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Gainor Planning to Leave DDTC

News that Sue Gainor, compliance chief for State's Directorate of Defense Trade Controls (DDTC), is preparing to resign her post caught many in industry by surprise, several sources told WTTL. As the move has not been announced formally, questions about her possible replacement, next moves and effective date remain unanswered. DDTC had no comment.

Prior to joining DDTC in November 2013, Gainor, a former Air Force officer, worked at the Defense Security Cooperation Agency, the Joint Staff, the Defense Technology Security Administration and for the Air Force under secretary for international affairs. She also has held positions at private defense companies.

Over the last year, Gainor is credited with revamping its company visit program (CVP), which she described in an exclusive interview with our sister publication, *The Export Practitioner*, in June (see **WTTL**, July 18, page 1). Gainor laid out what she's learned from the first year of the revamped CVP, how the latest DDTC settlements came about, and how her team's relationship with law enforcement has changed for the better.

Final Night-Vision Rules Clear Interagency Review

Final rules on transfers of products from U.S. Munitions List (USML) Category XII (night vision) have cleared the interagency review process and likely will be published in late September or early October, Bureau of Industry and Security (BIS) Deputy Assistant Secretary Matthew Borman told the agency's Sensors and Instruments Technical Advisory Committee (SITAC) July 26.

"We have a revised USML Category 12 revision, as well as the revised Commerce bookend that are now interagency cleared through the OMB [Office of Management and Budget] process, so they are actually final in that sense," Borman said. "They do largely reflect the

principle that if an item is specially designed for a military application it's on the USML, and if it's not, it's not. This is something we have been talking about for a very long time," he chuckled.

When asked about whether the Office of Management and Budget (OMB) would allow publications of new rules so late in an election year, Borman responded, "We've talked to folks at OMB, and that's not an issue, because this is really closing out export control reform, and these issues have been very well vetted, particularly in this sector" (see **WTTL**, May 2, page 1).

The next step in the publication process is the formal and informal notification to Congress of any products moving off the USML. "In this case, it's different from virtually every other USML revised category... because there you clearly had identifiable chunks of things that did move from the USML to the CCL," Borman said. "Here it's a little more challenging, because there's always been differing views as to what was previously controlled on the USML under the 'specifically designed' criteria," he noted.

DOT Gets Few Objections to Cuba Flight Routes

As airlines are publicly celebrating their plans to fly authorized travelers to Cuba's capital city, Transportation (DOT) received only a few objections to the cities and routes it proposed July 7 (see **WTTL**, July 11, page 1). Under the proposal, travelers will be able to book scheduled flights from ten U.S. cities on eight domestic airlines as early as this fall.

DOT expects to reach a final decision later this summer. In public comments posted on regulations.gov, Denver and Boston got love for being overlooked in the award process. "The Parties continue to believe that such an allocation to Frontier for service between DEN and HAV is not only warranted, but in the best interest of the public, and are disappointed by the Department's tentative decision to not only shut out Denver, but much of the entire Western U.S., from convenient, low-fare service," noted the City and County of Denver in its comments.

JetBlue, which like other airlines publicly celebrated the announcement in a widely distributed press release, requested more Saturday flights. The department's "tentative decision to re-allocate 50% of JetBlue's Saturday-only Ft. Lauderdale-Havana frequencies to support United's proposed Saturday-only Houston-Havana service places JetBlue at a major competitive disadvantage against every other carrier that will have the ability to offer a full and consistent Havana schedule every day of the week, including on Saturday, the most important travel day in the United States-Caribbean market," the airline wrote.

Eastern Airlines, which was not awarded any of the flights, either to Havana or the other Cuban cities, requested a second look. "While the Department has to date considered contemporaneously the applications of eleven different carriers, neither substantive order in this proceeding indicates that the Department considered the merits of Eastern's application alongside them," it wrote.

“Rather, the Department closes its review in the Show Cause Order with a terse assertion that Eastern has not ‘completed the necessary [economic] licensing steps to conduct scheduled air transportation.’ In other words, the Department proposes to deem Eastern *ineligible* to be considered for Cuba scheduled authority because Eastern does not already hold economic authority to provide scheduled service *in some other market*,” the airline noted.

Airline Settles Charges of Bribery in Union Dispute

South American-based LAN Airlines agreed July 25 to pay the Securities and Exchange Commission (SEC) and Justice more than \$22 million to settle parallel civil and criminal charges of violating the Foreign Corrupt Practices Act (FCPA). The charges relate to improper payments it authorized during a dispute between LAN subsidiary, LAN Argentina S.A., and its employees in 2006 and 2007.

LAN CEO Ignacio Cueto Plaza agreed in February to pay \$75,000 to settle related SEC charges (see **WTTL**, Feb. 22, page 9). LATAM, the larger holding company created after the 2012 merger of LAN and TAM, S.A., entered into a three-year deferred prosecution agreement (DPA) with Justice and agreed to pay a \$12.75 million criminal penalty. Under the SEC settlement, the company agreed to pay \$6.74 million in disgorgement and \$2.7 million in prejudgment interest.

“At the time, LAN understood that it was possible the consultant would pass some portion of the \$1.15 million to union officials in Argentina. The payments were made pursuant to an unsigned consulting agreement that purported to provide services that LAN understood would not occur,” the SEC order noted.

While LATAM fully cooperated with Justice, it “did not, however, remediate adequately. LATAM failed to discipline in any way the employees responsible for the criminal conduct, including at least one high-level company executive, and thus the ability of the compliance program to be effective in practice is compromised,” the department noted.

“LAN used a sham consulting agreement to make its financial reporting appear as though the company was funding a study rather than steering money to settle labor disputes,” said SEC FCPA Chief Kara Brockmeyer in a statement. “This settlement along with our prior case against the CEO shows that public companies and their executives must be truthful and forthcoming about its overseas consulting agreements or otherwise pay the consequences,” she added.

“As has been communicated in its corporate financial reports, the company has cooperated fully with relevant authorities throughout this process,” the company said in a statement. “LATAM and its senior management reaffirm its commitment to complying with the laws of all of the countries where the Group operates. From the time this event occurred, the company has taken action and made significant improvements in its Compliance structure and its internal accounting controls,” it added.

Agencies Issue Final Rules for USML Transfers

As the export control reform effort winds down, at least for this administration, Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) July 28 issued final changes to U.S. Munitions List (USML) Category XIV (toxins) and Category XVIII (directed energy weapons).

The Category XIV articles that will move to BIS jurisdiction consist primarily of dissemination, detection and protection "equipment" and related articles and will be controlled under new Export Control Classification Numbers (ECCNs) 1A607, 1B607, 1C607, 1D607 and 1E607. This includes riot control agents, test facilities, equipment for the destruction of chemical and biological agents, and tooling for production of articles, the DDTC Federal Register notice said.

The affected Category XVIII articles consist primarily of tooling, production "equipment," test and evaluation "equipment," test models and related articles and will be controlled under new ECCNs 6B619, 6D619 and 6E619. Specifically, ECCN 6B619.a will control tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test "equipment" that are "specially designed" for the "development," "production," repair, overhaul, or refurbishing of commodities controlled by Category XVIII, BIS said.

The rules will be effective Dec. 31. BIS said it received eight comments in response to its June 2015 proposal. Assistant Secretary Kevin Wolf previously said comments were "relatively mild and easy to implement" (see **WTTL**, March 14, page 1).

In Category XIV as in previous categories, the DDTC rule added a new paragraph (x) as a "regulatory reference point in response to industry requests to be able to use a Department of State license to export shipments that have a mix of ITAR controlled items and EAR controlled items for use in or with items described in that category," DDTC said. In addition, it establishes USML control of chemical or biological agent detectors only when they contain Defense Department reagents, spectra, algorithms or databases, it noted.

Under Category XVIII, the DDTC rule revises paragraph (a) "to control only those articles that, other than as a result of incidental, accidental, or collateral effect, achieve the effects described in the paragraph by way of non-acoustic techniques," DDTC said. In addition, the articles controlled previously in paragraphs (c) and (d) of the USML are moved to Commerce jurisdiction.

British Lamb Back on American Menus in 2017

Coming to menus in 2017: British lamb chops. United Kingdom (UK) Farming Minister George Eustice said at his country's National Sheep Event July 27 that the U.S. Agriculture Department (USDA) has published proposals for consultation to relax import restrictions on lamb. The restrictions have been in place since 1989 after an outbreak of the neurodegenerative disease commonly known as "mad cow disease."

According to the UK embassy in the U.S., a 1,000-page dossier was submitted to USDA detailing the “safety and quality” of British beef and lamb prior to the April 2016 meeting with Agriculture Secretary Tom Vilsack in Washington. The UK farming industry is now coordinating comments for the 60-day consultation with U.S. counterparts.

“The U.S. decision to press ahead with proposals to lift export restrictions on British lamb is great news for our farmers who are one step closer to gaining access to the lucrative America market, worth an estimated £35 million a year,” Eustice said in a statement.

G20 Ministers Meet in China, Pledge to Resist Protectionism

No joint initiatives were announced at the conclusion of the G20 Finance Ministers meeting July 23-24 in Chengdu, China, but the officials did promise to stabilize the global economy in the wake of Brexit and address the global steel glut.

“In light of recent developments, we reiterate our determination to use all policy tools – monetary fiscal and structural – individually and collectively to achieve our goal of strong, sustainable, balanced and inclusive growth,” the attendees said in a communique released July 24. They pledged to “resist all forms of protectionism.”

“[In] the wake of the referendum in the United Kingdom, I discussed with my counterparts in Europe and the UK the need for negotiations to take place in a smooth, pragmatic, and transparent manner, and that a highly integrated relationship between the UK and the EU is in the best interests of Europe, the United States, and the global economy,” said Treasury Secretary Jacob Lew in a statement during the meeting.

The joint G20 document acknowledges that “excess capacity in steel and other industries is a global issue which requires collective responses.” Subsidies and other forms of government support cause market distortion, it continued. G20 steelmaking economies will participate in the OECD Steel Committee meeting Sept. 8-9 and will discuss creating a Global Forum “as a cooperative platform for dialogue and information sharing on global capacity developments and on policies and support measures taken by governments.”

Conventions Show Growing Consensus Against TPP

Throughout the Democratic National Convention in Philadelphia July 25-28, anti-Trans-Pacific Partnership (TPP) protesters made their presence known with signage clearly visible during the mainstage broadcasts each night. The final Democratic platform says TPP should conform to the free trade standards detailed in the document, which calls for transparency during negotiation of future agreements and states that Democrats will not back free trade agreements that do not support “good American jobs, raise wages, and improve our national security” (see **WTTL**, July 18, page 7). The normally free-trade supportive Republican party scrubbed any mention of TPP from its platform. Instead, the Republican platform says “significant trade decisions” should not be rushed.

Falling into line with his running mate, Sen. Tim Kaine (D-Va.) went on the record as opposing TPP. He had not taken a formal stance prior to his selection, though he voted for fast-track approval and said in the past that he liked much about the deal.

On the other side, the Republican presidential nominee suggested in an interview with NBC that the U.S. might withdraw from the World Trade Organization (WTO) if he couldn't place tariffs of 15-35% on companies that move factories to Mexico. He called the WTO "a disaster." WTO Director General Roberto Azevedo said July 27 that he would not get into an argument with Donald Trump but noted that he was pleased by the people who have spoken up for trade "from unexpected quarters."

Though neither nominee currently supports TPP, there are certainly free-trade supporters within their parties. In a NBC/Wall Street Journal poll published in mid-July, 60% of Democrats and 51% of Republicans polled agree with this statement: "Free trade with foreign countries is good for America because it opens up new markets and because the United States can't avoid it in a global economy."

*** * * Briefs * * ***

IRAN: OFAC July 29 issued General License J (GL J) authorizing reexport by non-U.S. person of "eligible aircraft" to Iran on temporary sojourn. "Eligible aircraft" means U.S.-origin fixed-wing civil aircraft or non-U.S.-origin fixed-wing civil aircraft of which U.S.-controlled content constitutes 10% or more of total value and is (i) classified under ECCN 9A991.b, and (ii) registered in jurisdiction other than U.S. or any country in Country Group E, which includes Iran. GL J does not authorize reexport of any rotary wing aircraft or unmanned or optionally-piloted aircraft to Iran on temporary sojourn, it said.

ISIL: BIS July 25 updated previous guidance on licensing requirements for exports to ISIL posted in March (see **WTTL**, March 14, page 9). Agency added lists of ISIL-controlled facilities and territories in Iraq, plus link to State's "Illustrative List of Oil Drilling and Refinery Equipment that ISIL will likely require to continue its oil production and refining operations." BIS emphasized "ISIL's control over Iraqi territories is fluid and changes day to day."

HYDROFLUOROCARBON: In 6-0 final votes July 22, ITC found U.S. industry is materially injured by dumped imports of hydrofluorocarbon blends from China, but not injured by imports of hydrofluorocarbon components from China. Commission also made negative findings on critical circumstances with regard to imports of hydrofluorocarbon blends from China.

EXPORT ENFORCEMENT: R&A Logistics International, N.Y. freight forwarding company, and owner Rukhsana "Roxanne" Kadri agreed July 22 to pay BIS \$500,000 civil penalty to settle charges related to falsifying Shipper's Export Declarations in connection with international shipments of computers to UAE between October 2009 and May 2012. Of penalty, \$350,000 will be suspended for five years and then waived if R&A and Kadri commit no further violations. Company and owner were sentenced in August 2014 in Brooklyn District Court to two and three years' probation after pleading guilty to related charges (see **WTTL**, August 11, 2014, page 9).

TRADE FINANCE: Commerce established Trade Finance Advisory Council to advise secretary on "development of strategies and programs that would help expand access to trade finance for U.S. exporters," agency announced July 25. Nominations for membership open through Aug. 22.

CURRENCY: President Obama issued executive order July 22 explaining how Treasury will work with USTR and State to deal with foreign currency practices under Trade Facilitation and Trade Enforcement Act of 2015. Act requires Treasury to provide analysis of trading partners that have significant bilateral trade surplus, material current account surplus, and consistent one-sided intervention in foreign exchange market. No country has met all three criteria, but Treasury put five countries on watch list in April (see **WTTL**, May 2, page 2).

GSP: In letter to USTR Michael Froman July 27, 14 lawmakers requested administration issue, “as soon as possible, a proclamation designating duty-free benefits for travel goods for those GSP Beneficiary Developing Countries not already included” in June 30 declaration (see **WTTL**, July 25, page 7). Reps. Charles Boustany (R-La.) and Ron Kind (D-Wis.) among those who were “disappointed” in decision to exclude countries including Philippines, Indonesia, Thailand, India, Sri Lanka and Pakistan, calling decision “a missed opportunity.”

WTO: WTO Director General Roberto Azevedo told members July 27 he is prepared to serve second term. Brazilian government voiced support for its former trade negotiator.

INDIA: WTO Appellate Body expected to rule on India-U.S. solar panel dispute by mid-September. U.S. challenged India’s rules of origin on solar cells and modules used in its domestic solar power program (see **WTTL**, May 16, page 6).

UNITED KINGDOM: During meeting in Washington July 25 USTR Michael Froman told UK Secretary of State for International Trade Liam Fox bilateral trade and investment deal cannot be negotiated until UK sorts out its relationship with EU. U.S. will “engage in conversations” with UK regarding trade at “appropriate time,” USTR’s office said in statement.

MEXICO: Mexico and U.S. commit to hold formal negotiations on bilateral peaceful nuclear cooperation by year’s end. “123” Agreement would be basis for transfer of technology, fuel and nuclear components between two countries, according to White House fact sheet published July 22 following meeting between President Obama and Mexican President Enrique Pena Nieto.

CHINA: Commerce July 20 announced affirmative preliminary determination in antidumping duty (AD) on some large residential washing machines from China. Whirlpool Corporation is petitioner. Preliminary dumping margins for Nanjing LG-Panda Appliances Co., Ltd. and Suzhou Samsung Electronics Co. stand at 49.88%, Suzhou Samsung Electronics Co. – Export 111.09% and 80.49% for all other producers/ exporters in China. Final determination scheduled for Dec. 9. Imports of washing machines from China in 2014 were approximately \$899.4 million.

USTR: Rep. Morgan Griffith (R-Va.) July 14 introduced legislation (H.Con.Res 147) to move USTR functions and responsibilities to legislative branch within four years. “Members of Congress have historically had primary responsibility for compiling and proposing reductions/ suspensions of import duties, but over the last century, Congress has increasingly ceded authority for negotiating trade deals and import duties” to USTR, Griffith said in statement.

TARIFF SCHEDULE: ITC July 28 recommended modifications to U.S. Harmonized Tariff Schedule to conform to World Customs Organization (WCO) changes. Modifications concern classification of edible fish offal; new subdivisions for coniferous and non-coniferous wood and new HTS subheadings for certain wood of pine, fir, spruce, beech, birch, poplar, aspen, and eucalyptus; and certain bed-nets of warp knit fabrics.