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## BIS, State Publish Second Round of Aircraft Rules

U.S. Munitions List (USML) categories VIII and XIX (aircraft and engines) and its corresponding entries on the Commerce Control List (CCL) were the poster children for export control reform (ECR): the largest by license volume and the first to be published in October 2013. Three years later, State's Directorate of Defense Trade Controls (DDTC) and Bureau of Industry and Security (BIS) are publishing a second round of rules clarifying controls and jurisdiction for these items.

In the Federal Register Nov. 21, BIS makes very specific clarifying text changes to the descriptions of military aircraft and engine parts controlled on the CCL (see **WTTL**, April 4, page 4). In addition, it clarifies and expands "the lists of items that are subject only to the anti-terrorism reason for control," it said. In its parallel rule, DDTC says its goal is to ensure that each category "is clear, does not inadvertently control items in normal commercial use, accounts for technological developments, and properly implements the national security and foreign policy objectives."

The agencies proposed changes in these categories in February. Most companies that submitted public comments still want their individual products under less strict controls and are questioning specific definitions and terms that might apply.

Specific changes in the BIS rule include: removing the term "straight and unbent" from the description of gas turbine engine lines, stating that the term "fluid" should encompass both liquids and gases, removing the word "equipment" from the related controls paragraphs in specific Export Control Classification Numbers (ECCNs), and adding nameplates to identification plates in other ECCNs.

## National Oilwell Varco Settles Sanctions Charges

Oil and gas industry services firm National Oilwell Varco (NOV) and two subsidiaries agreed Nov. 14 to pay more than \$25 million in settlements with Treasury's Office of

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Foreign Assets Control (OFAC), Justice and BIS to resolve charges of violating Cuba, Iran and Sudan sanctions programs from 2002 to 2009.

Specific violations include: at least four Dreco commission payments to a UK-based entity that related to the sale and exportation of goods, directly or indirectly, from Dreco to Iran; two transactions totaling \$13,596,980 involving the direct or indirect sale and exportation of goods to Iran; filling at least seven orders from Iranian customers; 45 Dreco transactions totaling \$1,707,964 and two Elmar transactions totaling \$103,119 involving the sale of goods or services to Cuba; and one NOV transaction involving the direct or indirect exportation of \$20,928 worth goods to Sudan, OFAC said. NOV did not voluntarily self-disclose the apparent violations, OFAC noted.

At the same time, NOV agreed to pay BIS a civil penalty of \$2.5 million to settle 22 export charges. From April 2006 to December 2007, Dreco Energy Services, Ltd. transshipped U.S.-origin oil and gas equipment valued at \$2.3 million from Canada to Iran, specifically to the National Iranian Drilling Company and Kala Naft, the procurement arm of the National Iranian Oil Company, the BIS order noted.

In addition, in 2012, NOV sold filament winder mandrels classified under Export Control Classification Number (ECCN) 1B201 and controlled for nuclear nonproliferation to Oman. NOV received a license to export nine mandrels, but instead exported 21 to the applicable end-user in that country, BIS said.

NOV's \$5.9 million settlement with OFAC will be deemed satisfied by its payment of \$25 million under a nonprosecution agreement (NPA) with Justice. In a filing with the Securities and Exchange Commission (SEC) Nov. 9, NOV said the total settlement was "preliminarily agreed upon in 2010 and ... was fully accrued around that time."

In 2014, NOV subsidiary Robbins & Myers Belgium pleaded guilty in D.C. U.S. District Court to four charges of violating the International Emergency Economic Powers Act by exporting oil extraction equipment components to Syria without Commerce licenses in 2006 (see **WTTL**, Oct. 6, 2014, page 8). The company agreed to pay \$1 million in criminal fines in a plea with Justice and \$600,000 in civil penalties under a separate settlement with Commerce.

## **DDTC Looks Past Control List Review**

As the export control agencies near completion of the review of their respective control lists, and look ahead to a new administration, DDTC is trying to identify other issues in the pipeline that it can solve administratively, DDTC Chief Brian Nilsson told the Defense Trade Advisory Group (DTAG) plenary meeting Nov. 15.

Those priorities include another proposed rule on controversial definitions, tackling the government program license, a wholesale review of exemptions, brokering, and "giving some thought" to third-party transfers under Foreign Military Sales (FMS), especially for products that are now under BIS jurisdiction, Nilsson said.

With several vacancies in his department, staffing also remains a priority, Nilsson told DTAG. Nilsson himself is a career civil servant, in fact the first civil servant to be hired as a deputy assistant secretary. He's sticking around, telling DTAG, "I'm here now; I'm not going anywhere." An offer has also been made to an attorney, which could be the first step toward hiring a formal general counsel as other export agencies have, and the agency has received a fair number of applications for its compliance position, Nilsson noted.

In his counterpart agency, BIS Under Secretary Eric Hirschhorn and Assistant Secretary Kevin Wolf, who are political appointees, will stay on through Jan. 20, to "play it through the tape," Wolf told DTAG. Hirschhorn then will retire from government and Wolf is likely to go back to a private law firm. BIS Assistant Secretary for Export Enforcement David Mills is planning to retire at the end of November.

Wolf told DTAG he is relatively confident that the administration's efforts will continue in the direction they are headed, except for policy toward Iran, Russia and Cuba (see **WTTL**, Nov. 14, page 4). The export control reform effort will go on as a "process of continuous renewal and improvement," he said.

To go deeper into these future administrative priorities, the DTAG has created four working groups to mirror the departments under DDTC: licensing, compliance, policy and information technology (IT). Each of those four groups has been tasked with looking at past proposals and deciding on the next priorities under their respective areas.

## **JPMorgan Chase Pays \$264 Million to Settle FCPA Charges**

Global financial institution JPMorgan Chase Bank (JPMC) agreed to pay \$264 million to the Securities and Exchange Commission (SEC), Justice and the Federal Reserve Board of Governors to settle charges of violating the Foreign Corrupt Practices Act (FCPA). The fines settle charges that it and its Hong Kong-based subsidiary (JPMorgan-APAC) gave jobs and internships to their relatives and friends of government officials to win business.

From 2006 through 2012, JPMorgan-APAC bankers "set up and used a program (the 'Client Referral Program') to hire referred candidates specifically for the purpose of influencing senior officials at clients to award business to the Company and, in certain instances, to achieve the very *quid pro quo* arrangements the compliance review process and JPMorgan's policies sought to prevent. Company employees sometimes referred to the Client Referral Program as the 'Sons and Daughters Program,'" said the statement of facts that accompanied the NPA.

"Many of JPMorgan's clients were state-owned entities (SOEs), and therefore the client executives requesting employment for their relatives and friends were foreign government officials under the FCPA. The firm provided these jobs and internships with the intent to corruptly influence the foreign government officials making the requests," the SEC noted.

The settlement includes more than \$130 million in disgorgement and interest to the SEC, \$72 million criminal penalty as part of a nonprosecution agreement (NPA) with Justice

and \$61.9 million to the Federal Reserve Board of Governors. “The company did not receive voluntary disclosure credit because neither it nor JPMC voluntarily and timely disclosed ...the conduct described in the Statement of Facts,” the NPA noted. However, JPMorgan APAC did receive full credit for it and JPMC’s cooperation with the criminal investigation, Justice noted.

In a statement emailed to WTTL, the company said it is “pleased that our cooperation was acknowledged in resolving these investigations.” JPMC also said “the conduct was unacceptable and that it “stopped the hiring program in 2013 and took action against the individuals involved,” it added. “We have also made improvements to our hiring procedures, and reinforced the high standards of conduct expected of our people,” the company said.

In 2011, JPMC paid an \$88.3 million fine to settle OFAC allegations that it violated eight different trade sanctions programs (see **WTTL**, Sept. 5, 2011, page 4). OFAC claimed the bank violated sanctions targeting Cuba, Iran and Sudan, plus orders blocking the assets of various entities, including ex-Liberian leader Charles Taylor and vessels linked to the Islamic Republic of Iran Shipping Lines.

## House Passes Two Iran Sanctions Bills

Setting up a fight over Iran sanctions, the House of Representatives Nov. 17 passed legislation (H.R. 5711) prohibiting the Treasury Secretary from authorizing certain transactions by a U.S. financial institution in connection with the export or reexport of a commercial passenger aircraft to Iran. Two days prior, the House overwhelmingly passed a bill extending American sanctions on Iran for 10 more years.

H.R. 5711 passed 243-174 with only eight Democrats crossing the aisle to vote in favor of the bill, which came in response to OFAC issuing licenses to Airbus and Boeing to sell commercial aircraft to Iran (see **WTTL**, Sept. 26, page 8). The administration lifted nuclear-related sanctions on Iran once Tehran came into compliance with the Joint Comprehensive Plan of Action (JCPOA).

In a statement of administration policy (SAP) posted Nov. 14, the Obama administration said it strongly opposes the legislation. “The bill would undermine the ability of the United States to meet our JCPOA commitments by effectively prohibiting the United States from licensing the sale of commercial passenger aircraft to Iran for exclusively civil end uses, as we committed to do in the JCPOA, and seeking to deter companies from pursuing permissible business with Iran,” the SAP said.

The bill not only prohibits the authorization of transactions for export or reexport of commercial passenger aircraft to Iran, it also revokes any previous authorization granted. It further prohibits the Export-Import Bank (Ex-Im) from financing, directly or indirectly, the Iranian government or a non-U.S. entity “that, in the five-year period ending with the date enactment of this paragraph, has leased or sold aircraft to the Government of Iran.” Any approved financing for “the export, sale, or lease of an aircraft” to Iran shall be

cancelled and financing recouped. Rep. Bill Huizenga (R-Mich.), who introduced the legislation, said, “Not only will H.R. 5711 protect Americans’ bank accounts, it will prevent their tax dollars from being used through the Export-Import Bank to subsidize aircraft sales for Iran, be it through direct transactions or third-party leasing. This codifies and strengthens an existing Ex-Im prohibition that is renewed in annual appropriations bills. For that reason, this measure enjoyed the support of Ex-Im supporters and critics alike when it came before the Financial Services Committee.”

Far less controversial was the House vote on the Iran Sanctions Extension Act (H.R. 6297), which passed 419-1 Nov. 15. Rep. Thomas Massie (R-Ky.) was the lone dissenter, and 14 members did not vote. The bill moved to the Senate Nov. 16.

Just before the vote, Foreign Affairs Committee Chairman Ed Royce (R-Calif.) urged the Senate to take up the bill and pass it quickly to the president’s desk. “And should the next Administration decide – as I suspect it will – to press back on Iran’s growing missile program, support for terrorism and even Iranian violations of the nuclear agreement, I know that Ranking Member [Eliot] Engel (D-N.Y.) and I look forward to working with it in charting this new course,” he added.

“This legislation will ensure that President Obama and his successor will have the full force of sanctions available should Iran violate the nuclear agreement in any way. It’s critical that our approach to Iran remain bipartisan,” Minority Whip Steny Hoyer (D-Md.) said from the House floor.

## **Trump, Abe Meet in N.Y. as Japan Moves Forward on TPP**

As the Trans-Pacific Partnership (TPP) faces an uncertain future, President-elect Donald Trump met with Japanese Prime Minister Shinzo Abe at Trump Tower Nov. 17. As part of his campaign, Trump vowed to “rip up” trade deals, including the TPP, of which Abe has been a strident supporter. Japan’s House of Representatives voted a week earlier to ratify the deal, while many of the other trading partners have moved the agreement forward in their own parliaments.

Speaking through a translator after his 90-minute meeting with the president-elect, Abe did not reveal any specifics. “I do believe that without confidence between the two nations, the alliance would never function in the future and as the outcome of today’s discussion, I am convinced Mr. Trump is a leader in whom I can have great confidence,” said Abe through an interpreter in a brief interaction with the press.

None of the other TPP signatories have ratified the amendment yet, though many have taken steps in that direction. The deal passed its third reading in New Zealand’s Parliament Nov. 15. Australia’s Parliamentary Joint Standing Committee on Treaties will make its report in December and its Senate Foreign Affairs Committee will make its report in February 2017. Canada’s Parliament extended its consultations to Jan. 27, 2017, though Prime Minister Justin Trudeau has said his country was unlikely to reject a trade

deal with its major trading partners. Chile's Congress is expected to vote on TPP by the end of the year. Malaysia's Ministry of International Trade and Industry has drafted amendments to 18 laws to bring the country into TPP compliance. The Malaysian government is expected to move on those amendments in the beginning of 2017. Mexico's Senate is reviewing the deal, while Singapore awaits ratification of TPP by its Cabinet. Peru submitted TPP to its Congress in July, but there is no timeline as to when a vote will take place. TPP ratification is not part of Vietnam's current parliamentary agenda, and it is unknown where Brunei stands.

Republican leadership has made it clear that TPP will not be taken up for a vote in the lame-duck session (see **WTTL**, Nov. 14, page 1). But one expert thinks there is a way for the other 11 TPP countries to move forward with the deal without the U.S. The other countries "could agree among themselves to extend the TPP benefits to each other on a provisional basis, leaving the door open for U.S. participation in the future. If the United States subsequently ratifies the TPP, the pact would then enter into force on a permanent basis," Jeffrey Schott, senior fellow at the Peterson Institute for International Economics (PIIE), wrote Nov. 15.

Schott points to the General Agreement on Tariffs and Trade for precedent. GATT was a provisional agreement that held up for 47 years until the creation of the World Trade Organization. PIIE has been firmly in favor of TPP, so it comes as no surprise that Schott concludes by writing the following words of advice: "Given the cost to U.S. firms and workers, if the United States drops TPP while the other pact members move forward, my advice to the incoming U.S. administration is simple: Fix it, don't deep-six it."

## **U.S., Peru Make Progress on Timber**

The U.S. and Peru have made "important progress" to combat illegal logging and strengthen environmental protections, the U.S. Trade Representative's (USTR) office said Nov. 15. USTR officials met with their Peruvian counterparts Nov. 3-4 in Lima to discuss the environmental provisions in the U.S.-Peru Trade Promotion Agreement (PTPA).

The U.S. had urged Peru to do more to combat illegal timber harvesting and shipping in light of a January 2015 shipment of illegally harvested and traded Peruvian timber that arrived in Houston (see **WTTL**, Aug. 22, page 2). At the meeting, officials from both countries announced the hiring of Dino Delgado as the new executive director for the independent Secretariat established under PTPA.

"PTPA provides a strong foundation for addressing environmental challenges, including illegal logging. While Peru has made important progress under the PTPA to combat illegal logging, there is still much more work to be done. I am encouraged by the concrete actions announced by the Peruvian government, including new actions to help ensure that the timber exported from Peru is legally harvested," said USTR Michael Froman.

According to a joint statement by the meeting participants, Peru has put into practice many safeguards since the Houston incident. Specifically, Peru implemented its National

System on Forest and Wildlife Management and a National Pact for Legal Timber, and modified its legal code to crack down on forest crimes. Peruvian officials said their country will amend export documentation to improve traceability through the supply chain.

## **Former USTRs Agree NAFTA Should be Updated**

The lead negotiator of the North American Free Trade Agreement (NAFTA) told a Washington think tank Nov. 14 that the 1990s trade deal should be updated. Former USTR Mickey Kantor, who served under President Bill Clinton from 1993-1996, said that the agreement no longer fits today's economy.

When he negotiated NAFTA, "there was no internet. There was no cloud. There was no data transfer. We had a whole different world," Kantor told the audience at the Cato Institute. He said he'd encourage the incoming administration to renegotiate the deal, and those who favor trade liberalization should say, "You don't have to throw the baby out with the bathwater."

Former USTR Susan Schwab, who served from 2006-2009, agreed. "NAFTA is an ancient trade agreement. It's hopelessly out of date – that's not to say it's a bad agreement" but portions of it need to be renegotiated, she said. She also pushed back on the rhetoric spread on the campaign trail that trade deals are responsible for loss of jobs. Those jobs simply don't exist; not just in America, but in the rest of the world because of increases in productivity and advancements in technology.

"Manufacturing output in the United States continues to go up, manufacturing employment in the U.S. continues to go down and that is not a trade agreement, unfair practice phenomenon. That is a structural change phenomenon," said Schwab. Open trade is good for the American economy but it's not going to be good "for every single solitary American," she added.

Both former officials laughed off the idea that the USTR's office could be consolidated under Commerce. With all the agencies that already fall under the Commerce umbrella, plus the historical reasons as to why USTR was pulled out of State in the first place, both were confident that Congress will see the folly of moving USTR. Schwab went so far as to call such a move a "tremendous waste of political capital."

## **Brexit Future Uncertain, Lawyers Agree**

There is a lot of uncertainty surrounding Brexit and the future relationship among the United Kingdom (UK), the European Union (EU) and the World Trade Organization (WTO), but legal experts gathered in Washington for a panel discussion Nov. 16 agreed that the UK is a member of WTO in its own right. Though the UK's membership is not at risk, there are other significant hurdles to overcome.

Richard Cunningham of Steptoe & Johnson pointed out that the UK does not have its own countervailing and antidumping duty trade laws on the books. In fact, the UK would have to create a whole trade bureaucracy. Once the UK leaves, assuming a court ruling doesn't get in the way, the UK will no longer be party to some 60 free trade agreements the EU has negotiated, Cunningham noted. Controversy remains as to whether the UK can even begin to negotiate its own trade deals before the divorce is final. There are "no real rules governing this divorce," as Craig Thorn of DTB Associates LLP pointed out.

Another thorny issue is the UK share of the 121 EU tariff-rate quotas (TRQ), particularly agricultural TRQs. Pablo Bentes of Steptoe & Johnson suggested it would be in the UK's best interest to utilize Article 28 of the General Agreement on Tariffs and Trade (GATT) dealing with tariff schedules, but Rufus Yerxa of the National Foreign Trade Council took an opposite stance, suggesting that Article 28 could give the EU leverage over the UK. All of this speculation is moot if the divorce cannot be triggered in the first place.

The UK Supreme Court Nov. 18 granted The Lord Advocate of the Scottish Government, The Counsel General for Wales, the Expat Interveners and the Independent Workers Union of Great Britain the right to intervene in the case to prevent the UK from leaving the EU without consent of Parliament. The high court of England and Wales had previously ruled that the UK could not trigger Article 50 without a parliamentary vote (see **WTTL**, Nov. 7, page 7). UK Prime Minister Theresa May is appealing the decision and the UK Supreme Court is expected to review the case Dec. 5.

**\* \* \* Briefs \* \* \***

**COPPER PIPE AND TUBE:** In 6-0 "sunset" vote Nov. 15, ITC said revoking antidumping duty orders on seamless refined copper pipe and tube from China and Mexico would renew injury to U.S. industry.

**MYANMAR:** Officials from State, Commerce, Treasury, Defense, USAID and U.S. Trade and Development Agency Nov. 15 attended first annual U.S.-Myanmar Partnership Meeting in Naypyitaw, Burma. "U.S. delegation recognized Burma's progress towards consolidating its transition to democracy and stressed the main goal of U.S. policy toward Burma and this new Partnership was to help Burma succeed," State spokesperson said. Obama administration formally lifted remaining U.S. sanctions on country in October (see **WTTL**, Oct. 10, page 1).

**ZTE:** BIS Nov. 18 again extended temporary general license for exports, reexports and transfers (in-country) to two entities (ZTE Corporation and ZTE Kangxun) until Feb. 27, 2017. Companies were added to Entity List in March but sanctions were quickly suspended (see **WTTL**, Aug. 22, page 5)... Four days earlier, ZTE announced appointment of Matthew Bell as company's chief export compliance officer and legal counsel, effective Oct. 28. Bell will also serve as the chief compliance officer and legal counsel for ZTE USA, company's U.S. subsidiary, and will be based at ZTE USA's Richardson, Texas, headquarters. Bell previously worked on compliance at Kellogg Brown & Root (KBR), Weatherford International, Ernst & Young and KPMG.

**UKRAINE:** OFAC Nov. 14 added six individuals who represent Crimea and Sevastopol in Russian State Duma (Parliament) to Specially Designated Nationals (SDN) list: Konstantin Mikhailovich

Bakharev, Ruslan Ismailovich Balbek, Dmitry Anatolievich Belik, Andrey Dmitrievich Kozenko, Svetlana Borisovna Savchenko and Pavel Valentinovich Shperov. Specifically, OFAC added individuals “for being responsible for or complicit in actions or policies that undermine democratic processes or institutions in Ukraine and actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine.”

ZEROING: China Nov. 18 appealed WTO panel ruling in its case against U.S. antidumping methodologies. WTO Dispute Settlement Body in October found fault with way U.S. determined antidumping duties on Chinese goods, particularly Commerce’s use of weighted average-to-transaction methodology known as zeroing. Panel also found Commerce’s single-rate presumption to be inconsistent with WTO rules. However, panel rejected China’s claim against Commerce use of adverse facts available (see **WTTL**, Oct. 24, page 1).

EXPORT ENFORCEMENT: Indictment was unsealed Nov. 9 in Manhattan U.S. District Court against four Turkish and Iranian nationals charged with violating U.S. sanctions by using U.S. financial system to conduct at least \$100 million worth of transactions on behalf of Iranian government and other Iranian entities between 2014 and 2016. Transactions involved import and export of electrolytic copper cathodes and hot-rolled steel coil. Habibollah Zarei, aka “Adasi Habik” and “Emre Polatkan,” Bora Deniz, Nesteren Zarei Deniz and Abdullah Evren Erdem are at large.

PLYWOOD: Coalition for Fair Trade of Hardwood Plywood filed antidumping and countervailing duty petitions Nov. 18 at ITA and ITC against hardwood plywood products from China.

IRON TRANSFER DRIVES: In 6-0 final vote Nov. 18, ITC found U.S. industry is not materially injured by dumped imports of certain iron mechanical transfer drive components from Canada and China and subsidized imports from China.

STEEL PIPE: In final votes Nov. 18, ITC found U.S. industry is materially injured by dumped imports of circular welded carbon-quality steel pipe from Oman, Pakistan, and UAE. Commission further found that dumped imports from Vietnam and subsidized imports from Pakistan are negligible. Votes on Oman and UAE, as well as negligibility findings, were unanimous; vote on dumped imports from Pakistan was 3-3. Commissioners Dean Pinkert, Meredith Broadbent, and F. Scott Kieff voted no.

GSP: In Nov. 16 Federal Register USTR posted import statistics for first nine months of 2016 relating to competitive need limitations (CNLs) under GSP program. Statistics identified 11 products for which 2016 trade levels may exceed statutory CNLs, which is \$110 million or amount greater than 42% of total value of U.S. imports of that product. “Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2017, unless the President grants a waiver before the exclusion goes into effect. Exclusions for exceeding a CNL will be based on full 2016 calendar-year import statistics,” notice said.

EXPORT FRAUD: Federal jury in New Haven, Conn. U.S. District Court Nov. 9 found Brett C. Lillemoe of Minneapolis and Pablo Calderon of Darien, Conn., guilty of conspiracy and fraud related to multimillion-dollar scheme to defraud banks participating in USDA-backed export financing program between September 2007 and January 2012. Pair submitted fraudulent documents in connection with USDA Export Credit Guarantee Program (GSM-102), which is designed to encourage financing of U.S. agricultural exports. Lillemoe is scheduled to be sentenced Feb. 1, 2017, and Calderon Feb. 2.