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U.S. Trade Policies, Negotiations, Legislation,  
Trade Laws and Export Controls

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## **BIS, State Revise Controls on Tanks, Submarines, Auxiliary Items**

The Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC) are publishing the next big batch of transfers for items on the U.S. Munitions List (USML) to the Commerce Control List (CCL) in the July 8 Federal Register. In parallel notices, State is creating positive lists for USML categories VI (Vessels of War), VII (Military Vehicles), XX (Submersible Vessels, Oceanographic Equipment), and XIII (Auxiliary and Miscellaneous Items) and BIS is adding many transferred items to the CCL.

DDTC also is addressing industry concerns about how Defense funding will determine controls for certain items. “The Department has inserted a delayed effective date for this and other developmental article controls so that it would not affect contracts or other funding authorizations now in effect. The controls would thus apply prospectively and only after the affected community has a sufficient opportunity to review and, as necessary, modify standard contract or funding authorization terms and conditions,” the agency explained.

Items transferred to the CCL will go into new Export Control Classification Numbers (ECCN) in the 600 series. Transfers include: harbor entrance detection devices, self-contained diving and underwater breathing apparatus, signature reduction software, with embrittling agents, and most unarmored and unarmed military vehicles, trucks, trailers, and trains (unless specially designed as firing platforms for weapons above .50 caliber), and armored vehicles (either unarmed or with inoperable weapons) manufactured before 1956.

To consolidate and clarify, BIS isn’t adding gas turbine engines for military vessels of war to new ECCN 8A609. Instead, it adds engines for surface vessels of war and military vehicles to ECCN 9A619 which already covers those for military aircraft. Also, BIS clarifies what controls on “software,” “technology” and “production equipment” cover to reflect evolving definitions since the rules were first proposed. In addition, DDTC said it revised the final definitions of “organizational-level maintenance,” “intermediate-level maintenance,” and “depot-level maintenance” based on public comments.

## **U.S., EU Enter Trade Talks Cautiously**

The U.S. and European Union (EU) are entering the first round of talks on a Transatlantic Trade and Investment Partnership (TTIP) July 8 cautiously, careful to avoid raising high

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hopes for supporters or stirring up opposition from critics. “Both sides are really being coy, not saying how the talks will be organized or who will lead the negotiating groups,” one industry representative told WTTL. “They are making a big mistake. They should be more transparent,” he complained (see WTTL, June 24, page 3).

Although trade officials are not giving out details on the structure of the talks, they are entering the negotiations with extensive knowledge of the issues that need to be addressed and experience in dealing with them in other trade talks. For example, many of the topics on the agenda are already being negotiated by the U.S. in the Trans-Pacific Partnership (TPP), and both the U.S. and EU have completed free trade agreements (FTAs) with Korea.

“These talks should get off to a faster start than many people have given them credit for,” one source said. He noted the two years that U.S. and EU officials spent preparing the high-level working group report that set the stage for the launch of the talks. “There is no need for preparatory meetings to get acquainted. They know each other well,” he said. They also know each other’s sensitivities. In addition, the U.S. and EU FTAs with Korea should be a baseline that should be agreed upon quickly, he added. Even with this background, projections for when the talks will finish are wide ranging. Officially, both sides are aiming for 2014. EU sources don’t expect them to be completed before the summer of 2015. And some career trade negotiators are predicting 2016.

Michael Froman’s appointment as U.S. Trade Representative (USTR) is another factor favoring the talks. As deputy national security advisor for economic affairs, Froman led Cabinet-level bilateral talks with the EU as part of the Transatlantic Economic Council. He is seen as behind President Obama’s decision to complete the FTAs with Colombia, Panama and Korea and to launch the EU talks. Froman brings with him the president’s imprimatur and the goal of getting the TTIP done before the end of Obama’s second term.

The lead U.S. negotiator for the TTIP will be Dan Mullaney and chief EU negotiator is Ignacio Garcia-Bercero. Because of budget cuts, the USTR was not able to rent a single location in the Washington area to house the first round of talks, and meetings will be spread around town at the USTR’s offices, Commerce and State. U.S. and EU officials will hold a “direct engagement event for stakeholders and negotiators” July 10.

Calls for cancelling the talks because of EU anger over U.S. spying on European governments failed to hamper plans for negotiations. “With 60 European negotiators having booked plane tickets and hotels, that wasn’t going to happen,” one source said. The U.S. and EU have moved to calm the spying controversy by the “initiation of a U.S.-EU/Member State dialogue on the collection and oversight of intelligence and questions of privacy and data protection,” the White House said. During a phone call July 3, Obama and German Chancellor Merkel “reiterated their strong support for the launch of Transatlantic Trade and Investment Partnership negotiations and welcomed the upcoming first round of discussions,” the White House reported.

## **Singapore Men Plead Guilty to Export of Military Antennas**

Two men who were extradited from Singapore to face charges of exporting military antennas without licenses pleaded guilty June 26 in D.C. U.S. District Court. Hia Soo Gan Benson, aka Benson Hia, and Lim Kow Seng, aka Eric Lim pleaded guilty to a single

charge of conspiracy to violate the Arms Export Control Act (AECA) (see **WTTL**, Jan. 7, page 8). They had been charged with exporting 55 military antennas to Singapore and Hong Kong without a State license in a September 2010 indictment that was unsealed Oct. 25, 2011. The indictment, which named them, two other Singapore citizens, one Iranian and their companies, claimed they circumvented export controls through the use of false statements and certifications and, in one case, through the apparent willingness of two employees of two U.S. companies to evade the law deliberately. Sentencing of Hia and Lim is scheduled for Sept. 20.

The two are the reputed principals of Corezing International, Pte, Ltd, a Singapore firm that was the alleged center of a wide-ranging conspiracy to export U.S. military antennas that could be used in improvised electronic devices (IEDs) in Iraq. In a separate indictment Nov. 20, 2012, Amin Ravan, an Iranian citizen, and his company, IC Market Iran (IMI), were also charged in the D.C. court with conspiracy to defraud the U.S., smuggling and violating the AECA. Ravan allegedly acted as an agent of Corezing.

### **Court Upholds USTR Deal on Softwood Lumber**

The U.S. Trade Representative (USTR) had the authority to negotiate the 2006 Softwood Lumber Agreement (SLA) with Canada and agree to the distribution of collected countervailing duty (CVD) and antidumping (AD) funds to members of the Coalition for Fair Lumber Imports, the Court of Appeals for the Federal Circuit (CAFC) ruled July 1. The court upheld a similar Court of International Trade (CIT) ruling and rejected the appeal of some 30 lumber companies that were not members of the coalition and claimed they should have gotten a share of the \$500 million distributed to coalition members.

The plaintiffs in *Almond Bros. Lumber Co. v. U.S.* claimed the USTR exceeded its authority to negotiate the SLA, under which the CVD and AD cases against Canadian lumber were dropped and \$5 billion in collected duties were returned to Canada. Canada, in turn, agreed to distribute \$1 billion of returned duties to various groups in the U.S., including \$500 million to coalition members. The non-coalition lumber firms claimed they were denied equal protection because they didn't get a share of that money. They also charged the USTR lacked authority to delegate the distribution of the funds to Canada (see **WTTL**, April 30, 2012, page 4).

“We reject Almond’s arguments that [Trade Act] Section 2411(c) required the USTR to compensate every member of the domestic softwood lumber industry and that the compensation was required to be proportional to the harm suffered,” wrote CAFC Judge Jimmie Reyna for the three-judge panel. “Almond’s arguments attack the substance of the Distribution Term, which defines the compensatory trade benefits that the USTR secured from Canada in the 2006 SLA. Whether those benefits were satisfactory is a question that is committed to the discretion of the USTR and therefore beyond judicial review,” he wrote.

“Under Section 2411(c)(1)(D)(iii)(I)’s standard, the USTR has discretion to craft whatever relief it deems necessary to resolve the dispute. The negotiation and determination of the terms of international agreements is a paradigmatic example of ‘a complicated balancing of a number of factors which are peculiarly within [the USTR’s] expertise’,” he wrote, citing precedents. “The statute reflects this: the provision of compensatory trade benefits is not

mandatory, any benefits provided need only be ‘satisfactory’ to the USTR, and when benefits are provided, they need not even benefit the economic sector related to the harmful trade practice,” Reyna stated. “To state a plausible equal protection claim, Almond needed to negate every conceivable basis that could support the Distribution Term. By resting its argument on the distinction between the Coalition being party to the suit and the Coalition acting as the driving force behind this litigation, it has failed to do so,” he ruled. Almond and its co-plaintiffs were represented by the firm of Smith, Currie & Hancock. Former Deputy USTR Alan Holmer is of counsel to the firm and was on its brief in the case.

## **ITC Launches Pilot Program to Speed Up 337 Cases**

The International Trade Commission (ITC) has launched a pilot program to have dispositive issues in Section 337 cases decided more quickly by administrative law judges (ALJ) and reviewed quicker by the commission. Issues that will be subject to this speedier process include questions on the existence of a domestic industry, importation and standing, the ITC noted.

“Typically, the initial ruling on domestic industry has come relatively late in an investigation, often after several months of litigation (including an evidentiary hearing) when the ALJ issues his initial determination (ID) on whether there is a violation of section 337. The pilot program will reduce this time for this initial ruling to 100 days (subject to a limited extension for good cause),” the ITC said.

When it institutes a 337 case, the commission will identify the potentially dispositive issues and direct the assigned ALJ to rule on that issue early in the investigation through expedited fact finding and an abbreviated hearing limited to the identified issue. After the ALJ issues his initial determination (ID) under the pilot program, petitions for review will be due five calendar days after the ID has been served on the parties.

Replies will be due three business days after any petition for review has been served. The ITC will determine whether to review the early ID within 30 days after the ALJ issues it. If the commission does not review the ID, it will become the commission’s final determination. Commission review will normally be completed within 30 days, the ITC explained. “If the ALJ issues an early ID finding that there is no domestic industry, that action would stay the investigation pending Commission action,” the ITC said. “Any other decision would not stay the investigation or delay a final ID covering other issues of the investigation. The Commission does not expect any delays in other investigations assigned to the presiding ALJ,” it added.

## **Obama Announces New Africa Trade Push**

President Obama used his trip to Africa to launch a new trade initiative July 1 with the goal of increasing trade among African nations and between the U.S. and Africa. New U.S. Trade Representative Michael Froman, who was with the president in Africa, previewed the initiative before the trip (see **WTTL**, July 1, page 3). The program, Trade Africa, “seeks to increase internal and regional trade within Africa, and expand trade and economic ties between Africa, the United States, and other global markets,” a White House fact sheet said. Trade Africa will initially focus on the member states of the East African

Community (EAC) -- Burundi, Kenya, Rwanda, Tanzania and Uganda. "In its initial phase, Trade Africa aims to double intra-regional trade in the EAC, increase EAC exports to the United States by 40%, reduce by 15% the average time needed to import or export a container from the ports of Mombasa or Dar es Salaam to land-locked Burundi and Rwanda in the EAC's interior, and decrease by 30% the average time a truck takes to transit selected borders," the White House noted.

"As part of this effort, we'll negotiate a regional investment treaty with the EAC. We'll launch a new program to facilitate trade by focusing on moving goods across borders faster and cheaper. We'll work with the countries involved to modernize customs, move to single more efficient border crossings, reduce bottlenecks, reduce the roadblocks that stymie the flow of goods to market," Obama told Business Leaders Forum in Dar es Salaam July 1.

"It still takes way too long -- too many documents, too much bureaucracy -- just to start a business, to build a new facility, to start exporting," he said. "If we're going to, for example, build a lot of power around Africa, we can't have a seven-year timeframe for building a power plant. We've got to move. Things have to go faster. And government can have an impact on that -- for good or for ill," the president added.

## **State Eases Rules for Firearm Component Exports to Canada**

U.S. makers of certain parts and components for firearms will have an easier time exporting to Canada under changes State is publishing to the International Traffic in Arms Regulations (ITAR) in the July 8 Federal Register. Congress mandated the changes in appropriations legislation it enacted in 2012. The revisions to ITAR Section 123.16, general exemptions, add changes to Section 123.17 for exports of firearms, ammunition, and personal protective gear.

Under the legislation "the Department cannot require a license for the export of certain firearms and firearms components for end-use by the Canadian government with a total transaction value not exceeding \$500 wholesale, and cannot require a license for the export of certain firearms components for end-use in Canada with a total transaction value not exceeding \$500 wholesale," State explained in the Federal Register.

The changes apply to components under USML Category I(a), except barrels, cylinders, receivers (frames), or complete breech mechanisms, and under Category I, except barrels, cylinders, receivers (frames), complete breech mechanisms, or fully automatic firearms and parts and components for such firearms. Also, "section 123.16(b)(6) is being amended to remove the words 'for personal use,' as the firearms exemption at ITAR section 123.17 includes use of the exemption for an end-use other than personal use," State noted.

## **Petitions Target Imports of Oil Country Tubular Goods**

The boom in U.S. oil and gas exploration and production has also sparked a new trade dispute over imports of oil country tubular goods (OCTG). Nine U.S. producers of OCTG filed antidumping and countervailing duty (CVD) petitions July 2 against imports from nine countries, citing the increase in imports in the last year. The antidumping complaints

target imports from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam. The CVD cases were against products from India and Turkey. The petitioning companies were: United States Steel Corporation, Maverick Tube Corporation, Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, Vallourec Star, L.P. and Welded Tube USA Inc. The cases have drawn reactions from supporters on both sides of the cases.

“Whether it is conventional drilling activities or the newer ‘fracking’ method, the US is quickly moving to energy-independence and in the process, tens of thousands of jobs are being created,” said a statement from the American Institute for International Steel (AIIS), which represents foreign steel producers. “This massive filing will disrupt the oil and gas drilling market for those responsible traders, their suppliers and also could threaten to disrupt drilling operations as well,” it claimed.

The American Iron and Steel Institute (AISI), which represents the U.S. steel industry, had a different view. “Imports from these countries have surged by 111 percent in the past few years, and the petitioners present that these imports have caused material injury to the domestic steel industry,” said AISI President Thomas Gibson in a statement. “We applaud these domestic steel companies for taking a stand and we urge the DOC and ITC to take a hard look and provide antidumping and countervailing duty relief for our industry,” he said.

Census Bureau data for the broader category of “oil country goods” show imports for the first four months of 2013 at 671,349 metric tons v. 768,719 metric tons during the same period in 2012. May 2013 imports under this broad heading were 154,992 metric tons compared to 209,779 metric tons in May 2012. For the first four months of 2013, total steel imports in all categories declined to 7.7 million metric tons from 8.7 million metric tons, Census reported.

### \* \* \* Briefs \* \* \*

TRADE FIGURES: U.S. merchandise exports in May barely edged up 0.06% from year ago to \$130.25 billion, Commerce reported July 3. Services exports increased 5.11% to \$56.8 billion from year ago. Goods imports also went up slightly 0.07% from May 2012 to \$193.7 billion, as services imports gained 4.0% to \$38.4 billion.

TRADE PEOPLE: Elissa Alben has been named international trade counsel on Democratic staff of Senate Finance Committee. Before joining committee, she was deputy assistant USTR for monitoring and enforcement and served as associate general counsel. Earlier she was on staff of House Ways and Means Committee. Alben is a graduate of Harvard and Columbia Law School.

EXPORT ENFORCEMENT: ICE agents deported Alfredo Guerrero Espartiro, 41, to Philippines June 26 after he served 18-month prison term for violating IEEPA with attempted export of military aircraft parts to Iran. He had pleaded guilty in San Diego U.S. District Court in March 2012. Espartiro was Philippines-based manager for Florida-based Southward Aviation Supplies when he was arrested in January 2012 in Hawaii, trying to sell parts to ICE undercover agents.

CANNED TOMATOES: Australia launched six-month investigation under WTO safeguard rules June 21 on imports of canned tomatoes from Italy, Argentina, Germany, Turkey and U.S. to determine whether increased imports of product are causing, or are threatening to cause, serious injury to domestic industry.