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Remaining USML Transfers Move Toward Publication

After five years on hold, proposed rules to transfer commercial firearms and related ammunition from U.S. Munitions List (USML) Categories I, II and III to the Commerce Control List might finally see the light of day. This would then allow State's Directorate of Defense Trade Controls (DDTC) to finalize definitions that the agency previously punted.

"We have rules that are developed, they're under White House review, that would move and consolidate commercial firearms and ammunition to the Commerce Control List where they will remain controlled," DDTC Chief Brian Nilsson said at a conference in Washington Sept. 6. Proposals, which were drafted and ready to be published in 2012, have been updated and consolidated from six rules to two.

At the same time, DDTC is working on updated USML definitions, including public domain, technical data and defense services. "Having those items on my list continues to pose challenges for us in a definitional aspect, for being able to define what's in the public domain, what's technical data, what's a defense service," Nilsson said.

While DDTC has been granted a waiver from the administration's "2-for-1" executive order, the Commerce rules might not be exempt. Gun industry groups had also heard that these transfers would be published as interim final rules, but learned at a meeting of the Defense Trade Advisory Group (DTAG) Sept. 8 the rules first will be proposed. "We are very disappointed by today's revelations," Lawrence Keane, senior VP and general counsel of the National Shooting Sports Foundation, told WTTL (see **WTTL**, June 19, page 3). "Delaying ECR for the gun industry keeps in place an antigun policy of the Obama administration and hurts the creation of manufacturing jobs," he added.

Boeing Wins Victory at WTO, Airbus Vows to Fight On

In a victory for U.S. aircraft manufacturer Boeing, the World Trade Organization's (WTO) Appellate Body (AB) Sept. 4 rejected the European Union's (EU) claims that tax incentives

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provided by Washington State to its aerospace industry constitute prohibited subsidies. The AB overturned an earlier panel finding that “a reduced tax rate for the manufacture or sale of commercial aircraft constitutes a de facto subsidy contingent on the use of domestic over imported goods.”

The AB’s ruling means that none of the tax incentives challenged by the EU have been found to violate WTO rules during this long process. The tax incentives were put in place to ensure that Boeing would build its 777X jet at the company’s plant in Everett, Wash. (see **WTTL**, June 12, page 1).

“The WTO has rejected yet another of the baseless claims the EU has made as it attempts to divert attention from the \$22 billion of subsidies European governments have provided to Airbus and that the WTO has found to be illegal,” said Boeing General Counsel J. Michael Luttig in a statement. “The EU and Airbus, meanwhile, continue to be in flagrant breach of WTO rulings and must eliminate the massive illegal subsidies the WTO said a full year ago had not been addressed, or risk U.S. sanctions against European exports,” he added.

“European governments have provided billions of dollars in illegal subsidies to Airbus for years, yet they have tried and failed to create a false equivalence with the United States and Boeing,” said U.S. Trade Representative (USTR) Robert Lighthizer. “Just as the EU lost on nearly all claims against the United States in June 2017, today’s WTO report further confirms that the EU cannot justify their own illegal subsidies by hiding behind groundless claims against the U.S. The EU should immediately come to the table on a solution that will end all its WTO-inconsistent subsidies.”

Not surprisingly, Airbus maintains that the subsidies are illegal per the ongoing separate review of U.S. – Large Civil Aircraft (2nd Complaint) (DS353). “Boeing illegal subsidies are still illegal and need to be removed. If it is a “No” or a “No No” does not make a big difference in global fair trade and play,” Rainer Ohler, Airbus’ Executive Vice President Communications said in a statement. “The game is far from over,” Ohler added.

In its own statement, the EU echoed that sentiment. “While the Appellate Body has not confirmed the prohibited nature of the tax subsidies to Boeing for the 777x, Washington State tax breaks are still ‘actionable’ subsidies, i.e. subsidies that violate WTO rules causing economic harm to the producer of another WTO member. This ruling does not affect the obligation of the United States to put an end to the actionable tax subsidies,” it noted.

In a non-subtle jab at the ongoing dispute, Airbus has released a mobile app (available for iOS and Android devices) called WTO Warriors. The GooglePlay description reads: “In WTO Warriors, help our plane avoid dirty money and WTO obstacles and earn a well deserved honest money. Or try to slap the ugly greedy Porkliner to return money to innocent tax payers.” We kid you not.

Business, Ag Groups Urge Administration to Stay in KORUS

President Trump sent business and agriculture groups into a tizzy over Labor Day weekend when press reports emerged Sept. 2 that he was considering withdrawing from the U.S.-Korea Free Trade Agreement (KORUS). No official decision on the fate of the trade deal had been made as of press time, but the president has used a similar threat (some might say bluff) in the NAFTA renegotiation.

The KORUS Joint Committee met at the end of August and failed to come to an agreement. While President Trump has blamed the trade agreement for the trade in goods deficit, Korea opposes that view and suggested the two countries jointly study the impact of KORUS (see **WTTL**, Sept. 4, page 5).

U.S. Chamber of Commerce President and CEO Thomas J. Donohue noted that KORUS has boosted U.S. exports, particularly in the aerospace, services and agricultural sectors and warned that withdrawal could put Trump at odds with his base. “Ironically, states across mid-America that voted for the president would take the hit from withdrawal as their agricultural and manufactured goods exports fell in the wake of such a move,” Donohue said in a statement Sept. 5.

“It would damage White House relations with allies in the business and agriculture communities and in Congress, greatly complicating other initiatives such as tax reform. And withdrawal would alienate one of our strongest international allies, jeopardizing national security at a time of crisis on the Korean peninsula,” he added.

Business Roundtable also opposed withdrawal. “More than 366,000 American jobs are tied to U.S. exports to South Korea. Withdrawing from KORUS would significantly disadvantage many successful U.S. exporters, seriously harm many U.S. manufacturers and consumers, and badly undermine broader U.S. economic and strategic interests,” Roundtable President and CEO Joshua Bolten said in an emailed statement.

Agriculture groups added to the (ahem) chorus. “Withdrawing raises the specter of retaliation against agricultural exports and creates unnecessary uncertainty in the market. Any disruption in the relationship wheat growers have built in Korea over more than 60 years gives Australia, Canada and even Russia an opening to move in and take business away from us at a time when we are struggling to stay profitable,” U.S. Wheat Associates Chairman Mike Miller said in a joint statement with the National Association of Wheat Growers. The National Cattlemen’s Beef Association, the North American Meat Institute, and the American Soybean Association all oppose withdrawal and encouraged their members to contact Congress.

Trump’s mulling of scuttling KORUS evoked a bipartisan statement from House Ways and Means Committee Chairman Kevin Brady (R-Texas) and Ranking Member Richard Neal (D-Mass.), as well as Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.), who noted that now might not be the best time to break with Korea as they face a nuclear threat from North Korea.

“North Korea's latest nuclear test underscores yet again the vital importance of the strong alliance between the United States and South Korea,” they wrote. KORUS, which was “negotiated under two presidents and approved by Congress, is a central element of that alliance. Just as important, South Korea is a significant economic partner, our seventh largest export market, and a vital customer for U.S. manufacturers, services providers, farmers, and ranchers,” the leaders added.

“Our trade relationship can be enhanced and, because KORUS’s operation has presented frustrations for some important U.S. industries and stakeholders, we must press South Korea to improve its implementation and compliance. To be effective and constructive, however, we must not withdraw from the agreement while we do so. We welcome bilateral discussions to strengthen the economic ties between South Korea and the United States, and we reiterate the importance of transparency and close consultation by the administration with Congress and American businesses and workers,” they wrote.

NAFTA Negotiation Round 2 Ends with Optimism

Despite a trilateral statement touting “important progress” achieved by the U.S., Canada and Mexico in the second round of NAFTA talks, Commerce Secretary Wilbur Ross Sept. 8 reiterated the administration’s threat to withdraw from the agreement.

“The president has made clear if they don’t work, he’s going to pull out,” Ross said during a Washington Post webcast. “That shouldn’t be a shock to anyone, and really that’s the right thing. We need fixes to this deal. It has not worked the way it was intended.” President Trump threatened to withdraw from the deal during a rally Aug. 22 (see **WTTL**, Sept. 4, page 1). The third round of negotiations will be held in Ottawa Sept. 23-27.

At the conclusion of the second negotiating round, hosted by Mexico Sept. 1-5, U.S. Trade Representative (USTR) Robert Lighthizer, Canadian Foreign Affairs Minister Chrystia Freeland and Mexican Economy Secretary Ildefonso Guajardo issued an optimistic statement. “More than two dozen working groups comprised of trade experts and technical officials worked diligently to advance the discussions and exchanged information and proposals. In several groups, this engagement resulted in the consolidation of proposals into a single text upon which the teams will continue to work during subsequent negotiation rounds,” they noted.

Lighthizer, in his closing statement, said the American delegation is focused on “expanding opportunities for American agriculture, services and innovative industries.” But, as he mentioned in his remarks at the opening round in Washington, “we must also address the needs of those harmed by the current NAFTA, especially our manufacturing workers. We must have a trade agreement that benefits all Americans, and not just some at the expense of others,” he said.

From the AFL-CIO’s perspective, the U.S. team doesn’t get a passing grade. Celeste Drake, AFL-CIO’s trade and globalization policy specialist, wrote in a blog post Sept. 5

that the U.S. has not made proposals in important areas, including labor and tax dodging. On the subjects of rules of origin and Buy American, the U.S. proposals are incomplete, she wrote.

“In sum, the U.S. negotiators need to up their game. If I were still a teacher and the U.S. negotiators were in my class, I’d be calling the parents tonight to work out an improvement plan to make sure they could pass my class. Of course, there is still plenty of time left to bring the grade up, but the question is whether the U.S. negotiators are motivated to improve or whether they just want to keep recycling failed trade ideas that will add up to another pro-corporate, anti-worker deal,” Drake concluded.

* * * **Briefs** * * *

TRADE FIGURES: Merchandise exports in July jumped 5.2% from year ago to \$128.6 billion, Commerce reported Sept. 6. Services exports gained 4.2% to record-high \$65.8 billion from July 2016. Goods imports increased 4.9% from July 2016 to \$193.9 billion, as services imports gained 5.9% to \$44.1 billion.

NOMINATIONS: Former BIS Under Secretary Kenneth Juster was nominated Sept. 5 to be ambassador to India. He briefly served as deputy assistant to president for international economic affairs (see **WTTL**, Feb. 13, page 7). Since leaving BIS in 2005, Juster has been partner and managing director at global investment firm Warburg Pincus and before that was executive VP of salesforce.com... White House also sent Senate nomination of John C. Demers to be assistant attorney general, national security division, replacing John P. Carlin. Demers is vice president and assistant general counsel at Boeing. He previously served in national security division and office of legal counsel. ... At same time, Mark L. Greenblatt was nominated to be Ex-Im Bank inspector general. Greenblatt has been serving as Commerce assistant inspector general for investigations since 2016.

EXPORT ENFORCEMENT: Indian resident Narender Sharma and his company Hydrel Engineering Products agreed Aug. 31 to pay BIS \$100,000 to settle charge of exporting waterway barrier debris system designated as EAR99 valued at \$420,256 via UAE to Iran without OFAC authorization in 2011. System was sent to Mahab Ghodss, Iranian government entity, that OFAC added to list of Specially Designated Nationals in August 2010. Of penalty, \$70,000 will be suspended for five years then waived if Sharma and Hydrel commit no further violations. Worthington Products, Inc. (WPI) of Canton, Ohio, and its president Paul Meeks agreed in June 2016 to pay BIS \$250,000 to settle related charge (see **WTTL**, July 4, 2016, page 9).

MORE EXPORT ENFORCEMENT: Erdal Kuyumcu of Woodside, N.Y., CEO of Global Metallurgy and naturalized U.S. citizen from Turkey, was sentenced Sept. 7 in Brooklyn U.S. District Court to 57 months in prison followed by three years’ supervised release for illegally exporting cobalt-nickel metallic powder to Iran through intermediary in Turkey in 2013. He pleaded guilty in June 2016 to conspiracy to violate IEEPA (see **WTTL**, June 20, 2016, page 5).

URANIUM: In 4-0 “sunset” vote Sept. 7, ITC said terminating suspended antidumping duty investigation on uranium from Russia would renew injury to U.S. industry. U.S. reached antidumping suspension agreement with Russia on imports of highly enriched uranium (HEU) in 2008 (see **WTTL**, March 11, 2008, page 1).

COMMERCE: After one-day delay, Senate Finance Committee Sept. 7 unanimously approved Gilbert Kaplan to be Commerce under secretary for international trade. Full Senate vote not scheduled as of press time. Kaplan, who charmed at his committee hearing, is expected to be confirmed without much objection (see **WTTL**, Aug. 7, page 4).

RETIRING: Rep. Dave Reichert (R-Wash.), chairman of Ways and Means Trade Subcommittee, announced Sept. 6 he will not seek reelection in November 2018. During his seven terms in office, Reichert focused on trade. “From serving on President Obama’s Export Council to battling to reauthorize the Export-Import Bank to leading the fight to pass the U.S.-Korea free trade agreement, I have always fought to give our exporters the chance to sell their goods and services around the world,” Reichert wrote in press release.

SOUTH SUDAN: OFAC Sept. 6 designated three former or current South Sudanese government officials, including minister of information and broadcasting and deputy chief of defense force, and three companies owned or controlled by one official. At same time, Financial Crimes Enforcement Network (FinCEN) issued advisory to financial institutions about “possibility that certain South Sudanese senior political figures may try to use the U.S. financial system to move or hide proceeds of public corruption.”

SANCTIONS: Four more Turkish nationals, including former economy minister and bank officials, were charged Sept. 6 in Manhattan U.S. District Court with conspiring with others, including gold trader Reza Zarrab, to violate U.S. Iran sanctions by conducting international financial transactions on behalf of Iranian government and other blocked entities, including Bank Mellat, between 2010 and 2015. Turkish banker Mehmet Hakan Atilla was arrested March 27 and charged in scheme (see **WTTL**, April 3, page 9). Zarrab and Atilla are scheduled to begin trial Oct. 30. Reza Zarrab was arrested in 2016; seven others are at large.

ALUMINUM EXTRUSIONS: CIT Sept. 1 remanded Commerce’s final scope ruling that Agilent Technologies’ mass filter radiators (MFRs) were within scope of antidumping and countervailing duty orders on aluminum extrusions from China. “Commerce’s cursory explanation failed to address the considerable amount of record evidence submitted by Agilent to show that the MFR was designed and tested around specific thermal performance requirements,” CIT Judge Jennifer Choe-Groves wrote (slip op. 17-119). “Commerce’s explanation regarding why the MFR does not qualify for the finished heat sink exclusion is unsupported by substantial evidence,” she added. Case illustrates CIT’s “willingness to not simply rubber-stamp decisions by Commerce, but to require such decisions be supported by substantial evidence,” Agilent lead counsel George Tuttle, III, said in statement.

WASHERS: For third time in five years, Whirlpool Sept. 7 found itself before ITC testifying about alleged injury caused by washer manufacturers Samsung and LG, this time on its Section 201 global safeguard petition (see **WTTL**, June 5, page 1). Whirlpool had support of Ohio Sens. Sherrod Brown (D) and Rob Portman (R), who called practice of moving production to avoid duties “trade whack-a-mole,” at hearing. On other side, Rep. Ralph Norman (R-S.C.) and five colleagues urged caution in letter to ITC. “Unfortunately, the 201 petition invites undue risk in the existing residential washers market that could reduce consumer choice, curb innovation and jeopardize the expansion of a growing domestic manufacturing workforce,” they wrote. Samsung is investing \$380 million in Norman’s district to open plant to manufacture home appliances, including washers, company announced in June.