

CLIENT ALERT

This Month In International Trade - July 2011

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The BIS Annual Update Conference Sheds Light on the Commerce's Proposed Rule To Address Future Controls Over Items Removed From the USML

Last week, the Bureau of Industry & Security ("BIS") held its annual Update Conference. Among the many topics of interest were the continued efforts by the Commerce Department to implement the President's initiative aimed at reforming export controls. Central to that effort is the eventual merging of the United States Munitions List ("USML") and the Commerce Control List ("CCL"). For its part, BIS published a proposed rule, [76 Fed. Reg. 41958](#), which would create a structured approach for addressing items to be removed from the USML where continued control under the Export Administration Regulations ("EAR") is necessary.

While BIS's proposed rule is a step toward the eventual single export control list, what Assistant Secretary of Commerce for Export Administration, Kevin Wolf, revealed in his opening remarks at the Update was that the proposed rule was just one of a number of recent steps in a larger coordinated effort by the Commerce Department, State Department, and Department of Defense towards export control reform.

Assistant Secretary Wolf indicated that BIS's proposed approach for migrating USML items to the CCL was designed in concert with the recent [STA license exception](#) and the State Department's recent proposed revisions to [Category VII of the USML](#). In addition, Assistant Secretary Wolf indicated that similar USML Category revisions would be released in the near future with Categories VI and VIII most likely to be next.

These three revisions and the future USML Category rewrites have been designed by the three agencies to provide a clear path to eventually merging the two export control lists. As envisioned by Assistant Secretary Wolf, an item written out of a USML category, but still designed for a military end item or military end use would be migrated under the proposed revisions to the EAR into a series 600 Export Control Classification Number ("ECCN"). Once controlled under the CCL, most of these items would be eligible for license exception STA. While BIS is still accepting comments on its newest proposed rule and the USML rewrite of Category VII has yet to be implemented, it is under this basic framework that Assistant Secretary Wolf and his counterparts at the State and Defense Departments intend to proceed with President Obama's export control reform initiative.

Kevin Wolf's comment at the BIS Update shed light on the larger, interagency plan. With less than sixty days remaining to provide comment on the proposed EAR revisions, hopefully exporters will now have enough information to provide meaningful comments and assist shaping effective and meaningful export control reform.

Commerce Revokes Bearings Duty Orders

On July 15th, the U.S. Department of Commerce officially [revoked the antidumping duty orders](#) on ball bearings from Japan and the United Kingdom. The revocation stems from a five-year "sunset" review by the U.S. International Trade Commission ("ITC") that began in 2005 and triggered a series of litigation proceedings in the U.S. Court of International Trade ("CIT"). After a series

of remands by the court, ITC ultimately concluded that revocation of the orders would not be likely to lead to a recurrence of injury to the domestic bearings industry. Despite the revocation notice, Commerce appears to be keeping the orders provisionally in place, as it has instructed U.S. Customs and Border Protection to continue to suspend liquidation of entries of subject bearings pending final review by the U.S. Court of Appeals for the Federal Circuit ("CAFC"). The agency is allowing importers to enter subject merchandise without making cash deposits for the time being, though it maintains that if the CAFC reverses the lower court and the orders are reinstated, current entries will be subject to antidumping duty assessments. Pending the CAFC's final decision (or further decisions & clarification by the CIT), importers therefore should not assume that their entries of Japanese and U.K.-origin bearings will not ultimately trigger antidumping liability.

China-EU Bilateral Investment Treaty Negotiations

On July 14, during a joint briefing in Beijing, China's Minister of Commerce and the EU Trade Commissioner announced their agreement to negotiate a bilateral investment treaty ("BIT"). China already has BITs in force with every single EU Member State except Ireland and Sweden, so issues arise regarding the transition, if any, from those BITs to a new EU-China BIT, and regarding the approach the EU will take toward the drafting (whether to select one of the existing Member State BITs as a "model" or piece together a new model from among the "best" components of the existing BITs). In addition, the issue of the respective competences between the Commission and the Member States since the 2009 entry into force of the Lisbon Treaty has not been clearly resolved, especially with regard to critical BIT provisions on investor-State arbitration. As there are reports of "technical discussions" between the United States and China over a BIT negotiation, another question is the extent to which the US and EU may try to coordinate their negotiations with China. These and other issues surrounding the negotiation of an EU-China BIT are important because trade and investment flows between the EU and China have increased significantly in recent years.

Negotiations and Delays for Pending FTAs and TAA

Three pending Free Trade Agreements (South Korea, Colombia and Panama) and Trade Adjustment Assistance (TAA) will not be submitted to Congress until after the August 2011 recess. The White House decision to delay submitting the trade deals appears to be related to the debt ceiling negotiations. Meanwhile, Congressional leaders continue to negotiate over procedural issues involving trade deals and whether the voting would be tied to TAA. Administration officials and congressional staff hope to advance the negotiations to enable approval of the trade deals in September 2011.

WTO Ruling on China Rare Earth Restrictions

On July 5, the World Trade Organization (WTO) released a panel report declaring China's export restrictions regarding "rare earth" raw materials inconsistent with WTO rules. The ruling represents a victory for the U.S., the original complainant in the dispute. As of late July, China had increased but not eliminated its quotas on these raw material exports.

USDA-APHIS Seeks Comments on Lacey Act Exemptions

The Animal and Plant Health Inspection Service (APHIS) is accepting comments through August 29, 2011 regarding exemptions to Lacey Act declaration requirements. The agency seeks comments regarding burdensome, difficult and expensive declaration requirements involving minimal plant materials, composite plant materials, re-used plant materials and commercial identification of plant products.

U.S. and Mexico Reach Cargo Trucks Agreement; U.S. Truckers File Court Challenge

On Wednesday, July 6, the U.S. and Mexico signed a memorandum of understanding granting Mexican commercial trucks access to U.S. highways if the trucks and drivers meet certain safety requirements. The deal, combined with a June agreement, paves the way for the elimination of retaliatory duties Mexico imposed on U.S. exports due to the U.S. ban on Mexico commercial trucks. In accordance with the agreement, half of the tariffs were suspended 10 days after the signing of the memorandum. Remaining duties would be suspended within 5 days of border access to a Mexican trucking company. On July 7 the Owner-Operator Independent Drivers Association (OOIDA), a U.S. truckers association, protested the agreement, filing a petition in the U.S. Court of Appeals for the D.C. Circuit.

New California Law Requires Company Disclosure of Procedures Designed to Eliminate Human Trafficking and Slavery

Beginning January 1, 2012, the California Transparency in Supply Chains Act of 2010 will require every "retail seller and manufacturer" with annual worldwide gross receipts exceeding \$100 million dollars and "doing business in the state" of California to disclose on company websites whether it engages in certain actions designed to eliminate human trafficking and slavery from its supply chain. This law does not impose requirements on companies other than disclosure of their policies and procedures, and compliance could technically be achieved by disclosing that there are no such policies or procedures. The only remedy for failure to post the necessary disclosure is an action by the California Attorney General for injunctive relief to force compliance.

European Commission Issues Green Paper To Launch Reform Of The EU's Dual-Use Export Controls

The European Commission (the "Commission") has recently issued a Green Paper on the reform of the EU's dual-use export controls (the "Green Paper"). The objective is to initiate a broad public debate and invite input from the business world and other stakeholders on the current deficiencies and future of the EU's dual-use export control system, particularly in relation to the trade distorting effects of disparate Member State implementation and the impact of export control reform efforts elsewhere (such as in the U.S.). On the basis of this consultation, the European Commission will make formal proposals for amendments of the existing EU dual-use regime, Council Regulation No. 428/2009 (the "Dual-Use Regulation").

Crowell and Moring Speaks

On July 14, 2011, Alan Gourley delivered a speech on US and UK enforcement of economic sanctions for the LexisNexis Legal Implications of Economics Sanctions program, part of the Butterworths' Economics Sanctions conference in London.

Advisory Center on WTO Law adds Crowell and Moring

Crowell & Moring recently has been added to the roster of external legal counsel of the Advisory Centre on WTO Law. The Centre assists developing country members and least developed countries in WTO dispute settlement and advises them on matters related to WTO law. Lawyers on the Centre's roster of external legal counsel are available to assist developing country members and least developed countries when a conflict prevents the Centre's own staff from representing a country.

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