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Single Electronic Export Application System Two Years Away

If the administration's export reform plans are actually implemented, it will be two years or more before exporters will be weaned off the current separate electronic systems used to file export license applications with the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC), according to a BIS official. The adoption of a single information technology (IT) system for submitting both dual-use and defense applications isn't likely to be ready before 2012, Amanda Simpson, BIS senior technical advisor, told the BIS Sensors and Instrumentation Technical Advisory Committee (SITAC). The adoption of a single internal IT system for the interagency review of applications will come sooner, she said.

"In the next couple of months, while the industry portal will remain D-Trade, the State Department's licensing officers will start using USExports [the Defense Department's electronic system] for viewing applications," she said July 27.

"That will smooth the transfer of information between State and Defense," she added. "Commerce will switch over to USExports next year, but we will have SNAP-R as the portal," Simpson stated.

"The next step will have a team developing a single, web-based form that will – by selecting the product and where it is going – send you to the appropriate interfaces to answer the questions for submission," she told the committee. "The hope is that some time in 2012 or soon thereafter we will join all the systems into one and have a true, integrated system between State, Commerce and Defense, as well as bringing on Treasury, which currently operates a paper system," Simpson said; admitting that is a "huge hurdle."

Simpson also said she is aware of the costs and burdens exporting companies will face in revamping their electronic filing systems when they have to make the switch from the current systems to the single IT system. "I don't want to make a premature jump to something and then find out that six months later we have to change it," Simpson told WTTL after the SITAC meeting. She said she wants to be able to say that "if we're going to move to something, that's the way it is going to be for five years."

CIT Bars Commerce from Applying CVD and AD to NME Imports

The politically popular idea of imposing countervailing duties (CVD) on imports from China hit a roadblock Aug. 4 with a ruling from Court of International Trade (CIT) Chief Judge Jane Restani barring Commerce from imposing CVDs at the same time as it uses its nonmarket



economy (NME) methodology to impose antidumping duties (AD) on the same product. The ruling is likely to increase pressure in Congress to amend the CVD law to clarify how it applies to NMEs in general and China in particular. It also will send Commerce lawyers back to the drawing board to try and find a way of applying both remedies to NME imports. In a 2009 ruling in *GPX International v. U.S.*, which dealt with AD and CVD orders on off-the-road tires from China, Restani remanded the case to Commerce to assure that the NME methodology and CVD process didn't result in double counting subsidies.

Based on the offset methodology Commerce adopted on remand, she said the department failed to comply with her remand instructions. "Accordingly, the court holds that the offset does not comply with the statute and is also unreasonable due to the expense associated with conducting an additional investigation that is essentially useless," she declared (Slip Op. 10-84).

Commerce "must forego the imposition of the countervailing duty law on the nonmarket economy (NME) products before the court because its actions on remand clearly demonstrate its inability, at this time, to use improved methodologies to determine whether, and to what degree double counting occurs when NME antidumping remedies are imposed on the same good, or to otherwise comply with the unfair trade statutes in this regard," Restani ruled.

When the NME AD and CVD methodologies are used concurrently, they "result in a high likelihood of double counting because they effectively counteract the same behavior twice," Restani found. "In its remand redetermination, however, Commerce proposes guarding against double counting by merely offsetting CVD against NME AD after it uses its regular methodologies to calculate the CVD and NME AD margins," she wrote. "The court notes that with this offset, the combination of the CVD margin and the NME AD cash deposit rate will always equal the unaltered NME AD margin. This result, therefore, renders concurrent CVD and AD investigations unnecessary because the same remedial price adjustment can otherwise be obtained by merely conducting an NME AD investigation." Restani ruled.

Restani agreed with respondents GPX and Starbright that it is unreasonable to force foreign parties "to spend many months and large sums of money to go through an investigation, the end result of which is to calculate a CVD margin, but then to eliminate that CVD [margin] because it has been offset by some parallel investigation." Perhaps even more importantly, she wrote, "the offset that Commerce now advances is inconsistent with 19 U.S.C. Section 1677a, which lists the specific offsets to export price and constructed export price that are permissible."

ETRAC Finds Search for "Emerging Technology" Is Elusive

Finding a needle in a haystack is one thing. Finding a needle that hasn't been invented yet is quite another. That is the problem members of the Bureau of Industry and Security (BIS) Emerging Technology and Research Advisory Committee (ETRAC) say they are finding as they respond to the assignment BIS gave them to develop a "watch list" of emerging technologies (see **WTTL**, May 3, page 2). At the ETRAC's Aug. 3-4 meeting, members said they face the problem of finding technologies that researchers haven't perfected or released to the public.

The committee has two main tasks, according to chair Thomas Tierney, project leader at Los Alamos National Laboratory. The first is how to identify emerging technology and how to gauge the maturity of that technology. After that, the second is to "identify research outcomes" and pinpoint the actual technology that could be of national security concern, he told the committee.

ETRAC discussion highlighted one sticking point, namely where to begin? Members questioned where to find information about these new technologies and what keywords to use to search the data. They suggested that possible sources include program calls, funded and failed grant proposals, scientific journals, expert panels, symposia, dissertations, provisional patent applications, existing agency roadmaps, venture capital or angel investors, as well as applications for

Waasenaar controls and research visa applications. Another limitation may be access to these data, even for government advisors, because they may be classified or proprietary. Much of the research on emerging technologies may not be documented, members noted. As an example, members wondered whether grant proposals to the National Science Foundation, even those that are rejected, are part of the public record and can they be accessed.

Gary Kramer, a research chemist with the National Institute of Standards and Technology, suggested, "The system won't be perfect, it just has to be useful." Pinpointing the dilemma of how you know what you don't know, Amanda Simpson, BIS senior technical advisor, said, "If we're only looking for technologies that we're looking for, we're not going to find the ones that we're not looking for."

U.S. Urged to Add Textiles to Korean FTA Talks

In the shadow of the debate over autos and beef in the Korean-U.S. (KORUS) Free Trade Agreement, several manufacturing groups and two members of Congress have written to U.S. Trade Representative (USTR) Ron Kirk urging him to add textiles to the agenda of things to fix in the trade pact. Kirk told reporters Aug. 6 that he had not had a chance to read the letters yet, but said his main focus remains on autos and beef. "I think it is improbable to believe that we're going to reopen and look at every aspect of disagreement at this late date," he said.

In an Aug. 4 letter to Kirk, six major textile industry groups and unions contend three areas of the FTA need reworking: the tariff phase-out schedule, rules of origin and customs enforcement language. South Korea is the second largest supplier of textiles by volume to the U.S. and is "a large and aggressive producer and exporter of textile and apparel products," the letter noted.

Korea's exports of polyester fiberfill have been the subject of a continuing antidumping case for 14 years, it said. The "complete and immediate removal of this duty in KORUS is an inexplicable and totally unwarranted outcome for an unfair-trade product that is, to the best of our knowledge, unprecedented in U.S. negotiating history," it asserted. The Aug. 2 letter to Kirk from Reps. John Spratt (D-S.C.) and Howard Coble (R-N.C.), cochairs of the Congressional Textile Caucus, echoed industry's concerns around the tariff phase-out schedule. "Exposing sensitive portions of the textile industry to immediate duty phase-outs will increase the possibility of further job losses and plant closings in the United States," the lawmakers wrote.

Bill to Strip China's MFN Comes As Exports to China Surge

A bill (H.R. 6071), introduced Aug. 4 by Rep. Brad Sherman (D-Calif.), to revoke China's most-favored-nation (MFN) status was filed just after the U.S.-China Business Council (USCBC) issued a report Aug. 2 showing how – on a congressional district-by-district basis – exports to China surged from 2000 to 2009. The USCBC report shows exports to China from Sherman's own district in California rising 142% from 2000 to 2008 and declining 14% in 2009 when all trade dropped during the recession. From 2000 to 2009, exports to the rest of the world from California's 27th District decreased 15%.

The elimination of MFN, which U.S. trade law now calls permanent normal trade relations (PNTR), for China would give Beijing the right to bring a complaint against the U.S. at the World Trade Organization (WTO). The likely result would be China's ability to drop MFN treatment for U.S. exports.

Sherman's bill, co-sponsored by Rep. Ileana Ros-Lehtinen (R-Fla.), would revoke MFN for China six months after enactment and would direct the president "to negotiate a new trading relationship with China designed to eliminate the trade imbalance within four years," a press release from Sherman's office said. It would provide for expedited consideration of any new trade deal with China. "The U.S.-China trade relationship is horrendously lopsided, and it has

not lived up to the promises of those who encouraged us to give preferential trade treatment to China,” Sherman said. The USCBC report paints a different picture of the relationship. “Even with a global recession, American businesses and American workers continue to benefit from expanding opportunities to sell high-value manufactured goods to the China market, the world’s fastest growing economy,” said USCBC president John Frisbie. “U.S. exports to China have jumped 330 percent since 2000, compared to 29 percent to the rest of the world,” he noted. Other data in the report showed exports to China outpacing exports to the rest of the world in House Ways and Means Chairman Sander Levin’s (D-Mich.) district, where exports to China rose 516% from 2000 to 2009, and trade critic Rep. Mike Machaud’s (D-Maine) district, which saw exports to China surge 658% in those years.

Commodity Classifications Can’t Resolve Jurisdiction Issues

Exporters can’t rely on BIS-issued commodity classifications to determine whether a product is “subject to the EAR,” the agency warned in an interim final change to the Export Administration Regulations (EAR) published in the Aug. 2 Federal Register. Commodity classifications are intended only to offer advice on what Export Control Classification Number (ECCN) on the Commerce Control List (CCL) an item or technology falls under, BIS explained. Requests for a Commodity Jurisdiction ruling to determine whether an item is subject to the International Traffic in Arms Regulations (ITAR) must be submitted to State’s Directorate of Defense Trade Controls (DDTC), it stated.

“Because BIS does not have the authority to issue commodity jurisdiction determinations, a BIS commodity classification only reflects whether each item identified in the commodity classification request is described in the CCL,” BIS said in the notice. “Thus, prior to seeking a commodity classification, the applicant should have already determined--through a self-determination or with the assistance of another U.S. Government agency--that the item is not subject to the exclusive export control jurisdiction of another U.S. Government agency,” it said.

* * * Briefs * * *

COMMODITY JURISDICTION: DDTC in Aug. 4 Federal Register amended ITAR to require CJ requests to be submitted electronically as of 29 days after publication of rule.

CAFTA-DR: VESTEX, Guatemalan textile manufacturers association, issued statement Aug. 4 defending its industry’s efforts to comply with fair labor laws (see WTTL, Aug. 2, page 2). “When there have been concerns about practices in the factories, VESTEX works closely with the manufacturer and the U.S. customers to ensure that there is swift action to resolve any problems,” it said. It also tried to assure customers that end result of dispute, whatever it is, won’t disturb trade. “Even in the worst case that a dispute goes forward, the penalty that would be assessed against Guatemala Government is a monetary one,” VESTEX said

CIRCUMVENTION: Sens. Ron Wyden (D-Ore.) and Olympia Snowe (R-Maine) introduced bill (S. 3725) Aug. 5 to give Commerce added powers to address circumvention of antidumping and CVD orders when foreign exporters subject to trade remedies mislabel goods as coming from nonsubject countries. Measure would require goods under investigation to post cash duty deposits after preliminary determination.

LEBANON: OFAC finally published Lebanon Sanctions Regulations in July 30 Federal Register to implement an executive order that President George W. Bush issued in August 2007.

EAR: BIS revised “direct product rule” in July 30 Federal Register to apply to products reexported to Cuba, Iran, North Korea, Sudan and Syria, otherwise known as Country Group E:1.

IRAN: Treasury expanded list of Iranian persons and entities subject to U.S. sanctions Aug. 3 to include foreign affiliates of Iranian banks, insurance firms and technology companies in Belarus, Germany, Luxembourg and Japan. Two new targets, Metal & Mineral Trade S.a.r.L. of Luxembourg and Ascotec Steel Trading GmbH of Dusseldorf were subject of BIS denial orders in 2003 for illegal exports to Iran (see WTTL, Dec. 1, 2003, page 4).