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Defense Waiver on Chinese Parts Was "One-Off," Official Says

The Defense Department's decision to waive the prohibition on the purchase of parts from China for military equipment to allow the use of a Chinese-made part in the F35 Joint Strike Fighter (JSF) was a "one-off" waiver for that particular part and not a new Pentagon policy, Hugh F.T. Hoffman, deputy director of the Defense Technology Security Administration (DTSA) told WTTL Feb. 4. "The point here is we make this [decision] on a case-by-case basis. There is no broad policy," he said.

As first reported by the Reuters news agency, the Pentagon granted a waiver to Northrup Grumman and Honeywell to allow the use of a part that one of their foreign subsidiaries had procured in China for use in Lockheed Martin's F35 fighter. Defense is prohibited by law and the Defense Federal Acquisition Regulations (DFARs) from buying items made in China for use in military equipment. The Pentagon said the waiver was justified to prevent the closing of the F35 production line.

"There will be all kinds of issues about supply chains and parts moving to the 600 series and how to control that under DFARs," Hoffman told WTTL. "We're working through all that," he said. Potential legal action against the firms involved in this case is also possible, he indicated. "We're looking at that right now," he said.

"The problem is adhering to the license conditions," he noted. The export license for the part did not include work in China. "So you have a specific violation of a specific license," he said. The intent of the waiver "was to get back on track," he added. "That bespeaks a larger problem. We try to make sure that folks understand the stipulations in the license," Hoffman explained.

As far as the waiver goes, "it's about supply chains," he said. "The issue is how critical is the part; what's the risk. We weigh those in an individual case. If it's high risk, we could potentially shut down the line. If it's low risk, as we saw here, then people make a decision whether to accept the risks," Hoffman said.

Trade Deficit with FTA Partners Will Need Explaining

Defenders of free trade agreements (FTAs) will need to be prepared to explain why such trade deals are good when the U.S. racked up a $67 billion trade deficit with the 20

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countries with which it already has FTAs. The explanation is apparent with a little digging behind the numbers but that won't stop trade critics from using the figure in their fight against new fast-track trade legislation and a new deal with the Trans-Pacific Partnership (TPP). The trade deficits with Canada (-$31.7 billion) and Mexico (-$54.3 billion) are the primary reason for the FTA deficit. Without those two countries, the other 18 FTAs would produce nearly a $19 billion trade surplus.

2013 U.S. Trade with Free Trade Agreement Partners
(in millions)

Country	U.S. Exports	U.S. Imports	Balance
Australia	$26,047.4	$9,271.8	$16,775.5
Bahrain	1,017.9	635.2	382.7
Canada	300,346.9	332,077.9	-31,731.0
Chile	17,584.7	10,363.2	7,221.5
Colombia	18,606.3	21,617.3	-3,011.0
Costa Rica	7,230.2	11,906.0	-4,675.8
Dominican Rep.	7,196.2	4,256.0	2,940.2
El Salvador	3,167.7	2,437.1	730.6
Guatemala	5,522.5	4,167.6	1,354.9
Honduras	5,277.8	4,543.0	734.8
Israel	13,738.0	22,675.7	-8,937.8
Jordan	2,087.2	1,196.9	890.2
Korea, South	41,555.0	62,228.2	-20,673.2
Mexico	226,152.9	280,455.5	-54,302.6
Morocco	2,304.9	977.1	1,327.8
Nicaragua	1,057.1	2,804.0	-1,746.9
Oman	1,504.3	1,022.4	481.8
Panama	10,781.7	448.9	10,332.8
Peru	10,055.5	8,122.3	1,933.2
Singapore	30,723.9	17,827.6	12,896.2
TOTAL	731,958.1	799,033.7	-67,076.1

Energy imports from Canada and Mexico account for the bulk of the trade deficit with those two NAFTA partners. The U.S. imported $76.2 billion in crude oil from Canada in 2013 and $31.8 billion from Mexico. Total U.S. exports of crude oil, mostly to Canada, reached only $2.5 billion last year.

Autos are another large factor in NAFTA trade that has drawn major complaints from U.S. unions about trade with Mexico. While the U.S. has only $1 billion deficit with Canada for all trade in cars, trucks and parts, it has a $54.1 billion deficit with Mexico.

For the other FTA partners, the U.S. is running only a slight deficit with its CAFTA-DR nations, but a surplus with some countries participating in TPP talks, including Australia, Chile, Peru and Singapore. The $20.7 billion deficit with South Korea creates another public relations challenge for trade supporters. But as with Mexico, the main cause of that short fall is due almost entirely to auto trade, with the U.S. suffering a $18.6 billion deficit with Seoul in this sector.

Energy, China Are Bright Spots in 2013 U.S. Trade Picture

In a year that saw nearly flat growth in U.S. exports and imports, the two most positive results were seen in the rise in U.S. energy exports and exports to China. In addition to raising the prospect of America becoming energy independent, the highly touted increase in U.S. oil production helped boost oil and petroleum exports, mainly refined products, almost 11% while imports declined by the same 11% (see table page 3).

The growth of oil exports was achieved despite a ban on most exports of crude oil except for exports to Canada and reexports of foreign oil. As a result, crude oil exports were limited to $2.5 billion. Trade in all categories of petroleum products contributed $232 billion (33%) to the total 2013 merchandise deficit of $703 billion. The total deficit last year was the second year in a row that the deficit declined. Last year saw sluggish or no growth to most major U.S. export destinations, except for China, where U.S. export growth continues to outpace import growth. In 2013, U.S. exports to China rose nearly 11% while imports edged up just 3.3%. Nonetheless, the total trade deficit with China reached $318 billion, 45% of the total goods deficit.

Preliminary 2013 vs. 2012 U.S. Merchandise Trade Figures (in billions)

	2012 Exports	2013 Exports	% Change	2012 Imports	2013 Imports	% Change
Total	$1,561	$1,590	1.86%	$2,303	$2,293.5	-0.41%
BY COUNTRY/REGION						
Canada	292	300	2.74	324	332	2.47
Mexico	216	226	4.63	278	280	0.72
European Union (28)	265	262	-1.13	381	387	1.57
Germany	49	47.4	-3.27	108	114.6	6.11
France	31	32	3.23	42	45	7.14
United Kingdom	55	47.3	-14.00	55	52.6	-4.36
Japan	70	65.1	-7.00	146	138.5	-5.14
China	110	122	10.91	426	440	3.29
NICs: HK, Singapore, Taiwan, Korea	135	140	3.70	123	123.6	0.49
South/Central America	184	184	0.00	172	158.4	-7.91
BY SECTOR						
Agriculture	132.8	136	2.41	110.2	115.2	4.54
Aircraft, parts, engines	94.4	105.5	11.76	40.1	46.4	15.71
Autos, parts, engines	146	152	4.11	297.8	308.8	3.69
Clothing	3.4	3.4	0.00	84.9	87.9	3.53
Chemicals-Organic	42.4	43	1.42	52.3	52.2	-0.19
Chemicals-Inorganic	12.3	11.2	-8.94	15.5	14.2	-8.39
Petroleum, total categories	123.5	137	10.93	415	369	-11.08
Iron & Steel	19.3	18.4	-4.66	42.8	36.6	-14.49
Metalworking Machines	7.9	7.7	-2.53	11.7	11.3	-3.42
Pharmaceuticals	47.9	47.9	0.00	87.2	84.3	-3.33
Semiconductors	42.1	42.6	1.19	40.2	41.4	2.99
Telecommunications	38.5	39.7	3.12	52.8	54.4	3.03
Wood Products	2.1	2.2	4.76	7.9	9.1	15.19

The increase in exports was attributed primarily to sales of civilian aircraft, engines, equipment, and parts, while imports were driven by growth in cell phones and household goods.

The decline in exports to the economically hurting European Union (EU) was due mainly to a drop in exports of nonmonetary gold, autos and metallurgical grade coal. Imports increased for autos and aircraft.

Japan's weak economy caused a decline in U.S. exports due to lower sales of corn and civilian aircraft, engines, equipment and parts.

Increased production of Japanese-brand cars in the U.S. contributed to a drop in auto imports from Japan.

The rebound in sales of U.S.-brand autos and trucks also mirrored an overall increase in the U.S. appetite for German cars. The $29 billion deficit in auto trade accounted for 43% of the total deficit with Germany. Auto imports from Korea also contributed to the deficit (see related story page 1). In 2013, services exports were up 5% to a record $682 billion from 2012 and imports increased 1.8% to $450.3 billion from a year ago. The U.S. surplus in services trade was nearly $232 billion. U.S. merchandise exports in

December increased 0.06% from a year ago to $132.8 billion. Services exports increased 4.5% to $58.5 billion from the same month in 2012. Goods imports went up 0.9% from December 2012 to $191.6 billion, as services imports gained 3.5% to $38.4 billion.

Fast-Track, TPP Debates Draw in Surrogates

President Obama said just a few words about renewing fast-track trade promotion authority (TPA) or approving a Trans-Pacific Partnership (TPP) deal in his State of the Union address, but that hasn't stopped others from saying a lot. On the Senate floor Feb. 4, Sen. Orrin Hatch (R-Utah), ranking member of the Finance Committee, lambasted Senate Democrats for blocking action on TPA. On the same day, AFL-CIO President Richard Trumka wrote to House and Senate members to debunk administration claims that it has been consulting with unions on TPP.

> "While I thought President Obama could have spoken more forcefully on the matter, his call for TPA renewal was clear and unambiguous. Yet, so far, the call appears to be going unheeded among Democrats in the Senate," Hatch complained.

Hatch disagreed with U.S. Trade Representative (USTR) Michael Froman's assertions that talks on a TPP and a U.S.-EU Transatlantic Trade and Investment Partnership (TTIP) are continuing to go well even without fast track. "Our trading partners will not put their best deal on the table unless they know the United States can deliver on what we promise," Hatch said. "That is why every president since FDR has sought Trade Promotion Authority. No economically significant trade agreement has ever been negotiated by any administration and approved by Congress without it," he added.

"Put simply, if Congress does not renew TPA, the TPP negotiations and those with the European Union will almost certainly fail. That is why it is so disconcerting to me to see how some of my colleagues across the aisle have responded to President Obama's call for TPA renewal," Hatch said.

Trumka's letter came in reaction to a letter Froman reportedly sent lawmakers asserting that the administration has consulted organized labor on TPP. "We disagree," the labor chief wrote. He rebutted claims that labor has had access to the negotiations through the USTR's Labor Advisory Committee on Trade Policy and Negotiations (LAC). "It is important to distinguish between 'access' and meaningful participation and influence," he wrote. While there is one labor advisory committee, there are 16 Industry Trade Advisory Committees (ITACs), he noted.

"Over the course of the several years of negotiations for the TPP, the LAC has provided scores, if not hundreds, of specific suggestions to improve the trade agreement on a wide variety of chapters – labor, investment, procurement, services, intellectual property, regulatory and food safety. to name several," he wrote. "Few, if any, of these suggestions appear likely to be incorporated in the now almost complete agreement," he complained.

Meanwhile, a group monitoring media coverage of TPP has issued a report claiming major TV news organizations have mostly ignored the story. Over the last six months, ABC, CBC and NBC made no mention of TPP, claims Media Matters for America, a

Web-based, not-for-profit, progressive research center. The PBS Newshour had one mention. On other hand, cable news shows mentioned the talks 33 times, with MSNBC having 32 reports, mostly on The Ed Show.

BIS Proposes Removing Term "Routed Export Transaction"

Rather than trying to redefine a term that has caused confusion and concern, the Bureau of Industry and Security (BIS) suggested just removing the phrase "Routed Export Transaction" from its Export Administration Regulations (EAR) in a Federal Register proposal published Feb. 6. In so doing, the EAR would more closely sync with Census' Foreign Trade Regulations (FTR), the agency contends.

> In the notice, BIS said it would "create a new term to better define certain transactions of particular interest to BIS, specifically a 'Foreign Principal Party Controlled Export Transaction' which is a transaction where an FPPI [Foreign Principal Party in Interest] which is responsible for the export of items subject to the EAR, also assumes the authority and responsibility for licensing requirements."

In June 2013, the National Customs Brokers and Forwarders Association of America (NCBFAA) urged BIS to make sure the freight forwarder handling the shipment is made part of any arrangement between the FPPI and the U.S. Principal Party in Interest (USPPI) in these transactions (see **WTTL**, June 17, 2013, page 6). One NCBFAA member said the association is just beginning to review the proposal and will submit comments to BIS.

BIS said it has addressed the concerns of freight forwarders in the proposed rule. "Some exporters, freight forwarders, and foreign parties have misunderstood the current language to require the USPPI to allow the FPPI to assume responsibility for determining licensing requirements and obtaining license authority in all routed export transactions, as defined by the Census Bureau, because the current language states that the USPPI is the exporter 'except in certain routed transactions,'" it wrote.

"This change will clarify that the USPPI is the exporter in all export transactions, except when the specific requirements … are met to create a 'Foreign Principal Party Controlled Export Transaction,'" BIS added. The requirements for this type of transaction include written assumption of responsibility by the FPPI, delegation to a U.S. agent for the FPPI, and information sharing requirements between the parties, including the freight forwarder. The proposed rule provides greater detail than in current regulations on the required contents of the information shared, such as the correct Export Control Classification Number (ECCN) or other technical classification.

The proposal says the "FPPI may only assume the responsibility for determining licensing requirements and obtaining license authority when the FPPI is responsible for the movement of the items out of the United States." Comments are due April 7.

* * * Briefs * * *

SENATE: Senate Finance Committee Chairman Max Baucus (D-Mont.) gave his farewell speech on Senate floor Feb. 6 after his colleagues voted 96-0 to confirm his nomination to be U.S.

ambassador to China. Baucus leaves Senate without having gotten fast-track trade promotion authority bill out of his committee. Legislation's fate remains uncertain as Sen. Ron Wyden (D-Ore.) prepares to take Finance leadership.

TRADE PEOPLE: Senate Foreign Relations Committee Feb. 4 sent to floor nominations of Puneet Talwar to be assistant secretary of State for political-military affairs, replacing Andrew Shapiro, and Rose Gottemoeller to be under secretary of State for arms control and international security, replacing Ellen Tauscher (see **WTTL**, Sept. 16, page 1).

CUSTOMS: Senate Finance Committee voted Feb. 4 to recommend confirmation of Gil Kerlikowske to be next Customs and Border Protection Commissioner.

CALCIUM HYPOCHLORITE: ITC in 6-0 preliminary vote Jan. 31 found U.S. industry may be materially injured by dumped and subsidized imports of calcium hypochlorite from China.

WIRE ROD: ArceloMittal USA, Charter Steel, Evraz Rocky Mountain Steel, Gerdau Ameristeel US, Keystone Consolidated Industries and Nucor filed antidumping and countervailing petitions at ITA and ITC Jan. 31 against imports of carbon and certain alloy steel wire rod from China.

EXPORT ENFORCEMENT: Ansell Protective Products Inc. in Iselin, N.J., successor to Marigold Industrial USA Inc., and French affiliate Comasec SAS Jan. 31 agreed to pay $190,000 each to settle four BIS charges of exporting Nitrotough N115 and Blue Nitrile industrial-strength gloves to Iran via UAE without required licenses.

MORE EXPORT ENFORCEMENT: Federal jury found Navy veteran Alexandre Astakhov guilty Feb. 5 in Philadelphia U.S. District Court of attempting to export L-3 CNVD-T thermal clip-on night vision devices and L-3 mini thermal monoculars to Russia without State licenses in 2012. Astakhov was arrested in September 2012, released on $25,000 bond and indicted in October 2012. Sentencing is scheduled for May 13.

GSP: Failure to renew Generalized System of Preferences is costing U.S. business $2 million a day, claims Jan. 27 letter to members of Senate from 463 firms and trade groups. "The 463 signatories on this letter are writing with a simple message: We cannot afford to wait any longer," letter declared. It called on Congress "to pass a retroactive renewal bill immediately."

INDIA: U.S. and Canada are already concerned India is using "peace clause" it won at WTO's Bali ministerial in December, which allows it to buy wheat from its farmers at subsidized prices, to dump wheat stocks on world market (see **WTTL**, Dec. 9, page 3). At regular meeting of WTO Agriculture Committee Jan. 29, U.S. and Canadian representatives questioned their Indian counterpart about press reports that New Delhi is selling wheat for export from its surplus stock at prices below what should be price at port. India reportedly planned to lower price for two tonnes of exported wheat to $260 per tonne from $300. U.S. claims price at port should be $310 per tonne. Indian representative claimed wheat was being sold at $279 to $289, which is higher than floor price. Separately, ITC will hold public hearing Feb. 12-13 on "Indian policies that discriminate against U.S. trade and investment in that country."

HANGERS: ITC voted 6-0 in "sunset" determination Feb. 7 that ending antidumping duty order on steel wire garment hangers from China would cause renewed injury to U.S. industry.

BEEF JERKY: Court of Appeals for Federal Circuit (CAFC) Feb. 3 affirmed CIT Judge Leo Gordon's decision to uphold CBP's classification of beef jerky imports as "cured" beef and deny petition of Link Snacks, Inc., which wanted them classified as "processed" beef. "We con-clude that the Court of International Trade did not err in granting summary judgment in favor of the government as a matter of law because the imported articles are provided for *eo nomine* as cured, prepared or preserved beef products in HTSUS subheading 1602.50.09," CAFC ruled. "The trade court was correct that no analysis beyond GRI 1 is necessary," it declared.