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Electronic Submissions Have Speeded Up CJ Process

State's Commodity Jurisdiction (CJ) process is moving faster since early September when the department began requiring all decision requests to be submitted electronically, according to Andrew Shapiro, assistant secretary of State for political-military affairs. "We are already seeing benefits from electronic submissions and a partially electronic staffing process," he told the Defense Trade Advisory Group (DTAG) Oct. 20.

"Our response times have decreased from an average of 196 days in 2006 to just 41 days today, despite a doubling of the caseload in the last three years from 412 to 817," Shapiro told industry representatives. "We are in the process of establishing a collaborative workspace for the U.S. government for CJs using standard industry software. Electronic CJs will be disseminated to all reviewers through this workspace," he said.

ETRAC Confronts Limited BIS Resources to Track Technologies

The Bureau of Industry and Security's (BIS) Emerging Technology and Research Advisory Committee (ETRAC) is confronting the problem that any methodology it recommends to the agency to find and track technologies that might require export controls in the future will require more resources than BIS has to devote to this task. At an Oct. 21 meeting, ETRAC members questioned BIS resources for applying the committee's work. "We need a plan B that addresses constraints," said Melissa Flagg, technical intelligence director in the office of the Pentagon's Director of Defense R&D (see **WTTL**, Aug. 9, page 2).

The committee's original task was to create a methodology for identifying and evaluating emerging technology that could have dual-use functions and require controls, taking "into account current resources and constraints" at BIS. At last count, BIS officials counted six people, all of them part-time, who will take the committee's work and translate it into actual export regulations.

ETRAC members said the universe of technologies that are still in research and at least five years away from market could be infinite. Committee Chair Tom Tierney of Los Alamos Laboratory identified 150 search engines to access the thousands of papers and subjects currently being researched. "It's an untenable mess," Tierney said. Tierney presented the group with an outline of the current progress of the committee and raised these questions: "Can ETRAC invent a new methodology that can capture this research without requiring monitoring



everything everywhere? Can a process separate the wheat from the chaff?” Those questions led back to the question of resources and funding. Members asked whether the government is the best group to fund this work or could this be outsourced to the private sector. “Industry is going to make so much money off of understanding the future environment, they are always going to be better than government in this area,” Flagg said.

Defense Industry Advisors Try Hand at Revising USML

The criteria and guidelines that Obama administration officials have developed for merging the U.S. Munitions List (USML) and the Commerce Control List (CCL) work, defense industry executives found in applying them to three categories on the USML. Three working groups of State’s Defense Trade Advisory Group (DTAG) reported Oct. 20 on the results they found when they applied the criteria to entries under USML Category VIII (aircraft and associated equipment), Category XI (military electronics) and Category XII (fire control, range finder, optical and guidance and control equipment). For most entries in these categories, the groups were able to propose a tier of control under which the item should be controlled.

An interagency task force completed a similar review of Category VII (tanks and military vehicles) in August after months of interagency squabbling (see **WTTL**, Sept. 6, page 4). Administration officials expect to brief congressional staff on the findings on Category VII during the week of Oct. 25.

The DTAG working groups completed most of their effort in about a month, although they left some items incomplete because they lacked expertise on some narrow sectors. The administration’s classification criteria and guidelines “were pretty good,” Bryon Angvall of Boeing told the DTAG. “They are a great path to follow,” although “some tweaks around the edges may be needed,” he said.

Unlike the government reviewers who recommended that most items in Category VII should be switched to the CCL, the industry groups proposed keeping most of the items they reviewed under the USML but at lower tiers of control. The group reviewing Category VIII, however, recommended that many old military or obsolete aircraft could be moved to the CCL. It proposed that only unique military features on some jet engines should be on the USML. The working groups also proposed a structure for turning the USML into a positive list under which controls are determined by particular specifications, but in most cases they left blank what those specifications should be. One area where the specifications will be important will be controls on parts and components for thermal imaging devices where many products now have widespread commercial use.

Implementation of Defense Treaties At Least Six Months Away

U.S. exporters won’t be able to take advantage of the defense trade treaties the U.S. has entered with the United Kingdom (UK) and Australia for at least another six months, Robert Kovac, managing director of State’s Directorate of Defense Trade Controls (DDTC) told the DTAG Oct. 20. “A lot of mechanics” will need to take place before the treaties, which the Senate ratified Sept. 29, become operative, he said (see **WTTL**, Oct. 4, page 1).

The main obstacle to implementation will be the publication of regulations to amend the International Traffic in Arms Regulations (ITAR). State intends to publish the rules in proposal form first, possibly by the end of the year, and ask for public comments.

DDTC has decided to make one key change in the proposed rules. It originally planned to publish a positive list of defense items that could be exported under the treaties, but because of the cost and logistics of publishing such a list, the agency instead will follow the model used for the Canadian licensing exception and publish only a negative list of items that cannot

qualify for license-free export under the treaties. Kovac explained that a positive list would have required publishing a 43-page supplement to the ITAR. Moreover, that list is likely to change over the next year or so as the administration's export reform plans materialize.

As part of the proposed rules, DDTC also has to decide how it will identify the "community" in the UK and Australia that will qualify to receive U.S. defense items under the treaties and how to publicize who belongs to the community. In addition, it needs to identify the operations programs in each of those countries that also qualify as treaty eligible. The Census Bureau will also have to modify the Automated Export System (AES) to provide a box that will allow exporters to indicate that they are exporting an item under the provisions of the treaties.

"More importantly, there are changes, particularly in Australia, that need to take place in their law that have to go through Parliament, and there are changes the UK is going to have to make by publishing an OGEL [Open General Export License] that will allow the treaties to become effective," Kovac told the DTAG. "Combined with all of those, after all those actions, there will be an exchange of letters that will take place where everybody will say, 'Ready?' 'I'm ready'," he added.

Ruling Could Encourage More Safeguard Cases against China

Reports that a World Trade Organization (WTO) panel has preliminarily ruled in favor of the U.S. in a dispute with China over Washington's imposition of safeguard tariffs on imports of Chinese tires could encourage other developed countries to invoke these rules against Chinese imports, according to diplomats and executives who have followed the case. The still confidential panel report is likely to have a greater impact in developed countries that face a surge of Chinese imports than smaller economies that have avoided Chinese challenges over their use of safeguard measures.

Regardless of the final report issued by the panel, it is "absolutely clear" that China will appeal the ruling, one diplomat told WTTL. He said he also expects the U.S. to appeal. The transitional special safeguard provisions that China accepted in its WTO accession agreement end in 2013.

The Chinese complaint stemmed from President Obama's decision in 2009 to apply the special China safeguard rules in Section 421 to impose temporary duties on Chinese tires after the International Trade Commission (ITC) had found imports of Chinese tires had surged (see WTTL, Sept. 21, 2009, page 3). There was some expectation that the ruling would spark more Section 421 cases in the U.S., but such cases never materialized because the recession in the U.S. led to a reduction of Chinese imports in 2009, making the surge claim unsupportable.

With Chinese exports now on the rise again around the world, the situation may have changed. Other developed countries may have been waiting to see the results of the case before pursuing other cases, one executive close to the 421 case told WTTL. He said developing countries have never hesitated to use the safeguard rules and the panel decision isn't likely to have an impact on their decision to use the special safeguard rules in the future. Developing countries can use the safeguards with much less fear of being challenged in the WTO, because China has never used a WTO panel to challenge developing country trade decisions, he noted. China has "much greater extrajudicial leverage with countries like Ecuador," he said; adding that China has other more informal ways to pressure these countries.

WTO Rules on Countervailing Duty Dispute with China

In a switch with past experience, where a WTO panel has rejected a policy sustained by U.S. courts, a WTO dispute-settlement panel issued a report Oct. 22 saying the U.S. can apply both antidumping (AD) and countervailing duty (CVD) sanctions against the same imports from

nonmarket economies (NME). The decision runs counter to a Court of International Trade (CIT) ruling in *GPX International v. U.S.* in August in which the court said Commerce could not apply both sanctions unless it could devise a methodology that avoided double counting the same trade practice (see **WTTL**, Aug. 9, page 1).

The WTO panel rejected Chinese complaints about AD and CVD rulings against several imports from China. In particular, the panel said Commerce can use its NME methodology to calculate and impose AD duties concurrently with CVDs on the same Chinese imports and upheld the department's finding that state-owned enterprises (SOEs) and state-owned commercial banks (SOCBs) are public bodies that provide subsidies.

The Chinese complaint targeted cases against imports of circular welded pipe (CWP), light-walled rectangular pipe and tube (LWR), laminated woven sacks (LWS) and pneumatic off-the-road tires (OTR). The WTO panel agreed with China on a few subjects. It found the U.S. policies were inconsistent with WTO rules in how Commerce calculated the existence and amount of benefit from the purchase of SOE-produced inputs and the benefit of certain loans from SOCBs in the OTR investigation and the department's use of "facts available" to determine the amount of an SOE-produced input purchased from trading company suppliers in the LWR and CWP cases.

* * * Briefs * * *

EXPORT ENFORCEMENT: New England Trading Global Inc. (NET) of Pembroke, Mass., settled 13 BIS charges of exporting sodium cyanide and potassium cyanide to Israel without required licenses between 2004 and 2006, BIS announced Sept. 27. Firm agreed to pay civil penalty of \$365,000, but BIS agreed to suspend fine for one year and waived if NET commits no further violations. NET, a private international commodity trading company dealing in metals and chemicals, neither admitted nor denied BIS allegations.

MORE EXPORT ENFORCEMENT: Lindsey Manufacturing of Azusa, Calif., and two of its executives were indicted Oct. 22 for their alleged roles in conspiracy to bribe Mexican government officials at Comisión Federal de Electricidad, a state-owned utility company. President Keith E. Lindsey, Steve K. Lee, and company each were charged in eight-count superseding indictment with conspiracy to violate Foreign Corrupt Practices Act (FCPA) and FCPA violations. Two Mexican citizens, Enrigue and Angela Aguilar, were previously charged and await trial (see **WTTL**, Oct. 4, page 4).

WOOD FLOORING: Coalition for American Hardwood Parity filed antidumping and countervailing duty complaints Oct. 21 against imports of multilayered wood flooring from China.

SUDAN: OFAC amended its licensing policy for Sudan Oct. 20 to adopt a favorable licensing stand for exports of agriculture equipment and services to areas of Sudan other than the Specific Areas of Sudan to which licenses already are being approved. "The purpose of this new licensing policy is to benefit the Sudanese people by enhancing local food production and strengthening the agricultural sector in a chronically food insecure country," OFAC said.

COATED PAPER: ITC made final determination Oct. 22 that imports from China of dumped and subsidized coated paper for high-quality print graphics threaten to injure U.S. industry.

CIT: Court's 16th Annual Judicial Conference will be held in New York Nov. 18. For details and registration, contact clerk of court at (212) 264-2814.

EX-IM BANK: In fiscal 2010, which ended Sept. 30, Bank registered another record year financing exports, authorizing \$24.5 billion (up almost 17% from year ago) in aid that supported \$34.4 billion in exports.

G-20: In Oct. 20 letter to finance ministers of 20 largest economies in world, Treasury Secretary Tim Geithner urged G-20 countries to agree to undertake policies to reduce external imbalances to specific share of GDP over next few years. This will mean that countries running persistent trade deficits will have to increase their national savings rate, while those with persistent surpluses would have to boost domestic consumption. He also called for restraint in seeking competitive advantage by undervaluing national currencies and establishment of IMF monitoring and report on progress toward these goals.