

State Advisors Call for Review and Rewrite of ITAR

The State Department's Defense Trade Advisory Group (DTAG) Oct. 21 recommended that the department undertake a systematic review and rewrite of the International Traffic in Arms Regulations (ITAR) to organize the rules better and to provide definitions for many terms that are now undefined. Based on a White Paper presented by a working group, the DTAG called for changing the basis for regulating products under the ITAR. Instead of regulating products because they are "specially designed or configured" for military use, controls should be limited to items that meet "a military requirement," the White Paper recommended.

The DTAG proposal came in response to a request from State Assistant Secretary for Political-Military Affairs Mark Kimmet, who took office in August. Kimmet told the DTAG that he was interested in hearing ideas on how to improve the ITAR. State officials, however, have given the working group no assurance that its ideas will be considered.

In reorganizing the ITAR, the White Paper suggested that the U.S. Munitions List (USML) should not control parts and components that are based on widely available technology or are not "inherently military in nature and do not provide any unique military capability." As an example, it said, "if a part or component is altered physically (as opposed to functionally) for purposes of integration into a defense article and provides no enhancement to the military end use, per se, it should not be considered to be military in nature," the paper recommended.

In addition, USML controlled hardware that is embedded in items subject to the Export Administration Act (EAR) should not be controlled under ITAR if their removal from the item results in their destruction, the working group recommended. Also, "raw materials" used in USML items should not be controlled unless they are "required" to achieve a specific military requirement, such as "stealth" materials, the group urged. Among other changes, it called for the reduction in the number of items considered "significant military equipment".

Bolivians Defend Continuation of Andean Trade Preferences

Representatives of Bolivian industry and government Oct. 23 urged the U.S. not to suspend the country's eligibility under the Andean Trade Preferences and Drug Eradication Act (ATPDEA), contending that the mere proposal to cut Bolivia's trade benefits is already hurting its economy. According to witnesses at a hearing held by the U.S. Trade Representative's (USTR) office on the proposed suspension, U.S. firms that had invested in Bolivia to produce apparel and other goods for export to the U.S. have begun to pull out of the country because of uncertainty about



the country's tariff preferences (see WTTL, Oct. 6, page 5). President Bush proposed suspending Bolivia, one of the poorest countries in the Western Hemisphere, from ATPDEA benefits because it allegedly isn't doing enough to fight drug trafficking. The sanctioning of LaPaz, however, is more likely due to its nationalization of several foreign energy and natural resource firms and the close ties Bolivian President Evo Morales has to U.S. nemesis Hugo Chavez, the president of Venezuela.

Bennett Harman, Deputy Assistant USTR for Latin America, began the meeting by listing the administration's problems with Bolivia. "Actions by the Bolivian government have demonstrated its failure to carry out its obligations against drug trafficking," he said. "These actions include: encouragement and facilitation of coca production, long-term failure to roll back permissive policies for marketing and cultivation of coca, failure to take meaningful action against money laundering, as well as the recent expulsion of U.S. AID and U.S. DEA personnel from the main areas of Bolivia's illegal coca production," he added.

Luis Arce Catacora, Bolivia's Minister of Finance, told the hearing that removing the trade preferences would be virtually meaningless to the U.S. while disastrous for Bolivia. "During 2007, excluding hydrocarbons exports, the U.S. was the second commercial partner of Bolivia, with 13% of Bolivia's total exports," he said. "This only represents 0.02% of the U.S. total imports," he added. "Bolivia is meeting our signed commitment to eradicate 5,000 hectares of coca every year and drug seizures have increased," Catacora asserted. Catacora later told WTTL that he was "surprised no U.S. retailers attended" the USTR hearing. "We were under the impression they were coming," he said.

At a briefing for reporters the next day, Felipe Caceres, Bolivia's vice minister of Social Defense, produced charts showing how drug seizures were larger during the Morales government than under the previous pro-U.S. government. The previous government did eradicate more hectares but that "was through the use of violence and murder. We have achieved our eradications through negotiation and agreement with producers," he said.

The Bush administration's proposal has drawn criticism from some members of Congress. Rep. Elliot Engel (D-N.Y.), chairman of the House Foreign Affairs Committee's subcommittee on the Western Hemisphere, filed comments opposing the suspension. "The jobs that would leave Bolivia, particularly in the textile field, will quickly move to China and other Asian markets," he said in a statement. "Once these jobs are gone, there will be no incentive to bring them back to Bolivia," he added. He urged the administration to follow the approach Congress took in extending the ATPDEA for Bolivia for six months (H.R. 7222).

Jeffery Vogt of the AFL-CIO told the hearing that "the recent rejection of U.S. AID assistance in the Chapare region must be understood in context." He said the Chapare coca growers' union decided not to participate in additional alternative development projects supported by U.S. AID. "For the most part, previous projects were expensive failures," Vogt said. He argued that, "Bolivian workers should not have to pay for the political antagonism between the U.S. and Bolivian governments." Peter Weiss, speaking for the Chamber of Exports of Chochabamba and Chamber of Exports of Bolivia, told the hearing that Bolivia is "clearly in a difficult situation that will require compromise due to the financial instability, political changes and uncertain free enterprise conditions. It is very important not to lose the investment in resources, work and time already made."

Bolivian Confederation of Business Organizations President Gabriel Dabdoub Alvarez noted that under the ATPDEA Bolivian exports to the U.S. have grown from \$37 million in 2002 to \$155 million in 2007. The Executive President of the Export Chamber of La Paz, Guillermo Pou Munt, told the hearing that the Andean program "benefits a total of 25,000 employees that are linked to 94 textile and 34 leather enterprises, all of them located in the cities of La Paz and El Alto." These "25,000 jobs offer permanent income to 100,000 people, if we consider the families the workers support," he said. "The uncertainty has already served as a disincentive towards investment. We need sustainable conditions like during the first years of the

ATPDEA,” he added. Marcos Iberkleid, CEO of Ametex, an apparel manufacturer based in La Paz and El Alto, warned that “without ATPDEA, our firm cannot survive.” He said the same is true for other manufacturers across Bolivia who export their goods to the U.S. under the act. “Without these jobs, thousands of Bolivians will be faced with few opportunities for sustainable employment. Where will all these people go for work? They will be forced to seek work in the informal markets, which include the illegal drug markets,” he said.

Court Orders Refund of Wheat Duties to Canadians

All the countervailing duties and antidumping duties collected on imports of hard red spring wheat from Canada must be returned to the Canadian Wheat Board (CWB), Court of International Trade (CIT) Judge Richard Eaton ruled Oct. 20. Eaton said the International Trade Administration (ITA) incorrectly tried to return the duties only prospectively from the date the CVD and AD orders were revoked. The revocation came after a NAFTA binational panel found fault with the International Trade Commission’s (ITC) injury determination and the ITC reversed its decision and ruled that wheat imports from Canada were not injuring U.S. industry.

“Therefore, as the court expressly adopts the *Tembec II* panel’s analysis, it finds that Commerce is obligated to liquidate all of CWB’s pre-*Timken* Notice entries, whose liquidation has been suspended, without regard to duties,” Eaton ruled. “This result is demanded by both logic as well as the statute. That is, because the subject imports caused no injury during any time relevant to this inquiry, CWB should owe no duties,” he added (Slip Op. 08-112).

U.S. wheat growers filed the trade complaints against HRS wheat imports from Canada in 2003. The ITA then found dumping and subsidies, and the ITC determined the imports were injuring the U.S. industry. The Canadians, however, filed a complaint against the ITC injury ruling before a binational NAFTA panel, which found the ITC’s determination was not supported by substantial evidence and remanded the case to the commission. In 2005, the ITC reversed its injury finding and then the ITA issued an order saying it would refund suspended duties collected after the new ITC ruling. The CWB and the Canadian government then filed the complaint at the CIT. Although Eaton ruled in favor of the CWB, he said the Canadian government didn’t have standing to participate in the case.

Eaton also ruled that the CWB had not given up its right to sue in the CIT just because it had first taken its complaint to the NAFTA panel. “In keeping with the holding in *Tembec I*, the court finds that a party may appeal a determination to a NAFTA panel without forfeiting its right to have heard in this Court a separate cause of action concerning the administration and enforcement of agency actions implementing that determination,” he wrote. “Therefore, the court holds that plaintiffs’ challenge to the ITC’s original affirmative injury determination before a NAFTA panel did not oust this Court of jurisdiction to entertain their separate cause of action challenging Commerce’s legal conclusion found in the Notice of Revocation under Section 1581(I),” Eaton declared.

New EU Trade Commission Goes to WTO for Doha Briefing

The day after she was confirmed as European Union (EU) trade commissioner by the European Parliament, Catherine Ashton Oct. 23 went to Geneva to start getting up to speed on the status of the Doha Round. “My meetings in Geneva have confirmed to me that Doha is still very much alive,” Ashton said after talks with World Trade Organization (WTO) Director General Pascal Lamy and other Doha negotiators. “It is clear that negotiators and the chairmen of the various working groups would welcome a strong political push,” she said. “The current financial crisis requires us to lock in the openness that has generated so much growth and economic prosperity in recent years. A strong signal from political leaders soon after the U.S. presidential election would reinforce our efforts,” Ashton said in a statement. Ashton’s efforts to get briefed on the

round probably won't be needed for any new ministerial talks soon, according to EU spokesman Peter Power. Ashton "might need a couple of months to get up to speed" but that is not a problem, he said. "Nobody is talking about a new meeting. I don't think that process has even started," Power told WTTL before Ashton's visit to the WTO. "The issues are very technical and must be negotiated by other senior officials," he said.

Meanwhile, Swiss Ambassador to the WTO Luzius Wesescha, who succeeded Canada's Don Stephenson as chair of the negotiations on non-agriculture market access (NAMA), presented WTO members Oct. 22 with a detailed work plan for addressing the unresolved issues in the NAMA talks. After meeting with 47 delegations, Wesescha reported that many of the issues that have bogged down the negotiations for the last two years still remain. So starting Oct. 27 and for the following three weeks, Wesescha said he would devote one day to each of the unresolved topics. He said he has found consensus to use Stephenson's draft text from July 10 as the starting point for the talks, with the goal of achieving modalities in NAMA by the end of the year (see WTTL, Sept. 29, page 4).

First ITAR Fee Notices Sent to Defense Manufacturers

State's Directorate of Defense Trade Controls (DDTC) Oct. 20 sent out the first batch of notices to registered defense manufacturers with the new fees the agency is charging under the three-tier fee system it established in September (see WTTL, Sept. 29, page 4). Of the notices sent out, 68-70% called for payments of \$2,250 under Tier 1 for firms that are either newly registered or have not received a license in the previous 12 months, according to DDTC Managing Director Robert Kovac. Another 20-25% were for Tier 2 payments of \$2,750 for firms that had one to ten licenses approved, and the remaining notices went to Tier 3 firms that had more than 10 licenses approved and will pay a fee of \$2,750 plus \$250 for each license above 10, Kovac told the Defense Trade Advisory Group (DTAG) Oct. 21.

If firms disagree with the number of licenses for which they are being billed, they can request a printout of the license numbers on which DDTC based its calculation, Kovac indicated. If there are disagreements, "we can talk about it," he said. Kovac said it was the responsibility of registered firms to pay the fees after they receive their notices, which are sent out 60 days in advance of the expiration of each registration, and not to let their registrations lapse. The "onus is on the part of the registrant" to pay the fee; there is "no assumption in this rule that this has become a billing process," Kovac said.

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USTR: USTR Susan Schwab Oct. 24 announced promotion of Christopher Wilson to be Assistant USTR (AUSTR) for Europe and the Middle East and James Sanford to be AUSTR for newly-named Office of Market Access and Industrial Competitiveness, which was formerly Office of Industry, Market Access, and Telecommunications. She moved coverage of telecommunications services issues to Services and Investment Office and Generalized System of Preferences (GSP) portfolio to new Office of Trade and Development. Schwab also expanded responsibility of USTR Office of South Asian Affairs to cover Central Asian nations of Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan.

TRADE PEOPLE: Chris Kessler, until recently director of State's Office of Conventional Arms Threat Reduction in Bureau of International Security and Nonproliferation, has joined MK Technology, DC consulting firm, as senior adviser. He will be based in Seattle and can be reached at 571-426-0829.

ANTIDUMPING: WTO Oct. 20 reported 39% increase in new antidumping measures initiated by members in first six months of 2008 compared to same period in 2007. Report said 16 WTO members initiated 85 new investigations, compared with 61 initiations reported by 16 members year before. China was target of 37 of new cases. Turkey launched most new cases in first half of year (13), followed by U.S. with 12. Other leading nations opening new investigations were India (11), Argentina and the European Communities (10 each), Brazil (7), Australia and Colombia (4 each), Ukraine (3), China (2), and Canada, Chile, Indonesia, Israel, and South Africa (1 each).