

Vol. 31, No. 45

November 14, 2011

Administration Drops Plans to “Tier” USML and CCL

U.S. export control agencies have decided to forego, for now, plans to sort all items on the U.S. Munitions List (USML) and Commerce Control List (CCL) into three tiers based on their military sensitivity. In a Federal Register proposal Nov. 7 to convert USML Category VIII (aircraft) to a positive list, the Directorate of Defense Trade Controls (DDTC) said the tiering process would delay implementation of the administration’s export control reform initiative. “The Administration has determined that fundamentally altering the structure of the USML by tiering and aligning them on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters,” it said.

In a matching Nov. 7 Federal Register notice, the Bureau of Industry and Security (BIS) proposed a new 600 series in the CCL to control items moved from USML Category VIII to the CCL. BIS proposed creation of new Export Control Classification Numbers 9A610, 9B610, 9C610, 9D610, and 9E610 for these moved items. In addition, it proposed revisions to License Exception Strategic Trade Authorization (STA) to clarify that its scope extends to the U.S. government, to any person in the United States, and to the “development” or “production” of items.

“While a tiered list that is structurally aligned with the CCL remains the ultimate goal, we have adopted recommendations to not tier the revised categories at this time,” Andrew Shapiro, assistant secretary of State for political-military affairs, told the Defense Trade Advisory Group (DTAG) Nov. 9. He said trying to establish tiers at this time would be confusing and make it difficult for companies to recalibrate their internal systems. “Equally important, the tiering would delay the implementation of any category until all categories would be completed,” he said. “This would have imposed an unacceptable delay in the implementation that would deny exporters the near-term benefit of the reforms,” Shapiro told the DTAG.

Customs Pilot Test Aims to Speed Import Cargo Release

With more than \$2.5 trillion in goods entering the U.S. in 2011, Customs and Border Protection (CBP) has launched a pilot program aimed at speeding up the released of imported cargo at U.S. ports using the Automated Commercial Environment (ACE). In the Nov. 9 Federal Register, Customs called for volunteers to participate in the Simplified Entry Pilot, which would allow qualified importers to provide less information on their import documentation. Instead of the 27 data elements that must be completed on CBP Form 3461, the pilot would allow participants to submit 12 required and three optional data elements to CBP at any time



prior to the arrival of the merchandise in the U.S. The pilot will be limited to air transportation initially. CBP is limiting the pilot to 9 participants and will be seeking one or more importer self-filers and one or more brokers. Qualified participants must meet the Customs-Trade Partnership against Terrorism (C-TPAT) Tier 2 criteria or higher and have good compliance records. Industry sources that have worked with Customs to develop the program say the agency will seek to expand the role of customs brokers in getting importers to file required data correctly and early. Brokers already account for nearly 96% of import filings.

State Supports Arming Commercial Ships to Fight Piracy

The Obama administration is backing the arming of commercial cargo ships, including with private security personnel, to fight piracy, especially around the Horn of Africa off the coast of Somalia. “Working with industry, we recently established a national policy encouraging countries to allow commercial ships transiting high-risk waters to have armed security teams on board,” Andrew Shapiro, assistant secretary of State for political-military affairs, told the Defense Trade Advisory Group (DTAG) Nov. 9. “The reason is simple: to date, no ship with an armed security team aboard has been successfully pirated,” he reported.

“We believe the expanded use of armed security teams by commercial vessels is a major reason we have seen a decline in the number of successful pirate attacks,” Shapiro said. “We have recently demarched countries to permit the use of private-contracted armed security personnel on commercial vessels,” he added. In addition, the U.S. is working with industry and transited countries to make it “less onerous” for private security contractors to transit foreign ports with weapons intended for the self defense of ships.

Piracy “is a real issue for ocean carriers,” Erxin Yao, president of OOCL (USA), the Chinese shipping line, told the annual meeting of the U.S. Association of Importers of Textiles and Apparel (USA-ITA) and the American Import Shippers Association Nov. 8. “Just last year there were about 250 successful piracy attacks on ships,” he reported. “I’ve heard that 99% of these hijacks ended up with ransom being paid,” Yao noted. He said carriers “don’t want to publicize it, because it would only worsen the situation.”

State Advisors Recommend Change in Public Domain Rules

As part of its export reform initiative, DDTC should amend the International Traffic in Arms Regulations (ITAR) to clarify the meaning of “public domain” and how information can become “public domain” and also break out the definition of “fundamental research” into a new ITAR section, industry advisors recommended Nov. 9. Based on proposals from one of its working groups, the DTAG said the release of controlled technical data that is not in the public domain should be treated as a defense service, with illegal release considered a violation of those rules.

DDTC proposed changes to defense services rules and the meaning of “public domain” in April. The DTAG recommendations would amend the language in that proposal (see WTTL, April 18, page 4). The DTAG recommended that the definition of “public domain” remain based on information “generally available and accessible to the public” but with additional language saying availability doesn’t necessarily mean being published or made publicly accessible.

Also, it said persons making technical data available should “have exclusive ownership rights for such technical data” and “No other person has legal rights in the use or dissemination of such technical data (e.g., U.S. Government contractual data rights); and the act of making such technical data generally accessible or available to the public is not subject to restriction under any U.S. laws, regulations (not including the requirements of this subchapter) or Executive Orders enacted or imposed for national security reasons.” With the breaking out of the definition of fundamental research, the DTAG also said such research should not be limited to

institutions of higher learning, since some fundamental research is conducted by independent laboratories and industry. Its proposed definition in a new ITAR Section 120.xx would read:

“Fundamental research means basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. Fundamental research does not include industrial development, design, production or product utilization. ‘Basic research’ means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective. ‘Applied research’ means the effort that normally follows basic research, but may not be severable from the related basic research. ‘Applied research’ attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and attempts to advance the state of the art.”

The DTAG also recommended revising the BIS proposal for defining “specially designed” and plans for creating a single license application for export approvals by BIS, State and Treasury’s Office of Foreign Assets Control (OFAC). The group generally supported the proposed definition of “specially designed” with some minor refinements. It urged the administration to create a “logic based system” for the single application form. The group indicated problems with bringing OFAC under the single form, since most applications to the agency are from banks and handled through letter correspondence rather than specific forms.

G-20 Leaders Endorse New Approach to Doha Round

The heads of the world’s 20 richest nations (G-20) gave the green light Nov. 4 to World Trade Organization (WTO) negotiators to come up with a new multilateral negotiating agenda to bypass the deadlocked Doha Round talks. In their final communique after meeting in Cannes, France, the G-20 renewed their endorsement of the round but acknowledged that negotiations on what is formally known as the Doha Development Agenda (DDA) won’t be finished this year. They advised trade ministers to come up with a new approach to the talks during the upcoming ministerial conference in Geneva Dec. 15-17. So far, WTO negotiators have struggled to come up with an agenda for the meeting and what a new approach should be.

“To contribute to confidence, we need to pursue in 2012 fresh, credible approaches to furthering negotiations, including the issues of concern for Least Developed Countries and, where they can bear fruit, the remaining elements of the DDA mandate,” the communique said. “We direct our Ministers to work on such approaches at the upcoming Ministerial meeting in Geneva and also to engage into discussions on challenges and opportunities to the multilateral trading system in a globalized economy and to report back by the Mexico Summit,” it continued.

WTO Clears Last Major Hurdle Toward Russian Accession

A WTO working party cleared the way for Russia’s accession to the trade organization early next year, with formal approval Nov. 10 of the agreement detailing all trade reforms Moscow will adopt as a condition for its membership. The working party’s action followed the signing of a Swiss-mediated agreement between Russia and Georgia on the monitoring of trade along their contested border and transparency (see **WTTL**, Nov. 7, page 4). Full WTO adoption of the agreement is expected at the WTO ministerial in December, but Russia’s membership will only come after the Russian Duma ratifies the accord and implements required legislation, a task that is likely to be complete in the first half of 2012.

A senior official with the U.S. Trade Representative’s (USTR) office said the agreement meets all the criteria that the chairmen and ranking members of the Senate Finance Committee and House Ways and Means Committee had said must be satisfied to win congressional support for revoking the Jackson-Vanik Amendment and granting Russia permanent-normal-trade relations (PNTR) status. He said the deal resolves concerns over Russia’s protection of intellectual

property rights, sanitary and phytosanitary rules and its joining of the Information Technology Agreement (ITA). Once it joins the ITA, tariffs on ITA-covered goods will go to zero.

A third of Russia's GDP is earned abroad, said Maxim Medvedkov, chief WTO negotiator for Russia. He noted that Russia is the seventh largest exporter in the world and 92% of its foreign trade is with WTO members. He said it won't be difficult for Russia to implement its commitments, because it has had 18 years since the accession process began to adjust laws and practices to WTO rules.

Unlike China, Russia won't face a post-accession review period. The 750-page accession agreement and 1,000-page schedule of commitments for goods and services are the largest accession package ever approved by the WTO, the U.S. official said. Russia will have the right to continue with current investment projects in the auto sector until mid-2018, Medvedkov said. "We will be able to apply WTO inconsistent measures [and] after that we'll have to bring those measures in line with WTO requirements," he explained. A bilateral deal with the European Union on autos will be WTO consistent, he added. Russia will have the right to implement a 50% quota for all banking operations in the Russian market, Medvedkov said, referring to negotiations completed "many years ago." Moscow "will not allow foreign branches of foreign banks to be established in Russia," Medvedkov said. It may be considered at "a later stage," he noted.

Examples of tariff changes after implementation, according to a WTO fact sheet, include: dairy products will go to 14.9% from 19.8%; for cereals to 10% from 15.1%; oilseeds, fats and oils to 7.1% from 9.0%; chemicals to 5.2% from 6.5%; automobiles to 12% from 15.5%; electrical machinery to 6.2% from 8.4%; and wood and paper to 8% from 13.4%.

* * * Briefs * * *

WOOD FLOORS: ITC Nov. 9 made final determinations on 4-2 vote that imports of multilayered wood flooring from China that is subsidized and dumped is injuring U.S. industry.

VEU: BIS in Nov. 9 Federal Register removed National Semiconductor Corporation from list of Validated End-Users and Eligible Destinations in China and one facility of Semiconductor Manufacturing International Corporation (SMIC) – Semiconductor Manufacturing International (Chengdu) Corporation, Assembly and Testing (AT2) Facility (SMIC AT2 facility) from Eligible Destination list. Amendments were due to material changes in ownership and control of facilities and "not the result of activities of concern," BIS said. Changes don't establish any new license requirements or policies for exports, reexports, or transfers (in-country) of items to National Semiconductor, SMIC, or their facilities, it added.

SUDAN: USTR in Nov. 8 Federal Register said it has initiated review to consider designation of Republic of South Sudan as beneficiary under GSP program. Separately, State amended ITAR to say policy of denial as it applies to the Republic of the Sudan doesn't apply to the Republic of South Sudan. "Licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in the Republic of the South Sudan will be considered on a case-by-case basis," it said.

ANTIBOYCOTT: Rexnord Industries, LLC, agreed to pay \$8,000 civil fine Oct. 24 to settle five BIS charges that it violated antiboycott regulations by furnishing boycott related information to customer in Qatar. Rexnord had made voluntary self-disclosure, but neither admitted nor denied BIS charges.

TRADE FIGURES: With record exports of goods, industrial supplies and consumer goods, U.S. merchandise exports in September were up nearly 19% from September 2010 to \$129.3 billion. Goods imports rose almost 14% to \$188.2 billion from year ago. Services exports hit record \$51.1 billion in September, increase of 8.9% from last September. Services imports inched up 2.5% from year ago to \$35.3 billion.

FCPA: "We in the Justice Department are always open – and I personally am – to working with Congress on ways to improve our criminal laws," said Assistant Attorney General Lanny Breuer in a Nov. 8 speech. "That said, I want to be clear about one thing with respect to these proposals: we have no intention whatsoever of supporting reforms whose aim is to weaken the FCPA and make it a less effective tool for fighting foreign bribery," he declared. "Indeed, at this crucial moment in history, watering down the Act – by eliminating successor liability in the FCPA context, for example – would send exactly the wrong message," he said. Breuer noted adoption of tougher antibribery laws in United Kingdom, Russia and China.