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Exporters Have Mixed Views on Eliminating “Specially Designed”

Industry has given the Bureau of Industry and Security (BIS) contradictory advice on whether it would be better to eliminate the use of the definition of “specially designed” in Commerce Control List (CCL) entries or keep the term despite all its shortcomings. In response to a BIS request for comments on the feasibility of enumerating specially designed parts and components rather than merely applying the specially designed catch-all, only a few firms submitted their views, but those that did differed on the benefits of a change (see **WTTL**, June 18, page 2).

The Alliance for Network Security (ANS), an industry association that represents firms such as Cisco Systems, Google, Hitachi Data Systems, Intel, Microsoft, Qualcomm and Rockwell Automation, said its members support eliminating the term where it currently appears in the CCL, but keeping it for items moved to the CCL from U.S. Munitions List (USML). ANS members support the adoption of a common definition for transferred items “if it is done in a way to reduce confusion and capture just the items of interest,” the group wrote.

Boeing argued against enumeration in the short term. “While enumeration may be feasible, Boeing believes it would constitute a significant effort, for which the benefits may be minimal. With so many aspects of export control reform currently in process at this time, such an effort would further complicate the compliance landscape for exporters,” it told BIS. It suggested that BIS wait two years to see what lessons it learns from the new specially designed definition. GE Aviation agreed with Boeing, citing several reasons against an enumeration, including the different nomenclature across industries and the potential length of the list. “Because technology is continuously advancing, no list will be able to remain exhaustive unless the descriptions of components included are so broad that they continue to capture parts that don’t merit inclusion on a list of highly controlled items,” GE wrote.

Brazil Rejects U.S. Complaint Against Hike in Tariffs

Brazil responded quickly to U.S. complaints about its raising of tariffs on a broad range of industrial goods, defending its action as necessary to counter U.S. monetary policy that has caused the artificial appreciation of the Brazilian currency. In a Sept. 20 letter to U.S. Trade Representative (USTR) Ron Kirk, Brazil’s minister for external relations, Antonio de Aguiar Patriota, rejected the complaints in a Sept. 19 letter he received from Kirk, who claimed the increase in tariffs by Brazil and its partners in the Southern Cone trade group (MERCOSUR) would “significantly hit U.S. exports to Brazil in key areas of export interest to the United



States.” Patriota said he appreciated Kirk’s recognition that the increase in the applied tariff rates is legal under World Trade Organization (WTO) rules. “The world has witnessed massive monetary expansion and the bailout of banks and industrial companies on an unprecedented scale, implemented by the United States and other developed countries. As a result, Brazil has had to cope with an artificial appreciation of its currency and with a flood of imported goods at artificially low prices,” he wrote. “The Brazilian Government will not abdicate its right to make use of all legitimate instruments under the WTO,” he wrote.

Kirk said the higher tariffs, which will come in two stages, would lead to a deterioration of market access in Brazil. “The fact that your ministry may currently envision these tariff increases to be time-limited does not mitigate their harmful impact. Nor are we reassured by the fact that these are increases in applied tariffs within bound rates. Brazil’s tariff increases will significantly restrict trade from present levels and clearly represent protectionist measures,” Kirk asserted.

Canada Has Offensive and Defensive Issues in TPP Talks

Canada sees the Trans-Pacific Partnership (TPP) talks as an opportunity to update and modernize the 18-year-old North American Free Trade Agreement (NAFTA), but it also recognizes that it will face pressure in the talks to end its agriculture supply management programs, especially for dairy and poultry, and to address intellectual property rights issues, according to John Manley, president of the Canada Council of Chief Executives. Manley, who previously served as Canada’s deputy prime minister and foreign minister, acknowledged the difficulty Ottawa will face in trying to end the supply management program. “I have had my name on the ballot and I know how difficult it can be politically to achieve some of these things,” he told the Center for Strategic and International Studies (CSIS) Sept. 20.

After his talk to CSIS, Manley told WTTL a main concern for Canadian business with NAFTA is its complexity. Other issues include nontariff barriers, customs clearance and rules of origin. “Some of my companies have basically said, ‘We don’t use NAFTA anymore; it’s just too complicated. General rates have gone down enough where we are better exporting to the U.S., paying a little duty and getting on with it,’” he recounted.

At the end of the latest round of TPP talks Sept. 15, U.S. officials said they were pleased with their outcome (see **WTTL**, Sept. 17, page 1). “The teams were pleased with progress made on a wide range of chapters, including market access, customs, rules of origin, technical barriers to trade, sanitary and phytosanitary standards, cross border services, telecommunications, government procurement, and others,” Assistant USTR for Southeast Asia and the Pacific Barbara Weisel said. The nine TPP countries “also continued to move forward in constructing the tariff and other specific market-opening commitments that each country is making on industrial goods, agriculture, textiles, services and investment, and government procurement,” she added.

Separately, Tim Groser, New Zealand’s trade minister, told a services conference Sept. 19 that negotiators are holding that nothing in the TPP talks will be agreed on until everything is agreed. “But they are not hiding behind that to stop progress. Right now about half of those 29 [negotiating] groups have either sort of done their work or reached a collective judgment that they’ve taken this about as far as they can until they get some political signals,” Groser said.

U.S. Seeks WTO Talks with China on Chinese Export Subsidies

President Obama beat GOP presidential candidate Mitt Romney in the latest “who-can-bash-China-the-most” contest. Just as Romney was ramping up campaign ads claiming Obama is soft on China, the president showed the power of incumbents to undercut an opponent’s arguments when the U.S. asked China for WTO consultations Sept. 17 to present complaints about its alleged export subsidies for its auto and auto parts producers (see story page 3). Separately,

the U.S. also asked the WTO to establish a dispute settlement panel to address Beijing's anti-dumping and countervailing duties on imports of U.S. autos (see **WTTL**, July 9, page 3). "Today, my administration is launching new action against China -- this one against illegal subsidies that encourage companies to ship auto parts manufacturing jobs overseas," Obama said in a campaign speech in Cincinnati Sept. 17. "We've brought more trade cases against China in one term than the previous administration did in two. And every case we've brought that's been decided, we won," he declared. The USTR's office claims China made at least \$1 billion in WTO-illegal export subsidies available to auto and auto parts manufacturers through so-called "export bases" in China between 2009 and 2011. The value of China's auto and auto parts exports increased more than nine-fold from 2002 to 2011, from \$7.4 billion to \$69.1 billion.

China Seeks Consultations with U.S. on Change in CVD Law

Perhaps not by coincidence, the same day the U.S. asked China for WTO consultations on its alleged auto export subsidies, China filed a request for consultations with the U.S. on changes to the countervailing duty (CVD) law that breezed through Congress with bipartisan support in March (see story above). The new law made it clear that Congress has given Commerce authority to impose both CVD and antidumping remedies on nonmarket economies and applied the new statute retroactively to 2006. In its request for consultations, China identified 31 CVD and 31 antidumping cases affected by the new law.

In its notification to the WTO, China said it considers Section 1 of the new statute (Public Law (P.L.) 112-99) to be inconsistent as such with Articles X:1, X:2 and X:3 of General Agreement on Tariffs & Trade. Beijing also renewed its complaint that U.S. authorities have no basis under domestic law to identify and avoid double remedies.

China specifically claims: "(1) These provisions of U.S. law were not 'published promptly in such a manner as to enable governments and traders to become acquainted with them'; (2) These provisions of U.S. law were enforced by the United States prior to their official publication; (3) The United States has not administered its laws and regulations relating to the application of countervailing duties to imports from non-market economy countries 'in a uniform, impartial and reasonable manner'; and (4) The United States has failed to ensure that the decisions of its domestic courts are implemented, and govern the practice of the U.S. authorities, in respect of the matters that are the subject of those judicial decisions."

As the WTO consultations begin, a parallel legal fight continues in the U.S. courts. In June, the Court of Appeals for the Federal Circuit remanded to the Court of International Trade (CIT) an appeal by GPX International Tire, which claims the retroactive application of the new law, which is often referred to as the GPX Law, to be unconstitutional (see **WTTL**, April 9, page 3). While the GPX case will be heard by CIT Judge Jane Restani, two other CIT judges have lifted their stays of similar suits by other Chinese firms and may issue separate opinions. Several other suits at the CIT based on similar grounds remain stayed for now.

WTO Services Talks Face Key Decisions in Fall

WTO talks on an International Services Agreement (ISA) still haven't reached consensus on the "architecture" for the negotiations or whether an eventual deal would be open to all WTO members, U.S. and foreign trade officials told the Global Services Summit in Washington Sept. 19 (see **WTTL**, July 9, page 3). Issues such as market access, dispute settlement and whether the ISA would be a positive or negative list are still unresolved among the 20 participants in the talks. Officials said they hope many of these issues will be resolved at the next meeting of the participants – known as the "Really Good Friends of Services" – the first week in October. "Our goal for that meeting is to become concrete on the types of issues that are being discussed here," said Deputy USTR Michael Punke. "I think one element in succeeding in that exercise this fall is not to over-engineer our discussion. We don't need a new formula for how to

negotiate. I think we can skip a lot of the ritual dance, and dive right in,” he said. A key outstanding issue is whether the final ISA would include a negative list, under which all services sectors in a country are open to other ISA signatories except those sectors specifically excluded, or a positive list, where each country identifies the specific service sectors it is opening to ISA signatories. Officials say a negative-list approach could speed up the negotiations, while a positive list approach would take longer. “I think this is headed towards a hybrid outcome, and I think that Europe won’t get a pure positive list and we won’t get a pure negative list. I think it will end up someplace in between,” Punke said.

Other ministers speaking at the summit were more cautious about the ISA’s prospects. “I’m hearing a frightening emerging consensus, but I’m sure sooner or later we’ll run into a bit of static,” said Crawford Falconer, head the Organization for Economic Cooperation and Development’s trade and services division. There might be “implicit consensus,” but when you scratch into it, you will see the differences, said Tim Yeend, Australia’s ambassador to the WTO.

In testimony the next day to the House Ways and Means trade subcommittee, Punke admitted that the European Union (EU), which has been participating in the ISA talks, still has concerns about an agreement. “We’ve been engaging over the course of the last several months and weeks with our European colleagues to figure out our mutual interests and needs in this negotiations and others,” Punke noted. “The line that those conversations takes is not always a straight line. In fact, it seems to be always a jagged line. But I do feel like in the last couple of weeks in particular that we have gotten closer to figuring out a pathway that both of us can agree on for moving the ISA forward,” he stated.

* * * Briefs * * *

ENTITY LIST: In Federal Register Sept. 19 BIS added six persons under eight entries in Iran and UAE to Entity List. It removed one party, Raaziq International (Pvt.) Ltd., in Pakistan. In addition, as part of annual review, BIS removed 14 entries, amended 36 entries, and added three entries in China and Uganda.

BURMA: OFAC Sept. 19 removed Burmese President Thein Sein and Lower House of Parliament Speaker Thura Shwe Mann from Specially Designated Nationals list, noting their “efforts on behalf of reform.”

SYRIA: OFAC Sept. 19 added Syria’s Army Supply Bureau and Belarus-based Belvneshpromservice to SDN list for their support of Assad regime. It also identified 117 more aircraft operated by Iran Air, Mahan Air or Yas Air.

ANTIBOYCOTT: Dover Energy Inc. (formerly Dover Fluid Management Inc), Norriseal Division, in Downers Grove, Ill., Sept. 11 agreed to pay \$22,000 to settle 10 BIS charges of violating antiboycott regulations. In 2007 through 2008, Dover Energy engaged in transactions to Pakistan, BIS said. Dover Energy neither admitted nor denied charges.

POLYESTER FIBER: ITC made “sunset” review determination Sept. 19 on 5-0 vote that revoking anti-dumping order on polyester staple fiber from China would likely lead to renewed injury U.S. industry.

U.S.-EU FTA: U.S.-EU High Level Working Group expects “to be able to have an announcement soon on the proper vehicle that we will move forward with to complete liberalization of trade between these two important partners,” USTR Ron Kirk said Sept. 19. European sources say they expect that announcement in mid-November. Meanwhile, working group has issued call for public comments on how to make regulatory regimes more compatible across the Atlantic (see **WTTL**, June 25, page 2).

TAA: Government Accountability Office report (GAO-12-930) Sept. 13 said participation in Trade Adjustment Assistance (TAA) for Firms dropped when portions of its legislation lapsed and program faced funding uncertainty. While Commerce’s Economic Development Administration (EDA), which runs program, has improved staffing and efficiency, “EDA’s performance measures and data collection for the TAA for Firms program provide limited information about the program’s outcomes, although GAO’s economic analysis found that participation in the program is statistically associated with an increase in firm sales,” GAO said.

TRADE PEOPLE: Viji Rangaswami, chief trade counsel for Democratic minority on House Ways and Means Committee, leaving post Oct. 3. She says she has no immediate employment plans and intends to stay home with her three children.