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"Specially Designed" Definition Still Needs Work

In attempting to apply the proposed new definition of "specially designed" to their own products, some exporters are finding the proposed criteria don't fit all situations, according to members of the Bureau of Industry and Security's (BIS) Materials Technical Advisory Committee (MTAC). At their Aug. 11 meeting, MTAC members questioned the application of the definition to parts that are uniquely made for items that might be moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL) but serve only safety or aesthetic functions and don't contribute to the performance of the end item.

> Assistant Secretary of Commerce for Export Administration Kevin Wolf told the MTAC that he could not respond directly to those concerns but urged members to raise these issues in the comments they file on the regulations proposed in the July 15 Federal Register (see **WTTL**, Aug. 1, page 3). Wolf, who has been attending TAC meetings regularly, also has been hosting a weekly teleconference call with industry to answer questions about proposed rules.

Wolf acknowledged the time, costs and controversy surrounding "specially designed" in the past, but said BIS could not do away with the concept because it appears in several multilateral export control regimes, including the Missile Technology Control Regime (MTCR). "We have the inherent authority to define it, since none of the other regimes except for the MTCR has defined it," Wolf said. "Also, the amount of time it would take to go through and start revising category by category by category wouldn't allow us to get much done in terms of some sort of reform in the next couple of years," he added.

The MTAC discussion brought up a possible hole in the proposed definition. The example involved safety guards used for machines that produce defense items. The parts are designed for these machines, but don't contribute to their performance. They are not interchangeable for civil applications, nor are they "peculiarly responsible" for the machines they are used on.

"Made in China" Small Fraction of U.S. Consumer Spending

Despite popular myths that everything U.S. consumers buy is imported from China, a Federal Reserve Bank of San Francisco study released Aug. 8 shows that these goods make up less than three percent of U.S. personal consumption expenditures (PCE). Because of this small fraction, it is unlikely that recent increases in labor costs and inflation in China will generate broad-based inflationary pressures in the U.S., the bank concludes. Moreover, less than half of the

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PCE spent on Chinese goods actually goes to China, with most of the money staying in the U.S. and paying for transportation, wholesaling and retailing. "A total of 88.5% of U.S. consumer spending is on items made in the United States. This is largely because services, which make up about two-thirds of spending, are mainly produced locally," it asserts. "The market share of foreign goods is highest in durables, which include cars and electronics. Two-thirds of U.S. durables consumption goes for goods labeled 'Made in the USA,' while the other third goes for goods made abroad," the report says.

> Of the remaining 11.5% foreign share, Chinese goods account for 2.7% of U.S. PCE, mostly in household goods, clothing and shoes. "In the clothing and shoes category, 35.6% of U.S. consumer purchases in 2010 was of items with the 'Made in China' label," the report states. Of that 2.7%, only 1.2% actually reflects the cost of the imported goods, due to domestic transportation and retail costs.

"In other words, the U.S. content of 'Made in China' is about 55%. The fact that the U.S. content of Chinese goods is much higher than for imports as a whole is mainly due to higher retail and wholesale margins on consumer electronics and clothing than on most other goods and services," the bank notes.

Two Telecom Executives Guilty in Haiti Bribery Case

In the first jury trial in a far-reaching case against Florida telecommunications executives charged with bribing Haitian government officials, two of those executives were found guilty in Miami U.S. District Court Aug. 4 on all counts. Joel Esquenazi of Miami and Carlos Rodriguez of Davie, Fla., were each convicted of one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and wire fraud; seven counts of FCPA violations; one count of money laundering conspiracy; and 12 counts of money laundering.

> Esquenazi was the president and Rodriguez was the executive vice president of Terra, a Miami firm that had contracts with Telecommunications D'Haiti S.A.M (Haiti Teleco), a state-owned telecommunications company. The contracts allowed Terra's customers to place telephone calls to Haiti.

According to prosecution evidence, the defendants participated in a scheme to commit foreign bribery and money laundering from November 2001 through March 2005, during which time Terra paid more than $890,000 to shell companies to be used for bribes to Haiti Teleco officials. Esquenazi and Rodriguez authorized these bribe payments to successive directors of international relations at Haiti Teleco. Esquenazi was remanded to the custody of the U.S. Marshals, but his lawyers have asked for his release on bond. Rodriguez remains free on bond. Sentencing for both defendants currently is scheduled for Oct. 13.

In July, a superseding FCPA indictment cited two Haiti Teleco officials and executives of Cinergy Telecommunications Inc., another Florida company (see **WTTL**, July 18, page 4). Over the last two years, several executives have pleaded guilty and were sentenced to varying jail terms for illegal dealings with Haiti Teleco, including Antonio Perez, a former controller at Terra, and Robert Antoine, a former director of international affairs for Haiti Teleco.

U.S. Asks for Arbitration of Labor Dispute with Guatemala

With Congress expected to vote in the fall on free trade agreements (FTAs) that organized labor opposes, the Obama administration is trying to show it can be tough in enforcing the labor provisions of trade accords. The U.S. Trade Representative's (USTR) office said Aug. 9 that it has escalated a dispute with Guatemala by asking for the creation of an arbitral panel to settle U.S. complaints that Guatemala has violated its Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) labor commitments by failing to effectively enforce its labor laws. "With this case, we are sending a strong message that the Obama Administration

will act firmly to ensure effective enforcement of labor laws by our trading partners," said USTR Ron Kirk. The U.S. launched its complaint against Guatemala in July 2010 in response to a petition that the AFL-CIO first filed in 2008 (see **WTTL**, Aug. 2, 2010, page 2).

> The two governments held consultations in Guatemala in September and December 2010. After those consultations failed to resolve U.S. complaints, Washington asked the CAFTA-DR Free Trade Commission to intervene. "The Commission met June 7, 2011. Intense work ensued to reach agreement on an adequate enforcement plan, but those efforts have not succeeded," the USTR's office said.

Under CAFTA-DR rules, the arbitral panel will comprise three members. The parties jointly select the chairperson and each party selects one panelist. Both countries will provide written and rebuttal submissions, after which there could be a hearing and post-hearing submissions. An initial panel report is supposed to be circulated 120 days after the last panelist is selected, and a final report issued 30 days after the initial report is circulated. If the U.S. prevails in its claims, but the two sides can't agree on a resolution within 45 days, the U.S. may ask the panel to reconvene to impose a monetary assessment of up to $15 million on Guatemala, adjusted for inflation. The assessment would be paid into a fund established by the Free Trade Commission and expended at the direction of the Commission for appropriate labor initiatives.

While the U.S. action isn't likely to change the minds of FTA opponents, it did win praise from some critics. "Today's announcement is an important milestone in the effort to enforce the obligations made in trade agreements and protect the rights of workers in the U.S. and overseas," said AFL-CIO President Richard Trumka.

Questions Raised about Technology Exports under Proposal

Among the questions that exporters are raising about proposed rules for the transfer of items from the USML to the CCL is how technology for items placed under the new "600 series" in the CCL will be handled. At the Aug. 11 meeting of the BIS Materials Technical Advisory Committee (MTAC), committee chairman Thomas May of Boeing asked whether License Exception Strategic Trade Authorization (STA) can be used when sending technology for the production of 600-series items to a company in one of the 36 STA-eligible countries when the ultimate end-use isn't known or where there might be multiple end-users.

> "You would not be able to use STA, which is the authority for exporting in the first instance," responded Assistant Secretary of Commerce for Export Administration Kevin Wolf, differentiating between items and technology. "You would require a license from the Commerce Department to export that box of stuff to the UK, because you couldn't satisfy the condition of License Exception STA, [that the export is for] ultimate end-use by a government of one of those 36 because some of them you know are going to be used by another government," he said.

Because the technology would no longer be subject to the International Traffic in Arms Regulations (ITAR), there would be no requirement to obtain Technology Assistance Agreements (TAAs) or Manufacturing License Agreements (MLAs), he noted. "So those long complex forms, where you have to list out the parties, the nationals and all that, and the scope, don't kick in -- but rather you can just include within the scope of your application to BIS 'and technology therefore' with that same end-use, end-user and otherwise," Wolf explained.

Another question, which came up during Wolf's Aug. 10 teleconference call with industry, was whether exports need to be ultimately destined for government agencies identified in the proposed rules even if they are directly exported to the government itself. "Yes, if you use STA, the authority of STA to export the item out of the United States, that 600-series item must ultimately be destined to one of those types of government entities, law enforcement, etc. But don't forget there is also License Exception GOV, which is eligible for use for 600-series items with very few limitations," Wolf said.

U.S. Seeks $505 Million in Dispute over Canadian Lumber

The U.S. asked an international arbitration panel Aug. 9 to grant it $505 million in compensation for British Columbia's alleged violation of the U.S.-Canada Softwood Lumber Agreement (SLA). The request came in a Statement of Case, which is still confidential, arguing that British Columbia has illegally underpriced lumber that Canadian producers claim has been damaged by the infestation of the Mountain Pine Beetle. The U.S. contends British Columbia is taking advantage of the infestation to export more low-priced lumber to the U.S. than the damage warrants. The panel is scheduled to hold hearings on the dispute on Feb. 27 and March 5, 2012, and issue its report by the summer of 2012.

> Meanwhile, the U.S. and Canada are expected soon to sign a two-year extension of the SLA (see **WTTL**, July 11, page 1). The legal fate of the SLA, however, remains uncertain following the Court of Appeals for the Federal Circuit's decision in June allowing a suit challenging the agreement to go forward.

The British Columbia Lumber Trade Council (BCLTC) contested the claims the U.S. made to the arbitration panel, saying the harvest of the infested lumber had to be accelerated while it still had some value. "This explains why the volume of poor quality logs increased in the interior over this same period, and not because B.C. circumvented the SLA, as the U.S. alleges," said BCLTC President John Allan.

Export Boom May Be Cooling Off, Trade Figures Show

The highly touted surge in exports over the last 18 months appears to be slowing down as the global economy starts to hit some headwinds, according to trade figures Commerce released Aug. 11. The rate of export growth for manufactured goods on a year-over-year basis declined in May and June after rising steadily in the first four months of the year. June exports were up 15% compared to June 2010; May exports rose 18%, while April saw growth of 21.6%; March 18.7%; February 17.6% and January, 16%. For all of 2010, exports jumped 21%.

> For the first six months of 2011, goods exports increased 18.3% from the same period last year to $734.4 billion, as imports rose 18% to $1.1 trillion. The resulting goods trade deficit went up 17% to $373.6 billion. The largest share of the higher deficit came from three sources: OPEC (+$16 billion), China (+$14 billion) and the European Union (+$13 billion).

The tragic earthquake and tsunami in Japan appears to have contributed to a 10.8% increase in U.S. exports to Japan to $32.4 billion in the first half of the year compared to 2010, while imports increased just 5.5% to $59 billion. The "reset" of trade relations with Russia has seen a significant jump in bilateral trade. U.S. goods exports in Russia in the first half of 2011 v. 2010 surged 49% to $3.8 billion, as imports jumped 40% to $16.7 billion.

* * * Briefs * * *

EXPORT ENFORCEMENT: Ulrich Davis of The Netherlands, ex-manager of Dutch freight forwarder, was arrested and charged Aug. 6 in Newark U.S. District Court with one count of conspiracy to violate IEEPA and Iranian Transactions Regulations (ITR). In 2007 and 2008, Davis and his company allegedly exported several shipments of goods to Iran, including aircraft parts, adhesive primer, peroxide and aerosols.

SYRIA: As U.S. moves towards total break with government of Syrian President Bashar al-Assad, Treasury imposed new sanctions Aug. 10 on Syria's largest bank, its Lebanese subsidiary and country's largest mobile phone operator. Targeted were: Commercial Bank of Syria, Syrian Lebanese Commercial Bank and Syriatel. Treasury said Syriatel is owned or controlled by Rami Makhluf, "a powerful Syrian businessman and regime insider designated under E.O. 13460 in February 2008 for improperly benefitting from and aiding the public corruption of Syrian regime officials." By imposing these sanctions, "we are taking aim at the financial infrastructure that is helping provide support to Assad and his regime's illicit activities," said Treasury Under Secretary for Terrorism and Financial Intelligence David S. Cohen.