

## Cantor Bill to Offer Stepped Increases In Ex-Im Lending Cap

After weeks of intense negotiations aimed at balancing opposition from House conservatives backed by the tea party and strong pressure from the business community, Majority Leader Eric Cantor (R-Va.) is expected to introduce a revised bill May 7 to reauthorize the Export-Import Bank for three years and increase its financing cap in steps. A House vote on the measure could come as early as May 9. The third-year increase would depend on Ex-Im submitting to Congress annual reports on the progress in negotiations with other governments to reduce and ultimately eliminate subsidized export financing (see **WTTL**, April 3, page 1).

In a discussion draft floated by Cantor's office, the cap would rise to \$120 billion from \$100 billion for fiscal year 2012, which ends Sept. 30, 2012. It would go up to \$130 billion in FY 2013 and 2014, but could increase to \$140 billion in FY 2014, if Ex-Im meets certain conditions. One condition is to maintain a default rate of less than 2% and another is the submission of several reports by Ex-Im and the Comptroller General on bank activities, including an annual report on the status on negotiations on ending government export lending subsidies.

The bill would require the Treasury secretary to initiate negotiations with other major exporting countries, including Organization for Economic Cooperation and Development (OECD) members and non-members, "to substantially reduce, with the ultimate goal of eliminating, subsidized export financing programs and other forms of export subsidies" and negotiations with all countries that finance air carrier aircraft to substantially reduce and ultimately eliminate export credit financing covered by the 2007 Sector Understanding on Export Credits for Civil Aircraft.

Another provision would require the bank to seek public comment on financing that exceeds \$100 million and to notify congressional committees also. It would require Ex-Im to review current domestic-content requirements to determine whether the policy "accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning engineering, design, development, production, return on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States."

## Proposals Would Amend USML, CCL Rules on Explosives

In the latest set of proposals to implement the Obama administration's export control reform initiative, State's Directorate of Defense Trade Controls (DDTC) and the Bureau of Industry



and Security (BIS) published parallel proposals May 2 to convert Category V (explosives) of the U.S. Munitions List (USML) into a positive list and move less critical products to new Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL). The DDTTC proposal covers explosives and energetic materials, propellants, incendiary agents, and their constituents subject to the International Traffic in Arms Regulations (ITAR).

“One major change proposed to this category involves removal of broad catchalls with the listing of specific materials that warrant ITAR control caught by current catchalls,” State noted. “Those materials currently captured in the catchalls that do not warrant control on the USML are to be controlled on the CCL. Examples of such materials to be removed from various catchalls and controlled on the CCL are spherical aluminum powder and hydrazine and its derivatives,” State said.

BIS proposed creating four new 600 series ECCNs to house explosive materials that no longer warrant control on the USML. In addition to new ECCNs 1B608, 1C608, 1D608 and 1E608, BIS proposed controlling aluminum powder and hydrazine under ECCN 1C111. The proposed rule also would move some products in existing ECCNs into the new 600 series. “This proposed rule also would control equipment for the ‘production’ of explosives and solid propellants, currently controlled under ECCN 1B018.a, and related ‘software,’ currently controlled under ECCN 1D018, under new ECCNs 1B608 and 1D608, respectively,” BIS stated.

BIS said its rule “would move commercial charges and devices containing energetic materials, which are currently classified under ECCN 1C018, to new ECCN 1C608 (except for chlorine trifluoride, which is not on the WAML [Wassenaar Arrangement Munitions List] and would be controlled under ECCN 1C111.a.3.f). In a corresponding change, this rule would remove ECCN 1C238, which controls chlorine trifluoride, from the CCL as it would no longer be necessary.”

## **Shoes, Apparel and Sugar Interests Seek Changes in TPP Talks**

It may be easier to go against apple pie and motherhood than to change the U.S. policy of insisting on a “yarn-forward” rule for textiles and apparel in trade agreements, but a bipartisan group of 15 senators urged President Obama May 1 to drop the rule as part of negotiations on the Trans-Pacific Partnership (TPP) agreement. Just as difficult may be a plea from 27 House members to U.S. Trade Representative (USTR) Ron Kirk April 17 to give up demands in the TPP talks for a slow phase-out of footwear duties. Also joining the effort to shift U.S. trade policy are sugar-consuming groups that wrote to Kirk April 30 opposing protection for sugar in any TPP deal. The letters came ahead of the next round of TPP talks in Dallas May 8-18.

The lawmakers’ letters drew praise from shoe and apparel importers and retailers that have joined together in the TPP Apparel Coalition. “Some of the highest U.S. tariffs are on apparel; these duties inhibit job growth, rather than foster it, and the TPP provides a unique opportunity to create a new framework that will facilitate trade and investment in the TPP region,” said a statement by Sandy Kennedy, president of the Retail Industry Leaders Association. The industries noted that 98% of apparel sold in the U.S. is sewn abroad and only 1% of shoes sold in the U.S. are produced in the U.S.

The senators noted that tariffs on clothing and home linens from TPP countries in 2010 were just under \$1.2 billion and accounted for 68% of the tariffs collected from those countries. “The current U.S. proposal on rules of origin takes an overly broad approach in advocating a yarn-forward position for nearly all apparel products,” said the letter, which was organized by Sen. Mark Warner (D-Va.). “Instead, we believe that it would be better to take a more flexible approach which would support the growth of U.S. exports and U.S. jobs,” it added.

House members noted that 8% of U.S. footwear imports originate in Vietnam, one of the nations in the TPP talks. “A TPP footwear provision that would only slowly eliminate duties and incorporate a complex rule-of-origin undermines the important opportunity presented by the

TPP to craft a high standard 21st century agreement that allows U.S. brands to reinvest duty savings in innovation and maintaining global competitiveness,” they told Kirk.

The groups writing to Kirk on sugar, including the National Confectioners Association, the American Bakers Association and the Club for Growth, said they were “deeply concerned about any U.S. pre-conditions to TPP market access negotiations.” They said all products should be on the table in the talks. “In particular, sugar should not be excluded from the TPP as it was in the U.S.-Australia FTA,” the groups wrote.

## **U.S., China Talks Produce No Breakthroughs or Breakdowns**

Despite the controversy swirling around Chinese activist Chen Guangcheng, senior U.S. and Chinese officials were able to complete the fourth round of Strategic and Economic Dialogue (S&ED) talks in Beijing May 3-4 without a diplomatic breakdown but also without any dramatic breakthroughs. As with previous rounds, the final joint statements on the economic and security tracks of the talks were larded with phrases saying the U.S. and China were “committed to,” “decided to continue,” “reaffirm commitments,” “welcomed,” and “reiterated,” on a host of topics from currency and intellectual property rights to logging and clean stoves.

“China and the United States are determined to implement fully their G-20 commitments to move more rapidly to more market-determined exchange rate systems and enhance exchange rate flexibility to reflect underlying economic fundamentals, avoid persistent exchange rate misalignments, and refrain from competitive devaluation of currencies,” the economic joint statement said. “China remains committed to continue the exchange rate regime reform, enhance the RMB exchange rate flexibility in both directions, and let market supply and demand play a more basic role in the formation of the exchange rate,” it added.

The U.S. also committed to “give full consideration to China’s request that it be treated fairly as the United States reforms its export control system.” It also committed to “take efforts to facilitate the export of civilian high-tech exports to China for civilian end-users and civilian end-uses.” The U.S. and China also agreed to continue cooperation on supply chain security and facilitation. “Three Customs-Trade Partnership Against Terrorism (C-TPAT) joint validations are to be conducted this year in China, which will further U.S.-China Customs cooperation on supply chain security and facilitation,” the statement noted. At the same time, a study of Authorized Economic Operator (AEO) systems will be conducted “to achieve the goal of mutual recognition of AEO as early as possible.”

## **USTR Rewards Malaysia, Spain for IPR Protection**

In its annual Special 301 Report released April 30, the U.S. Trade Representative’s (USTR) office moved Malaysia and Spain off the “Watch List” for their recent efforts in protection and enforcement of intellectual property rights (IPR), but it moved Ukraine up to the “Priority Watch List.” Once again, no country was named a “Priority Foreign Country”, the top sanctionable category. The USTR credited Malaysia for “copyright amendments that significantly strengthen its protection of copyrights and its enforcement against piracy.” The report placed 13 countries on the 2012 Priority Watch List and 26 on the Watch List.

Among other advances, Spain was removed for “adoption of regulations implementing the ‘Ley Sinde,’ a law to combat copyright piracy over the Internet.” Ukraine was moved up the priority ladder because it “made minimal progress in implementing its 2010 IPR action plan commitments, including addressing the government’s use of unlicensed software, amending the copyright law, and increasing IPR enforcement.” Kiev “has done little to address counterfeiting and piracy, and in some cases took steps backwards,” the report noted. Non-government organizations criticized the report for punishing countries for helping consumers. “It is unacceptable that the U.S. is once again trying to use its enormous influence to strong-arm developing

countries to make it more difficult to access affordable generics,” said a statement from Judit Rius, the U.S. manager of Doctors Without Borders. Praise for the report came from the movie and IPR-intensive industries. “This report highlights content theft and barriers in foreign markets that pose threats to the continued growth of U.S. creative industries and the U.S. economy,” said Chris Dodd, chairman and CEO of the Motion Picture Association of America.

\* \* \* **Briefs** \* \* \*

**FIREARMS:** Department of Homeland Security (DHS) concerns about transfer of USML Category I firearms to CCL, which were highlighted in reports in *Wall Street Journal* and *Washington Post*, are being addressed by adoption of special controls that will impose export restrictions on weapons after they are transferred to CCL, according to sources. DHS memo quoted in articles is several months old, but some issues it raised are still being discussed, they say. BIS and DDTC expect to keep fully automatic military weapons on the USML, while moving arms that are .50 caliber or less and not fully automatic for civilian end-users to CCL. “There is not a lot of change from what is currently licensed under the ITAR and the same controls under the EAR,” one source said. “License requirements will be very, very similar,” source added. Transferred end-item weapons won’t be eligible for License Exception Strategic Trade Authorization (STA), one of DHS concerns. Discussions continue on treatment of parts and components, sources report. “There will be carve-outs that will be unique that are not in other categories,” one source noted.

**SATELLITES:** Rep. Adam Smith (D-Wash.), ranking member of House Armed Services Committee, is expected to offer amendment during committee’s scheduled May 9 markup of 2013 National Defense Authorization Act (H.R. 4310) to grant president authority to move some commercial satellites from USML to CCL with certain conditions attached (see **WTTL**, April 23, page 1).

**TRUSTED TRADERS:** U.S. and EU signed agreement May 4 granting mutual recognition to certified participants in Custom-Trade Partnership Against Terrorism and EU’s Authorized Economic Operators.

**JAPAN:** Japan’s role in TPP talks remains up in air following meeting between President Obama and Japanese Prime Minister Noda April 30. “We will continue to advance our ongoing bilateral consultations on the Trans-Pacific Partnership (TPP), and further explore how bilateral economic harmonization and the promotion of regional economic integration could be achieved,” they said in joint statement after meeting.

**IRAN:** BIS imposed six-month Temporary Denial Order (TDO) April 27 on four airlines and three executives for reexporting and attempting to reexport three Boeing 747s to Iran without authorization. Named were: Sayegh Group Aviation; Aban Air; Sam Air Corporation Limited; Aviation Legacy (Gambia) Limited; Abdullah Khaled Ramadan, managing director of both Sayegh Group Aviation and Sam Air; Ali Mahdavi, chairman of Aban Air; and Mahmoud Khali Hamze, managing director of Aviation Legacy. Everex Global Cargo and Courier also was named as related person to Aban Air and Ali Mahdavi. “The conduct in this case is deliberate, significant and likely to occur again absent the issuance of a TDO,” BIS stated.

**EXPORT ENFORCEMENT:** Mattson Technology Inc. of Fremont, Calif., April 30 agreed to pay \$850,000 to settle 47 BIS charges of acting with knowledge of violation of Export Administration Regulations. Mattson allegedly transferred or otherwise serviced pressure transducers worth \$78,000 and classified under ECCN 2B230, which were controlled for nuclear nonproliferation reasons, to customers in Israel, Malaysia, China, Singapore and Taiwan without Commerce licenses. Under settlement, Mattson agreed to pay \$250,000 within 30 days. Remaining \$600,000 will be suspended for one year and then waived if Mattson commits no further violations, BIS said. Mattson neither admitted nor denied charges.

**CUBA:** National Foreign Trade Council and USA\*Engage May 2 praised signing statement issued by Florida Gov. Rick Scott (R-Fla.) calling unconstitutional state measure (HB 959) that prohibits companies from doing business with state if they invest or have business operations in Cuba or Syria. “We welcome Gov. Scott’s effective acknowledgment in his signing statement that the legislation is unconstitutional, but the fact remains that he signed the bill anyway, which will only continue the uncertainty and confusion over this fundamental point of law,” said NFTC President Bill Reinsch, citing 2000 Supreme Court ruling that federal law preempts such state laws (see **WTTL**, June 26, 2000, page 4).

**INDIA:** Court of Appeals for Federal Circuit in *Essar Steel Limited v. U.S.* April 27 upheld CIT ruling that affirmed ITA decision that certain hot-rolled carbon steel flat products from India are being dumped and subsidized. It reversed CIT decision that Essar did not benefit from subsidies from Chhattisgarh Industrial Program. Separately, USTR in May 4 Federal Register asked for comments on India’s WTO request for consultations to protest CVD order on Indian steel products (see **WTTL**, April 16, page 4).