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DDTC Needs to Better Control License Process

While State's Directorate of Defense Trade Controls (DDTC) generally ticks all the boxes when reviewing export license applications, the agency needs to do a better job of comparing notes with other departments and vetting end-users, according to an audit released by the department's Inspector General (OIG).

Based on a DDTC request, the audit reviewed 21 license application reviews after a licensing officer improperly issued a license to an American manufacturer of semi-automatic weapon systems. "The stated purpose of the license was to supply the Philippines Bureau of Customs with rifles, ammunition, and cleaning and maintenance kits for 'military use,'" the OIG noted.

The OIG audit released Feb. 7 found that DDTC "did not implement sufficient internal controls to ensure that permanent export license applications included all required information as set forth in its standard operating procedures (SOP)," it said. OIG also learned of instances in which licensing officers did not engage other bureaus in decisions.

Finally, the office found that "DDTC did not implement sufficient internal controls to ensure that the end-use and end-user of exports were appropriately vetted," it said. OIG observed that one Blue Lantern check was not conducted in accordance with guidance."

OIG made 11 recommendations, with which State concurred. Recommendations include: develop and implement a process to annually review and update its SOP, provide uniform guidance to licensing officers, establish a central repository for licensing officers' signature authority, and develop and implement a "second signature" process for all licenses.

Cognizant Settles SEC Bribery Charges

Information technology provider Cognizant Technology Solutions in Teaneck, N.J., agreed Feb. 14 to pay the Securities and Exchange Commission (SEC) \$25 million to settle

charges of violating the Foreign Corrupt Practices Act (FCPA) by facilitating the payment of millions of dollars in bribes to Indian government officials. At the same time, two of the company's former executives were charged for their roles in one of those schemes.

Between 2014 and 2016, the firm "authorized contractors to pay on the company's behalf and reimbursed them for a total of approximately \$3.6 million in bribes to Indian government officials to obtain government construction-related permits and operating licenses in connection with the construction and operation of commercial office buildings," the SEC order noted. While Cognizant neither admitted nor denied the allegations, the settlement included \$19 million in disgorgement and prejudgment interest and a \$6 million civil penalty.

For example, in 2014 Cognizant "authorized a contractor to pay a \$2 million bribe to a senior government official for the issuance of a planning permit for a project in Chennai, India," the SEC said. "In 2013 and 2014, Cognizant's Indian subsidiary authorized the same third party contractor to pay a bribe of approximately \$770,000 to a government official for an environmental clearance for a project in Pune, India," it added.

The day before, former President Gordon Coburn and former Chief Legal Officer Steven Schwartz were indicted in Newark, N.J., U.S. District Court on charges of violating and conspiring to violate the FCPA. Between January 2014 and January 2016, Coburn, Schwartz and others "engaged in a scheme to bribe one or more government officials in India to secure and obtain a planning permit ...necessary for construction of an office campus in the state of Tamil Nadu that would support approximately 17,000 Cognizant employees and become one of Cognizant's largest facilities in India," the indictment noted.

At the same time, Justice declined to pursue charges under its FCPA Corporate Enforcement Policy. In its declination letter, the department cited the firm's voluntary disclosure, its "full and proactive cooperation," and its agreement to continue to cooperate in the department's ongoing investigations and/or prosecutions. In addition, it cited Cognizant's full remediation, including terminating the employment of those involved, and "the steps that the Company has taken to enhance its compliance program and its internal accounting controls," Justice said.

Industry, Lawmakers Anticipate Section 232 Auto Report

In advance of Commerce's expected release of its Section 232 investigation results, industry groups and lawmakers who oppose potential tariffs on autos and auto parts are putting their feet on the gas pedal and making their voices heard. If the schedule holds, the department should release its report Feb. 17.

Commerce first announced its Section 232 investigation in May (see **WTTL**, May 28, page 1). European trading partners in particular have long said that tariffs on auto and auto parts would be a deal-breaker in any nascent trade negotiations.

“Tariffs are not a long-term solution, and nobody wins in the end. While they may provide short-term protection for domestic industries, they do so at the expense of ordinary consumers and industries increasingly dependent on complex global supply chains. On the whole, this is damaging to the economy,” Sen. Chuck Grassley (R-Iowa) said Feb. 14 on the Senate floor.

“According to the Center for Automotive Research, a 25% tariff on auto imports would also result in the loss of over 700,000 jobs and raise the price of an average car by nearly \$7,000. Dealers would see a decline in annual sales by as many as 2 million vehicles. Consumers would face up to a 10 percent increase in the cost of repairs and replacement parts,” the senator added.

“The recent U.S. tariff increases [on steel and aluminum] have invited tariff retaliation from our trading partners,” he said. “Imposing tariffs on auto imports will inevitably invite more retaliation, and we simply cannot afford this,” Grassley added.

As would be expected, the Alliance of Automobile Manufacturers agreed. “Tariffs are a tax on our customers, and would mean that Americans shopping for a new car would see the prices of many new vehicles increase. Imposing tariffs on imported vehicles and parts would be a mistake, with significant negative consequences for the U.S. auto industry, our employees,” the group wrote on its website.

“American consumers would also see an increase in the prices of many new cars and trucks by thousands of dollars, which would ultimately lead to the loss of hundreds of thousands of U.S. jobs,” it added.

China Talks Continue – Could Tariff Deadline Slip?

With talks ramping up between U.S. and Chinese trade officials, the question has become: is the potential March 1 tariff increase a “drop-dead” deadline? After representatives met in Beijing Feb. 14-15, President Trump hinted that the deadline could slip if negotiators are making progress.

“There is a possibility that I will extend the date. And if I do that, if I see that we’re close to a deal or the deal is going in the right direction, I would do that at the same tariffs that we’re charging now. I would not increase the tariffs,” President Trump said during remarks in the Rose Garden Feb. 15.

Both countries highlighted positive movement after U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin met with Chinese Vice Premier Liu He. “These detailed and intensive discussions led to progress between the two parties. Much work remains, however,” the White House said in one statement.

During the talks, the U.S. delegation “focused on structural issues, including forced technology transfer, intellectual property rights, cyber theft, agriculture, services, non-

tariff barriers, and currency,” it added. The USTR’s office admitted that structural issues will be difficult in a recent report (see **WTTL**, Feb. 11, page 1). The two sides also discussed China’s purchases of U.S. goods and services intended to reduce the U.S.’ large and persistent bilateral trade deficit with China, the White House noted.

The Chinese perspective sounded similar. “The two sides reached a principled consensus on the main issues and conducted specific consultations on the bilateral economic and trade memorandum of understanding. The two sides stated that they will work hard to reach an agreement based on the consultation period determined by the two heads of state,” China’s Commerce Ministry posted on its website (Translation by Google).

*** * * Briefs * * ***

NOMINATIONS: President Trump Feb. 12 nominated Ian Paul Steff to be assistant secretary of Commerce and director general of U.S. and Foreign Commercial Service. Steff currently serves as deputy assistant secretary of Commerce for manufacturing. Prior to that, he served as Indiana’s first chief innovation officer.

SOLAR CELLS: In 5-0 “sunset” vote Feb. 8, ITC said revoking antidumping and countervailing duty orders on imports of crystalline silicon photovoltaic cells and modules from China would renew injury to U.S. industry.

TRADE PEOPLE: Kimberly Glas, executive director of nonprofit BlueGreen Alliance, will become president & CEO of National Council of Textile Organizations effective April 29, replacing Auggie Tantillo, who is retiring (see **WTTL**, Feb. 11, page 5). Prior to current job, Glas served as deputy assistant secretary of Commerce for textiles, consumer goods and materials in Obama administration from 2009 to 2014.

SANCTIONS: AppliChem GmbH of Darmstadt, Germany, agreed Feb. 14 to pay OFAC more than \$5.5 million to settle charges of violating Cuban sanctions between May 2012 and February 2016. Company sold chemical reagents to Cuba on 304 occasions worth approximately \$3,433,495. Illinois Tool Works, Inc. (ITW) acquired AppliChem in 2012. “AppliChem’s former owners had continued AppliChem’s Cuba business by creating a scheme that concealed this business from ITW after specifically representing to ITW that it had ceased,” OFAC said. ITW voluntarily self-disclosed violations and cooperated with OFAC on AppliChem’s behalf, agency said.

LOBBYING: Dozen trade associations, businesses, and advocacy groups Feb. 13 launched “Pass USMCA Coalition,” alliance advocating for swift passage of U.S.-Mexico-Canada Agreement (USMCA) during 116th Congress. Former ambassador and Commerce secretary Gary Locke serves as honorary chairman; former Trump deputy chief of staff Rick Dearborn is executive director. Members include PhRMA, National Chicken Council and Canadian American Business Council.

FCPA: Frank James Lyon of Honolulu pleaded guilty Jan. 22 in Hawaii U.S. District Court to conspiracy to violate FCPA for his role in scheme to bribe Micronesian government official Master Halbert to corruptly secure \$8 million in engineering and project management contracts. Halbert was arrested Feb. 11 in Honolulu and charged with conspiracy to commit money laundering. Lyon’s sentencing is scheduled for May 13.

BREXIT PREP: Deputy USTR C.J. Mahoney and UK Ambassador to U.S. Kim Darroch Feb. 14 signed two mutual recognition agreements (MRAs): one on telecom equipment, electro-magnetic

compatibility (EMC) for information and communications technology products, pharmaceutical good manufacturing practice (GMP) inspections, and another on marine equipment. MRAs “replicate substantive provisions of existing MRAs” between U.S. and EU for these sectors and “will ensure that U.S.-UK trade in these product sectors is not disrupted when the UK leaves the European Union,” USTR said in statement.

INDIA: U.S. and Canada Feb. 12 submitted counter notification on India’s market price support (MPS) for five pulses -- chickpeas, pigeon peas, black matpe, mung beans and lentils -- at WTO Committee on Agriculture (COA), third ever COA notification under WTO’s Agreement on Agriculture regarding another country’s measures. Issues included quantity of production used in MPS calculations, exclusion from India’s notification of information on total value of production for each category of pulse (information necessary to assess compliance with WTO commitments), issues with currency conversions, and issues regarding prices used in India’s calculations, USTR said. U.S. submitted second counter notification on India’s MPS for cotton at COA in November (see **WTTL**, Nov. 19, page 5).

VENEZUELA: OFAC Feb. 15 designated five more “illegitimate” Venezuelan government officials including current president of Venezuela’s state-owned oil company, Petroleos de Venezuela, S.A. (PdVSA), head and first commissioner of National Intelligence Service, commander of Directorate General of Military Counter-Intelligence, and director of National Police’s Special Actions Force. OFAC designated PdVSA in January (see **WTTL**, Feb. 4, page 4).

DOORKNOBS: CAFC Feb. 15 vacated and remanded CIT decision on proper classification of doorknobs with integral locks in *Home Depot U.S.A. Inc. vs. U.S.* CIT affirmed CBP classification of products as locks; Home Depot argued products should have been classified as metal fittings for doors, including metal doorknobs. Court held that “the products are properly classified as composite goods” under General Rule of Interpretation (GRI) of tariff schedule, Circuit Judge William Bryson wrote for three-judge panel. “We remand to the Trade Court to make a finding as to the ‘essential nature’ of the composite goods,” he added. “We conclude that the products are prima facie classifiable under both headings,” Bryson wrote.

IRAN: OFAC Feb. 13 designated New Horizon Organization, Iranian entity that organizes international conferences for Islamic Revolutionary Guard Corps-Qods Force’s (IRGC-QF’s) efforts to recruit and collect intelligence from foreign attendees, and four New Horizon officials. At same time, agency designated Net Peygard Samavat Company and six associated individuals that were involved in cyber campaign against current and former U.S. counterintelligence agents.