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Future Looks Bright for Defense Exports, Report Says

While U.S. defense exports declined in 2015 and commercial aerospace exports grew, the outlook for 2016 flips those numbers sideways, according to a new Deloitte report published April 13. However, certain external risk factors, such as continued low oil prices, could affect those numbers either positively or negatively.

Gross commercial aerospace U.S. exports grew \$6 billion in 2015, while defense exports declined by \$800 million, largely due to regulatory approvals, contractual delays and a decline in global defense spending, Deloitte noted. Taken together, gross U.S. aerospace and defense (A&D) exports are expected to grow another 3.2% in 2016, the report predicted. In addition, A&D was the largest contributor to U.S. net exports from 2010 through 2015, accounting for 9.5% of total exports in 2015.

This expected growth is “due to an increased pipeline of defense platform products announced and expected for foreign military sales by U.S. defense contractors,” it said. However, a strong U.S. dollar, low oil prices or a global recession could risk the outlook. “On the other hand, low oil prices may contribute to increased airline profitability, allowing for accelerated aircraft fleet renewals. In addition, renewed regional security threats may accelerate purchases of defense platforms,” the report noted.

Commercial aircraft exports are expected to flatten out in 2016 before a resurgence in 2017, Deloitte said. “Continued weak crude oil prices may selectively cause foreign airlines to postpone purchases of new fuel-efficient aircraft to replace their older jets. Weak oil prices may also affect the affordability and import of both commercial aerospace as well as defense products by oil producing states,” it noted.

China Dismantles Prohibited Export Subsidies Program

The U.S. and China signed an agreement April 14 terminating export subsidies China provided through its “Demonstration Bases-Common Service Platform” program. The U.S.

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Trade Representative's (USTR) office estimates China spent \$1 billion over three years on the subsidy program. The export subsidies prohibited by the World Trade Organization (WTO) were provided to Chinese businesses spread across 179 industrial clusters aka Demonstration Bases.

Per the memorandum of understanding signed in Geneva, China has agreed to: defund the Common Service Platform (CSP) program; terminate preferential service agreements between sub-central governments and CSP providers; prohibit CSP providers from providing free or discounted services in export-contingent Demonstration Bases; terminate sub-central government export-contingent cash grant measures; eliminate export-contingent criteria from the Demonstration Base designation process; and reevaluate national and provincial level bases without the use of export-contingent criteria.

Over the last year, China has "repealed 136 laws, regulations, other forms of administrative actions...that has fully taken down this export subsidy program," said a U.S. trade official. "Going forward we will continue to track all of these actions carefully through a continuing information exchange division," the official added.

The U.S. first filed a challenge with the WTO in February 2015 and a panel was established in April 2015 as China and the U.S. continued to talk (see **WTTL**, April 13, 2015, page 3). This resolution came through swiftly, which a U.S. trade official attributed to "China could see we had them dead to rights." The official hedged on detailing how the U.S. obtained the documents it used as evidence.

The Demonstration Bases' enterprises spanned seven sectors: textiles, apparel and footwear; advanced materials and metals (specialty steel, titanium and aluminum products); light industry; specialty chemicals; medical products; hardware and building materials; and agriculture.

House Subcommittee Weighs New MTB Process

U.S. manufacturers may soon get some relief thanks to the American Manufacturing Competitiveness Act of 2016 introduced in the Senate and House April 13 by the chairs and ranking members of the Senate Finance and House Ways and Means committees. The proposed legislation seeks to advance the process by which American manufacturers can request temporary reductions and suspensions on duties levied on components used in the production of American-made goods.

In the past, American manufacturers would petition a member of Congress to sponsor their request for tariff relief. Finance and Ways and Means would then draft a Miscellaneous Tariff Bill (MTB). The program lapsed in 2012; although language in the Customs bill passed last year addressed the MTB process, that language did not make it into the law President Obama signed in February (see **WTTL**, Dec. 14, page 7). Under the newly proposed streamlined process, applicants would have 60 days, beginning Oct. 15, to petition the International Trade Commission (ITC) directly. Next, the ITC would analyze

the petition, take public comment, and issue a report to Congress on its findings. Senate Finance and House Ways and Means committees would then review ITC's recommendations and issue a draft MTB proposal. The committees would need to certify that there are no spending earmarks, as mandated by Senate and House rules, so the MTB could be considered within existing rules.

"Our bill delivers a regular and predictable legislative process for the temporary suspension and reduction of tariffs that helps our manufacturers and their employees. And it also is consistent with the rules of the House, and upholds our strong ban against earmarks," said Rep. Dave Reichert (R-Wash.), chair of the Ways and Means trade subcommittee, at a hearing on the bill April 14.

"Manufacturers are encouraged that, after three years of calling upon Congress to act, leaders in the House and Senate have introduced legislation to create a transparent and predictable MTB process that eliminates unnecessary border taxes. Amid rising costs and a tough global economy, manufacturers are paying and will continue to pay a heavy price if Congress does not move on this legislation," said Linda Dempsey, National Association of Manufacturers (NAM) vice president of international economic affairs.

"These distortions are particularly severe for those manufacturers that must pay tariffs on necessary inputs not produced domestically, while the competing foreign finished product comes in duty-free," she added. Four NAM-affiliated witnesses drove home Dempsey's point when testifying before the subcommittee, and all of the subcommittee members present voiced support for reviving the MTB in the streamlined format.

Leib Oehmig, president and COO of Glen Raven, Inc., which manufactures Sunbrella fabrics used in furniture, marine and automotive industries, told the subcommittee that they pay a 4.3% duty on the value of imported solution-dyed acrylic fibers essential to their product. Solutia, the last U.S. manufacturer to make the necessary acrylic fibers closed its U.S. operation in 2005, leaving Glen Raven without a domestic option.

"These import taxes on acrylic fibers are taxes that we do not pay anywhere else in the world where we manufacture nor do our competitors pay such a tax. ... These taxes make us less competitive in the global marketplace where we are already confronting tremendous headwinds," Oehmig testified.

Members of Congress, Unions Tackle Steel Production Glut

While they're not the only culprit, China was the main villain of the USTR's two-day hearing on global steel overcapacity and its impact on the U.S. steel industry and market. Members of Congress, local steel union presidents, and industry executives who testified before USTR, Commerce, State, Treasury, Labor, and Homeland Security officials April 12-13 were in general agreement that existing trade remedy laws need to be enforced. Global steelmaking capacity is set to grow to 2,361 million metric tons (mmt) by 2017, approximately 700 mmt in excess of global demand for 2015, the Organization for

Economic Cooperation and Development (OECD) reported. China's expansion has fueled this overcapacity. As a result, U.S. steel exports have decreased over the last four years, declining 17% between 2014 and 2015. More than 13,500 U.S. jobs have been lost, steel officials testified.

“China's overcapacity is not the result of ‘market forces.’ China has developed massive overcapacity because it is a non-market economy. It has continued to build its productive capacity in steel and other sectors because it was reliant on an export-led economy to employ its people and fuel its growth,” said Leo Gerard, United Steelworkers (USW) international president.

Gerard and his steel colleagues called on the administration to implement broad-based import restraints; craft enforceable measures to reduce global overcapacity; engage with EU allies to ensure China is not granted market economy status; stimulate domestic demand; aggressively pursue enforcement; and retain domestic procurement policies during trade negotiations.

Nearly every member of Congress who testified urged the administration to fully implement the Leveling the Playing Field Act, co-authored by Sens. Sherrod Brown (D-Ohio) and Rob Portman (R-Ohio). The legislation, which passed as part of the Trade Preferences and Extension Act, gives Commerce the ability to apply the highest counter-vailable subsidy rates or dumping measures in proceedings, Portman explained (see **WTTL**, April 4, page 3). He also urged the administration to use the ENFORCE Act, which gives the administration “tools to prevent countries and companies from getting around AD/CVD duties.”

In addition, Brown called on the administration to fully fund Commerce's Office of Enforcement and Compliance, to address overcapacity via a WTO case against China, and to back the steel industry should it file a Section 201 (safeguard) petition. Toward the end of his testimony, Brown called on the administration to renegotiate the auto rules of origin in the Trans-Pacific Partnership (TPP) calling the rules “weaker than NAFTA's.”

USTR Michael Froman revealed on the first day of testimony that Deputy USTR Robert Holleyman and Commerce Under Secretary Stefan Selig will lead a delegation to the OECD High-Level Meeting on Excess Capacity in Belgium April 18 to shore up international commitment to reducing excess capacity. Froman also said USTR is working with partners in Japan, Canada, Mexico and the UK on the overcapacity issue.

“Steel cases comprise approximately 45% of all U.S. final trade remedy measures in place and nearly 74% of our ongoing investigations. To put this in perspective, in fiscal year 2015, more petitions were filed and investigations initiated than any year since 2001. Given the persistence of excess capacity globally and current market conditions, this trend shows no signs of abating,” Commerce Secretary Penny Pritzker said on the second day of the hearing.

In the lead-up to the Strategic and Economic Dialogue meeting this summer, USTR will reiterate to China that it cannot dump its excess capacity on global markets, Froman

noted. “What’s clear, though, is that aggressive enforcement efforts and inter-national engagement, while absolutely necessary, are not entirely sufficient,” he said. “Our MFN [most favored nation] tariffs on steel imports are zero, and have been since the mid-1990s. Our market is open, so we need to raise standards in other countries and tackle emerging issues. We need to update and improve the ‘rules of the road’ on trade, including rules for state-owned enterprises, which are fairly prevalent in the steel and aluminum sectors of many economies,” Froman said.

Ag, Footwear, Public Health Groups Join TPP Fight

While the Trans-Pacific Partnership (TPP) agreement has not yet made its way to congressional desks, supporters and detractors of the deal let loose a flurry of letters to Congress outlining their praise and criticism.

In their April 11 letter to Congressional leaders, a coalition of 225 food and agricultural companies and associations praised TPP, noting that according to the American Farm Bureau Federation, the deal could boost annual net U.S. farm income by \$4.4 billion. USDA estimates food and agricultural exports were \$150 billion in 2014, representing 1,132,000 full-time civilian U.S. jobs (including the non-farm sector).

“Japan is our largest export market and our Japanese customers demand high quality U.S. beef,” said Tracy Brunner, president of the National Cattlemen’s Beef Association, in a statement. “However, due to the Australia-Japan Economic Partnership Agreement, U.S. beef faces a tariff that is 11 percent higher than Australian beef, our leading competitor. That tax alone makes our beef less competitive and gives Australia’s beef producers a significant advantage that has allowed them to capture over \$100 million in additional beef sales at the expense of U.S. producers,” Brunner said.

More than 50 public health, labor and religious groups shot off their own letter to Congress April 12 criticizing the trade agreement. Doctors Without Borders was among those that argued that TPP provisions related to intellectual property, investment, and pharmaceutical and medical device reimbursements “would do more to undermine access to affordable medicines than any previous U.S. trade agreement.”

In contrast with much of the footwear and apparel industry, athletic footwear producer New Balance renewed its opposition to TPP. In several published interviews New Balance VP Matt LeBretton said the company had agreed to keep quiet about TPP and in exchange the USTR’s office would support the company’s efforts to expand the Berry Amendment that requires military uniforms be produced in the U.S. Athletic footwear is presently exempted.

The American Apparel and Footwear Association (AAFA) in response reiterated its support for TPP April 12, but called on the administration to “ensure the full application of the Berry Amendment to all U.S. Department of Defense procurements, including those covering athletic footwear.” Footwear Distributors & Retailers of America (FDRA)

President Matt Priest said he was “disappointed at New Balance’s change of heart on this vitally important agreement for the entire U.S. footwear industry over a matter unrelated to TPP. New Balance’s position is especially surprising as it is one of the companies that would see significant tariff reduction under the agreement. In fact, TPP will save footwear consumers and companies \$450 million the first year of implementation and \$6 billion over the first decade.”

EU Regulators Still Have Concerns on Privacy Shield

Despite another less than glowing opinion by European Data Protection Authorities (DPAs), European Union (EU) officials still are pushing to complete by this summer a transatlantic agreement on rules for the transfer of personal data to the U.S. from Europe.

The two partners released the formal texts and multiple annexes of the controversial EU-U.S. Privacy Shield framework agreed in February (see **WTTL**, March 7, page 9). At press time, no U.S. official had issued a statement on the latest decision, which calls into question U.S. privacy protections.

In its April 13 opinion, the EU’s Article 29 Working Party (WP29) welcomed some improvements of the new agreement over the previous Safe Harbor decision, but still expressed “strong concerns on both the commercial aspects and the access by public authorities to data transferred under the Privacy Shield,” it wrote. “In particular, the insertion of key definitions, the mechanisms set up to ensure the oversight of the Privacy Shield list and the now mandatory external and internal reviews of compliance are a positive step forward,” the WP29 opinion noted.

“As a preliminary remark, the WP29 regrets that the Privacy Shield is constituted by a various set of documents and that therefore, the principles and guarantees afforded by the Privacy Shield are set out in both the adequacy decision and in its annexes making the information both difficult to find, and at times, inconsistent. This contributes to an overall lack of clarity,” it wrote. Despite the seemingly negative opinion, EU Vice President for Digital Single Market Andrus Ansip tweeted April 13: “Following #WP29 opinion today, I will continue to work for EU-US #PrivacyShield in place by summer. Important for our citizens & business.”

“We understand the DPAs are also calling for certain clarifications of the complex Privacy Shield agreement to ensure it provides EU citizens with an ‘essentially equivalent’ level of protection when their data is transferred” to the U.S., Information Technology Industry Council (ITI) Vice President for Global Cybersecurity and Privacy Policy John Miller said in a statement. “We share the goal of crafting a mechanism for transatlantic data transfers that is consistent with the high levels of privacy protection afforded to citizens” in both the EU and U.S.,” Miller said. Activist Max Schrems, who brought the original case against the Safe Harbor agreement at the Court of Justice of the European Union (CJEU), later tweeted: “Insane how industry lobbyists ignore all warnings and demand that #PrivacyShield is adopted. Later they’ll complain about legal instability.” EU

consumer groups, including the Transatlantic Consumer Dialogue (TACD), urged the Commission to reject the agreement. “It is clear that the Privacy Shield does not adequately protect EU consumers’ fundamental rights. The Commission must reconsider its adoption. The EU cannot afford to set a precedent like this and allow fundamental rights and values to be hijacked by political and commercial interests,” Finn Myrstad, EU co-chair of the TACD Information Society Committee, said in a statement.

TTIP Talks Moving Forward Despite Anti-Trade Rhetoric

Despite the charged rhetoric of the presidential campaign on trade and the current financial and security crises in Europe, talks toward a Transatlantic Trade and Investment Partnership (TTIP) are intensifying, but may be more difficult to sell, experts told an event in Washington April 14.

Trade has “seldom been as good as the advocates have said, and it’s not been quite as bad as the opponents of it have stated. The charged nature of the campaign trail has contributed to many of the doubts as they relate to trade,” Rep. Richard Neal (D-Mass.), co-chair of the Congressional TTIP Caucus, said.

“On TTIP, we have a stronger argument [than TPP], and I’m hopeful that we can all get to the specifics and find a path forward,” he added. “There’s no guarantee on this, and the argument on trade has become much harder, much more difficult,” Neal noted.

A diplomatic answer on a specific part of the negotiation -- regulatory cooperation in the financial services sector -- could be taken as a proxy for congressional opinion on the talks in general. “There’s less attention being paid to that right now, and there’s more attention being paid to TPP. I’ve heard both sides of the argument. We’re simply waiting for more data,” Neal said.

“We are intensifying negotiations at the technical level, and at the political level,” Damien Levie, head of trade section, the EU Delegation to the U.S., told the event. EU Trade Commissioner Cecilia Malmstrom and USTR Michael Froman “will meet now regularly,” he said. In fact, Froman and Deputy USTR Michael Punke traveled to London for talks with Malmstrom April 10-11. “They will meet more and more to get it moving,” Levie noted. “We’re working very hard to make this happen, to achieve an ambition and balanced agreement as quickly as possible.” The 13th round of TTIP negotiations is scheduled for New York April 25-29. Responding to a question about specific areas of agreement, Levie grew testy. “In the big picture, you’ll need to wait a bit more,” he said. “Just hold your breath and give us leeway and oxygen to get it done,” Levie advised.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: David Maricola of Southbridge, Mass., pleaded guilty April 7 to 32 counts of conspiracy, illegally exporting defense articles, making false statements on customs forms, and money laundering. He admitted to shipping hundreds of firearm parts to people in 22

countries including France, Finland, Indonesia, New Zealand, Thailand, Spain, Australia and Germany. Shipments included parts for M16, M4, AR-15 assault rifles, Glock pistols and UZI submachine guns. Sentencing is set for June 30.

MORE EXPORT ENFORCEMENT: Hannah Robert, owner of N.J.-based One Source USA LLC, was sentenced April 14 in Trenton, N.J., U.S. District Court to 57 months in prison for conspiracy to violate Arms Export Control Act (AECA). She pleaded guilty in April 2015 (see **WTTL**, April 6, 2015, page 8). From June 2010 to December 2012, Robert conspired to export blueprints of torpedo parts for nuclear submarines, military attack helicopters, and F-15 fighter aircraft to India without licenses. In related case, Robert Luba, owner of Allied Components LLC of Sparta, N.J., was sentenced same day in same court to six months in prison for making false claim to Defense and violating AECA. Luba pleaded guilty in October 2013.

EVEN MORE EXPORT ENFORCEMENT: Chinese national Fuyi Sun, aka Frank, was arrested April 13 in connection with scheme to illegally export Toray type M60JB-3000-50B carbon fiber to China without license. Sun was charged in Manhattan U.S. District Court with Sun with one count of attempting to violate International Emergency Economic Powers Act (IEEPA), conspiracy to violate IEEPA and attempting to smuggle goods from U.S.

CHINA: Customs and Border Protection (CBP) issued withhold release order April 13 against Tangshan Sunfar Silicon Company, aka Tangshan SunFar Silicon Industries Co. Ltd., in China. Order requires detention of potassium, potassium hydroxide and potassium nitrate imports due to use of convict labor in production process. Order is second since President Obama signed Trade Facilitation and Trade Enforcement Act of 2015 in February (see **WTTL**, April 4, page 10).

TUNA: U.S. requested WTO compliance panel April 11 to examine new “dolphin-safe” tuna import labeling rules that National Oceanographic and Atmospheric Administration (NOAA) published in March (see **WTTL**, March 28, page 9). Request is “unusual in that most compliance panel requests are brought by the complaining party,” WTO said. Mexico has not agreed that new regulations are consistent with obligations.

BIOTECH: American Soybean Association (ASA) sent letter April 11 to USTR Michael Froman and Agriculture Secretary Tom Vilsack, urging administration to press European Commission to approve three biotech soybean traits, including Monsanto's dicamba-resistant and Vistive Gold high-oleic soybeans, and Bayer CropScience's isoxaflutole-resistant soybean. ASA said products have been waiting for final approval since January. USTR noted EU's slow pace of approvals in national trade estimate report earlier this month (see **WTTL**, April 4, page 8).

BURUNDI: OFAC in Federal Register April 6 issued abbreviated Burundi sanctions regulations, implementing November 2015 executive order imposing sanctions on government officials of central African country (see **WTTL**, Dec. 21, page 16). OFAC intends to supplement rules with “a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy,” notice said. “Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public,” it added.

1,1,1,2-TETRAFLUORETHANE: In 6-0 preliminary vote April 15, ITC found U.S. industry may be injured by allegedly dumped imports of 1,1,1,2-Tetrafluorethane (R-134a) from China. American HFC Coalition filed antidumping duty petition March 3 at ITA and ITC. In 4-2 negative final vote in November 2014, ITC previously determined that U.S. industry is not materially injured by these imports (see **WTTL**, Nov. 17, 2014, page 9).