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State Proposes Rules to Implement UK, Australia Defense Pacts

A year after administration officials said there were some technical details to work out, State Nov. 22 proposed a rule to implement the Defense Trade Cooperation Treaties the U.S. ratified with Australia and the United Kingdom (UK). The Federal Register notice identifies the long list of defense articles and services that may not be exported under the treaties as well as the members of the “community” that would be eligible to receive exports under the accords. Last year, Robert Kovac, managing director of State’s Directorate of Defense Trade Controls (DDTC), told an advisory group “a lot of mechanics” would need to take place before the treaties became operative (see **WTTL**, Oct. 25, 2010, page 2).

In a separate part of the notice, State proposed adding Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold. The rule would give Israel legal status similar to members of the North Atlantic Treaty Organization (NATO), Australia, Japan, New Zealand and South Korea concerning certifications to Congress, the notice says.

To implement the treaties, DDTC proposes to create new sections in the International Traffic in Arms Regulations (ITAR) spelling out the license exemptions that apply to Australia and the UK as a result of the pacts. A new Section 126.16 contains the details for exports to Australia and a new Section 126.17 for the UK. In addition, the agency proposes dropping the separate list of exclusions from license exemptions for Canada in Section 126.5(b) and creating a new Supplement 1 in Section 126 with a category-by-category chart identifying the specific exclusions for Australia, Canada and the UK.

If an Australian or UK community member wants articles received under an existing license to be treated as treaty items, the member would have to submit a written request to DDTC either directly or through the original U.S. exporter, identifying the articles or defense services, the existing authorizations and the treaty-eligible end-use for which they will be used. “The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the Australian [or UK] Community member has received approval from the Directorate of Defense Trade Controls to transition to this section,” it proposes.

Pentagon Panel Sees Climate Change as National Security Risk

Regardless of the political debate over global warming, climate change could pose national and international security risks and the Defense Department should prepare plans for dealing with



potential conflicts that could arise from weather-caused disasters, the department's Defense Science Board warns in a new report. While acknowledging that the effects of climate change are uneven and subject to many factors, the report singles out Africa as particularly vulnerable to conflicts stemming from water shortages and natural disasters.

“Climate change is likely to have its greatest impact on security through its indirect effects on conflict and vulnerability,” the report says. “These effects span the spectrum from basic necessities of livelihood to social conflict, including protests, strikes, riots, inter-communal violence and conflict between nations,” it adds.

The report recognizes that the U.S. can't deal with climate change or potential conflicts alone, but recommends that the Pentagon develop a climate information system and institute water security as an element of its strategy, especially for its Africa Command. “Climate change is an observable fact. Regardless of cause, global temperature rise is outside the range of experience since the end of the ice age approximately ten thousand years ago. This change has the potential to change many of the delicate balances that affect U.S. national security,” the report states. The recommendation for a Defense climate office comes as Congress has rejected a Commerce proposal for such an office in the National Oceanic and Atmospheric Administration.

Chinese Promise Not to Force Transfer of New Auto Technology

While the 22nd meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) produced the usual long list of Chinese promises to cooperate on a myriad of American complaints about Beijing's trade policies, it also gained a Chinese pledge not to force foreign car makers to transfer technology to China for New Energy Vehicles (NEV). “China confirmed that it does not and will not maintain measures that mandate the transfer of technology. China clarified that ‘mastery of core technology’ does not require technology transfer for NEVs,” said a fact sheet on the results of the talks that were held in Chengdu, China, Nov. 20-21.

China's treatment of NEVs was one of the top priority topics for the talks. According to the U.S. Trade Representative's (USTR) office, China plans to manufacture one million NEVs annually by 2015 and five million annually by 2020. “I am pleased that China specifically confirmed it would not force U.S. auto manufacturers to transfer electric vehicle technology to Chinese partners,” USTR Ron Kirk said in a statement.

The Chinese also made commitments in three other priority areas: indigenous innovation, intellectual property rights (IPR) and counterfeit drugs. The Chinese said their State Council has issued a measure requiring governments of provinces, municipalities and autonomous regions to eliminate by Dec. 1 any catalogues or other measures linking innovation policies to government procurement preferences. The council also has set up a group to lead and coordinate IPR enforcement across China. For counterfeit drugs, the Chinese said they are setting up and funding a Complaint Center for Counterfeit Drugs that will include a consumer hotline and data analysis unit. In addition, China's food and drug administration (SFDA) will monitor and crack down on websites that sell or distribute counterfeit medicines. “The U.S. government and the U.S. pharmaceutical industry will share with SFDA instances of counterfeit drugs in China when such information is available,” the fact sheet noted.

Monitoring of Night Vision Exports Inadequate, Report Claims

State and Defense are not adequately monitoring the export of night vision devices (NVDs) and other military equipment sold to countries in the Persian Gulf, the Government Accountability Office (GAO) contends in a report released Nov. 17 (GAO-12-89). The report faults both Defense's Golden Sentry post-shipment monitoring program and State's Blue Lantern program. “Gaps in implementation limit the effectiveness of U.S. efforts to safeguard military equipment sold or exported to the Persian Gulf,” the report claims. It says Golden Sentry did not

document security and accountability procedures in five of six Gulf countries. The Blue Lantern program conducted post-shipment checks without visiting end-users of U.S. military equipment in 10 of 13 cases the GAO reviewed, it notes.

The GAO examined post-shipment monitoring of sales to six Persian Gulf countries: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. “Regional tensions and civil conflicts have raised concerns about the security and use of arms sold or exported to these countries,” it says. It also checked on how State and Defense vet end-users to prevent military items from going to parties linked to human rights abuses. The report recommends that the two departments harmonize their approaches to end-use monitoring for NVDs and to take steps to plan or schedule how and when harmonization would occur.

The report says post-shipment monitoring of NVDs varies markedly between the two departments, making the devices prone to diversion. “Man-portable NVDs sold through Foreign Military Sales (FMS) must be tracked by serial number, inventoried following delivery, and inventoried periodically thereafter. In contrast, State does not track NVDs by serial number or conduct regular inventories for NVDs exported through direct commercial sales (DCS),” it notes.

“As a result, less advanced NVDs purchased through FMS have received more rigorous monitoring than more advanced NVDs purchased through DCS,” it asserts. “In Saudi Arabia, DOD officials inventoried thousands of second-generation NVDs that were purchased through FMS in the early 1990s. Meanwhile, State approved licenses for the sale of thousands of advanced, third-generation NVDs to Saudi Arabia since 2005, which are subject to less rigorous end-use monitoring,” the GAO points out.

Administration Increases Pressure on Iran

The Obama administration stopped short of specifically sanctioning the Central Bank of Iran Nov. 21 for fear of disrupting the world’s oil and gas supply and hurting allies, such as Japan, that pay for Iranian oil purchases through the bank. Instead, President Obama issued an executive order (EO 13590), identifying Iran as a jurisdiction of “primary money laundering concern” under Section 311 of the USA PATRIOT Act. The order also expands sanctions to target the supply of goods, services, technology or support to Iran for the development of its petroleum resources and maintenance or expansion of its petrochemical industry. It also designates 11 more individuals and entities for their role in Iran’s weapons of mass destruction program.

Many banks already have screening procedures in place to prevent the handling of transactions with sanctioned Iranian banks and parties, but the new sanctions add a new level of clarity, administration officials claim. “What this measure does is require U.S. financial institutions to take additional due diligence steps to ensure that any foreign relationship that they have is not being used to provide indirect access for Iran to the U.S. financial system,” said a senior administration official (see **WTTL**, Oct. 17, page 1).

The EO “will make it more difficult for Iran to work around the sanctions and will further impede efforts to maintain and modernize its oil and gas sector,” Secretary of State Hillary Clinton said. “To accompany this new measure, we will launch a worldwide diplomatic campaign to encourage other countries to shift any purchases of Iranian petrochemical products to other suppliers,” she noted. Administration officials left open the possibility of further sanctions. At a press conference with Clinton, Treasury Secretary Tim Geithner said, “No option is off the table, including the possibility of imposing additional sanctions on the Central Bank of Iran.”

The U.S. sanctions came in coordination with similar measures imposed by Canada and the United Kingdom, whose sanctions are tighter than Washington’s. “The UK has imposed a direction requiring UK credit and financial institutions to cease all business with banks incorporated in Iran and their branches and subsidiaries,” the UK said. Only transactions licensed

by the UK Treasury will be permitted. Canada said it will prohibit financial transactions with Iran, expand the list of prohibited exports to the petrochemical, oil, gas and nuclear industry in Iran and add new individuals and entities to the list of designated persons.

The U.S. moves aren't likely to satisfy some in Congress who are calling for direct sanctions against the Central Bank. The designation of Iran "could have a significant impact, but we need to actually punish those foreign financial companies that continue to do business with Iran's banks, including the Central Bank," said Rep. Brad Sherman (D-Calif.).

The business community, however, applauded the administration's approach. "Given the Administration's action, we urge Congress to refrain from taking any steps to enact additional, unilateral sanctions, either in stand-alone legislation or as amendments to other 'must pass' legislation," said Richard Sawaya, director of USA*Engage.

End of Import Certificates Urged

The requirement for exporters to obtain a written import certificate (IC) and delivery verification (DV) should be dropped from the Export Administration Regulations (EAR) because they are burdensome and unnecessary, Cecil Hunt, an attorney with Wilshire & Grannis, told the President's Export Council Subcommittee on Export Administration Nov. 14. In a written proposal to the panel, Hunt, who served had as Commerce chief counsel for export administration, said the requirements are a holdover from the 1940s and pre-Wassenaar Arrangement days of the Coordinating Committee on Multilateral Export Controls (COCOM) when the U.S. and its allies were trying to keep controlled goods away from Eastern bloc countries.

"The precise rationale for the IC system is murky," Hunt wrote. It appears to have been designed to give exporting countries confidence that exported goods would not be reexported without permission, while allowing importing countries to acknowledge the extraterritorial jurisdiction of the exporting country.

Hunt asked the PECSEA to put the IC issue on its future agenda. He suggested that other trade information, including customer "end-user statements" and Customs documentation, can replace the IC. "Standard customs entry documentation should provide the importer's authorities with information they can use if they wish to cooperate to achieve trade control objectives shared with the exporter's government," he wrote. Hunt acknowledged that negotiations would be needed with other governments to make any changes to the rules.

* * * Briefs * * *

KOREA: At raucous, tear-gas-throwing session, Korean National Assembly ratified U.S.-Korean Free Trade Agreement Nov. 22 and passed legislative changes needed to implement pact. Action clears way for early implementation of deal in 2012. "We look forward to working closely with the government of Korea to bring the agreement into force as soon as possible," said USTR Ron Kirk (see **WTTL**, Oct. 24, page 1).

LIBYA: OFAC Nov. 18 issued General License No.9 unblocking all funds, including cash, securities, bank accounts, investment accounts and precious metals of the General National Maritime Transport Company, subject to requirement to report to OFAC on release of any blocked funds. OFAC also specified unblocked banks and oil companies under previous general licenses 7A and 8A (see **WTTL**, Oct. 3, page 4).

TRADE RESTRICTIONS: WTO review of global trade actions in 2011 shows "on the whole governments have largely continued to resist protectionist pressures, although an upward trend was observed this year in the imposition of new trade restrictions," says report released Nov. 21. Study found 339 new trade restrictive measures, 53% more than in previous period. "In particular, the number of new export restrictions has increased sharply; although accounting for only 19% of total restrictions during the monitoring period, export measures were the fastest-growing component," report adds. "Nonetheless, new restrictive measures introduced in the period between mid-October 2010 and mid-October 2011 cover around 0.9% of world imports, down from 1.2% recorded in the previous twelve-month period," it notes.