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Report Could Clear Way for Satellite Legislation

Congress could move this year to implement the recommendations of a joint April 18 State-Defense report that said licensing jurisdiction for most commercial satellites should be moved back to Commerce from State. Two routes appear open for congressional action. One is a pending bill (H.R. 3288) sponsored by Rep. Howard Berman (D-Calif.), which would give the president authority to move these items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). The other is the fiscal 2013 National Defense Authorization Act (NDAA), which House Armed Services Committee subcommittees are set to begin marking up April 26-27. Congressional sources say no decision has been made on which route to take.

The report, mandated by the 2010 NDAA and a year late in being sent to Congress, examined the impact of the 1999 NDAA, which moved satellite controls to State from Commerce and imposed strict monitoring requirements, called Special Export Controls (SECs). State and Defense recommended giving the president discretion to move some commercial satellites back to Commerce, while keeping controls on military-related satellites at State. They also urged amending the law to give Defense flexibility to decide when to impose SECs.

The 44-page report found Commerce controls adequate for communications satellites that do not contain classified components; remote sensing satellites with performance parameters below certain thresholds; and systems, subsystems, parts and components associated with these satellites and with performance parameters below USML control levels. In an annex, it suggested a new, detailed Export Control Classification Number 9X515 for spacecraft and related commodities. The report said USML controls should remain on satellites that perform a purely military or intelligence mission; remote sensing satellites with high performance parameters; systems, subsystems, parts and components unique to those satellites; and services in support of foreign launch operations for USML and CCL designated satellites.

Pressure Mounts to Get Ex-Im Reauthorized as Deadline Nears

With the Export-Import Bank nearing its current \$100 billion exposure limit and its charter about to expire in May, talks in both the House and Senate are intensifying to find a compromise that would allow lawmakers to approve the bank's reauthorization in the next few weeks. But so far, no deal is in sight, according to industry sources. Staffs for House Majority Leader Eric Cantor (R-Va.) and Democratic Whip Steny Hoyer (D-Md.) have been meeting to find a compromise based on a draft bill prepared by Cantor. Industry sources,



however, say they do not expect an agreement or vote during the week of April 23, which may mean no vote until May. The Cantor-Hoyer talks are focused on two main areas: a new spending cap for the bank and the length of its recharter plus provisions in Cantor's bill that would force Ex-Im out of the business of financing large commercial aircraft exports and restrict the future use of government-backed financing for all exports.

In the Senate, members are still trying to get agreement to vote again on a re-authorization bill that Republicans blocked in March (see **WTTL**, April 16, page 2). "We're trying to encourage the Republicans to drop their objections," Senate Banking Committee Chairman Tim Johnson (D-S.D.) told reporters after a hearing in support of Ex-Im. "The House has the biggest problem as far as accommodating Delta Airlines," he said.

U.S.-Colombia FTA to Go into Effect May 15

To the surprise of many skeptics, including **WTTL**, who thought the White House would continue to drag its feet on implementing the U.S.-Colombia Free Trade Agreement (FTA), and to the dismay of organized labor, which wanted a longer delay, President Obama announced April 15 that the pact would go into effect on May 15. The announcement drew the expected mixed response from business, which praised it; labor, which condemned it; and members of Congress who took both sides, depending on their support or opposition to the accord.

To bolster the president's decision to go ahead with implementation, the U.S. Trade Representative's (USTR) office issued a detailed fact sheet explaining the steps Colombia has taken to implement the labor action plan that was the key to getting the deal through Congress. "The Colombian government's achievement of milestones under the Action Plan and their continued implementation of labor reform has already provided tangible improvements and laid a foundation for improved labor rights in Colombia," a separate White House fact sheet said.

Rep. Sander Levin (D-Mich.) issued a noncommittal statement neither praising or condemning the decision to implement the accord. He said Obama's statement that more work needs to be done on labor conditions "needs far more emphasis and is a much more realistic view than reflected" in the USTR fact sheet. In a section-by-section evaluation of progress on the plan, Levin said "that much work remains" in several areas. A joint statement from the AFL-CIO and two Colombian unions said they opposed implementation of the deal and urged the two countries to reexamine the Action Plan and the entire FTA. "We fear that prematurely declaring the plan a success will not only halt progress, but lead to backtracking," they declared.

U.S. Wants Arms Treaty to Match Export Control Reforms

As the U.S. heads into the final round of talks in July on a United Nations Arms Trade Treaty (ATT), it will seek to ensure that any agreement doesn't conflict with the goals of the Obama administration's export control reform initiative. "One of the central points of our position in the July Conference is that the Treaty will correspond and be supportive of United States Export Control Reform," said Thomas Countryman, assistant secretary of State in the Bureau of International Security and Nonproliferation, in an April 16 speech in Washington.

The ATT would tell countries what factors they must consider before authorizing arms transfers, not how they must evaluate such transfers, he said. "That position is not only sensible for the sovereignty of states, but it is also consistent with the kind of bureaucratic streamlining we are seeking to finalize in our export control reform," he said in his prepared remarks to a Stimson Center program. In reiterating the U.S. position, Countryman stressed that this "is not a disarmament negotiation; it is an arms trade regulation negotiation." The goal is to regulate legitimate conventional arms sales while making it more difficult and expensive to conduct illicit, illegal and destabilizing transfers. "But we do not want something that would make

legitimate international arms trade more cumbersome than the hurdles United States exporters already face,” he said. In preliminary talks over the last year, the U.S. has objected to the efforts of some countries to expand the scope of the negotiations. It has also opposed a draft working paper prepared by the chairman of the talks and raised concerns about proposals to impose restrictions based on human rights or humanitarian issues.

Countryman noted a major disagreement has been potential controls on exports of ammunition. The U.S. opposes including ammunition in the deal. “Many states and organizations – many of them without major armaments industries or significant international arms trade – have sought to include ammunition in the scope of an ATT,” he pointed out. “The United States, which produces over seven billion rounds of ammunition a year, has resisted those efforts on the grounds that including ammunition is hugely impractical,” Countryman said. Other industry sources have suggested the U.S. may be open to including licensing requirements for ammunition under an ATT but without a reporting requirement to the U.N. because such controls already exist (see **WTTL**, July 25, 2011, page 4).

TPP Negotiators Want to Set Bar High for New Participants

When or whether Japan, Canada and Mexico will join Trans-Pacific Partnership (TPP) negotiations may be more than a matter of timing; it may be a strategic question of where the bar is set for their participation. At an April 18 briefing to launch the TPP Business Coalition, which will lobby to support the eventual accord, USTR Ron Kirk said the administration “absolutely welcomes” the interest of the three additional countries, but that the substance of the negotiations will drive decisions about timing. “We think of it as an on-ramp. It’s a slow train; you can jog and jump on,” he said (see **WTTL**, March 12, Page 3).

Administration officials have said they hope to complete TPP talks this year, but some industry sources doubt that goal will be met and negotiations will continue into 2013 and maybe beyond. A more important aim may be to have enough agreement among current countries so Japan, Canada and Mexico would have to come into the talks with many major issues already agreed upon, particularly on agriculture, which would present significant hurdles for Japan and Canada.

On the same day as the coalition launch, New Zealand Ambassador Mike Moore told a National Bureau of Asian Research event that TPP negotiating countries want Japan, Canada and Mexico in the talks. He said the original nine participants are eager for new countries to join, but some are concerned that slowing down to have new members join will hinder progress. “Of course we want to see Japan, Canada and Mexico join. Our fear is, Will we lose momentum and not do it?” said Moore. It would be a “dreadful failure if TPP was just TPP [nine] in five years’ time,” he added. Moore conceded that textiles and agriculture could be sticking points. “I hope we’re big enough not to stumble over catfish and a few pairs of underpants,” Moore said, referring to U.S. trade disputes with Vietnam over catfish and textiles.

U.S. Finally Adopts New Model Bilateral Investment Treaty

After three-years of hand-wringing over how to satisfy both business community and labor demands for an updated model Bilateral Investment Treaty (BIT), the Obama administration finally released the new version April 20. The 2012 Model BIT, which the U.S. will use as the template for negotiating deals with other countries, tries to placate both sides of the debate without giving anyone everything they wanted. It adds new industry-sought provisions on transparency in government investment laws and regulations, on opportunities to participate in standard-setting and new disciplines to prevent parties from imposing domestic technology requirements on foreign investors. The U.S. also will seek assurances that BIT requirements apply to state-owned enterprises. To address demands from labor and environment groups, the new model would seek to expand BIT obligations to preclude countries from waiving or

derogating from their labor and environmental laws to encourage foreign investment; to require parties to “effectively enforce” their labor and environment laws; and to reaffirm or recognize international commitments, including those of the International Labor Organization and multi-lateral environmental agreements. The model also calls for a more detailed and extensive consultation procedures than the 2004 model BIT.

“We appreciate the strengthening of the labor and environment provisions, but we are deeply disappointed that these provisions remain outside of any dispute settlement or enforcement framework,” said Thea Mei Lee, AFL-CIO deputy chief of staff, in an e-mail to WTTL. “The labor and environment provisions are thus little more than paper commitments, without any recourse in the event that consultation fails to resolve a problem,” she said. This contrasts sharply to the rights of corporate investors, which “remain extraordinarily well protected,” she said.

Calman Cohen, president of the Emergency Committee for American Trade (ECAT), issued a statement applauding the new model but raising concerns about its new labor and environment provisions. “ECAT is very disappointed that many proposed changes that ECAT sought through the BIT review process to strengthen core protections were not included in the updated 2012 Model BIT,” he said. The labor provisions “set a bad precedent and may well undermine the United States’ ability to conclude BITs with developing countries and the very improvements in labor and environmental objectives that increased foreign investment would bring,” he stated.

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BURMA: Following State’s partial lifting of sanctions after apparently fair elections, OFAC April 17 issued General License No. 14-C, authorizing financial transactions in support of not-for-profit activities in Burma (see **WTTL**, April 9, page 2).

FCPA: Stuart Carson, ex-president Control Components Inc. (CCI) in Rancho Santa Margarita, Calif., and Hong “Rose” Carson, ex-CCI director of sales, pleaded guilty April 17 in Santa Ana, Calif., U.S. District Court to violating FCPA. CCI paid \$18 million FCPA fine in July 2009 (see **WTTL**, Aug. 10, 2009, page 2).

ENTITY LIST: In Federal Register April 18 BIS added three names from Canada and Jordan to its Entity List: Abou El-Khir Al Joundi and Canada Lab Instruments in Quebec and Masound Est. for Medical and Scientific Supplies in Amman.

STEEL SINKS: In preliminary ruling April 16 on 6-0 vote, ITC found U.S. industry may be materially injured by imports of allegedly dumped and subsidized drawn stainless steel sinks from China.

REFRIGERATOR-FREEZERS: In uncommon negative determination, ITC voted 5-0 April 17 in final ruling that dumped and subsidized bottom-mount combination refrigerator-freezers from Korea and dumped units from Mexico do not injure U.S. industry. Samsung welcomed decision in statement, saying, “Whirlpool’s action in bringing this case simply resulted in a lengthy investigation that has been costly to the U.S. taxpayer, the result of which has been to prove that Samsung is in compliance with U.S. trade law.”

STEEL WHEELS: In another uncommon ruling in antidumping and CVD case, ITC made final determination April 17 on 6-0 vote that imports of steel wheels from China are not causing injury to U.S. industry.

OPTICAL BRIGHTENING AGENTS: On 6-0 final vote April 19, ITC found that dumped stilbenic optical brightening agents from China and Taiwan are injuring U.S. industry.

STEEL NAILS: On 6-0 final vote April 19, ITC found U.S. industry injured by dumped steel nails from UAE.

TIMBER: Nonprofit Environmental Investigation Agency (EIA) April 19 petitioned USTR under U.S.-Peru FTA “to investigate and verify the legal origin of shipments from at least two Peruvian companies and to audit dozens more.” Companies involved are Maderera Bozovich SAC and Maderera Vulcano SAC. On April 10, EIA released report claiming that between 2008 and 2010 over 100 shipments containing millions of dollars worth of illegal cedar or mahogany wood from Peruvian Amazon were exported to U.S.

FCPA: Manuel Caceres, former VP of Latin Node, was sentenced to 23 months in prison April 19 in Miami U.S. District Court for paying bribes to former government telecom officials in Honduras. He pleaded guilty May 18, 2011, to conspiracy to violate the FCPA (see **WTTL**, Sept. 12, page 4).