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BIS Has August Deadline for Early Export Control Reforms

The Bureau of Industry and Security (BIS) has set August as its deadline for completing its early portion of President Obama's export control reform plans, Under Secretary Eric Hirschhorn told an agency advisory committee April 26 (see **WTTL**, April 26, page 3). "The announcement on Tuesday has three phases," Hirschhorn told the BIS Emerging Technology and Research Advisory Committee (ETRAC). "Our internal deadline is August 13, which is a year from the date that the president announced the review," he said.

"There has been a lot of attention on phase three, which is the proposal for a single licensing agency and a single enforcement agency, but there is an incredible amount of work and progress in phases one and two," he told the committee. "I think many of you are aware of the many regulatory changes we're trying to make between now and then, including starting work on simplifying and combining the U.S. Munitions List and the Commerce Control List. That's a tall order. I'm not promising that by August 13, but I am promising that we are going to do our best to get it underway," the BIS chief said.

"We are working very hard right now on setting criteria and then we are going to test those criteria against actual items to see whether they make sense – put them into practice in a sort of beta effort," he explained. BIS Assistant Secretary Kevin Wolf urged ETRAC members to bring to the agency their ideas and suggestions for amending particular Export Control Classification Numbers (ECCNs). "Now's our chance to bring these regs into conformity with the 21st Century and what the actual threats are," he said.

At an April 27 meeting of another committee, Wolf responded to questions about the future role of the Nuclear Regulatory Commission and the Office of Foreign Assets Control (OFAC) in the possible unification of export licensing agencies. "Everything is on the table," he said. That's not the way OFAC Director Adam Szubin sees it. "I can't predict where this goes," Szubin told an April 29 conference in Washington. "We're part of the discussion," he said; adding, "I don't expect OFAC to be merged and don't expect the tenor of sanctions regulations or sanctions compliance to change substantially through the export control reform process."

Doha Round Negotiations Drift Toward Summer

Senior-level trade officials meeting in Paris April 26-27 worked to keep a flicker of life in the Doha Round trade talks until more political drive is mustered, but their talks appear to have



produced nothing of substance. Trade diplomats in Geneva, however, say they are pleased that Deputy U.S. Trade Representative (USTR) Michael Punke and Chief Agriculture Negotiator Islam Siddiqui are now in place and may be able to get the talks moving again. Yet, there is still a feeling the round isn't urgent for the U.S., one diplomat told WTTL.

The Paris meeting of officials from the U.S., European Union (EU), Brazil, India and China showed that the talks may need to move to a larger group of countries, the diplomat said. "Not much" came out of a meeting, he added. Conversations mainly involved the negotiating process. Another diplomat said additional talks between negotiators will take place over the "next few weeks and months and in different configurations," but no meeting of the Paris group is planned.

One observation that emerged from the meeting, which the U.S. had proposed, is that the group of five trade partners isn't the main game in town and that a larger group is needed, the first trade diplomat said. The question is how to continue the negotiations, including whether to expand the negotiating groups, to reopen everything or continue with the bilaterals, he said. So far, the U.S. is the only country that says the bilaterals are making progress, he added. One goal of the Paris meeting was to revive talks after the disappointing results of the stocktaking meeting the World Trade Organization (WTO) held in March (see WTTL, March 29, page 1). Nothing has happened since then, the first diplomat said. The next opportunity for political-level officials to weigh in on the Doha Round will be the May 26-27 annual ministerial meeting of the Organization for Economic Cooperation and Development (OECD) in Paris.

Ex-Im Creates Environmental Panel to Monitor Peru Project

In response to criticism from environmentalists about its financing of exports for the construction of a liquid natural gas (LNG) project in south central Peru, the Export-Import Bank has established an independent advisory panel of experts to advise it on the environmental and social impact of the project. More than 60 U.S. exporters and suppliers are involved in providing equipment and services for the Peru LNG Project, which consists of an LNG plant, a related marine loading terminal and a pipeline to the plant. Environmental and consumer groups, which also opposed the U.S.-Peru free trade agreement, have complained that several projects in Peru are despoiling the Amazon and displacing indigenous peoples.

Creation of the panel, which is based in Lima, was a condition for the bank's approval of financial support for the project. In early 2008, Ex-Im approved a \$458.6 million long-term loan guarantee to support U.S. exports for the project, which is expected to become operational in the next few months. "We look forward to their findings on how the environmental and social aspects of the development of south central Peru are being managed," said Ex-Im Chairman and President Fred Hochberg in a statement. Panel members include officials from non-government organizations in South America and Peruvian universities.

Advisors Asked to Help BIS Created Deemed Export "Watch List"

BIS has given its Emerging Technology and Research Advisory Committee (ETRAC) a second assignment to help the agency create a "watch list" of emerging technologies that might become subject to deemed export controls in the future. The ETRAC is expected to complete its first assignment in early May with the submission of a report and recommendations on how BIS should evaluate future technologies that might become subject to deemed export controls and how to narrow the current list of technologies that are subject to controls.

At the committee's April 26 meeting, BIS Under Secretary Eric Hirschhorn noted the work the committee has already done and said "now we're asking you for something more ambitious... We're asking you to tell us how to see the future." ETRAC has been asked to consider "not those technologies that are going to be on the shelves three-to-five years from now but really

10-to-20 years from now,” said committee Co-Chairman Thomas Tierney, a physicist with the Los Alamos National Laboratory. The work will aim to identify technology areas and sub-categories and to rank their importance based on their negative potential to affect national security, economic activity, human health and safety, food supply production, domestic infrastructure, including water, power and transportation, U.S. manufacturing capabilities and domestic raw material supplies and production.

Some of the indicators the committee will look at to determine what should go on the watch list are the rate of change in a specific technology, the intensity of research and development activity, the number of publications, the ability of the technology to change the competitive landscape, the potential to alter the strategic U.S. technical stance and the harm to U.S. national security and interests.

Committee members said evaluating emerging technologies in the U.S. alone won't adequately identify what is happening in science and research because an increasing amount of research is being done in foreign countries, especially in India and China. They also pointed out that BIS will need to monitor foreign language scientific journals, since the number of these journals is growing. In addition, they said a way needs to be found to track private research that is not published but is conducted in universities, in government labs and by corporations.

“I believe this tasking is smart, meaning it is simple, measurable, achievable, realistic and very timely,” Tierney said. “We are seeing a rapid emergence of capabilities around the world in science and technology and this is going to be one of the many ways that the government is going to employ to look at emerging threats in the developing world,” he added.

At the meeting, Hirschhorn was asked to reaffirm BIS' commitment to the exclusion of “fundamental research” from export controls and that nothing the ETRAC will recommend will lead to new controls on such research. “Absolutely,” Hirschhorn responded. “I don't think anyone is looking to tamper with what fundamental research is. I think that everyone agrees that there could be more clarity both in our regulations and in the State regulations and [that] is certainly one of the things we will try to make part of our ongoing work,” he told the committee. “Let me make it clear that I don't think anybody I am aware of in the administration is looking to restrict what constitutes fundamental research,” he declared.

U.S. Concerned about China's Indigenous Innovation Plans

Despite a favorable reaction from the business community to China's proposed changes to its “indigenous innovation” initiative, U.S. trade officials still have concerns about the program's goal of having Beijing “picking winners and losers” (see **WTTL**, April 19, page 1). The continuing objections to the program came with the USTR office's April 30 release of the annual Special 301 report on how foreign countries are protecting intellectual property rights (IPR). China remains on the “Priority Watch List” in the report.

“We are seriously concerned about China's implementation of ‘indigenous innovation’ policies that may unfairly disadvantage U.S. IPR holders,” said USTR Ron Kirk in a statement accompanying release of the report. “Procurement preferences and other measures favoring ‘indigenous innovation’ could severely restrict market access for American technology and products,” he said. “Creating an environment that nurtures innovation and entrepreneurship is a worthy goal, but China must maintain a level playing field,” Kirk added.

Another U.S. trade official, speaking on background, said the U.S. appreciates China's request for comments on proposed changes to the indigenous innovation regulations, and the USTR's office intends to send in comments on the proposal. “We will be looking at this measure in its larger context because we're concerned, we remain concerned, that the premise of this measure – government picking winners and losers – is actually going to impede innovation,” he said. “We're pressing for a comprehensive dialogue with China on appropriate, nondiscriminatory

ways to foster innovation, not to condition it, not to push it into China, but to let it actually work for both China and for China's trading partners," he said. In its latest Special 301 report, the USTR's office said it was taking the Czech Republic, Hungary and Poland off its Watch List because of progress they have made in improving IPR laws and enforcement. It said it would conduct an "out-of-cycle" review of IPR policies of the Philippines and Thailand. Eleven countries were renamed to the Priority Watch List and 29 to the Watch List.

Lawmakers Agree on Bill to Extend Benefits for Haiti

After months on wrangling on how to help Haiti after its devastating earthquake but still protect the U.S. textile industry, House and Senate members agreed April 28 on bipartisan legislation (S. 31275 and H.R. 5160) to extend duty-free treatment for most textile and apparel imports from Haiti until 2020, but with continued caps on the level of trade. The bill extends Haiti's benefits under the Caribbean Basin Initiative (CBI) until 2020 and allows in more of its textile and apparel products without requiring those goods to be made from U.S. fabric.

The bills drew praise from retailers. The Haiti Economic Lift Program (HELP) Act "will provide much needed incentives to spur private sector investment, economic growth and job creation," said Stephanie Lester, vice president of the Retail Industry Leaders Association (RILA). "RILA applauds the bipartisan, bicameral effort that resulted in the introduction of the HELP Act, and we urge Congress to enact the legislation without delay," she said. USTR Ron Kirk, who avoided taking sides on the legislation in public, also praised the bill.

In a complex formula, the measure would increase Tariff Preference Levels (TPLs) for goods from Haiti, increasing from 70 million square meter equivalents (SMEs) to 200 million SMEs the respective TPLs under which certain Haitian knit and woven apparel products may receive duty-free treatment regardless of the origin of the inputs, according to an explanation issued by the Senate Finance Committee and House Ways and Means Committee. The increased allotment will be triggered when subject imports reach certain levels spelled out in the bills.

* * * Briefs * * *

ANTIBOYCOTT: United Source One, Inc., of Belcamp, Md., agreed March 25 to pay \$19,800 civil fine to settle BIS charges that it committed 11 violations of antiboycott regulations by failing to report to BIS its receipt of boycott-related information requests from customers in Kuwait and UAE. Firm is international distributor of food products and services mainly in Middle East.

EX-IM: Miami resident Guillermo Sanchez pleaded guilty April 29 in D.C. U.S. District Court to conspiracy to defraud Export-Import Bank of approximately \$854,000. In criminal information, he was charged with setting up fraudulent deal through his firm, ACE Products, to obtain loan from Florida bank with Ex-Im guarantee for export of generators to South America when no exports were actually made. When he defaulted on loan, Ex-Im had to pay back loan to Florida bank.

EXPORT ENFORCEMENT: ICE agents April 15 seized Bell helicopter owned by Italian firm, Tiber Aviation, in Arlington, Texas, on charge that it was destined for Iran, ICE announced. Agents had grounded helicopter, which is worth \$8 million, in December. BIS agents participated in joint investigation of case.

ADVISORY COMMITTEES: After pushing all registered lobbyists off Industry Trade Advisory Committees, USTR's office and Commerce published notice in April 27 Federal Register asking for comments on who should be named to panels (see WTTL, October 5, page 3).

RUSSIA: USTR Ron Kirk and National Economic Council (NEC) Director Larry Summers met April 27 with Russian officials to discuss still outstanding issues blocking Russia's accession to WTO. "First Deputy Prime Minister Shuvalov and NEC Director Summers agreed that the dialogue at all levels would continue and be intensified," said statement from USTR's office. Meeting focused on operation of state-owned enterprises, IPR, agriculture trade and encryption products, as well as implementation of U.S.-Russia 2006 bilateral agreements. Russians also explained plans for customs union of Russia, Kazakhstan and Belarus. "On all of these issues, the participants laid out a plan for future work," statement said.