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Export Agencies to Issue Partial List of Harmonized Definitions

Still reeling from unexpected public response to its previous proposal, the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) are working towards publishing a partial list of harmonized definitions, while punting the controversial ones down the road.

> They will issue a revised rule that captures the "low-hanging fruit," and then "continue to work on some of the tougher pieces, like public domain, where there really are some very serious constitutional issues, like free speech," DDTC policy director Ed Peartree told the BIS Export Control Forum in Burlingame, Calif. April 20. There are some "thorny things to untangle," he noted.

"We've tried to allay concerns, and [are working] hard to come up with something that provides some better clarity, some better definition," Peartree said. Officials later told WTTL that other terms such as fundamental research and defense services also proved too difficult to come to agreement. DDTC had received almost 12,000 comments from gun owners protesting what they call the "prior restraint" provision of the proposed definition of public domain.

BIS Under Secretary Eric Hirschhorn also addressed the issue in his keynote address to the conference. "It's proven more difficult than we anticipated. We do hope to get at least partial sets of harmonized definitions out sometime this year." Previously, BIS Assistant Secretary Kevin Wolf had said the Commerce version was done, and his office was just waiting on State (see **WTTL**, March 14, page 1).

Carnival Will Sail to Cuba, After All

All it takes is a little pressure in the right places. In a change of course, the Cuban government will allow Cuban-born passengers to come and go by vessel, clearing the waters for Carnival to start its touted weeklong cruises to the island May 1. "Carnival

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Corporation worked closely with Cuba to allow its cruise ships to operate in a similar manner as current air charter operations to Cuba," the company said in a statement April 22. Previously, the country had allowed Cuban-born passengers by air, but not by vessel. The company first announced its plans after President Obama's trip to Cuba in March (see **WTTL**, March 28, page 4).

As of April 26, Havana will "authorize the entry and exit of Cuban citizens, regardless of their immigration status, as passengers and crew on cruise ships," noted a statement on the state-run newspaper Granma. "The continued ban on U.S. citizens freely traveling to Cuba contrasts with these measures adopted by Cuba," it added as a last jab at U.S. policy. The government also authorized passengers on merchant ships and said it will gradually allow them on pleasure boats (yachts).

> The cruise line previously announced it would accept all reservations despite the ban. "In anticipation of this positive outcome, Carnival Corporation announced its new Fathom brand was accepting bookings to Cuba from all travelers, including individuals born in Cuba," it said. However, it had said it would delay the first voyage if necessary.

"We made history in March, and we are a part of making history again today," Carnival CEO Arnold Donald said in a statement. "More importantly, we are contributing to a positive future. This is a positive outcome and we are extremely pleased. We want to extend our sincere appreciation to Cuba and to our team who worked so hard to help make this happen," he added.

In addition to the commercial pressure, Obama administration officials had also been working with Havana directly. The ban "put Carnival…in a difficult situation, because to comply with that they would have to screen their customers, which of course in the United States would appear to be discriminatory practice. Those kinds of issues are prominent on the Cuban side, and we continue to raise those kinds of issues with the Cuban government," BIS Deputy Assistant Secretary Matthew Borman told the agency's Export Control Forum April 20.

Hirschhorn Scoffs at Election-Year Regulatory Cut-Off

With the traditional cutoff for new regulations during an election year nipping at his ankles, BIS Under Secretary Eric Hirschhorn told his agency's Export Control Forum April 20 that he was confident "that we are not going to be stopped by that informal deadline."

"The deadline tends to be imposed on new initiatives that are coming into the Federal Register after June. We don't view this as a new initiative. We have 15 categories that are final already. We think that to have a few more is really not a new initiative," he told the conference. "We are going to press very hard, and have already started laying the groundwork for that, to be able to publish regulations during the period between June and the end of the year," he added. Racing that deadline are proposed rules on six remaining U.S. Munitions List (USML) categories, including Category XII (night vision). DDTC policy director Ed Peartree told the forum that the agencies are in the "final stretches of the interagency reconciliation of comments" on the second proposed rule on those items. The comments seemed to be much more positive than the thousands of pages they received during the first go-round (see **WTTL**, April 11, page 5).

Peartree also hinted that industry may see revisions to categories I, II and III (firearms and ammunition), despite the "political and domestic sensitivities involved." The administration previously has committed to finishing the review of every USML category by the end of the year, including firearms. "You'll see some revisions there as well, [as we're] trying to get that out before that magic cut-off date occurs," Peartree said.

MTB House Vote Expected Next Week

The House Ways and Means Committee voted unanimously April 20 to pass the American Manufacturing Competitiveness Act of 2016 (H.R. 4923), including a new Miscellaneous Tariff Bill (MTB) process that was introduced just one week earlier. House Speaker Paul Ryan (R-Wisc.) told reporters the next day that the House would take up the legislation the week of April 25.

> "This is something that we've been trying to get done for years. This MTB issue is something that I personally have been involved in, and I'm very excited that we have a solution now that we're moving. It's a jobs bill, it's a transparency bill, and it upholds our earmark ban, first and foremost, which is very important," Ryan said.

The speaker's comments echoed those of Ways and Means Chairman Kevin Brady (R-Texas) during the markup. "Our bipartisan bill creates an open and transparent process that allows the American people to see every part of this process. Our bill upholds our earmark rules because Members of Congress will no longer introduce bills to begin the MTB process," he said.

The proposed legislation would streamline the process by which American manufacturers can request tariff relief. Instead of petitioning individual members of Congress, manufacturers would petition the International Trade Commission (ITC) directly (see **WTTL**, April 18, page 2).

A close version of the MTB measure now moving through Congress was introduced by Sen. Rob Portman (R-Ohio) as part of the Senate's action on the Customs enforcement bill in 2015. The amendment was dropped by the House-Senate Conference Committee because of opposition from then-House Speaker John Boehner (R-Ohio), industry sources say. After Boehner resigned, new Speaker Ryan was initially reluctant to act on the bill, but was convinced to support it at Brady's urging.

The language in the bill reportedly was drafted by industry MTB supporters, including staff from the National Association of Manufacturers (NAM). NAM and 200 businesses and business organizations sent a letter to Congress April 20 urging movement on the legislation. Industry representatives were reportedly frustrated with congressional opposition to renewing the MTB in both the Senate and the House. Over several years, MTB legislation that once passed Congress fairly easily faced increasing hurdles, with the last version passed in 2010. That measure lapsed in 2012.

In drafting their proposal, the business representatives aimed to overcome House rules that had categorized MTB amendments as forbidden "earmarks." By shifting the initiation process to the ITC, their proposal eliminated the need for any member to be seen as sponsoring a bill as a favor for a constituent. The legislation still leaves the introduction of final tariff measures to the House so its constitutional responsibility remains intact.

Industry sources say the Senate is likely to accept the House version without moving its own bill. The Senate could act on the House version sometime in May, probably under a unanimous consent motion, sources forecast.

Meeting Fails to Dissipate Steel Frustrations

Though initially optimistic, international officials walked away disappointed after the Organization for Economic Cooperation and Development (OECD) high-level meeting on excess capacity and structural adjustment in the steel sector April 18. China did not cooperate in Brussels, and instead reportedly accused the other nations present of protectionism.

> "With the largest amount of excess capacity in the world, larger than the rest of the world combined, China had a unique opportunity – and responsibility – to engage constructively towards such a result, one that is in the world's interest as well as China's," U.S. Trade Representative (USTR) Michael Froman and Commerce Secretary Penny Pritzker said in a statement.

"Unless China starts to take timely and concrete actions to reduce its excess production and capacity in industries including steel, and works with others to ensure that future government actions do not once again contribute to excess capacity, the fundamental structural problems in the industry will remain and affected governments – including the United States – will have no alternatives other than trade action to avoid harm to their domestic industries and workers," they added.

According to the OECD co-chairs' summary, the world's crude steelmaking capacity increased to 2,371 million tons in 2015, while the steel industry's capacity utilization rate declined to 67.5% from 70.9% in 2014. The organization predicts global steelmaking capacity to increase to 2.42 billion tons per year by 2017, with non-OECD economies accounting for approximately 72.4% of the total capacity. The U.S. steel industry has long pointed the finger at China (see **WTTL**, April 18, page 3). Froman and Pritzker also endorsed a statement released April 19 on behalf of the U.S., Canada, the EU, Japan, Mexico, Korea, Switzerland and Turkey. In comments clearly targeted at China, the countries agreed to: ensure that their governments do not offer subsidies to uneconomic steel plants or otherwise distort competition; enhance the exchange of information on capacity developments and formulation implementation of support measures; and ensure governments that fully or partially own steelmaking enterprises do not receive "special benefits that distort competition." They further urged the OECD to develop "a global forum where all can participate on an equal footing" on the restructuring of issues related to steel.

Industry and union representatives submitted statements to the meetings' participants. They called on governments to level the playing field by collaborating with the industry to ensure "regulatory market-oriented approaches that ensure a process that leads to survival of the fittest producers," the OECD summary noted.

Experts Disagree on Cause of Trade Slowdown, but Agree on Solution

Peterson Institute for International Economics (PIIE) experts and guests could not agree on why there has been a slowdown in global trade growth in recent years, but most speakers at a discussion in Washington April 20 agreed that increased liberalization is warranted, if unlikely to occur.

PIIE Senior Fellow Caroline Freund agreed with recent writings from economist Larry Summers that weak trade is a symptom of an investment slump and secular stagnation. "World trade is especially sensitive to investment," she emphasized. During the trade collapse, the "slump" in investment was eight times as important as the consumption collapse, she said, citing a paper published in the American Economic Journal. To revive the cycle of trade and growth, Freund recommended that policymakers should strive to open markets, particularly in emerging economies like Brazil and India.

> PIIE colleagues Gary Hufbauer and Euijin Jung attributed the slowdown to "not much liberalization and lots of micro-protection." Local content requirements are forms of microprotectionism that were put in place since the Great Recession. According to the Global Trade Alert, 3,500 new protectionist events have been recorded since 2008. Hufbauer admonished macroeconomists who dismiss these "poison pills, perhaps individually small but collectively deadly."

Liberalization could help spur growth, but given the political climate, namely strong opposition from presidential campaigns to the Trans-Pacific Partnership, makes that unlikely. Hufbauer also pointed out that it's been two decades since the Uruguay Round concluded, and it remains the most recent installment of global trade liberalization. Prospects for resuming 6% trade growth and $2 trillion annual foreign direct investment (FDI) outflows "appear distant," he said.

Aaditya Mattoo, research manager for trade and integration at the World Bank, voiced yet another opinion, stating that trade slowdown can be attributed in part to "the maturing of manufacturing value chains." Though the slowdown could hurt growth prospects, changes in China's economy could create new opportunities. Like Freund and Hufbauer, Mattoo said the pace of goods trade liberalization may be a factor in the slowdown, though he was optimistic about the resiliency of services trade.

U.S. Exporters Would Benefit from Lifted Cuba Restrictions

The International Trade Commission (ITC) April 18 confirmed what many had suspected: U.S. manufacturing and agricultural exporters could be competitive in the Cuban market, should the U.S. lift restrictions on trade and travel. Exporters of services, on the other hand, would not see much growth in the short term, according to the ITC's long awaited Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions.

Cuba is dependent on agricultural imports to feed its people and no longer manufactures goods it once did, providing a potential opportunity for U.S. exporters in those sectors, the commission noted. If the U.S. restrictions on exports to Cuba were lifted, and Cuba responded like a market-based economy, then selected manufactured products and agricultural exports could "increase in the medium term by about $1.4 billion from a base year (2010-13 average) of $400.8 million to approximately $1.8 billion," the report said.

> "If U.S. restrictions were removed and Cuban import barriers were reduced to the level of the calculated average for developing countries, the quantitative analysis suggests that U.S. exports of selected agricultural and manufactured goods could increase by an additional $442 million, to a total of about $2.2 billion," it added.

While total Cuban imports of goods reached $9.3 billion in 2014, imports of services totaled $2.5 billion. Tourism and medical services makes Cuba a net exporter of services, making it unlikely for U.S. exports of services to grow substantially in the short term.

Of course, those potential outcomes are dependent on the U.S. lifting its restrictions and the Cuban government addressing "nontariff measures, institutional and infrastructural factors, and other barriers, including those associated with a non-market, state-controlled economy," according to the report. The report responds to two requests from the Senate Finance Committee in December 2014 and August 2015.

"This report confirms a common-sense proposition: that there are significant economic opportunities for American producers if restrictions on U.S. trade with Cuba are eased. In particular there are substantial opportunities for American agriculture, including dairy and wheat from the Pacific Northwest, and for goods manufactured in America, like construction machinery and building materials," said Finance Ranking Member Ron Wyden (D-Ore.) in a statement.

On the import side, State April 22 updated its list of goods and services produced by independent Cuban entrepreneurs eligible for import into the U.S. The list now covers the import of coffee, additional textiles and textile articles. The department said it cannot predict what the Cuban government will allow in terms of export, but hopes that the Cuban government "makes this and other new opportunities available to Cuba's nascent private sector," a State fact sheet said. Cuba issues licenses to private individuals for small operations; a copy of that license can be used to verify to the U.S. that the entrepreneur is in fact independent.

Commerce Secretary Gives Optimistic Economic Forecast

Commerce Secretary Penny Pritzker painted an optimistic picture for the country's long-term economic health at a luncheon in Washington April 18, citing job growth but deflected questions about much-touted initiatives to increase exports.

Pritzker pointed to 26 quarters of expansion, 14.4 million jobs created over 73 months with 5.5 million open jobs throughout the U.S., 5% unemployment and the labor force up 2.4 million people. Manufacturing has been on the rise with 850,000 jobs created in manufacturing. On the flip side, 50,000 manufacturing jobs have been lost in the last six months, but even that is a source of opportunity to invest in advanced marketing, she said.

> "What should we worry about? Global growth is obviously something to be concerned about, and something that our administration works on, particularly our Treasury Department, the President and others. We should worry about barriers being put up for trade," Pritzker said.

"You know, we have a significant amount of our growth and jobs, we have about 11.5 million jobs that depend on our ability to sell outside the United States, which is where 80% of the buying power is and 95% of the customers -- we need to make sure we have access to those markets," she added.

Pritzker deflected questions about the National Export Initiative that President Obama launched in his January 2010 State of the Union address, aiming to double exports over the next five years, "an increase that will support two million jobs in America," he said.

The International Trade Administration (ITA) was charged with taking on the challenge, but the 2015 total of $1.5 trillion in exports meant the initiative fell about 50% short of its goal (see **WTTL**, Feb. 8, page 4). When asked the status of that initiative, Pritzker replied that "exports have grown dramatically" as global growth has slowed, affecting some exports "to a modest extent."

"Whatever a target is for five or six years isn't what's important. What's important is we're continuing at the International Trade Administration to put in place policies that encourage the ability for American workers and American companies to be able to sell the products and services that they make all over the world," she noted.

* * * Briefs * * *

ALUMINUM: United Steelworkers (USW) April 22 suspended Section 201 (safeguard) petition on primary unwrought aluminum it filed at ITC just four days prior. "The petition we filed was based on the tools available. We believe the Section 201 case would have resulted in immediate price increases that would have helped to maintain domestic production and employment as well as ensuring that producers in the United States and Canada would be able to obtain a fairer price for their products. Many in the industry refused to support the case," USW President Leo Gerard said in statement. "Within a few days, by working together, we have sparked long-overdue discussions that we hope will lead to a coordinated effort to address this critical problem," said Sen. Ron Wyden (D-Ore.), who previously supported petition in Senate floor speech April 18.

COPPER: In 6-0 preliminary vote April 21, ITC found U.S. industry may be injured by allegedly dumped imports of phosphor copper from Korea. "This is a significant step toward obtaining relief for U.S. companies and their employees who have been injured by unfairly priced imports from Korea," said Daniel B. Pickard, partner at Wiley Rein LLP and counsel to Metallurgical Products Company, firm that filed petition.

TUNA: At WTO dispute-settlement body (DSB) meeting April 22, Mexico rejected U.S. request for compliance panel to examine new "dolphin-safe" tuna import labeling rules that National Oceanographic and Atmospheric Administration (NOAA) published in March (see **WTTL**, April 18, page 8). Countries argued over whether request for sanctions could proceed while there was request for compliance panel. U.S. will ask for special meeting of DSB to submit its second request for panel.

FCPA: Dmitrij Harder of Huntingdon Valley, Pa., former owner of financial consulting firm Chestnut Consulting Group, Inc., pleaded guilty April 20 in Philadelphia U.S. District Court to two counts of violating Foreign Corrupt Practices Act (FCPA). He was indicted in January 2015 (see **WTTL**, Jan. 12, 2015, page 7). From 2007 through 2009, Harder paid approximately $3.5 million in bribes to European Bank for Reconstruction and Development (EBRD) official to influence applications. Sentencing is scheduled for July 21. He is in custody after Judge Paul Diamond revoked bail. "Defendant failed to show that he is not a flight risk," Diamond wrote in detention order.

EXPORT ENFORCEMENT: Indictment against Amin Yu of Orlando, Fla., was unsealed April 21 in Orlando U.S. District Court. She was charged with committing unlawful export information activities and other offenses related to illegal export of systems and components to China for use by former colleagues at state-run Harbin Engineering University (HEU) from 2002 through February 2014. Parts were used in development of marine submersible vehicles, including unmanned underwater vehicles, remotely operated vehicles and autonomous underwater vehicles. Specifically, Yu allegedly undervalued items on export documents and also provided false end-user information for those items.

WTO APPEALS: India April 20 appealed finding in WTO dispute with U.S. over India's local content requirement for solar cells and modules (see **WTTL**, April 4, page 10)…. Day before, U.S. appealed decision in dispute with Seoul regarding antidumping and countervailing measures on large residential washers from Korea. Panel previously found that Commerce did not conduct required relational analysis when determining antidumping and countervailing duty on imported washers from Korea (see **WTTL**, March 14, page 1).

POULTRY: Mexico lifted its ban on poultry imports from 14 states, USDA reported April 19. Mexico put ban in place in March 2015 after Arkansas turkey tested positive for highly pathogenic avian influenza (HPAI). "By persuading other trading partners to enforce regionalized bans that affect only those areas where HPAI was detected and to rely on internationally accepted, science-based standards for trade, USDA has helped preserve billions in U.S. poultry exports," USDA Secretary Tom Vilsack said in statement. Mexico has been largest destination for U.S. poultry exports since 2010. Despite ban, U.S. poultry and poultry product exports to Mexico reached $1.2 billion in 2015, Vilsack said.

COMMERCE PEOPLE: President Obama announced April 21 his intent to nominate Peg Gustafson as Commerce inspector general. Gustafson has been inspector general at Small Business Administration since September 2009. Commerce has not had inspector general since Todd Zinser stepped down in June 2015. Deputy David Smith has filled duties in interim.

TPP: Most Americans don't know what to make of TPP, according to Morning Consult poll of more than 10,000 registered voters released April 21. Of those surveyed, 45% didn't have opinion or didn't know how they felt toward TPP, while 29% declared themselves opposed and 26% were in favor of deal. However, data also suggests that Obama's "hard sell" on TPP has paid off among his supporters: 31% of those polled who supported Obama in 2012 support TPP, while 25% oppose it. Numbers don't seem to be moving in Obama's favor in Congress.

IRAN: House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) introduced U.S. Financial System Protection Act (H.R.4992) April 19. Legislation would prevent Obama administration from giving Iran access to U.S. dollar transactions, so long as Iran is engaged in illicit activities. Bill covers "direct dollar transactions and work-arounds including dollar-clearing, dollar-based conversions and dollar-related foreign currency transactions," according to statement from Royce's office. Sens. Mark Kirk (R-Ill.) and Marco Rubio (R-Fla.) introduced similar legislation in Senate April 6 (see **WTTL**, April 11, page 12).

BUDGET: Senate Appropriations Committee April 21 advanced FY2017 Commerce, Justice, Science and Related Agencies (CJS) Appropriations Act. Of $56.3 billion total, bill includes $59.3 million for USTR, $4.9 million increase over FY2016. Commerce is funded at $9.3 billion, $70.8 million increase over FY2016. Bill passed in 30-0 vote.

EX-IM FRAUD: Martin Slone of Oldsmar, Fla., owner of Woolie Enterprises Inc, aircraft brokerage and export business, was sentenced April 21 in Tampa U.S. District Court to five years probation and $131,215 restitution for defrauding Ex-Im Bank in 2007. He pleaded guilty in February (see **WTTL**, Feb. 8, page 8). Slone created false documents claiming that foreign buyers had purchased aircraft and parts from Woolie, then falsely reported that buyers had defaulted on payments.

STEEL ROD: Court of Appeals for Federal Circuit (CAFC) affirmed CIT ruling April 21 that Commerce correctly chose Thailand as surrogate country for second administrative review of antidumping order on steel threaded rod from China and decision was not arbitrary or capricious. "Commerce's decision to emphasize the steel input was reasonable and supported by substantial evidence," wrote CAFC Judge Jimmie Reyna for three-judge panel in *Jiaxing Brother Fastener Co., Ltd. v. U.S.*