EIB World Trade Headlines

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The Face of Export Control Reform- a Must Read

Changes coming over the next months and year

A new series "600" will be added to the CCL.

Some Wassenaar munitions list items as well as previous defense items will be added to the CCL. In fact the new section of the commerce control list (CCL) is unofficially called the CML- Commerce Munitions List. This demonstrates the commitment on the part of reformers to remove non-unique and non essential military items to the control of commerce. The 600 series numbers are still highly controlled but NATO type countries, have vehicles to receive exports without license in some instances, through the possible use of the license exception "STA" for these products. "STA" is only available to products controlled for National Security reasons or military reasons described in more detail in the proposed regulation. BIS is creating a new "600 series" set of Export Control Classification Numbers (ECCNs) to control the defense articles that move to the CCL from the USML as well as other Wassenaar munitions list items that have been subject to the CCL for nearly two decades now. The new "600 series" would be an extension of the existing series hierarchy in the CCL for items controlled by the various multilateral export control regimes. This aspect of the proposed rule reflects another theme of the effort, which is to create a structure for controlling on the CCL former defense articles while altering the basic structure of the EAR and the CCL as little as possible.

Comments to follow are that of Assistant Secretary of Export Administration Kevin J. Wolf: Some have asked how we can control military items on the CCL when the CCL is a "dual-use" list. The CCL was never a completely "dual-use" list because it controls some purely civilian items for foreign policy and other reasons and has controlled some purely military items for several decades that didn't warrant AECA controls.

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The more precise description of the CCL is that it controls commodities, technology, software, and some services that do not warrant control by one of the other export control agencies but nonetheless warrant some degree of worldwide or other control. The creation of the "600 series" is just a significant expansion of that long-standing concept."

We will informally refer to this new "600 series" of items as the "Commerce Munitions List." Having all such items in one series will allow for a straightforward application of a licensing policy for items that move to the CCL from the USML. It would also be a necessary intermediate step to eventually creating a single control list, which was announced by the President at last year's Update Conference.

Exporters will classify items moving from the USML to the CCL against existing ECCN entries first. If the item does not meet one of these existing control parameters, exporters will classify their item against the "600 series." The fourth and fifth ECCN characters of each new "600 series" would track the Wassenaar Arrangement Munitions List categories for the types of items at issue. The Wassenaar numbering structure for the last two characters would be used rather than the USML numbering structure to demonstrate the United States' commitment to control all Wassenaar Munitions List items and facilitate multinational companies in classifying their products in the United States and abroad.

D. Licensing Policies for "600 Series" Items The rule proposes that items in the "600 series" require a license for export or reexport to all countries except Canada, unless a license exception is available. Multilaterally controlled items moved from the USML to the CCL would retain their regime control parameters and reasons for control, even if added to an existing ECCN or added to a new "600 series" ECCN. Each new "600 series" ECCN will have three basic parts: controls on "end items," controls on generic "parts," "components," "accessories," and "attachments" that are "specially designed" for a specific CCL or USML entry; and specific parts and components that warrant no more than AT-only controls.

(Control List Reform Continued)

All "600 series" items would be subject to a general policy of denial when destined to a country subject to a United States arms embargo. We are, in essence, transferring the prohibitions of ITAR section 126.1 in to the EAR with respect to "600 series" items. The proposed rule would also restrict the use of license exceptions to export or reexport "600 series" items to countries subject to a United States arms embargo.

E. License Exceptions for "600 series" items For all other countries, License Exception LVS, TMP, RPL, and GOV would be generally available for "600 series" items. Other exceptions, such as APR, would not be. License Exception GOV would only be eligible for exports to one of the STA-36 countries for ultimate end use by a government of one of the 36 countries.

For "600 series" end items, however, STA is not automatically available. Applicants will need to request that it be made available for the type of end items at issue. If the Departments of Defense, State, and Commerce agree that such end items are eligible for export under STA, then BIS will publish the determination for others to rely upon.

"Specially designed" parts, components, accessories, and attachments would, however, automatically be eligible for export under STA for ultimate end use by a government of one of the STA-36 countries.

The ultimate government end use condition for the use of STA is proposed because its purpose is to facilitate interoperability among allies, not promote the commercial sale of inherently military items without U.S. Government advance knowledge and approval. From a national security perspective, we want to know who and for what purpose foreign commercial businesses are seeking to purchase munitions items.

(Control List Reform Continued)

(Control List Reform Continued)

F. Specially Designed- definition to be rewritten We have also proposed a single definition for the term "specially designed" to be used across both the EAR and the ITAR to create an objective standard for exporters and, just as importantly, prosecutors in determining whether a license is required. While touting the creation of a definition for "specially designed" may sound arcane to the casual export control observer, to those of you that live and breathe export controls on a daily basis, this definition will create a clear line for determining the eligibility of an item for export under a license or license exception. In other words, it is another example of a higher wall that we have erected to make our system more focused and enforceable.

I will answer questions about it during the open sessions I'll conduct on Thursday on the proposed rule because, yes, it is complex upon first read, particularly because it is such a novel approach to the issue. I, however, want to summarize the purpose and structure of the proposed definition here.

As we described in December, a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items. The Administration has nonetheless determined that it cannot completely eliminate "specially designed" as a control parameter. The term is commonly used in the multilateral export control regimes' control lists upon which much of the CCL and USML are based. A basket category for controlling militarily less significant items "specially designed" for defense articles that move to the CCL is still necessary to achieve the larger national security objectives of the reform effort. Creating a positive list of the tens of thousands of such parts, components, accessories, and attachments that warrant some degree of control is not practicable.

Our goals for the single definition are that it:

1. Preclude multiple or overlapping controls of similar items within and across the two control lists;

2. Be capable of being easily understood and applied by exporters, regulators, prosecutors, and juries;

(Control List Reform Continued)

3. Be consistent with definitions used by the international export control regimes;

4. Not include any item specifically enumerated on either the USML or the CCL, and, in order to avoid a definitional loop, not use "specially designed" as a control criterion;

5. Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;

6. Be applicable to both descriptions of end items that are "specially designed" to have particular characteristics and to parts and components that were "specially designed" for particular end items;

7. Be applicable to materials and software because they are "specially designed" to have a particular characteristic or for a particular type of end item;

8. Not increase controls on items controlled currently at lower levels; and

9. Not, merely as a result of the definition, cause historically EAR controlled items to become ITAR controlled.

A definition that we think meets all these goals is the one in the proposed regulation. BIS seeks public comments particularly on whether there would be any anticipated change in controls based on adoption of this definition. Through this proposed definition, if an item is "specially designed" today, it would continue to be "specially designed" after adoption of this definition. If it is not "specially designed" prior to adoption of the definition, it also should not, except in rare cases, become "specially designed" after adoption of this definition in a final rule. As a result, BIS strongly encourages the public to report any instances in which the proposed definition produces different results from the current definition. Such comments should describe the item and why the commenter believes that the item at issue is not now "specially designed" but would be as a result of the application of the new definition.

(Control List Reform Continued)

H. Next Steps Our next step is to focus on rebuilding the USML categories that will have the most impact for exporters. In addition to our first test case, Category VII, we are looking at the naval vessel and aircraft categories, VI and VIII, to begin the process of populating the Commerce Munitions List. Rewriting Category XI-Military Electronics also will have a significant impact for exporters and is a priority.

Over the coming months, State and Commerce will publish complementary proposed Federal Register notices that identify what items are subject to which list. We will then notify our oversight committees on Capitol Hill and eventually publish final versions of rebuilt USML categories and newly populated "600 series" ECCNs to implement this approach.

VI. Conclusion

Fundamentally reforming the export control system is a time-consuming process. Even with the departure of Secretary Gates and impending departure of Secretary Locke, we have White House commitment to complete the job. We are committed to seeing the job through, too.

Our goal is to find that sweet spot between facilitating trade to trusted end users and ensuring that sensitive items do not find their ways into the hands of entities and nation states that seek to undermine our national security. It takes a collection of activities from all interested stakeholders – exporters, export counselors, licensing officers, enforcement agents, and prosecutors – to make our system

(Control List Reform Continued)

That's what the President's export control reform initiative reform initiative aims to do.
Our accomplishments to date, particularly with regard to the list reform structure, are significant. We must now make them consequential by putting them into force. Commerce's encryption and STA regulations represent an important start. We must now finish the rewrite of the U.S. Munitions List and complete the tiering of the Commerce Control List to set the stage for final harmonization and work toward our ultimate vision of a single control list, within a streamlined regulatory construct, administered by a single licensing agency operating on a single information technology platform, and enforced by a single primary export enforcement coordination agency.

The control list changes are the key to reform in the short-term, and addressing unnecessary compliance burdens is the key to long-term fundamental reform. I hope you share my enthusiasm for our progress and vision.

Success is the sum of small efforts, repeated day in and day out.
~Robert Collier

DDTC Issues Supplemental Guidance on Submission of DSP-85 Applications

The Directorate of Defense Trade Controls (DDTC) issued a supplemental guidance to its DSP-85 application instructions, which contains clarifying information regarding the submission of applications. The following are details of DDTC's supplemental guidance. DSP-85s are for transactions involving classified defense articles and technical data. DSP-85s have an option for all export and import transactions – permanent export, temporary export and temporary import – as requested in Block 3 of the form. Note: Only one type of transaction can be requested per form. For each entry which requires the identification of an entity on the DSP-85 application – domestic or foreign – the Facility Security Clearance Code (FSC) or foreign country equivalent must be provided if that entity will have access, title, custody or control of the defense articles. This information is not required for foreign governments but must be provided for non-government entities. Complete instructions have been posted.

DDTC Guidance DSP-85 (06/21/11) http://www.pmddtc.state.gov/licensing/documents/gl_DSP85.pdf

DDTC Issues Updated Guidance on Scope/Quantities for DSP-61 Licenses

The Directorate of Defense Trade Controls (DDTC) updated its guidance on supporting documentation for DSP-73 (temporary export) and DSP-61 (temporary import) license applications in order to add information regarding the scope and quantity limits of items entered under a DSP-61 license. DDTC notes that any submission not meeting the application requirements detailed in its guidance is subject to return without action.

DDTC has added a section to its guidance entitled "Decrementation of DSP-61 Licenses."

DDTC Guidance (updated 06/23/11) http://www.pmddtc.state.gov/licensing/documents/gl_supportingdoc.pdf

Presidential Commission Issues Report on National Export Strategy

The Trade Promotion Coordinating Committee (TPCC), an interagency body comprised of 20 Federal agencies, has released its 2011 National Export Strategy report. The 2011 report focuses on methods of implementing 70 recommendations made in a September 2010 report to President Obama on the National Export Initiative (NEI). The annual National Export Strategy will fill the essential role of tracking and measuring the Federal Government's progress in implementing the NEI. Each year, the TPCC will also assess new opportunities and seek new ways for the TPCC agencies to improve coordination and increase their effectiveness. This report identifies several areas of focus for Federal agencies in their export-promotion efforts, including:

- Better collaboration with states, metropolitan areas, and border communities;
- Improve infrastructure;
- Better data collection and measurement; and
- Remove trade barrier.

Other sections of the report examine the progress that is being made by Federal agencies in addressing eight priorities identified in Executive Order 135342, which launched the NEI, and metrics for analyzing the success of export promotion strategies. Two appendices offer a detailed matrix of the status of the 2010 NEI recommendations and a report on export promotion activities by state.

TPCC 2011: http://www.trade.gov/publications/pdfs/nes2011FINAL.pdf

BIS Issues Final Rule Adding ECCNs for China VEU Authorization

The Bureau of Industry and Security (BIS) issued a final rule, effective 06/28/11, which amends the Export Administration Regulations (EAR) to add an Export Control Classification Number (ECCN) for multi-layer masks to the list of items that may be exported, re-exported, or transferred (in-country) to CSMC Technologies Corporation in China under Authorization Validated End-User (VEU). Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in eligible destinations that have a verifiable record of civilian uses for such items. VEUs may obtain certain eligible commodities, software and technology on the Commerce Control List (CCL) (except those controlled for missile technology or crime control reasons) without having to wait for their suppliers to obtain export licenses from BIS. BIS is amending Supplement No. 7 to 15 CFR Part 748 to add most items classified under ECCN 3B001.h ("Multi-layer masks with a phase shift layer") to the list of items that may be exported, re-exported, or transferred (in-country) to CSMC's "Eligible Destinations" under Authorization VEU. BIS notes, multilayer masks with a phase shift layer designed to produce "space qualified" semiconductor devices are excluded from those items eligible for shipment under Authorization VEU to CSMC. In addition to U.S. exporters, Authorization VEU may be used by foreign re-exporters as well as by persons transferring in-country, and does not have an expiration date. Currently, VEUs are located in China and India.
BIS contact- Karen Nies-Vogel (202) 482-5991
BIS notice (FR Pub 06/28/11) http://www.gpo.gov/fdsys/pkg/FR-2011-06-28/pdf/2011-16156.pdf

Senate Judiciary Committee Posts CBP Testimony on IPR Penalties and Enforcement

The Senate Judiciary Committee held an oversight hearing on intellectual property (IP) law enforcement efforts. At the hearing, U.S. Customs and Border Protection (CBP) and other Administration officials discussed recent efforts to improve IP enforcement. Written statements addressed:

- CBP takes action to improve IPR penalty collection;
- Increased overseas IPR staff and enforcement; and
- Giving U.S. Business strategies to solve IPR problems abroad.

The IPR Coordinator also noted in her testimony that the International Trade Administration's Office of Intellectual Property Rights (OIPR), through its Trade Agreements and Compliance Program, continued to work with other U.S. Government agencies to help U.S. businesses by suggesting strategies they can take to evaluate IPR problems encountered abroad. OIPR also launched a number of additional tools and services to help U.S. businesses protect and enforce their IPR abroad, which are now available through www.stopfakes.gov
Hearing materials, including witness written testimony and link to hearing webcast: http://judiciary.senate.gov/hearings/hearing.cfm?id=e655f9e2809e5476862f735da19c002e

United States and Mexico Sign Trucking Pact Phasing Out Punitive Tariffs on U.S. Goods

As reported, the U.S. and Mexico, moving to end a seemingly intractable trade dispute, recently signed agreements establishing a cross-border trucking pilot project and phasing out punitive Mexican tariffs on U.S. goods. The first trucks enrolled in the program could operate within the U.S. as early as the end of August, according to Federal Motor Carrier Safety Administration (FMCSA) officials. Mexico will suspend 50 percent of its punitive tariffs within 10 days, and suspend the rest when the first Mexican carrier in the program receives operating authority. U.S. Transportation Secretary Ray LaHood signed the agreements in Mexico City, infuriating opponents of an agreement that independent truckers and labor groups believe will bring lower-cost and poorly supervised Mexican operators into competition with American drivers. According to Jim Johnston, president of the Owner-Operator Independent Drivers Association (OOIDA), which represents more than 160,000 independent truckers, OOIDA and the Teamsters union fiercely oppose allowing Mexican truckers to operate beyond the border commercial zone, but it's not clear if they will be able to convince Congress to overturn the cross-border trucking agreement. U.S. exporters have pushed for a new agreement since Mexico imposed $2.4 billion in tariffs on U.S. goods after a Bush-era trucking project was shut down. The FMCSA published the final details on the program will be available in the Federal Register and are available on the FMCSA Web site: http://www.fmcsa.dot.gov/about/news/news-releases/2011/MX-trucks.aspx
JOC (7/6/11) www.joc.com

DOT and USTR Post Information on Mexico Truck Agreement - Reduction of Retaliatory Duties

The Department of Transportation (DOT) and the U.S. Trade Representative (USTR) recently announced that the U.S. and Mexico have, signed finalized agreements resolving the dispute over long-haul, cross-border trucking services between the U.S. and Mexico. As a result of the agreements, the Federal Motor Carrier Safety Administration (FMCSA) is planning to proceed with the U.S.-Mexico cross border long-haul trucking pilot, and Mexico will eliminate, in two stages, the retaliatory tariffs it has imposed since 2009 due to the U.S.' suspension of the pilot. As a first stage action, Mexico announced that it is reducing by 50% the retaliatory duties charged on certain U.S. origin goods, which Mexico has imposed since March 2009. In the second stage, all of the retaliatory tariffs will be suspended within five days of the first Mexican trucking company receiving its authority to operate in the U.S. USTR reports that as a result, Mexican tariffs that now range from 5% to 25% on more than $2 billion of U.S. products such as apples, certain pork products, and personal care goods will be immediately cut in half and will disappear entirely within a few months when the program is fully implemented. As part of the agreement, FMCSA is publishing a notice on its intent to proceed with the U.S.-Mexico cross-border long-haul trucking pilot and describing the pilot. According to DOT, this Federal Register notice addresses the recommendations of over 2,000 comments to the proposal issued by the FMCSA in April 2011. A DOT press release states that trucks under the pilot program will be required to comply with all Federal Motor Vehicle Safety Standards and must have electronic monitoring systems to track hours-of-service (HOS) compliance. In addition, DOT will review the complete driving record of each driver and require all drug testing samples to be analyzed in Department of Health and Human Services-certified laboratories located in the U.S.

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DOT will also require drivers to undergo an assessment of their ability to understand the English language and U.S. traffic signs. The new agreement also ensures that Mexico will provide reciprocal authority for U.S. carriers to engage in cross-border long-haul operations into Mexico. In response to the Administration's announcement, Representative DeFazio (D), Ranking Member of the House Committee on Transportation and Infrastructure's Subcommittee on Highways and Transit, wrote Secretary of Transportation LaHood challenging the cross-border trucking pilot program. He also introduced legislation to limit the Administration's authority to implement the program. According to a press release by Representative DeFazio, the agreement reached with Mexico will have a significant impact on the safety of U.S. drivers, security on the border, and U.S. jobs. Representative DeFazio press release: http://www.defazio.house.gov/index.php?option=com_content&task=view&id=716&Itemid=70
USTR press release (07/06/11): http://www.ustr.gov/about-us/press-office/press-releases/2011/july/ustr-kirk-friday-mexico-drop-retaliatory-tariffs-fift
FMCSA notice: http://www.ofr.gov/OFRUpload/OFRData/2011-16886_PI.pdf
MOU between the U.S. and Mexico Departments of Transportation: http://www.fmcsa.dot.gov/documents/Mexican_MOU_Eng.pdf
MOU between USTR and Mexico 's Secretary of the Economy: http://www.fmcsa.dot.gov/documents/English-Trucking-Letter.pdf
FR notice announcing FMCSA's intent to proceed with the pilot: http://www.ofr.gov/OFRUpload/OFRData/2011-16886_PI.pdf
Agriculture Secretary Vilsack's statement on the agreement: http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/07/0291.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent
DOT notice: http://www.dot.gov/affairs/2011/dot7911a.html

Mexico May Increase Punitive Tariffs if United States Does Not Resolve Trucking Issue under NAFTA

As reported, Mexico may increase the $2.4 billion in punitive tariffs it places on select U.S. goods if the Obama administration fails to implement a cross-border trucking program. Karen Antebi, economics counselor at the Mexican Embassy in Washington, delivered that message recently to trade officials at a panel on cross-border trucking. According to Antebi, "we reserve the right to re-impose, change, increase or deepen the retaliation list." Mexico imposed $2.4 billion in punitive tariffs on U.S. goods after Congress scuttled the 18-month Bush administration cross-border trucking program in 2009. The punitive tariffs stemmed from a 2001 ruling by a NAFTA arbitration panel that found the U.S. violated the trucking provisions of the trade agreement. The Bush-era pilot project was meant to resolve the dispute by testing the ability of Mexican carriers to operate safely in the U.S. and comply with U.S. regulations. Those tariffs would be suspended if a new cross-border pilot project is put in place as early as this August, and eliminated if the project ends successfully. The Obama administration's proposed cross-border program is detailed in an April 13 Federal Register notice from the Federal Motor Carrier Safety Administration (FMCSA). U.S. exporters have been strong proponents of a new program to meet the cross-border trucking requirements of the North American Free Trade Agreement. The proposal is also opposed by the Teamsters union, the Owner-Operator Independent Drivers Association (OOIDA), and several members of Congress, mostly Democrats. They argue that Mexican carriers are not required to meet the same type of safety standards as U.S. carriers and that opening the border would cost U.S. jobs. Antebi refuted these claims that Mexican trucks are unsafe or less regulated than their American counterparts, or that they were seeking special treatment under NAFTA. She reported numerous federal studies have shown Mexican carriers and drivers operate as safely as their U.S. counterparts "and have been doing so for some time." www.joc.com (6/30/11)

ECHA Posts Updated Guidance Document on REACH Substances

The European Chemicals Agency (ECHA) recently published a new version of its guidance on requirements for substances in articles. The guidance aims to help companies producing, importing or supplying articles to identify their obligations regarding substances in articles. The guidance explains key aspects such as the concept of an article, obligations for registration, notification and communication, and possible exemptions from these obligations. ECHA notice: http://echa.europa.eu/news/na/201106/na_11_30_guidance_nutshell_sia_20110629_en.asp

ITA Posts Report on Growth in Jobs Supported by United States Exports in 2010

The International Trade Administration (ITA) reports that U.S. exports supported an estimated 9.2 million jobs in 2010, up from 8.7 million in 2009. According to U.S. Commerce Secretary Gary Locke, "the exports surge in 2010 supported an additional half million jobs for U.S. workers – growth critical to America 's economic recovery. It's easy to understand why it's so important to reach President Obama's goal of doubling exports by 2015 and doing more than ever to help U.S. businesses reach the 95 percent of consumers who live outside U.S. borders." U.S. Commerce Secretary Gary Locke press release: http://www.commerce.gov/news/press-releases/2011/07/05/export-related-jobs-surge-2010

EU Enforcement of 24 House Cargo Information Security Rule Effective 7/1/11

As reported, the European Union will strictly enforce new customs regulations aimed at tightening security on goods moving through ports. Noncompliant shippers will face fines and penalties, and cargoes could be stranded on the dock. The advanced manifest rule, which required cargo information to be filed 24 hours before shipment, was enacted 01/01/11, but the EU gave shippers time to get accustomed to the new regulations and had not strictly enforced the new rule until now. Under the regulation, carriers must submit an Entry Summary Declaration, or ENS, to the first port of call in the EU at least 24 hours before cargo is loaded on a ship sailing to the 27-nation bloc from a non-EU port. Compliance with the ENS, which mirrors the 24-hour rule in the U.S., will help to ensure security risk assessments are performed before goods enter the EU.

An ENS is also required for freight remaining on board (FROB) a ship and destined for a non-EU port, transshipment cargo to and from non-EU ports, and all transit cargo for both EU and non-EU final destinations.

For short-sea shipments, an ENS must be filed two hours before cargo arrives at a EU port. Carriers have been issuing last-minute warnings to customers of the EU's get-tough stance on the advanced manifest rule.

The carrier announced that shippers would be responsible for any delay or fines arising because of commodity descriptions. www.joc.com (6/30/11)

OFAC Issues Final Rule on Libya Sanction Regulations

The Office of Foreign Assets Control (OFAC) issued a final rule, effective 07/01/11, to add "the Libyan Sanctions Regulations" under new 31 CFR Part 570 to codify Executive Order 13566, "Blocking Property and Prohibiting Certain Transactions Related to Libya." OFAC advises that the regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. However, it intends to supplement 31 CFR Part 570 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy. The final rule adds 31 CFR 570.201 (on prohibited transactions) which states that all transactions prohibited pursuant to EO 13566 of 02/25/11 are also prohibited pursuant to this part. It then states that the names of persons listed in or designated pursuant to EO 13566, whose property and interests in property therefore are blocked pursuant to this section, are published in the Federal Register and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier "[LIBYA2]." However, the property and interests in property of persons falling within the definition of the term "Government of Libya" are blocked pursuant to 31 CFR 570.201 regardless of whether the names of such persons are published in the Federal Register or incorporated into the SDN List. The final rule also adds new 31 CFR 570.307 (on licenses; general and specific) and 31 CFR 570.501 (on general and specific licensing procedures) that refer to OFAC's licensing procedures at 31 CFR Part 501 Subpart E and 31 CFR 501.801.

The final rule also incorporates General License numbers 3 and 2 into the Libyan Sanctions Regulations under 31 CFR 570.506 and 31 CFR 570.508, respectively. OFAC notes that effective 07/01/11, these sections replace and supersede General License numbers 3 and 2 which had been available on and are now being removed from, OFAC's website.

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In addition, OFAC states that General License Nos. 1B (Authorizing Transactions Related to Third-Country Libyan-Owned or Controlled Banks), 4 (with Respect to Investment Funds in Which There Is a Blocked Non-Controlling, Minority Interest of the Government of Libya), and 5 (Authorizing Transactions Related to Certain Oil, Gas, or Petroleum Products Exported from Libya), as well as certain statements of licensing policy, are not being incorporated into the regulations at this time and remain available http://www.treasury.gov/resource-center/sanctions/programs/pages/libya.aspx

OFAC contacts -

Compliance, Outreach & Evaluation (202) 622-2490
Licensing (202) 622-2480
Policy (202) 622-4855
Legal (202) 622-2410

OFAC notice (FR Pub 07/01/11) http://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-16621.pdf

White House Posts 2011 IPR Enforcement Strategic Plan

Recently the U.S. Intellectual Property Enforcement Coordinator issued its 2011 intellectual property enforcement joint strategic plan, which outlines the progress, made since the issuance of the Administration's initial strategy in 2010. According to the report, in the year since the Administration's initial strategy was issued, significant progress has been made on intellectual property (IP) enforcement and investigations, seizures, and arrests have increased. The Administration has also worked with Congress to advance legislation to increase IP enforcement. In addition, the Administration has been working closely with foreign governments to press for increased enforcement. Highlights of the 2011 report include:

- More seizures and arrests, additional agency participation in enforcement;
- Recent legislation addresses some of administration's recommendations;
- Economic espionage penalty enhancement act of 2011 (S.678);
- International enforcement includes embassy efforts in 17 targeted countries; and
- Focus on counterfeit pharmaceuticals resulted in enforcement sweeps, with more training.

White House Report: http://www.whitehouse.gov/sites/default/files/omb/IPEC/ipec_anniversary_report.pdf

Senate Finance Committee Posts Draft Bills for GSP, ATPA, and FTAs

The Senate Finance Committee recently posted the draft bills and Statements of Administrative Action from its canceled "mock" mark-up of the draft implementing bills for the South Korea, Colombia, and Panama Free Trade Agreements, which include provisions for retroactive renewal of Generalized System of Preferences (GSP), the Andean Trade Preferences Act/Andean Trade Promotion and Drug Eradication Act (ATPA/ATPDEA) and Trade Adjustment Assistance (TAA). The Committee has also posted information on the 97 amendments to the draft implementing bills that had been filed prior to the scheduled commencement of the "mock" mark up. As reported, the draft implementing bills and Statements of Administrative Action are from the Obama Administration, and would have provided an opportunity for members at the mark up to make their views known on the draft bills' provisions which could influence the text of the final Free Trade Agreement (FTA) implementing bills. The 97 filed amendments had been suggested by various Senators, and included substantial trade measures on Customs Reauthorization and antidumping (AD) Countervailing (CV) enforcement, as well as measures on TAA, the U.S. beef trade, and issues unrelated to trade. There were 79 amendments filed for the U.S.-South Korea FTA (KORUS) draft implementing bill, 15 for the Colombia FTA draft, and 3 for the Panama FTA draft. Draft bills & amendments: http://finance.senate.gov/legislation

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WCO and ICAO Sign MOU on Air Cargo Risk Management and Advance Data

At the June 2011 World Customs Organization (WCO) Council meetings, the International Civil Aviation Organization (ICAO) and the WCO signed a Memorandum of Understanding (MOU) on increased cooperation to protect air cargo from acts of terrorism or other criminal activity and for speeding up the movement of goods by air worldwide. As reported, the ICAO and WCO cooperation will focus on aligning the regulatory framework of both organizations relative to air cargo and will include electronic advance data, the sharing of information at various levels (government-to-government, Customs-to-Customs and Customs-to-industry), training and education, and risk management. WCO and ICAO experts will also be exploring the application of risk management to cargo for identifying threats and implementing the required security measures, including the vetting of advance cargo information. In addition, on 07/01/11, more stringent ICAO standards concerning air cargo become applicable, and will include a new requirement for Member States to establish a supply chain security process. WCO notice: http://www.wcoomd.org/press/?v=1&lid=1&cid=8&id=264

USCIB Posts List of Incoterms 2010 Seminars

The U.S. Council for International Business (USCIB) updated its list of upcoming seminars on the new incoterms (Incoterms® 2010) that took effect on 01/01/11. The following is a list of upcoming 2011 dates and locations of USCIB seminars that have been planned to explain the changes to the incoterms:

- 07/07/11 - Austin, TX
- 07/13/11 - Dallas, TX
- 07/27/11 - Chicago, IL
- 08/02/11 - Atlanta, GA
- 08/09/11 - Albuquerque, NM
- 08/16/11 - Newark, NJ
- 09/07/11 - Chicago, IL
- 09/15/11 - Houston, TX
- 10/05/11 - Los Angeles, CA
- 10/17/11 - Orlando, FL
- 11/02/11 - Las Vegas, NV
- 11/15/11 - Louisville, KY
- 12/06/11 - Chicago, IL

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Justice Posts Guide to Anti-Bribery Provision of FCPA

The Justice Department (DOJ) posted a guide to the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and other documents. DOJ explains that liability for FCPA violations includes knowing payments made through intermediaries (which can include customs agents, sales representatives, etc.) to foreign officials. Liability can also attach to pre- and post-acquisition and merger conduct, or so-called "successor liability." Another feature of the FCPA is its exception for small payments made to government officials to facilitate or expedite performance of a "routine governmental action" that does not relate to obtaining or retaining business. Routine governmental actions include obtaining licenses, scheduling inspections related to transit of goods across country, processing governmental papers, etc. DOJ advises that the FCPA potentially applies to any individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm.

The FCPA prohibits corrupt payments through intermediaries. Therefore, individuals and firms may be penalized if they order, authorize, or assist someone else to violate the anti-bribery provisions or if they conspire to violate those provisions themselves. Specifically, it is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. While the recipient of the corrupt payment normally applies to a foreign official, in this case, the "recipient" is the intermediary who is making the payment to the requisite "foreign official." DOJ notes, intermediaries may include agents (such as customs agents) or joint venture partners. To avoid being held liable for corrupt third party payments, DOJ encourages U.S. companies to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives. In negotiating a business relationship, DOJ notes that a U.S. firm should be aware of certain "red flags," such as:

(Continued below)

- unusual payment patterns or financial arrangements;
- a history of corruption in the country;
- a refusal by the foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official and not take any act that would cause the U.S. firm to be in violation of the FCPA;
- unusually high commissions;
- lack of transparency in expenses and accounting records;
- apparent lack of qualifications or resources to perform the services offered; and
- whether the joint venture partner or representative has been recommended by an official of the potential governmental customer. DOJ also notes that a company may have successor liability for FCPA violations. Such violations may include conduct that occurred pre-acquisition/merger or conduct that continued after the acquisition/merger was completed.

According to DOJ, given the increase in companies held liable for FCPA violations pursuant to successor liability principles, more companies are implementing a robust pre-acquisition due diligence review of their intended merger partner or acquisition target, including:

- assessing the corruption risks of the target company's line of business and countries in which the target company operates;
- reviewing the use of third-party intermediaries and agents;
- conducting FCPA focused audits;
- reviewing the target company's FCPA policies and procedures; and
- evaluating the company's handling of known compliance issues.

FCPA violations can also be detected during post-acquisition activities.

(FCPA Continued…)

Prompt reporting of FCPA violations discovered post-acquisition is a factor considered by U.S. authorities in reaching a resolution. In addition, steps taken to quickly and fully integrate the new entity into the acquiring company's compliance program is also a factor considered by U.S. authorities. DOJ advises companies and/or individuals to seek the advice of counsel and consider utilizing DOJ's FCPA Opinion Procedure. Through this procedure, any U.S. company or national may request a statement on DOJ's present enforcement intentions under the FCPA anti-bribery provisions regarding any proposed business conduct. The Attorney General will issue an opinion in response to a specific inquiry within 30 days of the request. If DOJ issues an opinion stating that the conduct conforms to current enforcement policy, that conduct will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA.
DOJ's Lay-Person's Guide to the Anti-Bribery Provisions of the FCPA: http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf
FCPA Opinion Procedure and contact information: http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf
U.S. response to questions concerning the Organization for Economic Cooperation and Development (OECD) Working Group on Bribery: http://www.justice.gov/criminal/fraud/fcpa/docs/response3-supp.pdf
The International Chamber of Commerce (ICC) Guidelines on Agents, Intermediaries, and Other Third Parties: http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/pages/195-11%20Rev2%20ICC%20Third%20Parties%20FINAL%20EN%2022-11-10.pdf

EPA Issues FR Notice on Acrylonitrile in Plastic - Seeks Comments

The Environmental Protection Agency (EPA) issued a draft toxicological review of acrylonitrile, which is used in the manufacture of certain plastics, in support of summary information on the Integrated Risk Information System (IRIS). EPA is releasing this draft for peer review and public comment by 08/29/11. In addition, a listening session will be held on 08/10/11 for scientific and technical comments. As reported, EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process for chronic non-cancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.
EPA FR Notice: http://www.gpo.gov/fdsys/pkg/FR-2011-06-30/pdf/2011-16487.pdf

EU Issues Press Release on Korea FTA - Effective 7/1/2011

The European Commission issued a press release reporting that the European Union-South Korea Free Trade Agreement (FTA) will enter into force on 07/01/11. Under the FTA, South Korea and the EU will eliminate 98.7% of duties in trade value within five years. By the end of the transitional periods, import tariffs will be eliminated on all industrial products, and most agricultural products, with a few exceptions, such as rice. As reported, the FTA will also create new market access in services and investment and will make advances in areas such as intellectual property, procurement, competition policy and trade and sustainable development.
EU press release: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148017.pdf

BIS issues proposed rule on Transfer of certain USML Exports to CCL

The Bureau of Industry and Security (BIS) recently issued a proposed rule to establish a framework for transferring certain items from the U.S. Munitions List (USML) to Commerce Control List (CCL), transfer an initial tranche of items on USML Category VII to the CCL, establish a process for making certain transferred items eligible for License Exception STA, establishing new definitions for "specially designed;" as part of the Administration's Export Control Reform Initiative Since 2010, the Commerce and State Departments have been in the process of reviewing and revising the two primary lists of items controlled for export – the CCL and the USML – in order to make the lists more "positive," "aligned," and "tiered." In its rule, BIS is proposing a new regulatory construct for the transfer of items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA), the President determines no longer warrant control under the AECA and that would be controlled under the Export Administration Regulations (EAR) once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) and its USML and the EAR and its CCL are completed. In addition to proposing a regulatory construct for transferring these items into the CCL, this rule proposes the transfer of an initial tranche of items from USML Category VII (Tanks and Military Vehicles) to the CCL. This rule also proposes amending the EAR to establish a process by which certain items moving from the USML to the CCL would be made eligible for License Exception Strategic Trade Authorization (STA).
BIS contact – Timothy Mooney (202) 482-2440
BIS notice (FR Pub 07/15/11)
http://www.ofr.gov/OFRUpload/OFRData/2011-17846_PI.pdf

BIS issues final rule on Dual-Use Export Control for South Sudan effective 7/9/11

The Bureau of Industry and Security (BIS) issued a final rule, effective 07/09/11, which amends the Export Administration Regulations (EAR) to add certain controls on exports and reexports of U.S.-origin dual-use items to a new nation, the Republic of South Sudan, which has voted to become a separate nation from Sudan. The Republic of the Sudan (referred to as "Sudan" in the EAR) was designated by the Secretary of State as a state sponsor of terrorism under U.S. law in 1993. In 1997, the President issued Executive Order 13067 (Blocking Sudanese Government Property and Prohibiting Transactions with Sudan), imposing comprehensive economic sanctions against Sudan because of the policies and actions of the Government of Sudan, including its continued support for international terrorism. The Commerce Department imposed anti-terrorism controls on Sudan under 15 CFR 742.10, which restricts the export or reexport to Sudan of most items subject to the EAR that are listed on the Commerce Control List (CCL). Pursuant to the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation, in 2006 the regional government of Southern Sudan was excluded from the definition of the "Government of Sudan" set forth in EO 13067. In February 2011, a referendum commission announced that the region of Southern Sudan had voted to become a separate nation, and President Obama announced the intention of the U.S. to formally recognize the Republic of South Sudan as a sovereign state, effective July 9, 2011. As a result, the EAR will now list two countries with "Sudan" in their names: the Republic of the Sudan, referred to as "Sudan" in the EAR, the capital city of which is Khartoum, and the Republic of South Sudan, referred to as "South Sudan, Republic of" in the EAR, the capital of which is expected to be Juba. BIS will require a license for the export or reexport to the Republic of South Sudan of items controlled unilaterally for regional stability and crime control reasons, and items controlled by the multilateral export control regimes (Australia Group, Wassenaar Arrangement, Chemical/Biological Weapons Conventions, Nuclear Suppliers Group, and Missile Technology Control Regime).