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U.S., 44 Countries Agree to Start Talks on Military UAV Exports

Two years after industry advisors complained about restrictive export policies on military unmanned aerial vehicles (UAVs), State Oct. 5 announced the “logical next step” in the process: a joint declaration with 44 other countries agreeing to start discussions on international standards. The agreement comes more than 18 months after the Obama administration clarified its own policies, enhancing controls and giving exporters a clear set of licensing requirements.

“In light of the rapid development of UAV technology and the benefit of setting international standards for the export and subsequent use of such systems, we are resolved to continue discussions on how these capabilities are transferred and used responsibly by all States,” the declaration said.

The countries also acknowledged the following principles: the applicability of international law; the importance of engaging in responsible export; existing multilateral export control and nonproliferation regimes; and the importance of appropriate voluntary transparency measures. Discussions on the more detailed set of international standards “will convene in Spring 2017. These discussions will be open to all countries, even if they choose not to join the Joint Declaration,” State said in a fact sheet.

The Obama administration in February 2015 “put in place stringent conditions on the U.S. sale or transfer of military UAVs,” State noted (see **WTTL**, Feb. 23, 2015, page 1). A year prior, State’s Defense Trade Advisory Group (DTAG) told the department there is widespread foreign availability and that past policies have caused long delays in getting licenses and required extensive and restrictive provisos that have hurt foreign sales.

Administration Lifts Burma Sanctions

Three weeks after a beautifully choreographed meeting with Nobel Laureate Aung San Suu Kyi, the Obama administration Oct. 7 formally lifted remaining U.S. sanctions on

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Myanmar, aka Burma. In a coordinated announcement, Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) detailed their respective actions.

During the meeting, President Obama promised to lift the sanctions, citing the country's "new way of doing business and a new government." At the same time, the administration reinstated Burma's eligibility for benefits under the Generalized System of Preferences (GSP) (see **WTTL**, Sept. 19, page 4).

Under the president's executive order, all individuals and entities blocked under the Burmese Sanctions Regulations (BSR) have been removed from OFAC's Specially Designated Nationals (SDN) list and the import ban on Burmese-origin jadeite and rubies, and any jewelry containing them, has been revoked, OFAC noted. "The termination of the Burma sanctions program does not impact Burmese individuals or entities blocked pursuant to other OFAC sanctions authorities, such as counter-narcotics sanctions. They remain on the SDN List, and their property and interests in property remain blocked," OFAC said in a fact sheet.

Treasury also issued a Frequently Asked Question (FAQ) addressing any ongoing enforcement action or investigation for apparent BSR regulations. "Pending OFAC enforcement matters will proceed irrespective of the termination of OFAC-administered sanctions on Burma, and OFAC will continue to review apparent violations of the BSR, whether they came to the agency's attention before or after the Burma sanctions program was terminated," the FAQ said.

"Under longstanding practice, apparent sanctions violations are analyzed in light of the laws and regulations that were in place at the time of the underlying activities, and civil and criminal enforcement authorities are applied accordingly. Current or future investigations regarding apparent violations of the BSR will not be impacted by its termination and may result in OFAC enforcement actions after the termination of the BSR," OFAC wrote.

At the same time, FinCEN announced it is providing "exceptive relief" to its prohibitions on financial institutions maintaining correspondent accounts for Burmese banks. In 2003, FinCEN found Burma to be a jurisdiction of primary money laundering concern. "The 2003 finding remains in place, but FinCEN is issuing an administrative exception today to suspend the prohibition so that U.S. financial institutions can continue to provide correspondent services to Burmese banks, subject to the appropriate due diligence requirements," the agency said.

Justice Drops Criminal Charges after DDTC Settlement

In what could be seen as a slap on the wrist, a Las Vegas arms broker and his company avoided criminal charges for attempting to broker weapons to Libya in 2011 after he agreed to a four-year consent agreement with State's Directorate of Defense Trade

Controls (DDTC) for violating the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). Under the terms of the agreement posted Oct. 5, Marc Turi and Turi Defense Group (TDG) agreed to refrain from participating in activities subject to the ITAR for the term of the agreement. A \$200,000 civil penalty will be suspended and then waived unless Turi and TDG materially violate the agreement, State said. Because Turi cooperated with the investigation, State determined that administrative debarment “was not appropriate at this time.”

“Based on its compliance review, DDTC alleged that Mr. Turi, as president of TDG, engaged in brokering activities for the proposed transfer of defense articles to Libya, a proscribed destination under the ITAR, despite the Department’s denial of TDG requests for the required prior approval of such activities. The proposal did not result in an actual transfer of defense articles to Libya,” State said in a statement.

Criminal charges against Turi and TDG of violating the AECA also had been pending in Phoenix U.S. District Court. “After having been denied a brokering license to supply weapons to Libya, Marc Turi, and Turi Defense Group then did submit brokering applications” to DDTC, “false listing Qatar and United Arab Emirates as the end users for weapons that were actually intended for individuals in Libya,” the February 2014 indictment against Turi and TDG noted.

Between February and July 2011, Turi and TDG “attempted to broker a substantial quantity of weapons – machine guns, sniper rifles, assault rifles, anti-tank rockets, rockets and other high explosives and ammunitions – to individuals in Libya,” the indictment noted. Turi and TDG were registered with State as a broker and manufacturer of defense articles and “have a history of applying for and receiving both approvals and denials to broker defense articles that precedes the events in this Indictment,” the indictment said.

After the DDTC settlement was announced, Justice dropped the two charges. “While the parties disagree on the facts of this case and the defendants deny any criminal conduct, the defendants acknowledge that the charges obtained in this case were based in fact,” said a joint motion to dismiss the charges filed in court. State noted that Turi did not disclose the violations, but that it became aware of the information from Justice.

The dismissal motion details two years of negotiations between the parties over the disclosure of documents. In October 2014, the court said that “it intended to order the disclosure of a document ‘if it relates to an effort to arm rebels, something that actually occurred, then it should be disclosed,’ but it also pointed out that ‘there is a difference between actively contemplating and doing it.’” The parties were still negotiating when DDTC announced its settlement, the motion said.

At 15th Round of Negotiations, TTIP Slowly Moves Forward

Though far from their original goal of completing negotiations toward a Transatlantic Trade and Investment Partnership (TTIP) by summer’s end, the U.S. and European Union

(EU) chief negotiators tried to strike a hopeful note at the end of the 15th round of TTIP talks Oct. 3-7. More than 20 negotiating groups met in New York during this round.

“We have heard some skeptical voices about TTIP lately, but I want to emphasize that the United States remains fully engaged in these negotiations and is as committed as ever to their success,” U.S. Chief Negotiator Dan Mullaney said. “We remain ready to move forward on an agreement that is in our mutual economic interest.”

New texts were tabled before and during the negotiating round, covering rules of origin, autos, intellectual property, trade remedies and textiles. “Good progress” was made in the areas of customs and trade facilitation, good regulatory practices, regulatory cooperation, technical barriers to trade and regulatory compatibility, Mullaney said. The negotiating teams also discussed nine sectors for cooperation: cars, pharmaceuticals, chemicals, cosmetics, ICT, pesticide, engineering, medical devices and textiles.

Chief EU Negotiator Ignacio Garcia-Bercero used his remarks to assuage European fears regarding globalization. He argued that “strong regulatory cooperation” between the EU and U.S. would benefit European companies and promote effective regulations for the benefit of citizens and consumers. “Of course, regulatory cooperation will always be voluntary, based on mutual interest and not restrict either side’s freedom to regulate in public interest,” Bercero noted.

EU representatives will report back to their respective governments ahead of the EU trade ministers meeting Nov. 11. German Chancellor Angela Merkel shouldn’t be a difficult sell. “We are still continuing the discussions about TTIP and I think we should continue them as long as possible,” she told a German trade body Oct. 5.

Ahead of the talks, House Ways and Means Chairman Kevin Brady (R-Texas) and Senate Finance Committee Chairman Orrin Hatch (R-Utah) wrote to U.S. Trade Representative (USTR) Michael Froman about “the unwillingness of the EU to negotiate on key issues of high priority” for the U.S., including full tariff elimination for all products. “We ask that you continue to emphasize to the EU that any eventual TTIP must address such issues if Congress is to support the agreement,” they wrote. In addition, Brady and Hatch alleged that the EU “has not engaged meaningfully” on digital trade issues like cross border data flows and data server localization requirements.

“The EU’s pattern of ‘hostage taking’ and other stall tactics has led us to where we are today – to a point where European leaders are expressing an inability and unwillingness to complete a comprehensive agreement by the end of this year,” they wrote. “Congress will not accept an abbreviated or low-standard agreement simply because the Europeans have run out the clock.”

Divided CAFC Upholds Dumping Ruling on Magnesium

The cost of certain manufacturing equipment cannot be used to calculate the direct materials cost of a product in an antidumping investigation, a divided Court of Appeals for

the Federal Circuit (CAFC) ruled Oct. 6. The 2-1 decision in *U.S. Magnesium (USM) v. U.S.* upheld a Court of International Trade (CIT) decision that supported Commerce's treatment of costs associated with the production of the material by a Chinese exporter, Tianjin Magnesium International (TMI).

The appeal focused on how to classify the costs of retorts in constructing the normal value of the exported product. Retorts are vessels used in the Pidgeon process for producing magnesium and require frequent repair and reconditioning due to the heat used in the process.

"Following the preliminary results, USM continued to argue that retorts should be classified as direct materials rather than as overhead. In the final results, however, Commerce stood by its classification, explaining that the retorts are best classified as overhead 'because they are not physically incorporated into the final product and are replaced too infrequently to be a direct material,'" noted Appellate Judge William Bryson for himself and Chief Judge Sharon Prost.

"In this case, Commerce relied primarily on two factors: the fact that the retorts were not physically incorporated into the final product, and the fact that the retorts were not replaced frequently. Commerce's focus on those factors was neither inconsistent with its past practices in analogous cases nor unreasonable as a way of distinguishing between direct and indirect materials. As long as its analysis was reasonable, as it was here, Commerce was not required to examine and rely on every factor that it has used in the past," Bryson ruled.

In her dissent, Judge Pauline Newman argued that the department's decision to treat retorts as factory overhead is contrary to precedent and contrary to the practice of every record producer of magnesium. "These factors have seen litigation in a variety of situations. Physical incorporation into the final product is not dispositive of whether a material is accounted as a direct input, as illustrated by precedent treating materials such as catalysts, electrodes, and other production materials as direct inputs," she wrote.

"The record also contains evidence of industry treatment of retorts by producers of magnesium in Malaysia and in India, as well as a second producer in China. The record shows that no producer used the accounting method adopted by Commerce (and now by this court), whereby the retorts are treated as factory overhead or as indirect materials," Newman noted.

China's Entry to WTO "Good on Balance," Concerns Remain

Ahead of its annual report to Congress on the status of China's World Trade Organization (WTO) obligations, USTR held a hearing Oct. 5 for industry, including representatives from business, agriculture and tech, to voice their concerns. Also present at the USTR-led hearing were officials from Agriculture, Commerce, Labor, State and Treasury.

“On balance, China’s WTO entry has been positive,” noted Erin Ennis, senior vice president of the U.S.-China Business Council, summing up the position of many witnesses. However, deep concerns remain with regard to China’s use of national security exemptions and policies meant to promote domestic industries, lack of transparency on policy and regulatory processes, and challenges with intellectual property rights protection and enforcement. A “high-standard” bilateral investment treaty (BIT) could solve many of these points, she noted.

That viewpoint was shared by fellow panelist Jeremie Waterman, senior director, Greater China, at the U.S. Chamber of Commerce. His organization supports ongoing BIT negotiations, but he cautioned that “substance, with an emphasis on achieving a high-standard and comprehensive agreement, should drive the timing.”

A representative from the U.S. Wheat Associates claimed that China does not reallocate the majority of unused tariff rate quota. “The [WTO] Protocol explicitly states: ‘In any year, if the quantity of the tariff-quota reserved for importation through state-trading enterprises has not been contracted for by 15 August, quota-holders will have the right to trade or to import through any entity with the right to trade,’” the group wrote in its submitted testimony.

“That does not happen currently,” it concluded. USTR’s challenge to China’s farm subsidies, though a “major first step” will “require persistence in addressing the full ranges of China’s other support programs and market access barriers” (see **WTTL**, Sept. 19, page 1). Not surprisingly, representatives from the tech industry took issue with China’s intellectual property rights violations, lack of enforcement, requests to see source code and the country’s Anti-Monopoly Law.

EU Hails “Good Progress” in TISA Talks

While the U.S. delegation has been notably silent on the talks for a Trade in Services Agreement (TISA), the European Union (EU) side is living up to its promise of full transparency. The EU Oct. 4 published two proposals that were tabled during the latest TISA round: one on institutional arrangements and the other on settlement of state-to-state disputes. At the same time, it provided a status update on the 20th round held in Geneva in September.

“Overall, it was a round with good progress in working towards agreed text. A process to elevate outstanding issues to higher political levels has been initiated at this round, with an initial exchange of views on some issues among Chief Negotiators,” the EU said in its status update. “An updated ambitious work plan towards a possible conclusion by the end of the year has been agreed,” it added. EU Trade Commissioner Cecilia previously expressed optimism about completing the round during this administration, despite concerns about the upcoming election (see **WTTL**, June 6, page 2).

The tabled proposal on institutional arrangements creates processes to allow countries beyond the current 23 participants to join the agreement at a later stage, as well as to

bring the deal into the WTO framework in the future. The proposal on state-to-state dispute settlement is largely based on the existing WTO model and “does not jeopardize the future multilateralization of the Agreement,” the EU noted.

In specific areas, such as transparency, good progress also has been made. “Following a half-day plenary discussion, the text of the annex on transparency is now almost entirely stabilized. There is broad agreement as regards a compromise wording of the article on stakeholder consultation and prior publication of laws and regulations, with only a few Parties that need further internal consultations,” the EU said.

In contrast, progress is still elusive on financial services and market access, which has long been a sore point. “On market access, all pending offers from the Parties are now on the table. The EU proposed to turn the so-called ‘commitment related provisions,’ which set out market access standards in several annexes, into aspirational objectives for current and future TISA participants. This proposal will require further discussion in the course of the negotiations,” it said.

During three days of discussions on financial services, “parties made further progress in consolidating the text, but some difficult questions could still not be resolved,” it said. “Further work will be needed on financial services purchased by public entities, as well as articles on insurance services provided by postal entities and cooperatives respectively,” the EU noted.

U.S. Seeks Quick Adoption of WTO Victories

To parody a popular commercial: It’s USTR’s money and they want it now! The Obama administration is seeking quick adoption of its recent victories at the World Trade Organization (WTO), including European subsidies for Airbus and India’s solar panel policies, USTR Michael Froman announced Oct. 3.

At a special meeting of the WTO’s Dispute Settlement Body (DSB) scheduled for Oct. 14, USTR will press the organization to adopt the compliance panel report in the challenge against European subsidies for Airbus large civil aircraft (see **WTTL**, Sept. 26, page 1). The EU could appeal, but the U.S. has urged them to accept the panel’s findings and negotiate a settlement, USTR said. The administration will also press the DSB to adopt the panel and appellate reports in the challenge against India’s local content requirements in solar cells and modules. Unhappy with the ruling, India requested consultations in early September regarding the renewable energy sector in eight U.S. states (see **WTTL**, Sept. 19, page 3).

“We will not tolerate our trading partners ignoring the rules at the expense of American workers and their families,” Froman said in a statement. “We need to resolve these disputes once and for all. The Obama Administration is strongly committed to enforcing the rights of the United States under our trade agreements and we will use every tool at our disposal to expedite these cases for the benefit of American businesses and workers.”

Preferential Trade Agreements Are Good, CBO Concludes

Preferential Trade Agreements (PTAs) have had “relatively small positive effects on total U.S. trade,” the Congressional Budget Office (CBO) concluded in its report on the deals published Sept. 29. It’s a viewpoint that’s unlikely to sway minds on either side of the debate surrounding the Trans-Pacific Partnership (TPP) and TTIP.

CBO looked at all previous trade deals, particularly NAFTA, which trade critics often cite as a reason to not go forward with TPP or TTIP, but according to the report, the “likely increases in overall trade from NAFTA are significant but still small.” CBO found it difficult to measure the effects of the deal on trade balance. PTAs have had relatively small positive effects because past agreements have been primarily with countries whose economies are smaller and whose tariffs and trade barriers are low, at least when the agreements took effect.

The U.S. labor movement has criticized NAFTA and proposed trade deals for their impact on workers. CBO found that “most economic evidence suggests that the total number of workers directly affected by PTAs has been too small to significantly affect labor market conditions nationwide.” PTAs tend to hurt workers in low-skilled occupations or in manufacturing, the report acknowledged. Displaced workers can face costly transitions to new jobs or fail to find new employment altogether. “Nevertheless, economic theory and historical evidence suggest that the diffuse and long-term benefits of international trade have outweighed the concentrated short-term costs,” CBO said.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in August inched up 0.85% from year ago to \$125.3 billion, Commerce reported Oct. 5. Services exports gained 0.28% to \$62.5 billion from August 2015. Imports dipped 2.45% from August 2015 to \$185.6 billion, as services imports gained 4.8% to \$43.0 billion.

ANTIBOYCOTT: Coty Middle East FZCO (CME), UAE-based affiliate of beauty products manufacturer Coty Inc., agreed Sept. 29 to pay \$238,000 to settle 70 violations of BIS antiboycott regulations. CME allegedly furnished information about business relationships with boycotted countries or blacklisted persons from 2009 through 2013 in invoices during transactions with Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Pakistan, Qatar, Saudi Arabia, Syria, UAE and Yemen.

MORE ANTI-BOYCOTT: Westlake Vinyls Company LP of Houston agreed Sept. 28 to pay BIS civil penalty of \$12,000 to settle four antiboycott charges. Westlake allegedly furnished information about business relationships with boycotted countries or blacklisted persons and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. in letters of credit with UAE from October 2010 through July 2012.

CUBA: U.S. and Cuba held fourth Bilateral Commission in Washington Sept. 30. Acting Assistant Secretary of State for Western Hemisphere Affairs Mari Carmen Aponte led U.S. delegation. Josefina Vidal, Foreign Ministry’s Director General for U.S. Affairs, led Cuban delegation. Meeting “took place in a cooperative and productive environment,” State said. Delegations discussed

agriculture, health, environmental protection, economic engagement, science and technology, civil aviation, regulatory affairs, claims, culture and education, law enforcement, nonproliferation, trafficking in persons, human rights, maritime borders and migration. Delegations also discussed “prospects for upcoming high-level visits and their shared desire to achieve as much progress as possible by the end of the year,” State added. Next meeting will be in Havana in December 2016.

LUMBER: USTR Michael Froman and Deputy USTR Matthew Vogel met with Canadian Trade Minister Chrystia Freeland Oct. 5 in Toronto for continuing negotiations on Canadian softwood lumber (see **WTTL**, Oct. 3, page 10). “As President Obama and Prime Minister Trudeau agreed when they met in Ottawa, our mandate continues to be to reach a new agreement that will maintain Canadian exports at or below an agreed upon U.S. market share. While important differences remain in the approaches of our two countries, we will continue to engage with Canada to find a path forward that is acceptable to all parties,” Froman said in statement.

TPP: Happy 1st anniversary, TPP! Twelve-nation trade deal was signed one year ago Oct. 5, but odds are low that it will come to vote this year (see **WTTL**, Oct. 3, page 5). One person who remains optimistic is Treasury Secretary Jack Lew, who told Washington think tank Oct. 6 he thinks “we can get there” during lame-duck session. Passing trade deals is always tough, but “we have an economic and geopolitical imperative here that’s very strong,” he said.

EXPORT ENFORCEMENT: Alexey Barysheff of Brooklyn, N.Y., naturalized U.S. citizen, and two Russian nationals, Dmitrii Aleksandrovich Karpenko and Alexey Krutilin, were arrested Oct. 6 on charges of illegally exporting controlled microelectronics, including digital-to-analog converters and integrated circuits, to Russian end-users without Commerce licenses. Scheme allegedly involved two U.S.-based front companies shipping items first to Finland and then to Russia.

MORE EXPORT ENFORCEMENT: Two civilians were arrested Oct. 6 on charges of reselling sensitive U.S. Army equipment to foreign bidders on eBay without licenses. John Roberts and Cory Wilson of Clarksville, Tenn., were indicted in Nashville U.S. District Court on charges of violating Arms Export Control Act and wire fraud. Six Army soldiers also were arrested on charges of stealing more than \$1 million worth of equipment and reselling to Roberts and Wilson. Items included night vision helmet mounts and advanced communications headset helmets sold to buyers in Russia, China and Kazakhstan, among others.

ZIMBABWE: OFAC Oct. 4 removed 30 entities from its SDN list, including several listings for Zimbabwe Financial Holdings Limited, aka Finhold, and Zimbabwe Banking Corporation Limited, aka Zimbank. Individuals included Sabina Mugabe, sister of current president Robert Mugabe.

TRADE SHIFTS: Declines in total U.S. exports in 2015 can be attributed primarily to declining crude petroleum prices, weak global economic growth and appreciation of U.S. dollar, ITC said in annual Trade Shifts report posted Sept. 30. Losses were felt across all sectors, except footwear, ITC said. Large global supplies of soy, corn, dairy and frozen chicken cuts were blamed for the decline in agricultural exports, as well as dollar strength, which hurt price competitiveness. Price of natural gas was 45% lower in 2015 than 2014, resulting in 41% decline in value of natural gas exports to NAFTA partners. Exports to Canada decreased as Canadian production increased, while exports to Mexico, particularly of propane, increased, report noted.