

Vol. 34, No. 11

March 17, 2014

BIS Still Looking for Comments on Transfer of Satellites

The final rule transferring many items from Category XV (satellites) of the U.S. Munitions List (USML) to the Commerce Control List (CCL) is on Congress' desk for review as of the week of March 3 but will be left open for comments after it is published, Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn told the BIS Emerging Technology and Research Advisory Committee (ETRAC) March 12.

Unlike previous USML-CCL transfers, the satellites rule "is probably going to come out as an interim final rule with a request for comments," Hirschhorn said. "The State rules may be fairly narrow in their request, because they're short-staffed. I think ours is going to be fairly broad in terms of 'knock yourself out, comment on anything you like,'" he added. If all goes according to plan, the rule will be published in the Federal Register by the end of May, he advised.

In response to industry lobbying for a shorter timeframe for some products, Hirschhorn noted, "the normal 180-day waiting period is going to be slightly altered." For new rules on radiation-hardened chips, which were included in the satellite proposal, "it's going to be a shorter period, we anticipate, but for everything else in the space and satellite category, it's going to be the usual 180 days," he said.

The under secretary acknowledged ongoing debate on the future of controls on human spaceflight (see **WTTL**, March 10, page 4). "We didn't want to hold up this rule for a couple of particular items that are still problematic, so we decided to go forward with most of it. And as to the rest, we're anxious to have comments," he said. "Part of the arrangement for dropping a couple of items, or at least not changing a couple of items, is that we're going to take a very intensive look at those aspects of the rule in the next couple of months," Hirschhorn added.

Professor Roth Gets Six-Month Reduction in Sentence

Former University of Tennessee Professor J. Reece Roth will likely spend six months less in prison following a March 10 ruling by Knoxville U.S. District Court Chief Judge Thomas Varlan, who cut Roth's sentence to 42 months from 48 months. While Roth

had sought the resentencing based on the dropping of one count against him, Varlan indicated that his decision was based more on Roth's declining health than on one less charge (see **WTTL**, Feb. 3, page 1). Roth, who has been transferred from the Ashland Federal Correction Facility in Kentucky to the Federal Medical Center in Rochester, Minn., because of his health problems, had asked the court to reduce his sentence after the court vacated his conviction on one count of denying the university his "honest services" by failing to follow its orders on not taking controlled data to China.

The decision to vacate the count was based on a 2010 Supreme Court ruling in *Skilling v. U.S.*, in which the high court dismissed the honest service charge against the former Enron CEO because he had not received illegal payments for his actions. Neither had Roth.

Roth entered prison in January 2010 and was expected to be released earlier than his full 48-month sentence by mid-2015 based on good behavior. With the new 42-month sentence he could be free by January or February of next year. Because of his health problems, Roth appeared at the new sentencing hearing via video conference from the Rochester center. He is now wheelchair bound, his lawyer said.

In a court brief before the hearing, Roth's lawyer, Thomas Dundon of Neal & Harwell in Nashville, had argued that the honest services charge had colored the judge's original sentencing decision. "Defendant suggests that his direct disobedience of the explicit directive of University of Tennessee personnel was a considerable factor in his original sentence and one which must now be completely discounted," Dundon wrote. "While Defendant's medical condition was certainly relevant at the time of his original sentencing, his health has significantly deteriorated since then, as detailed in the Revised Presentence Investigation Report," he added.

Justice disagreed, seeking to retain the 48-month sentence. "That 'disobedience of the explicit directive' would still have been established at trial regardless of Count Eighteen, as it was relevant to prove the defendant's intent on the export violations," wrote Assistant U.S. Attorney Jeffrey E. Theodore. "The importance of this case cannot be overstated," he added. "The original sentence continues to provide substantial general deterrence on similar conduct nationwide. A reduction of the original sentence would undermine and diminish the tremendous deterrent impact of that sentence," he wrote.

Azevedo Pushes Importance of WTO, Multilateral System

With several regional and sectoral trade talks going on around the world and years of failed rounds of global negotiations, World Trade Organization (WTO) Director-General Roberto Azevêdo's main job since taking office in September is making the case for multilateral trade commitments. At the U.S. Chamber of Commerce March 10, Azevedo called those plurilateral talks, including the Trans-Pacific Partnership (TPP), "positive and welcome" with a caveat. "The simple fact is that none of the big challenges facing world trade today can be solved outside the global system. They are global problems demanding global solutions," he said.

Specifically, the trade facilitation agreement, which was seen as the victory of the Bali ministerial, "was successful in the WTO because it makes no sense to cut red tape or streamline customs bilaterally — if you do it for one country, you automatically do it for

everyone,” he explained. In addition, “financial or telecom regulations can’t be liberalized for just one trade partner,” he added. “Nor can farming or fisheries subsidies be tackled in bilateral deals — or disciplines on trade remedies, such as the application of antidumping or countervailing duties,” he argued.

Next on Azevedo’s plate is overseeing the completion of a plan to finish the Doha Development Agenda. “As instructed by ministers in the Bali Declaration, we must prepare a clearly defined work program to conclude, once and for all, the Doha Development Agenda,” Azevedo said. “Under the Bali declaration we must define our new approach by the end of this year. And — in my view — we should then move to conclude the negotiations as quickly as possible,” he continued.

The director-general also addressed ongoing talks toward an expanded Information Technology Agreement (ITA). While some have said the coming meeting of Asian-Pacific trade ministers in May would be an important milestone for its success, “it would not be wise for me to try to point to arrival points,” Azevedo said. “Whether the APEC ministerial could be one, I clearly hope it would be, it would have the right people there. To the extent that I can help and make that possible, I will,” he said.

“There is particularly one country that is still unsure about how far they can go in terms of ambition, and I have been talking to them. It’s difficult to tell at this point in time how quickly and how far we can get from where we are,” Azevedo noted.

Azevedo arrived at the Chamber after a short meeting with President Obama. “We talked mostly about the multilateral negotiations, what we are going to do next, what the next challenges are, not only in terms of implementing what we did in Bali, what we agreed in Bali, but also about the conclusion of the Doha round and what we can do to move it forward as quickly as possible,” he told reporters after his speech.

In parallel with Azevedo’s speech, the Chamber put out a white paper outlining its own WTO policy priorities. Not surprising, these include: implementation of the agreement on trade facilitation; expansion of the ITA; launch of negotiations on trade in environmental goods; and conclusion of the Doha Development Agenda.

WTO Government Procurement Pact Changes Will Go into Force

With Israel’s acceptance of the protocol revising the World Trade Organization’s (WTO) Government Procurement Agreement (GPA) March 7, the changes to the agreement will go into force April 6, the WTO announced March 12. GPA participants at the WTO ministerial in Bali in December had set the end of March as the deadline for members to sign on to the revisions that were adopted at the previous WTO ministerial in 2011 (see **WTTL**, Dec. 9, page 6). “The modernized text of the revised GPA and the expanded commitment to market access should prompt other WTO Members to consider the potential advantages of joining,” said WTO Director-General Roberto Azevedo in a statement.

Bruce Christie of Canada, the chairman of the GPA committee, said the required two-thirds of participants needed to bring the changes into effect has been achieved. It took 10 years for the 15 members to agree to update the GPA, and acceptance of the changes was slow up until December. There were not enough acceptances as had been hoped, by

the time of the Bali conference to bring the changes into force at the meeting. The 10 members that have accepted the changes are, in order of acceptance, Liechtenstein; Norway; Canada; Chinese Taipei; the United States; Hong Kong-China; the European Union (EU); Iceland; Singapore and Israel. The EU covers all its 28 members. Ten other WTO members, including China, Moldova, Montenegro, New Zealand and Ukraine, are in the process of negotiating accession to it, the WTO said.

Among the changes include provisions dealing with electronic procurement tools. Others expand its scope, cover more government ministries and agencies and new services. “The revision also incorporates improved transitional measures that are intended to facilitate accession to the Agreement by developing and least-developed economies,” a WTO statement said.

Bilateral Agriculture Talks with Japan End with Limited Progress

Everyone knew talks with Japan to join a Trans-Pacific Partnership (TPP) weren't going to be easy, particularly on agriculture and cars. Until now, U.S. officials have remained positive about progress in bilateral negotiations to resolve these long-standing issues. But candor broke out at the U.S. Trade Representative's (USTR) office March 12 in its readout of two days of talks between Acting Deputy USTR Wendy Cutler and Japan's Deputy Chief Negotiator Hiroshi Oe on farm products.

“Limited progress was made so far this week and significant gaps remain,” a USTR statement admitted. “Cutler and Oe agreed to continue discussions on these issues in an effort to narrow the gaps in the weeks ahead. Dates for subsequent discussions will be set through diplomatic channels,” the agency continued. Even this blunt statement barely disguises the deeper splits between the two countries.

These talks followed TPP ministerial talks in Singapore that ended without a conclusion, and even without scheduled next dates (see **WTTL**, March 3, page 4). President Obama is scheduled to visit Japan April 22-23, but hopes for a deal by then seem to be dimming. Prior to the Singapore talks, U.S. farm interests and senators that represent them urged the USTR to guarantee an agreement on market access.

“We seek assurances from you that the U.S. will not close the TPP negotiations without an acceptable comprehensive agreement with Japan to eliminate tariff and non-tariff barriers in agriculture,” the Feb. 21 letter noted. Signers included Sens. Charles Grassley (R-Iowa) and Michael Bennet (D-Colo.). The letter came a day after an agricultural coalition, including the National Pork Producers Council (NPPC), issued a strong statement asking USTR to reject Japan's offer that did not include full tariff elimination.

ETRAC Considers Implications of Crowdsourcing, 3D Printing

Although the Emerging Technology and Research Advisory Committee (ETRAC) is technically under the umbrella of the Bureau of Industry and Security (BIS), its influence is being felt by other agencies, both in government and the nonprofit world. As an example, ETRAC urged BIS two years ago to put resources toward a crowdsourcing tool to predict emerging technology, acknowledging the constraints of a limited number of

government officials and advisors (see **WTTL**, Jan. 2, 2012, page 3). In a presentation to ETRAC's quarterly meeting March 12, Kavita Berger, associate director of the Center for Science, Technology, and Security Policy at the American Association for the Advancement of Science (AAAS), reported on a website, SciCast.org, which is doing exactly that. ETRAC members privately told WTTL that they were involved in the creation and seeding of the platform, since BIS did not pursue their idea.

SciCast is a "crowdsourced forecasting platform for science and technology," the website notes, and a federally funded research project led by George Mason University. In its role, AAAS is helping to identify topic leaders to develop questions for scientists and engineers, along with any other member of the public who wishes to participate, Berger noted.

One emerging technology that generated debate at ETRAC was 3-D printing and its implications for export controls, both on the machines and the blueprints for products to be printed. In May 2013, State's Department of Defense Trade Controls Compliance (DTCC) reportedly asked Cody Wilson of nonprofit group Defense Distributed to pull gun blueprints off his website, DEFCAD.org, saying it could violate the Arms Export Control Act. DTCC requested that Wilson submit a commodity jurisdiction request. In response, Wilson tweeted, "#DEFCAD is going dark at the request of the SOS Department of Defense Trade Controls. Some shapes are more dangerous than others."

ETRAC also discussed other technologies that could be the subject of future export controls, including 3D bioprinting, which can involve printing tissue and even strands of DNA, having far-reaching implications for global public health. Organova, a San Diego company, was mentioned as a leader in the field. The "bioprinting process centers around the identification of key architectural and compositional elements of a target tissue, and the creation of a design that can be utilized by a bioprinter to generate that tissue in the laboratory environment," the company's website notes.

Court Remands Shrimp Case to Commerce for Third Time

Court of International Trade (CIT) Chief Judge Donald Pogue March 10 remanded to Commerce for the third time its fifth administrative review of the antidumping order on frozen warmwater shrimp from Vietnam, saying the department incorrectly applied his second remand order (slip op. 14-28). In *Camau v. U.S.*, Pogue rejected Commerce's claim that his earlier remand orders required the department to use a single country, Bangladesh, as the surrogate country for determining the factors of production and wage rates for Vietnam, which is still treated as a non-market economy (NME).

"Commerce's claim is incorrect. Rather, the court's prior decisions required that Commerce address, evaluate, and weigh the conflicting record evidence regarding the appropriateness of its surrogate data choices for valuing the relevant factors in this review, including labor," Pogue wrote. "Commerce has yet to do so. Consequently, the 2d Remand Results must again be remanded for additional consideration, consistent with *Camau I*, *Camau II*, and this opinion," he ordered.

"As discussed above, the court did not order Commerce to do anything more than what is required of it pursuant to established principles of administrative law – namely, to

provide a reasoned and reasonable explanation connecting its conclusion to the record evidence, including the evidence suggesting that Bangladesh's wage data is likely to significantly understate the estimated fair market wage rate in Vietnam," Pogue explained. The requirement to explain the agency's approach "is not synonymous (as Commerce implies) with a compulsion to employ any particular approach," he added.

One option Commerce has on remand "is to explicitly weigh the evidence that Bangladeshi wage data are likely to understate the surrogate fair market labor rate for the shrimping industry in Vietnam against the remaining evidence (if any) that Bangladeshi surrogate FOP data as a whole are nevertheless the best available data on record from which to value all of the surrogate FOPs in this review," Pogue suggested.

"It may be that, upon weighing the evidence, Commerce decides that the reasons supporting the use of Bangladesh as the primary surrogate country outweigh the trade-off of losing some accuracy with regard to the labor FOP value. As the court has held, Commerce is not required to deviate from its New Labor Rate Policy and use data from more than one country when calculating the labor FOP in this case," he added. "Should Commerce choose to engage in such evidence weighing, however, the agency must explicitly lay out the value choices and data preferences it is making, so that the path of its analysis may reasonably be discerned as based on some set of predictable standards, as well as to provide a basis for judicial review," Pogue ruled.

U.S., EU Claim Progress on TTIP, as Industry Raises Concerns

Lead U.S and European Union (EU) negotiators claimed they made progress in talks March 10-14 in Brussels during the fourth round of talks on a Transatlantic Trade and Investment Partnership (TTIP), but industry executives are raising concerns that the negotiations aren't moving fast enough and may get bogged down in technical issues. Early disagreements have surfaced over proposals for cutting tariffs, investor-state dispute settlement (ISDS), sanitary and phyto-sanitary (SPS) rules, government procurement, service sectors and regulatory harmonization.

"I have a bit of a sense that momentum is beginning to slow," John Cridland, director-general of the Confederation of British Industry, told a program in Washington March 11. "There is a certain inevitability to that," he conceded. "It's in the nature of these debates that you move from strategic to tactical, technical and granular very, very quickly," he said. Still, he added, "this is not a Doha situation."

Cridland expressed concern that negotiators are missing the opportunity to grab the "low-hanging fruit" in the talks, especially on subjects like tariffs. Faster progress will be needed because of coming changes in Europe, including European Parliament elections in May and a change in EU Commission leadership after Oct. 1, he said. The elections "will significantly change the dynamics in the European Parliament," he cautioned. Cridland said he would like to see progress in the early days of a new commission or early in 2015. If it goes longer, "we ain't going to get anywhere," he warned.

On one of the supposedly easy subjects, tariffs, the EU has been dissatisfied with the first U.S. tariff-cutting offers in February. At a joint press conference with his EU

counterpart, Chief U.S. Negotiator Dan Mullaney admitted that the U.S. offer was just a starting point. Mullaney said the U.S. wants a comprehensive agreement that would include the elimination of all tariffs. “Thus, the main focus is the end point in the negotiations, not the initial steps,” he told reporters. The EU’s chief negotiator, Ignacio Garcia Bercero, agreed that tariff cutting was a goal, but also acknowledged that some products might need different treatment. “It has always been clearly understood that those options include different possibilities, for instance, tariff-rate quotas,” he said.

No progress has been reported on the treatment of investor-state dispute settlement because the EU won’t discuss the issue until after it undertakes public hearings and gets public comments on the subject as part of a separate review it is conducting (see **WTTL**, Jan. 27, page 3). Reports that Germany is opposed to any inclusion of ISDS in TTIP have complicated negotiations for the EU. While the U.S. still wants to include investor-protection provisions in a deal, Mullaney indicated that those provisions would have to recognize existing domestic rules.

Although an accord would need to include provisions for both state-to-state and investor-state disputes, “we do think it is important, however, that these provisions respect the regulatory space; that nothing that provides investor protection, that investors expect, will interfere with the regulatory space,” Mullaney said.

Bercero said he has a mandate to negotiate on investor protection as part of the talks, but such an agreement might just include “clear standards for investor protection to avoid the risk of abusive interpretations; with much clearer provisions on transparency; avoiding conflicts of interest,” he said. Any proposal, however, would have to go back to EU members for approval.

While regulatory coherence has been touted as the most important part of any TTIP in terms of economic benefits, Mullaney and Bercero underscored the problems being seen in just one area of regulation, chemicals. “It cannot be a question of compromise on environmental protection,” Bercero said; noting that the EU’s REACH rules for chemicals are stricter than the U.S. Toxic Substances Control Act.

“Because of the differences in this level of protection, there can be no question of harmonizing or, indeed, having mutual recognition, in the chemical sector,” he stated. The two sides, however, may work to eliminate unnecessary duplications, to identify priority chemicals for control and to use common data and test results, he added.

U.S., Korea Still Trying to Fix Korus Implementation Issues

Amid dueling press releases and press conferences by supporters and opponents of the U.S.-Korea Free Trade Agreement (Korus) ahead of its second anniversary March 15, officials of both countries admit there are still concerns about how the accord is being implemented. “We have experienced some issues of concern,” a senior U.S. official told reporters March 13 speaking on background. Among those issues are the treatment of financial data transfers, verification of country of origin and proposed rules on auto emissions. The U.S. raised these concerns with Korea during a bilateral working group meeting in February. The U.S. is concerned that the Korean customs service is requiring excessive documentation from U.S. exporters to demonstrate the country of origin of

their goods to show that they qualify for duty-free treatment under the accord. “We have had good meetings on this issue just two weeks ago where we invited our Customs service to work with the Korean customs service as well as to help them shape a program that allows them to verify the origin of a product, which is a legitimate activity, but not to do so in a way that is trade restrictive,” the U.S. official said.

“A number of issues have been brought to our attention with respect to the auto sector,” the official noted. One of those is a Korean draft proposal that would impose penalties on cars with higher emissions. This is also a concern to Korean carmakers. “We are working with the Korean government to make sure that such a system when implemented would not disproportionately affect exporters of our cars to Korea,” the official stated.

One problem that appears to have been resolved dealt with Korean restrictions on the transfer of financial data out of the country. Provisions in Korus aimed at this requirement were not to go into effect until the second anniversary of the accord. Seoul has now issued regulations and guidelines to implement that provision, the senior U.S. official reported. “How those rules are implemented is a key concern,” the official added; saying the administration will work with industry to monitor the situation.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Vahid Hosseini of Reston, Va., pleaded guilty March 6 in Alexandria, Va., U.S. District Court to money laundering and exporting various high-tech goods included tachometers, power supply instruments, high-temperature probes, ammonia test tubes, valves and machinery parts to Iran via UAE without Treasury licenses. Hosseini was released on \$50,000 bond. Sentencing is set for June 6.

TRADE PEOPLE: Senate confirmed by voice vote March 13 nomination of Puneet Talwar to be assistant secretary of State for political-military affairs, replacing Andrew Shapiro, who resigned almost year ago. Five months after being nominated, Talwar’s name had been sent to floor Feb. 4 (see WTTL, Feb. 10, page 6)... Same day, Senate also confirmed by voice vote nomination of Arun Madhavan Kumar to be assistant secretary of Commerce and director general of U.S. and Foreign Commercial Service (see WTTL, Oct. 21, page 1).

FCPA: French citizen Frederic Cilins pleaded guilty to one count of superseding information March 10 in Manhattan U.S. District Court of obstructing federal criminal investigation into whether mining company he worked for violated FCPA by paying bribes to win lucrative mining rights in Guinea. Cilins, who reportedly worked for Israeli firm, BSG Resources (BSGR), one of firms being investigated, originally was charged with tampering with witness, victim or informant; obstructing criminal investigation; and destroying, altering or falsifying records in federal investigation. BSGR was not named in original indictment which only identified it as “entity,” but company website admits hiring Cilins. Sentencing is scheduled for June 27. Cilins was arrested April 14 in Jacksonville, Fla., and has been in custody since then (see WTTL, April 22, 2013, page 9).

STEEL WIRE ROD: ITC in 5-0 preliminary vote March 14 found U.S. industry may be materially injured by dumped and subsidized imports of carbon and certain alloy steel wire rod from China. Commissioner Shara L. Aranoff did not participate in investigation.

UKRAINE: As U.S. and EU contemplate sanctions against Russia for its occupation of Crimea, EU Commission March 11 proposed temporary removal of tariffs on imports from Ukraine as

precursor to signing of Deep and Comprehensive Free Trade Area (DCFTA) agreement that former Ukrainian government had rejected. “Once adopted by the EU, this unilateral measure will allow Ukrainian exporters to benefit from preferential access to the EU market in full line with the schedule of concessions negotiated under the DCFTA,” commission statement said. “It is expected that the DCFTA between the EU and Ukraine will be signed and provisionally apply before the 1st November 2014 in which case the unilateral system of autonomous trade preferences ends,” it added. During visit to Washington March 12, including session with President Obama, Ukrainian Prime Minister Arseniy Yatsenyuk told Atlantic Council that Kiev intends to sign deal with EU.

USTR: Reubin Askew, who served as U.S. trade representative in Carter administration from 1979 to 1981, died March 11. Governor of Florida before coming to Washington, he was 85.

TAA: Group of House Democrats March 6 introduced another Trade Adjustment Assistance Act amendment (H.R. 4163) to renew provisions that expired at end of 2013.

BEDROOM FURNITURE: United States Court of Appeals for Federal Circuit (CAFC) March 11 affirmed CIT ruling upholding Commerce decision to rescind new shipper investigation of furniture made by Marvin Furniture of Shanghai (case 13-1156). Marvin had filed incorrect information about previous sales in U.S. in its new shipper request but later corrected it. “Although Marvin ultimately provided correct information to Commerce, it did so after Commerce had instituted the new shipper review. Hence, the late information did not operate to make Marvin ‘eligible’ for a new shipper review because a review had already been initiated, for a period not covering the September 2010 entries, based on the defective initial request. Accordingly, Commerce’s determination that Marvin was not eligible for new shipper review is supported by substantial evidence and not contrary to law,” wrote CAFC Judge Jimmie Reyna for three-judge CAFC panel.

DIAMOND SAWBLADES: CIT Judge Richard Eaton rejected plea from Diamond Sawblades Manufacturers’ Coalition for preliminary injunction March 13 to block Commerce “sunset” review of diamond sawblades while separate case goes forward challenging date for start of review (slip op. 14-29) Coalition is challenging department’s decision to use Jan. 23, 2009, as anniversary date to begin review rather than Nov. 4, 2009. “If victorious, plaintiff will not lose the several months of trade protection to which it claims it is entitled even though no injunction is in place. On the other hand, should plaintiff lose on the merits, it would not be entitled to those additional months in any case. Thus, plaintiff’s final argument fails to demonstrate that it will be irreparably harmed if no preliminary injunction is issued,” Eaton ruled.

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