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## BIS Budgets for 30,000 More Export Licenses

The Obama administration's proposed budget for the Bureau of Industry and Security (BIS) for fiscal year 2013, which starts Oct. 1, 2012, anticipates that plans for shifting thousands of items from the U.S. Munitions List to the Commerce Control List will advance far enough by next year to move 30,000 licenses to BIS from the Directorate of Defense Trade Controls (DDTC). As BIS officials have previously said, the budget released Feb. 13 calls for adding 24 positions and \$3.5 million to the BIS budget. Even though DDTC will supposedly handle 30,000 fewer licenses, its budget proposal includes no decrease in its staff or spending.

While BIS is adding money for export licensing, its overall budget would go up only \$1.1 million because of savings in other activities. Some savings will come from spending \$300,000 less for export administration and \$2 million less for export enforcement because of the expected adoption of Defense's USExport computer system to handle electronic licensing.

Commerce says each BIS export licensing officer will be expected to process 1,200 licenses a year. "This estimate incorporates the number of licenses processed by DDTC with an added factor for the additional commodity classification requirements done by BIS," it states.

## ITC Continues Move Toward Being Patent Court

The International Trade Commission (ITC) expects to continue moving away from its historic role as a trade tribunal toward being a patent court, its proposed budget, released Feb. 13, for fiscal year 2013 indicates. Its proposed \$82.8 million budget would handle more unfair import cases under section 337 of the Trade Act, while the number of antidumping (AD) and counter-vailing duty (CVD) cases would remain at the low levels of recent years. The budget also will pay for a heavy load of litigation its lawyers support in the Court of International Trade (CIT) and Court of Appeals for the Federal Circuit (CAFC).

"Since FY 2002, the Commission's section 337 caseload, which is mostly patent-related, has increased by more than 350 percent," the ITC said in the explanation of its budget for the fiscal year starting Oct. 1, 2012. The number of 337 cases in fiscal 2011, which ended Sept. 30, 2011, jumped 34% from 2010, with 78 new and ancillary investigations started, "breaking the record set the previous year." The commission said it expects the 337 caseload to continue to grow in FY 2012 and FY 2013. "The Commission is an attractive forum due in part to its speed in reaching decisions," the ITC explained. Meanwhile, AD/CVD cases were near record



lows in fiscal 2011, with the ITC instituting eight preliminary and two final AD/CVD investigations. The ITC estimates that in fiscal 2012 it will institute 10 preliminary and 13 final investigations. For fiscal 2013 it projects launching 10 investigations.

During fiscal 2011, the commission instituted 31 “sunset” reviews, 12 full and 19 expedited reviews. “Sunset caseload can be projected with relative accuracy five years in advance,” it said. Based on historical experience, it expects to launch five full and nine expedited reviews in FY 2012 and 11 full and nine expedited reviews in FY 2013. “The Commission assumes that on average about 2 reviews per year will be revoked by Commerce due to lack of domestic interest,” it noted.

ITC Office of General Counsel (OGC) lawyers are heavily involved in litigation at the CIT and CAFC, as well as in NAFTA binational review panels. “OGC expects that, in FY 2012, the number of new appeals challenging the Commission’s injury and sunset determinations will be at levels similar to or higher than recent historical levels, reflecting the recent increase in new petitions filed and sunset reviews,” the ITC stated. At the close of fiscal 2011, ITC lawyers were participating in 56 cases before U.S. courts and NAFTA panels.

## Funding of Enforcement Office Just Shifts Money

The Obama administration’s proposed Interagency Trade Enforcement Center (ITEC), which the president touted in his State of the Union address, will be funded mostly from money taken from other trade enforcement activities that will be reduced, the administration’s proposed fiscal 2013 budget shows. The budget released Feb. 13 would give Commerce’s International Trade Administration (ITA) \$30 million more for trade enforcement, including \$24 million from the ITA budget and \$2 million from the U.S. Trade Representative to staff the ITEC in the fiscal year starting Oct. 1, 2012. At the same time, it calls for cutting almost \$18 million from ITA’s Market Access and Compliance (MAC) office and other administrative staffs.

MAC has had the job of responding to U.S. industry complaints about unfair trade practices in foreign countries. A large part of the cut in its budget would come from what the White House calls administrative efficiencies and consolidation of work with other ITA programs (see **WTTL**, Jan. 30, page 3).

Commerce said it also plans to: “Decrease MAC specialists in headquarters that combat non-tariff barriers in customs, standards, and transparency in markets that are not priorities or have a limited return on investment; Consolidate MAC staff to cover priority markets such as FTA partners, emerging markets such as China and India, and next tier markets such as Turkey and Indonesia.” ITA’s overall budget would increase by almost \$65 million, with \$18 million going to enhanced the Export.gov website, \$30 million for trade promotion and \$12.2 million for SelectUSA, the department’s effort to promote foreign direct investment in the U.S.

## ITA Keeps “Zeroing” in Back Pocket in Final Rule

Lawyers representing foreign respondents in antidumping cases remain leery of ITA’s promise to end the use of “zeroing” in administrative review cases in the final regulation published in the Feb. 14 Federal Register. Publication of the rule was part of the deal the U.S. reached with the European Union and Japan to settle their World Trade Organization complaints against the practice of zeroing (see **WTTL**, Feb. 13, page 3).

“In reviews, except where the Department determines that application of a different comparison method is more appropriate, the Department will compare monthly weighted-average export prices with monthly weighted-average normal values, and will grant an offset for all such comparisons that show export price exceeds normal value in the calculation of the weighted-average margin of dumping and antidumping duty assessment rate,” the agency said. Some lawyers still wonder when ITA will decide “a different comparison method is more appropriate.” They say

they expect the agency to apply “targeted dumping” rules more often and use zeroing in those cases. “In adopting this Final Modification for Reviews, the Department's intention is to apply a comparison methodology in reviews that parallels the WTO-consistent methodology the Department currently applies in original investigations, which will necessarily include any exceptional or alternative comparison methods that are determined appropriate to address case-specific circumstances,” ITA explained.

In response to comments on its original proposal concerning the use of zeroing in “sunset” review cases, ITA said it does not rely on those previously determined margins in reaching its decision on potential renewed dumping and won't go back and recalculate those margins. “The Department does not anticipate that it will need to recalculate the dumping margins in the vast majority of future sunset determinations to avoid WTO inconsistency, apart from the ‘most extraordinary circumstances’ provided for in its regulations,” the agency explained.

While the final rule said ITA will stop applying zeroing “prospectively,” many respondents in completed or pending administrative reviews still hope to get relief from past orders through pending litigation. Numerous cases are now at the CIT and CAFC seeking reversal of orders based on the CAFC's March 2011 ruling in *Dongbu Steel* (see *WTTL*, April 4, 2011, page 1).

## Another Chinese Visit; Another Set of Chinese Promises

Time will tell if meetings President Obama and Vice President Biden held with Chinese Vice President Xi Jinping, who is in line to be China's next leader, will result in action that 30 years of previous talks have failed to achieve. After the Feb. 14 meetings, the two countries agreed on 20 steps to promote “healthy and steady development of the U.S.-China cooperative partnership based on mutual respect and mutual benefit,” said a White House fact sheet.

Among those steps are two addressing export controls. “When all of the information, consistent with U.S. relevant regulations, has been provided for the application of Commercial Aircraft Corporation for Validated End-User authorization, the U.S. Government commits to process the application in a timely manner,” a U.S.-China joint statement said. “The U.S. Government commits to process, in a timely manner, specific requests for items China wishes to procure that may be subject to export controls,” it continued.

The two countries also addressed the growing concern about China's export financing practices. They agreed to hold two bilateral seminars to promote transparency and mutual understanding of each other's export credit agency programs and “establish an international working group of major providers of export financing to make concrete progress towards a set of international guidelines on the provision of official export financing” (see *WTTL*, Feb. 13, page 1).

Another step said, “China reiterates that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access.” In other measures, the Chinese said they will open up the Mandatory Third-Party Liability Insurance for motor vehicles to foreign-invested insurance companies. The U.S. promised to increase visa processing capacity in China. “The two sides affirm that WTO rules should be strictly observed when initiating trade remedy investigations and imposing trade remedy measures, to prevent their abuse,” they agreed.

## Prosecuted Gun Dealers Not Linked to SHOT Show

The 22 gun dealers who have been prosecuted for alleged violations of the Foreign Corrupt Practices Act (FCPA) were not associated with or at the Shooting, Hunting and Outdoor Trade (SHOT) Show when they were arrested, according to an official of the National Shooting Sports Foundation, Inc., (NSSF) which sponsors the show. News reports and legal press releases,

including WTTL stories, have often referred to the dealers as the SHOT Show defendants. The government's case against the defendants, who were arrested while in Las Vegas in January 2010 to attend the show, has been slowly unraveling and its future is uncertain (see **WTTL**, Feb. 6, page 3). "No defendants associated with this prosecution were arrested at the SHOT show," NSSF Senior Vice President Lawrence Keene said in a letter to WTTL. "It is improper to suggest an association where none exists, and this results in harm to the reputation of the SHOT show, which is a well-known registered trademark of the NSSF," he added.

## Obama Details Export Plans to Counter Chinese Financing

President Obama Feb. 17 laid out more details of his plan to promote exports as he noted in his State of the Union in January. One step would give the Export-Import Bank authority to counter China's export financing. "The Administration will actively employ its existing authorities so that the Export-Import Bank can provide U.S. firms competing for domestic or third-country sales with matching financing support to counter foreign non-competitive official financing that fails to observe international disciplines," White House statement said. It also announced revisions to Foreign Trade Zones (FTZ) regulations that were previously proposed (see **WTTL**, May 9, 2011, page 5). The new rules are aimed at cutting FTZ Board review times for FTZ applications to 120 days from 12 months, the White House said.

### \* \* \* Briefs \* \* \*

**EXPORT ENFORCEMENT:** Massoud Habibion, co-owner of Online Micro LLC in Costa Mesa, Calif., pleaded guilty Feb. 16 in D.C. U.S. District Court to conspiracy to illegally export computers to Iran through UAE. Mohsen Motamedian, his co-owner, pleaded guilty to obstruction of justice. Sentencing set for May 16 (see **WTTL**, April 25, 2011, page 4). Under terms of plea and related BIS and OFAC civil settlements, Habibion and Online Micro agreed to \$1.9 million forfeiture. Motamedian separately agreed to pay \$50,000 to settle civil charge that he solicited false statement to federal law enforcement agents.

**MORE EXPORT ENFORCEMENT:** PRC Laser Corporation of Landing, N.J., Feb. 14 agreed to pay \$42,000 to settle BIS charge of acting with knowledge of violation of EAR and Iranian Transaction Regulations, with alleged export of industrial laser valued at \$32,000 from U.S. to Iran via UAE.

**TRADE REORGANIZATION:** President Obama Feb. 16 sent Congress proposed legislation, Consolidating and Reforming Government Act of 2012, to grant him authority to reorganize government departments, including trade agencies (see **WTTL**, Jan. 16, page 2).

**CHILE:** Sen. Orrin Hatch (R-Utah) sent letter to USTR Ron Kirk Feb. 16 complaining that U.S. has not launched dispute settlement case under U.S.-Chile FTA to address Chile's failure to enact patent law changes. "Despite this clear violation of the Chile FTA, and the economic harm caused to U.S. innovators, your office has yet to initiate any formal dispute settlement action under our trade agreement," he wrote.

**SERVICES:** At first working-level meetings in Geneva week of Feb. 13 on potential services plurilateral deal, almost dozen countries shared information on how they approach services liberalization and options for future services negotiations, sources report (see **WTTL**, Feb. 6, page 1). This was first discussion of this size since 2008. "No conclusions were reached, but all agreed these discussions should be carried forward in as inclusive a manner as possible," one source said. More meetings planned for March.

**TARIFFS:** Three-judge CIT panel Feb. 15 dismissed suit by three apparel importers that claimed different tariff levels for men's and women's products are sexual discrimination and violate Constitution (slip op. 12-18). Judges said CAFC settled issue in *Totes-Isotoner* in 2010 (see **WTTL**, Feb. 15, 2010, page 3).

**ORGANIC PRODUCTS:** U.S. and EU signed accord Feb. 15 under which organic products certified in U.S. or EU may be sold as organic in either region. "All products meeting the terms of the partnership can be traded and labeled as certified organic produce, meat, cereal, or wine," USTR release explained.

**BYRD AMENDMENT:** CAFC Feb. 7, in *Sioux Honey Association*, rejected appeal of domestic U.S. producers of honey, mushrooms and crawfish who were seeking to force insurance firms to pay on surety bonds they had provided for imports from China. Producers claimed Customs has failed to collect \$723 million of the \$771 million in final AD duties that could have gone to them under Byrd Amendment.