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DDTC Proposes Revised Guidelines for Preparing TAAs, MLAs

To reflect policy change adopted over the last 18 months as part of export control reforms, State's Directorate of Defense Trade Controls (DDTC) Jan. 6 posted a proposed revision to its "Guidelines for Preparing Agreements" for public comment. The advice for filing Technical Assistance Agreements (TAAs) and Manufacturing Licensing Agreements (MLAs) also deals with the transfer of many parts and components from the U.S. Munitions List (USML) to the Commerce Control List (CCL).

> "For the purposes of agreement valuation and decrementing hardware, previously approved IFO [In Furtherance Of] licenses for permanent export are considered USML even if some items have subsequently transitioned to the CCL," DDTC wrote. The proposed guidelines then list several examples of these licenses. The agency said average processing times for agreements or amendments will lengthen to between 40 and 55 days from 30 to 45 days.

Other changes include updating the length of the validity period for agreements and staff processing times, clarifying requirements for limited defense services, and adding information on expedited execution for adding sublicensees. On defense services, DDTC clarified its MLA guidance. "Note that even if manufacturing know-how is not transferred, an MLA is still generally required for authorization to perform a defense service enabling the manufacture of defense articles abroad. Alternatively, if no defense services are being performed and all the conditions of Section 124.13 are met, an offshore procurement license may be appropriate," it said (see **WTTL**, Oct. 19, page 9).

Business Groups Wake Up to TPP

After waiting two months to give the impression that they were studying the Trans-Pacific Partnership (TPP), major U.S. business associations, as expected, have fallen in line behind the accord just as they have backed every major trade deal in the last 35 years. What remains to be seen is how much money they will devote to promoting the agreement. Within a few days during the week of Jan. 4, TPP endorsements came from the National

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Association of Manufacturers (NAM), Chamber of Commerce and Business Roundtable (BRT). Late in December the National Foreign Trade Association (NFTC) also came out in its favor. The endorsements renew a lobbying rivalry that has played out over major trade deals dating back to NAFTA. The fight pits most of the business community against a coalition of groups led by labor unions, consumer organizations and environmentalists that have already launched campaigns against the pact.

> At stake are a few swing votes, mostly Democrats, in the House and Senate that are needed to pass legislation to implement TPP. In the past, business groups, notably the Chamber, have invested their funds into advertising in key congressional districts to gain support for trade deals. They have also created "war rooms" to coordinate their lobbying efforts in Washington.

There have been complaints that business groups and companies have not been enthusiastic enough about TPP to overcome the opposition the accord has garnered. Even while endorsing TPP, NAM acknowledged some shortcomings. "We recognize this agreement is not perfect, and there are some principled objections to the TPP, so the NAM will continue to work closely with its members to address remaining barriers, to raise standards, to promote the rule of law and to further level the playing field for all," said NAM President and CEO Jay Timmons in a statement.

"No trade agreement is perfect, and the TPP is no exception," said a statement from Chamber President and CEO Thomas J. Donohue. "We're rolling up our sleeves to work with the administration, Congress and our TPP partners to ensure the agreement is implemented in a way that maximizes its commercial benefits, including market access, rules, and intellectual property protections. We intend to see this job through to the end—to the agreement's entry-into-force and beyond," he added.

"We want Congress to approve the TPP this year. To that end, we are urging the administration to quickly address the remaining issues that impact certain business sectors in order to ensure the broadest possible benefits to all sectors of U.S. business, which will enable the broadest support possible for the TPP," said Tom Linebarger, chairman and CEO of Cummins Inc. and chair of BRT's international engagement committee.

NFTC Vice President Chuck Dittrich identified some issues that still concern the business community. "The short list appears to be four issues, which is the length of protection for biologics, which differs from what the U.S. law is currently; the aspect of carving out sectors [tobacco] unnecessarily in the investor-state dispute settlement provisions; certain aspects of financial services related to digital trade and the localization of servers...as well as issues related to currency," he told reporters Jan. 7.

World Bank Sees Small Gains in GDP from TPP

As the Obama administration and business community step up their efforts to promote the benefits of the Trans-Pacific Partnership (TPP), a World Bank report Jan. 6 splashed some cold water on that hype. The assessment, which is a chapter in the bank's 2016 Global Economic Prospects report, may offer a preview of a report the International Trade Commission (ITC) is required to prepare on the accord under provisions of fast-track trade promotion authority (TPA). The ITC will hold hearings Jan. 13-15 to get public testimony on the agreement.

> TPP critics were quick to cite the World Bank's estimate that the accord would raise the Gross Domestic Product (GDP) of the 12 participating countries overall by just 4/10th of 1% to 1.1% over the next 15 years on a GDP-weighted average. The U.S. will grow the least. In comparison, NAFTA has been estimated to have raised member country GDP by 1% to 2%, while the European Single Market raised European Union GDP by an estimated 2% to 3%, it notes.

While overall GDP growth will be small, Vietnam and Malaysia will be the big winners, the bank suggests. "The impact could be considerably more in countries facing currently elevated barriers to trade (as much as 10 percent in Vietnam and 8 percent in Malaysia). In countries that export labor-intensive products, incomes of low-income and low-skilled households could expand strongly," the report states.

While GDP growth may be modest because trade is only a part of the calculation, particularly for the U.S., TPP will boost trade among its members. "TPP could also lift member countries' trade by 11 percent by 2030. This would be an important counterweight to the trade slowdown underway since 2011. At current 2011-14 trends, member countries' trade would fall 25 percent below pre-crisis trend by 2030," the bank estimates.

For the U.S., the World Bank sees a small impact on jobs and wages among advance economies in the accord. "Although the TPP is unlikely to affect overall employment in the long run, it may accelerate structural shifts between industries based on comparative advantage and scale economies," it opines. "In the United States, for example, changes in real wages are expected to be small as unskilled and skilled wages increase by 0.4 and 0.6 percent, respectively, by 2030. In contrast, in Vietnam, TPP could increase the real wages of unskilled workers by more than 14 percent by 2030, as production intensive in unskilled labor (e.g. textiles) shifts to Vietnam," it reports.

Levin Wants TPP Currency Addressed by Finance Ministers

House Ways and Means Committee Ranking Member Sander Levin (D-Mich.) appears to recognize that the U.S. won't be able to reopen TPP to address concerns about its currency manipulation provisions. Nonetheless, nothing would stop Treasury from going back and renegotiating a side agreement under which TPP countries promised to avoid such practices (see **WTTL**, Nov. 9, page 4).

"That is an agreement among finance ministers," Levin told reporters Jan. 7 after he chaired a forum sponsored by Ways and Means Democrats on the currency provisions in

TPP. "That doesn't mean it can't be strengthened," he said. Finance ministers from the 12 TPP countries adopted Nov. 5 a "Joint Declaration of the Macroeconomic Policy." Under the agreement, each country confirmed that is bound "to avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage."

The forum, the latest the Democrats have held on their own on TPP provisions, heard a balanced debate among witnesses on whether TPP's currency provisions are strong enough or the entire deal should be rejected because the language is too weak. Strong opposition to those provisions came in testimony by <u>Ford</u> Vice President Stephen Biegen.

"Ford is recommending to Congress that TPP not be approved in its current form," he said. The company urges the administration "to renegotiate TPP to incorporate strong, enforceable rules on currency manipulation," Beigen said. "TPP does little to open the Japanese market," he also argued. "Ford can compete against Japanese automakers, but it cannot compete against the Bank of Japan," he told the forum.

Biegen said the Japanese yen has declined 33% in value since Shinzo Abe became prime minister. That has added $6,000 to the cost of an American car valued at $20,000 entering Japan, while giving Japanese exports to the U.S. a $6,000 advantage, he argued.

Fred Bergsten, senior fellow and director emeritus at the Peterson Institute for International Economics, told the forum currency manipulation "has declined sharply over the last two or three years and almost disappeared last year." He credited the rise in the value of the Chinese renminbi, which had risen about 40% until recently, to pressure from the U.S. and the threat of legislation. The more recent decline of the Chinese currency and the currency of other countries in Asia is due to the rise of the U.S. dollar. Bergsten claimed the renminbi had become overvalued in relation to the Japanese yen and the euro.

He urged lawmakers to pass TPP but also the pending Customs enforcement bill, which has provisions imposing stronger requirements on Treasury's semi-annual report on foreign exchange policies. He also said Congress should set up procedures to regularly monitor agreements on currency and their effectiveness "to hold their feet to the fire."

TransCanada Seeks $15 Billion for Keystone Denial

It couldn't have come at a worse time for the Obama administration as it tries to sell TPP, including its investor-state dispute settlement (ISDS) provisions. Canadian pipeline company <u>TransCanada</u> said Jan. 6 that it intends invoke the bilateral investment provisions of NAFTA Chapter 11 to seek monetary redress from the U.S. for President Obama's rejection of its application to build the Keystone XL pipeline across the U.S.

"When it signed the NAFTA, the U.S. Government committed to provide all Canadian investors with core investment protections, including national treatment (Article 1102), most-favored-nation treatment (Article 1103), treatment in accordance with international law (Article 1105), and protection against uncompensated expropriations (Article 1110)," TransCanada wrote in its notice of intent. "The U.S. Government failed to meet those commitments. The NAFTA entitles the Disputing Investors to full compensation for these failures," it said. TransCanada intends to seek damages of over $15 billion, it said.

> The complaint "illustrates that there are issues related to ISDS that need to be addressed" in TPP, House Ways and Means Committee Ranking Member Sander Levin (D-Mich.) told reporters Jan. 7. "We have a good legal system in this country, and those who don't like the U.S. government decision should go to court," Levin said.

In its notice of intent, TransCanada noted State's approval of other pipelines. "The United States has previously approved pipelines from other investors, including from the United States and Mexico, based on factors that, if applied to Keystone's application, would have resulted in approval of the application," it wrote.

The U.S. "had also approved those other applications in a significantly shorter period of time than it took the United States to review, and ultimately deny, Keystone's application. By delaying the processing of Keystone's application for the Keystone XL Pipeline, and applying new and arbitrary criteria in deciding to deny the application, the United States discriminated against, and significantly damaged, the Disputing Investors," it said.

Opponents of ongoing trade negotiations used the announcement to support their positions. "To make matters worse, TransCanada is exploiting provisions of so-called free trade deals that permit foreign corporations to undermine American policy meant to protect the health of our families and the safety of our communities" Sierra Club Executive Director Michael Brune said in a statement.

Levin told reporters he had urged the White House to add language in TPP that would bar the use of "arbitrary" action suits under the accord. "Unfortunately, the administration in negotiations did not address that particular issue," he said. Levin also wanted provisions that would essentially allow two governments in a dispute to prevent the use of ISDS.

Deal Saves South Africa from Losing AGOA Benefits

A last, last-minute deal between the U.S. and South Africa Jan. 6 to open – partially – the African nation's market to U.S. beef, pork and poultry saved South Africa from losing its tariff-free access to the U.S. market. In November, President Obama had notified Congress that he intended to suspend South Africa's Africa Growth and Opportunity Act (AGOA) benefits in 60 days because of its failure to open its market to U.S. products.

The agreement settles U.S. complaints going back nearly 15 years about South Africa's barriers to U.S. farm products. When Congress renewed AGOA as part of the Trade Preferences Act in June, it mandated an out-of-cycle review of the country's AGOA eligibility.

That review led to renewed bilateral talks that failed to resolve the issue until after the president's threat (see **WTTL**, Nov. 9, page 10). Although the USTR provided no details about the accord, a poultry industry release said the agreement calls for South Africa to grant the U.S. an annual quota of 65,000 metric tons of chicken that will be increased incrementally each year.

> "South Africa also agreed to a policy of regionalization in the event of future detections of highly pathogenic avian influenza in the U.S. Previously, if HPAI were detected in the U.S., South Africa would impose a nationwide import ban on poultry. Under the new agreement, bans would be imposed only on individual states affected by the virus," said the USA Poultry & Egg Export Council (USAPEEC) and National Chicken Council (NCC).

A statement from USTR Michael Froman said South Africa "will reserve a portion of the new trade in poultry for historically disadvantaged importers, thus providing new business opportunities that could contribute to their economic advancement." He did not elaborate on who those exporters are or what share of the import market they will get.

"We're pleased that this process has reached a successful conclusion and that U.S. chicken can again be shipped to South Africa," said a joint statement by USAPEEC President Jim Sumner and NCC President Mike Brown. "USAPEEC and NCC negotiated an agreement with the South African Poultry Association (SAPA) to end the South African chicken embargo in Paris last June, which required the support and approval of the respective governments," they noted.

The pair thanked the congressional "Chicken Caucus" for its help in putting the issue into AGAO. "We especially thank the leaders of the caucus, Senators Chris Coons of Delaware and Johnny Isakson of Georgia, for their exemplary work in helping to reopen this important market for our products," their statement said.

Pork producers were more cautious in their praise for the deal. National Pork Producers Council (NPPC) said it has "not yet seen the fine print of an agreement between the United States and South Africa but understands that some restrictions on U.S. pork may remain." South Africa had imposed a de facto ban on U.S. pork to prevent the spread of Porcine Reproductive and Respiratory Syndrome (PRRS) to South African livestock. "There is no documented scientific case of PRRS being transmitted to domestic livestock through imported pork," NPPC said.

* * * Briefs * * *

<u>EXPORT ENFORCEMENT</u>: <u>Falcon Instrumentation and Machinery FZE</u>, Iranian company formerly known as FIMCO, was ordered Jan. 6 in Harrisburg, Pa., U.S. District Court to pay $100,000 criminal fine for conspiracy to smuggle lathe machine, also known as bar peeling machine, to Iran via UAE in June 2012 without license. Company pleaded guilty in July (see **WTTL**, Aug. 3, 2015, page 8). At same time, FIMCO also agreed to pay BIS $837,500 civil penalty to settle same

charges. Pennsylvania equipment manufacturer, Hetran Inc., and its CEO, Helmut Oertmann, were sentenced to 12 months' probation in same court in December 2014 for their role in scheme.

TRADE FIGURES: Merchandise exports in November fell 10.5% from year ago to $122.2 billion, lowest level since mid-2011, Commerce reported Jan. 6. Services exports gained 0.5% to $60.0 billion from last November. Imports dipped 6.3% from November 2014 to $183.5 billion, as services imports gained 1.7% to $41.1 billion.

GSP: USTR Michael Froman Dec. 30 asked ITC to conduct Section 332 investigation on "probable economic effect on total U.S. imports, U.S. industries producing like or directly competitive articles, and on U.S. consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP program."

MAGNESIA CARBON BRICKS: In 6-0 "sunset" vote Jan. 5, ITC said revoking antidumping and countervailing duty orders on magnesia carbon bricks from China and Mexico would renew injury to U.S. industry. "We are pleased that the Commission has reached a unanimous, affirmative determination and that the orders will be continued for another five years," said Michael Taylor, partner at King & Spalding and counsel for Magnesia Carbon Bricks Fair Trade Committee.

HIZBALLAH: OFAC Jan. 7 added Hizballah financier and member Ali Youssef Charara and telecommunications company Spectrum Investment Group Holding SAL to Specially Designated Nationals list. Designation was first under Hizballah International Financing Prevention Act of 2015 (H.R. 2297), which President Obama signed in December (see **WTTL**, Dec. 21, page 16). "In addition to Charara's facilitation of commercial investments on behalf of Hizballah, Charara has also worked on oil ventures in Iraq with Hizballah member Adham Tabaja and Hizballah financial supporter Kassem Hejeij, both of whom were previously designated by Treasury," OFAC said.

TIRES: Titan Tire Corporation and United Steel Workers (USW) filed countervailing and antidumping duty petitions Jan. 8 at ITA and ITC against pneumatic off-the-road tires from India, China and Sri Lanka. Previous case against unmounted tires from China dates back to 2008 and order is still in place (see **WTTL**, March 16, page 1). New cases hit wheel-mounted tires and two new respondents. "Chinese producers and importers appear to be gaming the system to avoid the duties they owe," said statement by USW International President Leo W. Gerard. "Now, subsidized producers in India and Sri Lanka have stepped in to get their own piece of the U.S. market," he added.

NAFTA: Court of Appeals for Federal Circuit (CAFC) affirmed on 2-1 vote Jan. 6 CIT decision that upheld Customs's denial of Ford's duty-refund request. "We are satisfied with Customs' explanation that the differences between the reconciliation program and the traditional post-entry duty refund process warrant different filing requirements. We therefore agree with the Trade Court that Customs' remand explanation is reasonable. Having satisfied our mandate in *Ford IV,* our inquiry goes no further," wrote Appellate Judge Sharon Prost for majority. CAFC Judge Jimmie Reyna dissented. "Because Customs' remand explanation fails to identify a reasonable basis for its inconsistency, I dissent and would reverse and remand to the Trade Court with instructions to calculate and award Ford's excess duties paid, with interest," he wrote.

WAYS & MEANS: Rep. Jim McDermott (D-Wash.), veteran member of House Ways & Means Committee, announced Jan. 6 that he will not seek reelection at end of term. He has represented Seattle in Congress for 27 years. "Not surprisingly, not everything has worked out as I had hoped, but, on balance, I will leave the Congress with few regrets," he said in announcing retirement.