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BIS Creates Holding ECCN for Emerging Technology

Emerging technologies and goods that don't have an existing place on the Commerce Control List (CCL) or U.S. Munitions List (USML) could find a home in a newly established set of Export Control Classification Numbers (ECCNs) on the CCL. The Bureau of Industry and Security (BIS) published a final rule in the Federal Register April 13 creating a new ECCN series for "items that warrant control on the CCL but are not yet identified in an existing ECCN." The rule creates five new ECCNs in this series: 0A521, 0B521, 0C521, 0D521 and 0E521 for commodities, materials, software and technology (see **WTTL**, March 12, page 4).

> "These items are typically emerging technologies (including emerging commodities, software and technology) that are not yet included in the CCL, so such items are listed on the CCL in 0Y521 ECCNs while the U.S. Government determines whether classification under a revised or new ECCN, or an EAR 99 designation, is appropriate," BIS noted. It said the new ECCN series is comparable to Category XXI (Miscellaneous Articles) on the USML.

"While an item is temporarily classified under ECCN 0Y521, the U.S. Government works to adopt a control through the relevant multilateral regime(s); to determine an appropriate longer-term control over the item; or determines that the item does not warrant control on the CCL," the agency said. BIS first proposed this holding ECCN in July 2011 as part of its broad outline of plans for export control reform and the transfer of items from the USML to the CCL.

ECCN 0Y521 items will be subject to a worldwide license requirement except for Canada with a case-by-case license review policy under regional stability (RS Column 1) controls. These items will be eligible for License Exception GOV, but additional license exceptions may be available on an item-specific basis, BIS noted. Many in industry have been concerned about how these new controls apply to fundamental research. "Items classified in 0Y521 ECCNs by definition would only be items subject to the EAR. If an item were not subject to the EAR - such as technology that arises during, or results from, fundamental research, as described in Section 734.8 of the EAR - then it would not be subject to the EAR," BIS explained.

Panama, Colombia FTAs May Await U.S. Elections

There is a growing sense that President Obama won't certify the implementation of the free trade agreements (FTAs) with Colombia and Panama, which were signed into law Oct. 21, 2011, until after U.S. elections in November. After meeting with U.S. Trade Representative (USTR)

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Ron Kirk on March 14, Panamanian Commerce Minister Ricardo Quijano told associates that he does not expect the Panama pact to be implemented until Oct. 1, former Panamanian Ambassador to the U.S. Juan Sosa told WTTL April 12. Quijano "was very confident that by Oct. 1 the agreement will be in place. To me, that means December 31," Sosa said. For now, the delay is being caused by the need for Panama to enact additional laws to meet the conditions of the FTA. "There is some legislation on labor and finance that has to go to the assembly, and that is to happen in the next few months. There is no problem," Sosa explained.

> At the Export-Import Bank's annual meeting April 12, Deputy USTR Demetrius Marantis said the U.S. is working with both governments on implementation. "Our teams are working pretty tirelessly with both the Colombian government and Panamanian government," Marantis said. "It is in the interest of both sides to bring, as we did with Korea, the Colombian and Panamanian agreements into force as quickly as possible, and that is what we are doing," he added.

U.S., Brazil Liquor Deal Small Part of Bilateral Accords

U.S. and Brazilian officials were able to provide one trade "deliverable" during the visit of Brazilian President Dilma Rousseff to Washington April 9, an agreement on the joint recognition of distilled spirit names. Through an exchange of letters between USTR Ron Kirk and Brazilian Foreign Trade Minister Fernando Pimentel, the two countries launched a process for the U.S. to designate Cachaça as a distinctive product of Brazil and for Brazil to designate Bourbon Whiskey and Tennessee Whiskey as distinctive U.S. products.

> The exchange of letters is the first step toward this recognition, a USTR statement explained. Treasury's Alcohol, Tobacco and Firearms Bureau (ATF) will need to publish a notice of proposed rulemaking to solicit public comments and then issue a final rule confirming the designation of Cachaça. Brazil will then recognize Bourbon Whiskey and Tennessee Whiskey.

The meetings of U.S. and Brazilian officials during Rousseff's visit produced numerous bilateral agreements, mostly aimed at future cooperation, including on defense issues. During an Oval Office press availability with President Obama, Rousseff praised the progress being made toward closer bilateral ties, including reductions to U.S. ethanol tariffs. Nonetheless, she used the occasion to criticize U.S. expansionist monetary policies that are causing the devaluation of the dollar and the appreciation of Brazil's currency (see **WTTL,** April 2, page 1).

"I also voiced to President Obama Brazil's concern regarding the monetary expansion policies," Rousseff said. "Such expansionist monetary policies in and of themselves, in isolation regarding the fiscal policies, ultimately lead to a depreciation in the value of the currency of developed countries, thus impairing growth outlooks in emerging countries," she said.

Ex-Im Chief Hits out at Bank Critics in Congress

In a speech to the Export-Import Bank's annual meeting April 12, Bank Chairman and President Fred Hochberg struck out at members of Congress who are blocking Ex-Im's reauthorization. "Some in Washington think government has no role to play in helping our companies compete abroad," he said. "They think we should stand down as American companies compete with foreign companies backed by foreign governments. They think we should disarm in the middle of an economic arms race," Hochberg told some 1,200 attendees at the meeting.

Hochberg noted President Obama's national export initiative (NEI) and the goal of doubling exports by 2014. "But now, a few in Congress want to gut the NEI by gutting Ex-Im. They want to unilaterally disarm American companies just as foreign competition is heating up," he complained. "Make no mistake. No matter what happens in Congress, current Ex-Im obligations will not be affected. Your loans, your guarantees and your insurance will still be backed by the full faith and credit of the U.S. government. But if Congress fails to act, all new activity will grind to a halt," Hochberg said. Hochberg tried to rebut a concern of many tea party backers and conservatives that Ex-Im is causing the U.S. to build a large financial liability, arguing that the bank has never lost any money from its deals.

> "That's an important point – especially for the few who think that Ex-Im is the next Fannie or Freddie," he said. "We don't operate in one country. We operate in over 170. We don't operate in one industry. We operate in dozens of industries. Ex-Im's historical loss rate is less than 1.5%; and Ex-Im makes money for U.S. taxpayers," he asserted.

"But that's still not enough for some. They just don't like the idea of a government-backed export credit agency. It offends them philosophically," he said. "This is no time for America to let ideology triumph over pragmatism. We need to keep fighting to ensure that American companies are competing on a level playing field. And that means we must keep Ex-Im open at the level that U.S. exporters require," Hochberg asserted.

Former President Bill Clinton also spoke at the annual meeting and gave a strong endorsement of Ex-Im's renewal, while also taking the opportunity to knock those who are trying to shrink the government. "Every successful country, every one, has both a strong economy and an effective government," he said. "You cannot cite a single country on the planet that has both a growing economy, rising income and a robust sense of the future that does not have both a vibrant private sector and an effective government," Clinton asserted. "They don't say the government is intrinsically evil, should be as weak as possible, everything they do is wrong, they always mess up a two-car parade; let's just get out of it," he added.

U.S., EU Announce Shared Investment Principles

In an effort to show that the Transatlantic Economic Council can actually agree on something, the U.S. and European Union (EU) announced April 10 that they have reached an agreement on "Shared Principles for International Investment." The nonbinding, exhortative principles are intended to "strengthen our collaborative efforts to foster open investment policies worldwide. These principles would guide the United States and EU and the governments of third countries in developing future investment policies," a joint statement said.

> The seven principles call for: (1) Open and Non-Discriminatory Investment Climates; (2) A Level Playing Field; (3) Strong Protection for Investors and Investments; (4) Fair and Binding Dispute Settlement; (5) Robust Transparency and Public Participation Rules; (6) Responsible Business Conduct; and (7) Narrowly-Tailored Reviews of National Security Considerations.

WTO Foresees Slower Trade Growth in 2012

The prospects for world merchandise trade growth in 2012 are dimmer than earlier projections, raising doubts about President Obama's goal of doubling U.S. exports by 2012. World Trade Organization (WTO) economists issued their latest estimates April 12, forecasting growth of only 3.7% in 2012, which is slower than the 5% growth of 2011 and far off the 13.8% surge in 2010. The 2012 prediction would be below the long-term average of 6% for 1990-2008 and even below the average of 5.5% over the last 20 years, which includes the 2009 downturn, the WTO reported. "Should it come to pass, the baseline forecast for 2012 and 2013 would not bring the volume of world trade any closer to its pre-crisis trend. In fact, the gap should grow larger as long as the rate of trade expansion continues to fall short of earlier levels," it said.

"The outlook for world trade darkened in recent months as the euro sovereign debt crisis threatened to undermine global growth," the WTO report noted. "The agreement on a debt restructuring plan for Greece has provided some respite for governments, but at least a mild recession in the European Union may now be looming, with negative consequences for global trade and output. Emerging and developing countries would certainly be adversely affected by falling import demand in the European Union, which is the single largest market for their exports," it added. U.S. exports in 2011 were aided by the dollar's depreciation against the currencies of major foreign trading partners, including Japan, Switzerland and Brazil.

> "The Japanese yen and the Swiss franc both recorded significant nominal appreciations against the U.S. dollar in 2011. The yen was up 10% year-on-year, partly due to the safe haven role of the currency during times of uncertainty. Meanwhile the franc jumped 17%, prompting interventions by the Swiss National Bank in currency markets to forcing down the value of the currency, especially against the euro," the WTO reported. The Brazilian real was also up 5.4% against the dollar, and the Chinese yuan and Korean won rose 4.7% and 4.3%, respectively. Despite the sovereign debt crisis in Europe, the euro appreciated 5% against the dollar," report stated.

"Real effective exchange rates supplied by the International Monetary Fund show that the U.S. dollar's depreciation in 2011 was even stronger in real effective terms (-4.9%) than in nominal terms," the report noted. "On the other hand, the average appreciation of other major currencies was overstated. The Japanese yen only appreciated 1.7% in real terms while the Chinese yuan rose 2.7%. Brazil's currency registered a strong increase of 4.7% in real effective terms, while the euro's rise of 1.8% was relatively small," it stated.

* * * Briefs * * *

TRADE FIGURES: U.S. exports are growing more slowly than in 2010 and 2011, and unless pace picks up, they may not achieve President Obama's goal of doubling U.S. exports by 2014. U.S. merchandise exports in February rose 9.0% from year ago to $128 billion, Commerce reported April 12. Services exports increased 10% to $53.2 billion from last February. Goods imports went up 7.1% from February 2011 to $189.3 billion, as services imports gained 10.1% to $37.8 billion.

ANTIBOYCOTT: BIS has issued three warning letters to companies, indicating that it does not intend to take enforcement action against them. It sent warnings to: Alliant Techsystems (ATK) in Arlington, Va., March 30 for failure to report request to engage in restrictive trade practice or boycott on two occasions involving letters of credit issued by Central Bank of Kuwait; Pittcon Architectural Metals in Riverdale Md., March 7 for one failure to report request to engage in restrictive trade practice or boycott involving export to Qatar and letter of credit issued by British Bank of the Middle East (UAE); and PBS&J International in Tampa Fla., Feb. 1 for three exports to UAE involving request for proposal and instructions to tenderers.

OFAC: Essie Cosmetics Ltd. of New York, which was acquired by L'Oreal in 2010, and a former corporate officer agreed to pay $450,000 to settle charges of violating Iranian Transactions Regulations by sale and export of nail care products to Iranian distributor in 2009 and 2010. Other press reports identified executive as Max Sortino, Essie's CEO, who signed nonprosecution agreement (NPA) with U.S. Attorney in Manhattan on behalf of company. OFAC considered $200,000 of its total settlement satisfied by Essie's NPA with U.S. Attorney and administrative forfeiture to Department of Homeland Security.

WTO: Director General Pascal Lamy named 12 international business and trade experts April 13 to "WTO Panel on Defining the Future of Trade." Lamy had called for creation of panel at WTO ministerial conference in December (see **WTTL**, Dec. 19, page 4). Group's first meeting will be in Geneva May 16, with report expected in early 2013. "The difficulties we, and many other multilateral institutions, have encountered in recent years is indisputable proof that yesterday's solutions simply cannot be applied to the problems we face today," Lamy said in statement. Panel's analysis "will spark debate and open new channels of thinking on how we can best confront the stumbling blocks that today's rapidly evolving world has strewn in our collective path," he added.

INDIA: India filed formal request for WTO dispute-settlement consultations with U.S. April 12 to address complaint against U.S. imposition of countervailing duties on steel products from India.

FRESH GARLIC: On 6-0 vote April 12 in "sunset" review, ITC determined that ending antidumping order on fresh garlic from China would likely cause renewed injury to U.S. industry.