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Industry Rejects Suggested Night-Vision Control Parameters

In comments posted on the State's Directorate of Defense Trade Controls (DDTC) website March 15, 27 companies and industry groups pleaded with the DDTC and Bureau of Industry and Security (BIS) to keep U.S. Munitions List (USML) Category XII (night vision) rules as published. After two years and two rounds of proposed rules, industry responded with 304 more pages of comments and marketing brochures.

In January, BIS and DDTC published parallel notices of inquiry (NOI) in January asking for public comments on even more technical parameters for Category XII (see **WTTL**, Jan. 16, page 1). Final rules on the USML category published in October depend on items being specially designed for a military end-user.

Some comments even used identical language in acknowledging that finding "clear bright lines through performance parameters" has proven difficult. For example, this sentiment from BAE Systems cropped up in several other comments, especially from smaller manufacturers. "We do not feel that the parameters listed in this NOI are descriptors unique to the military. This is key to ensuring that commercial items are not caught on the USML today, or in the near future," BAE (and others) wrote.

Many commenters, especially large defense contractors, claimed that products meeting the proposed parameters were already in commercial use. For example, DRS cited multi-spectral infrared focal plane arrays with a detector pitch of less than 50 microns. "High performance multi-spectral infrared imaging entered the commercial mainstream several years ago. It is common in environmental sensing such as ocean oil spill detection, earth mapping, and critical bio-medical applications such as tuberculosis detection," it wrote.

Lighthizer Talks China, Trade Agreements at Confirmation

After weeks of waiting, and then a further delay by snow that struck the Washington region, President Trump's nominee for U.S. Trade Representative (USTR), Robert

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Lighthizer, finally had a confirmation hearing March 14. Senate Finance Committee members pressed the trade lawyer and former Reagan-era deputy USTR on China, renegotiating trade deals and trade enforcement.

Unsurprisingly, China was a large topic of conversation, from currency manipulation to steel overcapacity. “In the past, it is my judgment that China was a substantial currency manipulator and I think we lost a lot of jobs because of it. ... Whether China is manipulating the currency right now to weaken it is another question. That’s up to the Treasury secretary,” said Lighthizer in response to Sen. Debbie Stabenow (D-Mich.).

In addressing overcapacity in steel and aluminum, Lighthizer told Sen. Tim Scott (R-S.C.), “I don’t believe that the WTO [World Trade Organization] is set up to deal effectively with China and their industrial policy... so we have to use the tools we have and then I think we have to sit down with members and find a reasonable way to deal with the problem by creating new tools.”

Though he doesn’t believe the WTO is the most effective way to deal with China, Lighthizer did tell Sen. Bob Casey (D-Pa.) that he would work with the European Union (EU) and other allies to defend the position that China must be considered a non-market economy when calculating antidumping and countervailing duties. China filed a complaint against the U.S. and EU in December over this treatment (see **WTTL**, Dec. 19, 2016, page 3).

On the issue of the beleaguered Export-Import Bank, Lighthizer ducked. “I expect to do what the president instructs me to do when he instructs me to do it,” he said. President Trump has repeatedly called for renegotiating NAFTA. Lighthizer assured the committee that a renegotiated deal would focus on bringing American manufacturing back from Mexico. He said he believes NAFTA can be renegotiated in a way that “helps both countries and doesn’t put agriculture in a precarious position.”

The nominee also commended former USTR Michael Froman’s work on digital trade. “There’s headway that’s been made, and Froman gets credit for that, in terms of the negotiation, and you and your colleagues in terms of putting pressure on it. It is essential to moving forward that we have free flow of data, and that you can store the data where it makes sense economically,” he said. “When we talk about NAFTA and other trade agreements that need updating, this is something that didn’t exist when the agreements were first negotiated. ... I will commit to you that it will be something we will prioritize.”

Lighthizer did not spare U.S.’ neighbors to the north. Sen. Ron Wyden (D-Ore.) raised the issue of the contentious softwood lumber dispute with Canada (see **WTTL**, Feb. 27, page 6). The nominee replied that of the many issues with Canada, resolving the dispute to the benefit of American workers is at the “top of the list.”

“There is a long history of litigation and memorandum of understanding and trying to work it out temporarily. It is a very serious kind of intractable sort of problem. It has enormous political consequences on both sides of the border. Right now, we are in the

process of litigation which is at Commerce, not at USTR, but I expect to be involved,” said Lighthizer. Lawmakers debated whether Lighthizer needs a waiver to serve as USTR given his previous work for foreign governments (see **WTTL**, March 13, page 7). Senate Finance Committee Chairman Orrin Hatch (R-Utah) said he doesn’t believe Lighthizer needs a waiver, but in any case, the Democrats are holding the waiver “hostage” in a “totally unprecedented” manner.

Wyden replied in his opening statement. “Speaking for Democrats, we are willing to work with Republicans to provide a statutory exception for Mr. Lighthizer, but we also insist that Republicans work with Democrats to provide a lifeline to America’s hardworking miners who are now facing the possible loss of health care and retirement benefits.” Democrats, particularly Sen. Joe Manchin (D-W.Va.), want to tie the waiver to passage of the Miners Protection Act (S. 175).

Budget Blueprint Slashes Trade Spending

While the president’s budget blueprint is just that, fans of trade promotion and federal funding for manufacturing programs will be left to find private sector financing to make up the deeply slashed department budgets. The Trump administration unveiled its proposed 2018 “America First” budget March 16, which if enacted also will eliminate some agencies outright.

Trump’s 2018 budget requests \$7.8 billion for Commerce, a 16% (\$1.5 billion) decrease from the 2017 annualized continuing resolution level. The proposed budget “strengthens the International Trade Administration’s trade enforcement and compliance functions, including the antidumping and countervailing duty investigations, while rescaling the agency’s export promotion and trade analysis activities.” It’s not clear what “rescaling” means in dollar terms, but cynical trade observers figure it probably means cutting funds.

The budget also eliminates the Economic Development Administration and Minority Business Development Agency, and discontinues federal funding for the Manufacturing Extension Partnership program. No mention was made of the Bureau of Industry and Security (BIS).

For Treasury, the administration requests \$12.1 billion for domestic programs, a 4.1% (\$519 million) decrease from 2017. The proposed budget “prioritizes funding for Treasury’s array of economic enforcement tools,” including financial sanctions on “rogue nations.” The budget plan “focuses Treasury on our core missions of collecting revenue, managing the nation’s debt, protecting the financial system from threats, and combating financial crime and terrorism financing,” Treasury Secretary Steve Mnuchin said in a statement.

The proposed budget for State and USAID comes to \$25.6 billion, a 28% (\$10.1 billion) reduction. The plan made no mention of defense trade or export controls. Secretary of State Rex Tillerson, at a press conference with Japanese Foreign Minister Fumio Kishida, put a positive spin on the massive budget cuts. “Clearly, the level of spending that the

State Department has been undertaking in the past – and particularly in this past year – is simply not sustainable,” he said. “As time goes by, there will be fewer military conflicts that the U.S. will be directly engaged in; and second, that as we become more effective in our aid programs, that we will also be attracting resources from other countries, allies, and other sources.”

Under the proposed budget, Labor’s budget will be cut to \$9.5 billion, a 21% (\$2.5 billion) decrease. The Bureau of International Labor Affairs (ILAB) will be focused to ensure that “U.S. trade agreements are fair for American workers.” The budget eliminates the bureau’s “largely noncompetitive and unproven grant funding.”

Labor groups denounced the budget cuts. “Corporate trade deals’ ‘race to the bottom’ lowers wages in US Trump budget would make labor exploitation easier by ending ILAB grants,” AFL-CIO’s Celeste Drake tweeted March 16.

In all, 19 agencies are cut from the budget, including the Overseas Private Investment Corporation, U.S. Trade and Development Agency, the U.S. Institute of Peace and the Inter-American Foundation. The proposed budget covers discretionary, not mandatory, spending. A full budget with specific mandatory and tax proposals will be unveiled later this spring.

Florida Shipper Pays \$27 Million for Export Violations

Access USA Shipping, LLC, a mail and package forwarding company in Sarasota, Fla., which does business as MyUS.com, agreed to pay \$27 million to settle 150 Bureau of Industry and Security (BIS) charges of exporting controlled goods without required licenses from April 2011 through January 2013, BIS announced March 14. Of the penalty, \$17 million dollars of the penalty will be suspended for two years and then waived if the company commits no further violations.

Access USA provides foreign customers with a U.S. physical address and a “suite” – designated space at its warehouse facilities – for items purchased from U.S. merchants for ultimate export. Charges included 129 counts of evasion, 17 counts of exporting or attempting to export crime control items and four counts of exporting or attempting to export to Transsphere Oy, a Finnish entity on the BIS Entity List.

A similar type of firm, Fulfill Your Packages (FYP) of Portland, Ore., agreed in June 2016 to pay BIS \$250,000 to settle a charge of evasion in connection with the export of a FLIR thermal imaging camera to China (see **WTTL**, July 4, 2016, page 10).

Access USA illegally shipped rifle scopes, night vision lenses, weapons parts, and EAR99 items. The crime control items were classified under Export Control Classification number (ECCN) 0A987, and destinations included Argentina, Austria, Hong Kong, Indonesia, Libya South Africa and Sweden, the BIS order noted.

Evasive actions included: mis-describing and undervaluing the items in false export control documents; undervaluing the items improperly to avoid the filing of required documents; allowing foreign customers to place orders through Access employees to avoid export scrutiny; destroying or altering export control documents; and failing to maintain records related to export transactions, it added.

“The former owner is no longer involved with the company, which also has new officers. The company and its new owners are committed to compliance, as demonstrated by the fact that we have 18 full-time personnel working in our trade compliance team,” Corey Bonasorte, the company’s director of trade compliance, wrote in an email to WTTL.

In April 2012, Commerce awarded MyUS the President's “E” Award for Exports. “This award celebrates MyUS.com’s strong achievement in making significant contributions to the increase of U.S. exports,” the company said in a press release at the time.

TPP Countries, Minus U.S., Vow to Move Forward Together

Trans-Pacific Partnership (TPP) countries’ trade ministers, minus the U.S., met on the sidelines of the Pacific Alliance High-Level Dialogue in Chile March 15 to discuss the future of Asia-Pacific trade in the wake of U.S. withdrawal from the multilateral deal. The ministers vowed to move forward together on regional trade, but offered few specifics. They will meet on the sidelines of the Asia-Pacific Economic Cooperation (APEC) trade ministers’ meeting May 20-21 in Vietnam.

“The participating partners reiterated their firm commitment to collaborate in keeping markets open and to the free flow of goods, services and investment advancing regional economic integration and strengthening the rules-based international trading system noting our concern with protectionism in many parts of the world,” reads a joint statement from the 11 other TPP countries.

It is unclear whether the countries will proceed with TPP without the U.S. or form a new pact that will include China or other countries not party to the TPP. Mexican Foreign Minister Luis Videgaray, in a news conference, did not offer specifics, but confirmed that his country would move forward in the region. “The withdrawal of a very important member of TPP opens up new opportunities,” he said.

*** * * Briefs * * ***

BREXIT: UK Secretary of State for Exiting EU David Davis said March 16 Queen Elizabeth II had given royal assent to Article 50 Bill. House of Commons passed EU (Notification of Withdrawal) Bill March 13. UK Prime Minister is expected to trigger withdrawal by March 31. “By the end of the month we will invoke Article 50, allowing us to start our negotiations to build a positive new partnership with our friends and neighbors in the European Union, as well as taking a step out into the world as a truly Global Britain,” Davis said in statement.

STEEL: In Federal Register March 16, Commerce requested comments on domestic sourcing of materials in construction and maintenance of U.S. pipelines. Specifically, department is interested in: current pipeline construction technology and requirements; potential advances in pipeline technology; domestic and foreign supply chain; and “all other information respondents consider pertinent to the development of the domestic sourcing plan.” Comments are due April 7.

MAGNESIUM: In 5-0 “sunset” vote March 15 ITC said antidumping duty order on pure magnesium (ingot) from China would renew injury to U.S. industry.

TORTURE: UK Export Control Organization (ECO) amended regulations to reflect new EU restrictions on “goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment,” according to ECO notice to exporters March 15. EU adopted new rules in November 2016.

CONFLICT MINERALS: European Parliament March 16 adopted regulation to impose due diligence rules on companies importing tin, tantalum, tungsten and gold. “The new rules will ensure that minerals used by European industries are sourced responsibly, in a way that does not harm populations in mining regions and does not fuel war,” EU Trade Commissioner Cecilia Malmström said after vote.

USDA: Former Gov. Sonny Perdue (R-Ga.) confirmation hearing to be Agriculture secretary scheduled for March 23 before Senate Agriculture Committee.

ALUMINUM: Aluminum Association, European Aluminum and Aluminum Association of Canada requested G20 Sherpas create Global Forum on aluminum excess capacity, similar to forum on steel (see WTTL, Feb. 27, page 5). In letter March 15, three organizations said China supplied 10% of world’s aluminum in 2000; 17 years later China supplies 53% of all aluminum and will increase by 24% by 2020. “China’s state-sponsored support is contributing to an unsustainable structural overcapacity ... Now is the time to recognize the excess capacity which negatively impacts the competitiveness of the global aluminum industry,” letter noted.

NAFTA: Canadian Prime Minister Justin Trudeau in interview with NBC News March 15 said he’s willing to make few tweaks to NAFTA, but warned against big changes that could hurt U.S. jobs. “We’ve got auto parts criss-crossing the border six times before they end up in a finished product. You’ve got over \$2 billion in a day going back and forth. So making sure that the border is... secure but also smooth in its flow of goods and people is essential,” said Trudeau.

SHRIMP: CIT March 16 remanded Commerce’s final determination in ninth administrative review of antidumping duty order on certain frozen warmwater shrimp from Vietnam (slip op. 17-27). Specifically Commerce needs “to clarify or reconsider its practice for determining whether a surrogate country’s labor data is aberrational and to clarify or reconsider its use of Bangladeshi labor data in this review, despite record evidence that the data is from an industry affected by alleged labor abuses,” Judge Claire Kelly, wrote in *Ad Hoc Shrimp Trade Action Committee v. U.S.*

KOREA: Commerce March 17 announced affirmative final determination in antidumping investigation of imports of ferrovandium from Korea. Dumping found by mandatory respondents Korvan Ind. Co., Ltd. at 3.22%, Fortune Metallurgical Group Co., Ltd. and Woojin Ind. Co. Ltd at 54.69%. All other Korean producers/exporters assessed at 3.22%. ITC scheduled to make final determination May 1.