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BIS Amends AES to Decrement Value of Shipments

For once, a government agency is accurate in its forecast of major feature development. The Census Bureau Aug. 10 announced that the Automated Export System (AES) began decrementing the value of shipments against approved Bureau of Industry and Security (BIS) licenses July 28.

BIS officials had previously said development would be finished in July (see **WTTL**, June 20, page 6). Exceeding approved levels of 10% over the license value would not force a fatal error, but would simply trigger "informational messages," Census wrote in an email to industry. "These messages will not preclude the issuance" of an Internal Transaction Number (ITN), it added.

> Potential informational messages could include: that the BIS license value has been met or exceeded by a prior filing; that the BIS license value has been exceeded by the current filing; that the allowable shipping tolerance has been exceeded by the current filing; and of the remaining value on the BIS license (may be negative), Census said.

Exports of defense items subject to State licenses have been decremented for many years. This has been less of a concern for EAR exports, which are normally covered by a single license for one-time shipment. "The intent of this action is to enable filers to better track their own license usage and to identify potential filing errors so that corrective action can be taken immediately," Census said.

Administration Sends Congress Draft TPP Policy

It ain't over until it's over. In a sign of either last hopes or wishful thinking, the Obama administration Aug. 12 sent Congress a draft Statement of Administrative Action (SAA) on the Trans-Pacific Partnership (TPP). Both fans of the deal and its opponents were quick to respond to the action. Still unclear is whether Congress will actually vote on the

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deal during a lame-duck session after the election. For each chapter of the TPP agreement, the draft SAA "describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are strictly necessary or appropriate to implement the Agreement," it noted.

> The statement then "describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are required to implement the Agreement," the SAA continued.

The U.S. Trade Representative's (USTR) office said the draft SAA follows the rules set in the 2015 Trade Promotion Authority (TPA) legislation, which are "meant to ensure early consultations between the Administration and Congress. As such, the draft SAA was sent today in order to continue to promote transparency and collaboration in the TPP process," said USTR spokesman Matt McAlvanah in a statement. "We will continue to consult with Congressional leaders on the final SAA and on appropriate timing for additional steps laid out in the bipartisan TPA legislation," he added.

Industry groups that already support TPP approved of the action. "Today's submission of a draft Statement of Administrative Action is one more step in the right direction toward improving trade, boosting U.S. economic growth and creating more American jobs," said Business Roundtable President John Engler in statement.

On the other side, opponents denounced the action. Sen. Bernie Sanders (I-Vt.) said he was "disappointed by the president's decision to continue pushing forward on the disastrous" TPP. "In my view, it is now time for the leadership of the Democratic Party in the Senate and the House to join Secretary Clinton and go on the record in opposition to holding a vote on this job-killing trade deal during the lame-duck session of Congress and beyond," Sanders added.

ITC Reinstates 337 Steel Case Against China

The International Trade Commission (ITC) reinstated the investigation into U.S. Steel's Section 337 petition to block certain carbon and alloy steel products from China. "On review, the Commission has determined to reverse the ID [initial determination], vacate the suspension, and continue the investigation," reads the ITC ruling issued Aug. 5.

Administrative Law Judge Dee Lord suspended the investigation July 6, and U.S. Steel filed a petition for review of the initial determination a week later. Lord had suspended the investigation in order to give Commerce Secretary Penny Pritzker time to review the matter "given that the present matter comes at least 'in part' within the purview of the antidumping and countervailing duty laws" administered by Commerce, she wrote in her latest ruling.

Pritzker replied July 11 that she knew of only two cases that "potentially could come within the scope of the Commission's investigation." ITC began the investigation June 2 in

response to U.S. Steel's petition in April, which named dozens of Chinese steel producers and their distributors, Hong Kong and U.S. affiliates as respondents (see **WTTL**, May 2, page 1).

The complaint alleged "a conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States," "misappropriation and use of trade secrets," or "false designation of origin or manufacturer." ITC's decision is expected Oct. 2, 2017.

DDTC Updates Guidelines for Preparing TAAs, MLAs

Now that State's Directorate of Defense Trade Controls (DDTC) has issued some new definitions for its export regulations, the agency has work to do to reflect those definitions in further revisions to its assorted guidance and other documents. It began that work Aug. 11 issuing revision to its "Guidelines for Preparing Agreements," reflecting changes to specific definitions. The changes will become effective Sept. 1, along with the new definitions themselves (see **WTTL**, July 25, page 5).

Specifically, DDTC noted two dozen places in its existing guidelines that need to be updated to reflect specific definitions for the terms "export", "reexport" and "retransfer." In addition, it implemented "major revisions" to Section 3.5 on dual/third-country nationals (DN/TCNs) to add outdated references and to "remove country of birth as a consideration when vetting DN/TCNs," the agency said in a summary of major changes. DDTC also updated the required agreement statements for DN/TCN requests in the guidelines.

"Applicants are not required to submit an amendment for the sole purpose of updating these statements or removing the §124.16 statement. However, the statements must be updated at the next major amendment. All agreement/ amendment applications submitted after September 1, 2016, must include the new required statements, if applicable. If an old statement is used, a proviso will be added instructing the applicant to change it prior to execution," DDTC said.

Stop Classifying "Chucks" as Athletic Footwear, Says Industry Group

No matter the popularity of Chuck Taylor All-Stars, that doesn't make them athletic shoes, according to the Footwear Distributors and Retailers Association (FDRA). In a letter sent Aug. 10 to U.S. Customs and Border Protection (CBP), FDRA asked for a clarification of the Harmonized Tariff Schedule of the U.S. (HTSUS) arguing that shoes such as Converse, Keds and certain men's dress shoes should not be classified as athletic footwear, a distinction that impacts tariffs.

"The mere fact that a shoe has a flexible sole and/or 'a general athletic appearance' is not a sufficient basis to classify footwear as athletic. There must be one or more features that demonstrate suitability for use in athletic endeavors," reads the letter. Walking shoes and infant shoes are not intended for athletic purposes, FDRA gave as examples.

Taking aim at men's dress shoes classified as athletic by current standards, FDRA said marketing should be among the factors considered when classifying footwear. "[If] the shoe is marketed as casual or dress, classification as athletic footwear should be precluded," wrote FDRA.

> The American Apparel and Footwear Association (AAFA) had its own letter writing campaign. The group wrote to the four presidential candidates Aug. 10 requesting a commitment "to meaningful reform of the federal prison factory system."

AAFA argues that the U.S. government prohibits imports of goods manufactured using prison labor, but makes multimillion purchase orders from Federal Prison Industries (UNICOR), a U.S. government-owned complex of prison factories. Those goods are labeled "Made in USA" even though UNICOR does not have to meet the same health and safety standards as typical Made in USA manufacturers and pays prisoners as little as 23 cents an hour, AAFA wrote.

Additionally, "UNICOR benefits from a mandatory source requirement, meaning that the federal government is required to give contracts to UNICOR for any products that UNICOR is capable of manufacturing, even if there is a better value available from a Made in USA manufacturer," AAFA wrote. The organization asked the candidates if they would eliminate UNICOR's mandatory source requirement and prohibit UNICOR from competing as a small business. Candidates have until Aug. 31 to respond.

Key Energy Settles SEC Bribery Charges

Houston-based Key Energy Services agreed Aug. 11 to pay the Securities and Exchange Commission (SEC) $5 million in disgorgement to settle charges of violating the Foreign Corrupt Practices Act (FCPA). The charges relate to payments its Mexican subsidiary, Key Mexico, made to a contract employee at Petróleos Mexicanos (Pemex), Mexico's state-owned oil company, from 2010 through 2013.

According to the SEC order, the payments were made to the Pemex employee "to induce him to provide Pemex inside information as well as advice and assistance on contracts with Pemex and amplifications or amendments to those contracts," it said. "These funds were transferred to the Pemex employee via an entity that provided purported consulting services to Key Mexico (the 'Consulting Firm') despite the absence of appropriate authorization of the relationship with the Consulting Firm and lack of supporting documentation regarding the purported consulting work performed," the SEC added.

"Over a period of three years, the Key Mexico country manager approved payments to the Consulting Firm with ties to the Pemex employee in exchange for the employee providing assistance to Key Mexico in bidding for and obtaining amendments to contracts with Pemex, including providing Key Mexico with non-public information about upcoming Pemex tenders and lobbying internally at Pemex for lucrative amendments to Key Mexico contracts with Pemex," the order noted.

"In determining to accept the offer, the SEC considered cooperation Key Energy afforded to the SEC staff and the remedial acts undertaken by Key Energy. In addition, in determining the disgorgement amount and not to impose a penalty, the SEC considered Key Energy's current financial condition and its ability to maintain necessary cash reserves to fund its operations and meet its liabilities," the agency said. In a press release in April, the company said it had been informed by Justice that "the Department has closed its investigation and that it has decided to decline prosecution" of the company.

Commerce Issues Final Determinations in Hot-Rolled Steel Case

In another victory for U.S. steel companies, Commerce Aug. 5 announced final determinations in its antidumping duty (AD) investigation of certain hot-rolled steel flat products from Australia, Brazil, Japan, Korea, Netherlands, Turkey and the United Kingdom (UK) and final countervailing duty (CVD) investigations of the same products from Brazil, Korea and Turkey.

> The affirmative CVD determinations for Turkey and Korea are a reversal of the preliminary determinations, as such, the ITC has until Oct. 18 to make its final injury determination. All other determinations are expected Sept. 19.

The final AD and CVD determinations by country are: Australia 29.37% (AD); Brazil 33.14% (AD) and 11.2% (CVD); Japan 5.58% (AD); Korea 5.55% (AD) and 3.89% (CVD); Netherlands 3.73% (AD); Turkey 6.67% (AD) and 6.01% (CVD); and UK 33.06% (AD). Notably, Usinas Siderurgicas de Minas Gerais (Brazil) had a 34.28% dumping margin and Colakoglu Dis Ticaret A.S. (Turkey) had a subsidy rate of .34% (de minimis).

AK Steel Corporation (Ohio), ArcelorMittal USA LLC (Ill.), Nucor Corporation (N.C.), SSAB Enterprises, LLC (Ill.), Steel Dynamics, Inc. (Ind.) and U.S. Steel Corporation (Pa.) were the petitioners for the investigations. According to an Commerce factsheet, in 2015, imports of certain hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey and the United Kingdom were estimated at $122.5 million, $252.6 million, $314.7 million, $649.5 million, $208.4 million, $181.7 million and $197.1 million, respectively.

United Steelworkers (USW) praised the ruling and also highlighted the challenges that face the American steel industry. "The hot-rolled steel trade case and others like it are vital to saving steel jobs and our communities. But they're only part of the solution. Chinese excess steel overcapacity is causing terrible injury world-wide and remains a long-term threat," said USW International President Leo W. Gerard in a statement Aug. 8.

CAFC Blows in Several Directions on Wind Towers

The Court of Appeals for the Federal Circuit (CAFC) ruled Aug. 12 three different ways on an appeal that a Vietnamese manufacturer filed against a Commerce decision and a Court of International Trade (CIT) ruling on an antidumping order on wind towers from Vietnam. The appellate court upheld part of the ruling, reversed part and remanded a

third part to the department. CS Wind Vietnam Co., Ltd., had challenged Commerce's selection of data on the weight of towers, its presumptions on subsidies from the Korean government and the treatment of some overhead expenses.

"Because the reason Commerce offers for using the packed weights is without record support, we find Commerce's choice to be unsupported by substantial evidence. We therefore reverse the Court of International Trade's affirmance of that choice and direct Commerce to use the manufacturer-reported weights in its calculation," wrote Appellate Judge Richard Taranto in *CS Wind Vietnam v. U.S.*

On Korean subsidies, this "issue required a judgment about evidence," he ruled. "Commerce reasonably made that judgment, finding that CS Wind did not demon-strate that the purchases at issue were unaffected by the generally available export subsidies in Korea. Commerce could therefore choose to use surrogate values for those components of the wind towers, rather than the prices of the Korean purchases," Taranto wrote.

The CAFC found that more explanation is need on the subject of overhead expenses. "We conclude that a further remand is needed, because Commerce has failed to meet its obligation to set forth a comprehensible and satisfactory justification for its approach as a reasonable implementation of statutory directives supported by substantial evidence," he concluded for the three-judge panel.

* * * Briefs * * *

EX-IM FRAUD: Luyi Victor Ogebor, owner of Aegis Trading and Shipping Company of Country Club Hills, Ill. was indicted Aug. 9 in Chicago U.S. District Court on two charges of false claims for role in scheme to defraud Ex-Im Bank of $150,000. In August 2011, Ogebor allegedly filed two claims indicating that international customers had defaulted on payment guaranteed by Ex-Im bank, knowing that claims were "false, fictitious and fraudulent," indictment noted.

EX-IM BANK: Ex-Im Bank Chair Fred Hochberg criticized China's export subsidies Aug. 9, saying Ex-Im Bank of China extended $30 billion last year and Sinosure gave $471 billion to help Chinese businesses overseas. If China does not agree to global framework then it could spark "race to the bottom," he said. Hochberg criticized Congress failure to support Ex-Im. "It's confounding to U.S. exporters, it's confounding to U.S. workers and it's confounding to our overseas buyers," he said.

ITC: President Obama Aug. 11 designated David Johanson ITC vice chairman to two-year term ending June 16, 2018. Johanson, Republican from Texas, was sworn in as commissioner Dec. 8, 2011, for term ending Dec. 16, 2018. He previously served as international trade counsel on Republican staff of Senate Finance Committee and worked on FTAs, including TPP.

FLANGES: In 6-0 preliminary vote Aug. 12, ITC found U.S. industry may be injured by allegedly dumped imports of finished carbon steel flanges from India, Italy and Spain and subsidized imports from India.

DIOCTYL TEREPHTHALATE: In 5-1 preliminary vote Aug. 12, ITC also found U.S. industry may be injured by allegedly dumped imports of dioctyl terephthalate (DOTP) from Korea. Commissioner F. Scott Kieff voted no.