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First USML Revision Coming Soon for Industry Comment

The first effort at consolidating two different control lists -- Category VII of the U.S. Munitions List (USML) and Export Control Classification Number (ECCN) 9A018b, its sister on the Commerce Control List (CCL) -- is "coming soon to a Federal Register near you," said Brian Nilsson of the White House National Security Staff Dec. 2. "We're going to release Category VII as a Christmas present," he told the Washington International Trade Association.

An interagency task force completed a review of Category VII in August and released a description of its findings (see **WTTL**, Oct. 25, page 2). The Obama administration now plans to publish the complete results of that effort and ask for public comment on how the task force sorted the category into items that should stay on the USML, move to the CCL or be decontrolled, Nilsson said.

The proposal and comment exercise is just a test of the methodology and criteria that will be used to merge the USML and CCL into one list as part of the administration's export control reform plan. Actual movement of USML items to the CCL or their decontrol would require notification to Congress. Creation of a single list will require legislation, said Nilsson, who chairs the White House Export Control Task Force and oversees the interagency reform process. The publication will feature complete details on what should be controlled, the structure of controls, including the three-tier structure of sensitivity and availability of defense products, and the translation of the USML into a positive list structured in the same way as the CCL.

It will be the responsibility of industry to send back comments on what's missing. There will be "homework," Nilsson said. Eventually, this effort, along with similar work on the 19 other USML categories, will lead to a consolidated, positive list, with detailed technical parameters for those items that warrant control. Nilsson said other interagency task forces have been formed to examine all the USML categories and have started that work.

Prospective AD/CVD System Would Reduce Burdens

The Commerce Department reluctantly admits that shifting from the current retrospective system for administering antidumping (AD) and countervailing duty (CVD) cases to a prospective system would generally reduce its workload and the Department of Homeland Security's (DHS) and possibly improve efforts to fight duty evasion, according to a report the department sent to Congress in November and released Dec. 3. Commerce, however, carefully avoided taking a position on whether it favors such a change. Instead, the report mostly recites the comments and positions submitted to the department from supporters of the two different systems (see



WTTL, April 2, page 3). The report, which Congress requested in the 2010 Commerce appropriations law, notes that the U.S. is the only WTO member that uses a retrospective system. By balancing comments from both sides of the debate, Commerce tried to take a neutral stand on which approach would be better. While citing the greater accuracy of a retrospective system, it also recognizes the greater certainty of a prospective system.

“Given the variation in current and yet to be designed alternative, prospective systems, there is no certainty that the transition from a retrospective to a prospective system would be any less burdensome on Commerce and its administration of the AD/CVD laws,” the report states. “Without a significant decrease in the number and complexity of administrative and new shipper reviews and a reevaluation of the judicial review alternatives currently in place, a move to a prospective system may result in a system that is equally, if not more, burdensome as the current retrospective system (though that is just one possible outcome),” it adds.

Nonetheless, Commerce says a changed approach “could prove less burdensome” because the department would no longer need to maintain the same level of detail within the DHS ACE system’s Case Management System, which contains files for each AD/CVD case on a company-specific basis. “Commerce notes that under a prospective system it would likely issue fewer instructions to DHS. For example, Commerce would no longer need to issue liquidation instructions because final duties would be collected at the time of entry,” the report states.

“DHS observed that, depending on the type of prospective system selected, much of these administrative burdens could be reduced or eliminated,” the report states. With a reduced administrative burden, “DHS would not have to devote significant assets and resources to deemed liquidations,” it notes. “DHS notes that by lessening the administrative functions involved with a retrospective system, import specialists would be able to devote more time to review AD/CVD entries and non-AD/CVD entries to detect evasion,” Commerce says.

“Final Countdown Starts Now” on Doha, Lamy Tells Officials

World Trade Organization (WTO) Director General Pascal Lamy told trade officials in Geneva Nov. 30 that 2011 presents a “window of opportunity” to complete the nine-year-old Doha Round, claiming negotiators received the signal they needed to complete the talks from world leaders attending the G-20 meeting in Seoul and the Asia-Pacific Economic Cooperation Forum (APEC) in Japan. “In sum, we have the political signal, we have the technical expertise and we have the work programme. We now need to translate these into a comprehensive deal which you can all take back home. The final countdown starts now,” Lamy said.

Lamy outlined a work program that would move the current informal talks that have been referred to as the “cocktail approach” to a more formal “give and take” on the specific outstanding issues in the negotiations, with the chairs of the various negotiating committees intensifying their efforts. “Together we plan an intensive work programme from now on, through the beginning of next year, advancing on all fronts of the negotiations at the same time,” he said.

“With this timing in mind, I believe there is now a collective sense emerging that revised texts in all areas of the negotiation will have to be developed so that they appear towards the end of the first quarter of 2011,” Lamy suggested. The WTO chief also said he would continue to be involved actively in the talks, including the use of “Green Room” meetings where smaller groups of officials and ministers will meet to negotiate specific issues.

Deputy U.S. Trade Representative Michael Punke told the Trade Negotiations Committee (TNC) the U.S. welcomes the emphasis on negotiating groups and chair-led processes, “but at the same time direct engagement among Members will continue to be essential, particularly at the bilateral level.” He cautioned that the chairmen of the negotiating committees can’t make the final deal, members will have to do that. “In order to develop revised texts we must negotiate

with one another and not look to the Chairs – or other exogenous messiahs – to resolve disagreements by handing down answers from above,” Punke said in his prepared remarks. He also added a dose of realism to the discussion. “We also need – and this is of course the trickiest part of our work – to negotiate our way to solutions that will enable all of us to sell a final [Doha] outcome in our domestic political processes, as the G20 leaders pledged to do,” Punke reminded the TNC. “We all need to be as forthright as possible about what it will take for each of us to make that case, and the United States will continue to do so,” he added.

A Single Export Application Form One Step Closer

All the departments involved in export licensing – Commerce, State, Treasury and Defense – have reached agreement on the basic elements for a single application form that shippers and manufacturers will be able to use to apply for licenses under all U.S. export control regulations, according to Brian Nilsson, who serves as chairman of the White House Export Control Task Force and oversees the Obama administration’s interagency reform process. He said the proposed form will be released for public comment early next year after final touches are made to the definitions that accompany the form. “We have interagency agreement on what the data elements are for a single form,” Nilsson said Dec. 2. The next step is to finish the proposed definitions, which “we need as a companion to the one form,” he noted.

A common application form is the first step toward a single information technology (IT) system that all export licensing agencies will use for receiving and processing applications. A single IT system is one of the four singularities in the Obama administration’s export control reform plan. Once the single form is adopted, it will be turned over to the IT staff which will develop the software to fit the application into the single IT system that all agencies will use.

The decision has already been made that the Pentagon’s USXports computer system will be adopted by all agencies, including State’s Directorate of Defense Trade Controls (DDTC), Treasury’s Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS). DDTC plans to shift its electronic licensing system to USXports early next year. BIS, which is now beta testing the system, aims to change systems by the end of 2011, Nilsson said.

The single form, which will have to include consensus on all the data required by each agency, also will seek to standardize the different definitions used in the different export control regulations. As examples, Nilsson cited the differences in the meaning of “specifically designed” and the use of the terms “technology” in the Export Administration Regulations (EAR) and “technical data” in the International Traffic in Arms Regulations (ITAR). Creating a common term would require changing 26 separate sets of regulations, Nilsson pointed out.

ITA Issues Advice on Handling China Trade Cases

As part of its promise to tighten antidumping and countervailing duty rules for Chinese imports, the International Trade Administration (ITA) has posted three policy bulletins that supposedly would implement that goal. The three bulletins, however, basically restate existing policies for these cases (see **WTTL**, Sept. 6, page 1). The bulletins address: “Specificity of Subsidies Provided to State-Owned Enterprises;” “Inclusion of International Freight Costs When Import Prices Constitute Normal Value;” and “Factor of Production Reporting Requirements for Non-Market Economy Companies with Multiple Facilities and/or Production Processes/Lines.”

In the first bulletin, ITA said it “confirms the Department’s practice with respect to the specificity of subsidies granted to state-owned enterprises (SOEs).” In the second, it said it “affirms the existing practice of the Department of Commerce (“the Department”) in non-market economy antidumping proceedings with regard to the inclusion of international freight costs in import statistics used as surrogate values in the calculation of antidumping margins.” The third bulletin says respondents from nonmarket economies (NMEs) are required to provide

production inputs, including “factors of production, for their total production of the merchandise meeting the description in the scope of the investigation or review.”

U.S., Korea Reach Deal on Fixing FTA

After three and a half days of intense talks, U.S. and Korean negotiators reached agreement Dec. 3 on fixing provisions in the U.S.-Korea Free Trade Agreement (FTA) that could help move the pact to congressional approval in 2011. In the hours before U.S. Trade Representative (USTR) Ron Kirk and Korean Trade Minister Kim Jong-hoon reached the deal while ensconced in a suburban Washington hotel, their staffs were busy calling key lawmakers and business executives to run the deal by them. The deal addresses concerns that Ford and Chrysler had with the pact’s auto provisions but leaves unresolved demands from Sen. Max Baucus (D-Mont.) to force Korea to allow the import of beef from cattle older than 30 months.

The new deal, being called the “2010 supplemental agreement,” didn’t change the FTA’s beef provisions, which are more of a political problem for Baucus than a trade issue for most of the U.S. beef industry. Even with existing restrictions, U.S. beef exports to Korea have surged in the last two years. Complaints about the original pact, however, continue to come from cattle ranchers in Montana.

The supplemental agreement includes extensive changes to the FTA’s auto provisions. One key change will allow U.S. car companies to export up to 25,000 cars to Korea – four times the amount in the 2007 deal – without meeting Korean safety standards as long as they meet U.S. standards. U.S. autos will be “considered compliant” with Korean environmental, fuel-economy and greenhouse gas emissions standards established after 2007, if they achieve 119% of their targets. Another major change extends the phase-out period for the 25% U.S. tariffs on trucks. Rather than starting the 10-year phase out immediately, the current tariff will stay in place for seven years and phase out in years eight, nine and 10. The new deal also keeps the U.S. 2.5% auto tariff in place for five years instead of three. Stronger special auto safeguard provisions also will now allow the snapback of auto tariffs if Korean auto imports into U.S. surge for up to 10 years after tariffs are eliminated, instead of expiring when the tariffs are eliminated.

“The changes announced today resulted from the Administration, domestic automotive industry, the United Auto Workers and a key, bipartisan Congressional group standing up for American manufacturing,” said House Ways and Means Chairman Sander Levin (D-Mich.). “I support today’s agreement,” he said. “This is a big win for American employers and workers,” said Rep. Dave Camp (R-Mich.), who is slated to take over Ways and Means in January. “I look forward to working, on a bipartisan basis and with the Administration, to implement this agreement,” he said in a statement. Rep. Mike Michaud (D-Maine), who has been a vocal critic of the FTA, said, “The deal reached today, while beneficial to the auto industry, falls far short.”

* * * Briefs * * *

PANAMA: One of key hurdles blocking submission of U.S.-Panama FTA to Congress may have been resolved with signing Nov. 30 of new bilateral tax information exchange agreement (TIEA). Upon entry into force, new TIEA will provide U.S. with access to information it needs to enforce U.S. tax laws, including information related to bank accounts in Panama, Treasury said. It “will permit the United States and Panama to seek information from each other on all types of national taxes in both civil and criminal matters for tax years beginning on or after November 30, 2007,” department explained.

EAR: In Federal Register notice Dec. 3, BIS claims EAR’s five-year recordkeeping requirements generate 84,001,108 records that each take just one second to one minute to create for total of 251 hours, but cost the public “\$0.” Notice requested comments to meet requirements of Paper Reduction Act.

NAFTA: Binational panel Nov. 26 remanded to ITC its injury determination in antidumping case against rectangular pipe and tube from Mexico, directing commission to provide sufficient explanation for why it rejected Mexico Nacional de Acero’s attempt to rebut “presumption that any market changes in 2008 were the result of the filing of the petition and Commerce preliminary affirmative determinations.”