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DDTC Offers Guidance for Gunsmiths

Trying to stem the number of questions from gunsmiths, State's Directorate of Defense Trade Controls (DDTC) consolidated its previous advisory opinions and individual advice on whether gunsmithing activities require registration under the International Traffic in Arms Regulations (ITAR) in guidance posted July 22.

"DDTC has found that many traditional gunsmithing activities do not constitute manufacturing for ITAR purposes and, therefore, do not require registration under the ITAR, particularly where such activities do not require cutting, drilling, or machining and do not improve the accuracy, caliber, or operation of the ITAR-controlled firearm beyond its original capabilities," the agency wrote.

"Activities limited to the domestic sale or resale of firearms, the occasional assembly of firearms without drilling, cutting, or machining, and/or specific gunsmithing activities ...are not manufacturing within the context of the ITAR. If you are not manufacturing, exporting, temporarily importing or brokering defense articles or services, you are not required to register with DDTC," it noted.

Specific activities that would require ITAR registration include: Use of any special tooling or equipment upgrading in order to improve the capability of assembled or repaired firearms; modifications that change round capacity; production of firearm parts; systemized production of ammunition, including automated loading or reloading; machining or cutting of firearms that enhance capability; rechambering firearms through machining, cutting or drilling; chambering, cutting or threading barrel blanks; and blueprinting firearms by machining the barrel.

U.S., EU Launch Efforts Against China at WTO

The European Union (EU) launched a third challenge to Chinese measures restricting access to raw materials for foreign companies, and the U.S. expanded its request for

consultations with China, EU Trade Commissioner Cecilia Malmstrom and U.S. Trade Representative (USTR) Michael Froman announced July 19. The U.S. and EU allege that China's restrictions enable it to unfairly influence global market prices, damaging the competitiveness of industries that depend on access to those materials.

"Today's action again makes clear that we will not hesitate to challenge export policies that harm U.S. manufacturers by restricting their access for key inputs into products made here in America. The restraints we challenged last week, along with the ones we have included today, are part and parcel of the same troubling policy – one that provides advantages for China in important manufacturing sectors at the expense of the rest of the world," said Froman.

The U.S. requested consultations with China July 13 regarding its export duties on nine raw materials (see **WTTL**, July 18, page 18). That request has been supplemented to include China's export duties on chromium and China's export quotas on antimony, indium, magnesia, talc and tin. These raw materials are "key inputs into high-value U.S.-made products in vital industrial sectors," USTR said.

"We cannot sit on our hands seeing our producers and consumers being hit by unfair trading practices," said Malmstrom during a press call. The EU did not join the U.S. last week because the U.S. filed ahead of the EU-China summit. Malmstrom said she spoke with her Chinese counterpart about the EU's concerns "but got very little result."

Malmstrom noted that the U.S. and EU have won two previous legal actions of a similar nature in 2012 and 2014 giving her confidence that the EU and U.S. will prevail again. "The past two WTO rulings on Chinese export restrictions have been crystal clear: these measures are against international trade rules," said Malmstrom.

In an online statement, China's Commerce Ministry said its duty and quota requirements conform to WTO rules and are imposed to "protect resources and the environment." Parallel consultations between China and the U.S. and China and the EU will take place over 60 days from the consultation requests. Should the parties fail to reach a solution then the EU and U.S. can request the WTO arrange a dispute settlement panel.

Malmstrom and Froman denied the action had anything to do with China's quest to be granted market economy status. Rep. Sander Levin (D-Mich.) and Sen. Ron Wyden (D-Ore.) sent letters to Froman and Malmstrom July 21 urging them to cooperate closely on the issue of China's MES. "In our view, the expiration of subparagraph 15(a)(ii) of China's WTO Accession Protocol does not require WTO Members to grant China market economy status [and] going forward, we believe that it is critical that the United States and Europe work much more closely on enforcement matters," Levin and Wyden wrote.

Johnson Controls Settles SEC Bribery Charges

Milwaukee-based HVAC provider Johnson Controls (JCI) agreed July 11 to pay the Securities and Exchange Commission (SEC) almost \$14 million to settle charges of

violating the Foreign Corrupt Practices Act (FCPA) related to the improper payments to Chinese government officials from 2007 to 2013.

During that time, the managing director and approximately 18 employees of JCI's wholly-owned Chinese subsidiary China Marine "made payments to sham vendors, some of which were then used to make improper payments of approximately \$4.9 million to employees of Chinese government owned shipyards, and ship-owners and others, to obtain and retain business, as well as to personally enrich China Marine employees," the SEC order noted.

In total, JCI obtained a benefit of \$11.8 million as a result of over \$4.9 million in improper payments made to or through approximately 11 problematic vendors, it added. The company acquired the Chinese subsidiary as part of a 2005 acquisition of York International, which was subject to a prior FCPA enforcement action in October 2007, for conduct in China and other parts of York's business, the SEC said (see **WTTL**, Oct. 8, 2007, page 1).

The company disclosed the violations and cooperated with the investigation. "The ability to identify and address issues when they do occur, reflects the company's commitment to ethics, responsible management practices and the good governance systems that uphold them. Our continuous improvement culture also involves continuing to make those systems even stronger," Johnson Controls CEO Alex Molinaroli said in a statement.

For its part, Justice declined to pursue charges "citing among other things the company's voluntary disclosure, thorough investigation, full cooperation, remediation and additional enhancements to the company's internal accounting controls and compliance program," the company said.

Under the terms of the settlement, Johnson Controls will pay \$11,800,000 in disgorgement, prejudgment interest of \$1,382,561, and a civil penalty of \$1,180,000. In addition, it agreed to report to the SEC for one year on the status of its FCPA and anti-corruption related remediation and implementation of compliance measures.

WTO DSB Moves Forward with Search for Appellate Body Member

World Trade Organization (WTO) members agreed at the July 21 Dispute Settlement Body (DSB) meeting to fill the vacancy left by the non-reappointment of Appellate Body (AB) member Seung Wha Chang of Korea. The vacancy is expected to be filled by November. Candidates must be nominated by Sept. 14 and will be interviewed in October.

The U.S. objected to Chang's reappointment in May (see **WTTL**, June 27, page 3). DSB Chair Xavier Carim of South Africa clarified that the search for Chang's replacement is separate from the search for Yuejiao Zhang's replacement. Zhang's second term expired at the end of May. At the same meeting, the DSB agreed to establish panels for two disputes involving the U.S. China requested a panel to examine U.S. compliance in a previous ruling on countervailing duty measures on certain products from China that include solar

panels, wind towers, country tubular goods, wire strand and aluminum extrusions. The U.S. did not object to the establishment of a compliance panel. DSB also established a panel to examine Canada's complaint regarding countervailing duties the U.S. placed on supercalendered paper. The U.S. said it "regretted" Canada's second request for a panel and maintained that Canada had no legal basis for its claims.

At the July 19 WTO DSB special meeting, the U.S. request for WTO authorization to impose \$450 million annually in additional duties on imports from India was referred to arbitration. The U.S. said India did not modify its import ban on U.S. poultry by the June 19 deadline nor by the U.S. request for retaliation July 7 (see **WTTL**, July 18, page 5).

Lacking a prior agreement on compensation, the U.S. wants authorization from DSB to suspend concessions or other obligations to India at a level matching how U.S. interests were hurt. India is "deeply disappointed" by the turn of events and said it believes a new measure that went into effect July 8 should bring it into compliance. Both sides said they remain open to discussion.

The U.S. and Vietnam signed an agreement July 18 resolving two outstanding WTO disputes over Vietnamese shrimp imports to the U.S. "The agreement also provides a framework for the settlement of certain U.S. court litigation, as well as the resolution of certain outstanding duty claims covering various administrative reviews of the warmwater shrimp antidumping duty order," Commerce said in a statement. Vietnamese exporter Minh Phu Group, which exported frozen warmwater shrimp, is no longer subject to the antidumping order and certain duty deposits will be refunded. The antidumping duty order remains in place for all other Vietnamese exporters of warmwater shrimp.

Letters Highlight Tension in Ongoing Softwood Lumber Dispute

Tit-for-tat letters highlight the ongoing tension in the softwood lumber negotiations between the U.S. and Canada. Sens. Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho) sent a letter, signed by 23 of their colleagues, to USTR Michael Froman July 19. The senators wrote that any new softwood lumber agreement with Canada must protect American lumber jobs.

"A truly durable solution cannot be based on an outmoded framework that does not offset the harmful effects of subsidized Canadian lumber in the U.S. market or allow the U.S. industry to invest and grow to its natural size without being impaired by unfairly traded imports. To fully address these impacts, any new agreement must establish border measures that are effective in all market situations and that disallow further divergences between U.S. and Canadian timber costs created by Canadian subsidies," reads the letter. The U.S. Lumber Coalition applauded the Senate letter. Canada's ambassador to the U.S. David MacNaughton sent a missive in return July 20 to remind Wyden that "despite repeated investigations and litigation in this sector over the past 35 years, there has never been a countervailing subsidy finding or an adverse impact (injury or threat of injury) determination by the U.S. government that has survived legal challenge."

A previous softwood lumber agreement between the two countries expired in October 2015. President Obama and Canadian Prime Minister Justin Trudeau attempted to put a positive spin on the negotiations during the North American Leaders' Summit June 29, but trade sources remained skeptical that a deal will be concluded by the October deadline (see **WTTL**, July 4, page 1).

Industry Responds to Proposed Harmonized Definitions

Industry questions and complaints about harmonized export definitions are getting down to the nitty-gritty, according to comments DDTC posted July 21. DDTC published a final, but only partial list in June, while punting the controversial ones down the road (see **WTTL**, June 6, page 4).

When publishing its parallel rule in June, Bureau of Industry and Security (BIS) did not open a formal comment period. Commenters on the DDTC rule took issue with a number of definitions and provisions, for example, the difference between DDTC and BIS definition of "release," specifically how it relates to theoretical access to technical data.

"To the extent that DDTC continues to believe that 'theoretical or potential access' is sufficient to constitute an export in the context of ITAR licensing and Section 126.1 and 127.12 reporting, it would be important to understand that as well. Absent further guidance or clear standards from DDTC, regulated companies may take divergent approaches to this issue in view of the latest guidance in these rules, with some companies continuing to treat theoretical or potential access as an export, while other companies transition to the view articulated by BIS," Akin Gump wrote.

Airbus took issue with the communication of the scope of licenses via license application and any letters of explanation. "We would like to emphasize that it is critical, in order for the foreign parties to comply with the terms of the license, and in particular to conduct reexport and retransfer and abide by the scope of the authorized end use and end user, that all the terms be included in the license approval itself. The foreign parties do not have access to 'letter of explanations' and other side documents which may have been submitted by the U.S. Applicant," the company wrote.

BAE Systems questioned the policy on export/reexport based on past citizenship. The rule "states that disclosing technical data to a foreign person is an export or reexport to all countries in which the foreign person 'has held' or holds citizenship or permanent residency. DDTC should consider additional guidance clarifying whether it intends to capture renounced citizenships and eligibility for citizenship that has not been exercised within the definitions of export and reexport," it wrote.

"Does DDTC consider country of birth alone sufficient to establish a particular nationality for ITAR purposes? (i.e., will DDTC consider a person born in a particular country as a national of that country, even if the person does not hold citizenship or permanent residency status in his/her country of birth?)" Raytheon asked.

The Semiconductor Industry Association (SIA) asked for clarification on the difference between installation and integration. “DDTC should modify the definition of ‘integration’ provided in the Note to paragraph (a)(2) to include only introduction of software ‘required’ for a defense article,” it wrote. “The introduction of software not peculiarly responsible for the controlled characteristics of the defense article should be explicitly included in the definition of ‘installation,’” SIA added.

“By doing so DDTC would give meaning to the distinction between ‘integration’ and ‘installation’ for software and would appropriately classify as a ‘defense service’ only the introduction of software that meaningfully contributes to the controlled characteristics of a defense article,” SIA noted.

*** * * Briefs * * ***

PIPE FITTINGS: In “sunset” votes July 20, ITC said revoking antidumping duty (AD) orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan and Thailand would renew injury to U.S. industry. Votes for China, Japan, Taiwan and Thailand were 6-0, while 5-1 for Brazil. Commissioner Meredith Broadbent voted no.

RUBBER: Lion Elastomers and East West Copolymers filed antidumping duty petition July 21 at ITA and ITC against emulsion styrene butadiene rubber from Korea, Mexico and Poland.

ECR: Rep. Collin Peterson (D-Minn.) and Rep. Tom Marino (R-Pa.) July 13 introduced H.Res.829, which “encourages publication of proposed rules” to shift remaining USML categories to CCL by end of 2016. Resolution notes three categories remain under State regulation “with no indication of movement since 2013.”

TRADE PEOPLE: USTR Chief of Staff Matt Vogel designated acting Deputy USTR July 18 filling role Wendy Cutler held. Vogel will continue to serve as chief of staff. Prior to joining USTR, he was Special Assistant for Economic Policy at White House.

DIGITAL TRADE: USTR Michael Froman July 18 announced creation of Digital Trade Working Group to serve as “rapid response” team to “identify and combat barriers to digital trade” and promote policies to advance global digital trade. Team led by Deputy USTR Robert Holleyman will “closely examine barriers to cloud computing, platform services, and the trade in digital products, as well as coordinate the negotiation and implementation of digital trade provisions bilaterally and across on-going and completed negotiations” including TPP, TTIP and TiSA.

AZERBAIJAN: WTO Accession Working Party of Azerbaijan met July 22 in Geneva. Azerbaijan’s working party established July 16, 1997, and currently chaired by Ambassador Walter Werner of Germany. Azerbaijan signed protocols with Turkey, Oman, UAE, Georgia and Kyrgyzstan.

BREXIT: British Prime Minister Theresa May met with German Chancellor Angela Merkel July 20 to discuss UK’s position in EU. May said Britain will not exit EU in 2016 but will relinquish its turn holding rotating presidency of EU Council, scheduled for second half of 2017. “All of us will need time to prepare for these negotiations and the United Kingdom will not invoke Article 50 until our objectives are clear. And that’s why I’ve said already, this will not happen before the end of this year,” said May. She met with French President Francois Hollande following day.

CUBA: July 20 marked one-year anniversary of restored diplomatic relations between U.S. and Cuba. U.S. and Cuba re-opened their respective embassies July 20, 2015, and two governments reached bilateral arrangement to establish air service. Embargo remains in place. “We have begun to identify areas where we can work together within the confines of the embargo and create greater prosperity for the people of the United States and Cuba,” senior State official said in press call July 20. U.S. and Cuba signed Counternarcotics Arrangement July 21 in Havana at third Counternarcotics Technical Exchange.

CHINA: National Council of Textile Organizations (NCTO) July 19 called on Obama administration to reject China’s request to be designated market economy under WTO. “China’s chronic misallocation of investment to expand its state-owned enterprises in the textile supply chain and in other industrial sectors where there is an excess of global capacity invariably leads to Chinese dumping and other non-free-market economic practices,” NCTO President and CEO Augustine Tantillo said in statement. NCTO is member of Manufacturers for Trade Enforcement that met with lawmakers July 11 and 12 to explain why China should not be granted MES. China claims terms of its WTO accession call for MES designation on Dec. 11, 15th anniversary of its accession (see **WTTL**, June 27, page 7).

STEEL: Commerce issued final antidumping (AD) and countervailing (CVD) duties on cold-rolled steel products from Brazil, India, Korea, Russia and UK July 21: Brazil 14.35-35.43% (AD) and 11.09-11.31% (CVD); India 7.06% (AD) and 10% (CVD); Russia 13.36% (AD) and 6.95% (CVD); Korea 6.32- 34.33% (AD) and 3.91- 58.36% (CVD); and UK 5.4- 25.56% (AD). Petitioners of original case are Arcelor Mittal USA, United States Steel, AK Steel, Nucor and Steel Dynamics.

GSP: Economics counselors from 14 embassies representing Alliance of Generalized System of Preferences Countries voiced displeasure in Obama administration decision to only extend duty-free treatment to AGOA countries and GSP Least Developed Beneficiary Developing Countries (see **WTTL**, July 11, page 1). In letter to USTR Froman July 18, counselors said action “only helps support the status quo in the market.”

EX-IM BANK: House Appropriations Committee July 12 approved amendment by Rep. Charlie Dent (R-Pa.) to allow Ex-Im Bank board quorum to consist of two members instead of three mandated by charter. Senate Banking Chair Richard Shelby (R-Ala.) refuses to hold hearings to confirm nominee to Ex-Im board. Without quorum, Ex-Im Bank cannot approve loans larger than \$10 million. Amendment language would be in effect Oct. 1, 2016, through Sept. 30, 2019. Last month, Senate Appropriations Committee approved identical language introduced by Sen. Lindsey Graham (R-S.C.) in its foreign operations spending bill.

EXPORT ENFORCEMENT: Alexander Fishenko, dual citizen of U.S. and Russia, was sentenced July 21 in Brooklyn U.S. District Court to 10 years in prison and more than \$500,000 in forfeiture. He pleaded guilty in September 2015 to more than 20 charges, including conspiracy to violate Emergency Economic Powers Act and Arms Export Control Act, and obstructing justice. Fishenko was indicted in October 2012 with 10 other Russian and U.S. naturalized citizens on charges of unlicensed export of microelectronic products to Russian military and intelligence agencies between 2008 and 2012. He is president and CEO of Arc Electronics and part owner of Apex Systems, Moscow procurement firm that was also charged. ARC is now defunct, and Apex failed to appear in court, Justice noted. Nine other defendants are Arc or Apex employees and one was employed by Atrilor, Ltd., another Russian firm. Most charges against Sevinj Taghiyeva were dropped June 27 in same court. Codefendants Alexander Posobilov, Shavkat Abdullaev and Anastasia Diatlova were convicted in October and await sentencing (see **WTTL**, Nov. 2, 2015, page 8). Svetalina Zagon pleaded guilty in May to related charges.