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BIS to Look at Exporters' ITAR Compliance Records, Mills Says

BIS will consider how exporters complied with the International Traffic in Arms Regulations (ITAR) when it considers future voluntary self-disclosures (VSDs) for items transferred to the Commerce Control List (CCL) from the U.S. Munitions List (USML). "We will factor that into account when we review their submissions to us," BIS Assistant Secretary for Export Enforcement David Mills told the President's Export Council Subcommittee on Export Administration (PECSEA) Sept. 18.

"We will be very conscious of the past practices of the State Department as they reviewed voluntary self-disclosures," Mills said. "We will have access to that information when USXport comes online. Our analysts and agents will be able to see what the history of that company is in regard to ITAR items and compliance with State Department rules," he added.

Mills appeared to be responding to industry concerns that BIS more readily imposes civil fines on firms that file VSDs than State. He noted that for the first three quarters of fiscal 2012 through June 2013, BIS imposed penalties on only 2% of the VSD cases it closed. "We are not interested in spending our resources on inadvertent, technical violations," Mills asserted. "We want to make sure we dedicate our resources to those cases which are most important for purposes of deterrence and compliance," he stated.

Mills also repeated his plans for proposing new penalty guidelines that will be modeled on those issued by Treasury's Office of Foreign Assets Control (OFAC). The OFAC penalty guidelines call for the imposition of fines that are twice the value of a transaction or \$250,000, whichever is greater, with certain mitigating and aggravating factors that can adjust the fine. When BIS deals with items of small value but large importance to national security or U.S. military forces, it will consider those case "egregious," Mills said. "Then all bets are off," he declared. "Then we will throw the book at them," he said. This might mean going up to the statutory maximum fine.

EU Parliament's Role Looms over U.S.-EU Trade Talks

As the next round of U.S.-European Union (EU) talks are set to begin Oct. 7 in Brussels on a Transatlantic Trade and Investment Partnership (TTIP) pact, the negotiations are

being closely followed by the EU Parliament, which will play a crucial role in determining what the EU will accept in a final agreement. Under EU governance rules that went into force in 2009 as a result of the Lisbon Treaty, the EU Parliament now has the same powers as the U.S. Congress to vote up or down any trade treaty negotiated by the commission. That power was demonstrated in July 2012 when the Parliament rejected the Anti-Counterfeiting Trade Agreement (ACTA).

“The Parliament is more deeply involved in TTIP than the U.S. Congress,” one source told WTTL. In particular, the chairman of the Parliament’s international trade committee, Vital Morreira, a Social Democrat member from Portugal, has been in close communications with EU Trade Commissioner Karel De Gucht, as well as with House Ways and Means trade subcommittee chairman Devin Nunes (R-Calif.) and Senate Finance Committee Chairman Max Baucus (D-Mont.).

Morreira’s committee “is Ways and Means and Finance wrapped up in one committee,” one source said. Morreira is being briefed by the trade commission staff regularly and will get a confidential briefing before and after the next round of talks, the source reported. Because of the experience with ACTA, the commission is taking the Parliament’s role very seriously, hoping to avoid the same outcome. ACTA’s rejection was based in part on the commission’s failure to keep the lawmakers informed about the pact and to provide them with supporting arguments when the accord came up for a vote.

Meanwhile, EU representatives were in Washington the week of Sept. 16 for meetings with Dan Mullaney, chief of the U.S. negotiating team, to prepare the agenda for the coming talks in Brussels. Both sides are expected to offer detailed papers and presentations on potential TTIP provisions. “They are now getting into details, which is the way it should be done,” one source said. Political-level officials still say they are aiming to complete the talks in 2014, but as one observer noted on that goal: “Who knows?”

Concerns about Ambition Grow as TPP Nears Endgame

The business community is increasingly concerned that too many sensitive issues aren’t being resolved as negotiations on a Trans-Pacific Partnership (TPP) agreement near their endgame this year. In an open letter to TPP chief negotiators who were in Washington the week of Sept. 16 for an “intersessional” meeting, nine trade associations complained that the talks have “yet to achieve the level of ambition pledged by the governments.”

“We urge you to redouble your efforts toward the goal of a comprehensive, high-standard, and commercially meaningful agreement that removes barriers to trade and investment and addresses 21st Century challenges in all sectors. We stand ready to support you in achieving this outcome,” said the letter, which reportedly raised hackles in the U.S. Trade Representative’s (USTR) office because it implied the U.S. wasn’t doing enough to reach that goal.

With USTR Michael Froman still saying the end of 2013 is the target for completing the talks, industry representatives cite the large number of sectors where country sensitivities, including Washington’s, are keeping the talks from moving forward. While the toughest issues in any negotiations are usually left unresolved until the very end of the talks when negotiators will make their last, best offers, business groups are concerned

that too much will be left for the last minute and the result will be compromises that fall short of promised goals. The list of sensitive issues includes cross-border data flows, state-owned enterprises, government procurement, investment, textiles, apparel and footwear, dairy, rice and financial services. In some areas, it is the U.S. that has sensitivities it has not yet been willing to compromise on. Although Japan's entry into the TPP talks was considered a potential cause of delay, Tokyo is not the problem, one source said. "Japan has been very supportive on many U.S. issues," he said.

While business is pushing negotiators for a more comprehensive agreement, U.S. trade officials are facing strong opposition to the deal from labor, non-government organizations (NGOs) and health groups. Complaints about the U.S. proposal on tobacco even drew the attention of an editorial in the *Washington Post* (see **WTTL**, Sept. 2, page 6). Froman appears frozen between the conflicting positions of key Democratic Party constituents and the business community, which may account for the business community's public effort to put a fire under negotiators to reach a deal.

The business organizations that signed the letter to the TPP negotiators were: American Apparel & Footwear Association; Business Roundtable; Coalition of Services Industries; Emergency Committee for American Trade; National Association of Manufacturers; National Pork Producers Council; Retail Industry Leaders Association; U.S. Chamber of Commerce; and United States Council for International Business.

"Deep Dive" into Space Finds Little Concern for Export Controls

Export control reforms will have little impact on the vast majority of small and medium-size firms that have any space-related business, a BIS "deep dive" into the space industry discovered. Export controls were not on the list of top 10 issues challenging the space industry, and 75% of those responding to the BIS survey said they have not used either ITAR or EAR licensing for their products, and another 10% said they seek licenses less than once a year, according to survey results presented at the Sept. 18 meeting of the PECSEA (see **WTTL**, Nov. 12, 2012, page 4).

Although large aerospace companies fought hard for legislation that allowed the president to move export licensing jurisdiction for satellites and related equipment from USML Category XV back to the CCL and Commerce jurisdiction, export controls is not an issue for most suppliers because only a small share of their production goes to space uses. Nonetheless, many small suppliers said they were worried that government budget cutbacks would threaten their viability.

"These companies are doing other things and space sometimes is just one element, a small element, of what they do," Brad Botwin, director of industrial base studies in BIS' Office of Technology Evaluation (OTE), told the PECSEA. As far as export control reforms go, companies that do only one or two space exports a year "are not so interested in export control reforms," he said.

Of the 3,780 respondents to the BIS survey, which was sent to 9,000 entities, 62% came under the classification of small business. The survey received responses from commercial companies (3,585), universities (125), nonprofit organizations (49) and

government agencies (21). The amount of space-related business varied widely, with 1,646 respondents saying they had no space-related sales: 1,140 reporting just 0-5% of their sales in the sector; and 804 having space sales between 5% to 95% of their business. Only 190 firms said space-related trade comprised 95% or more of their business.

While many small firms did not see themselves as involved significantly in the space business, the survey found a vast interconnection of many small third- and fourth-tier suppliers feeding into the production of larger companies involved in several major Air Force and National Aeronautical and Space Administration (NASA) projects. In some cases, government agencies and major defense contractor don't know who these suppliers are. "There is no visibility in the Pentagon...no visibility to the fourth-, fifth-, sixth- and seventh-tiers down the supply chain," Botwin said.

OTE identified 155 products or services now in Category XV that may move to the CCL. It found 1,941 firms that provide at least one of these 155. But of those, 1,288 do not currently use the U.S. export control system for these products, and of those 865 are small businesses, BIS reported. From another part of the survey, the agency found 955 respondents that go through export controls for their business. Of these 25.7% said they avoided space-related products that are subject to ITAR and 15.2% that avoided EAR-regulated space items. Only 12.9% saw export controls as leading to the creation of non-U.S. competition in direct competition with them.

No Secret Sauce in CAFC Ruling on Del Monte Tuna

The Court of Appeals for the Federal Circuit (CAFC) has rejected Del Monte Corporation's challenge of a Customs ruling on the classification of its imported tuna in a package that also included sauce containing oil. In its Sept. 16 decision, the appellate court upheld the Court of International Trade's (CIT) ruling, which also backed Customs' classification. The CAFC also denied Del Monte's objections to the value Customs placed on the imports.

The imported merchandise at issue consisted of tuna fillets or strips in a sauce, packed in a sealed microwaveable pouch and came in three varieties: Teriyaki, Albacore Lemon & Cracked Pepper, and Yellowfin Lightly Seasoned. Along with the tuna came a separate sauce to be placed in the pouch for cooking.

"It is undisputed that the tuna is not cooked in oil, that the tuna is placed in the packaging after being prepared without using any oil, and that a sauce containing some oil is then added to the pouch. That is sufficient to describe the Lemon Pepper and Lightly Seasoned varieties as tuna 'packed . . . in added oil . . . and other substances' and thus to bring the goods within the scope of subheading 1604.14.10," wrote Appellate Judge Richard Taranto for the three-judge panel in *Del Monte Corporation v. U.S.* "To decide the classification issue in this case, we need not look beyond the tariff schedule and the Additional U.S. Notes as they read at all relevant times," he added.

Also in dispute was the value Customs gave to the shipment. Del Monte claimed that the import invoice was later adjusted with its supplier as part of a "formula," reducing the import value by \$1.5 million. It argued that Customs should have used the adjusted

price for valuation. “In order for recognition of a ‘formula’ to avoid swallowing the otherwise-strong statutory prohibition on using payments postdating importation to alter the tariffs owed, 19 U.S.C. Section 1401a(b)(4)(B), we think that an agreed-upon, pre-importation ‘formula’ must be clear and definite,” Taranto wrote. “Each of the Customs decisions cited by Del Monte, in which the transaction value calculation included some post-importation adjustments based on actual costs, involved at least that much. We find nothing like that here. There was no written contract, formal policy, or other hallmarks of a formal agreement between Del Monte and Chotiwat setting out a ‘formula’ to be applied,” he ruled.

Customs Sets Up Training on Export Control Reforms

Bureau of Industry and Security (BIS) and Customs and Border Protection (CBP) are stepping up training of outbound CBP officers to get ready to see four different types of paperwork on exports transferred from the U.S. Munitions List (USML) to the Commerce Control List (CCL). Because of the transition, some Automated Export System (AES) filings may continue to cite a DSP-5 for items subject to State’s International Traffic in Arms Regulations (ITAR); a BIS license for a 600-series item; a Strategic Trade Authorization (STA) license exception; or a No License Required license exception.

“We don’t want anything stopped for a simple fix,” John Connors, director of the import-export control division of CBP, told President's Export Council Subcommittee on Export Administration (PECSEA) Sept. 18. While he said he could not promise there would not be seizures, his preference is to have a “learning curve.” Nonetheless, he told the subcommittee that Customs will expect firms to be in compliance.

Customs agents are also being trained to recognize that some 600-series items that might otherwise be eligible for various license exceptions won’t be eligible for export under a license exception to countries that are subject to an arms embargo, including countries such as Cyprus. BIS and CBP did training for officers in Miami during the week of Sept. 9; and Sept. 16 at New York’s JFK airport. During the week of Sept. 23 officers in Los Angeles and Chicago will be trained. The training is trying to explain and give examples of the types of documentation officers might see, with different license basis depending on what they’ve got, Connors said.

BIS May Speed Up Transfer of Satellites to CCL

BIS may speed up approvals for satellites transferred from Category XV of the U.S. Munitions List (USML) to the Commerce Control List (CCL), based on industry calls for a quicker transition than the 180 days provided in the proposed regulations, BIS Assistant Secretary Kevin Wolf told the President's Export Council Subcommittee on Export Administration (PECSEA) Sept. 18.

“I’m sure we’ll be able to accommodate that,” Wolf said. In other transition proposals, industry wanted a lengthier timeframe for the transfers, but for satellites firms wanted to be able to do it quicker, according to public comments (see **WTTL**, July 15, page 2). BIS is still aiming to have a final rule out before December 31 for satellites, Wolf said. Officials from BIS, State and Defense spent four days during the week of Sept. 9 going

over public comments on Category XV. It's unlikely they'll have to repropose the rule as they did for Category XI (electronics), but Wolf admitted it's a "very difficult topic." We're "still very close to a final rule by December 31," Wolf added. In preparation for the expected influx of satellite licenses, BIS has hired one additional licensing officer to serve in its Munitions Control Division and plans to add a second shortly.

Obama Okays Export of Chemical Protective Gear to Syria

President Obama moved Sept. 16 to allow the export of chemical protective gear to vetted rebel forces and international organizations in Syria. In a presidential determination, Obama waived restrictions in the Arms Export Control Act (AECA) to allow the export of protective equipment and defense services subject to the International Traffic in Arms Regulations (ITAR).

In giving the secretary of State the authority to license these exports, the president also ordered the department to "consult with and submit reports to the Congress for proposed exports, 15 days prior to authorizing them to proceed, that are necessary for and within the scope of this waiver determination and the transaction referred to herein."

"This action will allow the U.S. Government to provide or license, where appropriate, certain non-lethal assistance inside or related to Syria," said a statement by National Security Council Spokesperson Caitlin Hayden. "This action is part of longstanding and ongoing efforts to provide life-saving chemical weapons-related assistance to people in need in Syria," Hayden said.

The waiver covers: (1) chemical weapons-related personal protective equipment to international organizations, including the Organization for the Prohibition of Chemical Weapons, for the conduct of operations; (2) chemical weapons-related life-saving assistance for organizations implementing State or U.S. Agency for International Development programs to strengthen local Syrian health care providers' ability to prepare for and respond to use of chemical weapons; and (3) defensive chemical weapons-related training and personal protective equipment to select vetted members of the Syrian opposition, including the Supreme Military Council, to protect against the use of chemical weapons.

China Shows Evolving Attitude on TPP Talks

Once thought to be an "insidious containment strategy" by the West, Chinese thinktanks and government officials are coming around to the idea of potentially joining talks toward a Trans-Pacific Partnership (TPP), said a former USTR official Sept. 17. Tim Stratford, formerly Assistant USTR for China Affairs, now with Covington and Burling in Beijing, said that as recently as four months ago, in talks with Chinese scholars and Chinese officials, "they referred to the TPP as part of the insidious containment strategy of the United States towards China, and this was the economic plank of that."

But most significantly, the viewpoint has changed. "We've seen a very remarkable shift in attitudes about TPP just within the last few months," Stratford said. A National Development and Reform Commission (NDRC) vice chair referred to the recently announced Shanghai Free Trade Zone as "a pilot for TPP," Stratford noted. "Now we're

hearing far more positive words, where decisions have been taken, that's the wave of the future," he added. Further, government officials now are saying "China should look at it positively, and they should be actively discussing what its progress is and what it might mean for China in the future," Stratford continued.

Stratford was part of an AmCham Shanghai delegation in Washington to relay its members' three main concerns to Congress and the Obama administration, relating to investment in China. These are: the increased cost of doing business in the country; corruption in government; and intellectual property rights (IPR), according to Robert Theleen, delegation chair and chairman and CEO of ChinaVest Ltd. While IPR had long been the most important concern of U.S. businesses in China, "we're learning how to manage that issue," Theleen noted.

Presidential Advisors Offer President Lots of Advice

The President's Export Council (PEC) had lots of advice to offer President Obama on trade issues in eight letters it approved at its Sept. 19 meeting. The topics that drew the advice of the PEC ranged from negotiations on services, information technology and intellectual property rights to *de minimis* levels for import tariffs and export control reform (see related story page 8).

The PEC, which includes top corporate and government representatives, said it welcomed Obama's decision to seek Trade Promotion Authority (TPA) from the Congress. It also urged the U.S. to seek an agreement on trade facilitation at the WTO ministerial meeting in Bali in December.

A trade facilitation agreement would expedite trade, while also providing for special and differential treatment of developing countries, one of the PEC letters noted. "The U.S. Government should intensify its commitment to the WTO Trade Facilitation Agreement and call on all parties involved to conclude the final agreement at the WTO Ministerial Conference in Bali in December," the PEC advised.

It also pushed for a deal on the Trade in Services Agreement (TISA). "Although TISA negotiations are not being conducted under the auspices of the WTO, TISA is the best prospect for developing a multilateral agreement and setting a new global standard for trade in services. We ask that your Administration seek high-level commitments of support for rapid conclusion to this 21st century agreement on the sidelines of the Bali meeting and to publicly affirm your commitment to concluding this agreement by the end of 2014," the PEC wrote (see related story page 9).

Another letter highlighted the challenge from increasing use of local content requirements around the world. "We strongly support your decision to establish a Task Force on Localization Barriers to Trade under the leadership of the U.S. Trade Representative and look forward to working with you to develop a comprehensive strategy moving forward that maintains the ability of the U.S. government's trade and export-promotion agencies to support the interests of American companies abroad," a letter said.

The disparity between the *de minimis* level for duty-free imports shipped to the U.S. versus the personal exemption for goods carried into the U.S. also drew PEC attention.

Shipped imports are eligible for only a \$200 *de minimis*, while carried goods get a \$800 exemption. “We urge you to prioritize U.S. *de minimis* reform as part of your Administration’s aggressive trade agenda. There is currently a bipartisan effort in Congress to increase this threshold, which will lower costs for American exporters who source internationally and provide the U.S. with leverage in key trade agreement negotiations,” the PEC wrote.

The business advisors also called negotiating strong intellectual property rights provisions in talks on a Trans-Pacific Partnership (TPP). “The TPP negotiations are now approaching their final phase, when the toughest decisions will be made. It is imperative, therefore, that the U.S. reaffirm and make clear to our negotiating partners the commitment to ensuring strong intellectual property provisions in the TPP that builds upon those in the KORUS FTA,” they advised the president.

The PEC also applauded a U.S. Trade and Development Agency (USTDA) initiative aimed at convincing other countries that government procurement should not be based only on the lowest price but should also take into consideration “best value.” The importance of the USTDA’s *Global Procurement Initiative: Understanding Best Value* should be highlighted among government agencies participating in the interagency Trade Promotion Coordinating Committee (TPCC). “Given the global scope of this Initiative and the need for sustained engagement with foreign counterparts in order to achieve results, we also recommend that the Administration direct additional resources to implement this Initiative,” the PEC advised.

The group also endorsed the administration’s decision to support a suspension of talks on revising the Information Technology Agreement (ITA). “This disproportionately large list of sensitivities presented by China was more than twice as long as that of any other country participating in the negotiations, and it has emerged as the primary obstacle to concluding an ambitious ITA expansion agreement this year,” the PEC noted. “We support your Administration’s reluctant conclusion that there is no alternative to maintaining the suspension of negotiations until China revises its position and produces an improved sensitivities list,” it said.

PEC Has Questions and Advice on Export Control Reform

Even before the PEC approved a letter to President Obama Sept. 19 posing questions about export control reforms, BIS Assistant Secretary Kevin Wolf said he had answers to some of those questions. At the Sept. 18 meeting of the PEC’s Subcommittee on Export Administration (PECSEA), which recommended the letter, Wolf said, “we actually have fairly specific answers to the three bullet points already,” referring to questions in the letter related to the application of new rules on satellites transferred to the CCL from the USML (see related story page 7).

The PEC cited three concerns heard from the commercial satellite industry at a field hearing in June 2013. These related to: a need for more clarity on what does and does not constitute controlled Telemetry, Tracking and Control (TT&C) “technology”; clarification on how to interpret License Exception Strategic Trade Authorization (STA) for satellite-related items to company affiliates and gateways; and allowing satellite buyers to have comprehensive insight into their satellite assets to encourage the purchase of

U.S.-origin satellites while still maintaining high standards of national security. The letter also highlighted the need for additional clarity on controls on encryption items and software under the Export Administration Regulations (EAR). PECSEA's recommendations included: expanding outreach pertaining to the classification of software and technology containing encryption, specifically including products that contain third-party encryption software, and web application products; developing online tools and FAQs "addressing practical scenarios for exporters of encryption items," the letter said.

Comments Complain New Visa Form Causes Unnecessary Burden

The U.S. Citizenship and Immigration Services (USCIS) received surprisingly few comments in response to its request for public advice on the impact of changes it adopted in 2010 to visa application Form I-129 for nonimmigrant workers. When the new form was issued, industry and the academic community complained loudly about a new requirement for filers to certify whether the work the visa subject would be doing involved controlled technology or technical data that would require a license. There was only passing reference to that issue in comments the agency received (see **WTTL**, Feb. 28, 2011, page 1).

In the original request for comments in the Federal Register in July 2013, USCIS said it was "especially interested in the public's experience, input, and estimates on the burden in terms of time and money incurred by applicants." It also wanted to know if the information required on the form is necessary for proper performance of its functions. USCIS estimated that 333,891 forms have been submitted, each requiring 2.34 hours to complete.

One comment from Prasant Desai, of Iandoli and Desai P.C. a Boston law firm, said the Part 6 question on export licensing requirements should be eliminated. "The inclusion of Part 6 is inconsistent with the spirit, if not the terms, of efforts to reduce and eliminate unnecessary data collection. The information collected by Part 6 has not been shown to be necessary to the 'proper performance of the functions of the' USCIS and should therefore be eliminated," Desai noted. Based on the justification for adding Part 6, "USCIS could ask a petitioner about it [sic] compliance with *any* matter over which some component of the U.S. Government has jurisdiction," he added.

Other comments answered the question USCIS asked with specific examples. The American Immigration Lawyers Association (AILA) complained that the preparer's declarations in Part 8 of the form "is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing the I-129 petition." Preparers are "already required, under applicable regulations, to attest to the veracity and truth of what is submitted," the AILA wrote. "The Preparer's Declaration ... unnecessarily impinges on the rights of petitioners and their legal representatives to determine their own legitimate procedures in the preparation of petitions for immigration benefits," it argued.

Participants See Progress in Services Talks, China Set to Join

A week of negotiations in Geneva on a Trade in International Services Agreement (TISA) produced positive reactions from many participants, with one EU official calling it a "good week," and a USTR spokesperson claiming "strong progress" was made. During the week of Sept. 16, the U.S. offered new proposals on the movement of information

and local infrastructure in talks on telecommunications and e-commerce and a single text reportedly emerged on these subjects. An EU official also reported that China has expressed formal interest in joining the agreement.

The U.S. also proposed new provisions on domestic regulatory transparency in August. Washington urged negotiators to require countries to publish public notices for rule changes and allow 60 days for comment after the notice. This approach is consistent with U.S. practice and law and is in most or all U.S. free trade agreements, one source said.

The draft TISA text that is emerging is in line with the WTO's General Agreement on Trade in Services (GATS), including provisions on security and general exceptions, sources report. This is very important for the EU because it means the services accord could become multilateral in the longer term, an EU official said. The negative list on national treatment is maintained, as is a standstill, with a ratchet on national treatment commitments, he said. The same exceptions in GATS will be in TISA, he said.

The official also said he expects the agreement to cover all important sectors on the market access side with specific commitments, including on financial services, telecom and computer services. Most of the sectors will be subject to sector-specific rules and disciplines, he said. The schedules will cover all the sectors, he added.

Negotiators reportedly were satisfied enough with the emerging text that they plan to exchange offers between Nov. 4 and Nov. 30 after the next formal round of talks the week of Nov. 4. The "horizontal part" of the text, including provisions on national treatment, market access and the principles of scheduling have now been discussed and agreed, the EU official said. Provisions on financial services are starting to come into focus, the USTR spokesman said. A number of additional proposals have been tabled or are in the pipeline as parties work to create an agreement going substantially beyond the GATS, she said. Negotiations are expected to continue to accelerate over the fall and into next year, she noted.

BIS Preparing for Government Shutdown

The potential shutdown of government Oct. 1 because of the congressional impasse over the budget could stop or delay export licensing, BIS Under Secretary Eric Hirschhorn told the PECSEA Sept. 18. "We haven't exactly decided where that's going to fall," he claimed. BIS Deputy Under Secretary Dan Hill was on conference call the same day with other agencies to discuss the potential impact of a government closure.

"To some degree, that's a matter to be looked at not only by the department but also OMB [Office of Management and Budget], which makes the final call," Hirschhorn said. "We are going to try and keep as many people on the job as we can, but obviously, if we are closed, we are closed," he added.

"Even if processing is going to continue, and I hope it will, it certainly will affect the speed of processing," he warned. "If we are closed, it will not be the same," Hirschhorn told the PECESA. He said he doesn't expect licensing to stop. "I don't think it will be zero, but it will not be the same. It will be somewhere in between," the BIS chief said.

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SHRIMP: In final injury determination Sept. 20, ITC voted 4-2 against countervailing duty petition on imports of frozen warmwater shrimp from China, Ecuador, India, Malaysia and Vietnam. Petitioners faced tough questions at ITC hearing in August (see **WTTL**, Aug. 19, page 1).

CCL: BIS expects to publish final “CCL Cleanup” rule before Oct. 15, BIS Under Secretary Eric Hirschhorn told PECSEA Sept. 18. Rule and another rule that also will be published in early October will include technical corrections to transition rules published in April and July.

GARLIC: CIT Senior Judge Nicholas Tsoucalas granted government motion Sept. 16 to dismiss one part of suit challenging Commerce’s final antidumping administrative review of garlic from China (slip op. 13-121). Tsoucalas agreed with government that court didn’t have jurisdiction to hear complaint about final order because plaintiff, Qingdao Maycarrier Import & Export Co., Ltd., had not filed suit within deadline set by statute. Maycarrier had filed objections to department’s denial of its new shipper review request but not to administrative review decision that included Maycarrier under “PRC-wide” rate. “Because Maycarrier failed to comply with the statutory timing requirements, the court must dismiss paragraph thirty-one,” judge ruled.

MSG: Ajinomoto North America Inc. filed antidumping and countervailing petitions at ITA and ITC Sept. 16 against monosodium glutamate (MSG) from China and Indonesia.

GRAIN-ORIENTED ELECTRICAL STEEL: AK Steel Corporation, Allegheny Ludlum LLC, and United Steelworkers filed antidumping and countervailing petitions at ITA and ITC Sept. 18 against imports of grain-oriented electrical steel from China, Czech Republic, Germany, Japan, South Korea, Poland and Russia.

ANTIBOYCOTT: Laptop Plaza Inc. (aka IWebmaster.Net Inc) Sept. 7 agreed with BIS to pay civil fine of \$48,800 to settle four charges of furnishing information about business relationships with boycotted countries or blacklisted persons and three charges of failure to comply with recordkeeping requirements by failing to retain and/or produce records. From August through September 2006, Laptop included boycott-related language in invoices to customers in Lebanon and Pakistan.

MORE ANTI-BOYCOTT: Leprino Foods Company in Denver, Colo. Sept. 16 signed consent agreement with BIS to pay civil fine of \$32,000 to settle one charge of furnishing information about business relationships with boycotted countries or blacklisted persons and 15 charges of failing to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. From 2009 through 2011, Leprino included boycott-related language in transport certificate to Oman and received requests in transactions in Bahrain, Oman, Qatar and UAE.

EXPORT ENFORCEMENT: Network Hardware Resale (NHR) in Santa Barbara, Calif. agreed Sept. 13 to pay BIS civil penalty of \$262,000 to settle 16 charges of reexporting U.S.-origin networking equipment and related accessories controlled for national security and/or anti-terrorism reasons to Iran, Syria and Sudan through Amsterdam branch office without required licenses. NHR neither admitted nor denied allegations.

MORE EXPORT ENFORCEMENT: John Alexander Talley of Seattle and his company Tallyho Peripherals Inc., pleaded guilty Sept. 18 in Tampa U.S. District Court to conspiracy to violate International Emergency Economic Powers Act and Iranian Transaction Regulations. Talley allegedly conspired with others to unlawfully export sophisticated enterprise-level computer equipment to Iran and provided technology support services from 2009 to September 2012, violating U.S. embargo against Iran. Sentencing is set for Jan. 7, 2014. Co-conspirator Mohammad Reza “Ray” Hajian was sentenced to four years in federal prison in October 2012 (see **WTTL**, Oct. 22, 2012, page 4).

PEC: President Obama Sept. 18 named seven new members to President's Export Council: Kenneth C. Frazier, president of Merck & Co; Andrés R. Gluski, president and CEO of AES Corporation; Marillyn A. Hewson, president and CEO of Lockheed Martin; Vanessa Keitges, president and CEO of Columbia Green Technologies; Ian C. Read, chairman and CEO of Pfizer; Virginia M. Rometty, chairman, president and CEO of IBM; and Arne M. Sorenson, president and CEO of Marriott International.

FCPA: President Obama Sept 18 nominated Leslie R. Caldwell to be assistant attorney general for criminal division, replacing Lanny A. Breuer, who left office in March (see **WTTL**, Feb. 4, page 1). She has been partner at Morgan Lewis & Bockius LLP in New York since 2004. Caldwell previously was director of Justice Enron Task Force from 2002 to 2004. She received B.A. in Economics from Pennsylvania State University and J.D. from George Washington University Law School. Her division is chief prosecutor of FCPA cases.

WORLD TRADE: WTO economists lowered their forecasts Sept. 19 for the growth of world merchandise trade in 2013 and 2014. They now expect 2013 growth to be 2.5% compared to an estimate of 3.3% earlier this year (see **WTTL**, April 15, page 10). For 2014, they foresee trade rising 4.5% versus earlier prospects of 5%. Target for 2013 is close to 2.3% rate in 2012. "Risks to the forecast are more balanced than in the past, since world trade growth could be higher than forecast if the EU rebounds relatively quickly from its recession. The most conspicuous downside risk is the phasing out of unconventional monetary policy in the U.S.," report says. Import growth in developing countries and former Soviet republics of 5% this year is "partly cushioning the drop in the EU and stagnation in the U.S.," it adds.

WTO ACCESSIONS: Yemen's accession to WTO at Bali ministerial appears on schedule, with draft accession package complete and ready for vote by working party Sept. 26, according to report to WTO accession group. Afghanistan's accession is "no longer on track" group was told because of remaining technical work. Although Kazakhstan has responded to issues in its accession talks, major impediments remain on tariff adjustment and compensation, making accession this year uncertain (see **WTTL**, June 10, page 11). Bosnia and Herzegovina plans to enact required legislation by end of September, and working party's technical work has been completed except for trading rights. Final report may be ready by Nov. 11, officials reported.

WTO: After meeting with several senior trade officials from national capitals, WTO Director-General Roberto Azevêdo issued statement Sept. 20 indicating more positive prospects for deals at WTO ministerial in Bali in December on trade facilitation, some elements of agriculture and specific development issues. "Over the past week the dynamic has changed profoundly. Delegations are no longer talking past each other but are seriously engaged in finding compromises on the issues that divide them. Senior officials from capitals and ambassadors are making good progress that has improved our prospects for a negotiated outcome by Bali," he said.

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