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Lawsuit Hits DDTC's Proposed "Public Domain" Definition

An ex-Directorate of Defense Trade Controls (DDTC) official has sued State, claiming the proposed clarification of the definition of "public domain" is unconstitutional. The Oct. 28 lawsuit claims the proposed definition is a "prior restraint" of free speech.

After getting over 10,000 comments from gun owners on the June 3 proposal and complaints from Congress, DDTC has decided to drop the change from the final rule moving toward publication (see **WTTL**, Nov. 2, page 6). The suit is one of several by gun advocates who see enforcement of the International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act (AECA) as a backdoor way to impose domestic gun controls.

The suit in Manhattan U.S. District Court was filed by Stagg P.C., the law firm of Christopher B. Stagg, a New York lawyer who claims the proposed rule will prevent him from speaking in public about defense export rules and advising clients. Stagg served as a senior policy advisor at DDTC from 2010 to 2013. In this role, he was deputy lead on export control reform and handled commodity jurisdiction determinations, his law firm website notes. He "also authored the U.S. policy on designating and determining items on the U.S. Munitions List within section 120.3 of the ITAR," it says.

Stagg argues the proposed language "means that a person requires a license or other approval in order to speak at a public conference in the United States or to publish a book or journal article in the United States if it contains information described in 22 C.F.R. § 120.10(a)(1). This includes academic, scholarly, and scientific speech and published works." He contends "DDTC's public statement in the *Federal Register* also imposes a prior restraint on fundamental research by the academic community because fundamental research is defined within the public domain definition." In addition, DDTC provides no guidance on how to get a license to put information into the public domain.

ITA Countries Agree on Quicker Tariff Cuts

In a key step toward expanding the Information Technology Agreement (ITA), all countries participating in the talks the week of Nov. 9 in Geneva have agreed to limit the phase-out of tariffs to seven years or less. No country will opt for a 10-year phase-out period and several nations increased the number of tariff lines they will take to zero

upon implementation of the accord in July 2016. China reportedly has chosen to load up many of its tariff cuts toward the end of seven years, but the Philippines agreed to drop 90% of the 201 tariffs covered by the ITA to zero upon the deal's entry into force and Malaysia will go to zero on 88% of those tariffs then. Other emerging market countries have also agreed to this early tariff-cutting plan. Other countries agreed to speed up cuts to five years from seven.

Negotiators still hope they can convince Beijing to accelerate its tariff cuts by Dec. 4, the deadline for countries to confirm each other's implementation plans and tariff lines. Sources say the conclusion of the Trans-Pacific Partnership (TPP) agreement will put pressure on China to be more competitive with its Asian neighbors who will be in a better position to attract foreign investment with zero tariffs on ITA products. For now, China promises only to take 36% of its ITA tariffs to zero upon implementation of the pact.

Industry sources said they were pleased with the progress made at the Nov. 9-12 talks, although they still want to see the final implementation plans from participating countries. Because the ITA identifies products at the six-digit level of the Harmonized Tariff Schedule, many countries will have to translate the actual changes at the eight- and ten-digit level on their individual schedules.

The goal is to have all pieces of the deal completed by the World Trade Organization's Dec. 15-18 ministerial in Nairobi, Kenya. The accord will provide the WTO with one of the few major accomplishments that it will be able to announce at the ministerial. The ITA has 53 participants representing 82 WTO members and customs territories. If the deal, as expected, ends up covering 96% of world trade in the covered ITA products, its tariff cuts will be applied on an most-favored-nation (MFN) basis to all WTO members, even those that have not participated in the talks.

CAFC Rejects ITC Jurisdiction over Digital Imports

A divided Court of Appeals for the Federal Circuit (CAFC) reversed Nov. 10 the International Trade Commission's (ITC) claim to control imports of digital technology under the unfair trade rules of Tariff Act Section 337. With one of the three-judge panel dissenting and a second concurring in part, the CAFC said the statute gives the commission jurisdiction only over imported "articles" and does not mention electronic transmission of digital data.

ClearCorrect Operating, LLC v. ITC involved claims that technology patented by Align Technology, Inc., was being infringed by the transmission of teeth measurements to Pakistan where they were converted to specifications that were sent back to the U.S. for production of corrective devices. The case was the second challenging ITC authority over digital imports and the second heard by the same CAFC judges (see **WTTL**, Aug. 17, page 3).

In the opinion for the majority, Appellate Judge Sharon Prost applied the *Chevron* rule to determine that Congress had not given the ITC discretion to expand its jurisdiction to digital products. "The Commission's jurisdiction to remedy unfair international trade practices is limited to 'unfair acts' involving the importation of 'articles.' 19 U.S.C. § 1337(a)," Prost wrote in her opinion. "Thus, when there is no importation of 'articles'

there can be no unfair act, and there is nothing for the Commission to remedy,” she added. “Here, the only purported ‘article’ found to have been imported was digital data that was transferred electronically, i.e., not digital data on a physical medium such as a compact disk or thumb drive,” Prost stated. “The clarity of the statutory context obviates the need to turn to the legislative history. The Tariff Act’s legislative history further confirms the conclusion that ‘articles’ is limited to ‘material things,’ however, and thus not inclusive of electronic transmissions of digital data,” she wrote.

In her concurring opinion, Appellate Judge Kathleen O’Malley said she would not have based the ruling on a Chevron analysis. “The majority’s analysis under the Chevron framework correctly reveals that the Commission’s interpretation of 19 U.S.C. § 1337 (Section 337) is not entitled to deference. I write separately, however, because I believe we need not resort to Chevron steps one and two to resolve this matter,” she wrote.

O’Malley noted that the Internet has been called the most important innovation in communications in a generation. “If Congress intended for the Commission to regulate one of the most important aspects of modern day life, Congress surely would have said so expressly,” she argued.

In a dissenting opinion, CAFC Chief Judge Pauline Newman said today’s culture and economy are founded on advances in science and technology. “The International Trade Commission correctly applied the Tariff Act and precedent to encompass today’s forms of infringing technology. The new technologies of the Information Age focus on computer-implemented methods and systems, whose applications of digital science provide benefits and conveniences not imagined in 1922 and 1930,” she wrote.

“Throughout this evolution, Section 337 served its statutory purpose of facilitating remedy against unfair competition, by providing for exclusion of imports that infringe United States intellectual property rights. Until today,” Newman contended. “The court today removes Section 337 protection from importations that are conducted by electronic transmission,” she added. “This holding is contrary to Section 337, and conflicts with rulings of the Supreme Court, the Federal Circuit, the Court of Customs and Patent Appeals, the Court of International Trade, the International Trade Commission, the Customs authorities, and the Department of Labor,” Newman wrote.

“If it is determined that the ITC cannot enforce the previously determined finding of infringement of Align’s patents then we will pursue relief in a venue that can. The panel’s opinion and the ITC jurisdictional issue have no bearing on Align’s stayed litigation against ClearCorrect in Texas, which Align will continue to pursue. We are conferring with the Commission regarding appropriate next steps, including the possibility of seeking en banc review of the ITC jurisdictional issue by the entire Federal Circuit,” said Roger George, Align’s vice president and general counsel, in a statement.

Some Farm Groups Give Strong Endorsement to TPP

Farm-state lawmakers can expect a strong push from some sectors of their agriculture communities to support the Trans-Pacific Partnership (TPP). Six associations representing field crops and livestock farmers and ranchers endorsed the pact Nov. 11, promising to lobby Congress to win support for the accord. Most of the groups are

heavily concentrated in states whose congressional delegations have traditionally backed trade deals and will be the core of votes needed to approve the accord. At a joint press conference, representatives of soybean, corn, wheat and grains farmers and pork producers and cattlemen said they support TPP for both offensive and defensive reasons. While this segment of agriculture is giving its backing to the pact, lawmakers can expect a different stand from groups representing sugar, dairy and tobacco.

In addition to opening Asian markets by reducing tariffs, the accord will protect U.S. farm exporters in markets such as Japan from competition from other countries, particularly Australia, which had already reached a trade agreement with Japan. "Japan represents the largest market for U.S. beef but this year we saw sales decline 11%," said Bob McCan, immediate past president of the National Cattlemen's Beef Association.

"This decline can be tied directly to the signing of the economic partnership agreement between Australia and Japan. This agreement gave beef from Australia better access to the Japanese market, reducing the market share for the United States," McCan said. He called the TPP "a significant victory for the cattle industry," noting that current Japanese tariffs on beef can range up to 38.5%, but will decline to 27.5% upon entry into force of the accord and then drop to 9% over the next 15 years.

Brett Blankenship, president, National Association of Wheat Growers, acknowledged that "no deal is perfect," but wheat growers, who export about 50% of their crops annually, will benefit from TPP. He also noted the offensive and defensive nature of the deal, especially in Japan. "That was a creative approach the trade representative took," Blankenship said. "Quotas are increased. The potential for added sales and preserving market share was the key there," he said. "So for wheat, the TPP is an all-in. It's a no-brainer. We will be enthusiastic in supporting it and helping these other gentlemen whip the votes we need to pass it," he said.

National Corn Growers Association (NCGA) "members will be going to Capitol Hill in the next few months, asking Congress to vote in favor of the Trans-Pacific Partnership," said NCGA President Chip Bowling. Alan Tiemann, chairman of the U.S. Grains Council, noted the increase in grain exports to Central America, Peru and Colombia since trade deals were struck with those countries. He said TPP will help his members because of better rules on the approval of biotech products and adherence to science-based sanitary and phyto-sanitary rules.

Labor Groups Turn up Heat on Congress over TPP

With the final TPP text in hand, labor and environment groups have launched a campaign to turn both Congress and the public against the deal. In a conference call Nov. 10, the groups said they will specifically target those Democrats that voted for fast-track trade promotion authority (TPA) in June.

When the implementation bill comes to the Hill, "there's no member of Congress that should feel safe voting for this," said Leo W. Gerard, international president of the United Steelworkers (USW). "We're not making threats, we're saying we're going to come and tell the constituents in their districts the truth," he said. "We're going to do a massive education job of both Republicans and Democrats," he said. "There is a handful

of Democrats that voted for [TPA]; we have to go and challenge them based on the promises they made of how they would vote once they saw the agreement,” Gerard added. In the final House vote June 12, TPA garnered 28 Democratic votes along with 191 Republicans to pass it by a 219-to-211 margin. While the final timing for the congressional debate and vote on approving TPP is still up in the air, Gerard’s threat has prompted some trade sources to suggest the vote will be delayed until after primary season ends in June to avoid Democrats being targeted from the left.

The final TPP text released Nov. 5 “is the most powerful weapon that we have now, rather than members of Congress having to rely on characterizations of what the text means,” said Celeste Drake, trade policy specialist at the AFL-CIO (see **WTTL**, Nov. 9, page 1). “As members become more familiar with the text, some who believed the hype may not be so willing to do so. Those votes are really going to be up for grabs,” she said.

“Our members absolutely believe that if they’re going to lose their jobs, the people who vote for this should lose their jobs also,” said Chris Shelton, president of the Communication Workers of America. “When people voted for TPA, a lot of them said they’d vote for TPA but they’d have to see the text of the actual deal before they could vote for TPP. Well, we’re going to hold them to that,” he said.

On the environmental side, Michael Brune, executive director of the Sierra Club, said his group has done a full analysis of the environment chapter, which has been hailed by U.S. trade officials as the strongest in history. “We have concluded that many provisions are toothless; they are weak, they don’t do what they profess to do,” he said. “Poachers won’t be forced to stop their dangerous practices, loggers won’t be forced to halt their illegal operation and criminals won’t be held accountable, because of weak suggestions in the rule, rather than mandates,” Brune added.

“Although it’s true that the range of conservation issues that are mentioned might be wide, the obligations, meaning what countries are actually required to do, are shallow. They’re vague obligations that are combined with weak enforcement, which will allow countries to continue their business-as-usual practices,” Brune said.

TPP Currency Deal Gets Key Support

The side deal declaration reached by TPP members to avoid currency manipulation got a key endorsement Nov. 6 from economists who have been at the forefront of critics of Chinese and Japanese market intervention. They said the declaration meets the goals of fast-track trade promotion authority (TPA). “The provisions of that declaration, released with the TPP text on November 5 — especially taken together with new legislation pending in the Congress — should strengthen the US Treasury Department’s ability to deter currency manipulation by our trading partners, including future members of the TPP,” wrote C. Fred Bergsten, director emeritus of the Peterson Institute for International Economics (PIIE), and PIIE Senior Fellow Jeffrey Schott in a blog.

“While not legally enforceable, the commitments in the declaration are far-reaching in ruling out competitive devaluations and persistent exchange rate misalignments. In addition, the requirements for more transparency and public disclosure of data on exchange rate policies, including currency intervention, should make the ‘naming and

shaming' of manipulators more effective," they wrote. The pair noted that the declaration doesn't go as far as some proposals in Congress to make currency manipulation subject to trade remedies and retaliation. Nonetheless, they recognize the Obama administration's argument that such a deal was not obtainable.

"In sum, the Joint Declaration substantially meets the negotiating objectives set out in the TPA. Along with the Bennet-Hatch-Carper amendment to the Customs and Enforcement Act, the Treasury should now become more effective in deterring TPP countries from embarking on new episodes of currency manipulation. Added together, these features of the TPP enhance the trade deal's benefits for the United States and the stability of the world economy," Bergsten and Schott wrote.

A blog by another PIIE senior fellow, Joseph E. Gagnon, will undercut the negative economic impact claims of TPP critics who have cited past PIIE estimates for the number of U.S. jobs lost due to currency manipulation. Gagnon now argues that there is no loss of jobs because countries accused of manipulation have stopped the practice and the U.S. shows no lost jobs on balance. "As the economy approaches full employment, the impact on jobs declines. When the U.S. economy is at or above full employment, currency manipulation has no net effect on jobs," Gagnon wrote.

"In 2012, C. Fred Bergsten and I estimated that U.S. employment would have been higher by between 1 million and 5 million jobs if currency manipulation were eliminated. This estimate has been widely cited recently in the renewed debate over trade. But the effect of currency manipulation on U.S. employment is much smaller today for two reasons," he said.

"First, many former manipulators appear to have stopped buying foreign currency assets recently, and some are even selling them (e.g., China). Second, the U.S. economy is getting close to full employment and the Federal Reserve is getting close to raising the federal funds rate," he pointed out. "Currency manipulation can be a job-stealer when times are toughest, and it distorts the U.S. and world economies even when times are good. It is important to protect against a return of currency manipulation. But we should not exaggerate its impact on the US economy right now," Gagnon wrote.

Trade Officials Ramp up PR Campaign on Pacific Pact

A week after releasing the final TPP text, the Obama administration is turning on the public relations campaign to win approval of the deal. Commerce and the U.S. Trade Representative's (USTR) office released a series of reports Nov. 12 that will highlight the benefits of TPP in all 50 states and key market sectors.

In a joint conference call that day with reporters, Commerce Secretary Penny Pritzker and USTR Michael Froman repeated the much-heralded talking points about a level playing field, the number of consumers that live outside the U.S. and the number of higher-paying jobs supported by exports. They hope the reports will prove their points.

"Our negotiators did a great job for the American people, and with these reports, our businesses and workers will understand the significant opportunities for economic growth

and job creation that will result from the TPP,” Pritzker said. “Our job at the Department of Commerce is to bring TPP to life for your businesses and to be your long-term partner in its day-to-day execution,” she added.

Already released are reports on each state and specific benefits in the chemical, consumer goods, energy and services sectors, Pritzker said. In the coming weeks, the department will release similar reports for sectors such as autos, healthcare and many others, she added.

“TPP will expand market access and investment opportunities in a number of services sectors, including entertainment, telecommunications, software licensing, Internet industry, retailing, and logistics and express delivery,” Commerce notes in the services report. It will facilitate Internet-based trade, bar discrimination against digital provision of services and prevent any imposition of customs duties on electronic transmissions, it says.

In many of the reports, Commerce highlights the ability to compete against China, which is not party to the TPP deal. “Under TPP, Vietnam will eliminate all its tariffs on U.S. consumer appliances within four years; Malaysia will eliminate most of its tariffs on consumer appliances immediately with the remaining tariffs eventually phased out. The elimination of the tariffs will provide U.S. producers the ability to compete more effectively with China for access to the growing middle class in Vietnam and Malaysia,” the consumer goods report notes.

DDTC Adjusting to New Licensing Numbers

State’s Directorate of Defense Trade Controls (DDTC) is adjusting to the new normal of reduced licensing. The total number of license applications expected for 2015 is 49,000, DDTC Licensing Chief Tony Dearth told the Bureau of Industry and Security (BIS) Update conference Nov. 3. This compares to the 2013 number of 78,387, and 2014’s total of 59,527 (see **WTTL**, June 15, page 7).

In categories VIII (aircraft) and XIX (gas turbine engines), the first categories from which items were transferred to Commerce Control List (CCL) jurisdiction, the monthly caseload has dropped over 65% to 527 applications since October 2013. Ground vehicles and items in categories VI, VII, XIII and XX have seen a 40.4% decline to an average monthly caseload of 288, based on the latest data through September 2015.

Category XV (satellites) has had the biggest change in caseload, dropping almost 80% to an average of just 73 per month since transfers became effective in July 2014. In all the categories transferred so far, officials initially saw a spike in the percentage of licenses returned without action (RWA), but that number has come down dramatically, according to the most recent data. In general, 45% of approvals come with conditions, Dearth said.

Dearth acknowledged that with export reforms, the DDTC licensing staff has gotten smaller but overall the agency is at the right size with about 140 employees. “I have not done a very good job of taking care of my people. I have lost 12,” he noted, saying those personnel have been moved to the DDTC policy and compliance offices, which have seen their tasks grow following export reforms. From February to mid-April of this year, the State Office of Inspector General (IG) conducted an inspection of DDTC and

agreed that its current size is appropriate. Dearth said it was unlikely that DDTC would get merged into other State offices as its licensing load declines. “We’re a bit of a regulatory orphan in a policy mechanism in the larger Department of State,” he said.

In April, DDTC’s Office of Defense Trade Controls Licensing (DTCL) reorganized from five subject-area licensing divisions to four to accommodate the reduced licensing load from export control reform. Under the reforms, “we have shifted from licensing everything to a more nuanced licensing structure that requires added personnel in policy and compliance,” he said. Dearth admitted DDTC won’t be getting bigger. “We’re doing more with less and in licensing less with less,” he said.

Suit Claims ITAR Registration Fees Are Unconstitutional

A Colorado maker of gun accessories sued the State Department Oct. 20, challenging the constitutionality of provisions in the Arms Export Control Act (AECA) that impose fees on manufacturers of defense items even when they don’t export their products. Leo Combat, LLC, which was founded in 2013, asked the Denver U.S. District Court to declare the AECA unconstitutional because of its “excessive delegation of legislative power” and its application to purely domestic commerce and its imposition of a fee that “bears no rational relationship to the government’s interest in protection of national security and causes an undue burden on the exercise of Second Amendment rights.”

In addition, Leo Combat asked the court to enjoin State from taking enforcement action against it as long as it doesn’t export defense articles. The suit doesn’t contest the department’s authority to implement the AECA or designate “defense articles” on the U.S. Munitions List (USML). Nonetheless, none of the sections of the AECA “discuss any need to control the purely domestic commerce in arms or ‘defense articles’,” it asserts.

Leo Combat also complained that it can’t get any of its calls to State’s Directorate of Defense Trade Controls (DDTC) returned. It said it submitted a Commodity Jurisdiction request to the DDTC April 6, 2015, and on May 15 received formal notice that its product is a defense article. “Defendant Department of State has subsequently sent two threatening letters to Plaintiff demanding that Plaintiff register and offering a phone number for a person within the Department of State who can allegedly assist,” the suit noted. “Plaintiff has placed 12 phone calls to the number provided and has left numerous messages, but has never received a call back or other communication from Defendant Department of State other than the attached letters,” it complained.

EU Will Resume TTIP Talks on Investment Protection

After taking an 18-month break in talks with the U.S. on investor-state dispute settlement (ISDS) issues, the European Commission, the executive branch of the European Union (EU), finalized a proposal Nov. 12 to create an investment court system to address such disagreements to replace the current use of arbitration panels. After sharing the proposal with the U.S., the EU says it can now resume negotiations on these issues in the Transatlantic Trade and Investment Partnership (TTIP). Originally proposed in September, the new system drew a negative reaction from the U.S. Chamber of Commerce

(see **WTTL**, Sept. 21, page 1). Regardless, the new system would replace the existing ISDS mechanism being discussed in TTIP talks and in all ongoing and future EU trade and investment negotiations, the EU said.

“Today marks the end of a long internal process in the EU to develop a modern approach on investment protection and dispute resolution for TTIP and beyond,” said EU Trade Commissioner Cecilia Malmström in a statement. “This approach will allow the EU to take a global role on the path of reform, to create an international court based on public trust,” she added.

The proposal “has a simple objective: to effectively safeguard the EU and its Member States’ right to regulate, while providing effective protection to European companies against unfair treatment, discrimination or other basic obligations. This will be ensured through a new fully transparent system for resolving investment disputes, with publicly appointed judges, the highest ethical standards and the possibility to have errors corrected through an appeal instance,” a EU fact sheet noted.

One of the changes made to the September proposal is an additional improvement for small and medium-sized enterprises (SMEs). “Under the EU text proposal, SMEs can always rely on an operational investment dispute resolution system, even where there is no other available alternative,” the fact sheet said.

*** * * Briefs * * ***

COMMERCE: New biography of late-Commerce Secretary Malcolm Baldrige, “Mac Baldrige: The Cowboy in Ronald Reagan’s Cabinet,” was published Nov. 3. It is written by Baldrige’s press secretary and former White House Deputy Press Secretary B.J. Cooper and Cooper’s wife, Chris Black, former Boston Globe and CNN reporter, with forward by President George H.W. Bush. Published by Lyons Press, book is available on Amazon.

TRADE PEOPLE: Professor John H. Jackson, 83, leading scholar on GATT, WTO and international trade law, died Nov. 7. He had taught at University of Michigan and Georgetown University Law Center and was director of Georgetown’s Institute of International Economic Law. Jackson had served as general counsel for then-Office of Special Trade Representative, 1973-1974. “He was one of the great scholars of international trade law, and the multilateral trading system was greatly improved by his insight and expertise. He will be sorely missed by the whole trade community,” said WTO Director-General Roberto Azevedo in statement.

EXPORT ENFORCEMENT: UK citizen Ahmad Feras Diri pleaded not guilty Nov. 13 in Scranton, Pa., U.S. District Court to conspiracy to export laboratory equipment, portable gas scanner, flowmeters for measuring gas streams and other items used to detect chemical warfare agents, to Syria without licenses. He was extradited from UK day before. Harold Rinko of Hallstead, Pa., pleaded guilty in September 2014 in same court to related charges (see **WTTL**, Sept. 22, 2014, page 7). Indictment against Rinko, Diri, and Diri’s brother, Syrian citizen Moawea Deri, along with brothers’ company, d-Deri Contracting & Trading, was unsealed in April 2014. Diri was arrested in London in March 2013, while Deri remains at large.

SATELLITES: Court of Appeals for Federal Circuit affirmed Nov. 12 ITC ruling that DeLorme Publishing Company, Inc. and DeLorme InReach LLC violated consent agreement by importing certain satellite two-way communications devices even though another federal court ruled subject patents were invalid. “In this case, the Consent Order applied to DeLorme at the time it committed the acts found to violate the order,” wrote Appellate Judge Kimberly Moore for three-judge panel. In partial dissent, Appellate Judge Richard Taranto agreed but said the “Commission has not had an opportunity to consider the effect of the invalidation. I would

remand this matter to the Commission for it to consider the effect of the invalidation on enforcement of the civil penalty for pre-invalidated violations of the Consent Order.” he wrote in *DeLorme Publishing Company, Inc. v. ITC*.

STEEL PLATE: In 6-0 “sunset” vote Nov. 9, ITC said revoking antidumping duty order on cut-to-length carbon steel plate from China would renew injury to U.S. industry. At same time, ITC found terminating suspended investigations on product from Russia and Ukraine also would renew injury to U.S. industry. Vote on Russia was 6-0, while Ukraine vote was 4-2, with Chairman Meredith Broadbent and Commissioner F. Scott Kieff voting no.

EX-IM FRAUD: Kermit W. Highfield, 43, of Louisville, Ky., owner of Preston Farms Popcorn, LLC, pleaded guilty Nov. 2 in Louisville U.S. District court to bank fraud. He admitted to diverting funds from loan payments to use for Preston operating expenses, then defaulting on loan insured by Ex-Im. Sentencing is scheduled for Feb. 1, 2016.

ENTITY LIST: BIS in Federal Register Nov. 12 added seven persons and companies under ten entries in China and Hong Kong to Entity List. Listed individual (Jack) Wang Wei “has used these companies to supply U.S.-origin items to an Iranian party associated with the Iranian defense industry and to an Iranian party whose customers include companies” designated by Treasury as Specially Designated Nationals, BIS said. Agency also removed two entities -- Weihai New Era Chemical Industrial Company Limited in China; and Able City Development Limited in Hong Kong -- from list. At same time, BIS added additional addresses and aliases for ten existing entries in China and Hong Kong.

UKRAINE: WTO’s Committee on Government Procurement (GPA) agreed Nov. 11 to invite Kiev to join GPA based on draft decision circulated to parties in October. Ukraine will formally accede to GPA 30 days after it has deposited its instrument of accession with WTO.

AFGHANISTAN: WTO working party agreed Nov. 11 by consensus, ad referendum, on terms of Afghanistan’s accession to WTO membership. Accession Package will be submitted to ministers for formal decision at WTO’s Tenth Ministerial Conference in Nairobi Dec. 15-18.

STEEL PRESSURE PIPE: In 6-0 preliminary votes Nov. 13, ITC found U.S. industry may be injured by allegedly dumped and subsidized welded stainless steel pressure pipe from India.

EAR: In Federal Register Nov. 16, BIS adds x-ray blocking and scattering (XBS) epoxy system to its “holding” Export Control Classification Number (ECCN) 0C521. Transfer is effective immediately and will be valid for year or until “the item is re-classified under a different ECCN, under an EAR99 designation, or the 0Y521 classification is extended,” BIS explains. Rule covers “epoxy system designed to obfuscate critical technology components against X-ray and terahertz microscopy imaging attempts,” BIS says. In same rule, BIS also removes technology and software related to aircraft wing folding systems from holding ECCNs, which were added in 2014 (see **WTTL**, July 7, 2014, page 5). References to these items are now obsolete because wing fold system “software” is now controlled by ECCN 9D001, and “technology” is controlled by ECCN 9E003.j, BIS explained.

TARGETED DUMPING: CIT Senior Judge Gregory Carman upheld remand determination that Commerce issued under protest in targeted dumping case against certain steel nails from United Arab Emirates (slip op. 15-122) Carman had initially remanded case because department had failed to apply regulation that it had improperly withdrawn without notice and comment. Carman noted that department used “the Nails test” to determine targeted dumping. “Commerce’s interpretation of 19 U.S.C. § 1677f-1(d)(1)(B) is entitled to Chevron deference and is in accordance with law,” he ruled. “The Court also determines that substantial evidence supports Commerce’s application of the statute here,” he wrote.