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Gun Industry Alarmed by Proposed Reversal of Export Reforms

U.S. gun manufacturers are raising alarms about a proposal being floated in the Obama administration to reverse export control reforms and move commercial shotguns and rifle scopes to the U.S. Munitions List (USML) instead of moving weapons in USML categories I, II and III to the Commerce Control List (CCL). According to sources, the proposal is scheduled to be the topic of discussion at an April 1 meeting of senior officials from Commerce, State, Justice and Defense.

Proposals to move the three categories to the CCL reportedly were written and pending at the Office of Management and Budget (OMB) just before the tragic shootings at Sandy Hook Elementary School in Newtown, Conn., in December 2012. The proposals were pulled back as the White House launched a push for gun controls and didn't want to be seen liberalizing gun export controls at the same time.

Industry sources say they have been told the reversal in reforms is due to budget considerations and the lack of Bureau of Industry and Security (BIS) resources to handle an estimated 10,000 additional licenses it would get if the transfer of categories I, II and III to the CCL went ahead. Others, however, claim the proposal might be part of another administration effort to tighten gun controls and also as a backdoor way to implement the United Nations Arms Trade Treaty, which Congress has blocked from being funded.

The National Shooting Sports Foundation (NSSF), which represents the gun industry, reportedly has asked State for a meeting to discuss the proposed change in policy. Gun makers are also reaching out to Congress to get support to squelch the proposal.

Commerce controls shotguns with a barrel length of 18 inches or more, certain parts, shells and optical sighting devices for foreign policy reasons. It handles less than 2,000 licenses annually for these items, with exports going mainly to Canada and Europe.

Court Again Affirms Imposition of CVDs on NME imports

The Court of Appeals for the Federal Circuit (CAFC) ruled March 13 for the third time on the ability of Commerce to impose countervailing duties (CVDs) on imports from

nonmarket economies (NMEs). In *GPX International Tire v. U.S.* (GPX III), the CAFC affirmed a Court of International Trade (CIT) ruling that the remedy did not violate the due process or *ex post facto* provisions of the U.S. Constitution. The CAFC decision cited congressional action that had overturned its earlier ruling in *GPX I* that said Commerce could not apply CVDs to these imports (see **WTTL**, March 24, 2014, page 1).

The latest ruling addresses a case dating back to July 2008 when Commerce issued its final CVD decision on pneumatic off-the-road tires from China. “The burden is on GPX to establish that Congress lacked a rational basis for the retroactive application of the new law,” wrote Appellate Judge Timothy Dyk for the three-judge panel.

Dyk argued that “this is not a wholly new” law. “The new law resolved uncertainty in the law with respect to whether countervailing duties applied to NME countries. Congress did not retroactively change the language of an otherwise clear statute,” he wrote.

While the period of retroactivity in this case is substantial, he noted, “it is shorter than that in other cases where the Supreme Court has rejected due process challenges.” The change in the coverage of the CVD rules applied to imports dating from enactment of the new law in March 2012 to imports starting November 2006. “GPX clearly had notice that Commerce would apply countervailing duties to NMEs prior to the imports in this case,” Dyk stated. “GPX had notice of the possible change as early as November 20, 2006, when Commerce first indicated that it was considering applying countervailing duties to imports from China,” he added.

“The new law is directed to the remedial administration of trade duties, as opposed to raising government revenue. Trade statutes, such as the new law, are designed to be remedial and to preserve American industry,” Dyk declared. “Under these circumstances, we cannot say that the new law does not rationally relate to the government’s interest in retroactively remedying the damage from unfair foreign trade practices. The new law violates neither the *Ex Post Facto* Clause nor the Due Process Clause,” he concluded.

Fast-Track Fight Intensifies as Legislation Nears

Although a bill to renew the president’s fast-track trade promotion authority (TPA) isn’t expected before April or later, supporters and opponents of the legislation are intensifying their fight, often resorting to shrill, disingenuous arguments. The desperation exhibited by both sides is fueled by uncertainty over the chances for the legislation in Congress and the inability of Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) to agree on a compromise bill.

The AFL-CIO, which has made defeat of TPA a top priority, said March 11 that it was freezing all political contributions “to conserve resources for the historic legislative battle around fast track...and the debate over the Trans-Pacific Partnership (TPP).” In addition to using their money to keep Democrats in line against TPA, unions are also threatening to support opponents to incumbents who support TPA, including Wyden, in primaries.

One of the main battlegrounds in the fight is over the inclusion of investor-state dispute-settlement (ISDS) provisions in any deal. Sen. Elizabeth Warren (D-Mass.) has become

the leading lawmaker against ISDS, penning an op-ed in the Washington Post Feb. 25 and holding a conference call with reporters March 11. Her position received support in a letter that more than 100 law professors wrote to members of Congress and U.S. Trade Representative (USTR) Michael Froman. "In recent years, corporations have challenged environmental, health, and safety regulations, including decisions on plain packaging rules for cigarettes, toxics bans, natural resource policies, health and safety measures, and denials of permits for toxic waste dumps," the letter said.

"ISDS threatens domestic sovereignty by empowering foreign corporations to bypass domestic court systems and privately enforce terms of a trade agreement. It weakens the rule of law by removing the procedural protections of the justice system and using an unaccountable, unreviewable system of adjudication," it argued.

Warren's arguments against ISDS were challenged in a blog posted by Gary Hufbauer, a trade economist with the Peterson Institute for International Economics. "To be blunt, Senator Warren has no facts to support her accusations. Instead, her op-ed, which ran 1,000 words, resorted to hypothetical scenarios that had no basis in 50 years of ISDS history and that ignored conflicting evidence," Hufbauer wrote. ISDS provisions "have been deemed necessary in agreements going back at least to a Germany-Pakistan accord in 1959, and they have successfully protected U.S. investments overseas in many countries," he asserted.

The business community has also stepped up its fight for the inclusion of 12 years of data protection for biological research in TPP. At the same time, consumer groups and organizations such as Doctors Without Borders are taking an opposite stand against longer patent protection for the data.

"Without the protection of the innovator's data for a sufficient period to continue venture capital to be invested, the concern is that the investments will not be made and new biologics will not be created," argued former Deputy USTR Alan Wolff in a paper issued by the National Foreign Trade Council (NFTC). On a conference call with reporters March 9 with other industry representatives, Wolff said industry needs 12 years of data protection to encourage investment. This claim comes as newspapers carry daily reports of pharmaceutical companies spending billions of dollars to acquire startup biopharmaceutical companies, apparently disregarding the potential competition from Vietnam, Brunei and Mexico.

On the other side of the debate, Judit Rius Sanjuan, legal policy adviser with Doctors Without Borders, warned that TPP if passed "will go down in history as the most harmful trade agreement for access to medicines ever." She called data protection "one of the most outrageous provisions" the U.S. is pursuing and "an unprecedented specially extended period of monopoly protection for medical products."

The public relations battle also is seen in the creation of a new coalition that calls itself Progressive Coalition for American Jobs and supports TPA. The launch of the group drew a heated reaction from the Communications Workers of America (CWA), which along with the AFL-CIO has been leading the fight against the trade legislation. In a statement, CWA Spokesperson Candice Johnson called the new coalition "insulting" and a "fake." She said none of the key progressive organizations, including unions, environmental or consumer groups, were part of it.

Transfer of Night-Vision Items Moves One Step Closer

Export agencies have come to a rough agreement on how to transition items in USML Category XII (night-vision devices and sensors) to the CCL. Parallel proposals on the transfers from BIS and State are under review at OMB and will be published in the “next some weeks,” BIS Deputy Assistant Secretary Matt Borman told the agency’s Materials Processing Equipment Technical Advisory Committee (MPETAC) March 10.

BIS Assistant Secretary Kevin Wolf said the interagency agreement is “at least good enough for something to go out for comments.” Category XII “has been a hard one intellectually,” Wolf told the BIS Emerging Technology Research Advisory Committee (ETRAC) March 12.

Behind the continuing three-year interagency disagreement has been the position of military branches and the Army Night Vision Lab, which want to restrict the export of night-vision products that give American warfighters the advantage in nighttime warfare. The U.S. military claims it “owns the night” and wants to keep it that way. Another of the more difficult transfers, USML Category XIV (toxins and biological organisms), is “a little further behind” and still in interagency review, Borman said. BIS Under Secretary Eric Hirschhorn told the BIS Export Control Forum in February the agencies hoped to publish a proposal on this category “this spring,” along with “minimal changes” to Category XVIII (directed energy weapons).

U.S. Follows EU Lead with More Ukraine, Russian Sanctions

The U.S. made good on threats to increase sanctions on Ukrainian and Russian individuals and entities March 11 for their aid to separatist operations in Ukraine and Russia’s annexation of Crimea. Treasury’s announcement follows similar moves by the European Union (EU) and Canada and targets eight Ukrainian separatists, one pro-separatist Russian entity and its leaders plus one Russian bank and three former officials of ex-Ukraine President Viktor Yanukovich’s government (see **WTTL**, Feb. 23, page 3).

“From the start of this crisis, we have demonstrated that we will impose costs on those who violate the sovereignty and territorial integrity of Ukraine,” said Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin in a statement. “If Russia continues to support destabilizing activity in Ukraine and violate the Minsk agreements and implementation plan, the already substantial costs it faces will continue to rise,” he added.

All the individuals and entities designated were blocked and had their property and interests in property within U.S. jurisdiction frozen. Treasury added to the Specially Designated Nationals (SDN) and blocked the assets of Russian National Commercial Bank (RNCB). “RNCB had no presence in the Crimea region of Ukraine prior to its occupation and attempted annexation by Russia and Russian authorities have used the bank to facilitate its illegal efforts to incorporate Crimea into the Russian Federation,” it said. Also added to the SDN list were: Roman Lyagin, chairman of the Central Election Commission and minister of social and labor policy of the Donetsk People’s Republic (DPR); Yuriy Ivakin, a leader of the Luhansk People’s Republic (LPR); Aleksandr Karaman, DPR minister for social and labor policy and other posts; and Oleksandr

Khodakovskyy, former head of DPR security service and chief of the Vostok Battalion militia. Treasury also included; Serhii Zdriliuk, an aide to Igor Girkin (a.k.a Igor Strel-ov), former DPR defense minister; Ekaterina Gubareva, who previously was DPR foreign minister and helped transfer funds from Russia to the DPR; Sergei Abisov, minister of interior affairs for Crimea; and Oleg Kozyura, head of the Federal Migration Service of Russia in Sevastopol, Crimea and responsible for issuance of Russian pass-orts to Crimean residents and to 260,000 citizens of Sevastopol.

Also hit was the Eurasian Youth Union, which has recruited individuals with military and combat experience to fight for the DPR, plus its leaders, Aleksandr Dugin, Andrey Kovalenko and Pavel Kanishchev.

Former Yanukovich officials named to the SDN list were: Mykola Azarov, former prime minister of Ukraine; Serhiy Arbuzov, a former first deputy prime minister and a member of Yanukovich's inner circle; and Raisa Bohatyriova, former minister of health of Ukraine, who is also under investigation in Ukraine for the embezzlement of state funds.

Obama's Order Targets Corruption, Rights Abuse in Venezuela

The deteriorating relationship between the U.S. and Venezuela took another downward step March 9 with President Obama's issuance of an executive order imposing sanctions on seven Venezuelan government and military officials. This was the president's first use of sanctions' authority enacted in December under the Venezuela Defense of Human Rights and Civil Society Act of 2014 (see **WTTL**, Dec. 15, page 10). The targeted Venezuelans have been added to the Specially Designated Nationals (SDN) list and will have their property in the U.S. frozen.

Obama sanctioned officials accused of corruption as well as human rights abuse. "The executive order goes beyond the legislation by also targeting those that undermine democratic processes in Venezuela and senior Venezuelan officials who have engaged in public corruption. On that point, Venezuela is considered the most corrupt country in Latin America and one of the most corrupt in the world by Transparency International," said a senior administration official on a background call with reporters.

Another official said sanctions wouldn't affect U.S. energy trade with Venezuela, one of the largest oil suppliers to the U.S. "In terms of the impact that it may have on certain -- on the energy sector or the oil industry, there's no direct effect from these sanctions," the official asserted. "There's no additional impacts or no additional sanctions on any industry, individual or entity that's not specifically named in the executive order, or that's not further named by the Department of Treasury in the future," the official said.

Those sanctioned are: Antonio Jose Benavides Torres, a major general in the Bolivarian National Armed Forces; Manuel Gregorio Bernal Martinez, a brigadier general and former director general of the National Intelligence Service (SEBIN); Gustavo Enrique Gonzalez Lopez, current SEBIN director general; Katherine Nayarith Haringhton Padron, a prosecutor in Venezuela's Public Ministry; Justo Jose Noguera Pietri, president of the Venezuelan Corporation of Guayana and a former major general in the National Guard; Manuel Eduardo Perez Urdaneta, director of Venezuela's National Police; and Miguel Alcides Vivas Landino, a major general and inspector general of National Armed Forces.

Advisors Keep Pushing for Decontrol of Machine Tools

Machine tool manufactures hope a six-year effort to get their equipment decontrolled finally may gain traction now that the Wassenaar Arrangement has revised control parameters for the equipment and BIS recently issued a positive foreign availability finding on dry etching equipment and proposed decontrol of those products. In December, the Wassenaar plenary agreed to adopt unidirectional repeatability instead of precision accuracy as the control metric (see **WTTL**, Dec. 8, page 1).

Armed with Wassenaar's more specific performance parameters, manufacturers should monitor the foreign availability of the equipment, especially in China, members of the BIS Materials Processing Equipment Technical Advisory Committee (MPETAC) agreed March 10. Committee members said they see the etching equipment effort as an example to follow.

"I think that's something the TAC members should try to monitor and [see what] data we can get for actual measurements off the Chinese equipment," one member said. "I think that's data we can get from U.S. customers," he added. Another member suggested it would be worth finding out not only what Chinese machine tools can do but also how consistently they do it. He noted that the standard for determining foreign availability is finding products that render controls ineffective because the items are available from uncontrolled sources in "sufficient quantity of comparable quality." That is a subjective call by the government, one member said. More than six years ago, a BIS report acknowledged these products were widely available.

BIS officials say they expected to publish a final rule to implement the Wassenaar agreements in April, which would be far earlier than it has in previous years. Along with the adoption of the unidirectional standard, Wassenaar set different control levels for different size machines with different numbers of axes. Although it has tweaked machine tool controls over the years, it has not decontrolled the machines. While Wassenaar adopted the new metric, the old positioning accuracy standard is still the control methodology applied by the Nuclear Suppliers Group (NSG), TAC members acknowledged. Wassenaar members have said they will work with the NSG to have its controls revised as well.

BIS Removes Most Support Documents Requirements

BIS has listened to industry complaints about out-of-date recordkeeping requirements and removed many of them in a March 13 Federal Register notice amending the Export Administration Regulations (EAR). The agency dropped requirements for written import certificates (IC) and delivery verification (DV) in most cases. It first proposed the changes in April 2014 and received mostly positive comments from industry (see **WTTL**, June 23, 2014, page 4). BIS Assistant Secretary Kevin Wolf called the new rules a "significant, significant change" to support documents requirement March 12. BIS "basically stripped it bare and wrote it again from the bottom up," he told the agency's Emerging Technology Research Advisory Committee (ETRAC).

Now there are "just three circumstances when the support documents, in terms of statement of ultimate consignees, are required: basically China, major defense equipment and firearms pursuant to a convention that we've entered into. But otherwise, it's not a

mandatory thing, and we leave it to case-by-case basis when we'll want additional information. It's relatively simple," Wolf explained. "We were requiring all sorts of end-use statements and support documents requirements in situations where they weren't really all that useful. If we'd want more information for applications, we'd go and ask for it. But most of the time, we didn't; it was fairly straightforward," he said.

In the Federal Register, BIS responded to the few companies, especially those with foreign parents, that said they have established timely and efficient procedures for obtaining ICs from foreign governments. "While some U.S. exporters may have developed efficient procedures for handling the IC requirement, such procedures do not justify the imposition of a burdensome requirement that provides little utility," the notice said.

In the final rule, BIS punted on changes affecting its participation in issuing ICs, ICs with triangular transaction stamp, and DV certificates for imports into the U.S. These revisions "will be addressed in a subsequent final rule," the notice said. "We ran into a Paperwork Reduction Act issue," Wolf told ETRAC with a wink of irony. "In order to reduce a paperwork requirement, we have to go through a bunch of Paperwork Reduction Act steps, and so we weren't able to go forward, because of the paperwork," he added.

Selective Use of Data Makes Korean Trade Deal Look Good

The USTR's office celebrated the March 15 third anniversary of the U.S.-Korean Free Trade Agreement (KORUS) two days early with a press release selectively showing the benefits of the deal, but playing down the growing bilateral trade deficit. In a call with reporters March 13, Acting Deputy USTR Wendy Cutler cited the record exports of U.S. goods and services to Korea and particularly the 134% increase in car exports since KORUS went into effect.

U.S. exports of goods and services in 2014 hit a record \$65.3 billion, with services exports having grown to \$20.7 billion last year from \$16.7 billion in 2011, the last year before the accord went into effect. U.S. passenger car exports jumped to \$1.02 billion in 2014 from \$416 million in 2011, making Korea the 10th largest market for U.S. auto exports.

Cutler, however, didn't mention that U.S. exports of manufactured goods to Korea have grown only 2.5% over the last three years, while Korean goods exports to the U.S. jumped 23%. The resulting U.S. merchandise trade deficit has doubled in three years to \$27.9 billion from \$13.2 billion. Also missing from the USTR statement is the continuing U.S. deficit in automobile trade, as U.S. imports of Korea cars rose to \$14.7 billion in 2014, a 38% increase from 2011, contributing \$13.7 billion to the U.S. trade deficit. As Korean car makers have moved production to the U.S., there has also been a jump in imports of engines, which rose 22% over three years to \$1.045 billion and auto parts and accessories which jumped 47% to \$6.3 billion.

*** * * Briefs * * ***

TRADE SANCTIONS: Commerzbank AG March 12 will forfeit \$263 million and pay \$79 million fine under deferred prosecution agreement with Justice to settle charges of violating Iran

and Sudan sanctions by handling transactions through U.S. financial system on behalf of blocked Iranian and Sudanese entities from 2002 to 2008. Bank also settled Treasury's Office of Foreign Assets Control charges of violating sanctions regulations in Iran, Sudan, Burma and Cuba. Commerzbank's \$258 million settlement with OFAC will be deemed satisfied by the bank's payment to Justice, OFAC said. "We take these violations very seriously and deeply regret the actions that led to today's announcements. Today's settlement concludes a long and arduous process for all involved," Commerzbank CEO Martin Blessing said in statement.

PET RESIN: DAK Americas LLC, M&G Chemicals and Nan Ya Plastics Corporation, America filed antidumping and countervailing duty petitions March 10 with ITA and ITC against imports of certain polyethylene terephthalate (PET) resin from Canada, China, India and Oman.

TRADE PEOPLE: Ed Gresser, who was managing director of D.C. think tank Progressive Economy, became director of policy planning in USTR's office March 9. Former USTR official Katrin Kuhlmann will join PE in newly created position as senior fellow....Greta Milligan Peisch, who was USTR chief counsel for negotiations, has joined Senate Finance Committee's Democratic staff as international trade counsel with focus on services, IPR, TTIP and Customs.

EX-IM BANK: Hencorp Becstone Capital L.C., Miami-based lender and financial services company, agreed March 12 to pay \$3.8 million to settle charges of making false claims to Ex-Im Bank to obtain loan guarantees. Hencorp financed three purported exports by Mario Mimbella of Miami, who was sentenced in January 2012 to six months in prison for his role in scheme (see **WTTL**, Jan. 23, 2012, page 4). Ironically, Hencorp was named Ex-Im Bank Small Business Regional Lender of 2008. "Over the last five years, Hencorp has offered more than \$100 million in Ex-Im Bank short- and medium-term financing products to support U.S. small business sales to Latin American small and mid-sized companies," Ex-Im said in April 2008.

TRUCKING: In suit filed in Ninth Circuit Court March 10, Teamsters asked for stay of Transportation's January decision to open U.S. to Mexican trucks. Suit contends department violated Administrative Procedures Act because its conclusion was "arbitrary and capricious." Union was joined by Advocates for Highway and Auto Safety and Truck Safety Coalition. Teamsters had asked USTR to broach trucking subject under TPP talks (see **WTTL**, March 9, page 5).

HELP WANTED: DDTC posted industry notice on website March 9 seeking help to update its information technology (IT). "IT DDTC is updating its technology infrastructure and seeks registered industry users to assist with user testing. Test participants will be requested to submit licenses, registration applications, Commodity Jurisdiction test cases and check the status via MARY during the week of March 23, 2015. If you are interested in participating, please contact the DDTC Help Desk at 202-663-2838 or dtradehelpdesk@state.gov," it said.

TOURISM: Just as Wall Street has begun to worry that strengthening U.S. dollar will cut profits for multinational companies and hurt U.S. tourism, Commerce reported March 10 that record 75 million foreign visitors came to U.S. in 2014. Department claims tourism supports 1.1 million jobs. "We remain on track toward achieving President Obama's goal of attracting 100 million international visitors to the United States by 2021," said Commerce Under Secretary for International Trade Stefan Selig in statement.

OIL COUNTRY TUBULAR GOODS: U.S. blocked Korea's request March 10 at WTO Dispute Settlement Body to establish panel to hear Seoul's complaint that antidumping order on OCTG imports is inconsistent with WTO rules. WTO members can block first request but not later requests. U.S. official told DSB that U.S. is "disappointed that Korea has chosen to request the establishment of a panel with regard to this matter," according to notes from session.

COATED PAPER: Indonesia notified WTO March 13 that it has asked U.S. for dispute-settlement consultations over Jakarta's complaint that U.S. antidumping and countervailing orders on coated paper from Indonesia are inconsistent with WTO rules.