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Electronics to Move to CCL Before End of 2014, Officials Say

Final rules transferring items from Category XI (electronics) on the U.S. Munitions List (USML) to the Commerce Control List (CCL) may become effective a little more than the normal 180 days after their publication in the Federal Register to avoid having them kick in during Christmas week, a State official told WTTL. Following the end of the congressional notification process June 19, the final rule could be published "very soon," Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn told the President's Export Council Subcommittee on Export Administration (PECSEA) June 18.

> Hirschhorn said work is still being done on categories XII (night vision and sensors) and XIV (toxins). "They are not easy ones, which is part of why they're taking longer," he said in an understatement (see **WTTL**, April 28, page 5). Other sources have said the delay is due to continuing objections from military branches and the Army Night Vision Lab to easing restrictions on the export of night-vision products that give American warfighters the advantage in nighttime warfare.

BIS staff provided PECSEA with an update on exports of items transferred to the CCL 600 series from the six USML categories since October 2013. So far, exporters have used Export Administration Regulations (EAR) license exceptions for 41% of those exports; sent 36.5% under license; 13% as No License Required (NLR) and 10% as .y, not specially designed. Through May, BIS processed about 4,200 licenses for 600-series items in an average of 15.5 days. This compares to State's average processing times in May of 20 days. BIS in May handled 2,600 applications overall, a 50% increase from its 2012-2013 average case load.

Processing times for 600-series items could get shorter. Once the Defense Technology Security Administration (DTSA) grants BIS a delegation of authority to approve licenses without DTSA review, which is now required for all 600-series cases, "those numbers will start coming down even further," said BIS Assistant Secretary Kevin Wolf.

Don't Conclude TPP Before Passing TPA, Camp Warns Obama

House Ways and Means Chairman Dave Camp (R-Mich.) warned the Obama administration June 19 not to conclude a Trans-Pacific Partnership (TPP) agreement before

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Congress passes fast-track Trade Promotion Authority (TPA) legislation. Although a TPA measure might not get acted on until a lame-duck session of Congress in December, Camp said President Obama has to make a commitment to support the legislation now so it would be ready to move quickly after the elections.

> "TPA must be considered before finalizing any major trade agreements such as TPP," Camp told a Global Business Dialogue program. "I want to be very clear, if the administration wants my support for TPP, it will have to ensure we have TPA before concluding TPP," he declared. "If it wants my support for TPA, it will not conclude TPP first," he added.

Camp said Congress would see the concluding of TPP without TPA first as "trumping congressional prerogatives." It also would show the administration ignoring the role of Congress. To get TPA this year, the president has to become "actively and personally involved," he said. So far, however, Obama has been "noticeably silent," Camp said.

Even though Camp chairs Ways and Means and has a Republican majority that could pass TPA out of committee, he said he doesn't want to act unilaterally without bipartisan support. "Ultimately, I want agreements that get signed by the president," he said. "Ultimately, we need to make sure they go through the Senate, which is controlled by the other party, and that the administration is on board," he added. "We will have the votes on the Republican side to move forward, but this is not going to be just a Republican-only vote. We are going to need to have a bipartisan vote in the Congress, in the House," he declared.

Camp said he is frustrated with Japan's continued resistance to opening its markets as part of TPP talks and should be left out of the deal if it can't make necessary commitments. "I am deeply concerned that Japan is stubbornly refusing to remove all of its severe restrictions that prevent our access to its agriculture and auto markets," the Michigan Republican stated. Based on the current state of talks with Japan, he said the U.S. might need to conclude TPP and "then arrange for that country to join when they are ready to make the necessary commitments." Camp's concerns aren't just with Japan. He criticized Canada for not offering to open its dairy and poultry markets.

In addition, looking at the U.S.-European Union (EU) talks on a Transatlantic Trade and Investment Partnership (TTIP), he said the EU "must eliminate all tariffs, including agriculture tariffs." It also must not use erect sanitary-phytosanitary barriers that are not based on sound science or improperly use geographic indications (GIs) to keep U.S. products out of Europe or third countries. "I am very frustrated by the EU's cynical and opportunistic spin on the NSA as an excuse for commercial advantage," Camp declared, referring to European reaction to National Security Agency spying on European officials.

Supreme Court Asked to Allow Byrd Payments to Non-Supporters

Two furniture manufacturers have filed a petition with the Supreme Court for a writ of certiorari, asking the high court to rule them eligible for a share of $100 million in antidumping duties that are being distributed to U.S. furniture manufacturers under the continuing implementation of the Byrd Amendment. In their May 2 petition, Ashley Furniture Industries and Ethan Allen Global claim their First Amendment rights were violated because they had not marked "support" on the International Trade Commission

(ITC) questionnaire to determine the industry's backing for the case against imports of bedroom furniture from China (see **WTTL**, Sept. 2, 2013, page 4). Because of the cert petition, Court of International Trade (CIT) Judge Timothy Stanceu June 17 denied a motion from the two firms for a stay of the ongoing hearing of their case in the trade court. "The court can have no assurance that the Supreme Court is likely to grant Ashley's petition. Plaintiff, therefore, has not shown that a stay of this action would promote judicial economy and efficiency rather than simply cause delay," he wrote.

> In the Supreme Court petition, the two firms claim there were business reasons related to their relations with customers for why they couldn't publicly support the antidumping case, which meant they couldn't be eligible for a share of collected duties under the terms of the amendment, formally known as the Continued Dumping and Subsidy Offset Act (CDSOA). They argue they are the victims of "viewpoint discrimination."

The petition seeks reversal of a 2013 Court of Appeals for the Federal Circuit (CAFC) ruling, which upheld a CIT decision that the firms were not eligible for Byrd money because they had not actively supported the case. The CAFC issued a split 2-1 ruling, which recognized that two previous challenges seeking Byrd funds, *SKF* and *PS Chez Sidney*, had reached different conclusions based on different facts.

"The Federal Circuit's decision upholding that viewpoint discrimination cannot be reconciled with this Court's First Amendment precedents, including its recent decisions in *Agency for International Development v. Alliance for Open Society International, Inc.*, 133 S.Ct. 2321 (2013), and *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011)," their lawyers at Goldstein & Russell argue. "Those decisions make clear that the Government may not condition receipt of a federal benefit on a recipients' expression of support for a particular policy position (*AID*) and that such viewpoint discriminatory statutes fail even commercial speech scrutiny when, as here, the Government fails to show that non-discriminatory measures cannot satisfy the government's interests (*Sorrell*)," they wrote.

"Like Chez Sidney, the petitioners supported a Government antidumping investigation by providing answers to an ITC questionnaire, but took no further part in the ITC proceedings," the brief notes. Petitioners were among those companies that declined to support the petition when asked in the ITC questionnaire. Ethan Allen checked the box indicating "Take no position," while Ashley marked "Oppose."

"Moreover, although the statute has been repealed prospectively, it continues to govern the distribution of tens of millions of dollars in antidumping duties to affected domestic companies every year, distorting competition by bestowing huge subsidies on the basis of individual companies' speech. And unless this Court intervenes, the effect of the erroneous principles of First Amendment law adopted by the Federal Circuit will endure long after the Government distributes the last CDSOA dollar," the brief contends.

Presidential Advisors Offer President Lots of Advice

The President's Export Council (PEC) offered President Obama lots of advice on trade issues in nine letters it approved at its June 19 meeting. The PEC gave its opinion on topics ranging from improving access to capital for small businesses to removing barriers to exporting for "technology-driven" businesses to innovation policy and the national

travel and tourism strategy. Some letters built on previous years' advice, especially on Trade Promotion Authority (TPA) and agreements at the World Trade Organization (WTO). The PEC, which includes top corporate and government representatives, urged the administration to "continue its engagement with the Congress to move forward on modernized TPA legislation as soon as possible." It also welcomed the agreement on trade facilitation completed at the WTO ministerial meeting in Bali in December and encouraged the administration to "continue to commit the needed resources to ensure a speedy implementation process."

> Not surprising, the PEC also approved a letter pushing for the reauthorization of the Export-Import Bank "as expeditiously as possible." This year's reauthorization fight has taken a more contentious tone than in previous years, members noted (see **WTTL**, June 16, page 1). Specifically, the PEC urged a five-year reauthorization and a $160 billion portfolio cap, as well as filling the vacancy on the Ex-Im board as soon as possible. The letter also asked the administration and Congress to "implement an action plan to increase financing for the services sector."

Another letter highlighted the challenge from increasing "digital protectionism" around the world, specifically "restrictions to the Internet and the free flow of data across borders for legitimate commerce." It objected to localization rules that require "in-country processing and storage of data or placing onerous restrictions on transfers of data out of the country." The letter urged the U.S. Trade Representative (USTR) to include "robust commitments" on these restrictions in its ongoing negotiations in Asia and Europe, as well as in talks on a services agreement.

Industry Has Mixed Views on Changes to Export Documentation

The Bureau of Industry and Security (BIS) will have its work cut out in responding to divergent comments on its proposal to remove the requirement for written import certificates (IC) and delivery verification (DV) as a condition for export licenses. BIS proposed the changes in the April 9 Federal Register (see **WTTL**, April 14, page 5).

> Cecil Hunt of Harris, Wiltshire & Grannis, told BIS the proposed rule "is a welcome and helpful response to recommendations that BIS end the outdated and ineffective requirements" for IC and DV documents. "This change will eliminate for many export transactions pointless red-tape that can delay exportations by U.S. companies and present marketing obstacles not faced by suppliers from other countries." Hunt himself first raised concerns about the requirements at a BIS advisory committee meeting in 2011.

A different view came from Michael Cormaney of Luks Cormaney who noted that some companies, especially those with foreign parents, have established timely and efficient procedures for obtaining ICs from foreign governments. "The foreign parent normally can obtain an IC in a very short amount of time to support a Commerce license application. We have been advised that this process is much less complicated and time consuming for the foreign parent than trying to obtain a completed and signed BIS-711 from one or more ultimate consignees," Cormaney wrote. Some European governments, particularly Germany and Spain, have been asking for the documents "to approve national licenses for delivery of military items from a European country to the U.S., including

when the U.S. customer is the U.S. Government," Airbus commented. "We kindly suggest that the U.S. Government does not cancel unilaterally the issuance of U.S. import certificate until coordination with the nations that are requiring such documents has taken place and these nations modify their rules on their side accordingly," it noted.

Boeing generally supported the idea of removing the requirements in connection with license applications for U.S. exports. However, the company said it was "concerned" with the proposal to no longer issue ICs or DVs for imports into the U.S. Since the IC/DV system remains in place under the Wassenaar Arrangement, Boeing said it is occasionally required to provide the documents to non-U.S. suppliers.

"Over the last several years, Boeing received requests from German, United Kingdom and Czech regulators to provide ICs to import commodities considered defense articles under their respective export regulations. While the United States has reduced the scope of commodities considered defense articles under U.S. regulations, other Wassenaar members have not made corresponding changes," the company wrote.

In the proposed rule, BIS agreed with Hunt and three commenters to a previous rule, saying it "believes that this proposed change would significantly reduce burden and improve timeliness for shipping under an approved license." It said the need "to obtain an IC can put U.S. exporters at a competitive disadvantage since many of the other member states of the Wassenaar Arrangement do not require their own exporters to obtain an IC from other Wassenaar Arrangement member states when importing dual-use items," BIS noted.

Intersil Fined Despite Erroneous Advice from DDTC

Export control reform and the transfer of items from State to Commerce jurisdiction can't come fast enough for Intersil Corporation. Under the terms of a two-year consent agreement with State's Directorate of Defense Trade Controls (DDTC) posted June 18, the Milpitas, Calif., semiconductor manufacturer agreed to pay $10 million to settle 339 charges of violating the Arms Export Control Act (AECA) from 2005 to 2010. The alleged violations involved integrated circuits (ICs) that will move from the U.S. Munitions List (USML) to the Commerce Control List (CCL) June 27 as part of transition rule changes under export reforms (see **WTTL**, May 19, page 4).

DDTC's proposed charging letter to the firm reveals that the agency gave Intersil erroneous advice in 2010 on whether the ICs the company exported under approved licenses from Commerce were retroactively subject to the International Traffic in Arms Regulations (ITAR). DDTC didn't correct the advice until it posted new guidance on its website in 2013.

"On August 20, 2010, a DDTC official misinformed Intersil that for any ICs that 'HAVE already been exported under EAR jurisdiction, these [ICs] ARE NOT retroactively subject to the retransfer provisions of 22 CFR 123.9'," the charging letter notes. "Intersil was further misadvised that Intersil did not need to inform its foreign customers to submit ITAR re-export authorization for these items and that this 'decision to not retroactively apply USML controls for these already exported [ICs] will continue to be applicable even if a future formal CJ determination asserts USML controls apply'," it continues. "In response to this and similar contemporary correspondence, DDTC posted

official guidance on its website regarding jurisdiction of defense articles on February 1, 2013, "supersed[ing]" the 2010 guidance. The 2013 official guidance, which was issued after the relevant conduct described in this Proposed Charging Letter, stated that an item within the scope of the USML remains ITAR-controlled even if an error is made in a jurisdictional decision by a manufacturer or exporter, and emphasized that the correct jurisdictional status of an item is critical to avoiding potential violations of export control regulations," the charging letter declares.

> Intersil made an initial disclosure in September 2010, filed a commodity jurisdiction in November and in March 2011 voluntarily disclosed "approximately 3,152 export transactions of radiation hardened parts" controlled under Category XV of the USML without DDTC authorization, the proposed charging letter noted.

DDTC claimed Intersil had misclassified the IC as subject to the Export Administration Regulations (EAR) under Export Control Classification Number (ECCN) 3A001.a.1 or 3A001.a.2 or EAR99. "On some occasions, Intersil erroneously obtained export licenses for ITAR-controlled ICs" from Commerce, the charging letter noted.

The 339 charges in the settlement cover exports and reexports without ITAR licenses to numerous countries, exports to persons on DTCC's Watch List located in Hong Kong, Korea and Singapore and reexports to China. Of the $10 million settlement, DDTC agreed to suspend $4 million "on the condition the Department approves expenditures for self-initiated, pre-Consent Agreement remedial compliance measures and Consent Agreement-authorized remedial compliance costs," a State statement stated.

"Intersil will establish an Internal Special Compliance Official position at the company to oversee the Consent Agreement, and Intersil will conduct two audits of its compliance program as well as implement additional compliance measures, such as improved policies and procedures, and additional training for employees and principals," it added.

Because Intesil disclosed the violations and cooperated with the investigation, State determined that administrative debarment "was not appropriate at this time." In its latest quarterly filing with the Securities and Exchange Commission, the company said: "The resolution of this matter will not result in debarment from engaging in the exporting of defense articles and will not impact our ability to transact business internationally."

Investor Protection Rules Pose Dilemma for Trade Negotiators

U.S. trade negotiators face a dilemma trying to accommodate resistance in Asia and Europe to tougher rules for the protection of foreign investors and U.S. industry demands for stricter provisions in proposed trade pacts. If the U.S. has to weaken investor-state dispute settlement (ISDS) provisions to keep them in final agreements, it could face a backlash from industry, trade lawyers warn. U.S. officials are encountering a similar problem in efforts to negotiate Bilateral Investment Treaties (BITs) with China and India.

As part of its public outreach for a Transatlantic Trade and Investment Partnership (TTIP), the European Union (EU) is evaluating stakeholder comments it requested on inclusion of ISDS provisions in the accord. With its request for comments, the EU also spelled out numerous changes it wants to see in ISDS rules, including creation of a

process to appeal the rulings of arbitration panels that rule on ISDS cases. U.S. officials say they are still insisting on the inclusion of ISDS rules in talks with the EU but have not taken a public position on EU proposals for changes in the rules. The U.S. appears open to the idea of an appeals process but is being cautious in its response because of the potential complexity an appeals process could create in ISDS cases, the officials say.

> U.S. sources also say they have tried to strike a balance between industry demands for stronger protections and critics who want some policies excluded from challenge. The revisions to the U.S. "Model BIT" attempted to do this but still drew complaints from all sides. The U.S. supports more transparency in ISDS cases, rules to prevent frivolous suits and standards for arbitration panels to avoid conflict of interest of their members. It also wants rules on expropriation to go no further than the U.S. Constitution's "takings" clause.

U.S. industry is concerned that weaker ISDS provisions in TTIP might give U.S. investors less protection than they already enjoy under existing BITs the U.S. has with nine EU members. Those treaties are with eastern European countries that formerly were part of the communist bloc before the fall of the Berlin Wall and later joined the EU, including Poland, Romania, the Czech Republic and Coatia.

Some in Europe have balked at including ISDS provisions in any TTIP deal, claiming EU courts and regulatory systems provide adequate impartial and fair treatment to all parties and don't need to be sidestepped through ISDS procedures. Australia has raised the same argument in opposing inclusion of these provisions in a Trans-Pacific Partnership (TPP) agreement.

In addition to proposing an appeals process for ISDS cases, the EU wants the agreement to provide more public transparency in arbitration procedures, rules to avoid conflict of interest for arbitration panelists who often come from a small clique of international lawyers, changes to narrow what constitutes "fair and equitable treatment" to limit the ability of arbitrators to apply their own interpretation, clarification of what "indirect takings" means and limitation of when investors are entitled to "legitimate expectations" of government policies to "clear and specific representations" to the investor.

"The EU aims to establish an appellate mechanism in TTIP so as to allow for review of ISDS rulings," the EU said in its public questionnaire on ISDS. "It will help ensure consistency in the interpretation of TTIP and provide both the government and the investor with the opportunity to appeal against awards and to correct errors. This legal review is an additional check on the work of the arbitrators who have examined the case in the first place," it said. "In agreements under negotiation by the EU, the possibility of creating an appellate mechanism in the future is envisaged. However, in TTIP the EU intends to go further and create a bilateral appellate mechanism immediately through the agreement," the EU noted.

Supporters and opponents of ISDS and BITs often cite the same statistics to draw different conclusions about the impact of these rules. Although there are more than 3,000 agreements globally with some form of ISDS provisions, only 514 disputes have gone to arbitration panels. U.S. and EU companies are the most common complainants in these cases, with EU investors accounting for 26% and U.S. investors 24%, according to an EU fact sheet. More recently, between 2008 and 2012, EU investors accounted for 52%

of complaints, it noted. While governments have won most cases or reached settlements, critics say the cases that governments have lost have involved important rules or undermined the ability of countries to implement their own laws and regulations.

Wikileaks Releases Draft Financial Services Text for TISA

Wikileaks, the rogue Internet source of secret information, was at it again June 19, leaking a draft of the financial services annex of a Trade in Services Agreement (TISA) being negotiated in Geneva. The text, dated April 14, was discussed at the last TISA meeting in April (see **WTTL**, May 5, page 5). Almost all of the text is inside brackets that indicate that no agreement has been reached on any of the provisions.

> The release came just as the services industry was launching "Team TISA," a lobbying coalition to support a services accord. At an event in Washington June 18 to unveil the group, U.S. Trade Representative (USTR) Michael Froman claimed the year-old TISA talks have made "significant progress." The 7th round of negotiations is scheduled for June 23-27.

"The basic framework of the agreement is in place, initial market access offers have been exchanged, and sector-specific work in areas like telecommunications and financial services is in full swing," Froman said. He also noted that the U.S. has tabled an "ambitious proposal to address restrictions on cross-border data flows and the troubling trend toward localization requirements."

The draft text that Wikileaks released includes definitions of various financial services and terms in the accord, along with proposed rules on how foreign service providers must be treated once the agreement goes into effect. Most of the language in the draft has been offered by the U.S., EU, Panama and Korea. The text is classified as "confidential" and supposedly barred from being made public until five years after the agreement is reached or talks terminated.

Some proposed provisions mirror rules already in place under the World Trade Organization's (WTO) General Agreement in Trade in Services (GATS) and other WTO accords. For example, one section calls for "each Party shall ensure that financial service suppliers of any other Party established in its territory are accorded most-favored-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Party in its territory."

Another section dealing with "commercial presence" says each party "shall grant financial service suppliers of any other Party the right to establish or expand within its territory, including through the acquisition of existing enterprises." It also adds that a "party may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and they are consistent with the other obligations of this Agreement."

The draft calls for permitting the "temporary entry into its territory of the following personnel of a financial service supplier of any other Party that is establishing or has established a commercial presence in the territory of the Party: (i) senior managerial

personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and (ii) specialists in the operation of the financial service supplier."

> The draft indicates that the U.S. has proposed restrictions on government operated postal insurance entities, a topic that has been the subject of U.S.-Japan dispute for many years. No Party shall "adopt or maintain a measure that creates conditions of competition that are more favorable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market," the U.S. proposes.

Other provisions in the draft cover such issues as the transfer of information for processing, including electronic data transfers, transparency and requirements for establishing financial services in a party. Notwithstanding any other rules, "a Party may determine the institutional and juridical form through which the new financial service may be supplied, and may require authorization for the supply of the service," proposed U.S. language states. "Where a Party requires a financial service supplier to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may only be refused for prudential reasons," it adds.

* * * Briefs * * *

EXPORT-IMPORT BANK: Ahead of House Financial Services Committee's scheduled June 25 hearing on bank's reauthorization, Ex-Im supporters in industry rolled out press releases and fact sheets and planned press conference to argue for need to keep Ex-Im in business (see **WTTL**, June 16, page 1).

RUSSIA: WTO members reportedly are complaining that Russia is widely violating its accession commitments, including agreement not to raise tariffs. EU, which has already requested dispute-settlement consultations with Moscow on some trade issues, may be ready to file another complaint aimed at Russia's imposition of new tariffs on paper products.

UKRAINE: OFAC June 20 added seven "separatists" in Ukraine to its SDN List. "These individuals have all contributed to attempts to illegally undermine the legitimate government in Kyiv, notably by falsely proclaiming leadership positions and fomenting violent unrest," said Treasury Under Secretary David S. Cohen in statement.

ITC: President Obama June 17 designated Meredith Broadbent as ITC chair and Dean A. Pinkert as vice chair.

EXPORT ENFORCEMENT: Vahid Hosseini of Reston, Va., was sentenced June 13 to 30 months in prison, followed by two years' supervised release, for exporting various high-tech goods included tachometers, power supply instruments, high-temperature probes, ammonia test tubes, valves and machinery parts to Iran via UAE without Treasury licenses. He pleaded guilty March 6 in Alexandria, Va., U.S. District Court to exports and money laundering (see **WTTL**, March 17, page 8).

MORE EXPORT ENFORCEMENT: Brothers Rex and Wilfredo Maralit, who are Manhattan police officer and L.A. Customs and Border Protection officer, respectively, pleaded guilty June 12 in Brooklyn U.S. District Court to conspiracy to violate Arms Export Control Act by

exporting high-powered weapons, including assault rifles, sniper rifles, pistols and firearm accessories, to Philippines without State license, and with conspiring to engage in unlicensed firearms dealing. Pair was arrested in September 2013 and released on $300,000 bond (see **WTTL**, Sept. 9, 2013, page 6). Sentencing is set for Oct. 16. Third brother Ariel, also charged in scheme, lives in Philippines and remains at large.

MORE EXPORT ENFORCEMENT: Hetran Inc., of Orwigsburg, Pa., and its CEO, Helmut Oertmann, pleaded guilty June 10 in Harrisburg, Pa., U.S. District Court to attempting to smuggle lathe machine worth more than $800,000 and weighing over 50,000 pounds to Iran via UAE in June 2012 without license. Criminal information was filed April 23 (see **WTTL**, April 28, page 6). Sentencing set for Sept. 17. Charges against Indian national Suniel Malhotra, overseas sales representative for Hetran, were dropped in April 2013 with government's agreement.

STILL MORE EXPORT ENFORCEMENT: Ronald A. Dobek was convicted June 4 after three-day jury trial in Milwaukee U.S. District Court of conspiring to export and exporting F-16 canopy seals to Venezuelan Air Force (VAF) without State license from December 2007 to December 2008. Sentencing is scheduled for Sept. 10. State revoked all export licenses to Venezuela in August 2006.

TRADE PEOPLE: Former Commerce Assistant Secretary for Import Administration David Spooner has moved to Barnes & Thornburg from Squire Saunders & Dempsey in Washington. He can be reached at 202-371-6377.

TPP: Administration is seeking in TPP "ground-breaking commitments to protect our oceans," USTR Michael Froman said at State conference June 17. "We're working to advance sustainable fisheries management, including management systems that are based on internationally recognized best practices and the best scientific information available and to combat illegal, unreported, and unregulated (IUU) fishing or pirate fishing," he said. Environmental groups have been in forefront of fight against TPP and other trade talks.

MAGNESIA CARBON BRICKS: CAFC in divided 2-1 opinion June 20 reversed CIT ruling that upheld Commerce's scope ruling in antidumping and countervailing duty cases against imports of certain magnesia carbon bricks (MCBs) from China and Mexico. "Commerce's scope ruling is unsupported by substantial evidence. We therefore reverse the Trade Court's decision and grant Fedmet's motion for judgment on the agency record," wrote CAFC Judge Jimmie Reyna for himself and Judge Randall Rader in *Fedmet Resources Corporation v. U.S.* In his dissent, Judge Evan Wallach said the "majority fails to ground its analysis in the plain language of the scope of the investigation, as defined in the antidumping and countervailing duty orders for MCBs and instead focuses on the petition of a domestic producer, contrary to the governing regulation."

SPORTS APPAREL: CAFC June 20 rejected appeal of Riddell, Inc., challenging Customs classification of imports of football jerseys, pants and girdles as "articles of apparel" under chapters 61 and 62 of HTSUS. "For the jerseys and pants, we affirm the Customs classification under the particular provisions within chapters 61 and 62 that Customs identified. For the girdles, we conclude, as Customs now agrees, that the proper apparel classification is different from the one Customs initially identified," wrote CAFC Judge Richard Taranto for panel.

FORD: Despite CAFC's 2013 reversal of CIT ruling on Ford's multiple claims for duty refunds under provisions of NAFTA, CIT Judge Mark A. Barnett dismissed suit June 17 (see **WTTL**, May 6, 2013, page 4). "The court grants Defendant's motion to dismiss. The court finds that it lacks subject matter jurisdiction over Plaintiff's Claims 1-4 and 6 for Entries B, C, and D, because they are time-barred, and declines to exercise jurisdiction over Plaintiff's remaining declaratory judgment claims," Barnett ruled (slip op. 14-65).