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Satellite Firms Taking Conservative Approach to New Rules

While many manufacturers and operators of commercial satellites have embraced new rules that transferred control of their product to Commerce from State, others, including suppliers and subcontractors, are taking a conservative “wait-and-see” approach and continuing to submit export applications to State under the International Traffic in Arms Regulations (ITAR) or not using the license exceptions that are now available.

At a meeting of the President’s Export Council Subcommittee on Export Administration (PECSEA) March 19, Song Volk, assistant general counsel at Inmarsat Inc., a UK-based satellite operator, explained her company’s experience with the Commerce Control List (CCL). “The new regulations really fit in perfectly with us, like a glove,” she said.

Some industry suppliers, however, have not been so quick to use the new rules, which were implemented in November 2014. “Five months into it, we started realizing, we are about as fast as the slowest runner in our group,” Volk said. “There are a lot of actors within the industry that are trying to do the right thing; they really want to be compliant. The flip side of that is the idea of being compliant is sometimes taking the most conservative approach possible,” she added (see **WTTL**, Nov. 24, page 7).

Among reasons given for not moving forward are the time needed to digest new regulations; ITAR mentality; lack of lore and best practices; and even misinformation. “Some people are digesting the regulations a little bit incorrectly, so they will come up with an idea, and it’s really hard to take that idea out of their head, and say ‘no, that’s actually not true,’” Volk said. There is a “weird fear that the regs will be constantly updated, to the point where all the things they believed before, are no longer true,” she added.

Froman Moves to Counter TPP Transparency Complaints

U.S. Trade Representative (USTR) Michael Froman finally acknowledged March 18 that the administration has a transparency problem with members of Congress on access to Trans-Pacific Partnership (TPP) negotiating documents and provided new guidelines to make it easier for lawmakers to see those texts. The change in policy is unlikely to soften opposition of many members, particularly Democrats, to TPP and fast-track trade promotion authority (TPA), but it will give trade supporters some ammunition to use

to defend the negotiations. In closed-door meetings with the Democratic House Caucus, Froman reportedly told them they will now have access to the full negotiating text and not just individual chapters. Lawmakers will be able to view the texts in the congressional security office upon request without requiring a USTR staffer to be present.

The USTR's office also will provide classified summaries in plain English along with legal text to help members navigate the diplomatic language. In addition, lawmakers will now also be able to bring with them a personal staffer who has the appropriate security clearance.

Until now, members could see only portions of the text; needed a USTR official present while they reviewed the documents; and could only be accompanied by professional staff from House and Senate committees. They also were barred from taking notes or disclosing what they read, two restrictions that apparently remain in place.

"The Obama Administration is committed to maximizing the transparency of U.S. trade negotiations consistent with negotiating the best possible agreement for the American people," Froman said in a statement after meeting with lawmakers. "Today, working directly with Congress we have taken unprecedented additional measures to help members fully understand the benefits we are working to bring home for American workers, businesses, farmers and ranchers," he said.

Froman has been working with leaders of the House Ways and Means Committee and Senate Finance Committee to address complaints about the lack of transparency in TPP. The negotiating documents are classified TPP CONFIDENTIAL but not Top Secret. Administration sources say the texts are kept under wraps because of their sensitivity, the ongoing negotiations and other countries' expectation of confidentiality.

Heated Crosstown Debate over Fast-Track, TPP

Anyone in Washington March 18 could have traveled to the Capitol in the morning to hear Finance Committee Chairman Orrin Hatch (R-Utah) laud the need for TPA and TPP on the Senate floor and then taken Metro across town to hear AFL-CIO President Richard Trumka blast them at lunch. Neither particularly added anything new to the debate, but their comments underscored the sharp differences over the legislation and trade talks and lack of agreement on what a TPA bill might look like (see **WTTL**, March 16, page 2).

Hatch repeated his statement that TPA is a top legislative priority, but suggested that he and Finance Ranking Member Ron Wyden (D-Ore.) have still not reached a deal on what it should include. "My goal has been to see if we could improve upon that product in order to broaden support for TPA. I am certainly willing to do that, but I have made it clear throughout this process that I cannot agree to any bill that would dilute the effectiveness of TPA as a tool to negotiate and enact strong trade agreements," he declared.

At the Peterson International Institute for Economics (PIIE), Trumka complained that trade deals have been "looked at through the very narrow lens of corporate interests." He said trade deals have not been about trade. "They were investment deals," he said. "Every single thing in our trade deals should be openly discussed and subject to public oversight and the full legislative process. There should be no question about that.

Fast track is wrong and undemocratic, it's a rotten process, and the American labor movement intends to kill it," he said. Speaking with reporters after his speech, Trumka clarified that the freeze imposed on union political action committee (PAC) contributions to candidates also includes funds given to House and Senate campaign committees.

"The PAC money is going to stay and be diverted to the fight for fast track," he said. Whether future support might be withheld from lawmakers who vote for TPA will be decided on a case-by-case basis, he noted. "There is not litmus test on that but this will be a report card vote," he said. "This will be a big report card vote; it will be a weighted vote," Trumka said.

Industry Still Confused over Transfers, DDTC Stats Show

While generally pleased with the progress of export control reform in the 17 months since the first licensing jurisdiction transfers were implemented, State's Directorate of Defense Trade Controls (DDTC) and Bureau of Industry and Security (BIS) officials are scratching their heads over statistics that still show confusion within industry. Specifically, they wonder why there have been reductions in licenses in categories in which very little or nothing moved from State to Commerce but little reduction in registrations under the International Traffic in Arms Regulations (ITAR).

At a meeting of the PECSEA March 19, DDTC Director of Licensing Tony Dearth reported on the declines in State licenses and rates of license applications returned without action (RWA). All categories transferred so far have shown double-digit percentage drops in State license applications, but not a parallel increase in BIS licenses (see **WTTL**, March 2, page 6).

RWA rates vary tremendously. Rates for aircraft and engines still on the U.S. Munitions List (USML) have dropped significantly, while those for five categories amended in July 2014 continue to have the highest RWA rates. Most of that is attributable to Category IV (rockets and missiles). "There's a lot of folks that are still coming in for parts and components for items which don't have parts and components in the enumerations. There are a lot of people that... are questioning 'what is the definition of a bomb.' Little things like that. It has created some amount of uncertainty," Dearth said.

In Category IX (military training equipment and training), agencies have seen "a net increase in the confusion factor, because defense services used to be neatly tucked into the technical data in every other category," Dearth said. Category IX now includes "defense services in which an actual defense item isn't involved. Hopefully, we'll see some resolution of that out of the proposed rule that's going to come out on the definitions," Dearth said. BIS and State are currently working on a proposal to harmonize definitions in their respective regulations.

"The interesting thing in these categories is that substantively very little changed. The volumes in IX and X were always very small. Missiles and bombs and explosives are not the kind of thing we were generally moving over to the Commerce Control List," BIS Assistant Secretary Kevin Wolf noted.

In another surprising statistic, Dearth reported that from 2013 to 2014, the number of Commodity Jurisdiction (CJ) requests actually went down, considering all the changes in

the regulations. “That’s kind of a head-scratcher, we’re not really sure what it’s attributed to,” he said. From a high mark of over 2000, agencies received 1800 last year, Dearth added. With all the reduction in State license applications, the agency also was expecting to see a parallel reduction in ITAR registrations. “We actually haven’t seen a reduction in registration. What we have seen is a number of folks coming to us who clearly admit they don’t produce any ITAR components, but they need to be registered because the prime manufacturer won’t let them be part of their suppliers’ group unless they’re registered with us,” Dearth said.

Wolf was also baffled. “What do you do as a government when you amend a regulation saying something isn’t required and industry still insists on requiring it?” he asked.

Lawmakers Grapple with International Tax Reform

There appears to be agreement among Senate Finance Committee members on the need to reform U.S. international tax laws, but the complexity of the task may elude their efforts, a hearing March 17 indicated. In addition to trying to unravel 50 years of special interest amendments to the original law enacted in 1962, lawmakers will also have to decide whether to act separately on international rules and domestic corporate tax reform.

At the hearing, Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) voiced support for reform. Hatch noted that he has created a bipartisan working group of members, including Sens. Charles Schumer (D-N.Y.) and Rob Portman (R-Ohio) to look “very closely at all the relevant details.” Schumer told the hearing the group was “making good progress.”

The hearing highlighted business community concerns about the difference between the worldwide tax system applied by the U.S. and the territorial tax systems used in most of the rest of the world. Witnesses said the rules “lock out” foreign earnings for U.S. companies, forcing them to keep the funds abroad to avoid taxation when the money is repatriated. They also noted the growing use of so-called “patent boxes” in other countries that provide tax breaks for the use of intellectual property in their jurisdiction. This has encouraged some companies, especially in the drug industry, to produce their products in those foreign locations instead of the U.S.

Anthony Smith, vice president and treasurer of Thermo Fisher Scientific, a maker of scientific and medical products with operations in the U.S. and overseas, said the U.S. tax system encourages companies to borrow money in the U.S. for acquisitions and investment rather than bring their foreign earnings back and face high taxes. “The tax laws result in profits being trapped offshore and act as incentive to make acquisitions in foreign countries,” he told the committee. Smith suggested the U.S. does not need to have the lowest corporate tax rate, a rate of 25% to 30% would bring it closer to other countries. Other witnesses said there is no pure territorial tax system and even if the U.S. changed the law, rules would have to be written to prevent “gaming” the system.

Pamela Olson, a former Treasury official who is now with PriceWaterhouseCoopers, noted Organization for Economic Cooperation and Development (OECD) work on an agreement to address base erosion and profit shifting (BEPS). “The U.S. Congress should pay more attention to that than it has,” she said. While BEPS has produced a lot of political

rhetoric, some countries are moving on their own, including through the use of patent boxes, she added. Before the hearing, an industry coalition called Let's Invest for Tomorrow (LIFT) America and comprising mostly U.S. multinational companies, wrote to Hatch and Wyden urging Finance to revise U.S. tax laws to eliminate the double layer of taxation of foreign earnings, simplify the tax code, create clear standards, and reduce the U.S. corporate tax rate. "Tax reform is inherently a complex political issue that can get pulled in many directions by different stakeholders," the letter conceded.

PECSEA Wants More Data from Export Filing Systems

The PECSEA called March 19 for changes to the Automated Commercial Environment (ACE) and Automated Export System (AES) to give exporters and foreign consignees more export control and shipping data and to provide more functionality. Bureau of Industry and Security (BIS) officials, however, shot down most of the group's suggestions because of their cost.

Among the technical recommendations PECSEA's Process Improvement & Trusted Trader Subcommittee presented at the meeting were: providing the ability to decrement all license types in ACE; adding an "Export Control" or "Export Compliance" contact field; and providing more information on fatal errors, seizures, license determinations and shipment status.

The subcommittee also considered whether to require exporters to provide the Export Control Classification Number (ECCN) in all Export Electronic Information (EEI) filings in AES. "It was concluded the ECCN should not be mandatory due to increase occurrence of incorrect reporting and placing a reporting burden on the trade," the group said.

BIS Assistant Secretary Kevin Wolf threw cold water on the recommendations. "To the extent that you come up with a really good idea, that would require more resources, or more time or more bodies by the U.S. government, [it should also be] accompanied by a way in which to find funding for it," Wolf said.

"There all are sorts of really great things we'd love to be able to do, like a single portal with a single application system. There are lots of things that would be a terrific idea to do, we simply don't have the money for it. And the money is getting even less, as costs increase and budgets are static or reduced," he noted.

The subcommittee will next "concentrate its efforts on defining what a Trusted Trader Program may include, from a regulatory and compliance standpoint, what mutual benefits can be derived to both government and trade and the impact this would have on trade facilitation," it said in a white paper.

U.S. Launches Complaint Against Indonesia's Import Restrictions

The U.S. is stepping up its campaign against foreign countries that impose import licensing restrictions that hurt U.S. exports, targeting Indonesia March 18 with a request for dispute-settlement at the World Trade Organization (WTO). Joined by New Zealand as a co-complainant, the U.S. wants a WTO dispute-settlement panel to hear its charges that Indonesia's import restrictions on certain fruits, vegetables and beef, including import

licensing, quotas and pricing rules, violate Jakarta's WTO commitments. The U.S. began consultations with Indonesia on the dispute in January 2013. Although Indonesia made some changes in its policies, it enacted other measures the U.S. still considers in violation of WTO requirements (see **WTTL**, Jan. 14, 2013, page 4).

One U.S. trade official who briefed reporters on background called import licensing a "systemic" issue and "a very pernicious form of import restriction." He cited the previous U.S. case against Argentina's import licensing scheme. "We need to demonstrate, both for the value of the hundreds of millions of dollars in exports a year, but also demonstrating that the United States is vigilant," he said.

The official noted that Indonesia changed some of its agriculture import rules after the U.S. first raised its complaints but then added new measures that continued to limit imports. "When countries seek to establish these kind of import licensing regimes, try to circumvent the rules...for us to walk away from the dispute just because they achieved some objectives through a different means, would be to sanction that ability of a very large economy," the official said.

U.S. officials claimed that U.S. exports of fruits, vegetables and beef to Indonesia were growing about 10-11% annually before the restrictive rules were put in place starting in 2010. Among the products at issue are apples, grapes, oranges, potatoes, onions, shallots, dried fruits and vegetables, flowers, secondary beef cuts and a ban on chicken parts and other animal products. According to Census figures, U.S. beef exports dropped from \$30.2 million in 2011 to \$14.7 million in 2012, but grew again in 2013 and 2014, reaching \$43.7 million last year. Imports of fruits and juices declined from \$128 million in 2012 to \$87 million in 2013, but grew to \$108.2 million in 2014. Vegetable exports have not gone down in five years, hitting \$43.4 million in 2014.

U.S., EU Far Apart in TTIP Talks on Geographic Indications

U.S. and European Union (EU) officials are showing little room for compromise, at least publicly, on how to address EU demands for legal protection for the names of foods tied to the location where they originated, so-called geographic indications (GIs). While EU member states, particularly Italy and Greece, are pressing to protect such names as Parmesan and feta, U.S. negotiators are under pressure from U.S. food producers and members of Congress to oppose inclusion of GI rules in a Transatlantic Trade and Investment Partnership (TTIP) agreement.

U.S. officials are also concerned the EU might try to circumvent the TTIP talks by seeking to add EU cheese names to the list of appellations of origin under the World Intellectual Property Organization's (WIPO) Lisbon Agreement. Because the U.S. is not a signatory to the Lisbon accord, it is being excluded from negotiations on the list changes, George York, deputy assistant USTR for intellectual property rights, complained March 18.

U.S. cheese imports from the EU have been growing even with GI protections, York told a program sponsored by the Global Business Dialogue. On the other hand, U.S. exports to Europe of cheeses using European-based names face restrictions, he said. York said there is "a very profound commercial interest and political interest" in the U.S. about

GIs. He said the U.S. has recognized the right to protect certain GIs through trademarks. “Where the true challenge resides is in the scope and nature of that protection,” he said.

Giulion Menato, the agriculture counselor at the EU delegation to the U.S., said GI protections are needed because consumers want to know the origin of the foods they eat. He noted that the U.S. has already agreed to protect the names of wines and spirits based on their origin as part of a WTO agreement. Trademark protections are not adequate because enforcement is complicated and depends on the holders of the trademark to bring legal action. Under the WTO wine and spirit agreement, Treasury enforces the rules, he noted. “If you do not police, you do not protect,” he asserted.

While some U.S. industries, such as Idaho potato farmers, favor GI protections, the major food producers strongly oppose them or even a compromise that would require foods using GI-type names to be hyphenated as “-style.” “That is entirely unnecessary,” said Shawna Morris, a vice president of the U.S. Dairy Export Council, who also represents the Consortium for Common Food Names, which is composed of major food companies that oppose GI rules. The addition of style to a food name “may incorrectly signal to the consumer that it’s a different quality,” she said. “The U.S. industry has been quite clear that that is an absolute nonstarter in the TTIP context,” she declared.

* * * **Briefs** * * *

EXPORT ENFORCEMENT: Hsien Tai Tsai, former resident of Taiwan, was sentenced March 16 to 24 months in prison in Chicago U.S. District Court for conspiracy to violate U.S. restrictions on designated proliferators of weapons of mass destruction. He pleaded guilty in October, admitting he engaged in illegal export of U.S.-origin machinery used to fabricate metals and other materials (see **WTTL**, Oct. 20, 2014, page 6). Tsai, also known as “Alex Tsai,” was arrested in May 2013 in Tallinn, Estonia, and later was extradited to U.S., where he remains in federal custody. He and two companies -- Global Interface and Trans Merits -- were designated in January 2009 as proliferators of weapons of mass destruction. His son, Yueh-Hsun Tsai, of Glenview, Ill., also known as “Gary” Tsai, who was released on bond after he was arrested in May 2013, pleaded guilty in December 2014 to related charges. Gary’s sentencing is set for April 8.

ALCOHOL: In 6-0 “sunset” vote March 19, ITC said revoking antidumping duty order on tetrahydrofurfuryl alcohol from China would renew injury to U.S. industry.

SUGAR: ITC March 19 made affirmative determinations in its reviews of suspension agreements entered by Commerce in antidumping and countervailing duty investigations of *Sugar from Mexico*. Commission found agreements between Commerce and Mexican sugar exporters would eliminate injurious effect of imports. As result, suspension agreements will remain in effect. ITC will release its full opinion in about seven days. Industry sources say fight over agreements will continue, possibly with review filed at Court of International Trade. There are “whole lot of laps to be swum,” one told **WTTL** (see **WTTL**, Jan. 12, page 5).

MALAYSIA: Criticism of lack of political rights in some TPP countries, including Malaysia, got unexpected boost from State March 16 in department statement deeply objecting to arrest of opposition leader Nurul Izzah. “The Malaysian Government’s recent investigations and charges of sedition against critics raise serious concerns about freedom of expression, rule of law, and the independence of the judicial system in Malaysia,” said statement by State Spokesperson Jen Psaki. “To further restrict freedom of expression will only lead to further erosion of important pillars of Malaysia’s democratic system. We encourage Malaysia to take steps to apply the rule

of law fairly, transparently, and apolitically in order to promote confidence in Malaysia's democracy, judiciary, and economy," she added.

ITAR LICENSES: DDTC is migrating all external systems to new platform effective April 17, agency announced in website notice posted March 16. New DTrade DSP forms will be available April 3, it said. Users will need to access new URLs as of April 18: DTrade Application: <https://dtrade.pmdtdc.state.gov>; Electronic Forms Submission for DS-2032 and DS-4076: <https://efs.pmdtdc.state.gov>; MARY status application: <https://mary.pmdtdc.state.gov/mary>.

EXPORTS: In its economic predictions issued March 18, the Federal Reserve Board said it reduced its growth projections for the U.S. in part due to the "weaker outlook for net exports." Fed Chair Janet Yellen told reporters that "the strong dollar is one reason" for weaker export growth. "On the other hand, the strength of the dollar also in part reflects the strength of the U.S. economy. The strength of the dollar is also one factor that is--as I noted is holding down import prices and at least on a transitory basis at this point pushing inflation down. So we are taking account of international developments, including prospects for growth in our trade partners in making the forecast we have here," she said.

TRADE PEOPLE: B. Todd Jones, director of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), announced resignation March 20, saying he will "pursue opportunities in the private sector." Jones's resignation becomes effective March 31. He has been director since July 31, 2013, and was acting director from August 2011. Prior to ATF, Jones was U. S. Attorney for Minnesota. ATF Deputy Director Thomas E. Brandon will become acting director.

BRAZIL: At end of U.S.-Brazil Commercial Dialogue meeting in Washington March 19, two countries signed Trade Facilitation Memorandum of Intent (MOI), which appears to be agreement to keep on talking. On sideline of talks, however, Tile Council of North America (TCNA) and ANFACER, Brazil's tile industry association, signed MOU to work on plan to compare national standards and explore the possibility of "regulatory convergence." "Key to this effort will be a mutual understanding on the best method for testing the water absorption of porcelain tile, which must, by definition, have 0.5% or less water absorption," TCNA said in statement.

SERVICES: After meeting in Brussels March 20, USTR Michael Froman and EU Trade Commissioner Cecilia Malmström tried to calm concerns about ongoing trade agreements' effects on public services, including national health services. In joint statement, they confirmed that "U.S. and EU trade agreements do not prevent governments, at any level, from providing or supporting services in areas such as water, education, health, and social services." In addition, no agreement "requires governments to privatize any service, or prevents governments from expanding the range of services they supply to the public," joint statement added.

ALUMINUM EXTRUSION: CIT Judge Claire Kelly remanded to Commerce March 20 administrative review decision on aluminum extrusions from China (slip op. 15-21). "Commerce must, to the extent practicable, corroborate an AFA rate and its failure to do so in this case renders its determination unsupported by substantial evidence," she ruled. "The lack of corroboration in this case leaves the court concerned that the rate it applied to Kam Kiu is punitive," Kelly said. She noted that Commerce applied 121.22% rate on Kam Kiu products but rates of 15.97% and 1.02% on other mandatory respondents. "This building of adverse inferences on top of each other to create a rate that Commerce does not corroborate in the aggregate leaves the court with the impression that the rate is punitive. Commerce's finding that the rate applied is a reasonably accurate estimate of Kam Kiu's actual countervailing duty rate albeit with some built-in increase to deter non-compliance, is not supported by substantial evidence," she stated. Kelly, however, dismissed Kam Kiu complaint that its late response to questionnaire was not used.