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Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301.570.4544 Fax: 301.570.4545

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BIS Lifts Export Licensing Requirement for Crude Oil

The ink was barely dry on President Obama's Dec. 18 signature on legislation (H.R. 2029) lifting the 40-year-old ban on crude oil exports before the Bureau of Industry and Security (BIS) issued a notice dropping Export Administration Regulations (EAR) licensing requirements. The notice, published on the agency's website, designates oil as EAR99.

> "Effective immediately, pursuant to section 101 of Division O of the Consolidated Appropriations Act, 2016, signed on December 18, 2015, a Department of Commerce license is no longer required to export crude oil. Crude oil is now classified as EAR99," the agency announced.

"Most exports of crude oil may now be made as NLR (no license required). Exporters should be aware that exports to embargoed or sanctioned countries or persons, including those listed in parts 744 and 746 of the EAR and persons subject to a denial of export privileges, continue to require authorization," it added (see **WTTL**, Dec. 21, page 11).

"BIS will shortly be taking steps to amend the Export Administration Regulations to reflect this change. Companies holding current licenses for crude oil exports should be aware of section 750.7(i) of the EAR terminating license conditions upon the termination of the requirement for the export license," BIS said.

Oil Firms Move Quickly to Start Exports

The benefits of new oil export rules may be dampened by multi-year low prices for oil and slow global growth. Nonetheless, several oil firms have announced export plans already. Pioneer Natural Resources Company, which shook up the regulatory picture in 2014 by receiving BIS advice permitting exports of its oil condensate, issued a statement after enactment of the new law saying it expects to export crude by the middle of 2016. "The Company has been actively working with its midstream partners to secure export facilities along the U.S. Gulf Coast, which will maximize the company's crude marketing flexibility going forward," it said. "Europe, Asia and Latin America are potential markets for U.S. crude as countries from these areas would realize economic and security advantages by diversifying their sources of supply," the company added. "After witnessing the success of condensate exports from the Eagle Ford Shale, the logical next step was to lift the ban on crude exports," Pioneer President and COO Timothy L. Dove said.

> On Dec. 30, NuStar Energy and ConocoPhillips announced they were loading U.S.-produced light crude oil for export the following day. "ConocoPhillips committed to sell Eagle Ford light crude oil/condensate to international trading company Vitol," a company statement said. The cargo was being loaded at NuStar's North Beach Terminal in Corpus Christi, Texas.

China Still Failing to Meet All WTO Commitments

The U.S. Trade Representative's (USTR) office seems to find it hard to criticize outright China's failure to meet the commitments it made to join the World Trade Organization (WTO) 14 years ago. In the USTR's annual report to Congress on China's compliance with those obligations, conveniently released Dec. 23 while lawmakers were on vacation, the office identified many shortcomings in Chinese trade policies but wouldn't say it was out of compliance, noting both good steps Beijing has taken and those it has not.

> "As in past years, despite these positive results, the overall picture currently presented by China's WTO membership remains complex," the report states. "Many of the problems that arise in the U.S.-China trade and investment relationship can be traced to the Chinese government's interventionist policies and practices and the large role of state-owned enterprises and other national champions in China's economy, which continue to generate significant trade distortions that inevitably give rise to trade frictions," it adds.

The USTR acknowledges that China's current leaders have highlighted the need for further economic reform in China. "If pursued appropriately, this reform effort offers the potential for addressing these problems and for helping to realize the tremendous potential of the U.S.-China trade and investment relationship," the report says.

The report touts promises China has made to improve its trade policies during various bilateral meetings of the Strategic and Economic Dialogue (S&ED) and Joint Commission on Commerce Trade (JCCT). It also highlights the 17 trade complaints the U.S. has taken to the WTO against China in the last 14 years, noting that this is "more than twice as many WTO cases as any other WTO member has brought against China."

Nonetheless, in a five-page table in the report that comments on China's actions policy-by-policy, the USTR identifies many areas where the Chinese still haven't met their WTO obligations. Even where it says Beijing has made progress, it repeatedly qualifies that statement with phrases such as, "concerns still remain," "more needs to be done," and "not yet fully implemented." Although the report boasts about WTO trade cases the U.S. has won against China, it also concedes the Chinese have not always corrected problems the U.S. had raised. For example, the U.S. won a 2012 dispute-settlement case against China's restriction on foreign movie distribution. China signed a memorandum of understanding with Washington to increase substantially the number of U.S. films imported and distributed each year and substantial additional revenue for foreign film producers. "China has not yet fully implemented its MOU commitments," the report concedes.

> In the area of electronic payment services, the U.S. won a WTO ruling against Chinese restrictions. "China has not yet implemented electronic payment services commitments that were scheduled to have been phased in no later than December 11, 2006. China agreed to implement these commitments by July 2013 in order to comply with the rulings in a WTO case brought by the United States, but it has not yet done so," the report says.

On other practices, the report takes a similar tone. For non-tariff measures, it says "China has adhered to the agreed schedule for eliminating non-tariff measures, but new prohibitions on the import of remanufactured products have generated concerns." Beijing finally gave the WTO in 2015 its list of domestic subsidies, but the "notification was far from complete." In addition, China has "a poor record of responding to other WTO members' questions about its subsidies before the WTO's Subsidies Committee," it said.

In the always contentious area of intellectual property rights (IPR), "key weaknesses remain in China's protection and enforcement of intellectual property rights, particularly in the area of trade secrets. Intellectual property rights holders face not only a complex and uncertain enforcement environment, but also pressure to transfer intellectual property rights to enterprises in China through a number of government policies and practices."

Beijing's financial services reforms "have generated concerns, and there are some instances in which China still does not seem to have fully implemented particular commitments, such as with regard to Chinese-foreign joint banks and bank branches," the USTR says. "China's Internet regulatory regime is restrictive and non-transparent and impacts a broad range of commercial services activities conducted via the Internet," it adds.

China's enforcement of antidumping and countervailing duty laws also is an area of complaint. "More significantly, China needs to improve its commitment to the transparency and procedural fairness requirements embodied in WTO rules, as the WTO found in three disputes brought by the United States. In addition, China needs to eliminate its apparent use of trade remedy investigations as a retaliatory tool," the USTR says.

Wassenaar Adopts Best Practices to Prevent Transshipment Diversion

A dozen years after BIS issued its first guidance on preventing the transit and transshipment of controlled goods, the Wassenaar Arrangement adopted its own "best practices" advice at its plenary Dec. 2-3 in Vienna. In 2011, BIS updated the transit and transshipment guidance it first issued in 2003 (see **WTTL**, Dec. 21, page 6). Wassenaar's "Best

Practice Guidelines for Transit or Transshipment" targets concerns that are similar to BIS'. "The diversion of items in transit or trans-shipment to unauthorized end-uses or end-users can pose significant risks to international trade and security. Participating States of the Wassenaar Arrangement share a responsibility for preventing the abuse of legitimate transit and transshipment trade through our territories," it states.

> The guidance urges, but does not mandate, members to establish legal and regulatory systems to prevent illegal diversion, including through measures that would allow countries to stop, inspect and seize suspected shipments and dispose of goods when law enforcement activities are completed.

The guidance recommends that members use "an intelligence-led, risk-based approach to identifying cargoes and known end-users of concern, including through the use of internationally endorsed requirements for manifest collections in advance of the arrival of all controlled goods." It says this approach "should enable the identification of inconsistencies that raise suspicion, in time to stop and seize items where necessary and appropriate, while taking into account increasing trade volumes and complexities of supply chains, so that available resources can be deployed in an efficient and targeted manner."

BIS Proposes Revisions to Enforcement Penalty Guidance

Under export enforcement penalty guidance that BIS proposed in the Dec. 28 Federal Register, exporters could see up to a 75% reduction in a potential monetary fine if they meet certain mitigating factors. The proposal, which BIS has been promising for nearly five years, expands upon previous enforcement guidance and aims to bring BIS policies closer to those of Treasury's Office of Foreign Assets Control (OFAC).

> "Mitigating Factors may be combined for a greater reduction in penalty but mitigation will generally not exceed 75 percent of the base penalty," the agency states in the preamble to the proposed rule. Reductions also may be applied based on a respondent's limited ability to pay or where a matter "is part of a global settlement with other U.S. government agencies."

Just as OFAC, under the BIS proposal a baseline penalty would be determined by the value of a violative transaction and the maximum penalty under the International Emergency Economic Powers Act. BIS would adjust the fine based on a set of aggravating, mitigating and general factors.

The proposal provides specific percentage reductions that could come from such positive steps as filing a voluntary self-disclosure (VSD), "exceptional" cooperation with the agency and remedial actions to prevent future violations. "Many apparent violations are isolated occurrences, the result of a good-faith misinterpretation, or involve no more than simple negligence or carelessness. In such instances, absent the presence of aggravating factors, the matter frequently may be addressed with a warning letter," BIS explains. VSDs would no longer be listed as mitigating factors by themselves, but will be considered in determining a potential fine. “This credit would no longer be characterized as constituting ‘great weight’ mitigation, but violations disclosed in a complete and timely VSD may be afforded a deduction of 50 percent of the transaction value or, in egregious cases, the statutory maximum in determining the base penalty amount,” the proposal states.

> In explaining aggravating factors, BIS adds a new section on Awareness of Conduct at Issue. This, it says, means: “The Respondent’s awareness of the conduct giving rise to the apparent violation. Generally, the greater a Respondent’s actual knowledge of, or reason to know about, the conduct constituting an apparent violation, the stronger the BIS enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers.”

In the preamble to the proposal, BIS explains how two mitigating factors – exceptional cooperation with BIS and when a license would have been approved if sought – can produce reductions in potential fines. Under Mitigating Factor G, exceptional cooperation with the Office of Export Enforcement (OEE) may result in a 25% to 40% reduction of the base penalty amount. Under Mitigating Factor H, where a license was likely to be approved, BIS may reduce the penalty by up 25%. In addition, a first offense might result in a reduction of that amount by up to 25%, the preamble explains.

WTO Agriculture Pact Gets Mixed Reaction from U.S. Groups

When it comes to agriculture trade agreements, where you stand may depend on what you plant. The differences can be seen in the responses of two U.S. farm trade groups to the World Trade Organization’s (WTO) agreement in Nairobi, Kenya, Dec. 18 to move toward the elimination of export subsidies for agriculture products, with some exceptions and special conditions (see **WTTL**, Dec. 21, page 2).

> The U.S. Wheat Associates (USW) issued a statement after the deal was announced, saying it was “very pleased” with the WTO decision, with some reservations. The American Soybean Association (ASA), however, expressed “its disappointment” with the deal because of those reservations, while praising other parts of the accord.

“While authorized subsidies are rarely used anymore, agreeing to eliminate them is no small matter,” the USW statement said. It noted that the European Union (EU), which collectively is the world’s largest wheat producer, has stopped the use of export subsidies, but it still has standby authority to do so. “Other countries are using unauthorized export subsidies and should be challenged to prevent continued violations of current disciplines. Certainly, eliminating export subsidy authority at once for developed countries and by the end of 2018 for developing countries is a major step forward for world wheat trade,” it added. The wheat growers, however, said it was concerned about other provisions in the agreement that will allow developing and least developed countries to use processing and transport subsidies for agricultural products, an authority that had expired in 2004.

> ASA acknowledged a positive outcome was the immediate elimination of export subsidies by developed countries and a relatively short elimination period for developing countries. But it opposed the continued ability of developing countries to use marketing, processing and transportation subsidies for exported commodities.

"The Nairobi agreement effectively raises these subsidies from the dead and legitimizes their use without any meaningful discipline until 2023," said ASA President Richard Wilkins, a farmer from Greenwood, Del., in a statement. "On balance, we are disappointed in the Nairobi results," he said. "In addition, we saw India hold the Doha negotiations hostage in Bali and now again in Nairobi. India's continued efforts to roll back previous commitments and to block meaningful trade liberalization by developing countries going forward makes us concerned about future talks," Wilkins added.

U.S., EU Extend, Expand Russian Economic Sanctions

The U.S. and European Union (EU) are keeping their parallel pressure on Russia with the extension of current sanctions and the addition of more entities to blocked lists. For its part, Treasury's Office of Foreign Assets control (OFAC) Dec. 22 named 34 individuals and entities under Ukraine-related sanctions authorities. The EU Dec. 21 extended its economic sanctions against Russia until July 31, 2016.

> OFAC's targets include three Russian banks and one Crimea-based bank, a Crimean state-owned enterprise engaged in air transportation; a distillery, three wineries; a health resort; a Russian engineering company; and a film studio. At the same time, BIS joined the chorus Dec. 28 by adding 16 entities to its Entity List, including many of the same names as on the OFAC list. These entities are listed under the Crimea region of Ukraine, Cyprus, Luxembourg, Panama, Russia, Switzerland and the United Kingdom.

The EU extended sanctions, originally adopted in March 2015, against financial, energy and defense sectors and dual-use goods. Those sanctions were linked to the implementation by Dec. 31 of the Minsk Agreement that was supposed to lead to a cease fire and negotiations between the Ukraine government in Kiev and secessionist military groups in Eastern Ukraine. "However, since the Minsk agreements will not be fully implemented by 31 December 2015, the duration of the sanctions has been prolonged whilst the Council continues its assessment of progress in implementation," the EU noted.

OFAC listed 14 individuals and entities that are linked to "serious and sustained evasion of existing sanctions or are 50 percent or more owned by a designated entity," the agency said. It also designated "six separatists designated for threatening the security or stability of Ukraine; two former Ukrainian government officials for being complicit in the misappropriation of public assets and/or threatening the security or stability of Ukraine; and 12 entities for operating in the Crimea region of Ukraine," OFAC said.

> The agency also identified a number of subsidiaries that are owned 50% or more by the previously designated VTB Bank, Sberbank and Rostec. "It is critical that Russia takes the steps necessary to comply with its obligations under the Minsk Agreements and to ensure a peaceful settlement of the conflict in Ukraine," said Acting OFAC Director John Smith in a statement.

Eight individuals and entities are owned or controlled by or get material support from the previously designated Gennady Timchenko and his network. These are: Sven Olsson, Avia Group Terminal Limited Liability Company, Transservice LLC, Lerma Trading, LTS Holding Ltd., Maples S.A., Fentex Properties Ltd. and White Seal Holdings. In addition, three entities were named because they are owned or controlled by previously designated brothers Arkady and Boris Rotenberg: Volgogradneftemash, Moskovskiy Oblatstnoy Bank and Investment Republic Bank LLC.

In its Federal Register notice announcing the new entities, BIS also included "a clarification for how entries that include references to Section 746.5 on the Entity List are to be interpreted." The agency said it "intends to include a new Russia FAQ on the BIS Web site to provide additional regulatory guidance on this issue of application."

* * * Briefs * * *

TAPERED ROLLER BEARINGS: Court of International Trade Chief Judge Timothy Stanceu issued two rulings Dec. 21 affirming Commerce's second remand determinations on scope of department's 21st and 22nd administrative reviews of antidumping duty order on tapered roller bearings (TRBs) from China (slip ops 15-142, 15-143). He agreed with Commerce decisions to exclude TRBs from Thailand. "In summary, the 'Analysis' presented in the Second Remand Redetermination, although suffering from some flaws in the interpretation of the court's holding in *Peer Bearing II*, is sufficient to allow the court to sustain the Department's ultimate determination under the standard of review that the court is required to apply," he wrote in second case.

CANDLES: In another ruling Dec. 28, CIT Chief Judge Timothy Stanceu remanded to Commerce for second time its scope determination in antidumping case against petroleum wax candles from China (slip op. 15-145). He rejected department's attempt to change definition of candles going back to 2001. At issue was whether common types of candles described in previous case was only "illustrative" and could apply to specially shaped candles for Christmas and holidays. "Commerce impermissibly attempts to use its redetermination upon remand to establish a new definition of the scope of the Order. This new definition lacks any foundation in the scope language that Commerce is charged to interpret," Stanceu ruled.

WASHERS: Whirlpool filed countervailing and antidumping duty petitions Dec. 16 at ITA and ITC against large residential washers from China. After Whirlpool won 2013 antidumping order on washers from Korea, Samsung and LG "replaced their dumped washers from Korea and Mexico with dumped washers from China," said Marc Bitzer, Whirlpool president and COO, in statement. "Since then, Samsung and LG have blatantly ignored a previous U.S. government order by continuing to dump washers into the United States," he said (see **WTTL**, Jan. 21, 2013, page 7).