neither presidential candidate approves of the deal, and Speaker Paul Ryan (R-Wisc.) has said the votes aren't there in the House. Outstanding issues remain, particularly on the extension of biologics protections. On that subject, they're having "good, ongoing conversation" with Sen. Orrin Hatch (R-Utah), said Froman.

But Froman told reporters that his team has not given up on the lame duck and has a clear objective from President Obama to get TPP done. "In terms of talking to members, we've got a whole government, whole cabinet, whole White House effort underway." Yes, members are aware of the politics, "but on substance, I feel there is a lot of support there," he concluded.

* * * Briefs * * *

<u>COUNTRY GROUPS</u>: In Nov. 4 Federal Register BIS removed EAR controls on arms and related materiel to Cote d'Ivoire, Liberia, Sri Lanka and Vietnam to reflect UN resolutions and administration policy. BIS also updated EAR to recognize accession of India as member of Missile Technology Control Regime (MTCR). India formally joined MTCR in June (see **WTTL**, July 4, page 1).

<u>TRADE PEOPLE</u>: More personnel changes at DDTC: Effective Nov. 7, Licensing Director Tony Dearth will become acting managing director, replacing Lisa Aguirre, who is moving to HHS; Tony's deputy Terry Davis will oversee licensing. Agency formally launched search for former compliance chief Sue Gainor's replacement. Gainor left in August and just took job at Dallas consulting firm (see **WTTL**, Oct. 24, page 6).

<u>TRADE FIGURES</u>: Merchandise exports in September inched up 0.69% from year ago to $126.1 billion, Commerce reported Nov. 4. Services exports gained 1.25% to $63.1 billion from September 2015. Highlights include monthly export records in several sectors, including travel; telecom, computer, and information services; and maintenance and repairs. Goods imports dipped 2.1% from September 2015 to $183.6 billion, as services imports gained 2.3% to $42.0 billion.

<u>REBAR</u>: In 6-0 preliminary vote Nov. 3, ITC found U.S. industry may be injured by allegedly dumped imports of steel concrete reinforcing bar from Japan, Taiwan and Turkey and subsidized imports from Turkey.

<u>EXPORT ENFORCEMENT</u>: Ali Afif Al Herz of Iowa was third member of his family to be sent to prison for his role in scheme to illegally export hundreds of firearms to Lebanon. He was sentenced

in Cedar Rapids, Iowa, U.S. District Court Oct. 31 to 342 months in prison. Al Herz pleaded guilty in March to multiple counts including violating Arms Export Control Act, and conspiring to illegally ship firearms in interstate and foreign commerce. Three other members of his family have been sentenced or are awaiting sentencing. Al Herz's son Adam Al Herz was sentenced Oct. 13 to 240 months in prison, followed by three years' supervised release. Sarah Majid Zeaiter, Al Herz's sister in law, was sentenced Oct. 14 to 87 months in prison and was also ordered to relinquish $33,869 in cash related to scheme. Bassem Afif Herz, Zeaiter's husband and Al Herz's brother, pleaded guilty May 24 and is scheduled to be sentenced Nov. 7.

WTO: World Trade Organization (WTO) Director-General Roberto Azevedo announced he's seeking reappointment Nov. 3 in letter to General Council Chairperson Harald Neple of Norway. Citing host of achievements since he was first appointed in September 2013, Azevedo wrote, "I am confident that the WTO stands stronger today than it did in 2013. We are now in the position to build on these achievements." Azevedo's term expires August 2017. WTO members have until Dec. 31 to nominate other candidates.

BREXIT: British Prime Minister Theresa May told EU leaders Nov. 4 she's confident that a court ruling issued day before that could potentially delay UK departure from EU would be overturned. In ruling, High Court ruled that British parliament must approve Brexit process. "Clearly we are disappointed by yesterday's decision, we'd rather not be in this position, but we are," said May. She said target date to trigger Article 50 remains end of March. Government will appeal decision and Supreme Court is expected to take up appeal in early December.

CUBA: U.S. tractor manufacturing company Cleber has been excluded from projects approved for installation in Mariel Special Development Zone (ZEDM) in Havana, because it reportedly does not meet standards that business center requires. Company received OFAC and BIS approval to operate tractor factory in development zone in February (see **WTTL**, Feb. 22, page 3). "Once it has been evaluated the proposal (Cleber) from the technological point of view, it was concluded that it is not the kind of investment we want to attract in the area," ZEDM director general Ana Teresa Igarza said in translated remarks to Cuban media. It's also possible that larger, U.S.-based and non-U.S.-based equipment manufacturers advocated against proposal "for competitive reasons," said U.S.-Cuba Trade and Economic Council in blog post Nov. 1.