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DTSA Plans Delegation of Review Authority for 600 Series

The Defense Trade Security Administration (DTSA) plans to issue delegations of authority to the Bureau of Industry and Security (BIS) to eliminate its need to review some items transferred to the 600 series on the Commerce Control List (CCL) from the U.S. Munitions List (USML), Michael Laychak, DTSA director of licensing, told the BIS Export Control Forum in Newport Beach, Calif., Feb. 25. DTSA currently is part of the interagency review required for almost all export licenses issued by BIS.

> If this requirement were imposed on the some 30,000 USML licenses moving to the agency's 600 series from State's Directorate for Defense Trade Controls (DDTC), industry has been concerned that licenses may take longer to go through BIS than through DDTC now. Licenses for some parts and components for previously approved weapons systems can get DDTC approval in 10 days, while BIS licenses that need interagency review take an average of more than 30 days for approval.

DTSA has already delegated its review authority to DDTC for many currently licensed USML parts and components. Those delegations will no longer apply once the items are transferred to the CCL. As a result, all transferred items will start getting DTSA review again once they move. DTSA delegations will wait until after final USML-to-CCL transfer rules are issued, and DTSA sees what 600-series licenses are submitted to BIS and how BIS reviews them, Laychak told WTTL after his presentation to the forum.

One area where they will be waiting to see what licenses are submitted to BIS is for products that fall under the new definition of "specially designed" and, in particular, .y items that are not enumerated on the CCL. Delegations are likely to be tied to specific product groups and specific countries or groups of countries, he explained.

Sequestration Could Hit Trade Agencies, Officials Claim

With no last-minute agreement between President Obama and Congress to avert mandatory budget cuts under so-called "sequestration" legislation March 1, government officials claim export licenses could be delayed, Customs inspections slowed and trade promotion limited. The warning comes as public skepticism grows over the real impact of sequestration and whether it would be as dire as Obama administration officials have predicted. A more serious concern is being raised about the need for Congress to pass a "continuing resolution" to keep funding all government operations by the end of March to prevent a full shutdown of every department and agency in government.

> BIS' ability to conduct pre-license checks and post-shipment verifications, which often is a condition for license approval, could be reduced, due to sequestration. "If sequestration moves forward, BIS will be forced to significantly cut travel specifically in support of these checks, which will hinder BIS's ability to pursue some known threats to our national security," said a Commerce statement. BIS Deputy Assistant Secretary Matthew Borman said the agency has developed a plan to implement sequestration. "The plan that was developed, I think, has as minimal an impact on our day-to-day work as possible," he told the BIS Export Control Forum in Newport Beach, Calif., Feb. 25.

A Customs and Border Protection (CBP) briefing for business community representatives also raised concerns about the impact of budget cuts. During the conference call, CBP Assistant Commissioners Kevin McAleenan and Al Gina said sequestration could require a 6% cut in the CBP budget and the need to furlough thousands of frontline officers.

"They predicted the cuts would affect peak periods at ports of entry and could have cascading effects on the movement of goods and people. They said that wait times at land crossings could be as long as 5 hours, delays through TSA airport screening could increase 50 percent, and cargo delays could reach five days," National Association of Foreign Trade Zones President Daniel Griswold reported in an e-mail to his members.

Commerce said its International Trade Administration (ITA) "would be forced, under sequestration, to reduce its support for America's exporters, trimming assistance to U.S. businesses looking to increase their exports and expand operations into foreign markets by nearly $15 million." In addition, it would need to cut nearly $7 million from "federal trade enforcement, compliance, and market access activities" which would lead "to fewer actions by the Federal Government to reduce trade barriers and ensure compliance with trade laws and agreements," it said.

Japan Seen Ready to Join TPP after Abe Visit to U.S.

Press reports from Japan say Prime Minister Abe may announce "soon" that Tokyo will seek to join the Trans-Pacific Partnership (TPP) talks. Abe's announcement would appear to be based on his meeting in Washington with President Obama Feb. 22 and a session he held Feb. 25 with members of his Liberal Democratic Party (see **WTTL**, Feb. 25, page 6). Before Japan could participate in the talks, however, it would need to get the agreement of all TPP countries, which could take months of bilateral negotiations.

In a joint statement after their meeting, Obama and Abe said they agreed that Japan would not have to make trade liberalization commitments before joining negotiations. They also said they recognized that both countries had "trade sensitivities" that would be addressed only during the TPP negotiations. "The two Governments confirm that should Japan participate in the TPP negotiations, all goods would be subject to negotiation, and Japan would join others in achieving a comprehensive, high-standard agreement, as described in the Outlines of the TPP Agreement announced by TPP Leaders on November 12, 2011," the statement said. "Recognizing that both countries have bilateral trade sensitivities, such as certain agricultural products for Japan and certain manufactured products for the United States, the two Governments confirm that, as the final outcome will be determined during the negotiations, it is not required to make a prior commitment to unilaterally eliminate all tariffs upon joining the TPP negotiations," it added.

A statement from House Ways and Means Committee Ranking Member Sander Levin (D-Mich.) pointed out that the sensitivities mentioned by Obama and Abe were mostly Japan's. "Today's joint statement suggests there are 'sensitivities' on both the Japanese side (agricultural products) and the U.S. side (autos and other manufactured products). It is worrisome that the joint statement might obscure the fact that those 'sensitivities' are both on Japan's side," he said. "Japan has long been 'sensitive' about opening its agriculture markets and about opening its auto market, as well as other markets, including insurance," he added. "An agreement that does not result in two-way trade is not an agreement that I or this Congress will support," Levin warned.

Russians Defend Beef Ban, But Seek to Resolve Auto Beef

As Russia steps into the trade disciplines of the World Trade Organization (WTO), it is defending its ban on imports of beef from the U.S., while trying to avert the dispute-settlement process with the European Union (EU) over its tariffs on used vehicle imports (see **WTTL**, Feb. 18, page 9). In the meantime, Kazakhstan and Belarus, Moscow's partners in the Eurasian Economic Commission (EEC) customs union, aren't planning to adopt Russia's policy of banning imports of beef treated with ractopamine, according to Andrey Slepnev, the EEC minister for trade.

> Russia's beef ban isn't bleeding into the other EEC countries, Slepnev told reporters Feb. 26 in Geneva. Trade bans fall under the jurisdiction of "national authorities," he said, speaking through a translator. Russia has the right to be at variance with international rules, but if they're not consistent with international guidelines, it needs to be scientifically justified, he said.

A scientific review, risk assessment and guaranteed compliance may be needed to protect Russian consumers, he argued. "The set of rules on ractopamine was adopted only last summer" and requires additional scientific review, Slepnev said. There also needs to be a system to "guarantee compliance" with estimated permissive levels in practice, he said in a follow-up e-mail clarification to WTTL. "These efforts should by no means be considered as an attempt to block potential imports of beef from the United States," he said.

"What we want from the U.S. agency is to confirm that there is none of that substance in beef exported to Russia," Slepnev said; noting that Russia imports similar beef from Canada and some other countries. The important thing is that beef that is imported for Russian consumers should be free of hormonal additives and this is something that needs to be "proved by the suppliers of the exporting nation," he said. The scientific rationale should be kept separate from the business side, he said.

Meanwhile, Russia's increase in tariffs on recycled automobiles, which has drawn EU complaints, was reviewed at a Feb. 18 meeting, Slepnev said. The idea is to make sure that the levy is applied on a "non-discriminatory" basis, he added. Both Russia and the EU want to find a "resolution" without having to resort to WTO dispute-settlement procedures, and a solution within the "next couple of months" is expected, he added. A possible decision on the duty by Belarus and Kazakhstan is "pending," he noted.

> Slepnev's briefing for reporters followed a presentation on the EEC's work to WTO members. He said the EEC hopes that Kazakhstan's WTO accession process will be completed this year and is interested in speeding up Belarus' effort to join the WTO. There is "a lot of hope" with the Feb. 25 appointment of a new head of the WTO working party on Belarus' accession, he said.

Trade among EEC members has grown over the last three years and grew at nearly twice the rate with international markets in 2012, he reported. EEC members have reviewed over 5,000 tariff lines during the past year to bring them in line with WTO requirements. In December they made necessary changes in all 38 chapters of sanitary and phyto-sanitary (SPS) measures to match international standards. The process of boosting transparency and harmonizing SPS measures is expected to be complete by mid-summer, he said. Decisions also were made to harmonize procedures for customs valuation.

AFL-CIO Warns Against "NAFTA Model" for TPP

The AFL-CIO made it clear Feb. 27 that it will oppose a Trans-Pacific Partnership (TPP) agreement if the final accord ends up in the direction it is currently heading. The union group's executive council urged the Obama administration not to adopt a "NAFTA-based trade model" in a TPP deal and to include strong labor-rights provisions. It said it believes there is a "serious risk" that the TPP "will repeat the mistakes" of the NAFTA model, which "promotes a race to the bottom in workers' rights, wages, pensions and working conditions; resource conservation; food safety; and consumer protections."

> "The disproportionate voice of global corporations in the formation of U.S. 'free trade' agreements has advanced deregulation, privatization, tax and other preferences for businesses, weakened worker bargaining power and led to a dwindling social safety net," a council statement said. "The results are clear: trade deficits, lost jobs, rising inequality, falling wages and weakened democratic governance," it declared.

"We are deeply concerned about the labor and human rights situations in several other TPP countries, as well as potential TPP entrants. The TPP should not be an open-ended agreement that allows 'any willing partner' to join, regardless of its labor and human rights record," the council said. "A democracy clause and a commitment that each party will afford *all* its workers (including migrant workers) fundamental labor rights (as set forth in the ILO core conventions and their jurisprudence) are essential," it continued.

"Unless the TPP requires these minimum standards for democracy and fundamental labor rights *prior* to granting trade benefits under the agreement, we will end up in a situation similar to the one prevailing under the U.S.-Colombia FTA, in which 'some progress' in a country that is a notorious labor rights violator may be declared 'good enough,' even as workers there remain largely unable to exercise the rights to freedom of association, organization and collective bargaining," the council stated. The AFL-CIO also raised concerns about Japan joining the TPP (see related story, page 2). "We oppose including

Japan because its inclusion could jeopardize millions of good, middle-class jobs. Although it is a high-wage nation with a well-unionized workforce, its auto markets are some of the most closed in the world," it said. "U.S. products and services will not gain meaningful market access in Japan unless USTR adopts a wholly new approach to eliminating non-tariff barriers, including addressing Japan's history of currency manipulation. Our concerns with Japan's entrance into the TPP can best be addressed through bilateral means," the council's statement added.

Foreign Trade Regulations Move Closer to Final Order

After years of delay, a final rule to amend the Census Bureau's Foreign Trade Regulations (FTR) could be published in the next four to six weeks, according to Joe Cortez, chief of the Census regulations and outreach branch. Census finally received approval for the new rules from the Department of Homeland Security (DHS) Feb. 21, he told the BIS Export Control Forum Feb. 25. Customs and Border Protection (CBP) had agreed to the changes last fall, but needed DHS clearance. The regulation now has to get the okay from Commerce lawyers, he said (see **WTTL**, Dec. 10, page 4).

> The final rule will amend requirements for the export of household goods and used vehicles and cut the deadline for reporting shipment data for items exported under Option 4 post-departure filing to five days from 10 days. It will also revise requirements for filing shipment values in the Automated Export System (AES) to allow separate reporting of license values for licensed exports and for inland freight and insurance. Another change will exclude from AES requirements shipments to international waters.

A new field on the AES Electronic Export Information (EEI) will require exporters to identify the category of business the ultimate consignee is in. Once the final FTR is published, its requirements won't go into effect for 300 days, Cortez said.

Protecting IPR, Privacy Still Thorny Issues, Officials Say

More than 15 years after widespread commercial adoption of the Internet, government regulators, industry and think tanks are still trying to figure out how to balance national security, privacy, innovation and amorphous borders, along with customer choice and offshore server locations. At a panel in Washington Feb. 26 at the Brookings Institution, panelists agreed there seem to be divergent approaches, either allowing governments to do whatever they want, signing mutual recognition and safe harbor agreements or trying to harmonize regulations on a bilateral or multilateral stage. Cross-border data flows and intellectual property protection have come up as thorny issues in international trade negotiations, including those toward a TPP, administration officials acknowledge.

"Intellectual property is a potential source of great complexity in international transactions and international trade; particularly as you try to map those questions about ownership and protection across multiple different jurisdictions," said Stanford McCoy, assistant U.S. Trade Representative (USTR) for intellectual property and innovation. "Where the rubber meets the road is on the question of certainty. If international trade disciplines have a role to play, it's a role of seeking to enhance certainty for people involved in international transactions," McCoy said. Jonathan McHale, deputy assistant

USTR for telecommunications and electronic commerce policy, argued that governments need to come up with new ways to assert their jurisdiction for legitimate regulatory needs. "Government wants to have a role in protecting its consumers and its other equities, and yet the mechanisms for doing so are not clear and they're typically blunt," he said, referring to policies like blocking all Internet traffic into a country or the great firewall in China. "That's a very inefficient way of being able to participate in what's obviously an enormously innovative and economically important sector. We have to rethink this, we have to rethink what are reasonable rules that will allow governments to have an impact on what happens to data, despite the fact they don't have jurisdiction over necessarily where the data is located or where the servers are," McHale said.

Antigua Complains about U.S. Statements on Gambling Dispute

Antigua and Barbuda is upset that the U.S. is calling the island nation's plans for retaliating against U.S. restrictions on gambling, "government authorized piracy." At the World Trade Organization's (WTO) Dispute-Settlement Body's (DSB) Feb. 27 meeting, the representative of Dominica, speaking on behalf of Antigua, said the plan to suspend U.S. intellectual property rights (IPR) in retaliation for Washington's failure to implement a WTO ruling against the restrictions was lawfully and expressly authorized by WTO rules and approved by the DSB (see **WTTL**, Feb. 4, page 4).

> The Dominica official said the U.S. criticism was a fundamental challenge to the WTO dispute-settlement system and the reputation of the DSB. The official called on other WTO members to defend the principles allowing retaliation under the system.

Antigua also got backing from other countries in the Caribbean at the meeting. Representatives from Trinidad and Tobago, speaking for the Caribbean Common Market (Caricom), Haiti, Jamaica and Barbados also made statements supporting Antigua's rights. Brazil, Cuba and China said they supported Antigua and urged the U.S. to negotiate a settlement. Antigua has not yet publicly released its plans for suspending U.S. IPR rights or what activities would be permitted.

EU-Canada Talks Raise Note of Caution for U.S.-EU Deal

The four years and counting it has taken the European Union (EU) and Canada to conclude a free trade agreement (FTA) offers a cautionary note as the U.S. is about to enter talks with Europe on a trade pact, industry representatives warn. "A note of caution is warranted here, because the Canadian government and the EU government have taken on a very, very ambitious trade agenda, and it's been very, very difficult for them to close these deals, even with economies which are much smaller," David Talbott, Eli Lilly's director of international government affairs, said Feb. 27 at a Cato Institute program in Washington. Europeans negotiators are smarting from the public opposition that led to the EU Parliament rejecting the Anti-Counterfeiting Trade Agreement (ACTA), he said.

"That was largely a grassroots effort conducted over the Internet which scared the living daylights out of many members of the EU Parliament," he said. "It is instructive for us to make sure that on both sides of the ocean are very well prepared for that sort of criticism going forward, no matter what's in the agreement," Talbott said. He noted the mounting opposition in Canada to an EU deal "from municipalities, from traditionally anti-trade NGOs, from generic industry, who are not particularly interested in having higher IP [intellectual property] standards in Canada, because that would mean an impact on their business."

> EU-Canada talks started in May 2009 and were to be completed in the first quarter of 2013. Negotiation teams are meeting twice per month to work out the final deal. According to press reports, EU Trade Commissioner Karel De Gucht is still not satisfied with the agreement.

"What was on the table simply didn't please me, so I didn't make an agreement," De Gucht was quoted by Canada's *Globe and Mail* telling the European Parliament's international trade committee in Brussels Feb. 21 "They need to make additional steps and, if not, there will not be an agreement," he was quoted as saying.

At the committee meeting, EU Parliament members (MEPs) expressed support for a U.S.-EU FTA but also raised concerns about specific sensitive issues. "Almost all the MEPs in the debate highlighted systemic differences between the EU and the U.S., where strong public criticism could be expected," reported a committee press release. Committee Chairman Vital Moreiria of Portugal said "the biggest bone of contention in the talks would be animal and plant health standards. He wondered whether the EU would have to abandon its traditional precautionary approach in that area," the release said.

"Other MEPs raised concerns over genetically modified crops and hormones in beef. Syed Kamall (ECR, UK) pinpointed the need to protect the EU's geographical indication system," the release continued. Two other members "asked whether the EP's positions on intellectual property rights and data protection would be respected and how the EP would be involved in the negotiating process. Several MEPs voiced fears about 'sneaking ACTA in through the back door'," it reported.

Industry Supports Trimming ITA List But Still Has Wish List

U.S. industry supports the idea of trimming the list of products that will be the subject of World Trade Organization (WTO) talks on expanding the Information Technology Agreement (ITA), but it still has a "wish list" of items it wants covered, including audio-visual products and especially flat-panel televisions (see **WTTL**, Feb. 25, page 3). "We support the effort to trim down the list," said John Neuffer, vice president of the Information Technology Industry Council Feb. 28.

> "There are definitely some products there that, I am sure, are not supported by everyone in the core group working on this," he told a conference call with reporters. "We are going to push to ensure they are included," he added. "Audio-visual is a big category of product that was on the wish list we gave to the USTR a couple of years ago," he said. That list included flat-panel TVs and global positioning systems (GPS), he noted.

Neuffer's briefing followed release of a letter to President Obama from 20 trade associations urging the U.S. to provide leadership to get an ITA deal "across the finish line" this year. "We are sending this letter now because momentum is building in Geneva to complete the expansion effort by the end of July," the letter said.

* * * Briefs * * *

PAKISTAN: DDTC Feb. 22 posted policy update for exports to Pakistan, saying prior prohibitions on export licenses for major defense equipment have been waived. "DDTC is now reviewing all license applications for the export to Pakistan of defense articles, including major defense equipment, on a case-by-case basis," DDTC said.

OFAC: Tung Tai Group, in San Jose, Calif., agreed Feb. 22 to pay Office of Foreign Assets Control $43,875 to settle charge of violating Cuban Assets Control Regulations (CACR) in August 2010 by entering into contracts to buy and sell Cuban-origin scrap metal.

MORE OFAC: Bank of Guam Feb. 22 agreed to pay OFAC $27,000 to settle two charges of violating Iranian Transactions Regulations (ITR), for processing payment for delivery of furniture to Iran. Bank of Guam did not voluntarily self-disclose matter.

RUSSIA: Russia's obligations under Information Technology Agreement "will be complied with," said Andrey Slepnev, minister for trade at Eurasian Economic Commission (EEC), customs union of Russia, Belarus and Kazakhstan. Russia will join "eventually," he said Feb. 26. Schedule of products is being drafted and will apply to all three countries in EEC, he said.

SOFTWOOD LUMBER: U.S. Lumber Coalition is seriously concerned by recent British Columbia change in log export policy. BC's increase in "fee in lieu of domestic manufacturing" will insulate BC lumber mills from world log prices, which have risen significantly due to demand from China and other countries, coalition said Feb. 26. Coalition has complained to USTR. "We have asked them to raise this issue urgently with their Canadian counterparts, and we urge our government not to hesitate to defend U.S. rights," said Coalition Chairman Luke Brochu.

IRAN: Sens. Mark Kirk (R-Ill.) and Jeanne Shaheen (D-N.H.), along with 34 other senators, wrote Feb. 25 to European Council President Herman Van Rompuy, urging EU to close alleged loophole in its Iran sanctions by severing Tehran's access to foreign-held euros through European Central Bank's Target2 settlement platform. "Therefore, we strongly urge you to take all necessary measures to immediately cut off Iran's ability to use its foreign-held euros by prohibiting direct or indirect access to Target2 services by or on behalf of accounts owned or controlled by the Government of Iran or its affiliates," they said.

MORE IRAN: House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) and Ranking Member Elliot Engel (D-N.Y.) introduced new Iran sanctions legislation (H.R. 850) to stiffen penalties for human rights abusers in Iran, penalize financial institutions that fund exports of sensitive technology to Iran and authorize president to penalize foreign persons who engage in significant commercial trade with Iran beyond current sanctions on oil and petroleum trade.

EXPORT ENFORCEMENT: Volodomyr Ponomarenko of Ukraine pleaded guilty Feb. 22 in Brooklyn U.S. District Court to conspiring to violate AECA. He admitted he attempted to export military-grade night vision equipment to Ukraine in 2011 without State license.

BURMA: OFAC Feb. 22 issued General License 19, authorizing additional economic activity in Burma, including most transactions with four Burmese banks: Myanma Economic Bank, Myanma Investment and Commercial Bank, Asia Green Development Bank and Ayeyarwady Bank.

OOPS: BIS in Federal Register Feb. 28 issued final rule correcting "reference and typographical errors" in EAR, including spelling of Tajikistan in Country Group D, BIS mailroom address, uniform spelling of "signaling" and proper subject/verb agreement in several places. "The corrections are editorial in nature and do not affect license requirements," notice said.

TRADE AGENDA: USTR sent Congress annual Trade Agenda report March 1 detailing plans for 2013, which include: continuing National Export Initiative, intensifying TPP negotiations, launching U.S.-EU trade talks, advancing WTO negotiations on trade facilitation, Information Technology Agreement and International Services Agreement.