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Trade Bills Could Be Signed by July 4th

Three bills essential to President Obama's trade agenda may be on his desk and signed by July 4th, Senate Majority Leader Mitch McConnell (R-Ky.) predicted June 18. After bicameral negotiations and legislative legerdemain, the House passed for a second time fast-track trade promotion authority (TPA) June 18 and the Senate is expected to pass TPA, Trade Adjustment Assistance and a trade preferences bill the week of June 22.

> The House's 218-208 vote for TPA (H.R. 2146) came after lawmakers agreed June 16 to extend until July 30 the deadline for re-voting on the TAA bill that failed June 12 (see **WTTL**, June 15, page 1). The extension proved unnecessary after House and Senate leaders reached a deal to move TPA as a standalone measure out of the House, a move predicted by WTTL.

As part of the deal, McConnell and House Speaker John Boehner (R-Ohio) promised to move both TPA and TAA. In addition, the 28 House Democrats who voted for TPA the first time and the 14 senators who also supported the measure agreed to vote for it again after they received assurances that the votes on the two bills would be "nearly contemporaneous," Rep. Earl Blumenauer (D-Ore.) told reporters (see story below).

The 28 House Democrats agreed to hold steady on TPA after they met for over an hour with President Obama at the White House June 17. Among the topics discussed were their concerns about specific issues in a future Trans-Pacific Partnership (TPP) agreement. The president "freely acknowledged those are all issues and we got to work on them and we are working on them," Rep. Gerald Connolly (D-Va.) reported.

McConnell said the Senate will first vote to concur to the House-passed TPA and then on the trade preferences bill (H.R. 1295) with an amendment adding TAA. McConnell filed two cloture motions June 18 to allow the Senate to begin debate and vote on the two bills as early as Tuesday, June 23.

Democrats Adopt "Free the Hostage" Strategy on Trade Bills

Pro-trade Democrats have devised a plan they call "Free the Hostage" to delink TPA legislation from TAA but assure passage of both measures. TPA was considered the

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"hostage" being held by the House rejection of TAA. The strategy allowed the House to pass TPA for a second time June 18 with the support of 28 Democrats who expect other Democrats who voted against TAA when it came up June 12 to switch their votes and support it when it comes back attached to trade preference legislation (see story page 1).

> The hostage-taking was part of a last-ditch effort of TPA opponents, led by the AFL-CIO, to stop the measure by blocking TAA, which has always been a sine qua non for Democratic support for trade legislation and trade agreements. The ploy didn't prevent passage of TPA the first time, but did create a short-term stumbling block to enactment of TPA, TAA, trade preferences legislation and a Customs enforcement bill.

Before the TPA vote, House Speaker John Boehner (R-Ohio) and McConnell issued a joint statement committing to bringing TPA and TAA to a vote. "We are committed to ensuring both TPA and TAA get votes in the House and Senate and are sent to the President for signature. And it is our intent to have a conference on the customs bill and complete that in a timely manner so that the President can sign it into law," they said in their June 17 statement. After the vote, Boehner reiterated that commitment.

"I have had personal assurances from the speaker and from the president that they will move heaven and earth to allow another opportunity for people to come to their senses on Trade Adjustment Assistance once it's delinked. There doesn't appear to be any good reason for people to jump off the cliff and kill it," Rep. Earl Blumenauer (D-Ore.), who voted for TPA, told reporters. "I'm confident this is a reasonable approach," he added.

Rep. Gerald Connolly (D-Va.), who met with President Obama along with other pro-trade Democrats the day before the vote, said that once it's clear the president will sign TPA, "that's the only way that here in the House Democrats are freed from their commitment to kill TAA to get at TPA," he said. "If you know that there is no such strategy that can work, because it's now law, now let's vote on TAA on the merits," he added.

The 14 senators who voted for the TPA measure wanted assurance that the 28 House Democrats would vote for it a second time, Connolly noted. They also wanted assurance that TPA would come back to the Senate without amendments. The House Democrats gave their Senate colleagues that assurance, he said.

Rep. Steve Israel (D-N.Y.), who voted against TPA, also said he expects TAA to pass when it comes back to the House. "Whatever needs to be done to pass TAA must be done," he said after the House vote. "I can't imagine [Democrats] voting against TAA. That's the quintessential cutting off our noses to spite our face," Israel said.

Rep. Jim Himes (D-Conn.), who also voted for TPA twice, said he expects fewer Republicans to vote for TAA when it comes back to the House as part of a preference bill. Republicans who normally would have opposed TAA voted for it to assure passage of TPA. "When you take away that dynamic you lose a lot of Republicans and pick up a lot of Democrats," he said. Rep. Pat Tiberi (R-Ohio), who chairs the House Ways and Means trade subcommittee, said he didn't expect to lose Republican votes for TAA.

The trade debate now shifts to the Senate where cloture votes on TPA and the trade preferences bill could come as early as June 23. "The best way forward now is to consider TPA and TAA separately," McConnell said on the Senate floor June 18. "That will mean

TAA will come second after TPA but the votes will be there to pass it, reluctantly, not happily, but they will be there if it means getting something far more important accomplished for the American people," he said. "This puts the Senate on a procedural glide path to consider and then pass the TPA bill, the AGOA and preference bill and TAA."

> "Assuming that everyone has a little faith and votes the same way they did just a few weeks ago, we'll be able to get all of those bills to the president soon," he added. Later the Senate will turn to the Customs enforcement bill (H.R. 644), which is more "complex and thorny," he said. "It will have to go to a conference committee and return to the Senate floor where it too will be passed and sent to the White House," he stated.

"It means before July 4th the president will have signed TPA, TAA and the AGOA and preferences bill and then we will be well on our way to enactment of a robust Customs package," he declared. The trade preferences bill to which TAA will be attached had strong support in both the House and the Senate when it passed, with the House voting 397-32 for it and the Senate passing it on a 97-1 vote. The amended preferences bill would have to go back to the House for another vote but is likely to be approved.

The White House has also clarified that President Obama intends to sign both TPA and TAA but wouldn't veto TPA if TAA weren't attached. "The President has been clear that he wants both TPA and TAA at his desk for his signature as soon as possible. The only strategy that we support moving through Congress is one that includes both of those pieces getting to his desk for his signature," said Principal Deputy Press Secretary Eric Schultz. "Leader McConnell, Leader Boehner have both talked about the strategy," he added. "So we feel confident that the procedural snafus that we've all experienced over the past few weeks are in the process of getting untangled. And we have confidence that the House and Senate leadership are working through that in real time," Schultz said.

USML Category XIV Proposals Aim to Address Research Concerns

After years of hand-wringing and debate among several government agencies, the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) proposed changes to U.S. Munitions List (USML) Category XIV (toxins) and Commerce Control List (CCL) Category 1.

> DDTC's proposal would add language clarifying that the controls apply to "chemical warfare agents not enumerated above adapted for use in war to produce casualties in humans or animals, degrade equipment, or damage crops or the environment." Research that is not aimed at these uses would be controlled on the CCL, it said.

The proposal was included with changes to Category XVIII (directed energy weapons) (see related story, page 7). The proposals address the concerns of Department of Homeland Security (DHS) laboratories, the Centers for Disease Control (CDC) and universities that their health-related work on some toxins and biologics has forced them to be controlled under the International Traffic in Arms Regulations (ITAR) even when their work is not military related. These objections have blocked interagency agreement on Category XIV for more than two years (see **WTTL**, June 15, page 1). For its part, BIS would create new 600-series Export Control Classification Numbers (ECCNs) -- 1A607, 1B607,

1C607, 1D607 and 1E607 -- for products no longer warranting control on the USML. These ECCNs primarily would control military dissemination, detection and protection "equipment" and related articles.

> The new ECCNs would control military dissemination equipment for riot control agents, military detection and protection equipment for toxicological agents (including chemical, biological, and riot control agents), and related commodities; military test, inspection, and production "equipment" and related commodities; and tear gases, riot control agents and materials for the detection and decontamination of chemical warfare agents.

As in other parts of the CCL, ECCN 1D607 would control "software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by ECCN 1A607, 1B607 or 1C607. ECCN 1E607 would control "technology" of the same. The State proposal also noted that "the controls in paragraph (f)(2) that include the phrase 'developed under a Department of Defense contract or other funding authorization' do not apply when the Department of Defense acts solely as a servicing agency for a contract on behalf of another agency of the U.S. government."

State also proposed updating paragraph (i) "to provide better clarity on the scope of the control by including examples of Department of Defense tools that are used to determine or estimate potential effects of chemical or biological weapons strikes and incidents in order to plan to mitigate their impacts." Finally, the rule proposes to only control on the USML chemical or biological agent detectors when they contain Department of Defense reagents, spectra, algorithms, databases, etc, DDTC said.

Defense Contractor Pays $7.1 Million to Settle Bribery Charges

IAP Worldwide Services Inc., a Florida defense and government contracting company, agreed June 16 to pay $7.1 million as part of a three-year non-prosecution agreement (NPA) with Justice to resolve charges that it conspired to bribe Kuwaiti officials to secure a government contract.

> James Rama, former IAP vice president, pleaded guilty separately the same day in Alexandria, Va., U.S. District Court to conspiracy to violate the Foreign Corrupt Practices Act (FCPA) for his involvement. Released on $50,000 bond, his sentencing is scheduled for Sept. 11, 2015.

The cases involve the building of the Kuwait Security Program (KSP) for that country's Ministry of the Interior (MOI). "In or about 2005, Rama joined IAP and began pursuing the KSP Phase I contract on behalf of IAP. IAP wanted to win both the Phase I contract and obtain the more lucrative Phase II contract. IAP determined that if it worked as the MOI's consultant in Phase I, it could tailor the requirements for the Phase II contract to IAP's strengths and thereby give the company an advantage in the Phase II bidding process," the NPA noted.

In or about 2006, Rama, IAP and Ramaco, a shell company that Rama created to bid on the contract, and others structured an illicit payment scheme to funnel approximately 50% of the payments received on the Phase I contract to a Kuwaiti consultant so he could pay bribes to Kuwaiti government officials. The coconspirators took numerous

steps to hide these payments and prevent the detection of their scheme, the NPA continued. "IAP, Ramaco, and Rama understood that to pay Kuwaiti Consultant, Kuwaiti Company would first inflate its invoices to IAP by charging IAP for the total amount of both the legitimate services that Kuwaiti Company was providing and the payments that Kuwaiti Company was funneling to Kuwaiti Consultant without listing or otherwise disclosing the payments that were funneled to Kuwaiti Consultant," it noted.

> "James M. Rama departed IAP Worldwide Services' employment more than seven years ago. He has not been employed by or affiliated with the company since then," Maureen P. Fitzgerald, IAP director of communications and public relations, wrote in an email to WTTL.

"IAP entered into non-prosecution agreement with the DOJ and has accepted full responsibility, made substantial improvements to its internal controls and compliance process, and cooperated in all ways. IAP takes this matter very seriously, is glad to have resolved it, and is firmly committed to its ethics and compliance program," she added.

Ex-Im Backers Still Don't Have Assurance on Vote

With just over a week to go before the Export-Import Bank's charter expires June 30, bank supporters in the Senate still have not received any assurance that they will be given a second chance to vote on a reauthorization measure. "There's nothing new," a spokesman for Sen. Maria Cantwell (D-Wash.), who has been pushing for action on reauthorization, told WTTL. He noted that there has been a lot of speculation on ways an Ex-Im bill might be attached to other legislation, but nothing has been decided.

> "Congress must act and not let this important credit agency expire. American small business jobs in Washington, Wisconsin and indeed every state, depend on Ex-Im Bank," Cantwell told a program in Milwaukee June 15.

A Senate procedural vote June 10 showed broad bipartisan support for the bank, but Democrats claimed the vote didn't fulfill the commitment Senate Majority Leader Mitch McConnell (R-Ky.) made to Cantwell to allow a vote on the bank as a way to garner Democratic votes for cloture to bring trade promotion authority (TPA) legislation to the Senate for a vote in May (see **WTTL**, May 25, page 1).

During debate on the National Defense Authorization Act (NDAA), Sen. Kelly Ayotte (R-N.H.) offered as an amendment the Ex-Im legislation (S. 819) sponsored by Sens. Mark Kirk (R-Ill.) and Heidi Heitkamp (D-N.D.). A motion to table the amendment was defeated on a 31-65 vote, but Ayotte then withdrew the amendment anyway.

"This is an attempt to show the investor community and those who are watching this issue that the Senate is in support of the bank," Sen. Lindsey Graham (R-S.C.) said during the debate. Graham also said the Senate is "trying to find a vehicle, a must-pass piece of legislation, to keep the bank afloat." Graham's home state of South Carolina is seeing a major expansion of the Boeing plant in Charleston.

The day after the vote, Democrats told a press conference that the onus is still on Republicans to find a way to get a vote on reauthorization. "Sen. McConnell is trying to argue amazingly enough that this symbolic vote fulfills the commitment he made to Senator

Cantwell and Democrats to hold a real vote to extend the Ex-Im Bank," Sen. Charles Schumer (D-N.Y.) said. "The vote yesterday was not done with anyone on the Democrat side," Heitkamp told reporters. "It was not done as a fulfillment of a commitment that was made to six Democrats," she added.

BIS Implements 2013 Australia Group Recommendations

It's as if BIS is clearing its rule backlog so it can take off for summer vacation. In the latest of a slew of Federal Register notices June 16, it implemented recommendations from the November 2013 Australia Group (AG) intersessional implementation meeting.

> In essence, the final rule combined human and animal pathogens into a single Commerce Control List (CCL) entry. Specifically, BIS removed Export Control Classification Number (ECCN) 1C352 (animal pathogens) from the CCL and renamed and renumbered ECCN 1C351 to include both human and animal pathogens. The rule also made a number of text changes to other provisions to reflect the merger.

"The scope of the controls on these human and animal pathogens and toxins was not affected by the merger of the two lists into a single AG common control list," the notice said. "No pathogens or toxins were either added to, or removed from, the CCL, nor were there any changes in the scope of the CB license requirements for any of these pathogens or toxins," it added. The changes are not expected to have a significant impact on the number of license applications that will have to be submitted for such items, BIS noted.

BIS implemented another AG recommendation in ECCN 2B350 to "revise controls on certain valves, casings (valve bodies) designed for such valves, and pre-formed casing liners designed for such valves," the notice said. The notice explained that the new provision expands controls on valves "that have all of the following characteristics: (1) A nominal size equal to or greater than 2.54 cm (1 inch) and equal to or less than 10.16 cm (4 inches); (2) casings (valve bodies) or preformed casing liners in which all surfaces that come in direct contact with the chemical(s) being produced, processed, or contained are made from specified materials; and (3) a closure element designed to be interchangeable." The rule also added a technical note to that ECCN "clarifying how the terms 'multi-seal' and 'seal-less' are used with respect to the controls on pumps," it added.

Court Reaches Back 216 Years to Interpret Customs Law

The Court of Appeals for Federal Circuit (CAFC) examined the meaning of a 216-year-old statute June 17 to uphold a Court of International Trade (CIT) ruling that the government is entitled to interest on continuous bonds backing antidumping duties and not just regular tariffs, but reversed the trade court's decision that it was not entitled to statutory prejudgment. In *U.S. v. American Home Assurance Company*, the appellate court vacated the CIT's decision that AHAC, a New York-based surety, was required to pay equitable prejudgment interest, although that question can be reassessed on remand.

At issue was Section 580 of the 1799 act to regulate the collection of duties on imports and tonnage. "We hold, as a matter of law, that 19 U.S.C. Section 580 provides for interest on bonds securing both traditional customs duties and antidumping duties. We

therefore reverse the contrary holding of the Court of International Trade," CAFC Judge Alvin Schall wrote for the three-judge panel. AHAC bonded imports of freshwater crawfish tail meat from China. "Section 580 is a short, free-standing statute within the Administrative Provisions section of Chapter 3 in Title 19. It does not cross-reference other statutory provisions," Schall wrote. It provides for collection of interest from the time when the bond is due. "Thus, by the statute's plain terms, it covers, among other things, bonds securing the payment of antidumping duties when the government sues for payment under those bonds," he wrote.

> "The creation of the current system of levying antidumping duties in 1921, more than a hundred years after enactment of what is now Section 580...is not an obstacle to concluding that the plain terms of Section 580 encompass bonds for securing the payment of such duties. Moreover, since Section 580 was enacted in 1799, there have been only minimal changes to the statutory language," Schall added.

"The current version of the statute was adopted in 1873. At that time, Congress retained the phrase 'all bonds' and incorporated the word 'duties' from the title of the original act into the phrase 'for the recovery of duties,' which is now in the body of the statute," Schall noted. "Thus, there have been no changes in the statutory language which, on their face, would serve to move bonds for securing antidumping duties outside the scope of the statute," he concluded.

BIS, DDTC Tick Category XVIII Transfers off To-Do List

In a rule that will probably see few jurisdiction changes, BIS and State's Directorate of Defense Trade Controls (DDTC) proposed new rules for USML Category XVIII (directed energy weapons) and CCL Category 6. The proposal was included with the transfers of Category XIV (toxins) (see related story, page 3). Following the same pattern as previous proposals, BIS would create new 600-series Export Control Classification Numbers (ECCNs) -- 6B619, 6D619 and 6E619 -- for products no longer warranting control on the USML, primary "tooling, production 'equipment,' test and evaluation 'equipment,' test models and related articles," BIS said in the June 17 Federal Register.

> Proposed ECCN 6B619.a would control tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by Category XVIII, the BIS notice added. As in other parts of the CCL, ECCN 6D619 would control "software" "specially designed" for the "development," "production," operation or maintenance of commodities controlled by 6B619, and ECCN 6E619 would control "technology" of the same.

On the USML side, the proposed rule would revise paragraph (a) to "control only those items that satisfy the paragraph's definition of 'directed energy weapon,' which focuses on the sole or primary purpose of the article in order to exclude those items that might achieve the same effect in an incidental, accidental, or collateral manner," DDTC said. Articles controlled currently in paragraphs (c) and (d) would move to the CCL, it noted. BIS and DDTC seek comments on the proposed rules by Aug. 17, 2015.

* * * Briefs * * *

STEEL NAILS: ITC in 4-1 final vote June 16 found U.S. industry is materially injured by dumped imports of certain steel nails from Korea, Malaysia, Oman, Taiwan and Vietnam and subsidized imports from Vietnam. Chairman Meredith Broadbent was only no vote. Commissioner F. Scott Kieff did not participate in investigations.

SANCTIONS: National Bank of Pakistan's New York Branch agreed June 18 to pay $28,800 to settle seven OFAC charges of violating U.S. trade sanctions. NBP processed seven funds transfers totaling $55,952.14 for Kyrgyz Trans Avia, Kyrgyzstan airline that was blocked entity.

MORE SANCTIONS: John Bean Technologies Corporation (JBT) of Chicago agreed June 19 to pay $391,950 to settle OFAC charges that it sold goods to Chinese company that were then shipped by Islamic Republic of Iran Shipping Lines (IRISL) aboard blocked vessel from Spain to China. Trade documents related to shipment were presented to U.S. bank for payment pursuant to letter of credit, OFAC noted. JBT did not voluntarily self-disclose violations.

FCPA: Joseph Sigelman, former co-CEO of oil and gas company PetroTiger, pleaded guilty June 15 in Camden, N.J., U.S. District Court to violating FCPA by bribing Colombian government officials for assistance in securing approval for oil services contract worth roughly $39 million. His trial began June 1 and he was indicted in May 2014 (see **WTTL**, May 19, 2014, page 9). Sigelman's co-CEO, Knut Hammarskjold, pleaded guilty to same charge in February 2014 and is awaiting sentencing. Case was brought to Justice's attention through voluntary disclosure by PetroTiger, which cooperated with department's investigation, Justice said.

WASHERS: CIT Judge Leo Gordon June 12 denied motions for judgment on agency record filed by Samsung Electronics Co., Ltd. and LG Electronics Inc. seeking to overturn Commerce antidumping ruling on large residential washers from Republic of Korea. Plaintiffs challenged department's use of average to transaction methodology to determine targeted dumping. "Commerce did not violate the statute when it applied the A-to-T methodology to all of LG and Samsung's sales," Gordon wrote. "In the end, LG and Samsung identify neither clear statutory language prohibiting Commerce from applying the A-to-T methodology to all sales nor any unreasonableness in Commerce's decision. The court therefore must sustain Commerce's application of the targeted dumping remedy below," he ruled.

UNITED KINGDOM: Export Control Organisation (ECO) issued notice June 17 saying it is missing its goals for handling applications for Standard Individual Export Licences (SIELs). ECO has two main targets: processing 70% of applications in 20 working days and 99% in 60 working days. "ECO is currently handling a very high volume of applications for SIELs. As a result we are missing our primary target. At present it is taking 25 working days to process 70 per cent of applications rather than the standard 20 working days. We apologise for the inconvenience this is causing exporters," notice said.

COOL: WTO Dispute-Settlement Body June 17 referred Canada's request for retaliation against U.S. for country-of-origin labeling law to arbitration panel (see **WTTL**, June 8, page 9).

SPECIAL 301: USTR June 18 removed Paraguay from 2015 Special 301 Watch List after signing memorandum of understanding (MOU) on intellectual property rights (IPR). Under MOU, country "committed to take specific steps to improve its IPR protection and enforcement environment," USTR's office said in press release (see **WTTL**, May 4, page 3).

RUSSIA: While "much of Russia's trade regime remains WTO consistent," USTR's office is "increasingly concerned that Russia may be moving away from the core WTO principle of trade liberalization, for example by placing greater emphasis on localization and import substitution policies," agency said June 19 in annual report on enforcement of Russia's WTO commitments.