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DDTC License Approvals Down Dramatically Since Reform Effort

While it isn't exactly a zero-sum game, export control reform is working as it should, officials from Bureau of Industry and Security (BIS) and State told the President's Export Council Subcommittee on Export Administration (PECSEA) June 18. During the eight months since the first rule transferring items from U.S. Munitions List (USML) categories VIII (aircraft) and XIX (gas turbine engines) to the Commerce Control List (CCL) became effective in October 2013, State is seeing an overall drop in licenses, while BIS licenses are going up, the officials said (see **WTTL**, June 23, page 1).

In May, the Directorate of Defense Trade Controls (DDTC) approved 4,517 licenses for all USML categories, down 25% from its 2012/2013 monthly average of 6,000. In the same month, BIS approved 2,600 applications overall, a 50% increase from its 2012-2013 average case load. As other USML-to-CCL transfers go into effect, that trend is likely to accelerate.

DDTC's numbers also will continue to drop as industry gets used to the changes, BIS officials told PECSEA. Under categories VIII and XIX, State approved only 436 licenses in May for items remaining in those two categories, down 73% from its 2012/2013 monthly average of 1,600 under Category VIII alone.

Prior to the reform effort, DDTC license approvals peaked in 2012 at 86,000, a State official told PECSEA. In 2013, the number, which also included a two-week government shutdown, was just shy of 78,000. The department is extrapolating that it will approve an estimate of 65,000 licenses for 2014, he added. That would be more than a 24% drop in licenses. With the transfer of less-sensitive items to the CCL, DDTC's average review time for cases is beginning to creep up since the easy cases no longer mask the real review times for the hard cases. In May, DDTC's average processing time for licenses was 20 days, compared to 18 days in May 2013 and 15-16 days in prior years. In May, BIS approved licenses for items switched to the 600 series in an average of 13.5 days, although the rate fluctuates month to month.

Hearing Further Darkens Prospects for Export-Import Bank

Export-Import Bank critic Rep. Jeb Hensarling (R-Texas) hinted June 25 that he might try to block an alternative route some bank supporters have been hoping they could use

to keep it operating if Hensarling prevents a straight reauthorization bill from being enacted. If Hensarling and other conservative Republicans keep reauthorization from passing, Ex-Im supporters have been considering attaching the reauthorization to a “continuing resolution” that would extend into 2015 several appropriations measures that Congress will not have time to pass this year (see **WTTL**, June 16, page 1). But Hensarling indicated that he may try to stop that end-run too.

“If Congress decided to send the president a clean continuing resolution and he refused to sign it because it didn’t reauthorize the Ex-Im Bank, and the administration threatened a government shutdown, would you counsel the administration publicly not to do that?” Hensarling, chairman of the House Financial Services Committee, asked Ex-Im President and Chairman Fred Hochberg at the tail end of a nearly seven-hour committee hearing on the bank June 25. Caught off guard, Hochberg replied, “I’m not in a position to make a recommendation on that.”

The hearing culminated a week of bad news for the bank. It started with newly elected House Majority Leader Kevin McCarthy (R-Calif.) telling a Fox News program June 22 that “the Ex-Im Bank is something that the government does not have to be involved in; the private sector can do it.” His statement was followed June 24 by House Speaker John Boehner (R-Ohio) declining to take a stand on the bank. Then on June 25, a front-page *Wall Street Journal* article reported on the suspension or dismissal of four Ex-Im employees who are being investigated for accepting kickbacks and bribes for helping firms get bank support.

The hearing underscored the sharp divide between Democrats who support reauthorization, along with some Republicans, and conservative Republicans who sharply oppose it. Rep. John Campbell (R-Calif.), however, tried to offer a middle course, telling the committee that he had drafted a bill based on the recommendations of a working group of GOP committee members to reauthorize Ex-Im but require extensive reforms to address the objections of critics. One of the Republican members of the working group, however, told **WTTL** privately that he didn’t think the group’s recommendations and alternative legislation would get adopted (see related story page 3).

The bank’s critics, led by Hensarling, focused on weaknesses in arguments that its supporters make for why its aid is essential for U.S. exports. They noted that less than 2% of U.S. exporters use Ex-Im support, with the biggest share going to large firms like Boeing, GE and Caterpillar, while more than 98% find commercial export financing without its help. They also latched onto testimony by Douglas Elmendorf, director of the Congressional Budget Office (CBO), who claimed the way the bank measures risks gives an incorrect projection of whether it is profitable or loses money. While Ex-Im’s current methodology forecasts a \$14 billion profit over the next 10 years, Elmendorf said the use of “fair-value” accounting of risk would produce a \$2 billion loss.

Committee Republicans also focused on testimony of Richard Anderson, CEO of Delta Air Lines, and Captain Lee Moak, president of the Air Line Pilots Association, who have sued Ex-Im to block its financing of wide-body Boeing plane sales to airlines, such as Air India, that compete with U.S. carriers. The pair testified that Ex-Im support for sales to Air India allowed the Indian airline to reduce rates on its U.S.-India route and force Delta out of the market. Hochberg and Steven Wilburn, president of FirmGreen, Inc. and also a member of the bank’s public advisory committee, tried to counter the

criticism. Hochberg noted that even though a small share of U.S. exports need Ex-Im aid, the support accounts for nearly half the exports to some African countries and counterbalances financing offered by Canada, Germany, South Korea and France, as well as increasing subsidized aid offered by China, Brazil, India and Russia.

Support for the bank came mostly from Democrats on the committee. The day before the hearing, Rep. Joe Heck (D-Nev.) introduced a bill (H.R. 4950) to reauthorize the bank with 200 Democratic co-sponsors. During the hearing, Heck said opponents of the bank are “playing with fire” in trying to terminate the bank.

Republicans who support the bank were able to muster only 41 signatures for a letter to Boehner and McCarthy June 23 urging them to bring a reauthorization bill to the floor for a vote before its current charter expires Sept. 30. “We respectfully request that you work with all stakeholders to expedite consideration of Ex-Im reauthorization to ensure job creators in our districts have the certainty they need to compete in the global marketplace,” the letter said.

Proposals to Reform Ex-Im May Be Too Late, Too Much

Draft legislation released June 25 by Rep. John Campbell (R-Calif.) to reform the Export-Import Bank as part of its reauthorization may have come too late to help save the bank and includes proposals that might not be acceptable to some of Ex-Im’s biggest customers. Campbell, who chairs the House Financial Services Committee’s monetary policy and trade subcommittee, released the text of his proposed legislation during the committee’s hearing on Ex-Im reauthorization. He told the committee he was trying to address concerns about the bank by offering a “third option” that falls between terminating it or making no reforms (see story page 1).

The debate over Ex-Im “has become a proxy for a bunch of other things” and “amongst the things for which it has become a proxy is how we operate around here,” he said. “It seems there are only two options that are being discussed; one is the complete elimination of the Ex-Im Bank and the other is the complete reauthorization as it is,” he said. Campbell offered some 20 reform proposals that were the product of a working group of Republican members of his subcommittee.

The temperature of the committee at the hearing suggested that reform of the bank would not be enough to win the votes of some members, who complained that reforms added to the bank’s last reauthorization have not been implemented fully and not solved their basic objection to having the government giving any loan guarantees to business. Even a member of Campbell’s working group told WTTL privately that he didn’t think the proposals would be adopted.

The business community gave a tepid response to Campbell’s proposals probably because some of them would not be acceptable to major exporters that use Ex-Im support. Campbell’s discussion draft “is welcomed activity from members of the House Financial Services Committee,” said Linda Dempsey, National Association of Manufacturers vice president of international economic affairs, in a statement. “While we still need to review the specific reforms in the draft, we very much appreciate the work by Rep.

Campbell and his colleagues and their active interest in moving forward on reauthorizing Ex-Im Bank,” she added.

One of the proposals that is likely to draw objections from Boeing would be a prohibition on financing for wealthy state-owned enterprises. Ex-Im would be barred from “making or guaranteeing loans for companies if it is to a state-owned enterprise of a government with sovereign wealth fund of assets totaling \$100 billion or more and Ex-Im would supply or guarantee more than 30% of the total transaction,” Campbell’s office said.

“The Secretary of the Treasury can issue a waiver on a transaction-by-transaction basis, if the Secretary determines that, on a given transaction, a competing export credit agency is willing to supply financing on terms that hampers a domestic exporter’s ability to compete,” it added.

Among other provisions, the draft reforms would:

- Lower the total cap for Ex-Im’s risk exposure in steps from \$140 billion to \$95 billion over three years:
- Allow the bank to purchase reinsurance policies up to \$25 billion “on all or parts of its portfolio risks, by which it will cede risk to reinsurers under catastrophe excess-of-loss reinsurance contracts for purposes of limiting Ex-Im’s maximum exposure:”
- Establish “portfolio sub-limits on bases including, but not limited to geography, borrower, supplier, financial partners or counterparties, product line, maturity, and industry;”
- Require borrowers in airline transactions to seek “to certify that they have first sought financing in the capital markets through enhanced equipment trust certificates (EETCs);”
- Dedicate \$1 billion of the current fiscal year’s exposure cap to a risk-sharing program under which financial institutions using Ex-Im support would absorb the first 5% of losses and 50% of remaining losses.

Ex-Im Report Shows Continued Growth in Unregulated Financing

Emerging market countries continued to increase their export financing programs in 2013 as members of the Organization for Economic Cooperation and Development (OECD) reduced aid for their exporters, the Export-Import Bank noted in its annual competitiveness report released June 25. Due to this trend, more export financing, particularly from China, Brazil, India and Russia (BRIC), is being provided outside of the restrictions imposed on OECD members, it said.

Non-regulated financing in 2013 “outstripped OECD-governed lending from all member nations combined,” the bank reported. Total OECD-regulated financing in 2013 declined 22% from 2012 to \$98 billion, while unregulated BRIC financing jumped 14.7% to \$125 billion.

“The OECD decline largely reflected the fact that there were no 2013 projects comparable to those approved in 2012, when three of the largest multi-billion dollar ECA projects of all time went forward. Moreover, the U.S. data captured reflects one month

of inactivity due to the October 2013 lapse in appropriations brought about by the shut-down of the U.S. Government,” the report explains. Nonetheless, the activity of BRIC export credit agencies (ECA) continues to grow even as OECD ECA activity declines. “Despite macroeconomic trends that report BRIC economic growth is slowing, BRIC ECA activity appears to be growing at a steady rate,” Ex-Im noted. Its analysis of Chinese activity found its ECA activity continuing to climb, “albeit at a slower pace than in years past.”

The report says Ex-Im financing for large commercial aircraft declined in 2013. “The year 2013 marked a notable and welcome departure from the years since the 2007–2008 global financial crisis when the aircraft industry became plagued with challenging liquidity constraints,” it said.

“Resurgence in the commercial bank market as a traditional source of aircraft financing and new financiers entering the space, coupled with the robust leasing and capital markets participation yielded a much more balanced aircraft finance market in 2013. As a result of this market improvement, the need for ECA aircraft financing has diminished significantly compared to previous years,” it explained. Last year, the bank’s help for commercial aircraft exports declined to \$8.1 billion for 41 authorizations from \$10.9 billion for 51 authorizations in 2012.

The OECD’s 2011 Aircraft Sector Understanding (ASU) was the prevailing rule regime governing ECA-financed aircraft. “The fundamental goal of the 2011 ASU is to level the playing field among ECA-supported aircraft financing,” Ex-Im reported.

Services Talks Look to Boost Ambition During Next Round

Negotiators working on a Trade in Services Agreement (TISA) are now looking toward October to see improvements in market access offers after making little progress in talks the week of June 23 in Geneva. The latest meeting heard complaints that countries are still not offering as much in the TISA talks as they have already provided in their free trade agreements (FTAs), and the European Union (EU) specifically called out the U.S. for not making a complete offer.

As they did during their last meeting, negotiators spent most of their time discussing regulatory texts. The level of ambition will likely become much clearer by the end of the next round of negotiations in October, Angelos Pangratis, the EU’s ambassador to the WTO, told WTTL, referring to the quality of offers and texts on specific sectors.

While trade officials aren’t predicting when the talks will be completed, they say a deal isn’t likely to be reached in October, which pushes the goal for an agreement into 2015. Not much further ambition was seen during the week of June 23, one trade official said.

Two countries have yet to make initial offers, while about half of the participating countries haven’t fully reflected their best FTA standards in their existing offers, officials complain. The number of market access offers remains at 21, which was the same number on the table in April. The EU is expected to post a new offer online in the near future in an effort to address concerns about transparency, a trade official said. The focus of the week-long meeting was not on the offers, but rather on regulatory texts,

including financial services, telecom, e-commerce and localization, domestic regulation and transparency, professional services, transport including maritime, road and air transport, competitive delivery services, and mode 4 (see **WTTL**, June 23, page 8).

One issue not discussed at the meeting was the possible participation of newcomers to negotiations. The U.S. is not yet ready to consider whether Uruguay should be able to join the talks and it also opposes China's participation, sources said. China's participation would put "significant pressure" on India and others to join the agreement, another trade official said. That would basically mean that it would de facto be multilateralized, he added.

Oil Industry Upset by Opaque BIS Ruling on Crude Oil Definition

Oil and gas industry firms reportedly are upset with the Bureau of Industry and Security (BIS) for issuing a commodity classification determination interpreting the ban on crude oil exports and not publishing a change in the regulations or a public advisory opinion. As first reported by the Wall Street Journal, the agency gave its advice to Pioneer Natural Resources and Enterprise Product Partners earlier this year, allowing crude oil that has been processed through a distillation tower to be exported without a license.

A Commerce spokesman claims the decision reflects no change in its policy, but industry sources contend it is a change. Nonetheless, sources say BIS is considering the publication of guidance on its policy.

Oil industry sources complain that what they see as a change in policy was issued to just two companies and not in a public guidance. "Everyone was shocked by the news," one source told **WTTL**. "It sounded like a new interpretation to the oil and gas guys," the source added. "Because there was not a change in the regulation, other firms are getting smacked," the source asserted. Another source complained the decision only applies to Texas oil and not Bakken oil from North Dakota.

According to an email to **WTTL** from Irving, Texas-based Pioneer, the Export Administration Regulations (EAR) ban on crude oil exports does not apply to hydrocarbons that have been processed through a distillation unit. "The stabilization process at Pioneer's Eagle Ford Shale central gathering facilities involves a distillation unit that lowers vapor pressure and removes volatile lighter hydrocarbons," the company explained.

"Earlier this year, following discussions with BIS, Pioneer filed a submission under BIS's standard commodity classification process. BIS recently confirmed our interpretation that the distillation process by which our Eagle Ford Shale condensate is stabilized is sufficient to qualify the resulting hydrocarbon stream as a processed petroleum product eligible for export without a license," the email stated.

"There has been no change in policy on crude oil exports," claimed a statement by Commerce spokesman Jim Hock. "Existing statutes provide both specific restrictions and allowances regarding crude oil exports, which are administered and enforced by the Department of Commerce's Bureau of Industry and Security," he said.

"Consistent with the regulatory definition, crude oil that has been processed through a distillation tower which results in the crude becoming a petroleum product is no longer

defined as crude oil. Petroleum product can be exported without a license, except in very limited circumstances,” he added.

Crude oil and related petroleum products are controlled on the Commerce Control List (CCL) under Export Control Classification Numbers (ECCN) 1C980, 1C981, 1C982 and 1C983. The definitions of items falling in these ECCNs are included in Supplement 1 to EAR Part 754. The regulation considers “lease condensate” to fall under the crude oil definition.

More than half of the licenses BIS issues each year are for oil products, and in 2012, it reported that those licenses were valued at \$113.6 billion. In 2013, total U.S. petroleum exports, including licensed and unlicensed products, reached \$137 billion, Census reported. While there is a general ban on crude oil exports, they are allowed for exports to Canada, for oil transiting the U.S. and for certain oil from California and Alaska.

Sen. Lisa Murkowski (R-Alaska), who has been pressing for a lifting of restrictions on crude oil and gas exports, applauded the BIS ruling. “Commerce’s decision to allow companies to process condensate and export the resulting products is a reasonable first step that reflects the new reality of our energy landscape. The rules remain outdated, nonetheless, and should be modernized. I continue to urge the administration to fully lift the ban on crude oil and condensate exports,” she said in a statement.

A paper prepared by Murkowski’s staff argued that Commerce retains the authority to allow condensate exports by modernizing its regulations. It noted several changes the department has made to its regulations over the years without congressional action to either allow certain crude oil exports or redefine which products come under the ban.

“In so doing, the Department has cited inefficiencies, warned of risks to production and supply, encouraged access to international markets, and described anomalies that require special action. The ban on condensate exports, based on a definition of crude oil inserted into the regulations nearly 30 years ago, is just such a case where the Commerce Department can act on its own to resolve a challenge unforeseen by regulators and legislators alike,” the paper contended.

Wyden Puts Focus on Trade Law Enforcement

Senate Finance Committee Chairman Ron Wyden (D-Ore.) used a June 25 hearing to highlight industry and union concerns about the enforcement of U.S. trade remedy laws and agreements, but wouldn’t say whether he is ready to press for any legislation to change the trade law to address those complaints. “I’m not prepared to take a position on that kind of thing today,” he told reporters after the hearing. “I don’t front-run my colleagues on issues that are this important,” he said.

During the hearing, Wyden acknowledged complaints about the enforcement of current laws and agreements and questions about why the U.S. is negotiating new deal when old ones aren’t being enforced. These complaints are among the objections that have been raised by critics of ongoing negotiations on trade accords with the Pacific and Europe. “It wasn’t coincidence choosing enforcement today as the first issue after [U.S. Trade Representative] Mike Froman came and talked to us,” Wyden said. He noted that he is often asked why the U.S. is talking about new agreements when it isn’t enforcing laws

already on the books. “My judgment was when we work together in a bipartisan way to enforce what is on the books, we build credibility for future trade challenges,” he said.

Witnesses at the hearing raised concerns about biotech approvals in China and the European Union (EU), food safety rules in the EU, pharmaceutical data protections under the Trans-Pacific Partnership (TPP), currency manipulation, and a recent Commerce decision on oil country tubular goods (OCTG) from Korea.

On OCTG, United Steelworkers President Leo Gerard said Commerce’s decision to compare very low-margin construction tubing to these goods was like “comparing an old used car against a spaceship. They’re both vehicles, but they’re both dramatically different.” In May, committee members Sherrod Brown (D-Ohio) and Rob Portman (R-Ohio), along with 55 other Democratic and Republican senators, wrote to Commerce Secretary Penny Pritzker urging her to reconsider the decision (see **WTTL**, May 19, page 9).

In addition to calling for 12 years of drug data exclusivity in a TPP agreement, Bart Peterson, Eli Lilly’s senior VP for corporate affairs and communications, complained about Canada’s use of the “heightened utility standard” in granting pharmaceutical patents.

“Canada is the only country in the world using this heightened utility standard, which is in violation of their trade obligations under both NAFTA and TRIPS,” Peterson told the hearing. Since 2005, Canadian courts have struck down 20 such patents, including three Lilly patents, for lack of utility or usefulness, he noted. “Domestic generic companies have then been allowed to copy these clearly useful drugs,” he said.

*** * * Briefs * * ***

ELECTRONICS: Final rules transferring some military electronics from USML Category XI to CCL are scheduled to be published in Federal Register July 1 (see **WTTL**, June 23, page 1).

WEST COAST PORTS: Importers, retailers, ports and carriers are girding themselves for potential slowdown of cargo handling along West Coast ports as contract between International Longshore and Warehouse Union (ILWU) and Pacific Maritime Association (PMA) ends June 30 with no new agreement as of press time. Without contract, union members may undertake “work-to-rule” tactic that would slow cargo handling (see **WTTL**, Nov. 11, page 4). Study conducted for National Association of Manufacturers and the National Retail Federation (NRF) warns that shutdown of ports could cost U.S. economy \$1.9 billion per day if closure lasted five days and as much as \$2.5 billion per day if it lasted 20 days.

EXPORT ENFORCEMENT: Network Hardware Resale (NHR) in Santa Barbara, Calif., agreed June 25 to pay OFAC civil penalty of \$64,758 to settle charges of reexporting U.S.-origin networking equipment and related accessories to Iran and Sudan in violation of sanctions. Company voluntarily self-disclosed matter. In September 2013, NHR agreed to pay BIS \$262,000 civil penalty to settle 16 charges of reexporting that equipment to Iran, Syria and Sudan through its Amsterdam branch office without required licenses (see **WTTL**, Sept. 23, 2013, page 11).

MORE EXPORT ENFORCEMENT: Janiece Hough of Kempner, Texas, pleaded guilty June 17 in New Haven, Conn., U.S. District Court to one count of exporting two Advanced Combat Optical Gunsights (ACOGs) to customer in Connecticut destined for Germany without State

licenses. Following guilty plea, she was sentenced to six months in prison, followed by three years' supervised release. Hough, who reportedly worked for government contractor at Fort Hood, bought military equipment from military personnel and sold to customers on eBay.

CUBA: Red Bull North America (RBNA) agreed June 27 to pay OFAC \$89,775 to settle seven violations of Cuba sanctions. In June 2009, seven RBNA representatives traveled to Cuba to film documentary without OFAC. RBNA did not voluntarily self-disclose violations.

ENTITY LIST: In Federal Register June 26 BIS added four persons under five entries in China and Hong Kong to Entity List. Poly Technologies Inc., Xinshidai Company (New Era Group), and Panda International Information Technology Company, in China, and HWA Create, located in China and Hong Kong, have attempted to supply items to People's Liberation Army and/or to export items to destinations sanctioned by U.S., BIS said. Agency also removed Masoud Est. for Medical and Scientific Supplies in Jordan from Entity List as result of request for removal.

STAINLESS STEEL PRESSURE PIPE: In "sunset" votes June 24, ITC determined that revoking antidumping and countervailing duty orders on welded stainless steel pressure pipe from China and antidumping duty orders on imports from Malaysia, Thailand and Vietnam would cause renewed injury to U.S. industry. Vote on China was 6-0; other votes were 3-3. ITC also made negative critical circumstances finding with respect to subject imports from Malaysia.

AGOA: President Obama June 26 reinstated Madagascar's eligibility for African Growth and Opportunity Act (AGOA) benefits, effective immediately, and withdrew Swaziland's AGOA eligibility, effective Jan. 1, 2015. USTR statement cited Madagascar's "return to democratic rule, as well as President Rajaonarimampianina's commitment to promote transparency, combat corruption, and begin rebuilding Madagascar's economy" in decision. Country's benefits were removed in 2010 due to military coup. Decision noted Swaziland's "use of security forces and arbitrary arrests to stifle peaceful demonstrations, and the lack of legal recognition for labor and employer federations."

COMMERCE: Former Bank of America-Merrill Lynch exec Stefan Selig was sworn in June 23 as under secretary of Commerce for international trade (see **WTTL**, June 9, page 7).

CIT: Judge Timothy Stanceu will become chief judge of Court of International Trade July 1 for seven-year term, following decision of Chief Judge Gregory Carman to step down and take senior status.

YEMEN: On June 26, Yemen became 160th WTO member, closing the 13-year long negotiating on its accessions terms with other WTO member countries.

INFORMATION TECHNOLOGY AGREEMENT: Talks in Geneva June 26 remained stalled with no new proposal from China to reduce number of products it wants excluded from accord. Members voiced concern about deadlock and some urged talks to restart to restore credibility to trading system. EU official reportedly noted that few difficulties will remain once China shows flexibility. Japan and Taiwan used session to complain about new 10% tariff India has placed on certain still/video cameras that they claim were duty-free before. India claimed there was lack of clarity about which cameras were covered. Next meeting is scheduled for Oct. 31.

PET FILM: In 6-0 sunset vote June 27, ITC determined that revoking countervailing duty order on polyethylene terephthalate (PET) film from India and antidumping duty orders on PET film from India and Taiwan would cause renewed injury to U.S. industry.

INDIA: Sen. Orrin Hatch (R-Utah), ranking member of Senate Finance Committee, put down marker on "continued concern with India's policies on intellectual property rights" in letter to USTR Michael Froman June 25. Immediately following Froman's promised Out of Cycle Review (OCR) of India in fall 2014, Hatch said he wants to be informed of what actions USTR

and government of India have taken. “At a minimum, I would expect such actions to include the development of a written, meaningful and effective action plan with definite timetables for implementation,” he wrote. Letter gives USTR some leverage in talks with India, providing warning that Congress is watching what steps New Delhi takes to improve IPR protections.

LIQUIDATION: Court of Appeals for Federal Circuit (CAFC) June 24 upheld Customs delay in liquidation of entries while agency conducted fraud investigation but gave importer notice of delay. “Only where Customs fails to extend the liquidation period, or fails to notify the importers of an extension as required by statute (as occurred in Ford), may importers seek a declaration that their entries have liquidated by operation of law once the deemed liquidation period has passed,” wrote Judge Evan Wallach for court in *Chemsol v. U.S.* “Where extensions are made with proper notice during ongoing investigations by Customs, however, Section 1581(a) provides jurisdiction for importers who object to the final liquidation, or any interim decisions merged therein, including the decision to extend the liquidation period,” he ruled.

TARGETED DUMPING: CIT Judge Judith Barzilay sustained final results of Commerce’s administrative review of antidumping order on imports of welded carbon steel pipe and tube from Turkey, rejecting importers effort to explain why case should not be treated as targeted dumping. Plaintiff Borusan Mannesmann Boru argued that Commerce violated 19 U.S.C. Section 1677f-1(d)(1)(B) by not considering its explanation for why its sales demonstrated a pattern of targeted dumping. “The statute is clear. Contrary to Borusan’s claim that targeted dumping connotes purposeful behavior, the language of the statute simply instructs Commerce to consider export sales price (or constructed export sales price) in its targeted dumping analysis,” Barzilay wrote (slip op. 14-71). “It does not require Commerce to undertake an investigation of the various reasons why a pattern of targeted dumping exists within a given time period,” she added. “Given that Borusan’s claim is predicated on Commerce going beyond what is required by the statute, there is no need to review Commerce’s factual determination under the substantial evidence framework,” she ruled.

WHITE SAUCE: Despite winning ruling on other portion of its complaint about Customs’ classification of its white sauce, International Customs Products can’t amend its complaint to avoid having to prepay duties to have standing to sue, CIT Chief Judge Gregory Carman ruled June 26 (see **WTTL**, April 21, page 4). “Ultimately, the result here might lead a reasonable mind to question the wisdom of requiring prepayment of all assessments regardless of their size. That is a matter for the democratic process and the legislature. Given that the Supreme Court has spoken on the Constitutionality of the prepayment requirement in Customs disputes, this Court must deny Plaintiff’s motion for reconsideration of its ruling on the Constitutional claims,” Carman rule (slip op. 14-74).

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