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ITAR Restructuring Rule Will Soon See Light of Day

The Loch Ness Monster. Bigfoot. Many in the export community would put in that category the long-discussed rules to reorganize the International Traffic in Arms Regulations (ITAR). The truth is out there, as the first of those rules is at the Federal Register, officials from State's Directorate of Defense Trade Controls (DDTC) told the Bureau of Industry and Security (BIS) annual Update conference Sept. 2.

Now that all the U.S. Munitions List (USML) categories have been reviewed and published, and the transfers implemented, DDTC officials could turn to the series of rules that will "improve the structural logic and flow of the ITAR to make it more intuitive and linear," one official told the conference. The department has been talking about this for quite a while and it has been "almost there" for a couple of months, he admitted.

The "fairly extensive" rule that includes no definitional or substantive changes, just a restructuring, will move direct to final with a 180-day delay in implementation to allow industry to adjust processing systems. Officials went through a series of back and forth with the Federal Register on technical changes, but the rule should be published "in the coming weeks." After that rule, other rules will follow, at least two more, which are in the process of being drafted and will be published "relatively soon," a DDTC official said.

WTO Dispute Panel Bolsters U.S. Solar Safeguards

A World Trade Organization (WTO) dispute panel Sept. 2 upheld the U.S. Section 201 safeguard tariffs on crystalline silicon photovoltaic cells (CSPV), rejecting Chinese claims that the duties violating U.S. WTO commitments. Where the dispute moves from here is an open question, as there is no Appellate Body quorum to hear appeals.

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In August, five U.S. solar companies requested the International Trade Commission (ITC) recommend extending the tariffs for four more years (see **WTTL**, Aug. 9, page 2). Without an extension, the safeguard remedy will expire Feb. 6, 2022. At the same time, the Solar Energy Industries Association (SEIA) urged the administration to end the tariffs.

Specifically, the panel ruled that: the safeguard measures complied with the requirement that imports increased “as a result of unforeseen developments and of the effect of the obligations incurred”; the U.S. demonstrated the required “causal link” between the increased imports and the serious injury found to exist; the U.S. ensured that injury caused by “other” factors was not attributed to increased imports; and U.S. “procedural and substantive treatment of confidential information” satisfied previous agreements.

U.S. Trade Representative (USTR) Katherine Tai welcomed the ruling. “The Biden-Harris Administration is committed to ensuring America’s role in resilient clean energy supply chains,” she said in a statement. “We must make historic infrastructure investments that unlock the full potential of solar power and create good-paying jobs in cutting-edge fields that will help address the climate crisis,” Tai added.

Mexico-U.S. Dispute on Auto Rules of Origin Could End Soon

Two weeks after Mexico requested consultations with the U.S. on auto rules of origin under the U.S.-Mexico-Canada (USMCA) trade agreement, specifically the use of “roll-up” methodologies, the Mexican president expressed confidence that a dispute panel wouldn’t be necessary.

“I am going to reach an agreement soon,” Mexican President Andres Manuel Lopez Obrador said in a press conference Sept. 2. “We do not want to reach an international panel. Those are the options that are available when there are these controversies in the treaty, but I do not think it will go there.”

Other USMCA provisions, specifically the novel Rapid Response Labor Mechanism (RRM), proved successful in resolving disputes the day before the Mexican request when workers at a General Motors (GM) facility in Silao, Mexico, voted to reject their existing collective bargaining agreement (see **WTTL**, Aug. 23, page 2).

“Mexico has identified a divergent position between our governments on the interpretation of the above-mentioned provisions on Rules of Origin for the automotive sector,” Mexican Economy Secretary Tatiana Clouthier wrote in a letter to USTR Katherine Tai Aug. 20. Canada joined the Mexican request a week later.

“One of those requirements is a Regional Value Content (RVC) of 75% for passenger vehicles and light trucks. Likewise, there is a requirement for an RVC of 75% for ‘core parts’ for a vehicle to be considered originating,” Clouthier wrote. Mexico considers that the RVC’s alternative calculation methodologies for core parts “can be applied in the overall passenger vehicle’s or light truck’s RVC calculation,” she added.

The U.S. has touted the deal, especially the provision requiring that 75% of auto content be made in North America. The U.S. government, “by its interpretation, is imposing certain requirements on motor vehicle producers that are inconsistent with the text of the USMCA and the Uniform Regulations,” Clouthier wrote.

SoCal Companies Convicted of Evading Aluminum Antidumping Duties

A jury in Los Angeles U.S. District Court Aug. 23 found six Southern California companies -- two aluminum businesses and four warehousing companies -- guilty in a scheme to evade \$1.8 billion in antidumping and countervailing duties (AD/CVD) on extruded aluminum from China.

The indictment against Asia’s largest aluminum extrusion company, China Zhongwang Holdings Limited; Zhongtian Liu, the company’s former president and chairman; and several others was unsealed in July 2019 (see **WTTL**, Aug. 5, 2019, page 3). Aluminum Extrusions Fair Trade Committee (AEC) was the petitioner in the original 2016 AD/CVD case, and China Zhongwang was the main target, though Commerce extended its investigation to all Chinese producers.

In addition to Liu and China Zhongwang, the other defendants charged in the indictment were: Chinese national Zhaohua Chen; Xiang Chun Shao, also known as Johnson Shao, who managed the Southern California businesses that pretended to be independent third parties; Ontario-based Perfectus Aluminium Inc., which was controlled by Liu and managed by Shao; subsidiary Perfectus Aluminum Acquisitions, LLC; and four other LLCs controlled by Liu. All the individual defendants are currently at large, Justice noted.

Among other charges, the defendants are charged with “falsely inflating the volume” of China Zhongwang’s exports to the U.S. and the strength of the demand in the U.S. for its products “through false representations and pretenses,” including that market demand for certain aluminum products manufactured by China Zhongwang was the reason for the company’s increased exports to the U.S. after the 2011 AD/CVD orders, the indictment noted.

In addition, the indictment cited “the concealment of material facts, including that the Perfectus predecessor entities and defendant Perfectus’s purchases from defendant China Zhongwang were not based on market demand from third-party customers and the purchased aluminum was simply being stockpiled,” it said.

AEC applauded the conviction in what it called the “fake pallet scheme,” it said. “This should be a warning sign to others intending to violate our trade orders. You will be discovered and prosecuted,” said AEC President Jeff Henderson in a statement.

Ex-Im Bank Could Back More Dual-Use Transactions

After several years of monitoring just a few dual-use export transactions, a full Export-Import (Ex-Im) Bank board could see an increase in demand. In its annual report on the bank's monitoring of one dual-use transaction published Sept. 1, the Government Accountability Office (GAO) noted more viable projects may be coming down the pike.

The Bank backed sales of two satellites for the Mexican government: one fixed service and one mobile service satellite. "For 2021, Ex-Im received all documents from the government of Mexico on time and subsequently determined that Mexico was in compliance with the bank's dual-use policy," the report noted (GAO-21-105227). The bank did not finance any new exports under its dual-use authority in fiscal year 2020.

"According to Ex-Im officials, no viable applications for dual-use projects reached Ex-Im's Board of Directors for approval in fiscal year 2020 or to date in fiscal year 2021," the report said. However, "there may be a higher potential for viable applications related to dual-use support in fiscal year 2022 because of an increase in the frequency and nature of preliminary inquiries Ex-Im has received," it added.

Appeals Court Sends Tubing Dispute Back to Drawing Board

The Court of Appeals for the Federal Circuit (CAFC) Aug. 31 reversed a Court of International Trade (CIT) ruling on a Commerce remand determination in its antidumping duty investigation on imports of cold-drawn mechanical tubing from India. The dispute involved a supplemental submission, which was either a permissible clerical correction or new factual information.

"We hold that Commerce's initial determination—rejecting Goodluck India's supplemental submission on grounds that it constituted new factual information and not a minor or clerical correction of the record, and that the submission was unverifiable as it was submitted on the eve of verification—is supported by substantial evidence and not otherwise contrary to law," Circuit Judge Jimmie Reyna wrote for a three-judge panel in *Goodluck India Limited v. U.S.*

Commerce originally rejected Goodluck India's submission of supplemental data and relied on "adverse facts available" for its less-than-fair-value analysis, which resulted in a 33.8% ad valorem antidumping margin on Goodluck India's imports, Reyna added. Goodluck India appealed to the CIT, "arguing that its submission was a permissible correction of a minor clerical error and that it was entitled to submit supplemental information up to the day of verification," he wrote.

* * * **Briefs** * * *

TRADE FIGURES: Merchandise exports in July jumped 28.2% from year ago to record-high \$148.6 billion, Commerce reported Sept. 2. Services exports grew 16.7% to \$64.2 billion from July

2020. Goods imports increased 20.2% from July 2020 to \$236.3 billion, as services imports grew 33.1% to \$46.6 billion.

SUDAN SANCTIONS: London-based Bank of China (BOC UK) Limited agreed Aug. 26 to pay Treasury's Office of Foreign Assets Control (OFAC) \$2,329,991 civil penalty to settle charges of violating now-repealed Sudan sanctions. Between September 2014 and February 2016, BOC UK processed 111 commercial transactions totaling \$40,599,184 through U.S. financial system on behalf of parties in Sudan, agency said. Bank voluntarily self-disclosed violations. "In relation to both customers, BOC UK's internal customer database did not include reference to Sudan in the name or address fields of either customer. Accordingly, SWIFT messages processed for those customers by BOC UK through U.S. banks did not include any references to Sudan," OFAC noted.

SANCTIONS: Romanian firm First Bank SA and its U.S. parent, JC Flowers & Co., agreed Aug. 27 to pay OFAC \$862,318 civil penalty to settle charges of violating Iran and Syria sanctions. "Specifically, First Bank processed 98 commercial transactions totaling \$3,589,189 through U.S. banks on behalf of parties located in Iran and Syria. In 2018, after JC Flowers acquired a majority ownership interest in First Bank, First Bank processed Euro-denominated payments for persons located in Iran," agency said. Bank voluntarily self-disclosed violations.

NOTORIOUS MARKETS: In Aug. 30 Federal Register USTR requested comments on online and physical markets based outside U.S. to be included in 2021 Notorious Markets List. List identifies "online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting," USTR noted. Comments are due Oct. 11.

SOFTWARE: DDTC in Federal Register Aug. 27 extended temporary controls on certain intelligence analytics software under USML Category XI by reinserting the words "analyze and produce information from" and by adding software to the description of items controlled in paragraph (b). Changes will be effective until Aug. 30, 2026. State, with its interagency partners, "continues to develop a long-term solution for USML Category XI(b). However, that solution will not be in place when the current temporary modification expires," notice said.

IRAN: OFAC Sept. 3 designated four Iranian intelligence operatives for "having acted or purported to act for or on behalf of, directly or indirectly," country's Ministry of Intelligence and Security (MOIS). MOIS was designated in 2012 for "commission of serious human rights abuses against Iranian people," agency said.

MORE IRAN: OFAC Aug. 24 issued General License (GL) M-1 extending authorization of exportation of certain graduate-level educational services and software for Iranian students not present in U.S. due to pandemic. GL "authorizes, on a time-limited basis, accredited graduate and undergraduate degree-granting U.S. academic institutions, including their contractors, to export additional services to those Iranian students who are eligible for non-immigrant classification under categories F (students) or M (non-academic students), and have been granted a non-immigrant visa" from State, agency wrote in FAQ. License expires Sept. 1, 2022.

METHIONINE: In 5-0 final vote Aug. 24, ITC determined U.S. industry is materially injured by dumped imports of methionine from Japan and Spain. Commission also made negative finding on critical circumstances on imports from Spain.

TRADE PEOPLE: Effective Oct. 1, longtime National Foreign Trade Council (NFTC) VP Jake Colvin will become president, replacing Rufus Yerxa, organization announced Sept. 2. "Jake has

been a huge asset to the organization for many years and nobody else knows its mission better,” Yerxa said in statement. “I relied heavily on his leadership role in areas ranging from China issues and WTO reform to e-commerce and global innovation,” he added.

USTR: Assistant USTR for WTO and Multilateral Affairs Dawn Shackleford moved over to assistant USTR for Southeast Asia and Pacific affairs, agency announced Sept. 1. Kent Shigetomi will replace her as acting assistant USTR. In 2020, Shackleford was elected first female chair of Organization of Economic Cooperation and Development (OECD) trade committee, agency said.

WTO DISPUTES: At meeting of WTO Dispute Settlement Body (DSB) Aug. 30, members agreed to establish panel to determine whether China complied with 2019 ruling on Beijing’s administration of its tariff rate quotas (TRQs) on imports of wheat, rice and corn. U.S. blocked China’s first request for panel at previous DSB meeting in July. U.S. earlier requested WTO authorization to impose retaliatory measures on Chinese imports in dispute.

AFGHANISTAN: BIS has suspended all licenses for exports to Afghan government and is continuing to monitor situation, agency officials told BIS Update conference Sept. 2. DDTC made previous announcement two weeks earlier (see **WTTL**, Aug. 23, page 5).

HOLD MY WINE: CAFC Aug. 23 affirmed CIT ruling on regulations that redefined “drawback” to include excise tax liability on exports that have neither been “paid or determined,” Circuit Judge Jimmie Reyna wrote for three-judge panel in *National Association v. Treasury*. “Congress made a policy choice to encourage exports by expanding the ability to claim drawback, even with the knowledge that industries may then avoid some payment of excise tax,” CIT ruled and CAFC agreed. National Association of Manufacturers (NAM) welcomed ruling. “Put simply, this program helps manufacturers in America level the playing field when they sell to overseas markets,” NAM Senior VP Linda Kelly said in statement.

DUTY COLLECTION: CAFC Sept. 2 affirmed CIT ruling it lacks jurisdiction in dispute over assessment and collection of antidumping duties on tapered roller bearings (TRBs) from China. “We hold that [CIT] does not have jurisdiction under § 1581(i) because Appellant could have sought relief under another subsection of § 1581, and Appellant has not shown that such relief would have been manifestly inadequate,” Circuit Judge Jimmie Reyna wrote for three-judge panel in *Wanxiang America Corporation v. U.S.* “As a result, Wanxiang cannot now avail itself of the CIT’s residual jurisdiction under § 1581(i),” he added.

EXPORT ENFORCEMENT: Three Maryland men were indicted Aug. 26 in Baltimore U.S. District Court on charges of exporting firearms and ammunition, including 38 semi-automatic firearms; over 35,000 rounds of ammunition; 44 magazines, Bushnell Trophy Rifle Optic and Burris AR Rifle Scope, to Nigeria in January 2019 without required State or Commerce licenses. Defendants and other conspirators concealed items in heavily wrapped packages and duffle bags, and inside sealed compressor units, placing those items into shipping container, indictment alleged.