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Interagency Dispute Delays New Cybersecurity Rules

Differences between State and Commerce over export licensing policies for cybersecurity products caused the Bureau of Industry and Security (BIS) to not implement changes to those controls that the Wassenaar Arrangement adopted at its December 2013 plenary. While other regime revisions were made to the Export Administration Regulations in the Aug. 4 Federal Register, BIS said it “intends to publish a separate rule in September setting forth changes to the CCL resulting from the WA agreements for cybersecurity.”

Because of concerns about human rights abuse and hacking of commercial and banking data, State reportedly wants a policy that would require licenses for all destinations, including Canada and NATO countries. State is worried about how governments such as Turkey and Hungary might use such technology to monitor or interfere with civil Internet traffic or social media.

“The cyber controls that we are talking about that we pulled out of this rule, to come out next month, that’s an example of an increase in controls,” BIS Assistant Secretary Kevin Wolf told an agency advisory committee Aug. 5. Ann Ganzer, director of conventional arms threat reduction at State, told the BIS Update Conference July 30 that the Wassenaar implementing regulation did not include cyber controls on “the surveillance and law enforcement, intelligence gathering tools, because we are still working on those.”

Wassenaar in December adopted several new controls on cybersecurity products, including under listing 4.A.5 for “Systems, equipment, and components therefor, specially designed or modified for the generation, operation or delivery of, or communication with, ‘intrusion software’” and 5.A.1.j. for “IP network communications surveillance systems or equipment, and specially designed components therefor” (see **WTTL**, Dec. 16, 2013, page 1). The regime also added a new definition for “intrusion software” to mean software “specially designed or modified to avoid detection by ‘monitoring tools’, or to defeat ‘protective countermeasures’, of a computer or network-capable device.”

USTR Stops Pretending There’s Progress in Japan Talks

U.S.-Japan talks on opening the Japanese agriculture market as a prelude to Japan’s participation in the Trans-Pacific Partnership (TPP) are going so slow that the U.S. Trade

Representative's (USTR) office has stopped even pretending they are making progress. After two days of talks that Acting Deputy USTR Wendy Cutler and Chief Agricultural Negotiator Darci Vetter held Aug. 4-5 with Japanese Ambassador Hiroshi Oe and Makoto Osawa, director-general of Japan's ministry of agriculture, forestry and fisheries, the office issued merely a terse statement that they "continued to make some progress in narrowing the gaps on treatment of a range of agricultural products." Technical-level talks went on for the rest of the week.

The meeting came after 140 House members wrote to President Obama July 30 complaining about Tokyo's and Canada's efforts to exempt many agriculture products from a TPP pact. "We urge you to hold Japan and Canada to the same high standards as other TPP members," the bipartisan letter said.

"Otherwise, congressional support for a final TPP agreement will be jeopardized. Indeed, we urge you to pursue the TPP negotiations without any country, including Japan, Canada or others, that proves unwilling to open its market in accordance with these high standards," said the letter, whose signers included Ways and Means trade subcommittee chairman Devin Nunes (R-Calif.) and ranking member Charles Rangel (D-N.Y.).

The letter comes as the air seems to have gone out of TPP, and administration trade officials have stopped making upbeat statements about a possible deal this year. TPP's lower profile also follows warnings from Congress that no agreement should be reached before Congress enacts a fast-track trade promotion authority (TPA) bill. Ways and Means Republicans made that point clear in a July 17 letter to USTR Michael Froman.

"Because of the critical importance of TPA in ensuring a successful outcome in the TPP negotiations, we will not support TPP if the agreement, even an agreement in principle, is completed before TPA is enacted," said the letter signed by Ways and Means Chairman Dave Camp (R-Mich.) and 22 other GOP panel members. They urged the president and the entire administration to "fully engage" with the House, Senate and stakeholders to enact the TPA measure (H.R. 3830) that Camp co-sponsored with then-Senate Finance Committee Chairman Max Baucus (D-Mont.).

One Member Blocking Wassenaar's New Machine Tool Metric

One member of the Wassenaar Arrangement on multilateral export controls, which may be Russia, is reportedly blocking the regime's adoption of a Japanese proposal for a new metric for controlling machine tools. An experts-level meeting of Wassenaar members in September is supposed to work out the details and controls for a new metric that would use unidirectional repeatability instead of precision accuracy as the control parameter, and 40 of the regime's 41 members appear ready to make the change once the specific formula for determining repeatability can be adopted (see **WTTL**, May 19, page 5).

The proposed change is aimed at stopping one company in one country from misapplying existing Wassenaar controls for these tools. Because precision accuracy can be adjusted by various compensation methods, this company reportedly has claimed its exports still comply with the regime's rules, although all other members and tool exporters interpret the rule differently. The main concern of Wassenaar members is the export of these machines to China because smaller machines, operating at less than two meters with extremely precise accuracy, are used to produce sensitive parts such as those used in

missiles, while larger machines, operating at 7-10 meters and less precise accuracy, can be used in stealth aircraft production. The use of unidirection repeatability would prevent circumvention of controls, supporters of the proposal contend.

BIS and other Wassenaar members have been collecting testing data and specifications from tool makers to determine whether the alternative approach is viable and not impose new restrictions on exporters. Agency staff say they are aiming for “scope neutrality” with the proposal so everything that can be exported now will also be exportable under the changes.

Wassenaar has been working on the proposal for two years. The experts meeting was supposed to agree on the change and to develop a formula for applying it, using accuracy and repeatability as factors, and to set new a control level. Setting a control level could present a problem because countries are concerned about giving an advantage or disadvantage to any country because of where the threshold is set.

“There potentially will be a big fight over the number,” one official said. With the potential blocking of an agreement and disagreement over the new control level, “negotiations in September could go either way,” the official said. If a deal can’t be reached in time for the regime’s December plenary and was pushed off for another year, the effort “would collapse,” he added.

State Getting Fewer Voluntary Disclosures This Year

After years of a steady rise in voluntary disclosures (VDs), State’s Directorate of Defense Trade Controls (DDTC) is seeing a sharp drop in filings in 2014. The rise was due to a dump of some 400 VDs from one major defense firm under the terms of a consent agreement; the decline came when that company had pretty much exhausted its reporting.

For the first 10 months of fiscal year 2014, which started Oct. 1, 2013, DDTC has received 1,050 VDs, Daniel Buzby, who has the new title of senior advisor to Sue Gainor, director of DDTC’s Office of Defense Trade Controls Compliance, told the BIS Update Conference July 30. This compares to about 2,000 it received for all of fiscal 2013 and nearly 1,400 in 2013 and puts it on pace to receive some 40% fewer reports than last year.

As it has with most VDs in the past, DDTC is handling the vast majority of filings with either warning letters or no action. Two-thirds of VDs, which generally involve minor actions, are handled in days or weeks, Buzby said.

One anticipated result from export control reforms that has failed to materialize is a decline in the number of firms registering with DDTC. The number of registered firms has dropped only slightly to 12,500 from 13,400, Buzby reported. Most of the decline is attributed to fewer brokers registering due to changes in the brokering rules in the International Traffic in Arms Regulations (ITAR), he explained.

Even though many of those parts and components makers are no longer required to register because their items have moved to the Commerce Control List (CCL), news about export reforms has “not filtered down” to them, Buzby said. Of the 13,400 firms that were registered last year, about 60% or more are parts and components suppliers that are

not actual exporters, he noted. Buzby also reported on a recent reorganization of the compliance office, which has seen its three divisions become one. The research and analysis division has been moved to the DDTC Office of Defense Trade Controls Policy. The enforcement division has been combined with the compliance and registration division. In addition to Buzby's move to being a senior advisor to Gainor, Glenn Smith, who was chief of the enforcement division, has become a senior advisor to Ken Handelman, the deputy assistant secretary of state for defense trade controls.

With the move of the research and analysis to the policy office, its director, Ed Peartree, told Update that his office has also reorganized. It now has three divisions: regulatory and multilateral affairs, commodity jurisdiction and regulatory affairs and analysis.

U.S. Farm Groups Play Down Impact of Russian Import Ban

U.S. agriculture groups mostly had a sanguine reaction to Russia's announced ban Aug. 7 on imports of most, if not all, farm products from the U.S. and other countries in retaliation for the sanctions those nations imposed on Russia. The mild response may be due to the Kremlin's telegraphing its retaliation for weeks ahead as many countries increased their sanctions against Russia for its actions in Ukraine and after the shooting down of Malaysian Airlines Flight 17 (see **WTTL**, Aug. 4, page 5).

"America's farmers and ranchers would have been more surprised if Russia's leaders had not announced bans and restrictions on food and agricultural imports," said American Farm Bureau Federation President Bob Stallman in a statement. "They do so regularly for seemingly small reasons and now they have to deal with sanctions imposed by our nation and others," he added.

"Going after western business will backfire on Russia causing more isolation and crippling growth," said a spokesman for USTR Michael Froman. "We are monitoring to see what specific actions Russia takes in practice, but this clearly represents a self-defeating escalation by Russia rather than a step toward resolution of the underlying issues," he added. State's Deputy Spokesperson Marie Harf said the Kremlin's action will adversely affect the Russian economy. "They will push up Russia's already-high inflation rate and also erode the purchasing power of Russian citizens. So if this is intended to hurt us, I think it's pretty clear that it will actually hurt the Russians," she said.

A European Commission spokesman said the EU "will assess the measures in question as soon as we have more information as to their full content and extent." He said the EU "remains committed to de-escalating the situation in Ukraine. All should join in this effort. Following full assessment by the commission of the Russian Federation's measures, we reserve the right to take action as appropriate."

Moscow's one-year import ban will hit imports of certain agricultural produce, raw materials and food products from the U.S., the European Union (EU), Canada, Australia and Norway. The list of banned products includes cattle meat; pork; poultry and its subproducts; salted, dried or smoked meat; fish, shellfish, scallops and other aquatic invertebrates; milk and dairy products; vegetables; fruit; nuts; sausage and similar meat products; cheese and similar products. Russia's retaliation will have a greater negative impact on the EU than on the U.S. In calendar year 2013, the U.S. exported \$1.2 billion to Russia in agricultural products. This was less than 1% of total U.S. ag exports (at

\$144 billion in 2013), the Agriculture Department points out. “Our largest exports last year were poultry meat and products (\$310 million), tree nuts (primarily almonds) at \$172 million, soybeans (\$157 million), live animals (primarily cattle) at \$149 million, and prepared food (\$84 million),” it reports.

Before the actual target list was issued, National Chicken Council and USA Poultry & Egg Export Council issued a statement playing down the expected impact of Russian restrictions on exports to Russia, which is the second-largest market for U.S. chicken in terms of volume. “Russia currently accounts for only about 7% of total U.S. poultry export volume. In the mid-1990s, exports to Russia were as much as 40% of that total,” the groups said. “As a result, we do not expect that a Russian ban on U.S. poultry imports will have a great impact on our industry,” they added.

The order Russian President Vladimir Putin signed Aug. 6 instructed his government “to take measures to ensure balanced goods markets and prevent accelerating price rises for agricultural products and foodstuffs; to organise together with regional authorities timely monitoring of goods markets; and act together with associations of goods producers, retailers and organisations to take measures to increase supply of domestic goods.”

As farmers in the U.S. and among its allies feel the pain of the Russian ban, producers in countries that haven’t participated in the sanctions against Moscow are likely to enjoy a windfall of trade with Russia as will Russian farmers that have complained about increased imports from the EU and U.S. According to press reports, Russian officials say Russia will increase imports from South America and the Middle East, including from Brazil, New Zealand, Turkey, Argentina, Chile, China, Uzbekistan, Azerbaijan, Serbia, Tajikistan, Israel, Iran, Egypt, Morocco and South Africa.

Sanctions Against Zimbabwe Discourage U.S. Investment

It was all Kumbaya and promises of aid at the U.S.-Africa Business Forum Aug. 5, until a young entrepreneur from Zimbabwe told President Obama that U.S. sanctions on President Mugabe and other officials are stopping U.S. investors from dealing with legitimate companies in his country. Though the sanctions are targeted at those officials, many U.S. investors think they can’t do any business with the country in general, claimed Takunda Chingonzo, who interviewed Obama as part of one of the forum’s programs.

“We have come to a point in time where we as young Africans are failing to properly engage in business with U.S.-based entities because there hasn’t been that clarity. These entities believe that Zimbabwe is under sanctions. So what really can we do to do try and clarify this to make sure that we as the young entrepreneurs can effectively develop Africa and engage in business?” Chingonzo asked.

The president threw back a softball answer, but hinted at future clarifications of existing sanctions. “Let’s see if we can refine them further based on some of the things you’re talking about,” he said. “You’re absolutely right that it also has to be balanced with making sure that whatever structures that we put in place with respect to sanctions don’t end up punishing the very people inside those countries,” Obama added. The president suggested U.S. and African firms “make sure that we’re using the Department of

Commerce and the other U.S. agencies where we can gather groups of entrepreneurs and find out exactly what can be done, what can't be done, what resources are available."

U.S. investor confusion is understandable. The U.S. first imposed sanctions on Mugabe and numerous officials in 2003 because of their role in election fraud and other suppressions of democracy and human rights abuses.

Over the years, executive orders (E.O.) added more persons and entities to the list of blocked parties, including E.O.s 13288, 13391 or 13469, which block specific parties and also anyone "owned, controlled, or acting on behalf of any person blocked pursuant to E.O.s" (see **WTTL**, Aug. 9, 2004, page 4). E.O. 13391 signed by President George W. Bush in November 2005 listed 129 government officials and their wives and 33 business entities. In subsequent years, the list has been modified by additions and deletions.

DDTC Expects 40% Decline in Licensing at End of Reforms

DDTC expects its annual export licens-ing load to level off at 45,000 to 50,000 cases when export control reforms are fully implemented and all U.S. Munitions List (USML) to Commerce Control List (CCL) transitions, including for categories I, II and III, have gone into effect. That would represent a drop of more than 40% from the peak it reached in fiscal year 2012 when it handled about 86,000 licenses.

The shift of more than 35,000 licenses to BIS is not likely to lead to a commensurate increase in BIS cases if current trends continue. Most items already moved to the CCL are being exported under various licenses exceptions or no license required. BIS Assistant Secretary Kevin Wolf told an agency advisory committee Aug. 5 that the value of licenses approved for export for transferred items has passed the \$7 billion mark.

DDTC has seen a dramatic drop in licenses for the first USML categories moved to the 600 series on the CCL. For Category VIII (aircraft), which moved on Oct. 15, 2013, there has been about a 69.1% drop in licenses, Tony Dearth, DDTC's director of licens-ing, told the BIS Update Conference in Washington July 30. At the same time, there has been a spike in the number of cases returned without action (RWA), with 31.7% returned for various reasons, including the fact that the items are now controlled by BIS.

For a second group that moved as of Jan. 6 -- categories VI (vessels), VII (vehicles) and XIII (military equipment) -- there also has been a decline, with DDTC receiving 31.4% fewer cases than a year earlier for these categories. RWAs have also jumped, rising to 28%. Another group -- categories IV (rockets), V (explosives), IX (training equipment), X (protective equipment) and XVI (nuclear) -- only moved on July 1, so there has been little time to gauge how many fewer cases will be received. Even in the first three weeks, however, "we saw a larger drop than we actually anticipated," Dearth said.

The early implementation of changes for micro-electronic circuits in Category XV (satellites) on June 27 has seen a 38.86% decline in licenses just in four weeks, Dearth reported. After the full transition of satellites from Category XV to the CCL on Nov. 10, DDTC expects a 50% drop in cases and a 90% plunge in the value of licenses for this category because of the high value of commercial satellites that will move to BIS jurisdiction, he predicted. Although DDTC's licensing load will decline, the average days

for handling cases will increase, Dearth conceded. Going forward the average is likely to be around 24 days, Dearth said. Times will get longer because the easy cases are being transferred to BIS and the harder cases are remaining at State, he explained. Recently, a number of cases have been held up because of political upheavals in several parts of the world, including the Arab Spring and certain coups. As a result, some 500 licenses are being held up awaiting policy decisions by State officials, Dearth reported.

WTO Appellate Body Upholds Ruling on Rare Earth Rules

China's obligations under its WTO accession protocol and the WTO's General Agreement on Tariffs & Trade (GATT) are a single set of rules but specific provisions don't automatically apply, the WTO Appellate Body ruled Aug. 7 in a decision upholding a dispute-settlement panel opinion that Beijing's restrictions on the export of rare earth minerals are inconsistent with WTO rules. The ruling complements an Appellate Body ruling in January 2012 against Chinese restrictions on raw material exports.

The Appellate Body actually issued three reports supporting the panel's ruling in favor of U.S., Japanese and EU complaints against China (see **WTTL**, March 31, page 3). But it also said the panel erred in saying conservation measures had to be applied in an even-handed way to share the burden between domestic and foreign markets. The U.S. and China must still work out a deal on how and when China will comply with the ruling.

The AB said questions about the link between the accession protocol and the GATT, including certain exceptions, "must be answered through a thorough analysis of the relevant provisions on the basis of the customary rules of treaty interpretation and the circumstances of the dispute." The analysis must start with the text of the protocol and take into account its context, including the Accession Working Party Report.

"The analysis must also take into account the overall architecture of the WTO system as a single package and any other relevant interpretative elements, and must be applied to the circumstances of each dispute, including the measure at issue and the nature of the alleged violation," the AB said. Based on this interpretation, it found that China could not justify its restrictions on exports of rare earths, tungsten, and molybdenum. Beijing had claimed the restrictions were justified under GATT rules permitting export limits as environmental protection measures and the conservation of exhaustible natural resources.

The Appellate Body, however, overturned the dispute-settlement panel's suggestion that "even-handedness" is a separate requirement that must be fulfilled in addition to other GATT requirements. China did not have to prove "the burden of conservation is evenly distributed, for example, between foreign consumers, on one hand, and domestic producers and consumers, on the other hand," the Appellate Body concluded. This opinion should cheer some environmentalists who are concerned that WTO rules can impose undue limits on how countries apply conservation measures.

BIS Tells CCATS Seekers to Answer Specially Designed Questions

Firms asking BIS for commodity classification decisions through the agency's Commodity Classification Automated Tracking System (CCATS) are likely to be told to first

answer the questions that part of the agency's "specially designed" regulations and its "decision tree" for determining whether an item is specially designed, BIS Assistant Secretary for Export Administration Kevin Wolf told the BIS Materials Processing Equipment Technical Advisory Committee (MPETAC) Aug. 5. When someone comes in for a CCATS, asking whether their item meets the specially designed definition, "we'll go back to them" and ask the questions in regulation, Wolf said.

"Unless they can answer one of those five questions yes, then it's specially designed," he told the committee. BIS is seeing that "a lot of companies don't work through the reg; they just apply a subjective sense it's not specially designed, so give me a CCATS that it's not specially designed," he said.

Before the specially designed rules were changed, companies filing CCATS would use their own definition and "just ask for a gut check from the government," Wolf said. "You're always more comfortable with a reg where you get to make up the definition," he said. The purpose of the new specially designed definition is to "eliminate the ability of companies to make their own subjective judgments," he explained.

Wolf said he is encouraging firms to use a new rule added to the Export Administration Regulations (EAR) that allows firms to submit a request to have BIS determine that their part, component, accessory, attachment or software that is not specially designed. EAR Section 748.3(e) gives exporters the opportunity to come in and argue an item "doesn't warrant control," he said.

EU Publishes TTIP State of Play after Latest Negotiations

Transatlantic Trade and Investment Partnership (TTIP) talks still have many miles to go before negotiators can sleep, a progress report on negotiations show. A European Union (EU) paper released July 29 says there are only a couple of areas, including on trade in goods and state-to-state dispute settlement, where negotiators are working from consolidated, though bracketed, texts. In other, more controversial areas, the two parties have exchanged official proposals, initial offers or simply information.

The "State of Play of TTIP Negotiations" paper gives the status of talks in 28 sectors and subsectors after the sixth round of TTIP talks in Brussels July 14-18 (see **WTTL**, July 21, page 7). The report says negotiators are ready to prepare consolidated texts on services, rules of origin, competition, small and medium-sized enterprises, and customs and trade facilitation.

In talks on rules of origin, the two sides "are working to combine each side's textual proposal into a consolidated text. Progress took place on common drafting for several provisions," the EU says. "On proof of origin and procedures the Parties are also working to identify the differences and to find options to bridge the gap between both approaches. As a subsequent step, the two sides intend to discuss the contents and drafting of the product specific rules," the EU adds.

The paper notes that "textual discussions are suspended" on the controversial subject of investor-state dispute settlement (ISDS), which the EU calls "investor protection." An EU position is "pending the outcome of the EU public consultation," it says. The EU is evaluating stakeholder comments it requested on inclusion of ISDS provisions in the

accord. The evaluation is also holding up final implementation of a pending EU-Canada free trade agreement. For state-to-state dispute-settlement provisions, “text based discussions have started given that both sides have tabled textual provisions. As in other areas where both sides have tabled proposals, the two sides have produced a consolidated, bracket text and are trying to arrive at compromise proposals in order to remove brackets where possible,” the EU reports.

Regulatory coherence remains difficult, the EU concedes. “The Parties have exchanged several non-papers outlining their respective objectives and have been engaging in a thorough exchange of information with a view to ensuring a more in-depth understanding of each other’s respective regulatory systems, discussing means of improving upstream regulatory cooperation, stakeholder involvement and strengthening the analysis of international trade effects when carrying out impact assessments,” the paper says.

Indian Commerce Minister Defends Stance on Food Security

Just a few days after the Trade Facilitation deal failed at the WTO, Indian Commerce Minister Nirmala Sitharaman Aug. 5 defended her country’s role in the breakdown (see **WTTL**, Aug. 4, page 2). India “took the stand that till there is an assurance of commitment to find a permanent solution on public stockholding and on all other Bali deliverables, including those for the Least Developed Countries (LDCs), it would be difficult to join the consensus on the Protocol of Amendment for the Trade Facilitation Agreement,” she said in a statement posted on the ministry website.

“Seeing the resistance to taking forward the other decisions, the apprehension of developing countries was that once the process of bringing the Trade Facilitation Agreement into force was completed, other issues would be ignored, including the important issue of a permanent solution on subsidies on account of public stockholding for food security purposes,” she said.

Sitharaman explained her country’s “unwavering efforts to offer a way forward in the face of criticism.” India offered “practical suggestions for the way forward. The issue of a permanent solution on public stockholding is a simple one that can be addressed very easily as there are already several proposals on the table. A solution to this simple problem will be a tremendous relief for millions of farmers and poor consumers,” she said.

“It is regrettable indeed that today the WTO is unable to agree even to fast track negotiations on an issue of such importance to millions of subsistence farmers across the developing world, while the rich world can continue to subsidize their farmers unabatedly,” she added. The minister said she remained “confident that India will be able to persuade the WTO membership to appreciate the sensitivities of India and other developing countries and see their way to taking this issue forward in a positive spirit.”

*** * * Briefs * * ***

EXPORT ENFORCEMENT: R&A Logistics International, LLP, N.Y. freight forwarding company, and Rukhsana “Roxanne” Kadri, its president and owner, were sentenced Aug. 6 in Brooklyn, N.Y., District Court to two and three years’ probation for falsifying Shipper’s Export

Declarations. They pleaded guilty in December in connection with international shipments of hundreds of Hewlett-Packard computers to UAE, Zimbabwe and Kenya between January 2008 and April 2012 (see *WTTL*, Dec. 16, 2013, page 9). R&A employees listed Perfume Center of America as U.S. Principal Party in Interest, when it should have been name of N.J.-based computer distributor. Kadri also agreed to forfeit more than \$125,000 in “ill-gotten gains” and company agreed to be subject to Commerce monitoring and oversight.

TRADE FIGURES: U.S. merchandise exports in June increased 2.65% from year ago to \$136.9 billion, Commerce reported Aug. 6. Services exports went up 3.45% to monthly record of \$59.0 billion from same month in 2013. Goods imports jumped 4.7% from June 2013 to \$197.1 billion, as services imports gained 4.3% to \$40.2 billion. Reported decline in imports from April and May probably was due to importers rushing in shipments ahead of feared shutdown of West Coast ports due to expiration of longshoremen’s labor accord.

STEEL THREADED ROD: ITC in 5-0 negative final vote Aug. 6 determined that U.S. industry is neither materially injured nor threatened with material injury by dumped and subsidized imports of certain steel threaded rod from India. Commissioner Rhonda K. Schmidlein did not participate in investigations.

EAR: In Aug. 7 Federal Register BIS implemented changes agreed to several previous plenary and intersessional meetings of Nuclear Suppliers Group (NSG). Changes include removing certain export licensing requirements for Croatia, Estonia, Iceland, Lithuania, Malta, Mexico and Serbia, which have become NSG participating countries; adding additional factor that must be considered to licenses for items controlled for nuclear nonproliferation (NP) reasons; and technical updates to multiple ECCNs.

ZEROING: CIT Judge Judith Barzilay July 30 granted government motion to dismiss suit challenging zeroing in dumping ruling on polyethylene terephthalate (PET) film. “Commerce, for its part, has provided an explanation of its zeroing policy in this case that is consistent with the explanation provided in *Union Steel*,” she ruled (slip op. 14-90). “JBF RAK is attempting to litigate an issue that has already been settled by the Federal Circuit,” Barzilay wrote.

MISSING APPAREL: Court of Appeals for Federal Circuit July 28 upheld CIT decision backing Customs ruling that importer was liable for duties on “missing apparel” that was imported in-bond as Transportation & Exportation (T&E) for reexport to Mexico. “Customs retains the authority to verify that delivery in fact occurred,” wrote Circuit Judge Jimmie Reyna for CAFC in *U.S. v. C.H. Robinson Company*. “Because the Government showed that the merchandise was not delivered and C.H. Robinson has not rebutted this showing or otherwise accounted for the subject merchandise, the Court of International Trade did not clearly err in finding that the merchandise is missing” and Robinson had to pay \$57,212 in duties.

SCREWS: Divided CAFC Aug. 4 reversed and remanded CIT ruling that reversed CBP classification of certain screws as “other wood screws” with 12.5% *ad valorem* duty and not “self-tapping screws” with 6.2% rate. “Because the Court of International Trade refused to consider the use of the screws at any step of determining the classification of the subject articles at issue, we vacate and remand for further proceedings consistent with this opinion,” wrote Chief Judge Sharon Prost for herself and Judge Raymond Clevenger III in *GRK Canada, Ltd., v. U.S.* “While GRK’s screws may be more difficult to characterize than conventional screw designs, there is no reason to make tariff classification more complicated by unduly ignoring such a critical factor at either step of the analysis—whether defining the legal meaning of the tariff terms at issue or determining the proper classification of the subject articles,” she wrote. In dissenting opinion, Judge Jimmie Reyna said the majority “unnecessarily confuses the tariff classification analysis by requiring the CIT to consider intended use when construing the *eo nomine* subheadings. The majority blurs the boundaries between *eo nomine* and principal use provisions in ways that will promote confusion and error in future classification cases.”