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House Committee Blasts Administration on Gun Transfers

During a seemingly benign House Small Business Committee hearing Feb. 11 on the progress of export control reform, committee members took the opportunity to press the Obama administration on what is left to be done: the transfers of firearms and ammunition from the U.S. Munitions List (USML) to the Commerce Control List (CCL).

> In response to relentless grilling by Rep. Tim Huelskamp (R-Kan.), Deputy Assistant Secretary of State Brian Nilsson argued that the prioritization of transfers was set early on. "The categories that we've been doing have been based on those that provide the best benefit for interoperability with our key allies. We've been systematically working through those," Nilsson told the hearing.

This argument contradicts common wisdom about those transfers. Administration officials previously have acknowledged the proposed rules for those transfers were drafted, but pulled back in 2012 after the mass shootings in Aurora, Colo., and Newtown, Conn. At the urging of gun industry groups, members of Congress from both parties have urged the Obama administration to complete the reforms (see **WTTL**, Nov. 23, page 8).

"At this time, the Department's primary focus, as well as that of our interagency partners, is to finalize the significant number of proposed rule-makings currently in process, which include revisions to USML Categories XII and XIV. Nonetheless, the Department is committed to finalizing an initial review of the entire USML in 2016," wrote State Assistant Secretary for Legislative Affairs Julia Frifield in a response Feb. 5 to one of these letter-writers, Sen. David Perdue (R-Ga.).

Customs Enforcement Bill Heads to President's Desk

Despite last-minute complaints on Internet taxes and currency provisions, the Senate passed the third piece of the Obama administration's trade agenda, approving Feb. 11 the

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conference report of the Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 644) on a 75-20 vote. President Obama will sign the bill, despite concerns on certain provisions on Israel. "As with any bipartisan compromise legislation, there are provisions in this bill that we do not support, including a provision that contravenes longstanding U.S. policy towards Israel and the occupied territories, including with regard to Israeli settlement activity," the White House Press Secretary said in a statement.

> "However, the legislation would strengthen trade enforcement at our ports and borders and improve our ability to stop evasion of our trade laws; improve transparency, accountability, and coordination in enforcement efforts; and give us unprecedented new tools to address unfair currency practices. Its passage is an important milestone in our overall trade agenda," he added.

In the end, the bill included the Enforce Act, which gives Customs tools to "to effectively act against evasion of antidumping and countervailing duties" and a permanent ban on Internet accesses taxes, according to a Finance Committee fact sheet. After the House passed a House-Senate Conference Committee compromise in December, Senate action had been blocked by Democratic opposition to Internet tax provisions in the measure (see **WTTL**, Dec. 21, page 9).

In addition, the bill eliminates the "consumptive demand" exception to the prohibition on importing merchandise made by convict, forced, or indentured labor; establishes the Interagency Center on Trade Implementation, Monitoring, and Enforcement (ICTIME); grants additional trade preferences to promote economic recovery in Nepal and provides Treasury "clear direction and robust tools for identifying and addressing currency manipulation," the fact sheet noted.

The no votes included those on the extreme sides of the aisle, including Sens. Charles Schumer (D-NY) and Mike Enzi (R-Wyo.). "While I support the Customs provisions in this conference report as well as the Internet tax moratorium, I cannot support the way that these issues were merged in conference," Enzi said on the Senate floor. Among the five not-voting senators were current and former presidential candidates Sens. Ted Cruz (R-Texas), Lindsey Graham (R-S.C.), Marco Rubio (R-Fla.) and Bernie Sanders (I-Vt.).

While most business groups applauded the bill's passage, opponents decried the lack of strong provisions on currency. "Stripped from the final bill is a critical bipartisan currency provision that would have made clear the U.S. can treat currency manipulation as a countervailable subsidy. The remaining currency provisions are a poor substitute, simply calling for 'engagement' and with so-called 'consequences' that simply won't work," William Samuel, AFL-CIO government affairs director, wrote in a letter prior to the vote.

Treasury, State Officials Grilled on Iran Sanctions

The Joint Comprehensive Plan of Action (JCPOA) opens up opportunities for international banks and companies to do legitimate business with Iran, but the U.S primary embargo on

Tehran is still in place, Obama administration officials told the House Foreign Affairs Committee Feb. 11. Officials also refuted claims that European banks and companies are doing business with blocked Iranian entities.

Despite the assurances, the two-hour long hearing was filled with questions on people and entities subject to sanctions. Rep. Ted Deutch (D-Fla.) queried Acting Director of Treasury's Office of Foreign Assets Control (OFAC) John Smith about the number of individuals on the Specially Designated Nationals (SDN) list subject to secondary sanctions. "You're saying that of the 400 individuals and entities who were listed in the agreement, 200 of them are still being sanctioned for terrorism and human rights violations?" he wondered.

"I should clarify this," Smith said. "We removed 400 from the list because they were not related to terrorism, human rights abuses, ballistic missiles or others. Two hundred of those were marked by the Treasury Department before as Government of Iran or Iranian financial institution. We still in the United States, our U.S. persons are still obligated to block and do no transactions with anyone that is identified as the Government of Iran or Iranian financial institution." Those 200 persons and entities are on a separate OFAC list for U.S. persons, he added.

> Rep. Brad Sherman (D-Calif.) got into a heated exchange with Smith regarding the fact that "zero point zero" European entities have been slapped with secondary sanctions for doing business with the Iran Revolutionary Guard Corps (IRGC). When Smith said, "I have not seen evidence of European actors continuing to do business with the IRGC," Sherman visibly expressed disbelief.

Sherman was further angered when questioning Smith about the U.S. government's work to prevent Mahan Air, a blocked Iranian airline, from landing in European cities. "We're relying on the executive branch to enforce this deal because you are able to monitor what Iran does and here's an example where you have a major airline doing business in dozens of cities and you can't find them doing business with a single bank?" Sherman said.

Smith said OFAC found no evidence of any European banks doing business with Mahan Air. Mahan Air was designated by Treasury in 2011 for providing "financial, material and technological support" to the IRGC. Mahan Air purchases planes built by Boeing and Airbus through third parties due to the sanctions.

In light of recent reports that European countries have entered into tentative business deals with Iran, Rep. Lois Frankel (D-Fla.) asked Smith and Ambassador Stephen Mull, lead coordinator at State for the implementation of the Iran nuclear deal, how realistic it is that U.S. allies will "snap back" sanctions should Iran cheat.

Mull was confident that Europe would side with the U.S. Noting that "we've been down this road before," Mull said that when "[we say] either you do business with Iran or you do business with us and every single time they choose us." During a similar line of questioning from Rep. Eliot Engel (D-N.Y.), Smith replied, "I fully expect that Europe is going to continue to be a committed partner with us." Europe has "sacrificed" economic ties with Iran in the past, he added.

BIS Sees Increase in President's Proposed FY2017 Budget

The cliché is wrong. Someone hears the tree falling in the forest, but probably will not do anything about it. President Obama unveiled his $4.15 trillion budget for Fiscal Year 2017 on Feb. 9, which includes a budget increase for the Bureau of Industry and Security (BIS) to handle increased licensing. Unfortunately, House and Senate budget committees will not hold hearings on the proposal.

> The proposed budget allots $127 million for BIS. That number is $15 million more than the FY2016 enacted level, and "will augment domestic and international efforts to curtail illegal exports while facilitating secure trade with U.S. allies and close partners," according to Commerce's budget brief. The additional monies are meant to support the completion of BIS' export control reform (ECR).

BIS staff levels "are not in line with growth in export license applications and enforcement activities," a preliminary study by outside experts to examine BIS' workforce found. The budget brief also described BIS employees as having "reached the tipping point." To alleviate this shortfall, BIS requested a $3.305 million increase and 13 full-time equivalents (FTEs), bringing the total Export Administration (EA) request to $64.539 million and 227 FTE.

The additional funding and FTE are needed to evaluate the "tens of thousands" of items specially designed for military applications that are moving from the purview of State to Commerce under the terms of the ECR. Ten FTEs will be dedicated to licensing and other reviews, and three will be analytical staff to support the growing number of Defense Production Act industrial base surveys and assessments.

Export Enforcement (EE) has requested an additional $4.115 million and 2 FTEs: $1.6 million for productivity improvement, $1.702 million for the export control officer and end-use check program, and $.8 million and 2 FTEs to support the Information Triage Unit (ITU) expansion. ITU was established as part of ECR.

Neither chamber of Congress will hold hearings with the Director of the Office of Management and Budget, committee chairmen Rep. Tom Price (R-Ga.) and Sen. Mike Enzi (R-Wyo.) said Feb. 4. "Rather than spend time on a proposal that, if anything like this Administration's previous budgets, will double down on the same failed policies that have led to the worst economic recovery in modern times, Congress should continue our work on building a budget that balances and that will foster a healthy economy," Price said in a prepared statement.

Management and Policy Coordination (MPC) requested $.5 million from the previous budget to stay up-to-date with technological changes and to upgrade its IT security tools and malware and virus detection software. The proposed Commerce budget also allots $521 million for the International Trade Administration, an 8% increase over FY2016 enacted levels. Within that number is $20 million for SelectUSA, a government program to recruit foreign businesses to invest and create new jobs in the U.S.

Pharmaceutical Firm Settles SEC Bribery Charges

Yet another global health care company has settled charges of bribing Chinese health care providers (HCPs) to increase sales. SciClone Pharmaceuticals agreed Feb. 4 to pay a total of $12.8 million to settle Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act (FCPA).

> Pharmaceutical company Bristol-Myers Squibb (BMS) agreed in October to pay more than $14 million to settle similar charges (see **WTTL**, Oct. 12, page 7). Two months prior, infant formula supplier Mead Johnson Nutrition Company agreed to pay SEC $12 million for the same kind of violations.

"Although SciClone has local distributor relationships in China, its sales and marketing activities there are conducted through SPIL [a Hong Kong subsidiary]. Sales representatives in China regularly reported to senior management of SPIL on their efforts to increase sales. In these reports, sales representatives openly referred to instances in which they provided weekend trips, vacations, gifts, expensive meals, foreign language classes, and entertainment to HCPs in order to obtain an increase in prescriptions from those HCPs. As described by one sales manager, this was 'luring them with the promise of profit,'" the SEC order noted.

"The related transactions were falsely recorded in SciClone's books and records as legitimate business expenses, such as sponsorships, travel and entertainment, conferences, honoraria, and promotion expenses. During this period, SciClone also failed to devise and maintain a sufficient system of internal accounting controls and lacked an effective anti-corruption compliance program," the SEC said.

SciClone agreed to pay a civil penalty of $2.5 million, disgorgement of $9.4 million and rejudgment interest of $900,000. As part of the agreement, the company neither admitted nor denied it engaged in any wrongdoing. In a press release, the company said the Department of Justice (DOJ) "has also completed its related investigation and has declined to pursue any action."

"We are very pleased to have reached a final settlement with the SEC and DOJ that is in line with our previous expectations and brings this matter to conclusion. We believe that we have established an industry-leading compliance program, including a commitment to constant improvement, which is a key business asset," SciClone CEO Friedhelm Blobel said in a statement.

Agencies Propose More Changes to Controls on Aircraft, Engines

As part of the agencies' ongoing review of their respective regulations under export control reform, the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) proposed another round of clarifications Feb. 9 to U.S. Munitions List categories VIII (aircraft) and XIX (gas turbine engines) and the accompanying 600 series on the Commerce Control List (CCL).

> These transfers were the first to go into effect in October 2013, and BIS and DDTC had asked for comments on the anniversary of the implementation. Comments on the latest changes are due by March 25.

Most of the changes were technical, adding a note or clarifying text to the existing regulations or to individual Export Control Classification Numbers (ECCNs). For example, BIS added a "note stating that forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by the ECCN in which the note appears (or by specified paragraphs in that ECCN) are controlled by that ECCN."

Other changes include clarifying that ECCN 9A610 would expand to control gauges and indicators and mirrors wherever they are located on the aircraft, all types of fluid filters and filter assemblies—not just hydraulic, oil and fuel system filters and filter assemblies, as well as fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets.

In its proposed rule, DDTC responded to comments about specific definitions, including "attack helicopter," "armed" and "military." In those cases, the agency argued the definitions were "sufficiently clear and understood by the public." Commenters also argued for the removal of the term "specially designed" in some text. "The Department accepts this edit to the fullest extent possible, but notes that 'specially designed' exists in recognition of the fact that an enumeration of specific technical parameters may prove too complex or unwieldy to produce a useful regulation in some cases," it wrote.

DDTC also proposed revising its regulations to clarify that the Category VIII controls for all paragraphs are applicable "whether manned, unmanned, remotely piloted, or optionally piloted," its notice said. For example, commenters argued that the control in paragraph (a)(13) is "overly broad and captures all optionally piloted aircraft, including aircraft that would otherwise be controlled by the EAR," it wrote. DDTC said it accepted these comments and deleted the paragraph, while revising paragraph VIII(a) to capture all optionally piloted variants of the aircraft listed in that paragraph.

* * * Briefs * * *

STEEL: AK Steel Corporation, Allegheny Ludium, LLC dba ATI Flat Rolled Products, North American Stainless and Outokumpu Stainless USA LLC filed countervailing and antidumping duty petitions Feb. 12 at ITA and ITC against stainless steel sheet and strip from China.

PAPER: In 6-0 final vote Feb. 9, ITC found U.S. industry is materially injured by dumped imports of certain uncoated paper from Australia, Brazil, China, Indonesia and Portugal and subsidized imports from China and Indonesia. Commission also made negative finding on critical circumstances with regard to imports from Australia.

CUBA: Former Commerce Secretary Carlos Gutierrez was named Feb. 9 first chair of U.S.-Cuba Business Council (USCBC), affiliate of U.S. Chamber of Commerce. Gutierrez is scheduled to meet with Rodrigo Malmierca, Cuba's Minister of Foreign Trade & Investment, in Washington Feb. 16. "This is a historic opportunity to press for a new bilateral relationship, and the Board's choice of Secretary Gutierrez as chairman signals its willingness to bring the full force of the private sector to the tasks ahead," USCBC president Jodi Hanson Bond said in statement.

NORTH KOREA: House adopted Feb. 12 Senate amendment to H.R. 757, North Korea Sanctions and Policy Enhancement Act of 2016. Bill will be sent to President. Senate voted 96-0 on Feb. 10 to authorize new sanctions against individuals or entities importing, exporting or reexporting arms or luxury goods to or into North Korea. House passed legislation, introduced by Rep. Ed Royce (R-Calif.), Jan. 12 in response to Pyongyang recent nuclear test and missile launch. South Korea suspended operations at joint-run industrial complex and Japan's Prime Minister announced new sanctions.

TPP: There are not enough votes in Congress to pass TPP, House Speaker Paul Ryan (R-Wisc.) told reporters Feb. 11. "I don't think the votes are there right now because of the concerns about what's in the TPP," said Ryan. President has "a lot more work to do" to earn support for the trade deal, he said. TPP was signed in New Zealand on Feb. 4.

TTIP: TTIP agreement unlikely to be concluded before President Obama leaves office, White House Spokesman Josh Earnest said Feb. 8, three years after launching talks in 2013. "I do not believe that we're going to reach a TTIP agreement before the President leaves office, but he's certainly interested in moving those negotiations forward and in a direction where we can be confident that the economy of the United States will be enhanced through the completion of an agreement hopefully under the leadership of the next U.S. president," Earnest said. Round 12 of E.U.-U.S. negotiations will take place in Brussels Feb. 22-26.

OFAC: Barclays Bank Plc agreed Feb. 8 to pay OFAC $2,485,890 to settle charges of violating Zimbabwe sanctions from July 2008 to September 2013. Barclays allegedly processed 159 transactions for corporate customers that were owned 50% or more, directly or indirectly, by Industrial Development Corporation of Zimbabwe (IDCZ), company on SDN list. Barclays did not voluntarily self-disclose apparent violations. Five days earlier, OFAC removed Agricultural Development Bank of Zimbabwe (Agribank) and Infrastructure Development Bank of Zimbabwe (IDBZ) from SDN list (see **WTTL**, Feb. 8, page 9).