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State Has Put Temporary Hold on BAE License Processing

State's Directorate of Defense Trade Controls has placed a temporary hold on the processing of export license applications submitted by BAE Systems, plc, while the department reviews the company's Feb. 5 guilty plea to criminal charges that it made false statements to the government (see WTTL, Feb. 15, page 1). "There is a temporary hold on processing licenses. We will resume normal processing shortly. We also expect to issue our policy determination soon," a State Department official told WTTL in an e-mail. "We continue to accept licenses for processing," the source said. "No, we are NOT revoking or freezing previously approved licenses," the official added (his emphasis).

The determination that has to be made is whether BAE should lose its export licensing privileges because of its guilty plea. The firm agreed to pay a \$400 million criminal fine in its plea agreement with Justice. Because it pled guilty to a general conspiracy charge and not to violating the Foreign Corrupt Practices Act (FCPA), it is not bound by statute to lose its licensing privileges or its ability to sell to the Defense Department. As the Pentagon's fifth largest supplier, both sanctions would severely damage U.S. military activities.

Caterpillar Tells Foreign Subsidiaries to Stop Business with Iran

Caterpillar issued instructions Feb. 26 to all its non-U.S. subsidiaries to stop selling its equipment in Iran. The move came after the company faced negative publicity about sales to Tehran by some of its foreign distributors, including a billboard set up in Peoria, Ill., its headquarters' town, by an anti-Iran group. "The policy of Caterpillar Inc. and its affiliates has been to comply with applicable U.S. export control and economic sanctions laws and regulations, including The Iranian Transactions Regulations," the company said in statement. "But Caterpillar now has gone a step further by prohibiting its non-U.S. subsidiaries from accepting any orders for Caterpillar machines, engines and new parts where the subsidiary knows that the product would be shipped to Iran," it declared.

The announcement came after a New York-based group called United Against Nuclear Iran (UANI) put up the billboard. The sign said: "Today's Work, Tomorrow's Nuclear Iran?" and featured images of Iranian President Mahmoud Ahmadinejad and Caterpillar equipment. UANI claims a Caterpillar subsidiary, Lovat, Inc., which Caterpillar acquired in 2008, has been selling tunneling equipment to Iran and some of that equipment may be used to build the underground sites where Tehran is hiding its nuclear program. Caterpillar spokesman Jim



Dugan told WTTL that Toronto-based Lovat's last sale of tunnel boring equipment in Iran was in the late 1990s and was for a sewer drainage project. He said the newly announced policy also applies to Lovat. Caterpillar's statement said UANI's assertions "are simply not supported by the facts." UANI's claims that it has "extensive business in Iran" are inaccurate, it said.

"In fact, Caterpillar does not transact business in Iran, and Caterpillar has no assets, operations or employees in Iran. Limited, indirect sales through independent dealers and distributors of Caterpillar branded products in Iran amount to less than two-tenths of one percent of Caterpillar's 2009 worldwide sales and revenues," the company noted.

"As is the case in other markets, some sales of Caterpillar branded products in Iran are conducted by unrelated third parties in the secondary market—with no connection to Caterpillar or any of its foreign subsidiaries or even its independent dealers. And of course, Caterpillar has no legal means to control the secondary market trade of its products," it said.

Grassley Warns against Adding Labor Language to Model BIT

Sen. Charles Grassley (R-Iowa) warned USTR Ron Kirk March 3 not to add the labor and environmental provisions from the May 10, 2007, agreement between congressional Democrats and the Bush administration to a new model Bilateral Investment Treaty (BIT). Kirk, testifying at the Senate Finance Committee, ducked Grassley's questions. "We have not made a final resolution of that," he said; noting that his office and State are conducting a review of the model BIT. "We are coming hopefully to the conclusion of our review, and at that time I would be more than happy to share with you the direction that we choose," Kirk said.

"I understand that the administration is considering whether to incorporate the labor provisions of the so-called May 10th agreement into the model," Grassley said. "That's a mistake," he declared. The May 10th agreement applied only to four pending free trade agreements, he noted.

"I question whether there are some who would like to see the May 10th provisions added as a poison pill to derail any future consideration of any bilateral investment treaties," Grassley said. "Such a modification would indeed risk losing consensus support for our bilateral investment agreements. I also question whether our negotiating partners would even agree to such a modification in the first place," the Iowa Republican said.

U.S. Plans to Give Colombia Legislative Proposals

The U.S. intends to give Colombia a list of legislative changes Washington wants Bogota to enact to allow the Obama administration to send the U.S.-Colombia Free Trade Agreement (FTA) to Congress for approval, U.S. Trade Representative (USTR) Ron Kirk told the Senate Finance Committee March 3 during a hearing on Obama's trade agenda. Kirk said he is still working with lawmakers and critics of the deal to reach agreement on what changes would make the FTA acceptable. "We are hopeful we can come to some resolution with members of Congress over the next several months, if not weeks, but certainly over the next several months, so that we can then go forward to Colombia with a finite list of what we would like to see done," Kirk said. "What we don't want to do is keep moving the goal posts," he added.

"You know that there are many, particularly within the Democratic Party and in labor, who believe that the level of violence, while it has gone down, has not been matched by concurrent legislative initiatives to guarantee at least basic minimum rights of workers to organize and to do so without the threat of violence and that we also need a legislative-judicial regime in place," Kirk told the committee. "In fairness to our friends in Colombia who have been asking us, 'Tell us what we need to do,' we thought it was only fair to get that information and work with you so that we can present them with a list of those legislative changes," he said. Kirk

said the proposals would be aimed at strengthening worker rights, including the right to organize, and the judicial system, so that violators of those rights will be prosecuted. At the same time, he praised the “extraordinary progress that [Colombian] President Uribe has made in combating violence in Colombia.”

In addition to Colombia, committee members pressed Kirk on other trade issues. Sen. Bill Nelson (D-Fla.) complained about the administration's apparent opposition to legislation to extend and enhance the Haitian Opportunity Partnership Encouragement Act (HOPE) to allow Haiti to produce duty-free apparel from non-U.S. fabric. “I didn’t mean to imply that we are opposed to that,” Kirk replied. He said the administration’s concern was that such a move would serve as a backdoor for China to bring in more apparel to the U.S. duty-free. “One of the biggest concerns that we’ve got is we don’t just want to create a venue that some other country just comes in and floods the U.S. with textiles that in no way benefit the people of Haiti or help America’s producers,” Kirk explained.

He also faced questions from Sen. Mike Enzi (R-Wyo.) about China’s use of a rebate to its Value Added Tax to benefit its soda ash industry. Sen. Ron Wyden (D-Ore.) expressed strong concerns about a new Chinese program, the Indigenous Innovation Accreditation System, which Wyden said discriminates against U.S. intellectual property rights holders in government procurement in China. Kirk said the issue was being addressed in the bilateral Joint Commission on Commerce and Trade. Sen. John Kerry (D-Mass.) made a short appearance at the hearing to plug a trade preferences program for Afghanistan and Pakistan. Among other topics raised were catfish from Vietnam and lumber harvesting proposals in British Columbia which might go beyond dealing with beetle infestation and allow more trees to be harvested with lower fees.

Report Clears Way for Sanchez Confirmation to ITA Post

A report clearing Frank Sanchez from any misconduct for his role in a defaulted loan backed by a government grant appears to have opened the way to his confirmation to be Commerce under secretary for international trade. The results of an investigation by the Health and Human Services Department (HHS) were revealed at Sanchez’s Senate Finance Committee confirmation hearing March 2. Questions about his role in the loan have delayed consideration of his nomination for nearly a year since President Obama tapped him to head the International Trade Administration (ITA) (see **WTTL**, April 20, 2009, page 4).

Sen. Charles Grassley (R-Iowa) noted the results of the HHS report and said questions about the loan had held up the committee’s consideration of Sanchez’ nomination. Sanchez was approved last year by the Senate Banking Committee, which shares congressional oversight of ITA. “We’re going to make sure you’re confirmed,” said Finance Chairman Max Baucus (D-Mont.).

In response to questions from Grassley, Sanchez explained that he had been a member of the board of the Community Development Corporation (CDC) in Tampa, a nonprofit organization that tries to help businesses and workers in East Tampa. While he was on the board, a firm named Renaissance Steel came to CDC for a loan to open operations in that neighborhood and train workers. After the loan was made Sanchez became president of Renaissance. Sanchez said the CDC staff had worked on the loan, which was funded by an HHS grant, and that he had recused himself from CDC board consideration of the loan. Renaissance operated for two years after the loan was made, but in 2007 it closed down due to the business downturn and defaulted on the loan, Sanchez told the committee.

New BIS Compliance Guidelines Offer More Flexibility

Exporters will have greater flexibility to design their export compliance programs to match their size and products under revised and greatly expanded guidelines for Export Management

and Compliance Programs (EMCP) that the Bureau of Industry and Security (BIS) released Feb. 22. “There is no generic, off-the-shelf, one-size-fits-all EMCP that could completely cover the great variety of different industries and business characteristics,” BIS concedes. “By developing an organization-specific compliance program that is appropriately tailored to the nature of an organization’s export and reexport activities, an organization can implement an effective compliance program that works well,” it says.

The 145-page document focuses on nine elements that should be part of any compliance program. These include: (1) Management Commitment; (2) Continuous Risk Assessment of the Export Program; (3) Formal Written EMCP; (4) Ongoing Compliance Training and Awareness; (5) Cradle-to-Grave Export Compliance Security and Screening; (6) Adherence to Recordkeeping Regulatory Requirements; (7) Compliance Monitoring and Periodic Audits/Assessments; (8) Internal Program for Handling Compliance Problems; and (9) Completing Appropriate Corrective Actions in Response to Export Violations.

While BIS says implementing an EMCP is a voluntary decision, it also stresses the benefits of having a program in place. In addition to avoiding violations of export controls, an effective program “can be considered a mitigating factor, with great weight, in determining administrative penalties in case of an export violation,” it declares. Along with the guidelines, BIS offers exporters the opportunity to send a copy of their compliance program to the agency for review and comment. Firms can send their EMCPs to Tom Andrukonis, director of the export management and compliance division in the BIS Office of Exporter Services.

* * * Briefs * * *

TRADE PEOPLE: Former USTR Susan Schwab has joined Mayer Brown law firm in D.C. as strategic advisor. Ex-USTR Mickey Kantor was already at firm. Schwab will continue to hold her professorship at University of Maryland School of Public Policy,

ITA: President Obama announced March 1 that he intends to nominate Michael C. Camuñez to be ITA assistant secretary for market access and compliance. Camunez is currently special assistant to president for personnel and worked on Obama-Biden Presidential Transition Project. Previously, he was partner in law firm of O’Melveny & Myers and also served in Clinton administration.

ANTIDUMPING: Court of Appeals for Federal Circuit March 2 on split 2-1 ruling rejected appeal by Ad Hoc Shrimp Trade Action Committee and upheld CIT and ITA opinions that multinational corporation provision in antidumping law does not apply in situation when non-exporting country is nonmarket economy and normal value is based on factors-of-production methodology.

CHINA: Joint U.S.-China working group released report March 5 explaining discrepancy between how U.S. and China measure trade figures. Without saying which approach is right, group said discrepancy has declined in recent years. Main cause of differences is that “goods are recorded as exports to intermediary country or region by Chinese customs, while recorded as imports from China by the United States based on the principle of Country of Origin,” report explains.

WAYS AND MEANS: Rep. Sander Levin (D-Mich.) became acting chairman of House Ways and Means Committee March 4 after Chairman Charles Rangel (D-N.Y.) took temporary leave of absence due to ethics investigation of his activities and Rep. Pete Stark (D-Calif.) held post for one day before being pushed out by fellow Democrats and House leaders. Levin has been sharp critic of U.S.-Korea Free Trade Agreement because of auto provisions and also leading advocate for stronger labor laws in Colombia as condition for considering U.S.-Colombia FTA.

TRANS-PACIFIC PARTNERSHIP: First round of talks to be held March 15-19 in Melbourne, Australia.

IRAN: GAO report (10-375) March 4 said U.S. trade statistic erroneously count exports to Iran because some AES filings inadvertently list Iran as destination instead of Ireland, Iraq and other countries. “The misidentification of Iran as the recipient resulted from errors in export data filings that Census did not detect or correct,” it said. “As a result of our review, Census officials stated, Census has begun manually checking all new filings of exports to Iran and posting corrections to a Census Web page.” it noted.