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Borman Says Proposed ITAR Hot-Section Changes Need Work

State's proposed changes to the controls on engine hot-section parts in the International Traffic in Arms Regulations (ITAR) is "certainly an issue, from our point of view, that we need to continue to work on," Bureau of Industry and Security (BIS) Acting Assistant Secretary Matthew Borman told the agency's Transportation Technical Advisory Committee (TransTac) May 8. Borman stopped short of saying whether BIS agrees with or opposes the proposed revision (see **WTTL**, May 5, page 4).

"That language is different than what is in ITAR currently, and so the question is does that language that is a proposed clarification, does that advance the clarification of 17(c) or not," Borman said. "Part of this will clearly be informed by what industry says," he added. "The people who are involved in the civil aircraft sector of the aerospace industries should look at that very carefully and decide what they want to say about that," Borman told the TAC.

TransTac members raised several concerns about the proposal and the intent behind some of the proposed language. One member questioned DDTC's proposed grandfather clause for previously issued commodity jurisdiction (CJ) rulings. The proposal suggests exporters file a new CJ if they have doubts about previous rulings. It isn't clear whether DDTC wants to use that to transfer some old ITAR items to BIS or to clawback rulings that gave BIS jurisdiction before.

Another concern is language that says testing to a military standard doesn't make a product a U.S. Munitions List (USML) item, but designing and developing a product to meet a milstd does. Many military standards are now considered industry standards even for civilian products and firms design to meet them because they are good standards and not for use in military products, another member argued.

Pace of Doha Talks Slows Further Waiting New Farm Text

Key blocks of developing countries indicated May 9 that they want to slow the pace of Doha Round talks just as the chairman of the agriculture negotiations announced that his next draft text won't be ready before May 16 or 19. With a new farm "modalities" document delayed, a June ministerial meeting likely isn't in the cards, said a high-ranking Brazilian negotiator who flew in to Geneva from his capital. The proposed ministerial is "very far ahead," he said. "We are taking this one step at a time," he added. Original hopes aimed at a ministerial at the end of April and then revised the goal to the end of May. With EuroCup soccer matches scheduled

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for Geneva and other Swiss cities in June, July may be the new target of a meeting where ministers are supposed to negotiate a “horizontal” deal balancing agriculture and non-agriculture market access (NAMA) proposals (see **WTTL**, May 5, page 2). Developing countries appear to believe the timetable for concluding Doha has slipped into the next U.S. administration, reports our Geneva correspondent Scott Billquist. As a result, they continue to raise concerns with various proposals in the farm talks and ask for more time to review pending proposals.

Advanced developing countries belonging to the Group of 20 (G-20) asked for “an adequate period for reflection” after the next farm text is released. This period should be followed by more discussions in the negotiating group before the talks move into the horizontal process, a G-20 representative told a May 9 meeting of agriculture negotiators. “Sufficient time and opportunity must be given to all members and groups to digest and consult with capitals” followed by coordination, more negotiations, and then a move to the horizontal process, said a representative of less developed countries belonging to the Group of 33 (G-33).

“We’ve pretty well exhausted where we’re going to get to” on the vast majority of issues, if not all of them, the chairman of the agriculture talks, Crawford Falconer, told reporters after the informal talks. Sensitive products have held up the revision, said Falconer, who is New Zealand’s ambassador to the WTO. A discussion on May 8 cleared the way for the revision of a proposal on sensitive products, he said.

Negotiations over tropical products and preferences are two areas where progress could still be incorporated into a revised text, reported Falconer, who said he would not invent a compromise in his paper. The text will not be “the final draft....It will be the draft that reflects exactly where they are,” he said. Negotiators have a process for talks on tropical products that is going somewhere, “but clearly it hasn’t reached its finishing point,” Falconer said.

The U.S. supports Falconer’s handling and timing for the revision, said Deputy U.S. Trade Representative, Peter Allgeier. Greater clarity is needed for special products, which developing countries, such as the G-33, can shelter from full market liberalization, Allgeier told reporters. “All that we’re asking for is that countries that may use special products indicate the universe of products that they’re considering,” Allgeier said. The universe of products could take the form of a list of products that could potentially be designated as special products, he said.

Separately, Allgeier also commented on progress in services negotiations. He said bilateral services talks the week of May 5 were serious. “We were impressed with the seriousness with which people took this and did their preparations, and so it shows that people are starting to think seriously about what they’re going to say in the signaling conference and what they’re going to provide in their revised offers,” Allgeier said.

U.S. Presses China on Standards, But Demurs on WTO Case

The U.S. is trying to dissuade the Chinese from going ahead with plans to adopt a unique Chinese information security standard that could impede access to China’s market for U.S. makers of Internet connection equipment. So far, U.S. officials are using bilateral discussions, including the Joint Commission on Commerce and Trade (JCCT), to prevent adoption of the standard. A complaint to the World Trade Organization (WTO) apparently isn’t being considered at this time because it isn’t clear whether Beijing’s plans are a violation of WTO rules, including the Agreement on Non-Tariff Barriers to Trade (NTB).

“At this point what we are doing is trying to raise them in the bilateral context through the JCCT or other mechanisms. We argue that it is in China’s interest,” Commerce Under Secretary for International Trade Christopher Padilla told reporters May 8. U.S. objections to the information security standard are part of broader American concerns about China’s approach to standards setting and its move toward unique Chinese standards and the eschewing of international standards. The key U.S. concern is Chinese plans for imposing a standard on certain

security protocols for information technology. This would cover equipment used in Internet connections, including routers and switches. The Chinese “are looking at some fairly unique Chinese encryption standards that would be very costly and would potentially cost our suppliers the ability to operate in that market,” Padilla said. “They appear to benefit domestic suppliers like Huawei and that is something we have raised bilaterally and will do again,” he added.

Padilla declined to say whether adoption of the security standard would violate Chinese WTO obligations, including under the NBT. “Countries have the ability to set standards,” he said, noting that Japan has a unique cellphone standard. “They have the right to do it,” Padilla conceded. “The question of how standards are set is a fundamental question. We are arguing that you should let the market drive standards; let industry groups drive standards; and China should participate more actively in international standards organizations,” he stated.

Earlier, speaking to the U.S. Chamber of Commerce, Padilla noted other examples of China going it alone on standards. “It appears that the PRC favors a China-specific 3G standard over internationally recognized standards,” he said. “While China’s approach may appear to provide a competitive advantage in the short term, it in fact inhibits collaboration, limits product development, reduces consumer choice, and hinders China’s competitiveness and growth,” Padilla said. “China’s policy of reform and opening up – of encouraging and welcoming foreign participation in its economy – is responsible for one of the most remarkable economic and social transformations in human history. Unfortunately, however, we are seeing signs that China may be slowly turning away from the very openness that has served it so well,” he said.

DDTC Says Photos on Internet Are Not “Public Domain”

What you read at a public library may be considered “public domain” under the International Traffic in Arms Regulations (ITAR) but not what you see on a computer at the library, according to State’s Directorate of Defense Trade Controls (DDTC). In a guidance letter that has export control lawyers both chuckling and scratching their heads, DDTC has said that “photographs of various military aircraft, vessels, and vehicles or the photographs of military aircraft cockpits (found throughout the brochure) should not be assumed to be in the public domain because they were retrieved from the Internet using Google’s Images search engine.”

“Military photographs being downloaded from the Internet DOES NOT automatically mean the photos are public domain; they MAY be technical data,” DDTC wrote to an unidentified advice requester (emphasis is DDTC’s). The letter also said interface drawings cannot be assumed as general system descriptions because they are linked to specific military systems in the brochure. “In addition, the drawings could very well be used as part of a build-to-print package to provide an example of the finished product,” DDTC said.

Trade lawyers are questioning how the DDTC advice squares with the definition of technical data in ITAR Part 120.10 and the public domain definition in Part 120.11. They note that the technical data definition specifically excludes “information in the public domain as defined in Section 120.11.” Also excluded is “basic marketing information on function or purpose or general system descriptions of defense articles.” Among the factors that might make information public domain under 120.11 is the fact that it “is published and which is generally accessible or available to the public” or is available “at libraries open to the public or from which the public can obtain documents.”

Apparel Importers Say Vietnam Monitoring Is Unnecessary

Apparel importers are calling on the Bush administration to end its monitoring of clothing imports from Vietnam because data to date show no surge in Vietnamese imports or lower prices. The industry’s appeal came May 6 after Commerce reported on the results of its last

six months of import monitoring and announced that there is “insufficient evidence to warrant self-initiating an antidumping investigation.” The monitoring program holds “a false cloud over apparel sourcing from Vietnam,” said Laura E. Jones, executive director of the U.S. Association of Importers of Textiles and Apparel.

“Today’s decision, like the one last October, is a relief, but it does not provide any assurance that the final review, the results of which are due to be announced in the fall of 2008, at the height of the presidential and congressional campaigns, will also vindicate manufacturers in Vietnam,” she said in a statement. “What we need – and what we deserve – is an immediate end to the use of Vietnam’s apparel industry as a political chit,” she argued.

Commerce initiated the Vietnam monitoring program as part of a deal to win the votes of Sens. Elizabeth Dole (R-N.C.) and Lindsey Graham (R-S.C.) for the U.S.-Central American Free Trade Agreement. The latest report covers five different apparel product groups – trousers, shirts, underwear, swimwear and sweaters – from August 2007 through January 2008. “The review determined that during this period, the United States did not import apparel from 208 of nearly 500 ten-digit Harmonized Tariff Schedule (HTS) lines within the five groups from Vietnam,” a Commerce statement said. “Many of the remaining ten-digit HTS lines had rising unit values, further indicating that dumping is not taking place,” it added.

Sanctions on Burma Eased to Help Relief Efforts

Treasury has issued a General License that will allow Americans to help send relief to disaster-struck Burma without violating U.S. trade sanctions on the country and its leaders. General License No. 14 issued on May 6 authorized financial transactions in support of humanitarian and religious activities in the country. An amendment to the license issued on May 9 limited the availability of the General License to 120 days, setting Sept. 6 as its expiration date.

The authorization of financial services to support humanitarian relief and non-governmental organizations helping to supply aid is based on the conditions that the financial service not go directly or indirectly to the government of Burma or to any person whose property and interests have been previously blocked by presidential executive orders. “This general license does not authorize transactions with, or on behalf of, a non-governmental organization owned or controlled by the Government of Burma,” the license also notes.

“Please note that all other transactions otherwise prohibited by 31 C.F.R. Sections 537.201 and 537.202 that are ordinarily incident to an exportation to Burma of goods, technology or services, other than financial services, are authorized pursuant to 31 C.F.R. Section 537.518, subject to certain conditions,” it advises.

* * * Briefs * * *

EXPORT ENFORCEMENT: TFC Manufacturing, Inc., of Lakewood, Calif., has agreed to pay \$31,000 civil fine to settle single BIS charge of violating deemed export rules with release of controlled technology for production of aircraft parts to Iranian national. TFC neither admitted nor denied BIS charge.

MORE EXPORT ENFORCEMENT: In May 7 Federal Register, BIS published notice of sanctions imposed on Kabba & Amir Investments, Inc., operating as International Freight Forwarders in Toronto, Canada, for allegedly aiding and abetting attempted export of x-ray film processors to Cuba via Canada. BIS fined company \$6,000 and imposed three-year denial of licensing privileges. Denial order was suspended for three years and will be waived after that, if firm stays in compliance with export control rules.

TRADE FIGURES: Manufactured exports in March jumped 15% from March 2007 to \$104.7 billion, Commerce reported May 9. Services exports in March were up 16% over year before to \$43.7 billion. Goods imports rose to \$173.3 billion, increase of 7% from last March; while services imports grew 12% from year earlier to \$33.4 billion. For first three months of 2008, goods exports are up 17.6%.