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## Transition Proposals Would Amend License Exception Conditions

With an eye toward congressional concerns about the transfer of items from the U.S. Munitions List (USML) to the Commerce Control List (CCL), the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) published parallel "transition" proposals in the Federal Register June 21, explaining how transferred defense articles would be treated as dual-use goods. The proposals attempt to ensure that USML articles that benefit from existing license exemptions in the International Traffic in Arms Regulations (ITAR) would get similar treatment under the Export Administration Regulations (EAR), while also restricting the use of some existing EAR license exceptions for transferred articles.

> As promised, the BIS rule extends EAR licenses to four years from two years to match State's four-year licenses. BIS also proposes revisions to several EAR license exceptions to handle the "600 series" of item moved to the CCL, including License Exceptions Strategic Trade Authorization (STA), GOV and RPL.

In addition to existing STA restrictions, the BIS wants to limit its use to "foreign parties that have received U.S. items under a license issued either by BIS or DDTC." This would ensure "such parties will have been vetted by a U.S. Government licensing process. For purchasers, intermediate consignees, ultimate consignees, and end users that have not been so vetted, a license would be required even for STA-eligible items" (see **WTTL**, May 28, page 3).

License Exception GOV would be revised to be comparable to ITAR license exemptions and to "authorize items consigned to non-governmental end users, such as U.S. government contractors, acting on behalf of the U.S. government in certain situations, subject to written authorization from the appropriate agency and additional export clearance requirements." RPL would be revised to limit the export or reexport of spares up to $500 in total value and to remove a provision limiting imports returned for service to original exporters.

## House, Senate on Different Paths on Russia PNTR and Magnitsky

The House and Senate are heading down two different paths toward granting Russia permanent-normal-trade-relations (PNTR) status and addressing Moscow's human rights abuses with the Magnitsky bill. The differences might require a House-Senate conference committee or a deal with the White House to resolve. In the House, the two pieces of legislation are heading toward independent but almost simultaneous consideration, while the Senate is likely to merge the measures together. Along with the PNTR and Magnitsky bills, both chambers appear



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likely to add new provisions that will require the monitoring of Russia's compliance with its World Trade Organization (WTO) obligations after its accession later this summer. Four Democrats introduced such a bill (S. 3327) June 21.

> At a House Ways and Means Committee hearing June 20, Chairman Dave Camp (R-Mich.) said legislation granting Russia PNTR "should be clean and targeted, or else the legislation could be unduly complicated and delayed" (see **WTTL**, June 18, page 3). In contrast, Committee Ranking Member Sander Levin (D-Mich.) told reporters later, "I don't think there should be a clean bill. There has to be a bill that spells out these issues."

Finance Chairman Max Baucus (D-Mont.) repeated a promise to add the Magnitsky bill (S. 1039) to the PNTR bill (S. 3285). "Passing the Magnitsky bill along with PNTR will help promote the goals of both bills," Baucus said at a Finance hearing June 21. Finance members grilled U.S. Trade Representative (USTR) Ron Kirk, Agriculture Secretary Tom Vilsack and Deputy Secretary of State William Burns on Russia's inadequate intellectual property protection, restrictions on pork and poultry imports, human rights abuses and its role in Syria.

Kirk said he is working on an IPR action plan with Russia. "We have not completed work on the action plan. We've got a commitment from Russia to work with us on establishing the regime that is in excess of the minimum standards required in the TRIPS agreement in the WTO, and more closely resembles the application of our intellectual property rights," he said. Meanwhile, Burns was guarded in taking a position on the Magnitsky bill. "Obviously, what our ultimate view will be will depend on the shape of the legislation that emerges," he said.

In the House, the fate of the two bills will be up to GOP leaders and the House Rules Committee. "I want a clean bill on Russia PNTR, but I think for us to build bipartisan support, some hybrid of Magnitsky is a fact of life," Rules Chairman David Dreier (R-Calif.) told the Emergency Committee for American Trade June 20. "It ain't my first choice, but we are where we are, so we are going to have deal with it," he added. "I hope to have them done separately but on the same basic track, so that we can use that as a means to gain greater support from people who might not otherwise be supportive of Russia PNTR," Dreier said. On June 19, Ways and Means trade subcommittee chairman Kevin Brady (R-Texas) told the Peterson Institute that "if the will of the House and Senate is to pass the Magnitsky bill, then it may well be necessary."

## U.S., EU Agree to Work Toward Bilateral Trade Pact

The U.S. and European Union (EU) are headed toward negotiating a bilateral free trade agreement (FTA), although they are refraining from calling it an FTA, a trade accord that dare not speak its name, because of the term's unpopularity in the U.S. Instead of an FTA, U.S. and EU leaders June 19 accepted the recommendations of their chief trade negotiators to launch talks on a "comprehensive agreement that addresses a broad range of bilateral trade and investment policies as well as issues of common concern with respect to third countries [and] would, if achievable, provide the most significant benefit of the various options we have considered."

> "A comprehensive agreement could include ambitious reciprocal market opening in goods, services, and investment, and address the challenges of modernizing trade rules and enhancing the compatibility of regulatory regimes," said the interim report of the EU-U.S. High Level Working Group on Jobs and Growth, which was co-chaired by USTR Ron Kirk and EU Trade Commissioner Karel DeGucht (see **WTTL**, May 28, page 2).

Diplomatic sources say they foresee talks being held throughout 2013 and a final deal reached in 2014. The short negotiating schedule was based on experience with the Doha Round, which has shown that "putting some speed on it has a lot of benefit when political will and leadership can get lost in the minutia," one EU source said. Sources expect the working group's final report to be submitted after the U.S. presidential elections. Although the defeat of President

Obama might delay the launch of talks, EU officials say they are confident a Romney administration would also want to pursue them. "We have discussed this with Romney's people," one source reported. The interim report was only three pages long but spelled out a broad agenda covering everything from merchandise tariffs, agriculture, technical barriers to trade (TBT), services, investment, government procurement, intellectual property rights and rules. It calls for an ambitious agreement on sanitary and phyto-sanitary (SPS) measures, which it describes as "SPS-plus." Talks on regulatory barriers will aim for a "TBT-plus" chapter that would establish "a bilateral forum for addressing bilateral trade issues arising from technical regulations, conformity assessment procedures, and standards."

## TPP Talks Await Decision on Japan's Entry

With Canada and Mexico now invited to join Trans-Pacific Partnership (TPP) talks, the focus has turned to whether Japan will get the same invitation. Some sources believe a decision on Japan could come in July. The addition of Canada and Mexico makes the TPP too big for Japan to stay out of, one diplomat noted. Mexican, Canadian and U.S. officials agreed to announce Mexico's invitation first on June 18, followed by the one to Canada June 19.

> Canada and Mexico won't join the talks formally until 90 days after President Obama sends Congress notice of his intent to add them to the TPP negotiations and consults with lawmakers. Administration officials have already been briefing members and their staffs on the expected addition of the two countries.

"Given the close integration between our economies, Canada's inclusion in TPP is the right decision and should be mutually beneficial. It will also give us the opportunity to correct the mistakes of NAFTA, especially on labor and the environmental standards," said Rep. Sander Levin (D-Mich.) in a statement. "Japan continues to be in a wholly separate category from both Canada and Mexico. With our long history of fruitless attempts to open Japanese markets through negotiations, what we need from Japan is action not commitments to act, comprehensive action before – not after – joining TPP," he added.

Although they are just joining the talks, Canadian officials have been monitoring the TPP talks and have seen most of the draft texts, which were shared with them by "friends," one source said. So far, none of the texts provide a serious problem for Canada, one senior official said.

## BIS, State Try New Definition of "Specially Designed"

In proposing a new definition of "specially designed" in the June 19 Federal Register, BIS and DDTC may not have completely satisfied industry complaints that a definition they proposed for the term in July 2011 was too complicated, wordy and confusing. The new proposal for revising the ITAR and EAR and Export Control Classification Numbers (ECCNs) where the term is used applies what BIS calls its "catch-and-release" approach (see **WTTL**, June 11, page 1). Under both proposed versions for the ITAR and EAR, the basic concept offers a broad definition of the term, which would "catch" many products, and five specific exclusions that would "release" a product from controls. If an item doesn't meet the "catch" part of the definition, it wouldn't have to worry about the "release" part.

The BIS and DDTC definitions say an item is "specially designed" if, as a result of "development," it: "(1) Has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; (2) Is a part or component necessary for an enumerated or referenced commodity or defense article to function as designed; or (3) Is an accessory or attachment used with an enumerated or referenced commodity or defense article to enhance its usefulness or effectiveness." Under the five-part "release" portion, an item would not be specially designed even if it meets the first part of the definition, if it is (1) enumerated in the USML; (2) an unassembled "part" commonly used in multiple types of commodities and not enumerated on the CCL or the USML

(3) has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in "production" and not enumerated on the CCL or USML or enumerated only for Anti-Terrorism reasons; (4) was or is being developed with a reasonable expectation of being used on items both enumerated and not enumerated on the CCL and USML, and (5) was or is being developed with no reasonable expectation of use for a particular application.

## ITA to Deduct Export Taxes in Antidumping Cases for NMEs

The International Trade Administration (ITA) has changed the way it calculates export prices or constructed prices from nonmarket economies (NMEs), rejecting comments that criticized the agency for not accepting market-based costs in calculating antidumping and countervailing duty rates in NMEs. ITA defended the change, saying it is based on Section 773(c)(1)(B) of the Trade Act and is consistent with China's and Vietnam's WTO accession protocols, which allow ITA to "reject internal costs and prices in an NME country for antidumping and countervailing duty purposes." In the June 19 Federal Register, ITA said it has changed a policy that dates back to 1995 and a Court of Appeals for the Federal Circuit ruling on the antidumping order on magnesium from Russia. The change is likely to lead to higher dumping and CVD margins on imports from China and Vietnam. The new policy will reduce export or constructed prices by the amount of export taxes, duties or other charges the exporter pays. ITA will apply the new method to new cases against imports from China and Vietnam and administrative reviews initiated after publication of the notice (see **WTTL**, Jan. 31, 2011, page 4).

## OFAC Will Issue Blanket Licenses for Companies in Burma

The Obama administration is still working out the details for suspending sanctions against Burma and providing guidance to U.S. firms that want to invest there. "In order to fully suspend the sanctions we have on financial services and on new investment, we have to have a presidential waiver and then we have to have licenses issued by Treasury's Office of Foreign Assets Control," said State Spokesperson Victoria Nuland June 20. Instead of company-specific licenses, OFAC will issue "two general licenses that authorize the export of U.S. financial services for commercial transactions and that authorize investment," Nuland explained. On the import side, the Burma Freedom and Democracy Act is set to expire July 26. "We intend to reauthorize the sanctions," House Ways and Means trade subcommittee chairman Kevin Brady (R-Texas) said June 19. Bills (H.R. 5986/S. 3326) introduced June 21 include a separate provision extending the Burma law for three more years (see Brief below).

## * * * Briefs * * *

AGOA: Bipartisan bills (H.R. 5986/S. 3326) introduced in the House and Senate June 21 would extend third-country fabric provisions of Africa Growth and Opportunity Act (AGOA) until September 2015. They also would amend rules of origin for duty-free treatment of textiles and apparel in CAFTA-DR trade pact and extend Burma Freedom and Democracy Act for three more years (see story above).

ZEROING: In keeping with its promised deal with EU and Japan to drop use of zeroing in administrative reviews of antidumping cases, ITA in June 18 Federal Register published final Section 129 findings and revised cash deposit rates for 33 cases where zeroing was used (see **WTTL**, Feb. 13, page 3).

FCPA: Data Systems & Solutions LLC, Reston, Va., which is subsidiary of Rolls-Royce Holdings, and provider of services to power plants, agreed June 18 to pay $8.82 million criminal penalty as part of deferred prosecution agreement to settle charges of violating FCPA. Firm allegedly paid bribes to officials of Ignalina Nuclear Power Plant, state-owned nuclear power plant in Lithuania, to secure service contracts.

DOMINICAN REPUBLIC: In Federal Register June 19, Labor's Office of Trade and Labor Affairs (OTLA) requested comments on petition it has accepted to review Dominican Republic labor practices under terms of CAFTA-DR. OTLA is examining complaints about denial of rights to workers in sugar sector to freedom of association and to organize, child labor, forced labor, collective bargaining and work conditions.