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BIS to Propose Rules for USML-to-CCL Transfers by Mid-July

The Bureau of Industry and Security (BIS) will propose rules spelling out the process for transferring articles from the U.S. Munitions List (USML) to the Commerce Control List (CCL) in time for the BIS Update conference July 19, promises BIS Under Secretary Eric Hirschhorn. “The departments of Commerce, Defense, Justice and State have agreed on a plan to control defense articles that no longer warrant ITAR [International Traffic in Arms Regulations] control on a new, in effect, Commerce Munitions List within the Commerce Control List,” he told the President’s Export Council Subcommittee on Export Administration (PECSEA) June 9.

The move of items to the CCL from the USML will let the government tailor controls for insignificant items such as bolts, wires and pivot blocks “in a manner that promotes interoperability with our allies and enhances the competitiveness of U.S. companies,” Hirschhorn said. Firms that make only articles that are transferred will no longer need to register with State, and those articles will no longer be subject to the ITAR “see-through” rule or require Manufacturing License Agreements (MLAs) or Technical Assistance Agreements (TAAs), he explained.

Hirschhorn also noted plans for a new definition of “specially designed” (see **WTTL**, May 9, page 1). “From an enforcement perspective, we’ve developed a definition of specially designed based on objective criteria to allow companies to classify their products without relying on a design-intent standard,” he said, “This will provide exporters more clarity and it will also provide the Department of Justice with an enhanced ability to prosecute violators,” he stated.

The BIS chief tried to put a positive spin on the House Foreign Affairs Committee’s May 12 hearing on export control reforms. “Importantly, that hearing saw senior House members going on the record that the export control system needs to be reformed and that the administration’s approach to updating control lists has considerable support from both sides of the aisle,” Hirschhorn said. “Clearly, we need to talk more with the Congress,” he admitted.

ITA Plans to Tighten Liquidation Rules for NME Imports

Nonmarket economy (NME) imports that are subject to antidumping (AD) orders could face higher duties under plans the International Trade Administration (ITA) has for changing the liquidation instructions it sends to Customs and Border Protection (CBP). In a request for comments in the June 10 Federal Register, ITA said it intends to direct CBP to impose the “NME-Wide Rate” to imports that are not subject to a separate rate rather than the current policy of



collecting only the cash-deposit rate. The change would apply a policy ITA adopted in 2003 for imports from market economies (ME). “By revising the NME liquidation instructions in a manner similar to that described in the 2003 Antidumping Duties Notice, the Department intends to ensure that entries are liquidated at the appropriate rate, i.e., the NME-wide rate for entries from firms without a separate rate assigned to them,” ITA explained. “In both ME and NME proceedings, the Department maintains an interest in having entries liquidated in a manner that is consistent with the final results of its administrative reviews,” it said. “This refinement will increase the need for interested parties (including exporters and importers of merchandise produced in NME countries) to participate in the Department’s proceedings,” the agency advised.

The change also would catch subject imports that originate in the NME country but go through resellers in third countries. “The Department proposes to apply this refinement to merchandise produced in the NME country and exported to the United States either directly from the NME country or from a third-country reseller,” it said. “Regardless of the location of the non-reviewed exporter or reseller, when a party does not file a separate-rate application, the Department lacks necessary information on the record to determine whether it is entitled to a separate rate,” the notice conceded.

Advisors Questions BIS Resources to Handle License Transfers

PECSEA members are concerned BIS won’t have the staff and resources to handle the transfer of licensing responsibilities for hundreds of articles that could move to the CCL from the USML under the Obama administration’s export reform initiative. At the PECSEA’s June 9 meeting, a working group cited that worry as one of their priorities. BIS Assistant Secretary of Export Administration Kevin Wolf acknowledged the resource issue. “For a big chunk of this effort to succeed, resources need to be found,” he told the subcommittee.

A report issued by the Office of Management and Budget on regulatory reform initiatives May 26 noted that as many as 30,000 licenses could move from State to Commerce as part of the reform effort. “Assuming the resources can be found for BIS to process such applications and related work, substantial national security benefits will result from the transfer,” it said.

Ros-Lehtinen’s EAA Bill Would Limit Export Control Reforms

House Foreign Affairs Committee Chairman Ileana Ros-Lehtinen (R-Fla.) and Obama administration officials appear headed on a collision course over their conflicting visions of export control reform and the president’s authority over national security. Legislation (H.R. 2122) that Ros-Lehtinen introduced June 3 would renew the Export Administration Act (EAA) but also would limit the scope of administration plans for ultimately merging the U.S. Munitions List (USML) and Commerce Control List (CCL) and, in the interim, transferring hundreds of articles from the USML to the CCL. It also would expand committee control over the process and give the Defense Department a veto over any proposed transfers.

Ros-Lehtinen’s measure also takes a different tack toward EAA renewal than Rep. Howard Berman (D-Calif.), who introduced his own EAA legislation (H.R. 2004) May 26. While Ros-Lehtinen would make a few modifications to the last version of EAA, which expired in 2001, Berman would attempt a complete rewrite of the statute. Where Lehtinen would impose strict limits on the implementation of reforms, Berman would give the administration more flexibility and discretion.

Although Ros-Lehtinen and Berman both have EAA bills in the hopper, veteran export control observers say Ros-Lehtinen’s measure will be the one approved by the committee with some amendments from the Berman bill and whatever legislation the administration eventually sends

Congress to implement Phase III of its export control reform plan. Although there are two bills “that doesn’t mean that one bill will have much of Berman’s bill, because the chairman sets the agenda,” Paul Freedenberg, chairman of MK Technology, told the President’s Export Council Export Administration Subcommittee June 9. “They may amend one bill with parts of the other bill or with the administration’s bill, but there will be a single mark-up,” he said.

As she had promised at a House hearing May 12, Ros-Lehtinen would add language to the EAA to clarify administration authority to transfer articles from the USML to the CCL (see WTTL, May 16, page 1). Congressional sources say this provision adds no new authority, but is intended to signal Ros-Lehtinen’s support for transferring some parts and components to the CCL but not full end-items.

The bill says, “Nothing in this section shall be construed to require the President to include as a defense article any component, accessory, attachment or part associated with any end-item included on the United States Munitions List if such component, attachment or part does not have specialized or unique military or intelligence capability or significance such that control under the Arms Export Control Act is warranted.” It would maintain congressional control over items moving from the USML to the CCL. Any item moved from the USML to the CCL “may not be made subject to export controls that are less restrictive than the export controls that are imposed on the item at the time it is removed from the Munitions List,” it states.

The bill also would require that “the secretaries of State, Defense and Commerce concur on all subsequent modifications to the export controls on the item.” That would, in effect, give the Pentagon a veto power over any future transfers and supplant the president’s power to make such decisions, a provision certain to draw opposition from the White House. If the president wants to apply less restrictive controls, he can issue a waiver after determining “that such less restrictive controls are appropriate and in the national security and economic interests” of the U.S. The bill includes a presumption of denial of any export to China for moved articles, as well as denial of licenses to any country subject to an arms embargo under Section 126.1 of the International Traffic in Arms Regulations or a UN resolution.

Republicans Step up Rhetoric against TAA

Whether or not there’s a deal in the works to get the Trade Adjustment Assistance (TAA) program renewed and all three pending free trade agreements (FTAs) passed through Congress, Senate Republicans continue to pound the training program and White House refusal to send the accords to Congress for approval until agreement is reached on TAA. “I would also suggest that any discussion of Trade Adjustment Assistance only be done as part of the debate over extending Trade Promotion Authority, the way it’s been done for decades,” Senate Minority Leader Mitch McConnell (R-Ky.) said in a speech on the Senate floor June 7. “Without the protections afforded by Trade Promotion Authority, Congress may never consider another trade deal again, and there will be no more trade agenda,” he warned.

In a separate floor statement, Sen. Orrin Hatch (R-Utah) said the Obama administration’s “schizophrenic trade policy is doing nothing but hurting American workers and undermining our recovery.” He said each FTA should stand on its own merits and “with the full backing of the White House and congressional leadership, will pass with significant bipartisan margins.”

Democrats Urge Strong Environment Rules in TPP

When the negotiations toward a Trans-Pacific Partnership (TPP) continue the week of June 13 in Vietnam, 15 Democratic members of Congress want environmental concerns to take center stage. In a letter to USTR Ron Kirk June 7, they said they could only support a TPP that included provisions providing “effective enforcement of multilateral environmental agreements, the non-derogation from a party’s environmental laws, and the application of dispute-settlement

provisions to the environmental obligations in the same manner as to our commercial obligations.” Such provisions are “an essential part of the basic framework of any trade agreement that we could support,” they declared. The Democrats want TPP provisions to be modeled on the May 10, 2007, agreement between congressional Democrats and the George W. Bush administration, which led to Democratic backing for the U.S.-Peru FTA. “Failing to include meaningful obligations in the Trans-Pacific Partnership Agreement – at least as robust as the environmental provisions in the Peru FTA and in the three pending FTAs – is a non-starter,” said House Ways and Means Ranking Member Sander Levin (D-Mich.) in a statement.

The letter acknowledged the progress in TPP environmental talks. “We support your efforts to advance the provisions tabled to date concerning illegal trade in wood and wood products, illegal wildlife trade, fisheries subsidies, marine conservation and shark preservation,” the letter said.

China Ends Green Tech Subsidies Challenged in WTO Dispute

For the third time in a dispute with the U.S. at the World Trade Organization (WTO), China has chosen to avoid the dispute-settlement process and the possible sting of losing a case by bowing to Washington’s demands. The U.S. Trade Representative’s (USTR) office announced June 7 that Beijing has stopped giving subsidies to Chinese wind turbine manufacturers that agreed to use Chinese-made parts and components rather than imports. “Subsidies requiring the use of local content are particularly harmful and are expressly prohibited under WTO rules,” said USTR Ron Kirk. “We challenged these subsidies so that American manufacturers can produce wind turbine components here in the United States and sell them in China,” he said.

The U.S. had challenged the Special Fund for Wind Power Equipment Manufacturing subsidies in response to a petition filed by the United Steelworkers (USW) in October 2010 (see **WTTL**, Oct. 18, 2010, page 3). The USW said it was “pleased” with the results of its petition. “With this first green technology issue behind us, we encourage the administration to continue to work to level the playing field for clean technology companies and American workers to grow sustained employment and good job opportunities,” said USW President Leo W. Gerard.

* * * Briefs * * *

EXPORT ENFORCEMENT: Analytical Technology Inc. (ATI) of Collegeville, Penn., will pay \$45,000 civil penalty to settle two charges of engaging in prohibited conduct, BIS announced June 9. On Aug. 28, 2006, ATI exported one wire gas transmitter under ECCN 2B351 valued at 8,034.75 to UAE without required export license. On March 7, 2007, it exported two wire gas transmitters under ECCN 2B351 valued at \$4,893.75 to UAE without required export license, BIS said.

TRADE FIGURES: Exports continued their robust growth, according to trade figures for April released June 9. U.S. goods exports in April rose 21.6% from April 2010 to record level of \$126.4 billion. Services exports rose 12% from year ago to \$49.1 billion, also record high. Imports, however, have rebounded as well, with goods imports jumping 17.8% to \$184.5 billion. Services imports increased 6.5% to \$34.7 billion. Trade deficit declined in part due to \$3 billion in lower imports from Japan.

TRADE PEOPLE: Ex-Im Bank June 7 named Angela Mariana Freyre senior VP and general counsel. She was most recently senior VP and deputy general counsel for legal and strategic affairs at The Nielsen Company and earlier was partner at Coudert Brothers law firm in N.Y.

AGOA: In June 9 speech in Lusaka, Zambia, USTR Ron Kirk unveiled African Competitiveness and Trade Expansion Initiative (ACTE), which aims to provide up to \$120 million over four years to support USAID programs in Africa and increase African export capacity. He also said administration will work with Congress over coming months to extend AGOA’s third-country fabric provision. “We would like to see it extended to 2015,” he said. In separate speech in South Africa, Deputy USTR Demetrios Marantis suggested it’s time for South Africa to graduate out of AGOA. “We are asking, how do we help South Africa transition from a trade preferences recipient to a status more befitting of a competitive and growing global economic stakeholder?” he said.