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DoD Official to Head Directorate of Defense Trade Controls

Ken Handelman, who has served in various Defense Department (DoD) posts since 1995 and currently is principal deputy assistant secretary of defense for global strategic affairs, is reportedly slated to become the head of State's Directorate of Defense Trade Controls (DDTC) and serve as deputy assistant secretary of State for defense trade controls.



Ken Handelman

In a version of musical chairs, Beth McCormick, who now heads DDTC, will become director of the Defense Technology Security Administration (DTSA) as of Oct. 1, replacing James Hursch, who is going to Brussels in September to serve as senior DoD advisor to NATO (see **WTTL**, July 29, page 10). In other changes, Ed Peartree, who has been in DDTC's compliance office, will become director of DDTC's defense trade controls policy staff, filling post left vacant when Candace Goforth left government. Also, Lisa Aguirre, former head of DDTC trade compliance, has moved to management post held by Patricia Slygh, who has retired. Daniel Buzby is serving as acting director of compliance.

Handelman has held his current post since April 2009. Previously, from 2006 to 2009, he was DoD's principal director for counternarcotics, counterproliferation and global threats. He concurrently served from 2007 to April 2009 as chief of staff for the assistant secretary of defense for global security affairs "where he helped manage the workflow of over 700 personnel on issues including partnership strategy, detainee affairs, security assistance, and technology security," according to his DoD biography.

Before going to Defense in 1995, Handelman was legislative assistant and legislative director for then-Sen. Howard Metzenbaum (D-Ohio) from April 1987 to January 1995. He received a B.A (1985) and Master of International Affairs (1986) from Columbia University and a J.D. from the Washington College of Law at American University (1994).

Injury Test in Shrimp CVD Case May Be Hard to Pass

Gulf shrimp processors faced tough questioning from International Trade Commission (ITC) members Aug. 13 as they tried to show why they are being injured by subsidized

imports of frozen warmwater shrimp from seven Asian countries, despite declining imports, high shrimp prices and receiving millions of dollars in compensation from BP for lost business from the 2010 oil spill. As the ITC hearing on the final injury review of the processors' countervailing duty (CVD) petition was underway, the International Trade Administration (ITA) issued its final CVD margins for five of the seven targeted countries but eliminated imports from Thailand and Indonesia from the case because subsidies to shrimp industries in the two countries were found to be *de minimis*.

The dropping of Thailand and Indonesia, the two largest shrimp exporters to the U.S. by value in 2012, could have a mixed impact on the ITC's final injury determination, according to questions commissioners raised at the hearing. The two countries accounted for nearly 59% of subject imports, leaving a much smaller volume of imports to judge. At the same time, imports from Thailand were declining the most during the period of investigation due to a disease, Early Mortality Syndrome (EMS), in its shrimp, and taking it out of the case makes the overall decline in imports look smaller.

The ITA calculated final CVD margins for China, Ecuador, India, Malaysia and Vietnam. If the ITC does find injury from these imports, both the ITC and ITA decisions would likely face legal challenges to the Court of International Trade (CIT). Ecuador, in particular, is likely to sue the ITA over its decision, based on adverse facts available, to raise the final CVD margins on Ecuador's two suppliers to 10.13% and 13.51% after finding *de minimis* subsidies at the preliminary stage.

The filing of the CVD petitions by the Coalition of Gulf Coast Shrimp Industries (CGCS), which represents 32 processors mainly in Louisiana and Mississippi, raised much discussion within the domestic shrimp industry over why the case was being filed. CGCS appeared to have different goals than the Ad Hoc Shrimp Trade Action Committee, which represents 536 parties, including processors, fisherman and associations around the country. The Ad Hoc group, which won a successful antidumping petition against many of the same Asian countries in 2003, became part of the current case by getting ITA to include shrimp frozen on board in brine, which is frozen by fisherman while at sea, within the scope of the case.

Among the questions raised by ITC members were: Was this the right time to file the case? Aren't processors seeking a "double remedy" from both BP payments and CVD action? Why aren't the antidumping orders sufficient protection? How do petitioners explain ITC staff findings that there is more overselling by imports than underselling? Is new investment by processors rational? How are imports hurting industry when shrimp landings are at same as historic levels? What is the impact of Indonesia and Thailand being excluded from the case?

TPCC Neither Promoting Nor Coordinating Trade Efforts

Three years after President Obama launched his National Export Initiative (NEI), the program still isn't achieving its goals, despite boasts by administration officials, because of the continuing shortcomings of the interagency Trade Promotion Coordinating Committee (TPCC), says a report by the Government Accountability Office (GAO) posted Aug. 14 (GAO-13-644). Reports issued by the TPCC, which was created during the

Clinton administration to coordinate government trade promotion activities, outline government-wide priorities and progress but “do not discuss how resources are allocated in support of these priorities,” the GAO contends. “Despite the current emphasis on export promotion as a high-priority goal, recent strategies have provided less information on budget resources than have previous strategies,” the report notes.

As a result, the TPCC, which was nearly dormant for many years, isn’t living up to its name of coordinating the administration’s trade promotion priorities, such as doubling exports and increasing exports by small- and medium-sized businesses, it suggests. When data is released, information is still not clearly allocated to priorities. “TPCC agencies do not use a common definition of export promotion, so it is unclear why some agencies are included in the TPCC’s data and others are not, and the TPCC’s data are not current,” it adds.

To better coordinate its efforts, the TPCC should “develop and distribute guidance for member agencies on what information they should provide the TPCC on the resources they spend on export promotion activities” and “report in its National Export Strategies on how resources are allocated by agency and aligned with priorities,” it recommends.

“This GAO report is further verification that federal trade agencies need better collaboration between our export programs so that small businesses can pursue new markets internationally,” said House Small Business Committee Chairman Sam Graves (R-Mo.) in a statement Aug. 14. “Currently, there are over 20 federal agencies that provide some, or all, of the steps in the export process. This can paint a very confusing and intimidating picture for small companies who often don’t have designated export officials or trade representatives on staff to navigate the process for their business,” added Graves, who requested the GAO report.

Little Progress Seen in Advance of Froman Talks in Japan

Talks that Acting Deputy U.S. Trade Representative (USTR) Wendy Cutler held with Japanese officials in Tokyo Aug. 7-9 appear to have done little to prepare for meetings USTR Michael Froman will have with the Japanese Aug. 19 (see **WTTL**, Aug. 12, page 7). The talks Cutler and Froman are having with the Japanese are aimed at reaching bilateral agreements on autos, insurance and other non-tariff measures that will be parallel to the broader agreement on a Trans-Pacific Partnership (TPP).

“During meetings, we shared with Japan our initial views on the issues that are on our agenda in these parallel negotiations,” a USTR official said in an email to **WTTL**. In addition to bilateral issues, Cutler “met with Japanese government officials to discuss the TPP negotiations more generally,” the official said. “She underscored the importance of concluding a comprehensive, high-standard agreement this year and was encouraged by the efforts of Japanese negotiators to come up to speed with the details of the negotiation so that they can contribute at the next TPP round in Brunei,” the official said.

“In our view, the negotiations got off to a good start and laid the groundwork for Ambassador Froman's visit to Japan on August 19. We recognized that we have a great deal of challenging work ahead of us. We agreed to set the date for our next session through diplomatic channels,” the official added.

Another Salvo Fired in Apple-Samsung Patent Dispute

The ongoing patent dispute between Apple and Samsung over what seem to be ubiquitous features of their respective smartphones continued late Aug. 9 when the International Trade Commission (ITC) released its determination that Samsung infringed on certain Apple patents in violation of Section 337. The patents at issue involve the phone itself, its touch screen, the audio headset plug and plug detection circuitry and other plug detection mechanisms.

This is the latest iteration of mutual patent suits and complaints Apple, Samsung and other smartphone makers have launched against each other at the ITC, the Patent Office and in courts. The announcement came just a few days after U.S. Trade Representative (USTR) Michael Froman overturned an earlier ITC decision that Apple violated Samsung patents and allowed continued imports of Apple products (see **WTTL**, Aug. 12, page 4).

The ITC's new exclusion order and cease-and-desist order, which will be published in the Aug. 15 Federal Register, against Samsung products will now head to Froman also for review just like the Apple ruling, raising the question of whether the USTR will apply the same standard to both cases. If Froman doesn't block the new orders, the case is likely to get appealed to the Court of Appeals for the Federal Circuit.

Samsung's "Continuum SCH-1400 infringes all of the asserted claims of [Apple's handset detection patent] the '501 patent; that the accused Samsung devices represented by Transform SPHM920 infringe claims 1-2 and 8, but not claims 3 and 4 of the '501 patent; and that the accused Samsung devices represented by Galaxy Tab 7.0 and Galaxy S II do not infringe any of the asserted claims of the '501 patent," the ITC ruled.

"The Commission has further determined that the asserted claims of the '949 [touch screen device] and the '501 patents have not been proven by Samsung to be invalid and that Apple has proven that a domestic industry exists in the United States relating to articles protected by the '949 and the '501 patents," it added.

"The Commission, however, ultimately finds that Apple has not proven a violation of section 337 with respect to the '697 [Plug detection mechanisms] patent because Samsung has proven with clear and convincing evidence that the asserted claims are invalid as anticipated by the YP-T7J media player. The Commission has further determined that Apple has proven a domestic industry exists in the United States relating to articles protected by the D'678 [Electronic device], the '922 and the '697 patents, but not the D'757 [Electronic device] patent," ITC notice said.

CBP Releases New Schedule for Completing Modernized ACE

It's time to get serious. After a decade of promises and missed deadlines, Customs and Border Protection (CBP) Aug. 8 released a new "schedule for completing core trade processing capabilities" in its Automated Commercial Environment (ACE) by the end of 2016. "This announcement marks a significant step forward for us," said CBP Acting Commissioner Thomas S. Winkowski in a statement. The new schedule for implementing ACE comes after a dozen years of delays and missteps that have prevented its full adoption, so many in industry may be skeptical of this new schedule. In February, Cynthia

Whittenburg, director of business transformation in the ACE business office, said CBP had set up a new management system to focus on specific areas of regulation and procedures with special teams and focused deadlines (see **WTTL**, Feb. 18, page 2).

The new plan includes seven deployments of new features over the next three years, the first of which is targeted for October 2013. Over that three years, certain functions will be mandatory on three dates: (1) May 1, 2015: all electronic import and export manifest data must be transmitted via ACE; (2) Nov. 1, 2015: all data associated with the release of cargo, including PGA [Partner Government Agency] interactions, must be transmitted via ACE; and (3) Oct. 1, 2016: mandated use of ACE.

“ACE consolidates, automates, and modernizes border processing and when complete, will provide a single access point to connect the trade community with CBP and Partner Government Agencies,” CBP noted. Developed with “extensive consultation with internal and external stakeholders,” the rollout is based on the Agile software development methodology, which produces smaller pieces of functionality more frequently. When employed well, Agile development allows project teams to respond to changes in priorities and stakeholder input while creating a usable, deliverable product.

Firearms Importers Facing Licensing Backlog, Delays

Firearms importers are encountering backlogs and delays in getting import licenses from the Alcohol, Tobacco, Firearms and Explosives Bureau (ATF) due to the lingering effects of short-lived staff furloughs required by federal budget sequestration and near record imports, transfers and national gun purchases. The bureau had to furlough 96 contract employees in April before Congress restored its funding. The short staffing contributed to the backlog “that we are still struggling to keep up with,” ATF Deputy Assistant Director Marvin Richardson said Aug. 6.

“There are backlogs. Backlogs that simply exist because of a large influx in the number of applications that have been received by our services division,” Richardson told a National Shooting Sports Foundation (NSSF) and FireArms Import/Export Roundtable (FAIR) trade conference.

Part of the problem was the furloughing of data entry employees who enter license applications into the ATF system. It can now take two weeks for paper applications to be entered into the system, ATF staffers told the conference.

The backlog affects all ATF licensing programs subject to the National Firearms Act (NFA) as well as import permits, ATF staff reported. There is a backlog of 53,000 NFA applications, with 162,000 firearms license applications expected in fiscal 2013, which started Oct. 1, 2012, compared to 152,293 for all of FY 2012. These numbers match the trend in gun purchases nationwide this year. ATF received 9,723 Form 6 import permit applications in FY 12 and expects more this year. Processing times for import permits have risen to 45-60 days from 30-40 days. ATF staff say they hope the move toward an electronic import application will speed up licensing and reduce the backlog. After a rocky start, the eForm 6 application has undergone improvements that should make it easier to use, ATF information specialist Lee Alston-Williams said. Importers at the conference, however, said they still face problems using the eForm 6, especially because

of limits on the number of models that can be entered on one form. ATF also has a backlog in applications for International Import Certificates (IIC), reported Desiree Dickinson, ATF industry liaison. IICs are usually requested by foreign export licensing agencies in lieu of end-user statements.

Dickinson said it is now taking 6-to-8 weeks to process an IIC request. She also noted that the Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC) are no longer processing IICs for products they license and instead are forwarding requests they receive to ATF. "They are waiting a month; they collect all they get in a month; and throw them in an envelope and mail them to ATF," she said.

Back in Africa, Froman Announces Trade Talks

After mostly ignoring the shortcomings in Africa Growth and Opportunity Act (AGOA) for the past four years, the Obama administration will begin the "process to review AGOA and gain insight from all of AGOA's stakeholders," USTR Michael Froman said in a speech in Ethiopia Aug. 12. The review will include asking the hard questions of African government leaders, U.S. and African companies, experts in civil society, non-government organizations and academics, he said. In his speech to the AGOA Forum, Froman called for the "seamless renewal" of the pact in 2015 when it expires.

This was Froman's second trip to Africa in six weeks. He was there with President Obama in July when the president announced a new initiative in increase trade and investment between the U.S. and Africa as well as among African nations (see **WTTL**, July 8, page 4).

"We should drill down into the thousands of duty-free tariff lines under AGOA and ask if they are appropriate for eligible exporters," Froman said. "We will be frank about our sensitivities, and I'll expect the same candor from you. But in that exchange, let's ask which AGOA countries should qualify to export certain products and why? Should there be graduation, for sectors or for countries? How should we treat African export sectors that are globally competitive versus those just starting out?" Froman told the Forum.

"So let's ask how AGOA can be a better stepladder to Africa's further growth, development and global economic integration," he said. "As we learn more about global production and global value chains, where should Africa fit in the future? How can AGOA help promote greater value-added production in Africa? How can we work together to avoid bad policies and common pitfalls, like rigid localization requirements that serve as barriers to trade and hinder the development of competitive industries?" Froman continued. "At the end, it is very possible that we will conclude that AGOA should just be renewed as is, but we go into this process with an open mind and look forward to a robust and insightful review," he concluded.

A day earlier, Froman announced plans for the U.S. and the East African Community (EAC) "to launch formal negotiations on a Trade Facilitation Agreement with a view to concluding these negotiations as quickly as possible." The EAC comprises Burundi, Kenya, Rwanda, Tanzania and Uganda. "In parallel, we will add new elements to the U.S.-EAC TIP [Trade and Investment Partnership] focused on sanitary and phyto-sanitary measures and technical barriers to trade," he said.

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CORRECTION: Only manufacturer of electro-multiplying charge coupled devices (EMCCDs) is e2v in Great Britain, not in Japan, as reported in **WTTL**, Aug. 5, page 1. Texas Instruments had been making EMCCDs in Japan but discontinued production due to lower sensitivity.

WTO: UN Secretary-General Ban Ki-moon appointed Arancha Gonzalez Aug. 15 to be executive director of International Trade Centre (ITC). Gonzalez spent last eight years as chief of staff to WTO Director-General Pascal Lamy, who is leaving post Sept. 1 (see **WTTL**, July 29, page 10). Before working for Lamy in Geneva, she served as his spokeswoman when he was EU trade commissioner. Created in 1964, ITC is joint agency of WTO and United Nations Conference on Trade and Development (UNCTAD). It works to foster sustainable economic development through trade and contributes to Millennium Development goals as well as WTO's Aid for Trade initiative. A native of Spain, Gonzalez holds law degree from University of Navarra and post-graduate degree in European law from University of Carlos III, Madrid.

OFAC: VISA received Finding of Violation from OFAC Aug. 13 for failing to file reports within ten days of blocking two accounts in which Bank Melli had interest in November 2007. VISA disclosed these blockings in 2009 and said violations were due to inadvertent oversight. In September 2011, credit card issuer also failed to file initial report within 10 business days of blocking funds of Real Estate Bank, Syria-owned bank. "VISA stated that it failed to meet the reporting deadline with respect to the Real Estate Bank funds because it was attempting to determine whether fees should be deducted from the funds owed to Real Estate Bank before filing a report with OFAC," OFAC said.

AUSTRALIA GROUP: Mexico became 42nd member of Australia Group Aug. 12.

TRADE PEOPLE: Augustine Tantillo named president of National Council of Textile Organizations Aug. 6, replacing Cass Johnson. Tantillo had served as executive director of American Manufacturing Trade Association Coalition (AMTAC), which merged with NCTO in April 2013 (see **WTTL**, April 8, page 8).

EXPORT ENFORCEMENT: Samuel Alphonso Nimo of Owings Mills, Md., was sentenced Aug. 9 in Oklahoma City U.S. District Court to 10 months in prison for illegally shipping firearms to Ghana from 2009 to 2011. Nimo worked then for Oklahoma State Department of Health. He pleaded guilty just prior to sentencing. At the same time, he also pleaded guilty to defrauding Social Security in unrelated case and was sentenced to 12 months to serve concurrently.

MORE EXPORT ENFORCEMENT: Iranian national Seyed Amin Ghorashi Sarvestani was sentenced Aug. 14 in N.Y. U.S. District Court to 30 months in prison for conspiring to export electronic equipment, including satellite technology and hardware, to Iran via UAE without OFAC approval. He pleaded guilty May 8 after being arrested in October 2012. In addition to prison term, Ghorashi was ordered to pay \$100,000 fine and to forfeit \$54,000.

OIL COUNTRY TUBULAR GOODS: In 6-0 preliminary vote, ITC Aug. 16 found U.S. industry may be materially injured by allegedly dumped imports of oil country tubular goods (OCTG) from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam, and allegedly subsidized OCTG from India and Turkey (see **WTTL**, July 8, page 5).

DIGITAL TRADE: In case you missed last 10 years, products and services delivered via Internet make up growing segment of U.S. economy and are increasing globally as well, reported ITC Aug. 15 in its publication *Digital Trade in the U.S. and Global Economies*, Part 1 (Pub. 4415).

EDITOR'S NOTE: In keeping with our 50-week publishing schedule, there will be no issue of *Washington Tariff & Trade Letter* on Aug. 26. Our next issue will be Sept. 2.