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State Clarifies Licensing Policies for Unmanned Aerial Vehicles

A year after industry advisors urged State to clarify its export licensing policies for unmanned aerial systems (UAS), the department announced a broad set of guidelines Feb. 17 for getting export approval for both military and commercial uses of these vehicles. State has characterized the new policy as an enhancement of controls, but the changes for the first time give exporters a clear set of licensing requirements.

Along with the new policy, the Directorate of Defense Trade Controls (DDTC) posted on its website the specific information that must be included with DSP-83 export applications, including an addendum signed by the applicant and end-user certifying compliance with specific conditions. While State promises continued compliance with Missile Technology Control Regime requirements for Category I systems, which still face a presumption of denial policy, it does not restrict exports to only MTCR members.

“As other nations begin to employ military UAS more regularly and as the nascent commercial UAS market emerges, the United States has a responsibility to ensure that sales, transfers, and subsequent use of all U.S.-origin UAS are responsible and consistent with U.S. national security and foreign policy interests, including economic security, as well as with U.S. values and international standards,” a State fact sheet said. “The new policy also governs the international sale, transfer and subsequent use of U.S.-origin commercial UAS, supplementing and building upon the Export Administration Regulations which govern all U.S. commercial transfers,” it added.

Industry has complained that past policies have caused long delays in getting licenses and required extensive and restrictive provisos that have hurt foreign sales. There is also widespread foreign availability, the Defense Trade Advisory Group (DTAG) told State last year (see **WTTL**, Jan. 20, 2014, page 4).

House Members Urge Asians to Reach TPP Deal Soon

A delegation of House members led by Ways and Means Chairman Paul Ryan (R-Wis.) urged leaders in Asia to move quickly to reach a Trans-Pacific Partnership (TPP) but warned that Congress will only approve the agreement “if it raises standards from

previous agreements and addresses new 21st century issues,” according to a blog posted by the Ways and Means staff. The Ryan-led congressional delegation (codel) visited Singapore, Malaysia and Japan Feb. 18-19.

The codel gave that message to Japanese Prime Minister Abe when they met with him in Tokyo Feb. 19, as well as in a meeting with Diet members and with Minister of Economic Revitalization Akira Amari, who has been overseeing bilateral talks with the U.S. In the meeting with Amari the delegation stressed “the need for Japan to make progress on particular market-access issues like agriculture and automobiles as well as to continue to work together for a positive outcome in the rules negotiations,” the blog said.

While in Malaysia, the codel confronted one of the growing objections to Malaysia’s participation in TPP: its treatment of gays and lesbians. The lawmakers met with Nurul Izzah, the daughter of opposition leader Anwar Ibrahim, who has been jailed on sodomy charges. “Chairman Ryan conveyed his sympathies and expressed serious concerns about Anwar’s jailing, noting that episodes like this should not arise in developed democracies. The situation raises questions about the Malaysian government’s commitment to the rule of law and basic human rights,” the Ways and Means blog reported.

The stop in Malaysia came as members of the House Lesbian, Gay, Bisexual, Transgender (LGBT) Caucus wrote to President Obama Feb. 18, objecting to inclusion of Brunei and Malaysia in TPP. “Brunei continues to move forward with full implementation of a strict penal code mandating the stoning to death of LGBT citizens; similarly, Malaysia has not taken action to end its persecution of LGBT individuals. Despite these abuses, the administration continues to include them in negotiations around the TPP and lists them as intended signatories to the trade agreement,” said the letter signed by Democratic Reps. Mark Pocan (Wis.), David Cicilline (R.I.), Sean Patrick Maloney (N.Y.), Kyrsten Sinema (Ariz.) and Mark Takano (Calif.).

In Malaysia the codel dined with Prime Minister Dato’ Sri Mohd Najib Tun Razak. They used the meeting “to stress the short time line that nations have to conclude a successful TPP agreement and encouraged him to empower his negotiators to make necessary commitments,” the blog said. “Chairman Ryan also conveyed his expectation that trade promotion authority legislation will soon pass Congress, underscoring the urgency for Malaysia to make progress in its TPP negotiations,” it added.

On the trip with Ryan were Republican Reps. Devin Nunes (Calif.), Pat Tiberi (Ohio), Dave Reichert (Wash.), Charles Boustany (La.), Vern Buchanan (Fla.), Adrian Smith (Neb.) and the sole Democrat, Gregory Meeks (N.Y.).

God Opposes Trade Promotion Authority, Trade Critics Suggest

Opponents of fast-track trade promotion authority (TPA) have appealed to a higher power in their effort to block legislation to give the president trade negotiating authority and to set the rules for congressional approval of any trade deals. Groups representing various faiths, including Quaker, Jewish, Protestant and Catholic organizations and clergy, joined the anti-TPA drive Feb. 17 with a press conference and a letter to House and Senate members calling for rejection of TPA and suggesting that God has taken a position in opposition to the legislation. “Now is the time for Congress to ensure that our trade

policies reflect the highest moral values and promote the common good. We ask that you oppose fast track so that trade agreements receive a fair hearing in the public square, protect people living in poverty, promote the dignity of all workers, and responsibly protect God's Creation," the letter said.

"Our faith traditions call for community participation in the democratic process because we believe this is the only way to ensure all people have a meaningful opportunity to participate in the creation of good policies. 'Fast track' is a broken and undemocratic process because it privileges the views of powerful global corporations in defining the terms of trade agreements, while excluding voices of those adversely impacted. This impedes progress towards a more just world," the groups asserted.

The letter was signed by 34 organizations. Among them were: American Friends Service Committee, American Jewish World Service, Catholics in the Alliance for the Common Good, Franciscan Action Network, Friends Committee National Legislation, Maryknoll Office for Global Concerns, Presbyterian Church USA, Sisters of Charity of New York, United Church of Christ Justice and Witness Ministries and United Methodist Church.

EU Adds More Ukraine-Related Sanctions as It Seeks Peace

If anyone was confused about U.S. and European Union (EU) policies on Russia's invasion of Ukraine, recent actions haven't clarified those goals. After negotiating a truce and peace plan with Russia in Minsk, Belarus, Feb. 12, a truce that Russia quickly ignored, the EU issued new sanctions Feb. 16 against 19 individuals and nine entities in Russia and Ukraine. The U.S., however, didn't follow suit and still appears to be pondering whether to provide military aid to Kiev or to impose more sanctions of its own.

The EU Council put the new sanctions in motion Feb. 9 before the Minsk meeting. It delayed implementation of the measures "to give space for our diplomatic efforts in these hours to be developed with the maximum of chances for success," said EU High Representative and Vice-President Federica Mogherini after the council meeting. The sanctions consist of an asset freeze and a travel ban aimed at the named individuals and entities.

The notice in the Feb. 16 European Journal, the EU's version of the Federal Register, said the council based its action on its 2014 decision to impose sanctions against Russians and Ukrainians responsible for the annexation of Crimea and the invasion of Ukraine. "In view of the continued gravity of the situation on the ground in Ukraine, the Council considers that additional persons and entities should be added to the list of persons, entities and bodies subject to restrictive measures as set out in the Annex to Decision 2014/145/CFSP," the notice said.

Among the Russians targeted by the sanctions was Valery Fedorovich Rashkin, first deputy chairman of the state Duma committee on ethnicity issues. "He is the founder of the civil movement 'Krassnaya Moskva- Red Moscow -Patriotic Front Aid' which organized public demonstrations supporting separatists, thereby supporting policies which undermine the territorial integrity, sovereignty and independence of Ukraine," the EU said. Also named were Anatoly Ivanovich Antonov, deputy minister of defense, who has supported the deployment of Russian troops in Ukraine, and Arkady Viktorovich Bakhin,

first deputy minister of defense, who “participates in shaping and implementing the policy of the Russian Government,” the EU explained.

The EU also sanctioned a Russian public movement known as Novorossiia or New Russia. The group was established in November 2014 and is headed by Igor Strelkov, a staff member of the Main Intelligence Directorate of the General Staff of the Armed Forces of the Russian Federation (GRU), the EU said. “According to its stated objectives, it aims at providing all-round, effective assistance to ‘Novorossiia’, including by helping militia fighting in Eastern Ukraine, thereby supporting policies undermining the territorial integrity, sovereignty and independence of Ukraine,” it added.

Most of the other individuals on the new list are leaders of separatist groups or the self-proclaimed governments of Eastern Ukraine. Among them are Pavel Dremov, aka Batya, the commander of the First Cossack Regiment, an armed separatist group; Viktor Yatsenko, minister of communications of the so-called Donetsk People’s Republic; and Olga Besendina, minister of economic development and trade of the Luhansk People’s Republic. The targeted entities included numerous armed separatist groups, such as the Sparta battalion, Somali battalion, Zarya battalion, Prizrak brigade and Oplot battalion.

BIS, OFAC Open Communications Exports to Sudan

The Obama administration Feb. 18 took steps to increase the free flow of communications to Sudan, adopting export licensing policies that are similar to those announced recently for Cuba. In the Federal Register, the Bureau of Industry and Security (BIS) revised the Export Administration Regulations to expand to Sudan the use of License Exception Consumer Communications Devices (CCD), which was just revised for Cuba. At the same time, Treasury’s Office of Foreign Assets Control (OFAC) issued a general license for the export to Sudan of certain software, hardware, and services incident to personal communications.

“BIS is making these changes consistent with the U.S. Government’s commitment to the advancement of the free flow of information to, from, and within Sudan, including during a national dialogue,” the notice said.

Commodities and software eligible for export or reexport under CCD to Sudan now include 17 product categories. Among them are consumer computers designated EAR99 or classified under Export Control Classification Numbers (ECCN) 5A992.c or 4A994.b. BIS expanded on its new policy in a Frequently Asked Questions posting on its website.

Also allowed are certain EAR99 disk drives, input/output control units for chemical processing, graphics accelerators and coprocessors designated, monitors, printers, modems, network access controllers, keyboards, mice, mobile phones, memory devices, consumer information security equipment and software, digital cameras and memory cards, televisions and radios, recording devices, batteries, chargers and consumer software.

In addition to the extension of CCD to Sudan, BIS said it would change its licensing policy from a general policy of denial to one of case-by-case review with respect to “telecommunications equipment and associated computers, software and technology for civil end use, including items useful for the development of civil telecommunications

network infrastructure.” The rule also makes certain telecommunications software that previously was subject to a reexport license requirement eligible for reexport to Sudan without a license. OFAC’s amended general license covers most items that qualify for CCD treatment. The general license authorizes certain no-cost services or software that are “incident to the exchange of personal communications over the Internet,” according to its posted Frequently Asked Questions (FAQs). Authorized services include instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, the agency added

The general license also authorizes, “a foreign branch of a U.S. company to export to Sudan, from a location outside the United States, certain hardware or software that is not subject to the EAR (including foreign-origin hardware or software containing less than a de minimis amount of U.S. controlled content),” OFAC noted.

EU Trade Commissioner Takes on TTIP Critics

In the midst of negative public opinion in Europe and the U.S. about the Transatlantic Trade and Investment Partnership (TTIP), European Union (EU) Trade Commissioner Cecilia Malmström defended investor-state dispute settlement (ISDS) provisions and raised the potential of increased U.S. energy exports. In a London debate organized by the European Parliament Information Office in the United Kingdom (UK) Feb. 16, she tackled the ISDS issue and its alleged effects on the UK’s national health service (NHS).

“I can be clear on one thing right now: Nothing in TTIP will prevent an outsourced public service from being brought back into the public sector. And not renewing a contract would not give any grounds for compensation,” she added. “So TTIP poses absolutely no risk to the NHS, or any other public service, or to our regulations and standards,” Malmstrom said.

“As you may know, the TTIP negotiations on this issue are frozen right now. Based on an extensive public consultation, we are working on a new European approach. That approach will have to balance two objectives: To protect the EU investments overseas that support our economy at home. And to make sure that nothing in any investment agreement will undermine our freedom to regulate or provide public services,” she said.

In an earlier speech, Malmstrom took on another controversial topic: the U.S. ban on crude oil exports. She said the EU is asking for the U.S. to lift its ban, hoping it will help the security and energy quandary Europe faces with an unstable Russia. She told the NATO Parliamentary Assembly in Brussels Feb. 14, that “the potential for future energy exports from the United States can also help change this security equation.”

She complained about cumbersome U.S. gas export licensing procedures and the ban on oil exports. “These limits can be removed in the agreement,” Malmstrom noted. “To do this, the EU believes that TTIP should include a legally binding commitment by both sides not to restrict exports of oil and gas to the other partner,” she added.

An example of the opposition to ISDS across the Atlantic in the U.S. was seen three days later when Rep. Mark Pocan (D-Wis.) and 12 House Democrats Feb. 19 introduced a bill titled Protecting America’s Sovereignty Act (H.R. 976). The measure would

prohibit ISDS provisions in trade agreements. Specifically, it would prohibit President Obama from entering into a free trade agreement or investment treaty with a foreign country or countries if the agreement or treaty includes ISDS provisions.

UMass Reverses Ban on Iranian Engineering Students

Export controls, especially on deemed exports and trade sanctions, have long confused and troubled university admissions offices, faculty and research labs. The latest example of the problem is the decision of University of Massachusetts (UMass) Amherst Feb. 18 to reverse a two-week old ban on the admission of Iranian students to its science and engineering programs. Its original ban was based on its interpretation of 2012 legislation expanding U.S. sanctions on Iran. The reversal of the policy came after it received assurances from State that the ban wasn't necessary.

“To comply with the law and its impacts, UMass Amherst will develop individualized study plans as appropriate based on a student's projected coursework and research in conjunction with an offer of admission. The plan will be updated as required during a student's course of study,” the university said. “The decision to revise the university's approach follows consultation with the State Department and outside counsel,” it added.

“We have always believed that excluding students from admission conflicts with our institutional values and principles. It is now clear, after further consultation and deliberation, that we can adopt a less restrictive policy,” said Michael Malone, vice chancellor for research and engagement, in a statement.

At issue is the Iran Threat Reduction and Syria Human Rights Act of 2012, which requires State to deny visas to Iranian citizens “to participate in coursework at an institution of higher education to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran.” In an earlier Feb. 6 announcement, UMass said it had “determined that these sanctions pose a significant challenge to our ability to provide a full program of education and research for Iranian students in certain disciplines and programs.”

To ensure compliance with applicable laws and regulations, “the University has determined that it will no longer admit Iranian national students to specific programs in the College of Engineering (i.e., Chemical Engineering, Electrical & Computer Engineering, Mechanical & Industrial Engineering) and in the College of Natural Sciences (i.e., Physics, Chemistry, Microbiology, and Polymer Science & Engineering) effective February 1, 2015,” it said.

WTO's Doha Round Talks Are Back to the Future

The new effort to revive Doha Round negotiations has produced a lot of meetings but not much progress in last two months, World Trade Organization (WTO) Director-General Roberto Azevedo conceded in a Feb. 20 report to the WTO General Council. “I believe that we have had a productive start to the intensive process that we launched last month,” he said. Nonetheless, “substantive positions have not changed a great deal since the last

time these issues were discussed,” he added (see WTTL, Feb. 2, page 5). Azevedo provided reports on each on the negotiating groups that met since the start of work on the post-Bali agenda. He also noted his own meetings with heads of delegations in so-called “Room W” informal sessions. There have been agriculture meetings and consultations, but it still appears a farm deal won’t be reached until the very end of negotiations.

“As the chair has emphasized, it is clear that all elements within the agriculture framework are inter-related and there seems to be a general acceptance that they will need to be dealt with as an overall package,” Azevedo said, according to his prepared statement. Market access talks continue to focus on various tariff-reduction formulas but “at this stage these are only ideas which would need, at some point in time, to be translated into more concrete proposals,” he said.

In his statement to the General Council, Deputy U.S. Trade Representative (USTR) Michael Punke was more negative about the lack of progress and stressed the need for some developing countries to cut domestic farm subsidies and provide more market access, a position the U.S. has pressed for several years. “The substance itself, of course, remains extremely difficult for all of us,” he said.

“We have been in a necessary process of ‘connecting the dots’ in the current landscape of the DDA and dealing honestly and directly with the picture that is revealed. When we connect the dots, what is revealed, undeniably, is that we are nowhere near consensus,” he said in his prepared statement. “We are quite distant from a common view of what a work program should look like, or how it could realistically enable us to conclude the Round in a manner that works for everyone, and that can be accomplished in a relatively rapid timeframe,” he added.

Punke noted that a recent paper on farm subsidies found only the U.S. would have to cut farm support under one proposal. Because some developing countries that maintain very significant agricultural subsidies and manufacturing capacity that can affect global markets, they “will necessarily have to participate in negotiations, and contribute to outcomes, in ways that are different than developing countries that don’t have such programs” he suggested. “Such developing countries are different from other developing countries, and we cannot succeed if we pretend otherwise,” he asserted.

* * * Briefs * * *

TROUBLE IN PARADISE: Early hopes for bipartisanship on enacting new fast-track trade promotion authority (TPA) are showing signs of crumbling. After Senate Finance Committee Chairman Orrin Hatch (R-Utah) announced Feb. 20 that he will hold hearing on Congress and U.S. trade policy Feb. 26, spokesman for Ranking Member Ron Wyden (D-Ore.) criticized timing of hearing. “Today’s hearing announcement is premature,” said Wyden spokesman Keith Chu. “There is no agreement on Trade Promotion Authority, or other aspects of the legislative trade agenda more broadly. Sen. Wyden is continuing to fight for more transparency, more oversight and provisions to ensure American workers come first in our trade policy,” he said in statement. Hatch’s announcement said hearing will allow committee members to discuss how Congress can help advance U.S. trade priorities. “I greatly look forward to an engaging, bipartisan conversation with my colleagues to work towards enacting a strong and robust trade agenda that will expand the economy and create jobs here at home,” he said in statement.

SILICOMANGANESE: Felman Production LLC, West Virginia-based producer, filed antidumping duty petitions Feb. 19 with ITA and ITC against imports of silicomanganese from Australia.

EXPORT ENFORCEMENT: Ali Saboonchi, U.S. citizen in Parkville, Md., was sentenced Feb. 10 in Greenbelt, Md., U.S. District Court to 24 months in prison for conspiracy and seven counts of exporting manufactured industrial products and services to Iran. Federal jury convicted him in August of exporting cyclone separators, thermocouples, flow meters, actuator springs and other items from November 2009 to present without Treasury authorization (see **WTTL**, Aug. 18, 2014, page 7). Saboonchi and Arash Rashti Mohammad, Iranian citizen and resident, were indicted in March 2013. Rashti is at large, believed to be living in Iran.

MORE EXPORT ENFORCEMENT: David Kelley of Richmond, Texas, was sentenced Feb. 9 in Baltimore U.S. District Court to 18 months in prison followed by three years' supervised release for illegal export of ATN Generation 4 Monocular Night Vision Device to New Zealand in October 2011 without State license. He pleaded guilty in May 2014. Kelley ran business named Optical Solutions and More, selling night-vision and other munitions items on eBay.

MORE EXPORT ENFORCEMENT: Vibgyor Optical Systems Inc., in Arlington Heights, Ill., its owner and his daughter were indicted in Chicago U.S. District Court on charges of violating Arms Export Control Act. Company, owner Bharat "Victor" Verma, and daughter Urvashi "Sonia" Verma were charged with unlawfully exporting and importing military articles, including components used in night-vision systems and M1A1 Abrams tank, between November 2006 and March 2014. Indictment was handed up in January and unsealed Feb. 18.

ENTITY LIST: In Federal Register Feb. 18, BIS added 11 persons in China, Pakistan and UAE to Entity List for "acting contrary to the national security or foreign policy interests" of U.S. Agency also removed SATCO GmbH in Germany, based on removal request from unrelated company of same name.

ISIS: United Nations unanimously adopted Resolution 2199 (2015) Feb. 12, condemning any trade with Islamic State in Iraq and the Levant (ISIL, also known as Daesh), the Al-Nusrah Front and other entities designated to be associated with Al-Qaida. Resolution "urged States to prevent the terrorist groups from gaining access to international financial institutions and reaffirmed States' obligations to prevent the groups from acquiring arms and related materiel, along with its call to enhance coordination at the national, regional and international level for that purpose," UN statement explained. It also condemned any engagement in direct or indirect trade, in particular of oil and oil products, and modular refineries with those groups, destruction of cultural heritage in Iraq and Syria and trade in such items.

AES: Census notified users of Automated Export System Feb. 18 to watch for coming announcements about changes to export reporting requirements as government implements International Trade Data System (ITDS) "single window" concept for exports. Changes will apply to reports for Environmental Protection Agency-regulated hazardous waste exports; Automated Outbound Manifests; and other government electronic reporting capabilities for regulated exports, it said.

CDMA: Court of Appeals for Federal Circuit (CAFC) issued nonprecedential decision Feb. 18 affirming ITC ruling that Nokia, Inc., has not infringed patents of Interdigital Communications for certain cellphone technology and code division multiple access (CDMA) networks. ITC had upheld ALJ finding that Interdigital's Power Ramp-Up Patents and Power Control patents were not infringed and Dual Mode Patent was invalid as obvious. InterDigital appealed, challenging construction of single claim term in each of patent groups at issue. "We have considered the remaining arguments and conclude that they are without merit. For the foregoing reasons, the Commission's decision is affirmed." CAFC ruled.