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State Asks NSC to Review Policies on Foreign Nationals

State's Directorate of Defense Trade Controls (DDTC) has asked the National Security Council (NSC) to review the different ways foreign dual-nationals are treated under U.S. export controls and to come up with a single policy. The DDTC paper, sent at the end of March, is intended to "begin a process of some type of review in the area of dual-nationals, trying to get the various ways to treat dual-nationals on the same page," DDTC Principal Deputy Assistant Secretary Frank Ruggiero told the Defense Trade Advisory Group (DTAG) April 7.

"This has been an issue for us across the board with our allies," he said. "Many governments have come to us and said these rules, from a human rights perspective, are unenforceable," Ruggiero said. "We've tried to address these concerns on an individual basis, but we want to get out of this ad hoc approach to solving this issue," he said.

DDTC and the Bureau of Industry and Security (BIS), as well as other agencies, use different standards for determining the country of citizenship of foreign nationals subject to U.S. export controls. State will look back to an individual's country of birth, while BIS will consider his or her last country of citizenship. DDTC's interpretation of the International Traffic in Arms Regulations (ITAR) has drawn criticism and legal debate, especially in Canada.

Because Obama administration is still organizing the NSC, the DDTC paper was given to the NSC staff to be put on the agenda for early consideration. The paper said "this is a concern the State Department has," DDTC Managing Director Robert Kovac told WTTL. "Here's the reasons we think this warrants an interagency policy committee meeting to discuss the ramifications," he explained. Kovac said the reasons for the different policies among the agencies isn't important. "It doesn't matter why they do it; it only matters that it exists and is different," he said. "The 'why' is a matter of practice and policies," he added.

Kirk Decides Not to Wait on Sanctions on Canadian Lumber

U.S. Trade Representative (USTR) is a quick study. On April 3 he said he wanted to review Canada's plans for paying the U.S. to settle a complaint that it had violated the terms of the Softwood Lumber Agreement (SLA). On April 7 he issued an order to impose a 10% tariff on imports from four Canadian provinces because Ottawa's remedy wasn't satisfactory (see WTTL, April 6, page 1). "We studied it and then we made our decision," Kirk told WTTL. "We have been in constant communications with our friends in Canada. We would like very



much for this to be resolved,” he added. “I understand they have some political challenges, but [Canadian Trade] Minister Day is looking at those, and if they can come up with a satisfactory answer, it could be resolved otherwise,” Kirk told WTTL. Formal notice of the new tariff was published in the April 10 Federal Register, with an effective date of April 15, offering time for the U.S. and Canada to work out a possible truce in the dispute.

Kirk announced the imposition of the tariff on softwood lumber imports from Ontario, Quebec, Manitoba and Saskatchewan in retaliation for what the U.S. considers Canada’s failure to comply with the recommended solution to the SLA violation proposed by an international arbitration tribunal. The USTR’s office said Canada’s offer to pay what the U.S. calculates to be US\$36.66 million does not cure the breach identified by the tribunal.

WTO Services Talks Shift away from Doha Round

With talks in the services leg of the Doha Round stalled, World Trade Organization (WTO) members are shifting their focus to the WTO’s regular services committee to determine the future direction for services negotiations and to consider the potential impact of proposals to tighten global regulatory oversight of financial services. The move came at the end of a cluster of services meetings from March 30 to April 6, reviewing the General Agreement on Trade in Services (GATS) and marking the 10th anniversary of the WTO Financial Services Agreement.

No Doha services negotiations had taken place since July 2008 when WTO members held a “signaling” conference and the chair of the services talks released a draft text, reported Hamid Mamdouh, director of the WTO Trade in Services Division (see **WTTL** Aug. 4, page 3). The approach since then has been one of anticipation, Mamdouh said. WTO members now think the silence on the Doha services front has been too long, he said.

“In terms of Doha, nothing happened” in the recent cluster of meetings, said a high-ranking developing-country trade diplomat. “Everybody knows this is the worst possible time to talk about market access in the negotiations,” he said. Executives from the European Services Forum were in Geneva for the cluster, “but the Americans didn't even bother to show up,” he said. “This is not the time to ask for more concessions, so if they raise the issue, they might lose the concession that are on the table,” he warned.

Mamdouh agreed that the April services meetings were more about market liberalization under the existing GATS than the Doha Development Agenda (DDA). “The scope . . . has broadened to encompass not only the DDA negotiations but also the reactivation of the regular agenda of services, particularly in the regular council,” Mamdouh said. Participants agreed that the WTO secretariat would produce about twenty “sectoral background papers that would feed into a program of sectoral discussions,” Mamdouh said. Something similar happened ten years ago in preparation for the Doha Round, he added.

Much has changed since then and business practices and technology have advanced, he noted. “The role of government is coming now increasingly under focus in terms of the regulatory responsibilities,” he said. Participants thought “a fresh look at policy and regulatory issues would be extremely helpful for everyone,” he reported. Most of the conclusions that came out of the 1997 Asian financial crisis pointed to inadequate regulation or lax enforcement, Mamdouh said. “It was very interesting to see those perspectives repeated last week,” he said.

OFAC to Split Licensing Tracks for Exports to Iran, Sudan

Treasury’s Office of Foreign Assets Control (OFAC) plans to divide the licensing process for agriculture and medical products going to Iran and Sudan to speed up approval and denial

decisions for farm exports, according to Victoria Rosenthal, OFAC senior counsel. OFAC has licensing jurisdiction for exports of agriculture, medicines and medical devices to the two countries under the 2000 Trade Sanctions Reform and Export Enhancement Act (TSRA). Exporters of these products have complained for years about the delays in getting licenses approved by OFAC. “We are all very aware that the community is frustrated with how long it takes,” Rosenthal told a recent BIS Export Control Forum in Newport Beach, Calif. “OFAC is, in fact, doing some things to speed up the process,” she said.

Agriculture product export licenses “are going to be handled on a separate track” from medicines and medical products “that take more scrutiny than ag products,” she said. OFAC is also “looking at improvements in processing times,” Rosenthal said. “I hope you will see improvements, but I can’t say when,” she told the conference. Approvals for medical products can take longer because the sales usually go to facilities operated by the governments of Iran and Sudan, raising questions about whether they will be used for civilians or the military.

Obama Administration Will Push for UK, Australia Treaties

The Obama administration is committed to supporting Senate ratification of the defense trade treaties the Bush administration negotiated with the United Kingdom (UK) and Australia, according to Frank Ruggiero, DDTTC deputy assistant secretary of state. Ratification of the treaties is “a priority for the administration,” he told the Defense Trade Advisory Group (DTAG) April 7. “That message has been delivered at the more senior levels between the government of the United States and the United Kingdom and Australia,” Ruggiero said.

“We’ve been working with the Senate to try to answer some questions that are left over from the previous Congress; mainly related to the issue of enforcement,” he explained. “We’ve been working with our colleagues at the Department of Justice to answer questions related to enforcement,” he added.

Senate action on the treaties was stalled in the last Congress because the Senate Foreign Relations Committee, which Vice President Joseph Biden then chaired, wanted to see the implementing regulations and to have assurance that U.S. export controls could be enforced against firms getting license-free trade under the pacts (see **WTTL**, May 26, page 3). The committee is now chaired by Sen. John Kerry (D-Mass.).

Telecommunications Report Shows U.S. at Odds with ITU

The USTR’s annual report, released April 6, on foreign barriers to telecommunications trade highlighted a dispute the U.S. is having with the International Telecommunications Union (ITU), the Geneva-based organization that sets standards for telecommunications equipment and services. The report, required under Section 1377 of the 1988 Omnibus Trade Act, notes Washington’s objections to recommendations (D.156) the ITU issued in October urging developing countries to consider adopting a “network externality” fee on telephone traffic originating in developed countries and terminating on developing country networks to fund extension of their networks. “The United States, together with 27 other ITU members, expressed a reservation against this recommendation,” the Section 1377 report notes.

“The ITU recommendation appears to encourage potentially WTO-inconsistent action,” the report states. “In particular, the recommendation appears to run counter to obligations set out in the GATS and various U.S. free trade agreements (FTAs) to afford MFN treatment to foreign services suppliers,” it adds.

“Practically all ITU Members are also WTO Members, and a number of ITU Members are also party to FTAs with the United States. Thus, if a WTO Member or U.S. FTA partner were to

implement the ITU recommendation, it would raise serious concerns about whether the country was affording MFN treatment to foreign telecommunication suppliers,” the report warns. For most of the barriers the USTR’s office found, the agency merely says it “urges” countries with these practices to change them. Among the problems found were allegations of that Colombia imposed discriminatory conditions on a U.S. operator’s access to the submarine cable landing station facilities of Colombia Telecommunications (COTEL). The report also cites concerns about China’s prohibition on the use of Wi-Fi technology in mobile handsets.

The report also notes objections to restrictions India and Korea have imposed on the use of strong encryption on networks. In India, “use of key strengths greater than 40 bits is allowed, but users must receive written permission from the Department of Telecommunications (DOT) and deposit the decryption key, split into two parts, with the DOT.” As part of long-term plans to switch to a Voice over Internet Protocol (VoIP) system, Korea “is considering mandating that government agencies purchase equipment that contains encryption technology based on a Korean encryption standard called ARIA,” the report notes. “USTR has raised these concerns with the Korean government, and the Korean government has informed us that it will postpone implementation of its procurement plans while it works to address U.S. concerns,” it reports.

* * * **Briefs** * * *

OCTG: After months of rumors that they were coming, U.S. steel producers April 8 filed antidumping and countervailing duty petitions at ITA and ITC against imports of oil-country tubular goods (OCTG) from China. Filing petitions were: Maverick Tube Corporation, United States Steel Corporation, TMK IPSCO, V&M Star L.P., Wheatland Tube Corp., Evrax Rocky Mountain Steel, and the United Steelworkers Union.

TRADE FIGURES: Although goods exports in February of \$84.7 billion inched up slightly from January, they were down 21.6% from February 2008, Commerce reported April 9. Imports of \$121.5 billion continued to decline, dropping 32.8% from year ago. Services exports were down just 5.5% to \$42 billion compared to February 2008, while services imports of \$31.2 billion were off 6.6% from year earlier. Combined trade deficit for goods and services of \$25.9 billion was lowest since November 1999.

EXPORT ENFORCEMENT: Traian Bujduveanu has pleaded guilty in Miami U.S. District Court to conspiracy to export military and dual-use aircraft parts to Iran. His plea follows guilty pleas in January by his co-defendants, Hassan Keshari and his corporation, Kesh Air International (see **WTTL**, Feb. 2, page 4).

MORE EXPORT ENFORCEMENT: BIS has reached settlements with Uni-Arab Engineering and Oil Field Services and two of its executives, Jami Radi Mustafa and Nureddin Shariff Sehweill for allegedly causing unlicensed export of gas lift mandrels to Libya through Netherlands. BIS imposed one-year denial of export licensing privileges on all three. This is second settlement BIS has reached with them. In 2005, Mustafa was fined \$55,000 and Sehweill, \$20,000, along with three-year denial order, on similar charges related to exports to Libya and dealing with denied person (see **WTTL**, March 28, 2005, page 4)

FCPA: Six more former executives of valve manufacturer CCC were indicted on charges of violating FCPA as part of alleged bribes paid to government officials in China, Malaysia and UAE. Two other executives have already pleaded guilty to related charges (see **WTTL**, Feb. 16, page 4). Indicted were: Stuart Carson, Hong (Rose) Carson, Paul Cosgrove, David Edmonds, Flavio Ricotti, and Han Yong Kim,

MORE FCPA: Latin Node Inc., privately held Florida corporation, pleaded guilty April 1 to violating FCPA in Miami U.S. District Court. As part of plea deal, it agreed to pay \$2 million fine over three-year period. Firm, which provided wholesale telecommunications services using Internet protocol technology, had been charged with bribing officials in Honduras and Yemen to win interconnection agreements.

MEXICO: Ad hoc coalition of 141 firms and associations wrote to President Obama April 7, urging him to resolve trucking dispute with Mexico. “Mr. President, we strongly urge you to work with Congress and quickly resolve the Mexican trucking issue to end retaliatory tariffs. Until this issue is resolved, Mexico’s retaliation will continue to economically harm U.S. farmers, manufacturers and service providers and those who work in these industries,” said letter whose signers included groups representing commodities such as pears, grapes, potatoes, pork, Christmas trees, apricots, milk, and wheat (see **WTTL**, April 6, page 5).

PLASTIC BAGS: Hilex Poly Co., LLC and Superbag Corporation March 31 filed countervailing duty petition against imports of polyethylene retail carrier bags from Vietnam and antidumping petition against bags from Indonesia, Taiwan and Vietnam.