

Industry to Offer Recommendations for Export Control Reforms

Nearly every phase of the administration and enforcement of U.S. export controls for defense and dual-use items could face changes, if the Obama administration were to adopt the recommendations that an industry coalition plans to unveil Jan. 12. The advice from the Coalition for Security and Competitiveness (CSC) is intended to focus the ongoing interagency review of U.S. export controls that President Obama ordered last August. Since then, working-level officials from Commerce, State, Defense, Treasury and Energy have been meeting regularly at the State Department to prepare recommendations for their department secretaries.

The CSC proposal reportedly will seek to direct the review toward five areas, with 11 general recommendations for changes in export control rules and procedures. Under each of these 11 general recommendations are dozens of additional specific changes industry wants to see.

The coalition will urge the administration to (1) Draw clear lines of agency responsibility; (2) Revise and reduce control lists; (3) Complete the transition to an end user-based system; (4) Enhance cooperation with allies; and (5) Enhance cooperation with the business community. Many of the ideas the CSC will present reportedly are already on the agenda of the interagency review. Most are ideas that have been discussed in the exporting community for years and do not break new ground. Among the areas where industry wants to see specific changes are the Commodity Jurisdiction (CJ) process. The CSC will call for clearer lines of responsibility between controls over defense and dual-use products. It also will propose improvements in the voluntary self-disclosure process as one way to improve the effectiveness of compliance.

Separate recommendations will be directed at reforming defense export controls. The CSC will propose revising the U.S. Munitions List (USML) to provide more objective definitions of what is a defense article or service. This would include adoption of recommendations the Defense Trade Advisory Group (DTAG) has made to narrow the list to items that provide core military functions. It will propose reform of the “see-through” rule and streamlining of the licensing process. It also wants the Pentagon’s logistic staff to have bigger say in licensing decisions.

GSP Request Foreshadows Shift Away from Chinese Tires

With imports of tires from China facing increased duties of 35% to 25% over the next three years under President Obama’s Section 421 decision last September, tire producers appear poised to increase imports from Thailand (see **WTTL**, Sept. 28, page 3). Four firms,



Bridgestone Americas Tire Operations, Yokohama Tire Corporation, Sumitomo Tire (Thailand) Company and Falken Tire Corporation, have asked U.S. Trade Representative (USTR) Ron Kirk to waive the competitive need limitation (CNL) on “new pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)” under the Generalized System of Preferences (GSP). The waiver is needed because duty-free GSP benefits are withdrawn when an import’s value exceeds \$140 million annually.

The USTR’s office accepted the petition from the companies and asked the International Trade Commission (ITC) Dec. 30 to provide advice on the economic impact of granting a waiver. It also published a notice in the Jan. 5 Federal Register seeking public comment on the waiver. Separately, the USTR’s office published another Federal Register notice Jan. 8 asking for comments on China’s request for a World Trade Organization (WTO) dispute-settlement panel to hear its complaint against the Section 421 ruling.

Opponents of the Section 421 decision, including two ITC commissioners who voted against relief, had warned that restrictions on tire imports from China would shift sourcing to other locations. Non-Chinese imports already account for nearly 70 % of tire imports, with the main suppliers being Canada, Japan, Korea, Indonesia, Brazil and Mexico. Although the tariff on the tires covered by the CNL request is only 4%, imports from NAFTA partners Canada and Mexico enter the U.S. duty free. The average price of imports from Indonesia, one of the lowest-cost suppliers, is more than 40% less than prices for tires from Canada and Mexico.

Man Charged With Laundering Iranian Funds through “Hawala”

Immigration and Customs Enforcement (ICE) agents Jan. 7 arrested Mahmoud Reza Banki, 33, in Manhattan on charges that he operated an “hawala” to launder money for Iranian clients in violation of U.S. sanctions on Iran and the International Emergency Economic Powers Act (IEPPA). An hawala is an informal system under Islamic law that allows the transfer of funds among parties. “Banki allegedly received wire transfers totaling approximately \$4.7 million from companies and individuals – located in, among other places, Saudi Arabia, Kuwait, Latvia, Slovenia, Russia, Sweden, the Philippines, and the United States -- in a personal bank account he maintained for this purpose at Bank of America in Manhattan,” said a Justice press release.

“Generally, Banki did not know the wire originators personally,” the release said. “He received the funds with the understanding that an equivalent amount of Iranian currency would, in turn, be disbursed to intended recipients residing in Iran. Banki informed an Iran-based co-conspirator when funds had been received, and the co-conspirator then disbursed the funds, less any fees, in Iran,” it reported.

Banki, a U.S. citizen who is a management consultant with a N.Y. consulting firm, “allegedly used certain of the funds transferred into his Bank of America account to make joint investments in the United States with the Iran-based co-conspirator,” Justice stated. “Among other things, Banki used the funds to purchase a \$2.4 million condominium in Manhattan; to invest in securities for his own benefit and that of the co-conspirator; and to make payments on his credit card accounts, including approximately \$55,000 in one month alone in the summer of 2007,” the department charged.

GAO Finds Softwood Lumber Law Adds Little to Compliance

Reporting requirements imposed on importers of softwood lumber from Canada under the 2008 Softwood Lumber Act add little to the enforcement of the 2006 U.S.-Canada Softwood Lumber Agreement (SLA), a Government Accountability Office (GAO) report has found. The Dec. 18 report’s (GAO-10-220) findings were based on interviews with Customs and Border Protection (CBP) officials and other government agencies. It appears to confirm Canadian complaints that the act, instigated by the U.S. lumber industry and sponsored by its supporters in Congress, was

intended to harass importers and not to improve compliance with the SLA. “The 2006 agreement with Canada contains mechanisms for monitoring compliance, and, according to U.S. government officials, the added reconciliation and verification requirements of the Softwood Lumber Act of 2008 do not provide the U.S. government with additional assurance of compliance with the bilateral agreement,” the GAO said. “Specifically, CBP officials told us the requirements of the act do not provide them with direct assurance that the Canadian exporter paid the export charges owed to the Canadian government under the agreement,” it added.

The legislation is flawed because its reporting requirements do not provide the U.S. with assurance that the Canadian exporter paid the export charges required under the SLA, since CBP doesn’t have access to company-level tax data from Canada, the GAO indicated. “While the agreement is scheduled to expire in 2013, the act does not have an expiration date,” the report noted.

“CBP officials said they have not yet determined how they will fulfill their requirements under the act when the agreement expires, but they would no longer have the estimated export charge data that are used in implementing the act,” it said. The GAO cited Commerce and USTR officials who supported the act. “The requirements of the act, however, may have an indirect effect on Canadian exporters’ compliance with the bilateral trade agreement, according to USTR and Commerce officials, because the act’s requirements demonstrate that the United States is looking closely at softwood lumber imports,” the report noted. U.S. lumber firms also told the GAO that the law improves the accuracy of Canadian data.

UTStarcom Fined \$3 Million for FCPA Violations in China

UTStarcom, Inc., (UTSI) of Alameda, Calif., has reached separate agreements with the Justice Department and the Securities and Exchange Commission (SEC) to pay a \$1.5 million fine to each of the agencies for violations of the Foreign Corrupt Practices Act (FCPA). UTStarcom’s wholly-owned subsidiary in China, UTStarcom China Co. Ltd., “paid nearly \$7 million between 2002 and 2007 for hundreds of overseas trips by employees of Chinese government-controlled telecommunications companies that were customers of UTStarcom, purportedly to provide customer training,” an SEC press statement said. “In reality, the trips were entirely or primarily for sightseeing,” it declared.

UTSI, a Delaware corporation listed on the Nasdaq stock exchange, is a global telecommunications company that designs, manufactures and sells network equipment and handsets. It had made a voluntary disclosure of its activities.

The settlement with the SEC forestalls a complaint the commission filed in the San Francisco U.S. District Court against the company’s alleged violations of the antibribery, books and records, and internal controls provisions of the FCPA. Justice also agreed to defer prosecution as part of its deal. Without admitting or denying the charges, UTSI agreed to a permanent injunction against FCPA violations and to provide the SEC with annual FCPA compliance reports and certifications for four years. The firm also promised to take corrective steps to improve its FCPA compliance program.

Report Claims Chinese Are Circumventing Trade Sanctions

A report that got front-page coverage in the *Wall Street Journal* Jan. 4 claims Chinese firms that have been the subject of U.S. sanctions are circumventing those restrictions and still selling to U.S. customers by changing their names or operating through subsidiaries. The report from the Wisconsin Project on Nuclear Arms Control based its assertions on reviews of bills of lading and public records. It focused on two firms: China Precision Machinery Import-Export Corporation (CPMIEC) and LIMMT Economic and Trade Company, Ltd. “The Wisconsin Project has discovered several instances in which two Chinese companies, sanctioned for arming Iran, have exploited holes in the U.S. sanctions regime,” the report contends. “Unfortunately, in recent

years more attention has been given to announcing prohibitions than to enforcing them,” it charges. “The Treasury Department’s Office of Foreign Assets Control (OFAC), which is responsible for administering and enforcing approximately 30 economic sanctions programs, has seen its workload increase rapidly as new sanctions are announced and additional companies are blacklisted,” it notes. “Although it runs one of the U.S. government’s only effective programs for fighting weapons proliferation and publishes by far the most thorough and usable blacklists of suspect entities, OFAC has not been given nearly the resources it needs to keep up with the growth in its responsibilities,” the Wisconsin Project states.

The Wisconsin Project says CPMIEC has continued to do business with American firms despite the sanctions through at least two other firms. One is CPMIEC Shanghai Pudong Corp., which CPMIEC lists in English as one of its subsidiaries in a brochure. The other is China JMM Import and Export Shanghai Pudong Corp. LIMMT, which was first designated by OFAC in 2006 and was indicted in 2009 in New York State on charges of falsifying business records and conspiracy, has operated under an alias, Dalian Orient Pipe Components Co., Ltd., report claims.

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DTSA: Todd Willis, assistant director of BIS Office of Enforcement Analysis, has been named chief of Licensing Directorate Dual-Use Office at Pentagon’s Defense Technology Security Administration (DTSA). Willis played key role in developing BIS deemed export rules. He starts work at DTSA Feb. 1.

TRADE PEOPLE: Michael Farren, former under secretary of Commerce for international trade in administration of George H.W. Bush and legal counsel in White House of President George W. Bush, was arraigned Jan. 7 in Norwalk, Conn., Superior Court on charges of attempted strangulation and attempted murder of his wife Mary Farren, who is attorney with Skadden Arps in Washington. Farren is schedule to appear in court again Jan. 21. “On January 6, 2010 officers responded to a residence on Wahackme Road for a report of a panic alarm activation,” New Canaan police department report states. They also received 911 call from neighbor. Officers responded and “found the female victim bleeding about her head, face and body,” statement adds. “Officers who responded to the Wahackme Road address located a male on the property inside the residence. The male was contacted by officers and voluntarily exited the residence where he was taken into custody without incident,” report states.

CHINA-ASEAN: China and the Association of Southeast Asian Nations (ASEAN) Jan. 1 implemented world’s largest free trade agreement (FTA) by population, covering more than one billion people, but only \$450 million in trade volume. Average tariff on goods from ASEAN countries is cut to 0.1% from 9.8%, according to Chinese report. Six original ASEAN members, Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand, will slash average tariff on Chinese goods from 12.8% to 0.6%, it said. By 2015, zero-tariff rate for 90% of traded goods is expected to extend to four new ASEAN members, Cambodia, Laos, Myanmar and Vietnam.

DRILL PIPE: VAM Drilling USA, Inc., TMK IPSCO, Texas Conversion Services, Inc., Rotary Drill Tools and United Steelworkers Dec. 31 filed antidumping and countervailing duty complaints at ITC and ITA against drill pipe from China.

ALBANIA/CROATIA: BIS in Dec. 23, Federal Register amended EAR to ease many export licensing requirements for shipments to Albania and Croatia because two countries joined NATO April 1, 2009. Despite their NATO membership, certain restrictions on exports to the two Balkan states remain in place.

NIGER: “In response to recent events in the Republic of Niger, DDTC wishes to inform exporters that although there is no current U.S. or UN arms embargo on Niger, the final decision of license applications for the export of U.S. Munitions List (USML) items to Niger received from this date or currently in the review process may be delayed,” agency said in notice posted on its website.

SHRIMP: Battle has erupted among U.S. shrimp interests. American Shrimp Processors Association (ASPA) Jan. 5 submitted brief with ITA opposing third request from Ad Hoc Shrimp Trade Action Committee and Thai Frozen Foods Association to revoke antidumping order on shrimp from Thailand through changed circumstances review. “A revocation of the order on shrimp from Thailand would return a substantial sum of money to the importers and foreign producers that were engaged in dumping in the first place, undermining the purpose of the law” said Edward Hayes, counsel to ASPA.