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Some DTSA Staff Unhappy with USML to CCL Switches

Not everyone at the Pentagon's Defense Technology Security Administration (DTSA) is happy with proposals to shift thousands of items now on the U.S. Munitions List (USML) to the Commerce Control List (CCL). Although top-level managers at the agency publicly express enthusiasm for the Obama administration's export control reform initiative, concerns have been raised that some working-level licensing officers at DTSA are resisting the expected transfers and could make an end-run to Congress to gin up opposition to the moves. Their objections could cause delays in the congressional notification process under Section 38(f) of the Arms Export Control Act (AECA).

When former Secretary of Defense Robert Gates said the goal of export reforms is to protect the "crown jewels" of U.S. technology, some DTSA licensing staffers began to claim what they are reviewing are the crown jewels, one senior official told WTTL. Because of this attitude, the 38(f) process "is going to be excruciating," he said. Another official reportedly has conceded that some staffers at DTSA "are fighting the assignment."

In the past, some DTSA licensing officers established their own "back channel" communications with members of Congress and congressional staff and used those contacts to complain about licensing decisions of previous administrations. The concern now is that those unhappy with the shift of licenses to the CCL will again take their objections to Congress.

Lack of Trust Blocks Movement on TAA and FTAs

The deadlock over renewal of Trade Adjustment Assistance (TAA) and passage of pending trade deals with Colombia, Panama and Korea has come down to a lack of trust. The White House and congressional Democrats don't trust Senate Republicans, especially Senate Minority Leader Mitch McConnell (R-Ky.), to pass TAA on its own, and GOP members don't trust administration promises to send up the three free trade agreements (FTAs) for approval. The continuing stalemate over TAA and the FTAs is another manifestation of the poisonous political atmosphere in Washington, congressional sources say.

As a result, there is no deal yet on how to move TAA and the FTAs. An offer, orchestrated by Sens. Roy Blunt (R-Mo.) and Rob Portman (R-Ohio), from 12 Republicans to support cloture against any filibuster of TAA legislation that comes to the Senate floor hasn't convinced some Democrats that TAA can get through the Senate without poison-pill amendments attached. In a



letter sent to President Obama July 22, Blunt, Portman and 10 other GOP senators pledged to vote for cloture to proceed to consideration of a standalone TAA bill and for cloture on final passage. At a press conference July 22, Blunt and Portman evaded questions on whether they and the co-signers would also commit to voting against any amendments to a TAA bill. Democrats are concerned that debate over amendments, including a GOP proposal to renew fast-track trade negotiating authority, would bog down consideration of a bill.

Republican staffers point out that Democrats have a majority in the Senate and could prevent the addition of GOP amendments. Democrats, of course, also might want to add amendments that would be opposed by House Republicans. If amendments are added to a Senate bill, Portman said, any differences with the House version could be resolved in a House-Senate conference.

McConnell, meanwhile, made it clear that he wants Senate Republicans to be able to offer amendments to any TAA bill. "I, myself, am personally committed to working with the majority leader to ensure a fair floor process for my members so they have an opportunity to try to amend a standalone trade adjustment assistance bill separate from the three free-trade agreements," he said on the Senate floor July 21.

An administration official welcomed the pledge from the 12 GOPers. "What's needed now is a commitment on specifics from the leadership of both chambers for a viable process for the passage of the three trade agreements and TAA," the official said. No formal statement has been made on when the White House will send TAA and the FTAs to Congress for approval, but the general expectation is it won't send them up before Congress starts its August recess.

USML-CCL Switch Will Await BIS Resources

The Bureau of Industry and Security (BIS) won't move items from the U.S. Munitions List (USML) to the Commerce Control List (CCL) until it has the resources to handle the extra licensing load, agency officials promise. "We'll make sure we have the resources in place before the items are moved," BIS Deputy Assistant Secretary for Export Administration Matthew Borman told the agency's annual Update conference July 19. "We're working very close with our budget people to make sure we have the resources we need to handle whatever comes over from the USML to the CCL," he said.

BIS advisory committees have voiced concern about whether the agency would have the resources to handle some 30,000 licenses that the White House Office of Management and Budget has estimated will move to BIS when the full movement of controlled items occurs (see **WTTL**, June 20, page 3). BIS and State officials contend that many of those licenses won't be needed because most of the shifted items will become eligible for export under various license exceptions.

Exports to countries eligible for License Exception Strategic Trade Authorization (STA) "constitute 68% of the licenses that I do," said Robert Kovac, managing director of State's Directorate of Defense Trade Controls (DDTC). "If I move a commodity, where it was licensed 68% of the time, it will no longer need a license," he asserted. "There won't be a one-for-one correlation between the number of licenses that will come over just based on the [STA] countries alone," he told the Update conference.

Even if just 32% or nearly 10,000 of the shifted licenses continue to need licenses, that would represent a 50% increase in BIS' workload. Privately, export officials say those licenses will require "staffing" to State and Defense as part of the interagency license review process because officials at the Defense Technology Security Administration (DTSA) don't trust BIS and have refused to grant it authority to approve licenses without interagency review except for eight categories. As a result, licenses that DDTC approves in about 15 days without having to get DTSA approval could end up taking 30 days for BIS clearance because of the interagency review process. "We are still working through internally for all those items that come over

what will be the referral process,” Borman said. Ann Ganzer, acting deputy assistant secretary of State for non-nuclear and counter-proliferation, told the Update meeting that her office is looking at staffing patterns because it will get extra licenses from BIS to review.

Bill Would Make Antiboycott Rules Separate and Permanent

Antiboycott rules that are now part of the Export Administration Act (EAA) would become a separate law – the Antiboycott Act – with no expiration date under an amendment the House Foreign Affairs Committee approved July 21 to pending authorization legislation to fund the State Department. The amendment is aimed at preventing legal challenges of the current anti-boycott regulations, which have been extended under executive orders maintaining the Export Administration Regulations (EAR) under the provisions of the International Economic Emergency Powers Act (IEEPA). Some trade lawyers claim antiboycott rules don’t meet the same national security emergency that allows the president to use IEEPA to maintain export controls.

“The use of IEEPA to continue the EAA – for antiboycott and export controls – has been challenged in a series of lawsuits,” said Rep. Howard Berman (D-Calif.), who sponsored the amendment. “Over the past decade, two of those lawsuits reached the federal appeals courts and were decided in the government’s favor by split decisions. There is a risk that some day the government will lose,” he said in prepared comments to the committee.

The amendment, which was part of final foreign relations authorization bill (H.R. 2583) passed by the committee, would impose up to a \$1 million fine for each criminal violation and up to \$250,000 per violation in civil fines, along with denial of export privileges whether or not an export license is required. In addition, all reports that must be submitted to Commerce of requests for compliance with a boycott would be open to public inspection except for confidential information, if the secretary of Commerce makes a determination that release of the information would put the filer at a “competitive disadvantage.”

U.S., China Spar over Doha Tariff-Cutting Proposals

U.S. demands for China to cut tariffs in the chemical, electronics and industrial machinery sectors as part of a Doha Round deal have led to an impasse in bilateral U.S.-China talks, officials from both countries indicated. The chemical sector is an example that brings us to the “reason of the current impasse in the Doha negotiations,” Zhu Haitao, the second secretary of China’s Mission to the World Trade Organization (WTO), told a program in Geneva July 21.

Zhu said the U.S. has asked China to cut to zero or near zero more than 1,000 tariff lines in those three sectors as part of sectoral negotiations. Those tariff lines are about 43% of China’s industrial tariffs, he noted. The result would be a coefficient of 8 using the Swiss formula for reducing tariffs, which would be the same as that for developed countries, compared to a coefficient of 20 proposed for developing countries, he argued.

In the negotiations, the U.S. is looking at its competitive position in relation to other major competitors, explained David Shark, the deputy chief of the U.S. Mission to the WTO. As an example, he cited China’s strong chemical industry. What’s on the table right now would “give them greater competitive advantage” and would lead to tariff deharmonization, he argued.

The U.S. decision to stop the bilateral discussion was made after the realization that there was no hope of bridging the differences, Zhu said. The wrong political environment has prevented substantive discussions, he added. “Simply asking others to do more [in the sectorals] will not lead to answers,” the Chinese diplomat said. Zhu suggested the Doha talks aren’t ready to be completed this year and it may take a few more years to reach a deal. “Unfortunately, it is not the right time. It takes time for both the developed world and emerging economies to adjust to

find a new balance to interact with each other. How long that will take isn't known," he said. 2012 is "obviously not the right year," Zhu said. Nor are 2013 and 2014, while 2015 might have a "slight chance" to conclude the round, he stated.

Shark dismissed assertions that elections in the U.S. in 2012 and a coming change in China's leadership will affect Doha talks. The problem is not "electoral calendars," Shark said. "What we've been doing so far is not working," he said. Election timing isn't going to solve the "fundamental issues of economics that people are trying to settle in these negotiations," Shark said. While negotiators don't know where the talks will go, "I can confidently predict that [WTO] members will not decide that [the Doha Round] is dead," Shark said. The remaining issues in the Doha Round are difficult, he conceded, referring to talks on agriculture, industrial market access and services. Saving the most difficult part of something for last is "human nature," Shark said.

One of the key things that drives the U.S. when it looks at balance in the negotiations is the test that the Doha Round is setting the terms of trade that will "probably" govern the next 20 years, Shark said. Proponents who say finish the round quickly and move on to work out the unresolved issues aren't accounting for the years that implementation will take and the "enormous negotiating fatigue," Shark said.

BIS Aims to Complete USML-CCL List Switch in 18 Months

BIS is aiming to complete the move of thousands of items from the USML to the CCL by the end of 2012, BIS Under Secretary Eric Hirschhorn told the agency's Update conference July 19. "We anticipate that later this year, the Department of State will issue a final version of Category VII, which will be followed by proposed rules for Categories VI (Naval Vessels) and VIII (Aircraft). The plan is to have all USML categories, and the corresponding revised ECCNs in the CCL, written and final form before the end of next year," he said.

At a press briefing, Hirschhorn fleshed out the process. "Well before the end of the next year, we have a high level of confidence that most, if not all, of the moves from the Munitions List to the Commerce Control List will have taken place," he said. "Obviously, we have Congress to take into account," he added, noting the process for notifying congressional committees about the changes under Section 38(f) of the Arms Export Control Act (see **WTTL**, July 18, page 3).

"Once we've done it once or twice, we hope it will get easier as things go by. I think it's a question of Congress being comfortable with what you're doing. That's very important to us. If we're able to achieve that, it should become almost a regularized process, but that's something that's ahead of us," he told reporters. Hirschhorn also clarified the proposed new "600 series" in the CCL for items moved from the USML. "It's a permanent category, not a holding category" he said at the briefing. "It's not to say at some future time some of them may not move to a lower level of control, but that's not the initial step by any means. There's no particular plan for subsequent steps," he said.

"Obviously part of what we're trying to do is ensure a continuing examination of what's controlled, that's the idea of the cascading criteria, so that as technologies become riper and more mature and more widespread they can eventually head toward a lesser control in tier 3 and perhaps in some cases eventually to decontrol," Hirschhorn noted. But at a separate Update briefing, BIS Assistant Secretary for Export Administration Kevin Wolf said there will "probably not" be any move of parts and components in the 600 series to EAR99 status.

U.S. Objects to Draft Goals for UN Arms Trade Treaty

The U.S. has raised strong objections to a draft working paper that is supposed to set the terms for the negotiation of a United Nations Arms Trade Treaty (ATT) in 2012. At preparatory talks

in New York the week of July 11, U.S. delegates complained the paper would take negotiations beyond the scope originally envisioned and certainly further than Washington is willing to go. The UN General Assembly approved a resolution in 2006 calling for the adoption of an ATT at a conference to be held sometime in 2012. One area reportedly of concern deals with hunting rifles and guns on which countries like Mexico want tighter controls but the U.S. is resisting because of political opposition to gun control.

The ATT's goal is a common, legally binding, international standard for the transfer of conventional arms and for boosting transfer control systems in countries that do not currently have active export control regimes. Preparation for the conference began in 2010 with a series of meetings, which have been guided by working papers drafted by the chairman of the negotiations, Argentine Ambassador Roberto Garcia Moritan. It was Moritan's latest draft that drew U.S. objections during the New York meeting.

"The paper right now as it stands is more or less a compendium of what everyone has said they want in the treaty. There really hasn't been anything taken out," Ann Ganzer, acting deputy assistant secretary of State for non-nuclear and counter-proliferation, told WTTL. "In our intervention, we raised objections to certain things in the chairman's paper, but none of it has come out," she added. The paper isn't going to turn into the treaty "because there is a lot in it that we don't like," Ganzer said. "One of our interventions said the treaty needs to focus on what countries need to do...as opposed to how they do it," she told WTTL. Negotiations on the treaty are expected to take place over a four-week period in the summer of 2012. Any final treaty would have to be agreed upon by consensus of all 193 countries participating in the talks.

Focus Turning to Small Doha Round Package for LDCs

The outline of a small package of "early harvest" Doha Round benefits for Least Developed Countries (LDC) is becoming clearer, and a series of meetings at the WTO the week of July 25 could determine whether members will be able to agree on its contents in the fall before the WTO's ministerial conference in December. According to participants in the talks on a package, key disagreements remain over provisions on cotton, fisheries and food aid. WTO Director-General Pascal Lamy will hold a "green room" meeting of a group of WTO members on Monday, July 25. The Doha Trade Negotiations Committee will meet informally on July 26 and the WTO General Council on July 27 to discuss the package.

A December deal on cotton "doesn't appear to be coming together," David Shark, deputy chief of the U.S. Mission to the WTO, said at a July 21 conference in Geneva. Cotton is proposed for inclusion in the December package, he said. If everything proposed is included in the December package, it would be a "faint shadow" of what was set out to do in the round, Shark said. A unilateral U.S. move on cotton would be "very poorly received on Capitol Hill," WTO Spokesman Keith Rockwell acknowledged. Agreeing on something for market access for LDCs as a standalone "would also be difficult" for the U.S., he added.

Despite some progress, serious doubts remain over whether something will emerge this year. Several sources said there is a strong desire among members to avoid a row over the package during the ministerial. Lamy's consultations on a small package have been "very difficult," said Rockwell. Some countries have had "difficulty in accepting a standalone LDC package," he noted. LDCs have been pressing for provisions on duty-free/quota-free access to developed countries' markets and on cotton, he reported.

Other difficult issues include disciplines on fisheries subsidies, export competition for agriculture, market access for environmental goods and services and food aid, Rockwell said. On the other hand, trade facilitation has "very little opposition," he said. On fisheries, Japan, Taiwan and South Korea all have difficulties with subsidies, Rockwell said. Japan says it doesn't want disciplines stricter than China's because China has many more fishing vessels and the Chinese

fleet is just as sophisticated. India and Brazil don't like proposals on environmental goods and services because they see it as a market access issue for developed countries. The European Union (EU), Switzerland and Canada are concerned with export competition, such as export credits, direct export subsidies and food aid.

Lack of Data on Services Trade Hinders Negotiations

The lack of data on the size of the services market in Asia and barriers to trade in these sectors is hindering efforts to insert strong services provisions in the Trans-Pacific Partnership (TPP) talks now under way, U.S. officials are finding. Addressing the Coalition of Service Industries' Global Services Summit July 20, Deputy U.S. Trade Representative (USTR) Demetrios Marantis acknowledged these challenges. One of the challenges to getting broad political support on services is the amorphous nature of the industry.

"The data on services is lagging," Marantis said. "We need more accurate information to help us make the political pitch as to why liberalization of the services sector is so important and why it means increased jobs for all of our economies. It's a challenge we face on a daily basis," he added.

The Obama administration has three key priorities for the region this year relating to services, Marantis said: (1) defining what the 21st century issues are, in the context of trade agreements; (2) to help push forward the agenda of promoting growth in environmental goods and services; and (3) achieving more regulatory cooperation and convergence. Marantis said a potential TPP services agreement is "not just about securing high standard market access; it's all about ensuring that there are disciplines in place that help remove restrictions that have bedeviled our service providers and help facilitate trade in services in the region."

* * * BRIEFS * * *

ANTIBOYCOTT: Three companies have settled separate allegations that they violated antiboycott provisions of EAR in transactions involving Libya, BIS announced July 20. Applied Technology Inc. (ATI), in Raleigh, N.C., Lynden Air Freight (dba) Lynden International, in Seattle, Wash., and Smith International Inc. in Houston, Texas, paid total of \$50,900 in civil penalties. ATI will pay \$10,000 to settle two allegations related to 2006 transaction to Libya. Lynden will pay \$20,400 to settle three allegations also tied to sales in Libya in 2006. Smith agreed to pay \$20,500 to settle 11 allegations surrounding transactions to Libya and UAE from 2006 through 2008. ATI President Mohammed El-Gamal has settled separate civil and criminal charges related to trade with Libya (see **WTTL**, July 11, page 4).

ENTITY LIST: BIS added two Hong Kong companies and four in Lebanon to Entity List in July 25 Federal Register: Biznest Ltd., and Yeraz Ltd. (Hong Kong) and Micro Power Engineering Group, Narinco Micro Sarl, Serop Elmayan and Sons Lebanon and Serpico Offshore Sarl (Lebanon). Companies purchased electronic components from foreign subsidiaries of U.S. firms and then resold components to persons in Iran and Iraq. "The same components were later found in Iraq in unexploded improvised explosive devices and related materials," BIS said.

STAINLESS STEEL PLATE: In split "sunset" rulings July 20, ITC on 4-2 vote determined that revoking CVD order on stainless steel plate from South Africa and antidumping orders on plate from Belgium, Korea, South Africa and Taiwan would likely lead to renewed injury to U.S. industry. At same time, on 5-1 vote, it found injury unlikely to recur if AD order on plate from Italy were revoked, setting stage for revocation of order on Italian goods.

AMMONIUM NITRATE: In another "sunset" review, ITC voted 6-0 July 20 that revoking antidumping order on ammonium nitrate from Russia would likely cause injury to U.S. industry.

BALL BEARINGS: CIT Judge Timothy Stanceu July 20 rejected motion to reconsider his remand order directing ITA to apply Court of Appeals for Federal Circuit's ruling in *Dongbu* to its 17th administrative review of ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom (slip op. 11-86). Stanceu said ITA either has to modify its decision or provide new explanation of why it applies "zeroing" in administrative reviews but not new investigations.