

Vol. 32, No. 5

January 30, 2012

Military Chief Presses for Speedier Approval of Export Reforms

General Martin Dempsey, chairman of the Joint Chiefs of Staff, is giving his personal backing to get Congress to act quicker on two major Obama administration concerns about defense exports: clearing the review of Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) and the transfer of items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). In Dec. 9 letters to Vice President Biden, as president of the Senate, and House Speaker John Boehner (R-Ohio), Dempsey urged Congress to work with the administration to improve the consultation process because it would have “a direct bearing on the ability of the United States to meet its national security objectives.”

Both issues stem from Arms Export Control Act (AECA) requirements to notify Congress in advance about large FMS/DCS sales and proposed changes to the USML under Section 38(f). Administration officials have been trying without much success for over a year to get an agreement from Congress on speeding up these reviews. “Over time these requirements have been largely expanded by informal and untimely processes,” Dempsey wrote.

Dempsey also gave his imprimatur to the national security foundation of the export control reform initiative. “I strongly support the President’s Export Control Reform Initiative and endorse the Department of Commerce’s robust implementation and enforcement of controls on USML items transferred to the CCL,” he wrote (see **WTTL**, Jan. 16, page 3).

World Prices Drive Desire for FTZ Status, Hearing Told

A major factor driving U.S. manufacturers to operate in Foreign Trade Zones (FTZs) is getting access to raw materials and components at world market prices rather than avoiding U.S. tariffs, a Commerce Foreign Trade Zone Board hearing was told Jan. 25. Both supporters of the establishment of FTZ subzones for Dow Corning, Hemlock Semiconductor Corp. (HSC) and Hemlock Semiconductors LLC (HSL) and opponent Global Metallurgical Inc. focused on the price of silicon metal (see **WTTL**, Jan. 23, page 1). The silicon metal tariff is only 5.3%.

HSC President Andrew Tometich said silicon metal prices in the U.S. are among the highest in the world because Global, the sole U.S. commercial supplier of silicon metal except for Dow’s own captive production, has won antidumping cases against imports from China and Russia. “Price is the top factor,” he said. Global’s economic advisor, Kenneth Button of Economic Consulting Services, said “it’s an issue of price, not quality or supply.” Global silicon metal



prices have been pushed down by low-priced exports from China, he said. Lower world prices for Chinese silicon metal have allowed Japan and Korea to increase silicon production and take market share from Dow, testified Denise Beachy, Dow Corning's vice president for strategic feedstocks. Alan Kestenbaum, executive chairman of Global Specialty Metals, Inc., Global's parent company, told the board that prices of polysilicon, the main product HSC intends to produce, have dropped to \$25 per ton from an average of \$60-70 per ton, but 90% of producers in China have closed down. "The guys who are producing are in the United States," he said.

Industry Recommends Moving Satellites Back to CCL

The aerospace industry blames the declining U.S. share of the global satellite market to the 1999 move of satellite export control jurisdiction from Commerce to State. "The shift, intended to protect sensitive space technologies and preserve U.S. preeminence, has since contributed to the loss of U.S. commercial satellite market share and fostered the competitiveness and capabilities of U.S. competitors abroad. Simply put, we have legislated away our nation's dominance in space," the Aerospace Industries Association (AIA) states in a report, *Competing for Space: Satellite Export Policy and U.S. National Security*, released Jan. 25.

The U.S. government should "remove low/no risk technologies from the USML and designate them for inclusion on the CCL, which allows for greater flexibility while preserving the appropriate technology transfer safeguards," the report recommends. In addition, AIA suggests space systems should receive support under the Obama administration's National Export Initiative, including extra funding for Commerce to develop and support space export strategies.

Basel III Rules Could Hurt Export Financing

Reforms intended to strengthen the global banking sector in the wake of the 2008 financial crisis could lead to higher prices and gaps in coverage for trade financing, speakers told the Washington International Trade Association (WITA) Jan. 25. Basel III, as these regulations are known, were launched in 2010 by the Basel Committee on Banking Supervision and are intended to insure that banks have adequate capital to back loans. The exporting community, however, has argued the rules should not apply to short-term export financing.

At the WITA event, Jeff Abramson, vice president of trade finance at the Export-Import Bank, said the problem is "not so much a compliance issue," but the concern that if "capital and liquidity become more scarce or more dear to banks, it is going to flow to the products that provide the greatest return." Trade loans are traditionally shorter term and more dependable, but not as profitable, he said.

The Basel III rules prompted World Trade Organization (WTO) Director General Pascal Lamy and World Bank President Robert Zoellick to write to the Basel committee last year about the potential adverse impact the regulations might have on trade. In October 2011, the committee approved two changes to the regulation, waiving maturity floor rules for certain trade finance instruments and the so-called sovereign floor for credit risk. "Waiving this floor to allow the risk weighting to move below 100% will help reduce capital requirements for banks engaged in trade finance and thus foster the import of goods for low income countries," the committee explained. But some in the banking community feel these changes didn't go far enough, suggesting all trade loans be excluded from the one-year requirement, not just letters of credit.

WTO Economic Counsellor Marc Auboin told WITA he was concerned about the idea of "carving out" trade products from other kinds of loans, but also worried that Basel III would create a disincentive to export financing. "If you start to carve out something for trade, the difficulty for the bank regulators is that some of the bankers may be tempted to call 'trade' something that would benefit from the carve-out," Auboin said. He echoed the concern that banks might move away from trade loans if the regulations were too high. "If you create

regulation disincentive, that might create some gaps or an increase in prices,” he said. The impact might be less on large corporations that can afford the higher costs than on firms “making the decision on trade or not to trade,” he said. “It might have a chilling effect on the supply by banks within the credit community,” he noted.

Enforcement Unit Aims to Deflect Push for China Legislation

President Obama moved in his State of the Union address Jan. 24 to dampen congressional pressure for legislation to fight China’s currency manipulation and subsidies with creation of a new Trade Enforcement Unit. The unit resurrects an idea from the Reagan administration, which formed an enforcement Trade Strike Force, and proposals in past legislation for a dedicated enforcement staff in the U.S. Trade Representative’s (USTR) office (see **WTTL**, Jan. 16, page 2). The administration has released few details about what the unit will do. “We’re going to let the president’s statement stand for now,” USTR spokesperson Nkenge Harmon told **WTTL**.

“Tonight, I’m announcing the creation of a Trade Enforcement Unit that will be charged with investigating unfair trading practices in countries like China,” Obama said in his speech. A White House fact sheet said the unit “will bring together resources and investigators from across the federal government to go after unfair trade practices in countries around the world, including China.”

Ever since Obama came into office, administration officials have promised tougher enforcement against unfair foreign trade practices. In addition to the limit on resources to pursue many more trade complaints, the effort has been stymied by the preference of some U.S. companies to have their disputes handled through negotiations rather than through formal complaints at the World Trade Organization (WTO) that risk retaliation from China and by the mixed economic interests of U.S. industries that have business ties with companies that might be the target of enforcement and often are themselves importers of foreign goods that are the subject of complaints.

Mexico’s Wassenaar Membership Will Speed Exports

With Mexico becoming the 41st member of the Wassenaar Arrangement Jan. 20, U.S. exporters will find the benefits of NAFTA now expanded to controlled goods and technology. Although Mexico has already issued new regulations adopting Wassenaar-based export controls as of Oct. 21, U.S. exporters will have to wait for the publication of amendments to the Export Administration Regulations and International Traffic in Arms Regulations to take advantage of the new relationship. Even before those changes are published, however, export licenses should “take a whole lot less time” because licensing officers will have confidence that U.S. goods sent to Mexico will be covered by Mexico’s new export control regime, one U.S. official told **WTTL**.

Mexico has been working for over nine months to gain membership in Wassenaar. Wassenaar is the only multilateral export regime to which Mexico is a member, but it is seeking membership in the other groups as well, sources report.

Wassenaar membership will be important for U.S. and foreign firms operating maquiladora plants in Mexico. Under current export controls, licenses often include restrictive provisos that have made it difficult for maquiladora and other plants in Mexico to reexport goods with U.S. content. Since Mexico issued its export control rules, it has already received 500 export license applications and has a full license processing system in place, the source reported.

Camp Willing to Consider China CVD Law Change

As Commerce seeks a rehearing of the Court of Appeals for the Federal Circuit’s (CAFC) ruling that the countervailing duty (CVD) law cannot apply to non-market economies (NMEs), House

Ways and Means Committee Chairman Dave Camp (R-Mich.) said Jan. 25 he might consider legislation to overturn the decision. “I am willing to consider targeted legislation that ensures our countervailing duty laws can be used to protect U.S. employers and workers from unfairly subsidized imports from countries like China,” he said in a statement after the CAFC Jan. 24 gave the government until March 5 to file its petition for a rehearing of *GPX International Tire*.

“I look forward to continuing to work with my colleagues in the House and Senate, and with the Administration, to explore legislative options,” Camp said. “Any such legislation would have to be narrowly targeted, ensure that U.S. application of its countervailing duty laws complies with its WTO obligations, and will pass the House and Senate without complications,” he added (see **WTTL**, Jan. 2, page 1).

It may be hard for Congress to draft such a rule, because the WTO has ruled that countries can’t apply both CVDs and antidumping duties to the same product from an NME country. The CAFC had said Commerce could not change its policy, which originally said it couldn’t apply CVDs to NMEs, to say it could, because Congress had ratified its earlier position.

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SERVICES: U.S. trade officials have started promised ground work toward launch of talks on services plurilateral agreement outside of framework of Doha Round (see **WTTL**, Dec. 19, page 1). Deputy USTR Michael Punke met with representatives of 16 countries in Geneva week of Jan. 16, and he and USTR Ron Kirk held more consultations in Davos, Switzerland, on sidelines of World Economic Forum week of Jan. 23. Punke reportedly plans another meeting in Geneva on services Feb. 13.

EXPORT ENFORCEMENT: Rudolf L. Cheung pleaded guilty Jan. 20 in D.C. U.S. District Court to conspiracy to violate AECA with unlawful export of 55 military antennae to Singapore and Hong Kong. Cheung was unnamed conspirator in indictment of Corezing Oct. 25 (see **WTTL**, Oct. 31, page 1).

BIS: Agency imposed over \$20 million in criminal fines for export violations in fiscal year 2011, compared to over \$12 million in fiscal 2010, according to annual report to Congress released Jan. 20. BIS approved 86% of license applications in 2011, processing 25,093 applications valued at approximately \$89.6 billion, increase of more than 15% in volume from 2010.

SOFTWOOD LUMBER: U.S. and Canada agreed Jan. 23 to extend 2006 U.S.-Canada Softwood Lumber Agreement (SLA) to Oct. 12, 2015 (see **WTTL**, Sept. 19, page 4).

DR-CAFTA: At Jan. 23 meeting of DR-CAFTA Commission in Miami, participants agreed to discuss expanding coverage of pact. “At our last meeting we agreed to a series of changes to the Agreement’s rules of origin for textiles and apparel goods. We determined that it is timely to consider possible modifications and updates to the Agreement’s rules of origin for non-textiles and non-apparel goods,” they said in joint statement. “We reviewed the status of the implementation of the modifications to the textile and apparel product rules of origin and look forward to their implementation as soon as possible,” they said.

JAPAN: U.S. and Japan Jan. 27 claimed progress has been made under U.S.-Japan Economic Harmonization Initiative (EHI) that was launched in February 2011. In latest talks, Japan promised again to resolve U.S. complaints about Japan Post’s discrimination against foreign insurers. Two countries also have agreed to adopt non-binding bilateral Trade Principles for Information and Communication Technology Services.

SALMON: After 20 years, U.S. will lift CVD and AD orders on Atlantic salmon from Norway after ITC “sunset” 5-0 finding Jan. 26 that revoking orders won’t cause renewed injury to U.S. industry.

TRADE REORGANIZATION: In case industry opposition to trade reorganization wasn’t clear, 86 trade associations sent letter to President Obama Jan. 24 to express their “deep concerns over your Administration’s proposal to merge the Office of the U.S. Trade Representative with five other agencies responsible for business and trade into one single cabinet-level department” (see **WTTL**, Jan. 23, page 3).

U.S.-EU: U.S. and EU should work toward negotiations of FTA based on high principles being considered in TPP talks, 49 agriculture trade associations said in Jan. 24 letter to USTR Ron Kirk. At last U.S.-EU economic summit Nov. 28, Kirk and EU Trade Commission Karel de Gucht were given assignment to form working group to explore trade ideas, including FTA (see **WTTL**, Dec. 5, page 3).