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BIS Moving 600-Series Licenses Quickly; DDTC Cases Drop

The Bureau of Industry and Security (BIS) is approving the first export licenses for items moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL) faster that the Directorate of Defense Trade Controls (DDTC) is moving licenses. Based on very preliminary data for aircraft parts moved from USML Category VIII and gas turbine engines from USML Category XIX, BIS has approved licenses in an average of 15 days, BIS Deputy Assistant Secretary Matthew Borman reported Feb. 24. According to DDTC's website, State averaged 22 days to clear applications in February.

> Borman's figures cover Oct. 15, 2013, when the first USML-CCL transfers went into effect, up to Feb. 2, 2014. During that time, BIS received more than 1,800 applications for the first transferred categories and approved 905. Overall, however, BIS there were 7,537 shipments for transferred items. Of those, less than half, 3,699, were exported under BIS jurisdiction by license, license exception or no license required. The rests went out under existing licenses previous authorized by DDTC, Borman said.

Meanwhile, DDTC has seen a "dramatic decline in licenses" for transferred items, reported Ed Peartree, DDTC's Office of Defense Trade Controls Policy director. "It is too early to draw any conclusions from these numbers," he said. Before Oct. 15, the mean average number of licenses DDTC received for those two categories was 414.9 per week. After that, the average dropped more than 70% to 125.7 per week, he reported.

At the same time, there was an uptick in applications that DDTC returned without action (RWA). "We are getting a lot of folks caught unawares or still not sure how it was going to work, erring on the side of caution, going ahead and submitting licenses and a lot of these things were RWA'd as a result," Peartree explained. Before Oct. 15, for categories VIII and XIX, his office RWA'd an average of 11.2% of applications. After Oct. 15, that average surged to 35%, with some days seeing RWAs close to 50%.

Corn and Cars Shape U.S. Trade with Korea

Trade critics have used the rise in U.S. imports from Korea and the decline in U.S. exports since the U.S.-Korea Free Trade Agreement (Korus) went into effect in March

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2012 as an argument for why FTAs are bad. A closer look at bilateral trade between the two countries from before and after the pact went into force shows a different picture. While the accord has had a significant impact on some sectors, some of the shift in trade was part of long-term trends that have been developing for more than a decade but other short-term factors played a big role.

From 2011, the last full year before Korus went into effect, to 2013, total U.S. merchandise exports to Korea declined from $43.4 billion to $41.6 billion, a 4% drop. During that period, imports rose from $56.7 billion to $62.2 billion, a 10% jump (see table).

Selected U.S. Exports to Korea 2011-2013 (in millions)

	2011	2012	2013
Total Exports	$43,399	$42,283	$41,555
Corn	1,831.6	626.2	120.9
Meat, Poultry	1,336.8	1,122.6	995.4
Metallurgical Coal	873.2	662.8	430.3
Steelmaking Materials	1,431.3	1,224.3	1,011.0
Electric Apparatus	689.4	740.1	830.4
Excavating Machinery	68.7	67.9	94.3
Semiconductors	3,514.2	4,059.2	3,785.2
Passenger Cars	413.1	615.9	746.8
Pharmaceuticals	688.7	889.3	1,056.1
Military Aircraft	208.4	256.0	48.7

Selected U.S. Imports from Korea 2011-2013 (in millions)

	2011	2012	2013
Total Imports	$56,661	$58,896	$62,228
Coal	0.064	0.079	66.9
Plastic Materials	588.9	741.3	830.3
Nontextile Flooring	92.5	124.7	173.3
Precious Metals	254.7	147.9	152.1
Electric Apparatus	1,111.8	1,185.2	1,275.9
Oil Field Equipment	1,186.7	1,556.7	1,772.7
Passenger Cars	8,612.6	10,621.8	12,037.6
Car Tires	1,457.1	1,605.7	1,314.4
Auto Parts	4,310.4	5,334.3	5,860.3
Televisions	559.3	428.0	365.5

Although scores of different tariff lines contributed in small ways to the increases and decreases in two-way trade, two U.S. exports accounted for the bulk of the decline in U.S. exports to Korea: corn and military aircraft. Military aircraft sales sank 81%.

U.S. corn exports plunged 93% from more than $1.8 billion in 2011 to just $121 million in 2013. The drop reflected major shifts in U.S. corn trade over that period due to droughts and floods in the midwest and a surge in prices in 2010-2011. Total U.S. corn exports to all markets dropped from $14.8 billion in 2011 to $7.8 billion in 2013.

Corn wasn't the only farm commodity that saw declines in exports to Korea in those years. Declines were also seen for meat and poultry, which dropped 26% in that period.

On the other hand, two sectors that were a sensitive part of Korus negotiations, pharmaceuticals and cars, saw significant gains from before to after the accord. Pharmaceutical exports jumped 53% and car exports surged 80%, albeit to only a fraction of Korean car exports to the U.S. Also seeing a significant improvement were excavating equipment exports, which increased 37%.

U.S. imports from Korea have been on an almost steady rise for more than a decade, as Korean brands such as LG, Samsung and Hyundai have gained significant market share in each of their fields. More than tariffs, the growth of these brands has been due to American public perception that they offer improving quality, better designs and competitive prices backed by a massive advertising push. Auto imports from Korea clearly are the largest element in the bilateral trade, with U.S. imports rising 40% from 2011 to 2013. Along with the cars, imports of auto parts jumped 36%. The oil and gas boom in the U.S. contributed to a 49% increase in imports of oil drilling and production equipment. At the same time, declining prices for television receivers caused a 35% decline in TV imports.

> The unintended consequences of trade actions can be seen in the growth of Korean tire exports to the U.S. When the U.S. imposed three years of Section 421 safeguard restrictions on imports of tires from China in 2009, that opened the door for Korean tire makers whose shipments to the U.S. doubled from 2009 to 2013, going from $643.4 million to $1.3 billion.

President Obama Threatens Sanctions on Russia, Ukraine

With few viable military or economic options to stop Russia from splitting Crimea off from Ukraine into Russia or an autonomous state, President Obama March 6 issued an executive order (EO) that will allow the U.S. to block the property and suspend the visas of people who have contributed to the crisis in the region. Although the White House did not name whom it would target, the European Union (EU) March 6 issued new regula-tions freezing the assets of 18 named former senior Ukrainian officials or their relatives, including ex-President Victor Yanukovych. Canada also froze those 18.

> Meaningful tougher action against Moscow is problematic because of the minuscule amount of trade between the U.S. and Russia – $11.2 billion in U.S. exports in 2013 and $27 billion in imports, of which 60% is fuel products. Harsher sanctions also would hurt the EU as much as Russia because of its dependence on Russian gas and oil, close EU banking connections to Russia and the major investments European firms hold in Russia (see **WTTL**, March 3, page 1).

Russia is less vulnerable to trade sanctions because energy is its major export, accounting for 80% of its exports ($530 billion) in 2012, compared to $187 billion in manufactures (24%) and $66 billion in agriculture (8%). A freeze on foreign assets would likely be much more effective because of the billions of dollars that senior Russian officials, oligarchs and well-off citizens have stashed in foreign banking accounts, including places like the Cayman Islands.

Sanctions talk has revived memories of the embargo the U.S. imposed on Russia in 1980 after its invasion of Afghanistan and President Reagan's unsuccessful efforts in 1982 to block the building of the Yamal pipeline linking Russia and Europe. Reagan had to back off his attempt to impose extraterritorial sanctions on exports to Russia under strong pressure from the EU and major U.S. exporters (see **WTTL**, Nov. 22, 1982, page 2).

Obama's EO would sanction those who have undermined democratic processes or institutions in Ukraine, participated in actions or policies that threatened the peace or misappropriated state assets. Administration officials have not named specific people who fall under these criteria. "No individuals or companies have been blocked or designated for sanctions this morning. What the authority does, though, put in place a powerful tool that will allow us to target individuals and companies in the future," one senior administration official said. Another official from Treasury said some individuals have had their visas pulled or would be banned from visas. "Those individuals, while I won't give names or numbers, this does include Russians and Ukrainians," he noted.

> The same day, the House Foreign Affairs Committee passed H. Res. 499, which was introduced by Chairman Ed Royce (R-Calif.) and Ranking Member Eliot Engel (D-N.Y.). The non-binding resolution condemns the violation of Ukrainian sovereignty and calls for sanctions on Russian officials, banks and other state agencies.

It also urges Ukraine and European countries and former Soviet Republics "to support energy diversification initiatives to reduce Russian control of energy exports, including by promoting energy efficiency and reverse gas flows from Western Europe, and calls on the United States to promote increased gas exports and energy efficiency."

European countries have expressed support for Ukraine and have cancelled their participation in preparations for the G8 Summit. "The solution to the crisis should be found through negotiations between the Governments of Ukraine and the Russian Federation, including through potential multilateral mechanisms," European Council President Herman Van Rompuy said in a statement.

"Such negotiations need to start within the next few days and produce results within a limited timeframe. In the absence of such results the European Union will decide on additional measures, such as travel bans, asset freezes and the cancellation of the EU-Russia summit," he added.

Commercial Spaceflight Industry Seeks Role in Export Reforms

The ability to jump on a rocket and have lunch in London or ship a package overseas in an hour instead of overnight are still the long-term dreams of the commercial spaceflight industry, but for now the industry wants to make sure its future needs will be addressed by the Obama administration's export control reform initiative. As part of that, it also needs restrictions imposed by the Missile Technology Control Regime (MTCR) to be addressed, Michael Lopez-Alegria, president of the Commercial Spaceflight Federation (CSF), told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) March 4.

> Lopez-Alegria, a former astronaut who made three space shuttle trips and spent seven months on the International Space Station (ISS), gave RAPTAC a detailed report on the growth of the commercial spaceflight industry which now has some 50 companies actively working in the sector. CSF members are already delivering cargo to the ISS and planning for sub-orbital trips for passengers and space tourists.

"What we are trying to do is expand people's horizons and give a little education about the industry's existence and what our piece of the export control reform pie is," Lopez-Alegria told WTTL after the RAPTAC meeting. For now, most of the industry's exports are controlled under U.S. Munitions List categories IV or XV, but the industry would like to see them classified in Category VIII (aircraft) or transferred to the Commerce Control List (CCL), Bruce Jackson, vice president for trade controls and export strategy for Virgin Galactic, told WTTL. As the industry matures, export controls will need to address how space services are treated as well as point-to-point travel from out of the U.S. to foreign spaceports, Lopez-Alegria said. Space firms are obtaining USML licenses for foreign engineers and employees, but will need to know how to treat foreign passengers in the future. "Getting sub-orbital vehicles treated as EAR is more important than getting some consideration under the Missile Technology Control Regime," Jackson said. There is a presumption of denial for licenses for items in MTCR Category I. "That presumption of denial is a real disincentive to investment," Jackson said.

New Obama Trade Agenda Same as Old Trade Agenda

In his annual Trade Policy Agenda, President Obama checked all the boxes on progress made in ongoing trade agreements and multilateral trade commitments, yet congressional Republicans still weren't satisfied. At the top of the president's list were the talks toward a Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP), along with three sectoral talks in services, information technology and the most recent, environmental goods. The agenda actually occupies only 17 pages of the 355-page annual report of the current year's activities, as required by Congress. The rest just recounts the status of various old and new trade initiatives.

> As in previous years, however, the report gave only brief mention to fast-track negotiating authority, which GOP lawmakers say the administration needs to be active in pursuing. "To facilitate the conclusion, approval, and implementation of our market-opening negotiating initiatives, we are working with Congress to support broad bipartisan passage of Trade Promotion Authority (TPA)," the report noted.

House Ways and Means Committee trade subcommittee chair Devin Nunes (R-Calif.) said he supports most of the president's 200-page trade agenda but complained "the document does not lay out a strategy for passing Trade Promotion Authority." Ways and Means Chairman Chair Dave Camp (R-Mich.) also stressed the need for TPA in a statement. "The President will not be able to conclude and implement any of the trade negotiations set forth in his agenda without TPA," he said. Camp introduced the current TPA bill with former Senate Finance Committee Chair Max Baucus (D-Mont.) before Baucus left the Senate to be U.S. ambassador to China. The measure now appears stalled under new Finance Chair Ron Wyden (D-Ore.).

Another perceived oversight was the controversial topic of currency manipulation, which both Democrats and Republicans are pushing the president to address. "While the agenda fails to address the problem of currency manipulation, it otherwise generally meets the objectives set in the bipartisan, bicameral Trade Priorities Act. That legislation also provides the necessary tools to address the unfairness and distortion caused when countries manipulate their currencies to gain a trade advantage," Camp said.

Obama Sends 2015 Pixie Dust Budget to Congress

Budget proposals are part wishful thinking, part political theater, with both the White House and Congress using the fuzzy numbers to their advantage. With that caveat, the fiscal 2015 budget President Obama sent Congress March 4 seems to give a bump to agencies and departments involved in export controls and trade promotion. Not surprising, as most in Washington expected, his proposed numbers show increases over last year's sequester limits.

> The proposed BIS budget would rise to $111 million "to sustain export licensing and enforcement activities, as well as to support the bureau's ongoing work under the Administration's Export Control Reform (ECR) initiative," the White House Office of Management and Budget (OMB) explained. "The $9 million increase from the 2014 enacted level will support the bureau's expanded export licensing and export enforcement operations that will improve service to U.S. exporters as controlled items shift from the State Department to the Commerce Department's jurisdiction," OMB said.

Commerce Secretary Penny Pritzker in a statement also highlighted that figure, which doesn't quite match numbers in the detailed budget appendix. According to those figures, the 2013 actual budget outlay was $109 million and the 2014 estimate was $101 million. The appendix did not list the 2014 actual numbers.

The U.S. Trade Representative's (USTR) budget would go up to $56 million in fiscal 2015, which starts Oct. 1, 2014. With an ambitious trade agenda planned, the USTR will need that extra money for travel to Asia and Europe (see related story, page 5). "Under the President's budget, USTR will be able to properly pursue American jobs by opening markets to Made-in-America products and bolstering our ability to level the playing field for our workers by standing up for our rights in the global trading system," USTR Michael Froman said in a statement. According to OMB figures, the 2013 actual budget outlay was $47 million and the 2014 estimate was $52 million.

The 2015 Commerce budget also includes plans to rename the International Trade Administration (ITA) to the International Trade and Investment Administration (ITIA), reflecting the department's "focus on making investment a bigger part of the U.S. economy's DNA," Commerce noted. This change harkens back to the trade battles of the 1980s when Sen. William Roth (R-Del.) sponsored legislation to create a Department of Trade and Investment (DITI) to match Japan's MITI.

The budget for Immigration and Customs Enforcement (ICE) would take a hit from 2013 levels, with the president proposing $5.4 billion for the agency. ICE's 2013 actual budget outlay was $5.7 billion and the 2014 estimate was $5.05 billion. "Americans know the borders are not secure and yet the Administration is aiming to decrease funding for Immigration and Customs Enforcement by almost $250 million – including the reduction of detention beds by almost 3,500 – and wants to cut the Coast Guard by more than $300 million, resulting in fewer ships interdicting drugs and potential criminals bound for the United States," House Homeland Security Committee Chairman Michael McCaul (R-Texas) said in a statement.

Esterline Pays $20 Million Penalty to Settle 282 DDTC Charges

In an administrative consent agreement announced March 6 with State's Directorate of Defense Trade Controls (DDTC), Esterline Technologies Corporation of Bellevue, Wash., agreed to pay a $20 million civil fine to settle 282 charges that it violated the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations

(ITAR). DDTC agreed to waive $10 million of the fine on the condition that Esterline use the money to pay for both pre- and post-agreement remedial measures to improve its export compliance program. Among the required remedial steps will be hiring an outside Special Compliance Officer to monitor its improvements and an external auditor to conduct new audits of its operations.

> The charges stem from voluntary and directed disclosures Esterline made to DDTC about alleged violations at several of its subsidiaries, including at CMC Electronics, Hytek Finishes Co., Kirkhill-TA Co. (KTA), Korry Electronics Company, Leach International Corporation, Mason Electric Company and Memtron Technologies Company. Although DDTC described many of the violations in its proposed charging letter, it said it "is not alleging charges at this time for all alleged violations described herein."

Many disclosures came from a 2009 external audit Esterline commissioned of export compliance at 17 subsidiaries. "In retrospect, however, the Department and Respondent agreed that the audit failed to identify persistent compliance issues at Esterline entities and inadequacies in Esterline's compliance program," the charging letter said.

State's "compliance review concluded that many of these alleged violations occurred because Esterline did not properly establish jurisdiction over its defense articles and technical data, did not properly administer licenses and agreements, and had incomplete or poor recordkeeping," a State press release explained. "The alleged violations involved defense articles, technical data, and defense services that are or were controlled at the time of the alleged violations by the U.S. Munitions List" under numerous categories.

"We accept responsibility for the actions leading to these penalties and we are cooperating with the Department of State to address the issues and strengthen our systems going forward. This process has given us the opportunity to focus on making our entire compliance program better, and we've already independently begun the improvement process with more to come," said Esterline President & CEO Curtis Reusser in a statement.

The proposed charging letter also revealed that in May 2011, the Department of Homeland Security, Homeland Security Investigations (HSI) initiated a criminal investigation of Esterline's KTA subsidiary for the "potential unauthorized exports of ITAR-controlled technical data" during a facility tour by a visiting delegation from China. After the U.S. Attorney's office declined to prosecute the case, HSI turned its files over to DDTC. "Following the investigation by HSI, on October 14, 2011, Esterline, on behalf of KTA, provided credible evidence refuting the allegations set forth in the HSI investigation, but disclosed access by foreign person employees from El Salvador, Honduras, India, Mexico, and the U.K. to defense articles and technical data," the letter recounted.

* * * Briefs * * *

<u>CORE FROM KOREA</u>: CIT Judge Timothy C. Stanceu March 4 affirmed in part and remanded in part Commerce's 15th administrative review of antidumping order on certain corrosion-resistant carbon steel flat products (CORE) from Korea (slip op. 14-27). In *Union Steel v. U.S.*, he ordered department to make second remand determination to address its (1) calculation of Union's interest expense ratio; (2) application of "quarterly cost" methodology, including difference-in-merchandise (DIFMER) adjustments and constructed value; (3) application of modified "quarterly cost" methodology for normal value calculations; (4) decision to depart

from normal method for selecting comparison months; and (5) decision to depart from normal method by selecting date of shipment, rather than date of invoice, as date of sale for certain sales that HYSCO made through a U.S. affiliate, Hyundai HYSCO USA, Inc.

TRADE PEOPLE: Senate was busy clearing nomination backlog March 6, confirming Rose Gottemoeller to be under secretary of State for arms control and international security by 58-42 vote; Rhonda K. Schmidtlein to be member of International Trade Commission and R. Gil Kerlikowske to be Customs Commissioner by voice vote.

TTIP: Fourth round of talks on U.S.-EU Transatlantic Trade and Investment Partnership (TTIP) will be held in Brussels March 10-14. Sources expect no significant announcements to come from meeting but see negotiations "proceeding in satisfactory manner." Since last formal session, there have been several "intersessional" meetings and discussions and exchange of tariff offers Feb. 10 (see **WTTL**, Feb. 24, page 4). While EU reportedly wasn't happy with U.S. tariff offer, sources say it is too early to get upset with these offers since talks will continue for at least another year.

GUATEMALA: USTR Michael Froman and Labor Secretary Thomas Perez met March 6 with Guatemalan Trade Minister Sergio de la Torre and Labor Minister Carlos Contreras to discuss implementation of Labor Enforcement Plan signed in April 2013. In meeting, Froman said U.S. believes "further action is urgently needed" to implement plan, USTR release said. If concerns are not addressed by April 25, U.S. "reserves the right to restart the dispute settlement proceedings that were suspended as a result of the Enforcement Plan," USTR noted. Critics of plan say it has given Guatemala "another opportunity to delay an Arbital Panel, and, in some areas, represents a step backwards in labor law enforcement," said Oct. 22 letter to Froman and Perez from leaders of AFL-CIO and Guatemalan unions (see **WTTL**, Oct. 28, page 3).

IRAQ: During inaugural meeting of U.S.-Iraq Council on Trade and Investment (TIFA Council) March 5, representatives discussed cooperation in following sectors: agriculture; electric power; housing projects and infrastructure; water, sewage, and sanitation; roads and bridges; engineering; metallurgical and petrochemical projects; light and heavy industry; and health, financial, and educational services, USTR statement noted. Two governments also identified three general areas for additional attention during future council meetings: government procurement, women's economic empowerment, and intellectual property rights, agency said.

TRADE FIGURES: U.S. merchandise exports in January increased 2.3% from year ago to $133.8 billion, Commerce reported March 7. Services exports increased 4.9% to $58.7 billion from same month in 2013. Goods imports went up 0.6% from January 2013 to $193.1 billion, as services imports gained 4.2% to $38.5 billion.

OFAC: Ubiquiti Networks, Inc. of San Jose, Calif., March 6 agreed to pay $504,225 to settle OFAC charges of violating Iranian Transactions and Sanctions Regulations (ITSR) from March 2008 to February 2010 by providing broadband wireless connectivity to Iran when it "entered into an agreement granting a distributor in the United Arab Emirates (UAE) exclusive rights to distribute Ubiquiti's goods in Iran, then subsequently sold to the UAE distributor and exported or shipped to the UAE goods that were reexported to Iran," OFAC said. Ubiquiti also allegedly exported goods for broadband wireless connectivity to distributor in Greece from December 2009 to February 2011 "with knowledge or reason to know that the goods were intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran." Ubiquiti did not voluntarily disclose actions. "This matter relates to events that ended in 2011. We are pleased to put this behind us. Since 2011, we have put measures in place designed to prevent this type of issue from happening again," Ubiquiti spokesperson wrote in e-mail to WTTL.

EX-IM BANK: Bank March 5 named James Burrows senior vice president for small business group. He came to Ex-Im in 2012 as VP for small business sales and marketing and has been acting senior VP since October.