

Lifting of Burma Sanctions Comes with Reporting Requirements

U.S. firms that take advantage of eased restrictions on investment in Burma will have to file annual reports with State to provide assurance that they are acting consistent with U.S. policies on human rights, workers' rights, environmental stewardship, land acquisitions, arrangements with security service providers and payments to Burmese government entities. The reporting requirements for investments over \$500,000 were announced July 11 at the same time Treasury published two General Licenses allowing the provision of financial services to Burma and new investments and President Obama issued an executive order giving Treasury new authority to impose sanctions on those who undermine the reform process, engage in human rights abuses, contribute to ethnic conflict, or participate in military trade with North Korea.

General License No. 16 allows the exportation or reexportation of financial services "directly or indirectly, from the United States or by a U.S. person, wherever located," with restrictions barring services to Burma's military or blocked parties. General License No. 17 authorizes new investments subject to similar limitations. With their submissions, firms will have to provide copies or summaries of policies and procedures they have in place to assure due diligence addressing human rights, worker rights, and the environment in Burma, anti-corruption, community and stakeholder engagement, hearing grievances from employees and local communities and "global corporate social responsibility."

U.S. Opposes Arms Treaty Controls on Domestic Sales

In recognition of growing conservative opposition, particularly from the National Rifle Association and members of Congress, to a United Nations (UN) Arms Trade Treaty (ATT), a U.S. official told negotiators July 12 that an agreement "must acknowledge and respect that this negotiation is not an attempt to intrude, either in principle or process, into states' internal activities, laws or practices concerning the domestic possession, use or movement of arms."

Donald Mahley, the U.S. representative to the talks, stressed that the treaty is aimed at regulating only international arms trade. "Any attempt to include provisions in the treaty that would interfere with each states' sovereign control over the domestic possession, use or movement of arms is clearly outside the scope of our mandate," he said in his prepared remarks (see **WTTL**, July 9, page 1). In an earlier statement July 6 to the negotiations, Thomas Countryman, assistant secretary of State for international security and nonproliferation, said "the United States has made clear that ammunition should not be included within the scope of the ATT." He said



experience has found little use in controlling ammunition. He noted that the U.S. has asked for proposals on how to regulate ammunition but has not received any suggestions. “In the absence of such a proposal and a compelling case for its benefits, the United States remains steadfast in its opposition to including ammunition in the ATT,” he declared.

Probes Launched into WIPO Shipments to Iran, North Korea

The State Department and the House Foreign Affairs Committee are looking into reports that the UN’s World Intellectual Property Organization (WIPO) provided computers and software to Iran and North Korea. The committee announced its probe July 9 after reports on Fox News revealed the shipments of 20 Hewlett-Packard Compaq computers, Microsoft software and Norton antivirus software to Iran in 2009. “This serious offense cannot go overlooked or unpunished,” said Committee Chairman Ileana Ros-Lehtinen (R-Fla.) in a statement. Patrick Ventrell, director of State’s press office, confirmed that the department is “reviewing their [WIPO] development projects both for Iran and the DPRK. We’re working with both the director general and other member-states to institute reforms that will ensure future development projects are properly reviewed prior to being approved and implemented,” he said.

NAFTA Panel Remands “Zeroing” Ruling to ITA

A NAFTA binational panel has followed the lead of U.S. courts and remanded back to the International Trade Administration (ITA) its use of zeroing in an administrative review of an antidumping order on alloy steel wire rod from Canada. The panel agreed that it should follow the precedents set in Court of International Trade (CIT) rulings that have required ITA to justify why it doesn’t apply zeroing in initial investigations but does in old administrative reviews. “We remand to Commerce for further administrative proceedings and an explanation along the lines of the remand instructions issued in *Dongbu* and *JTEKT*, specific to the anti-dumping administrative review before us,” the panel ruled. “We have taken notice, in this regard, of the detailed explanation produced by Commerce in the wake of *Dongbu*, as well as CIT Judge Restani’s decision in upholding that explanation,” the panel noted. “Nevertheless, a majority of the Panel favors following the CIT’s example and remanding to Commerce in order to secure a *Dongbu*-type explanation within the record of this appeal,” it added.

Process for Mexico, Canada to Join TPP Officially Begun

President Obama notified Congress the week of July 9 of plans to include Canada and Mexico in Trans-Pacific Partnership (TPP) negotiations. But industry and labor concerns could make their entrance as controversial as the original NAFTA negotiations 20 years ago. Letters to Rep. John Boehner (R-Ohio) July 9 and 10 from U.S. Trade Representative (USTR) Ron Kirk trigger a 90-day period “during which the Obama Administration will consult with Congress on objectives related to these new entrants to the TPP negotiations. Mexico and Canada will join the TPP negotiations once current TPP members successfully conclude their domestic procedures,” Assistant USTR for Public and Media Affairs Carol Guthrie told reporters July 10.

Kirk’s letter on Canada tried to address trade disputes with Ottawa. “We have conducted in-depth discussions with Canada about the standards and objective that the TPP countries are seeking, particularly in those areas where the standards or objectives are higher than those that exist in the NAFTA. Canada has assured us of its willingness to negotiate on these issues and its preparedness to achieve these high standards together with the other TPP countries,” Kirk wrote.

One sticking point is the long-standing complaint against Canadian farm management programs. “Canada needs to end its federal and provincial hog subsidy programs, which are distorting the North American and world pork markets,” R.C. Hunt, president of the National Pork Producers

Council, said in a joint statement with pork groups from Australia and New Zealand. U.S., Canadian and Mexican labor unions also expressed continued concern over workers' rights and environmental protection. They warned that if the TPP follows "the neoliberal model and substitutes corporate interests for national interests, workers in all three countries will continue to pay a high price" in suppressed wages, more difficulty organizing and regulatory erosion.

The notifications to Congress came near the end of the 13th round of TPP negotiations in San Diego. In response to questions about a completion date for the talks, Guthrie said, we are "seeking to make as much progress as possible this year, and we continue to follow that direction from our leaders." Earlier that day in Vietnam, which is a TPP negotiating partner, Secretary of State Clinton said, "we hope to finalize this agreement by the end of the year."

Trade Experts Call for Revision of Doha Mandate

International trade officials are still talking about ways to salvage the moribund Doha Round and are warning that the failure of the negotiations has dampened enthusiasm for the multilateral trading system and the World Trade Organization (WTO). "It's not healthy for the WTO, if the arm of the WTO that does negotiations isn't working," David Shark, deputy chief of the U.S. Mission to the WTO, said at a July 11 forum in Geneva. "It's not broken entirely," he said, noting the success of talks to revise the Government Procurement Agreement (GPA), new WTO accession procedures for least developed countries, efforts to update the Information Technology Agreement and ongoing negotiations on trade facilitation.

The round won't likely finish "exactly with the mandate we have at the moment untouched," said Swiss diplomat Nicolas Niggli, who chaired the GPA talks. "We need to take into account all the changes that happened in the world in the last 10 years," he said. The apparently dim prospects for concluding the round have created "some frustrations" among delegations in Geneva, he added. "This is having a serious impact on how we work, on how we keep on negotiating," he said.

Stuart Harbinson, a former senior WTO official, said he was "torn" on initiatives such as the Trans-Pacific Partnership (TPP) and plurilateral services talks. If those agreements aren't brought into the multilateral trading system, "are we facing a possible Balkanization...of the world trading system?" he asked. The TPP is "billed as a high quality, 21st century agreement," but reports indicate talks are moving more slowly than some had thought, he said. "The jury is still out on whether this is really going to be a groundbreaking agreement," he continued. Talks on the services agreement are "clearly not as easy as was thought," he said.

Court Seeks More Briefs on Timing for AD/CVD Challenges

Parties in antidumping and countervailing duty cases can't use "piecemeal litigation" to challenge determinations by the International Trade Administration (ITA), Court of International Trade (CIT) Chief Judge Donald Pogue ruled June 27 (slip op. 12-90). Nonetheless, Pogue ordered the parties in a dispute over multilayered wood flooring from China to file further briefs to address recent Supreme Court and Court of Appeals for the Federal Circuit rulings on the timing requirements of the Trade Act and the availability of equitable tolling.

Initially, Pogue attempted to clarify whether the challenge of an ITA decision to exclude a respondent in a case must be filed within 30 days of a final ITA determination or within 30 days of the final antidumping order. Commerce sought dismissal of a suit by the Coalition for American Hardwood Parity (CAHP) because it was filed before the final order. The statute "permits the filing of a challenge to a negative determination within thirty days of the final determination. And it permits a challenge to the exclusion of a company from the order to be filed, at the option of the complaining party, either with a challenge to an affirmative determination or as a challenge to a negative determination," he wrote. "As explained below,

however, the statute does not permit piecemeal litigation; therefore, CAHP's summons was untimely filed," Pogue ruled. He noted new case law that has called previous rulings on timing into question. "In a recent line of cases, the Supreme Court has begun to question the strict, jurisdictional construal of timing requirements," he said, asking parties to address these rulings.

Orthofix Settles FCPA Charges for Bribing Mexican Officials

Orthofix International in Lewisville, Texas, agreed July 10 to pay more than \$7.4 million in penalties to settle Securities and Exchange Commission (SEC) and Justice charges of violating the Foreign Corrupt Practices Act. It will pay the SEC \$5.2 million, and as part of a deferred prosecution agreement with Justice, it will pay a \$2.22 million penalty. A Mexican subsidiary of the medical device firm allegedly paid bribes, which employees called "chocolates," to Mexican officials to obtain contracts with government hospitals from 2003 to 2010. Orthofix self-disclosed the actions to the SEC. "Orthofix's lax oversight allowed its subsidiary to illicitly spend more than \$300,000 to sweeten the deals with Mexican officials," punned Kara Novaco Brockmeyer, chief of the SEC's FCPA Unit, in a statement. The subsidiary, Promeca S.A. de C.V., allegedly bribed officials at Mexico's Instituto Mexicano del Seguro Social.

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CIT: President Obama nominated Mark A. Barnett July 12 to be judge on Court of International Trade, replacing Judith Barzilay, who has retired. Barnett has been deputy chief counsel in Commerce's office of chief counsel for import administration since 2005. He was detailed to trade counsel for House Ways and Means trade subcommittee (2008-2009). Earlier, he was associate at Steptoe & Johnson.

TRADE PEOPLE: Former Deputy USTR Peter Allgeier will become president of Coalition of Service Industries in September after retirement of current head Bob Vastine....Former Dewey & LeBoeuf partner Alan Wm. Wolff has joined McKenna Long & Aldridge (MLA) as senior counsel in its DC office. Current MLA attorney in L.A. John Liebman has announced plans to retire at end of 2012....In other changes, Barbara D. Linney has moved to Miller & Chevalier from Blank Rome. Also joining firm's practice is Kuang Chiang, who comes from OFAC, where she was licensing officer.

TRADE FIGURES: U.S. merchandise exports in May rose 4.65% from year ago to \$131 billion, Commerce reported July 11. Services exports increased 3.1% to \$52.4 billion from May 2011. Goods imports went up 3.4% from last May to \$194.3 billion, as services imports gained 6.0% to \$37.5 billion.

BYRD AMENDMENT: Court of Appeals for Federal Circuit ruled July 13 that PS Chez Sidney, LLC, is entitled to share of antidumping duties distributed to crawfish producers even though it took no position in antidumping case. "We hold that when a U.S. producer assists investigation by responding to questionnaires but takes no other action probative of support or opposition, the producer has supported the petition under Section 1675c(d) and is eligible for distributions if it can otherwise make the required certification that it has been injured," court decided. "On remand, the Court of International Trade should fashion a remedy that ensures Chez Sidney will receive the money to which it is entitled, along with such interest as may be provided in accordance with law," it added (see WTTL, Nov. 1, 2010, page 1).

VEU: In Federal Register July 9, BIS changed names of two VEU listings in China -- Hynix Semiconductor China Ltd. and Hynix Semiconductor (Wuxi) Ltd. -- and updated list of eligible items for Boeing Tianjin Composites Co., Ltd. (BTC). "These changes are prompted by factors arising from the companies' normal course of business, and are not the result of any activities of concern by the companies," BIS noted.

OFAC: Great Western Malting Co. of Vancouver, Wash., July 10 agreed to pay \$1,347,750 to settle alleged violations of Cuban Assets Control Regulations between August 2006 and March 2009, when "it performed various back-office functions for the sales by a foreign affiliate of non-U.S. origin barley malt to Cuba," OFAC said. Great Western did not voluntarily disclose matter.

EXPORT ENFORCEMENT: Humane Restraint, Inc. (HR) of Waunakee, Wisc., agreed to pay \$465,000 civil penalty to settle 32 BIS charges that it exported strait jackets, bed restraints and wrist and ankle restraints without required licenses to Australia, Germany, Greece, Hungary, Ireland, New Zealand, South Korea, Taiwan and the United Kingdom from 2006 to 2008. Of penalty, \$415,000 will be suspended for two years and then waived, provided HR commits no further violations and pays first \$50,000 on time in four installments. HR neither admitted nor denied charges.