ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

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Vol. 32, No. 31 **July 30, 2012**

New Brokering Proposal Coming, as Brokering in EAR Discussed

State's Directorate of Defense Trade Controls (DDTC) plans to repropose changes to the brokering rules in the International Traffic in Arms Regulations (ITAR) to address the many negative comments it received on its first proposed revisions in 2011 (see **WTTL**, Jan. 2, page 2). As DDTC prepares to issue the new proposal in the fall, administration officials are also discussing adding brokering rules to the Export Administration Regulations (EAR) for items moved from the U.S. Munitions List (USML) to the 600 series on the Commerce Control List.

> "We put a proposed rule out; it wasn't well received," Kevin Maloney, DDTC's director of licensing, told the American Conference Institute's annual ITAR conference July 24. "We took those comments, and there should be another version coming out that will be much better received. We are trying to introduce common sense and good government into that," he added.

Based on discussions with DDTC, "there are significant changes that have been made" in the new draft, said Chip Brooks, associate general counsel with BAE Systems, Inc. "We have to see where they made the changes, but we are optimistic they have listened to the concerns," he said. Meanwhile, Peter Lichtenbaum, with Covington & Burling, warned that "brokering is coming to the Commerce Department...We are going to see brokering in the EAR."

Vann Van Diepen, State's principal deputy assistant secretary for international security and nonproliferation, told the Defense Trade Advisory Group (DTAG) July 26 the addition of brokering to the EAR has been part of discussions on export control reform. "As part of the export control reforms, there are discussions going on to figure out what the brokering ramifications are for the stuff that is currently on the USML that is moving to the CCL," he reported.

Joint Ventures in Burma Will Need to Report, State Official Says

U.S. companies that take advantage of new liberalized investment rules for Burma by joining joint ventures with Burmese or other foreign firms will have to meet new reporting requirements even if they are a minority partner, according to Robert Hormats, under secretary of state for economic growth and energy. "Just because they are part of a joint venture doesn't absolve them from any of these reporting requirements," Hormats told the Center for Strategic and International Studies (CSIS) July 23. "They will need to provide the information," he added. Hormats acknowledged that most of the early U.S. investments in Burma will be through joint ventures, including with groups already doing business in the country. "Most of them will be

Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail $697 a year. Combo subscription of print and e-mail is $797. Additional print copies mailed with full-price subscription are $100 each.

joint ventures. It would not be logical for us to say anyone who is in a joint venture with a very substantial portion would be absolved from any reporting," he said; noting that there is a $500,000 threshold for an investment to trigger the reporting requirement.

> For now there is no penalty for not reporting, but the requirement is expected to be part of regulations implementing the Dodd-Frank Act. Hormats said the U.S. expects all U.S. firms to comply with international investment standards that parallel the reporting requirements being issued by State. One example he pointed to is the Extractive Industries Transparency Initiative (EITI), which aims to promote good corporate behavior in the mining, gas and oil fields, sectors that are likely to see early U.S. investment in Burma. This would include dealings with state-owned Myanmar Oil and Gas (MOG), which is permitted, he said.

UK Official Says "Stars Are Aligned" for U.S.-EU FTA

Despite the recognized skepticism on both sides of the Atlantic about the hurdles to a U.S.-European Union (EU) free trade agreement, the British ambassador to the U.S. says the "political stars are aligned" in the EU to reach an agreement. Ambassador Peter Westmacott said he hopes a high-level U.S.-EU working group will issue a final recommendation before the end of the year calling for the launch of talks in early 2013 on a trade agreement with the goal of completing them by end of 2014 (see **WTTL**, June 25, page 2).

> "The political stars are aligned within the European Union in a way they may not be again for sometime and which they have not always been in the past, whether because of agriculture or textiles or industrial sectors which are frightened of doing more in the domain of free trade," he told the Washington International Trade Association July 25. "A deep, comprehensive, state-of-the-art trade and investment agreement between the European Union and the United States is, we think, both the biggest challenge and biggest prize available on the trade policy market today," he said.

Although most of the EU is beset with economic problems, particularly in the Eurozone, "trade is the best tool we have in our kit bag," Westmacott asserted. Before negotiations begin, however, both sides will have to "clear out some of the undergrowth" of bilateral disputes that could hinder the talks. He acknowledged the many disputes that have blocked U.S.-EU agreement before in both bilateral and multilateral negotiations, particularly over agriculture, as well as divisions among EU members that have blocked past deals. Agriculture will be less contentious because of higher farm prices in both the EU and U.S., reforms already made in the EU's Common Agriculture Policy (CAP) and less fear of competition among European farmers.

"I know there is skepticism shared by a number of people in Washington who don't want to waste a lot of time starting a new negotiation that is just going to round into the ground again," he conceded. This time is different, he suggested. "The [European] Commission has taken soundings and their conclusion is the same as ours that this is a good moment to try afresh," he said. "The governments concerned are willing to give their support," he declared.

Russia PNTR Bill Moves out of House Committee

Legislation to grant Russia permanent normal trade relations (PNTR) status moved closer when the House Ways and Means Committee July 26 approved by voice vote H.R. 6156, the "Russia and Moldova Jackson-Vanik Repeal Act of 2012." The vote came after Russia's parliament approved the country's accession to the World Trade Organization (WTO) July 23, clearing the way for Russia's formal accession as of August 22. The PNTR bill, along with the so-called Magnitsky bill (H.R. 4405) that the House Foreign Affairs committee approved in June, will now move to the House Rules committee. The Senate version of PNTR legislation, which the Senate Finance Committee passed July 18, included similar requirements for monitoring and

reporting on Moscow's compliance with its WTO obligations, but also the Senate Foreign Relations Committee's Magnitsky bill (S. 1039). Ways and Means Chairman Dave Camp (R-Mich.) said he expects the Magnitsky bill "to be added at Rules" (see **WTTL**, July 23, page 2).

> In his opening statement, Ranking Member Sander Levin (D-Mich.) urged House leaders to "nail down three things: (1) work with Senate leadership to reconcile the differences between the House and Senate Magnitsky bills as soon as possible; (2) after resolution of differences confirm that the Magnitsky bill and the PNTR bill will be joined together before any action on the House floor; and (3) determine how best we can send a clear message - through report language and other steps - to Russia that it needs to work with the other nations of the world to address the violence against civilians in Syria."

During the committee markup, Camp said he and Levin are working on report language that would address Russian action on Syria, including Moscow's controversial vote against sanctions at the United Nations. After the markup, Camp addressed the next steps for combining the PNTR bill with the Magnitsky legislation. "We have to first have the Senate agree that they're going to move the bill before we can establish that process," he told reporters. "We can't send a revenue bill over to the Senate without understanding what they're going to do with it," he said.

Hopes Dim For UN Arms Trade Treaty

At press time, chances looked exceedingly grim that United Nations (UN) talks on an Arms Trade Treaty (ATT) would conclude successfully by a midnight deadline. The U.S. was among at least 16 countries that continued to have objections to a draft treaty that the chairman of the talks released July 26 (see **WTTL**, July 16, page 1). Because the talks were authorized by a UN General Assembly resolution that set July 27 as a deadline, sources said there were no plans to carry the negotiations into the weekend, although they might go slightly beyond midnight. Talks on the chairman's draft continued until 1:30 AM Friday and were followed by a plenary session in the morning. Negotiators were working behind closed doors the rest of the day trying to resolve the many differences that remained over the draft.

> While the U.S. succeeded in getting ammunition dropped from the scope of the treaty – a position the State Department called one of its "red lines" – it continued to object to provisions requiring export controls on ammunition. Article 6.4 of the draft treaty states: "Each State Party shall establish and maintain a national control system to regulate the export of ammunition for conventional arms under the scope of this Treaty, and shall apply article 3, and paragraphs 1, 2, 3, 4, and 5 of article 4 prior to authorizing any export of ammunition." Although the U.S. controls exports of ammunition on the USML, the conditions in the draft treaty would add licensing criteria that are not in current rules.

The U.S. also reportedly objected to provisions in Article 6.5, which would require signatories to control the exports of parts and components for covered arms. There was also concern about the draft's restrictions on "transfers" of covered arms and requirements on "brokering." Meanwhile, U.S. officials were being squeezed by both gun-control advocates, who complained the treaty is too weak, and gun-control opponents, such as the National Rifle Association, which complained the treaty was too restrictive and would impinge on Second Amendment rights. Both industry and gun-rights advocates have raised concern about "treaty creep," which could allow language in the accord that seems limited now to be used to expand regulations later.

Industry Advisors Hit Provisions in Satellite Legislation

Industry advisors to State approved a report July 26 criticizing language in provisions the House has enacted twice to authorize the president to move controls on commercial satellites back to Commerce from State and to impose new requirements on what the administration must

do to justify the transfer of other items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). The Defense Trade Advisory Group (DTAG) endorsed the report from a working group that examined the provisions added to Sections 1241-1246 of the 2013 National Defense Authorization Act (NDAA) as well as a Senate bill (S. 3211) that only address commercial satellites. The House attached the same provisions to State authorization legislation (H.R. 6018) July 17 (see **WTTL**, May 28, page 1).

> While the report supports moving satellite controls back to Commerce, it said the language in the legislation needs clarification. It noted inconsistent descriptions of products to be moved, as well as the limitation to "commercial" satellites, which would leave out experimental and noncommercial satellites. The reporting requirements on satellites "could probably be onerous not only on industry but also the United States government," one industry speaker said.

The report was more critical of provisions that would impose new requirements on executive branch plans for export control reform. In particular, it objected to Section 1243 provisions that would require the administration to provide an "enumeration of items" to be moved from the USML to the CCL as part of the notification requirements in Section 38(f) of the Arms Export Control Act (AECA). The working group said it polled some companies in the satellite industry to see how that rule would apply just to satellites. It found that 80 to 150 suppliers could be involved in just one program, with some 8,380 unique parts and 69,500 other parts used in 3,900 assembly operations. If this requirement became law, "it would negate the entire export reform initiative," said Joy Robins of Space Systems/Loral.

* * * Briefs * * *

TPP: USTR asked ITC July 23 to investigate "economic effect of providing duty-free treatment for imports of products from Canada, Mexico and the other eight countries currently participating in the TPP negotiations." In Federal Register July 23, it also requested public comments on Canada and Mexico joining TPP.

RWANDA: In Federal Register July 23, BIS amended EAR to implement UN Security Council Resolution in 2008 terminating embargo on "arms and related materiel" against Rwanda, including removal of machetes from CCL. "Because this rule removes the UN controls imposed against Rwanda and because machetes were added to the CCL to address concerns with their use in Rwanda in particular, BIS is removing machetes from the CCL," notice said.

EXPORT ENFORCEMENT: Kesco Shipping Corporation and Multi-link Container Line, LLC at same address in Jamaica, N.Y. agreed July 24 to pay $28,000 civil penalty to settle BIS charges of exporting scrap steel designated EAR99 and worth $212,613.10 to Pakistan's People's Steel Mills, which is on BIS Entity List. In addition, officer and export controls compliance manager of both firms must complete export compliance training within 12 months. Kesco and Multi-link neither admit nor deny charges.

MORE EXPORT ENFORCEMENT: Technetics Group Singapore Pte. Ltd. (formerly known as Tara Technologies Singapore Pte. Ltd.) July 24 agreed to pay civil penalty of $110,000 to settle five BIS charges of transferring manufacturing instructions for certain edge-welded metal bellows to two Chinese nationals and selling metal bellows to customer in China. Instructions for metal bellows, used in semiconductor manufacturing equipment, which is production technology, are classified under ECCN 3E001 and controlled for national security reasons; bellows are under ECCN 3B001 and also controlled for national security reasons. Chinese nationals were working for Technetics Group Singapore when transfer occurred. Technetics Group voluntary self-disclosed matter and neither admitted nor denied charges.

MORE EXPORT ENFORCEMENT: Andro Telemi of Sun Valley, Calif., pleaded guilty July 26 in Chicago U.S. District Court to one count of attempting to export to Iran via Dubai 10 connector adapters for the TOW and TOW2 anti-armor missile systems without State license. Co-defendant Davoud Baniameri pleaded guilty in 2011 and was sentenced to 51 months in federal prison (see **WTTL**, Aug. 22, 2011, page 4).

COLOMBIA: AFL-CIO and Colombian trade unions released report July 24 detailing lack of progress under FTA Labor Action Plan (LAP). "So far, the LAP has failed to accomplish the goal of cracking down on illegal cooperatives and other forms of subcontracting so that workers can be hired directly by employers and exercise their fundamental rights of freedom of association, organization and collective bargaining," said AFL-CIO Trade Policy Specialist Celeste Drake in statement.