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## Congress Wants Justifications for USML-CCL Moves

Members of Congress want the Obama administration to provide detailed justifications for moving certain items from the U.S. Munitions List (USML) to the Commerce Control List (CCL) but not all the thousands of parts and components being proposed for transfer, according to congressional sources. For moves proposed so far, the Directorate of Defense Trade Controls and Bureau of Industry and Security haven't given line-by-line explanations for the shifts. Because of the need to provide Congress with those justifications, sources don't expect the full USML-CCL transfer process to be done until some time in 2013 (see **WTTL**, Feb. 27, page 1).

Under Section 38(f) of the Arms Export Control Act (AECA), the administration must notify Congress about any proposed changes to the USML. Because of the large number of items being moved, administration officials have been trying to work with Congress to come up with a plan that would not require item-by-item notifications. Depending on the number of items identified as needing specific justifications for being moved to the CCL, however, the process could get bogged down by the extra drafting work and consultations with lawmakers.

"The Hill doesn't want to look at 100,000 notices," one source told **WTTL**. But lawmakers do want explanations for certain key products, such as older tanks, transport planes and helicopters. They want enough details to understand the changes, the source said, saying a middle ground can be reached on which products need explanations. "If there is confidence that what they are moving to the 600 series makes sense, then the notification process is easy to solve," he added. Another issue that has to be resolved is the AECA requirement to notify Congress in advance on certain large defense sales for items moved to the CCL, the source said.

## EU Raises Concerns about Plurilateral Services Agreement

The U.S. push for a plurilateral deal on services isn't getting the same level of enthusiasm from the European Union (EU), which is concerned a deal outside the Doha Round could undermine the World Trade Organization (WTO) and the multilateral trading system. EU objections come just ahead of another set of expert-level talks in Geneva the week of March 19 on a potential framework for a services deal. Besides the EU, it's not clear whether there is enough support for negotiations among other countries, sources told **WTTL**. The EU "line" is that initiatives should not be taken that would "undermine the WTO," Karel De Gucht, the EU trade commissioner, told reporters in Geneva on March 12 (see **WTTL**, March 5, page 4). "Whether there will be plurilateral negotiations on services remains to be seen," he added. "I cannot see that



a plurilateral on services would make any sense if the European Union is not part of it,” De Gucht said. But he would not say whether the EU will get involved in services negotiations. “It could make a danger for the WTO,” De Gucht said. “That for us is a guideline,” he said.

Experts are still trying to work out whether there is a possibility of negotiations, said an official involved in the talks. All the participants are serious, but there’s no shared vision on what type of agreement could be achieved, she said. Discussions so far are focused on substance, not the legal framework, she added.

Another source said any deal would probably be submitted to the WTO committee on regional trade agreements, which he called “a rather toothless body.” While the rules for plurilateral agreements are not very precise and must cover substantially all sectors, the movement of natural persons – or so-called Mode 4 in services -- mostly likely would be excluded, he said.

## Export-Related Jobs Lag Growth in Trade

The increase in the number of export-related jobs is not keeping pace with the growth in exports of U.S. goods and services, new government data reveal. The disconnection between trade and jobs growth could dampen business and government claims that more trade agreements mean more jobs. Between 2009 and 2011, export-related jobs increased by 1.2 million to 9.7 million, a 14% increase, according to Labor’s Bureau of Labor Statistics. At the same time, exports of goods and services jumped 34% to \$2.1 trillion from \$1.5 trillion.

In a press release touting the job growth, Commerce said each \$1 billion in exports supports 5,080 jobs, fewer than in previous years. Based on that estimate, the \$600 billion jump in exports theoretically should have added 3 million jobs.

## Rare Earth Complaint against China Comes after Two Years

After listening for two years to Chinese officials defend their export restrictions on rare earth minerals, the Obama administration joined the European Union (EU) and Japan to ask China formally for WTO consultations March 13 to resolve complaints that the restraints violate WTO rules. The case against the restrictions was bolstered by a WTO Appellate Body ruling in January against similar Chinese restrictions on raw materials (see *WTTL*, Feb. 6, page 4).

The White House did not explain the delay in seeking consultations. While under consideration since 2009, White House Press Secretary Jay Carney denied that the request was an attempt to blunt criticism from Republican presidential candidates about the administration’s China policy. The case “was announced today because today the time was appropriate to announce this new trade case,” Carney said.

An EU official cited the WTO Appellate Body ruling on raw materials as a reason for bringing the rare earth case. That decision clarified the rules and forms a “very strong basis” for the new case, she said. Imports of several of these minerals provide 100% of the supply for European manufacturers, she noted. She rejected China’s claims that the restrictions were based on environmental concerns. Environmental protection has to take place at the source, not by limiting demand in one area or the other, she stated.

## Ruling on Boeing Subsidies May Give Push to Negotiations

With the WTO Appellate Body (AB) having confirmed that both the U.S. and EU have given unfair subsidies to Boeing and Airbus, respectively, the two sides have increased motivation to negotiate a new agreement on aid to large commercial aircraft manufacturers. The AB’s March 12 ruling also could push Brazil, Canada, China and Russia into such talks because the decision

could be used against any support they are giving to the move of their aircraft industries into the larger passenger plane market (see **WTTL**, Dec. 5, page 3). “Ambassador Kirk’s position is that he is prepared to enter into discussions with [EU Trade] Commissioner DeGucht and the commission to address WTO inconsistent practices in the aircraft sector, including obviously launch aid,” U.S. Trade Representative (USTR) General Counsel Tim Reif told reporters.

Both the U.S. and EU claimed victory from the AB report, which found that U.S. state, local and federal subsidies to Boeing were more than the original dispute-settlement panel estimated but caused less adverse impact on Airbus than the panel determined. The AB upheld most of the dispute-settlement panel’s findings, although for different reasons, but also said the panel erred on some issues.

Reif called the decision “a tremendous victory,” while EU Trade Commissioner Karel De Gucht told reporters the WTO gave Europe “a clear victory.” The ruling found “the U.S. is guilty” of past illegal funding of between \$5 and \$6 billion and future illegal subsidies of over \$3 billion, De Gucht said. The U.S. noted that \$2.2 billion of that alleged aid was eliminated with the repeal of the Foreign Sales Corporation and Extraterritorial Income laws. Reif said the U.S. is close to a decision on whether to move forward on its request for establishment of another WTO panel to review EU claims that its proposed remedies would satisfy the AB decision against Airbus. Talks in January between the EU and U.S. on Europe’s proposed measures apparently didn’t resolve the U.S. contention that the fixes aren’t satisfactory.

## **Lamy Looks to Private Sector to Revive Trade Talks**

WTO Director General Pascal Lamy says the revival of multilateral trade talks needs support from the world business community, which has been quiet during Doha Round negotiations. “We’re not at a time...where we can rely on political energy to move the multilateral trading system forward,” he said March 14 at a press conference in Geneva sponsored by the International Chamber of Commerce (ICC). Another engine is needed to “refill our tank for moving forward,” he said. The voice of business in the multilateral trading system over the last 10 years “hasn’t been that loud,” Lamy lamented.

During the decade, things were going well and business expanded internationally “quite nicely” until the crisis, he said. The crisis has triggered a very different picture, he added. Protectionism is now “the main threat,” Lamy said.

The ICC announced plans for working to “influence governments on what the negotiations will look like going forward,” said Jean-Guy Carrier, its secretary-general. The ICC agenda is “designed to have a positive contribution to this necessary definition of a new approach, of a more flexible approach of the multilateral rules,” said ICC Chairman Gerard Worms. Trade negotiations have focused on a “more and more sophisticated set of rules for a world that is no longer there,” said Victor Fung, chairman of the Li & Fung Group. He referred to the rise in complexity of global supply chains over the last 10 years, which is why trade facilitation will be a main focus of the ICC agenda with the aim of bringing down the cost of business.

## **U.S. Starting to Lay Groundwork for Expanding ITA**

The U.S. wants to build support for expanding the coverage and membership of the 15-year-old Information Technology Agreement (ITA) but doesn’t want those talks to include non-tariff barriers (NTB) to trade, said Deputy USTR Miriam Sapiro March 15. Members of the Asia-Pacific Economic Cooperation Forum (APEC) in November agreed to review the accord’s current product coverage to prepare for a decision on whether to launch formal expansion talks, she said. The U.S. also placed a proposal on the table at the March 2-8 meeting of Trans-Pacific Partnership (TPP) talks in Melbourne, Australia, calling for all participants in the TPP to commit to joining the ITA, she reported (see **WTTL**, March 12, page 4). The U.S. is starting with APEC rather than diving directly into ITA talks because “APEC is where the nucleus

of the original ITA agreement was developed, so that's the natural first stop for us," Sapiro told the Information Technology Innovation Forum (ITIA) program where the group released a study on the benefits of expanding the ITA. She said the ITA includes a mandate to hold new talks on expanding the pact to include more products but not to tackle NTBs.

The EU wants ITA talks to include NTBs and argues that they are included in the ITA mandate. "This is where the real problem is. Once you are in an area where you have zero tariffs, all the obstacles you have are non-tariff barriers," said Carsten Schitteck, EU negotiator on NTBs. Sapiro said the U.S. and EU have discussed the ITA but disagreed about the mandate to negotiate on NTBs. "It is our view and the view of a large number of ITA participants that the current mandate does not include negotiation over non-tariff barriers," she said.

## Lawmakers Question Dropping Russia from Jackson-Vanik

As the campaign for granting Russia Permanent-Normal-Trade-Relations (PNTR) status ramps up, Moscow's human rights record and corruption are causing some in Congress to question ending the application of the Jackson-Vanik Amendment to Russia. At a Senate Finance Committee hearing March 15, senators disagreed over how to maintain leverage on Russia without Jackson-Vanik. Once Russia joins the WTO, Committee Chairman Max Baucus (D-Mont.) said, the U.S. "will get new tools for our toolbox to hold Russia accountable to its obligations" (see **WTTL**, March 12, page 3). Sen. Jon Kyl (R-Ariz.) disagreed, citing the experience with China. "Yes, we would have access to a WTO dispute-settlement process if we grant Russia PNTR. But what has that gotten us in our trade relationship with China?" Kyl asked.

"I'm not able to correlate how PNTR status will in any way change those issues," testified Deere Chairman and CEO Samuel Allen. "Those issues still need to be solved," he said, also responding to complaints linking Moscow to enabling international terrorists and arms sales. "I would argue that giving Russia PNTR status, giving a chance for all of us to continue to move that country along, will be a positive," he told the committee.

### \* \* \* Briefs \* \* \*

**EXPORT ENFORCEMENT:** Powerline Components (PC) Industries, LLC in Afton Wyo., March 8 was fined \$60,000 in settlement with BIS to resolve charges that it sold EAR99 diesel engine parts worth \$21,056 to Syrian company without required licenses. Matthew Kallgren, its sales manager, agreed to pay fine of \$75,000 to settle two charges of evasion for negotiating sales in 2006 through 2008. R.I.M. Logistics, Ltd. in Roselle, Ill. will pay penalty of \$50,000 for allegedly aiding or abetting transactions as freight forwarder. Neither Kallgren nor two companies admitted nor denied allegations.

**FCPA:** BizJet International Sales and Support Inc., provider of aircraft maintenance, repair and overhaul (MRO) services in Tulsa, Okla., March 14 agreed to pay \$11.8 million to resolve FCPA charge of bribing government officials in Mexico and Panama to secure contracts. Justice filed one-count criminal information and deferred prosecution agreement in Tulsa U.S. District Court. BizJet's indirect parent company, Lufthansa Technik AG, also entered into three-year nonprosecution agreement with Justice. BizJet and Lufthansa Technik voluntarily disclosed FCPA violations.

**MORE FCPA:** Jean Rene Duperval of Miramar, Fla., former director of international relations for Telecommunications D'Haiti S.A.M. was convicted March 13 in Miami U.S. District Court of two counts of conspiracy to commit money laundering and 19 counts of money laundering for his role in laundering bribes paid to him by two Miami-based telecommunications companies (see **WTTL**, July 18, page 4).

**ORANGE JUICE:** ITC made "sunset" review determination March 14 on 6-0 vote that ending antidumping order on certain orange juice from Brazil would not lead to renewed injury to U.S. industry.

**TRADE FIGURES:** U.S. merchandise exports in January rose 7.6% from year ago to \$128.6 billion, Commerce reported March 9. Services exports increased 8% to \$52.2 billion from year ago. Goods imports went up 8.5% from January 2011 to \$196.1 billion, as services imports gained 7.8% to \$37.3 billion.