

Vol. 31, No. 27

July 4, 2011

EU “Green Paper” Calls For Examination of Export Controls

The European Commission (EC), the administrative arm of the European Union (EU), is following the U.S. lead in opening a discussion of how to reform EU controls on dual-use exports. In a “Green Paper” published June 30, the EC called for comments on the operation of Europe’s current system of controls and options for reform. Currently, dual-use controls are based on EU-wide regulations but are administered by individual member states.

“The development of the EU export control system over the last decade has witnessed an entanglement of these trade and security considerations,” the Green Paper acknowledges. “Instead of having a harmonized EU approach to export controls where security considerations are brought to bear on a case-by-case basis to protect essential security interests and prevent high-risk transactions, we have different approaches being applied to export controls across the EU,” it states.

As a result, controls among EU members “range from extremely tough export restrictions put on exporters established in some Member States, to the use of broad national facilitation measures to allow certain exporters in particular Member States to export dual-use items with minimum difficulty,” it notes. “Consequently, it may be necessary to start working towards a more fully developed risk-driven model for EU export controls, where limited resources are invested into controlling the highest-risk items,” the paper suggests.

Among the goals that could be achieved by this assessment are: (1) a common risk assessment approach would have to be used by all export control authorities; (2) a greater exchange of information on suspicious transactions and licenses issued would have to take place in a systematic fashion; (3) National General Export Authorizations would have to be progressively phased out in favor of EU General Export Authorizations; (4) a common approach would have to be developed for catch-all controls; (5) a satisfactory solution to the problem of intra-EU transfer controls would have to be found; and (6) coordinated enforcement across the EU would have to take place coupled with improved access to relevant information for customs.

Pilot Program May be Too Costly for Mexican Truckers

With the Transportation Department close to setting the final details of a pilot program to allow Mexican trucks on U.S. highways, the challenge now will be getting Mexican companies to participate, a top Transportation official warned June 29. To demonstrate that Mexican trucks can meet U.S. safety requirements and be allowed unlimited access to American high-



ways, the three-year pilot program will need to get 4,100 “safety snapshots” of Mexican trucks entering the U.S. to be statistically valid, William Quade, associate administrator of the Federal Motor Carrier Safety Administration (FMCSA), told the Washington International Trade Association. “There are certain, significant costs in operating in the United States for a Mexican motor carrier,” including time spent waiting at the border entry points, Quade said.

“Long-haul trucks from Mexico are not the same trucks that are operating into the commercial zone, and the long-haul drivers are not the same drivers. They are the better quality trucks, they are the better quality drivers, and they cost more to operate. And having them spend a long time in line at the borders is not necessarily an efficient, effective use of money,” he noted.

While the pilot program has not officially launched, the goal is to begin allowing trucks onto U.S. highways this summer, Quade said. Although administration officials are adding some logistical details, we “would not anticipate wholesale changes” to the plan proposed in the April 13 Federal Register, he said. FMCSA received over 2,000 comments on the proposal, more than half from Teamsters Union members who oppose the plan (see **WTTL**, May 23, page 3). Many of those comments expressed concern over the safety of Mexican trucks, which might have been an issue in the 1990s, Quade said. Karen Antebi, economic counselor at the Mexican Embassy, told the WITA audience, “It’s never been about safety. We strongly believe that our carriers, those that will be interested in participating in this very special service, will comply and will demonstrate that we can operate safely because that is their business.”

Political Maneuvering Blocks Action on Free Trade Pacts

It’s hard to tell who is doing more to sabotage enactment of free trade agreements (FTAs) with Korea, Panama and Colombia: Democrats, Republicans or the White House. Senate Republicans boycotted a Senate Finance Committee “mock markup” of the pacts June 30, blocking action on the deals because they object to the attachment of Trade Adjustment Assistance (TAA) legislation to the Korean FTA implementing bill. Several House Democrats, led by Ways and Means Committee Ranking Member Sander Levin (D-Mich.), announced June 27 that they will still oppose the Colombia FTA because the implementing legislation doesn’t refer specifically to the labor and human rights action plan Bogota is following.

The Obama administration, which has delayed action on the three FTAs for two years, is opposing a separate vote on TAA because it doesn’t trust Senate Republicans, who, they are afraid, will filibuster a separate bill. Meanwhile, the business community’s vaunted lobbying machine has had trouble getting its usual Republican allies to overcome the anti-spending, anti-Obama push of tea party supporters and anti-tax groups.

Despite the dramatic collapse of the Finance markup session, Chairman Max Baucus (D-Mont.) said, “We’re optimistic that we’ll be able to find a solution.” After the meeting he told reporters he wasn’t sure if he would be able to hold another markup the week of July 4. “We’ll schedule another meeting when I think we can be effective. We’ll find the right combination so we can move as quickly as we can,” he said. “I’m for a solution. We need the trade agreements and we need TAA. All four must pass or none of them will pass,” he stated.

The GOP boycott came after Baucus, Ways and Means Chairman Dave Camp (R-Mich.) and administration officials reached a deal June 28 to renew a slimmed-down TAA. The revised TAA keeps provisions granting coverage to service workers and those not directly hurt by trade agreements, but it cuts funding for some programs and reduces that health-care tax credit to 72.5% from 80%. The agreement, however, didn’t include any GOP commitment to support the measure or whether it could be tied to one of the FTAs. “This was a very good-faith negotiation,” a senior administration official said. “We did not want to infer that as we did that negotiation it was on the process for how it would be tied or for passage,” he added. Finance Republicans said they boycotted the markup because TAA was attached to the Korean

FTA implementing legislation. “While we may share different views regarding our support for these agreements and on trade adjustment assistance, we are united in our opposition to inclusion of expanded Trade Adjustment Assistance in this implementing bill submitted to Congress under Trade Promotion Authority,” they said in a letter to President Obama. Although renewal of the Generalized System of Preferences and the Andean Trade Preferences Act was attached to the Colombia FTA bill, the GOPers didn’t mention that in their explanation of their boycott.

In announcing his opposition to the Colombia FTA, Levin conceded that Bogota is meeting the goals set out in the action plan, which was based on Levin’s own proposals and the work of his former aide, Tim Reif, who is now general counsel in the U.S. Trade Representative’s office.

“Republican refusal to include in the implementing bill a reference to the document addressing the core issue which had prevented consideration of the FTA – the Action Plan on Labor Rights - and the administration’s acquiescence to that refusal are totally unacceptable. As such, it is not satisfactory, and I will actively oppose it,” Levin declared. A senior administration official told reporters the action plan “doesn’t require a change in U.S. law, and therefore there was no requirement that it be included in the implementing bill.”

National Foreign Trade Council President Bill Reinsch vented business community frustration with all the posturing and obstructionism in Congress on his blog June 30. “In the ongoing drama of FTAs and TAA renewal, we now have virtually the entire business community supporting a President whose trade policy they have spent two years criticizing, coupled with House and Senate Republicans who are doing the AFL-CIO’s work for it by blocking the free trade agreements that organized labor opposes,” he wrote. “If I were [AFL-CIO President] Rich Trumka, I’d give Senators McConnell and Hatch medals for doing what he has thus far been unable to do – stop the FTAs from advancing,” he quipped.

Advance Approval Proposals for FTZs Still Source of Controversy

A proposal to add additional advance approval requirements to Commerce’s Foreign Trade Zone (FTZ) regulations for goods subject to antidumping and countervailing duty (AD/CVD) orders continues to be the focus of opposing public comments submitted to the FTZ Board. After getting more than 100 comments to its original proposal, the board still has to decide what to do with the opposing responses (see **WTTL**, May 9, page 5).

In its rebuttal comments June 27, the National Association of Foreign Trade Zones (NAFTZ) took issue with the requirement. “There is no public benefit in enshrining in a regulation a requirement for advance approval for export manufacturing,” it stated.

“The current presumption in the regulations should be strengthened, not weakened; the proposed regulation, to its credit, introduced the concept of manufacturing without awaiting a lengthy approval process. The requirement of advance approval in all cases would result in less American export manufacturing and lost American jobs,” the organization noted.

Stewart & Stewart, a trade law firm in Washington, D.C, disagreed. “Requiring advance approval of activity that would involve inputs subject to AD and CVD orders, and of activity involving inputs that have become subject to a new AD or CVD order, further supports the Department’s objective of ensuring that FTZs are not used to circumvent AD and CVD orders,” the firm wrote. “Moreover, requiring advance approval provides the opportunity for interested domestic parties to receive notice and submit public comments, furthering the Department’s objective of ensuring that FTZs are in the public interest,” it added.

PointTrade Services, an FTZ consulting firm in Panama City, Fla., supported the NAFTZ’s views. “With the existing regulatory provisions to prevent circumvention of violations against AD/CVD orders, *why* limit capital investment, domestic labor and overhead for the production

of merchandise, particularly for the production of merchandise for export markets?” it asked (its emphasis). Rep. Bill Johnson (R-Ohio) argued against loosening the requirement in his comments. “It is my belief that the Board should retain the advance approval requirement in the final version of the regulations and should not allow it to be watered down by loopholes inserted during the comment process,” he stated.

National Export Strategy Defines Metrics for Success

As Congress remains stalemated over pending FTAs, Commerce said passage of the deals is one of the most important steps toward achieving President Obama’s goal of doubling U.S. exports by 2014. In its 2011 report on the National Export Strategy June 28, the department also stressed state and local collaboration and better measurement of progress as crucial tactics.

Specifically, the document said the Trade Promotion Coordinating Committee would focus on five areas in 2011: increase coordination with state export promotion programs and nonprofit associations; identify and encourage exports by U.S. companies selling technologies in high-growth sectors; increase the budget for trade promotion infrastructure; ensure that there are better data and measurement of the U.S. services economy; and resolve remaining issues with, and seek congressional approval of, the pending FTAs with Korea, Panama and Colombia.

“In addition to tackling issues affecting U.S. export competitiveness at the international and national levels, developing an effective national export strategy requires a coordinated response from U.S. Government agencies, the engagement of external stakeholders including private-sector partners and state and local governments, and strategic measurement of the nation’s overall export progress,” the strategy noted. This year’s export strategy marks the first time all 18 trade agencies have agreed-upon common metrics to measure export promotion. These metrics include the number of new-to-export companies, the number of new markets entered by U.S. firms, the total value of exports and foreign trade missions. “Developing government-wide, cross-cutting metrics will maximize transparency, improve cooperation among agencies, and strengthen program impact and delivery,” the report said.

* * * Briefs * * *

VEU: BIS in June 28 Federal Register added most items under ECCN 3B001.h to those that may be exported to three facilities of CSMC in Wuxi, China, under its VEU. Multilayer masks with phase shift layer designed to produce space qualified semiconductor devices are excluded (see **WTTL**, Jan. 24, page 4).

REMANUFACTURING: USTR Ron Kirk June 28 asked ITC to provide overview of U.S. remanufactured goods industries and markets; estimate U.S. and global trade in remanufactured goods to extent possible; and examine factors affecting trends in remanufactured goods trade.

FCPA: In Form 6-K filed with SEC June 24, Magyar Telekom, Hungarian telecommunications provider, revealed deal in principle with SEC to settle alleged violations of FCPA by its Montenegrin and Macedonian affiliates and setting aside of over \$60 million for eventual settlement. It said it was still in talks with Justice on separate settlement.

IRAN: GAO report June 30 said its investigation was unable to uncover information on sale by any company doing business with U.S. government to Iran of equipment for online monitoring and filtering, cell phone disruption and monitoring, and radio and television signal jamming (GAO Report GAO-11-706R). “Iran’s growing capacity to develop its own monitoring, filtering, and disrupting technology suggests it is relying less on non-Iranian technology to monitor and filter internal communications,” report said.

EXPORT ENFORCEMENT: General Reinsurance Corp. of Stamford, Conn., paid \$59,130 to settle OFAC charges that it violated Iranian Transactions Regulations in July and August 2005 through payment of claims to Steamship Mutual Underwriting Association Limited for losses arising from vessel operations of National Iranian Tanker Company. Gen Re voluntarily disclosed payments to OFAC. “The apparent violations resulted from activities of certain claims personnel, including a Vice President for Claims, that were contrary to Gen Re sanctions compliance policies and procedures,” OFAC said.