

# Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

Vol. 27, No. 38

September 24, 2007

## STATE PLANS NEW DUAL-NATIONAL RULES FOR U.S. ALLIES

State's Directorate of Defense Trade Controls (DDTC) plans to propose rules to ease licensing requirements for some dual-nationals in countries that are close allies of the United States. The regulatory changes under consideration would apply to dual-nationals in countries that belong to NATO, the European Union (EU), Australia, New Zealand and Japan, State officials told the Defense Trade Advisory Group (DTAG) Sept. 20.

The changes to the International Traffic in Arms Regulations (ITAR) may take some time before they are proposed because State wants to consult with key members and committees in Congress before proposing the new rules. Until State gets a reaction from lawmakers, the department won't reveal the details of what changes are being weighed, department officials said..

The proposal will be broader than the existing agreements DDTC has with Canada and Australia on dual-nationals in those countries. It will be "more broad than the Canadian agreement," said Acting Deputy Assistant Secretary of State Frank Ruggiero. The current accord with Canada allows certain dual-nationals in Canada that work for four Canadian defense agencies to have access to controlled items and technology as long as they have security clearances and meet other conditions set out in the agreement. The proposal under review at DDTC would extend this policy not only to government agencies in allied countries but also to defense companies and customers in those countries, Ruggiero explained (see **WTTL**, Sept. 10, page 1).

## ITC REPORT GIVES BOOST TO U.S.-KOREA FTA

If the Bush administration is looking for industry's that are willing to come to Washington to lobby for the U.S.-Korea Free Trade Agreement (KORUS), an International Trade Commission (ITC) report on the deal issued Sept. 20 provides a check list of potential supporters. The ITC's economic analysis of the agreement provides a strong positive picture of the accord's impact on several U.S. industries, including most particularly agriculture.

Other sectors that will benefit include pharmaceuticals, medical devices, machinery, electronics, transportation equipment, financial services, and audio-visual services. Nonetheless, as with other FTAs, the overall impact of KORUS on the U.S. economy will be small because of the size of the U.S. economy relative to the increased trade the pact will produce, the ITC found. "The FTA would likely result in a small to negligible impact on output or employment for most sectors of the U.S. economy, as expected losses in output and employment in contracting sectors are expected to be offset by gains in expanding sectors," the ITC concluded. It estimated

Copyright © 2007 Gilston-Kalin Communications, LLC. All rights reserved. Reproduction, copying, electronic retransmission or entry to database without written permission of the publisher is prohibited by law.

Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail is \$647 a year. Combo subscription of print and e-mail is \$747. Additional print copies mailed with full-price subscription are \$100 each. Circulation Manager: Elayne F. Gilston

that KORUS will increase U.S. GDP by \$10.1-11.9 billion, which is minuscule compared to the \$13 trillion U.S. economy. Merchandise exports to Korea would grow by \$9.7-10.9 billion, which is also small compared to total 2007 exports that are likely to top \$1.1 trillion. Goods imports from Korea would rise by about \$6.4-6.9 billion, it said. Again, this is small number compared to total goods imports of \$1.9 trillion expected in 2007.

In the auto sector, which remains one of deal's most contentious provisions in Congress, the ITC said the benefits to U.S. carmakers would depend on how well reforms in non-tariff measures (NTM) are implemented. "U.S. exports of passenger vehicles to Korea could experience a large percentage increase; however, given the current small U.S. market share and regulatory environment issues, short- to medium-term increases would likely be small by value," it stated.

The long-term impact on auto exports would depend on implementation of the NTM provisions. "Addressing these NTMs could increase U.S. exports, whereas shortfalls in their elimination could reduce the estimated impact," the ITC said. To the extent that imports of Korean passenger vehicles to the U.S. would increase due to the elimination of the car tariff, the ITC estimated that 55-57% of the increase "would be diverted from other import sources."

For textiles and apparel, Korean imports are expected to increase "especially for man-made fibers and man-made fiber goods for which Korea is a competitive and major supplier and for which the United States maintains relatively high tariffs," the Commission noted. As in other sectors, much of the increase will come at the expense of other countries. "Approximately 85-90 percent of the estimated increase in U.S. imports from Korea would be diverted from other import sources," it forecasted. This increase, however, will be tempered by the general decline in the competitiveness of both the Korean and U.S. industries relative to China, the ITC stated.

## **INDUSTRY WARNS OF "UNINTENDED CONSEQUENCES" FROM BROKERING RULES**

Defense exporters warned DDTC Sept. 20 to avoid "unintended consequences" when it proposes changes to the ITAR brokering regulations. A working group of the Defense Trade Advisory Group (DTAG) raised several concerns at a DTAG meeting about the potential impact of the expected changes, particularly their affect on the relationship defense firms have with foreign consultants that work for them abroad (see **WTTL**, March 26, page 2).

DDTC officials have been talking about revising the brokering rules in Part 129 of ITAR for over a year. They had expected to propose the changes in the Federal Register for public comment sometime this past summer. The officials working on the revisions, however, had to shift their focus in the last few months to negotiating the defense trade treaties with the United Kingdom and Australia. As a result, proposal of the brokering changes has been put off.

But David Trimble, DDTC's director of compliance, told the DTAG that the proposal is finally in written form and waived a copy over his head at the DTAG meeting. He said DDTC is in the process of sharing the draft with Defense and other agencies. Once that review is completed, State will consult with Congress on the changes and begin internal department review and clearance probably in October.

Industry is concerned that if DDTC brokering rules require foreign consultants to register as brokers they may refuse and terminate their contracts with U.S. firms. This would not only force firms to find replacement consultants, which would disrupt business, but also could lead to legal action against the U.S. companies. Moreover, consultants who end their relationship with U.S. companies may go to work for foreign competitors or choose to "poison the well" for the American company, warned Chuck Jameson, chairman of the working group. The group urged DDTC to avoid potential disparities between the provisos and conditions placed on licenses for consultants and those imposed on the U.S. exporter. A broader problem for U.S. exporters is the lack of public information on which individuals or firms are registered as

brokers with DDTC. That information is now considered confidential, which makes it difficult for firms to confirm that a foreign consultant or broker is properly registered.

### **FCPA ADVISORY ALLOWS INTERN PROGRAM FOR FOREIGN OFFICIALS**

Justice has issued an advisory opinion to an unnamed insurance company giving the firm assurance that the department would not prosecute it under the Foreign Corrupt Practices Act (FCPA) for paying for six mid-level foreign government officials to come to the U.S. to attend an internship program at the company. "Based upon all of the facts and circumstances, as represented by the Requestor, the Department does not presently intend to take any enforcement action with respect to the planned educational program and proposed payments described in this request," Justice said in the Sept. 11 opinion.

According to Justice, the company said the visitors were selected by the foreign government, without the involvement of the requestor, to attend an annual six-week long program for foreign insurance regulators sponsored by the National Association of Insurance Commissioners. The insurance firm proposes to pay for domestic air travel in the U.S., lodging, local transport, meals and incidental expenses up to a modest set amount per day and a four-hour city sightseeing tour.

### **ADMINISTRATION ALMOST READY TO SUBMIT DEFENSE TREATIES TO SENATE**

The defense cooperation treaties the U.S. negotiated with the United Kingdom and Australia, along with their implementing procedures, are close to being submitted to the Senate for ratification, State officials said Sept. 20 (see **WTTL**, Sept. 10, page 2). "We are in the process of developing implementing regulations," Acting Assistant Secretary of State Stephen Mull told the Defense Trade Advisory Group (DTAG). Informal advance consultations with key members and Senate committees have already begun. "We haven't encountered any significant opposition yet," Mull reported. State hopes the treaties can be ratified by the end of the year.

Once the treaties are ratified, DDTC will issue implementing regulations in the Federal Register, said Acting Deputy Assistant Secretary of State Frank Ruggiero. The treaties will provide new exemptions from ITAR licensing requirements. "We need to be as explicit as possible," Ruggiero said. "Lack of explicitness might lead exporters not to take advantage of it," he added. He said DDTC has learned from its experience with Program Licensing, which exporters don't use "because of ambiguity," he told DTAG. Industry executives say it is easier to go through the regular licensing process than the effort to get a Program License.

### **DDTC BRINGS DOWN BACKLOG OF PENDING LICENSES**

The backlog of pending export licenses at DDTC has dropped to about 5,800 from 7,200 last spring, Acting Deputy Assistant Secretary of State Frank Ruggiero told the DTAG Sept. 20. Since taking over from Greg Suchan, who retired at the end of May, Ruggiero said he has instituted several reforms in licensing procedures to help bring down the backlog.

When he took over, Ruggiero said, he found that DDTC has no presidential executive order similar to the one that dictates the deadline by which the Bureau of Industry and Security (BIS) must complete action on pending export license applications. As a result, Ruggiero has established his own deadline procedures. For licenses for items going to military operations in Iraq and Afghanistan, any license pending over seven days is flagged and licensing officers have to meet with Ruggiero to explain the delay. He also has set up a 45-day case management review process, which will require licensing officers to meet with him when cases are pending longer than 45 days. Because of the existing backlog, however, the case management process is starting for licenses pending more than 90 days. As the backlog diminishes, the process will

flag cases at 75 days and 65 days until it gets down to 45 days, he explained. Another change is in the handling of Technical Assistance Agreements (TAAs) and Manufacturing License Agreements (MLAs). As agreement applications come in, they are now staffed immediately to the Defense Department for review rather than waiting for DDTTC staff to conduct an initial review before sending them out. This has dropped the number of TAA/MLA applications awaiting action to zero, Ruggiero reported. This change, however, has not reduced the backlog in pending agreement licenses, he conceded.

\* \* \* BRIEFS \* \* \*

PERU FTA: Senate Finance Committee Sept. 21 favorably reported out trade pact by 18-3 vote. House Ways and Means Committee has scheduled mock mark-up for Sept. 25.

TAA: With time running out before current Trade Adjustment Assistance law expires Sept. 30, House Ways and Means Committee Sept. 18 sent bill (H.R. 3375) to House for three-month extension.

DOHA ROUND: Although U.S. officials claim they haven't changed their position on cutting domestic support in agriculture talks, negotiators in Geneva week of Sept. 17 were abuzz with belief that U.S. was willing to accept lower range, below \$17 billion, cap on farm subsidies. "I think we are inching toward an ever more realistic appraisal of what our options are," Agriculture Committee Chairman Crawford Falconer said Sept. 21. Farm talks now take two-week break and will resume for four-week period in mid-October. Meanwhile, talks on lost leg of Doha Round, services, have resumed with bilateral and plurilateral meetings on postal and courier services, distribution and tourism, services related to agriculture, maritime and logistics, architecture, engineering and integrated engineering services. Sources say there have been positive signs, but members are basically just trying to clarify signals of possible progress.

EXPORT ENFORCEMENT: Justice Sept. 18 unsealed criminal complaint in D.C. U.S. District Court against Aviation Services International, B.V., of Netherlands, and its owner Robert Kraaijpoel for exporting and attempting to export aerospace grade aluminum, aircraft components, and other equipment from U.S. to Iran and government of Iran without OFAC license. Also listed as defendants are two other Dutch companies, Delta Logistics L.V., and TPC, B.V., which are owned by Kraaijpoel's son. This is first case where new Justice export enforcement coordinator Steven Pelak is listed as lead attorney. [**Editor's Note**: Copy of complaint and affidavit will be sent to subscribers on request.]

RICE: WTO dispute-settlement panel ruled Sept. 21 in favor of U.S. in complaint against restrictions Turkey imposes on rice imports. "The Panel concludes that Turkey's decision, from September 2003 and for different periods of time, to deny, or fail to grant, Certificates of Control to import rice outside of the tariff rate quota, constitutes a quantitative import restriction, as well as a practice of discretionary import licensing, within the meaning of footnote 1 to Article 4.2 of the Agreement on Agriculture. Accordingly, it is a measure of the kind which have been required to be converted into ordinary customs duties and is therefore inconsistent with Article 4.2 of the Agreement on Agriculture," panel concluded.

THERMAL PAPER: Appleton Papers, Inc. Sept. 19 filed antidumping petitions at ITC and ITA against imports of lightweight thermal paper from China, Germany and Korea; CVD against Chinese imports.

WIRE HANGERS: ITC, by 6-0 vote, made preliminary ruling Sept. 20 that allegedly dumped imports of steel wire garment hangers from China may be injuring U.S. industry.

APEC: Proposals for Asia-Pacific free trade pact got cold shoulder at APEC leaders' meeting Sept. 9. "Through a range of practical and incremental steps, we will examine the options and prospects for a Free Trade Area of the Asia-Pacific (FTAAP)," APEC leaders said.

ZEROING: CIT Judge Judith Barzilay Sept. 19 denied Corus Staal request for injunction to bar liquidation based on administrative review of flat carbon steel from Netherlands that had dumping order revoked after WTO ruling and Section 129 decision (Slip Op. 97-140). "Statute that governs implementation of a WTO panel report explicitly states that revocation of an antidumping order applies prospectively on a date specified by the USTR," she ruled.

ORANGE JUICE: CIT Chief Judge Jane Restani Sept. 19 remanded to ITC for second time determination that dumped imports of orange juice from Brazil are injuring U.S. industry (Slip Op. 07-141)(see **WTTL**, April 23, page 2). She said she found "at least two significant flaws" in ITC decision. "The Commission did not properly examine the inverse correlation between domestic production and subject imports, and the Commission did not conduct a proper analysis of the impact of non-subject imports," Restani ruled.