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Proposal Would Ease Controls on Defense Service Exports

State's Directorate of Defense Trade Controls (DDTC) is expected -- perhaps as early as the week of April 11 -- to propose revisions to the International Traffic in Arms Regulations (ITAR) to reduce the need for export licenses for many activities that have been classified as "defense services" in the past. Under the proposal, which has been under consideration for over a year, the mere hiring of U.S. persons to perform functions, including certain training, would not be considered a defense service (see **WTTL**, July 12, 2010, page 3).

The proposal would also explicitly exclude from licensing requirements the transfer or use of technical data that is in the public domain. Without the clarification of the public domain exemption, transfers of technical data now trigger requirements to obtain Technology Assistance Agreements (TAA) or Manufacturing License Agreements (MLAs) from DDTC.

The proposal, which received the endorsement of the Defense Trade Advisory Group (DTAG) a year ago, would clarify that a defense service would be subject to licensing when the assistance involves the integration of an item on the U.S. Munitions List (USML) or the Commerce Control List (CCL) into an end item on the USML. In addition, the mere hiring of a U.S. citizen by a foreign government or military would not require a license. A license would be required when a U.S. citizen provides training to foreign units or forces only if the training involves employment of a defense article.

Deal Puts Colombia FTA's Fate in Colombia's Hands

The Obama administration is trying to get the monkey of the U.S.-Colombia Free Trade Agreement (FTA) off its back and onto Bogota's in a deal April 6 that will require Colombia to take a series of specific steps over the next three months to meet U.S. concerns about labor rights in the country. The agreement gives President Obama discretion to decide when and if Colombia has met its commitments and when to send the accord to Congress for approval. With the fate of the FTA now in Colombia's hands, the White House can claim it's not delaying the deal and can push to get Congress to move the rest of its pending trade agenda, including the Korean FTA, Trade Adjustment Assistance and the Andean Trade Preference Act. Colombian President Juan Manuel Santos endorsed the agreement in an Oval Office meeting with Obama April 7. "The action plan that is giving the green light to the Free Trade Agreement is one that establishes stronger defense of workers, physical defense of workers," Santos said. Among the objectives of the action plan are creating a new labor ministry, reforming the criminal code to



punish employers who violate workers' rights, hiring new labor inspectors and police investigators, inspecting workplaces in key industry sectors, educating the public about workers' rights, expanding current protection programs to include union activists and investigating and potentially closing cold homicide cases of unionists.

Key Colombia FTA "To Do" List		
Date	Goal	Done
April 15	Approve budget to hire 100 labor inspectors	
April 22	Issue hiring decree for inspectors	
April 22	Establish and publicize web and telephone hotline for labor complaints	
April 22	Confirm inspections of cooperatives in palm oil, sugar, mines, ports and flower sectors	
April 22	Broaden protection program for labor activists, organizers and ex-unionists	
April 22	Amend teacher protection program to eliminate pecuniary sanctions	
April 22	Meet with unions to compare unionist homicide cases with Prosecutor General's	
April 22	Publicize cases decided from January 1, 2011	
May 30	Ensure 2012 funding for labor inspectors	
June 15	Start promoting awareness of illegality of collective pacts	
June 15	Issue regulations implementing 2010 cooperatives law	
June 15	Conduct preventive inspections of temporary service agencies	
June 15	Begin training labor inspectors on conciliation and dispute resolution	
June 15	Issue guidance to prosecutors to accelerate action on leads and close cold cases	
June 30	Assign homicide cases to new police investigators	
July 15	Analyze closed homicide cases of union members and activists	
July 30	Begin emergency plan to eliminate backlog of unionist applications for protection	
Dec. 15	Fully implement enforcement plan for temporary service agencies	
Dec. 15	Complete hiring and training of first 100 labor inspectors	

In a conference call April 6 U.S. Trade Representative (USTR) Ron Kirk said, "We fully expect Colombians will take the steps they have agreed to." Some of the actions will happen before the administration moves the agreement forward and some will happen before Congress votes on the legislation, he said (see "To Do" List in box).

Kirk carefully avoided saying when the administration would confirm that Colombia has successfully taken all the actions it has promised or when Obama would send the FTA to Congress for approval.

While the deal drew praise from Republicans in Congress and the business community, it received a mixed reaction from Democrats and opposition from organized labor. "I have been eager for such an action plan and time frames to be developed for some time, and this announcement is certainly a major step forward," said Ways and Means Committee Chairman Dave Camp (R-Mich.).

The spectrum of Democratic response ranged from Senate Finance Committee Chairman Max Baucus (D-Mont.), who said, "I'm going to keep fighting to get this agreement passed in Congress so that Montana producers can expand their ability to sell goods and services in Colombia while creating jobs here at home."

In the middle, Rep. Sander Levin (D-Mich.) said, "This active process allows us to provide oversight, to understand the changes as they are made, evaluate progress and shortcomings and to highlight their importance to real workers' rights in Colombia." Rep. Mike Michaud (D-

Maine), who also opposes the Korea FTA, said he was "appalled that the administration is putting forward this action plan as the answer to Colombia's rampant human rights and labor rights violations."

A sweetener in the deal may have been an April 7 U.S. Export-Import Bank decision to give preliminary approval to a \$2.84 billion direct loan/loan guarantee for Colombia's Refinería de Cartagena S.A in Cartagena. The financing, which is subject to congressional notification, is the second largest ever approved by Ex-Im and will support the purchases of equipment and services from over 150 large and small U.S. engineering, contracting and process license firms.

GOP and White House Play Cat-and-Mouse with Korea FTA

“I have in my briefcase....” While not using that historic quote, Deputy USTR Demetrios Marantis told the House Ways and Means Committee trade subcommittee April 7 that he had with him a copy of draft legislation to implement the U.S.-Korea (Korus) FTA, but Republican leaders have not yet asked him to submit it for congressional consideration. “There have been a number of questions that we’ve been going back and forth on, in terms of how certain provisions will work, and I think we’ve answered those questions in the text and we’re ready to share it,” Marantis said. When Rep. Joseph Crowley (D-N.Y.) said he wondered if anyone had asked for it, Marantis said, “Not yet, we’ve been continuing our work on it.”

Rep. Jim McDermott (D-Wash.) pressed the issue. “If I understand correctly, we have the Korean FTA draft implementing legislation here. I just want to make it clear that Democrats want you to send it up here today. It’s time to move the ball and get the FTA moving. Let’s not play this game of who asked whom. If you’ve got it, send it,” McDermott declared (see **WTTL**, March 14, page 3).

“Despite what some are saying, we’ve already started the bipartisan technical drafting work on the Korea agreement with the administration,” said subcommittee chairman Kevin Brady (R-Texas). “Technical discussions are ongoing, and we are awaiting responses to questions that staff on both sides of the aisle have raised with USTR,” he said.

The four-year delay in adopting Korus to get more concessions to remove nontariff measures (NTM) on U.S. cars appears to have added little additional economic benefit to the pact, according to International Trade Commission (ITC) analysis released April 7. The changes agreed to in December may help increase U.S. auto exports to Korea by about \$48-66 million, which seems inconsequential compared to the \$10.8 billion trade deficit the U.S. runs in auto trade with Korea. “A separate Commission economic simulation estimates that removal of NTMs affecting U.S. exports of passenger cars could lead to an increase in U.S. exports of \$48-66 million (an increase from approximately \$119 million to approximately \$167-185 million, or 41-56 percent),” the ITC reported.

DoT Seeks Comments on Mexican Trucking Pilot Program

In a notice to be published in the April 13 Federal Register, Transportation’s Federal Motor Carrier Safety Administration (FMCSA) will seek public comments on the pilot program the U.S. and Mexico agreed to launch to allow Mexican trucks to enter the U.S. (see **WTTL**, March 7, page 1). The staged pilot program would allow Mexico-domiciled motor carriers to operate throughout the U.S. for up to three years, while U.S.-based motor carriers would be granted reciprocal rights to operate in Mexico for the same period. Participating Mexican carriers and drivers would be required to comply with all applicable U.S. laws and regulations, including those concerned with motor carrier safety, customs, immigration, vehicle registration and taxation, and fuel taxation, the notice said.

The U.S. trucking industry has already weighed in against the proposal. In a statement April 8, the Owner-Operator Independent Drivers Association (OOIDA) said it “is infuriated” by the proposal. “Mexico does not have an even remotely equivalent regulatory regime for its trucking industry and drivers,” OOIDA said.

Trade Growth Will Slow in 2011, WTO Forecasts

World trade will slow down in 2011 from the sizzling pace it set in 2010, with global exports expected to grow just 6.5%, compared to last year’s 14.5% jump, the World Trade Organization (WTO) said April 7. “However, recent events in the Middle East and Japan have raised the

level of global economic uncertainty and tilted the balance of risk towards the downside,” it warned. The report also addressed exchange rates, including China’s. “In terms of exchange rates, by February 2011 the Yuan had appreciated against the U.S. dollar in nominal terms by around 3.8% from its previous level. However, real appreciation against the dollar is happening at a faster rate due to higher inflation in China,” it stated.

“Among countries for which data are available, the five countries with the fastest growing merchandise exports in volume terms were Jordan (30%), China (28%), Japan (27%), and the Philippines (27%) and Chinese Taipei (27%),” the report said. “On the import side, the BRIC countries of Brazil, Russia, India and China all reported very rapid growth in 2010 (43% for Brazil, 39% for China, 30% for Russia and 25% for India,” it noted.

U.S. Proposes Adding Regulatory Cohesion in TPP Talks

In the latest talks that ended April 1 in Singapore on a Trans-Pacific Partnership (TPP) agreement, the U.S. proposed including provisions in the accord to establish a common approach to government regulations. “The United States tabled legal text on regulatory coherence, a new issue to feature for the first time in a trade agreement that is aimed at making the regulatory systems of the TPP countries operate more seamlessly and addressing so-called ‘behind the border’ issues that are increasingly the key barriers U.S. business faces in trying to access foreign markets,” the USTR’s office said. “The teams had the opportunity for an initial review of these texts and we expect to be able to make further progress once the TPP countries have had the chance to consult in more detail with their respective governments on these proposals.”

* * * Briefs * * *

JAPAN: BIS posted notice on its website April 6, saying it “supports all efforts for emergency support and humanitarian relief for Japan involving items subject to the Export Administration Regulations.” It noted that most dual-use item exports to Japan don’t require license. “If you plan to export items in support of current relief efforts in Japan and you think that a license may be required, you should contact BIS for guidance. If a license is required, expedited processing may be requested,” BIS said.

FCPA: With Japan’s JGC Corporation agreeing to pay \$218.8 million criminal fine for FCPA violations in deferred prosecution agreement with Justice April 6, total civil and criminal fines on companies for bribery of Nigerian officials in connection with construction of liquefied natural gas facilities on Bonny Island, Nigeria, has reached \$1.5 billion. JGC said it has paid separate \$27 million fine to Nigerian government.

MORE FCPA: Comverse Technology, Inc. of Wakefield, Mass., will pay approximately \$3 million to settle SEC and Justice charges that it made improper payments to Greek telecommunications provider from 2003 to 2006 through Israeli operating subsidiary, Comverse Limited, in Cyprus, SEC said April 6. Comverse neither admitted nor denied the SEC allegations.

MORE FCPA: Johnson and Johnson has agreed to pay \$70 million to settle SEC and Justice charges of FCPA violations of bribing public doctors in Greece, Poland and Romania and paying kickbacks to Iraq to obtain business under the UN Oil for Food Program since at least 1998. J&J neither admitted nor denied the SEC allegations, but as part of a deferred prosecution agreement with Justice April 8, it acknowledged responsibility for actions of its subsidiaries, employees and agents.

USTR: USTR Ron Kirk has named Sharon Bomer Lauritsen assistant USTR for agricultural affairs. She was executive VP at Biotechnology Industry Organization. Lauritsen previously served as Deputy AUSTR for agricultural affairs, as well as a senior manager at USDA’s Agricultural Marketing Service.

CHEMICAL WEAPONS: In one of first publicly acknowledged settlements under Chemical Weapons Convention Regulations, GEOMET Technologies, LLC., subsidiary of Versar, Inc., has agreed to pay \$35,000 civil penalty for alleged willful failure to report storage, production and consumption of chemicals subject to regulations and failing to maintain required records. Joint settlement with BIS and State resolves eight charges, including failure to report these activities in annual declaration of past activities (ADPA) reports for 2004 and 2005. GEOMET neither admitted nor denied the charges.