

# Global Trade Report

NEVILLE PETERSON LLP

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## Export Sanctions, Regulatory Changes Head Busy Trade Agenda

### New OFAC Sanctions Target Syrian Regime

President Obama recently issued Executive Order 13582, which imposes significant export sanctions against the Syrian regime of President Bashar Al-Assad. The sanctions follow harsh U.S. and other criticism of the Assad regime, which has repressed dissent through military action against its own citizens.

The Executive Order bans new investment in Syria, and also bans the provision of services to the Syrian regime, or to any of a number of entities whose assets have been frozen. It also bans imports of Syrian-origin petroleum or petroleum products.

The Treasury Department's Office of Foreign Assets Control (OFAC) has followed up the Executive Order by issuing a number of General Licenses which permit certain transactions involving Syria. These general licenses involve the provision of (1) diplomatic services, (2) legal services, (3) normal bank service charges, (4) export and re-export of services subject to the Export Administration Regulations (EARs), (5) internet-based services, and (6) personal remittances.

The General License regarding provision of services subject to the EARs allows the provision

of services to the Syrian government or to Syrian nationals whose assets have been blocked, subject to the issuance of export licenses by the Department of Commerce, Bureau of Industry and Security (BIS).

### Courtesy Notices of Liquidation: R.I.P.

United States Customs and Border Protection (CBP) will cease issuing "Courtesy Notices of Liquidation" for most transactions, effective September 30, 2011.

The courtesy notices, familiar to importers as carbonless half-page forms confirming the liquidation status of an entry, have been in use for decades, and are widely relied upon by importers as evidence that their entries have "liquidated", and that the admissibility, classification and value of goods entered under cover of the entry have been finally established. However, the notices have always been unofficial, with only the "Bulletin Notice of Liquidation", a computer printout posted at the Customhouse where the entry was filed, acting as formal and official notice of liquidation.

Customs has amended its regulations to provide that, in lieu of a courtesy notice of liquidation, unofficial liquidation information will

be available through a new “liquidation report” function of the Automated Commercial System, effective on or about September 17, 2011. Importers wishing to access such reports must establish an ACE Portal Account.

Extended information concerning an importer’s activity will be available through CBP-provided ITRAC (Importer Trade Activity) reports. These reports will be provided free of charge to participants in CBP’s Importer Self-Assessment (ISA) program, but other importers will be charged.

Liquidation information will also be made available to entry filers using Customs’ Automated Broker Interface (ABI) system. Access to ABI reports by importers depends on commercial arrangements between the importer and its ABI-authorized Customhouse broker.

CBP estimates that the change will eliminate about 90% of courtesy notices, save the agency about \$3.8 million a year. It will also greatly reduce eyestrain among trade professionals who have been required to read the grainy data on the carbonless courtesy liquidation forms.

## Customs “Mitigates” Union Pacific Penalties to a \$50 Million Spend

**U**nion Pacific Railroad will be required to invest \$50 million in increased supply chain security measures in U.S. - Mexican rail trade, as part of a deal to “mitigate” Customs penalties assessed against the company.

In recent years, Customs penalties imposed against Union Pacific have grown to significant levels, as CBP officers have discovered drugs and

other contraband being carried in trains moving across the U.S.-Mexican border. Customs laws treat discovered contraband as “unmanifested” cargo, and penalize the carrier in an amount up to the value of the conveyance involved. The Union Pacific settlement – essentially deferring penalties in exchange for an investment in security measures – mirror similar arrangements which CBP has reached with air carriers in the past.

Union Pacific has already spent millions on supply chain security enhancement, and its future expenditures will include partnering with CBP to establish a “Rail Fusion Center” to identify high-risk shipments crossing the border with Mexico.

Customs decision indicates that it will mitigate past and future penalties assessed against Union Pacific if the company carries out its obligation to make investments in supply chain security.

The agreement and continued cooperation were announced by Customs Commissioner Alan D. Bersin and Union Pacific Chairman and CEO Jim Young.

## Google “Forfeits” \$500 Million Over Ads for Imported Pharmaceuticals

**S**earch engine operator Google, Inc., has entered into an agreement with Federal prosecutors under which it will “forfeit” some \$500 million received in revenue for advertisements carried between 2003 and 2009 which, according to the Department of Justice, resulted in unlawful imports of pharmaceutical products.

The settlement follows a lengthy investigation conducted by the U.S. Attorney in Rhode Island, which focused on Google’s “AdWords” service,

which assisted Canadian and other foreign firms in providing controlled and non-controlled prescription drugs to U.S. consumers in violation of Food and Drug Administration (FDA) requirements.

According to the Government, Google provided customer support to Canadian pharmacies advertising goods to U.S. consumers using the company's AdWords service. Although Google blocked firms in other countries from selling prescription drugs to U.S. residents, it did not block Canadian advertisers.

Google stopped aiding Canadian advertisers in 2009 when it became aware of the Federal investigation, which arose out of an unrelated criminal proceeding. The company put in safeguards to prevent Canadian online pharmacies from using its services to sell drugs for unlawful import into the United States.

The \$500 million forfeiture, one of the largest in U.S. history, represents Google's revenues from the advertising which led to the unlawful imports. The settlement agreement with the government also obligates Google to engage in additional and ongoing monitoring and enforcement activities.

## WCO Provides Guidance on Use of Tax Agreements for Customs Value

**T**ransfer pricing agreements approved by governments for the determination of prices between related parties may be useful to Customs authorities in setting dutiable values, but are neither binding nor authoritative, according to an important new guidance document issued by the Brussels-based World Customs Organization (WCO).

WCO Valuation Committee Commentary 23.1, concerning "Examination of the expression "circumstances surrounding the sale" under Article 1.2 (a) in relation to the use of transfer pricing studies" notes that many companies use Transfer Pricing Studies, prepared under guidelines issued by the Organization for Economic Cooperation and Development (OECD) to justify related party transfer pricing to tax authorities. In cases where Customs authorities feel the need to examine the circumstances surrounding related party sales, in order to determine the acceptability of related party pricing, Transfer Pricing Studies are often proffered as evidence that the parties are dealing on an "arms-length" basis.

Whether these transfer pricing studies are useful for Customs appraisal purposes will vary from case to case, the WCO notes. Specifically, the organization noted that "a transfer pricing study submitted by an importer may be a good source of information, if it contains relevant information about the circumstances surrounding the sale. On the other hand, a transfer pricing study might not be relevant or adequate in examining the circumstances surrounding the sale because of the substantial and significant differences which exist between the methods in the [GATT Customs Valuation] Agreement to determine the value of the imported goods and those of the OECD Transfer Pricing Guidelines".

Accordingly, the WCO concluded that transfer pricing studies might be a good source of information concerning the way related party prices are formed, but each study must be considered on a case-by-case basis.

## WCO Royalty Guidance Parallels U.S. Valuation Rules

**T**he WCO's Customs Valuation Committee also recently issued

guidance concerning when royalties and license fees may be included as additions to the “price paid or payable” for imported merchandise in determining the dutiable “transaction value” of imported merchandise.

WCO Valuation Committee Commentary 25.1, concerning “Third Party Royalty and License Fees: General Commentary” noted that there are two principal requirements which must be met in order for a royalty or license fee to be considered part of the “price paid or payable” for imported merchandise: (1) the royalty or license fee payment must be related to the goods undergoing appraisal, and (2) the payment of the royalty or license fee must be a condition of the sale of the goods “for export to” the country of importation.

The Commentary notes that all relevant documents must be considered, and that when a royalty or license fee is paid to a “third party”, other than the seller of the imported merchandise, it is “unlikely” that the payment will be considered part of the price paid or payable for the merchandise. While noting that there can be cases where a payment to a third party might be considered part of the price paid or payable for the goods, the WCO indicated that these would likely be limited to situations where “the sales documentation for the imported goods contains an explicit statement that the buyer must pay the royalty or license fee as a condition of sale.” In addition, a third party royalty might be deemed a condition of the sale for export if the royalty or license fee agreement contains terms that “permit the licensor to manage the production or sale between the manufacturer and importer (sale for export to the country of importation) that go beyond quality control”.

In general, the Commentary appears to line up closely with prevailing United States Customs and Border Protection precedent concerning the dutiability of royalties and license fees. There had been concern that the WTO was going to take a position which would have resulted in a sweeping

presumption that third party royalty or license fee payments should form part of dutiable value.

## APHIS Expects Importers to Begin Using New Lacey Act Declaration

The Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) has issued an amended Form PPQ 505, Plant and Plant Product Declaration Form, which is required to be filed by importers of plant products subject to Lacey Act reporting requirements. The revised Form PPQ 505, now in a “landscape” format, provides for the reporting of importation concerning the tariff classification, scientific name, country of harvest, quantity and recycling percentages of plant products incorporated in imported goods.

APHIS has indicated that importers should commence using the reviewed PPQ Form 505 immediately, phasing out earlier versions of the form.

## FCPA Whistleblower Protections Enter into Force

Whistleblower protections and incentives for persons who report violations of the Foreign Corrupt Practices Act (FCPA) entered into force on August 12, 2011.

Under the new Securities and Exchange Commission (SEC) regulations, informants who provide the agency with “high quality” tips and information concerning possible FCPA violations qualify for compensation. The FCPA prohibits

U.S. companies from making improper payments to foreign governments or officials for purposes of acquiring or maintaining business.

The new program assures informants who provide the SEC with “high quality” tips concerning FCPA violations to receive a minimum award of \$100,000, provided the information is original and results in recovery of a sanction of \$1 million or more. The monies will be paid out of a \$450 million “Investor Protection Fund” to be established and administered by the SEC. The statute providing for the rewards disqualifies certain classes of persons, such as attorneys who acquire information in the course of their professional employment, as being eligible to receive compensation from the fund.

The SEC said it expects to receive up to 30,000 tips a year, with as many as 3,000 in the form of written submissions. The new regulations also strengthen protection for whistleblowers, making it difficult for employers to terminate an employee in relation for reporting a suspected FCPA violation.

The new regulations encourage, but do not require, whistleblowers to try and raise issues within their corporation’s legal or compliance departments before making a whistleblower report to the SEC.

## Antidumping: Commerce Broadens Scope of Candles Order

### A CBP Seeks Comments on Petition Respecting CN-9 Solution

published scope determination by the United States Department of Commerce, International Trade Administration, substantially broadens the scope of the decades-old antidumping order covering Petroleum Wax Candles from the People’s Republic of China.

Since the issuance of the order years ago, the antidumping order has been understood to cover petroleum wax candles only if imported in particular shapes (pillars, tapers, etc.), while excluding from the order “novelty” candles, featuring a holiday or festive motif, or being in the form of an identifiable article, such as an apple or figurine. The Commerce Department had previously sought public comments in respect of five (5) spending scope requests, which covered some 618 different candle models.

Having preliminarily proposed a substantial expansion of the antidumping duty order’s coverage, the final determination goes even farther, holding all 618 models of candles involved in the scope requests to be subject to the antidumping order.

Commerce had already determined, and the courts upheld, the expansion of the order to include “mixed wax” candles containing any percentage of petroleum wax. The new final scope determination now asserts that all petroleum wax candles are subject to the antidumping order, regardless of shape or form – claiming that the specific shapes listed in the antidumping petition and order were only “illustrative”. It also holds all “novelty” candles to be subject to the order, with the exception of birthday candles, utility candles and figurine-shaped candles.

Customs and Border Protection recently sought public comments concerning a petition, filed by Yara North America, Inc., concerning a divergence in Customs treatment on a product known as CN-9 solution. According to the petition, Customs at the Port of Long Beach, California, has treated the

product as mineral fertilizer of Harmonized Tariff Schedule (HTS) heading 3102, entitled to enter the United States free of duty. Customs at the Port of Baltimore, on the other hand, has classified the solution under HTS Heading 2842 as other salts, and has assessed duty at the rate of 3.3% ad valorem. Yara claims that the Port of Los Angeles is correctly classifying the merchandise duty free.

Yara's petition was filed under Section 177.13 of the Customs Regulations, which allows an importer to petition to resolve a difference in treatment of goods by different Customs ports of entry. The regulation is primarily used to challenge excessive inspection demands, and the Yara petition appears to be the first instance in which the regulation was formally used to challenge classification practice.

Does the Section 177.13 petition procedure represent a more efficient solution to Customs classification problems than the traditional route of filing protests, or seeking internal advice rulings? It seems unlikely, as the petition languished with Customs for nearly 15 months before the agency decided to seek public comments.

## EPA Proposes Changes to TSCA Reporting Requirements

The Environmental Protection Agency is proposing to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) rule and to change its name to the "Chemical Data Reporting rule" ("CDR") to enable the EPA to collect and publish information on the manufacturing, importing, processing, and use of commercial chemical substances and mixtures on the TSCA Chemical Substance Inventory.

In contrast to the IUR, the CDR is used as a collection database for manufacturer, importing,

processing, and use information. TSCA has not published a final rule, but its proposal could significantly amend reporting requirements for importers of TSCA-subject substances.

Under the proposed rule, for the 2012 submission period, any person importing or manufacturing more than 25,000 lbs of chemical substances on the TSCA or Master Inventory list from one site must submit information for each chemical substance. 40 C.F.R. 711.15. For subsequent periods, any person importing or manufacturing more than 25,000 lbs of chemical substances on the TSCA or Master Inventory list from one site during any calendar year since the last reporting year must submit information for each chemical substance. For all submission periods, a separate report must be submitted for each chemical substance at each site for which the submitter is required to report.

Moreover, for the 2012 submission period, any person importing or manufacturing 2500 lbs or more at a single site in any calendar year since they last PRY of the following material, must report under the CDR if they are subject to any of the following proposed or final actions: (1) TSCA section 5(a)(2) Significant New Use ("SNURs") (2) TSCA section 5(b)(4) Chemical of Concern List rules; (3) TSCA section 6 rules containing prohibitions/restrictions arising from unreasonable risk findings, (4) An order in effect under the TSCA sections 5(e) or 5(f), (5) Relief has been granted under a civil action under TSCA sections 5 or 7.

The EPA has provided an e-CDR web reporting tool at <http://www.epa.gov/iur>. The submission must include all information described part of EPA Form U, which is described in section 711.15(b). The EPA proposal also identifies a number of categories of products for which full or partial reporting exemptions are available.

A more detailed analysis of the proposed rule is available from our offices.

## Dairy Products Not All “Articles of Milk”, CAFC Rules

Simply because an imported dessert is a “dairy product” does not make it an “article of milk”, subject to tariff-rate quotas, according to a new decision of the U.S. Court of Appeals for the Federal Circuit.

In [Arko Products, Inc. v. United States, No. 2010-1211 \(August 11, 2011\)](#), the appeals court considered the classification of “mellorine”, a frozen dessert in which some of the butterfat was replaced by vegetable or animal fat. Customs classified the imported mellorine as “articles of milk or cream”, subject to tariff rate quotas. Arko asserted that mellorine is a composite good that should be classified under HTS heading 0811 (fruits and nuts) or 2106 (food preparations not elsewhere specified). The Court of International Trade, however, disagreed with both parties, classifying the article as “edible ice” under HTS heading 2105. In the process, the CIT agreed with Arko’s contention that the product was not an “article of milk”. The government appealed.

Upholding the CIT’s decision, the CAFC held that “. . . the appropriate definition for an article of milk is a mixture with the “essential character” of milk. “ The mellorine products did not have the “essential character” of milk, the CAFC held, because milk powder is “not the most preponderant ingredient by weight in any of the flavors at issue: there are more sugar, oil and/or flavoring ingredients in each flavor”. The court also noted that milk powder was not the costliest ingredient in any of the mellorine preparations, save for one flavor, in which the flavoring ingredients, considered together, were more costly than the milk powder.

The decision will likely make it easier for importers of products with significant but not principal dairy content to import goods without regard for the tariff-rate quotas on “articles of milk”.

## Importer Claiming “Identity Theft” Time-Barred, CIT Says

An importer who claimed that its identity was stolen, and goods imported in its name without its knowledge or consent, was not excused from filing a timely protest to challenge the duty assessment, the U.S. Court of International Trade recently ruled.

In [Kairali Decan v. United States, Slip Op. 11-99 \(August 10, 2011\)](#), an importer of foreign foods brought suit to challenge the issuance of a claim for liquidated damages arising out of a Food and Drug Administration (FDA) claim that certain imported foodstuffs had not been produced for agency examination. The importer brought suit under the CIT’s 28 U.S.C. §1581(I) “residual” jurisdiction, charging that it had not imported the goods in question, and that another importer had committed “identity theft”, using its importer identification number and obligating its Customs bond without permission.

The government moved to dismiss the case, asserting that the plaintiff could and should have filed a timely protest to challenge the exclusion of the merchandise, even if the merchandise was not its own. A protest against exclusion, the government reasoned, would have allowed the plaintiff to raise its identity theft claims. Since a protest remedy was available, the government argued, the CIT’s residual jurisdiction could not be invoked.

The importer had initially filed its suit in the U.S. Court of Federal Claims, which concluded that it lacked jurisdiction, and transferred the matter to the CIT.

The Court, by Judge Gregory Carman, ruled that the protest remedy was available to the plaintiff, and was not “manifestly inadequate”. The importer was presumed to have received the mailed notice to redeliver the goods, and could have filed a timely protest. That it was not the actual importer of the goods, and did not have physical possession of the goods to redeliver them, did not matter, the Court held. The Court ruled that the CIT lacked jurisdiction over the case, and indicated that it would dismiss it for lack of jurisdiction if no motion to transfer it to another court were timely filed.

The Kairali Decan decision suggests that importers who are victims of identity theft cannot cavalierly disregard notices they may receive concerning merchandise that is foreign to them, but must instead take action before Customs in timely fashion.

## Importer’s Effort to Withdraw Excessive Bonds Untimely, CIT Rules

**I**n another case cautioning importers to take timely action, the Court of International Trade ruled that an importer of shrimp who failed timely to challenge a Customs demand for additional bonding was time-barred from seeking to have the bonds canceled or replaced.

In [Ocean Duke Corp. v. United States, Slip Op. 11-85 \(July 18, 2011\)](#) an importer of shrimp had been required to post enhanced Customs bonds to secure the government against potential

antidumping duty liability. The enhanced bonding requirements were pursuant to a Commerce Department policy. Several shrimp importers had successfully sued to challenge the excessive bonding requirements in the case of *National Fisheries Council v. United States*. Ocean Duke, however, was not one of the plaintiffs in that case.

Nonetheless, Ocean Duke made application to Customs to replace the excessive term bonds with new bonds, so that it could recover some of the security it had given to the surety bond companies. When Customs denied the request to cancel or replace the bonds, Ocean Duke brought suit in the CIT.

Invoking the CIT’s 28 U.S.C. §1581(I) residual jurisdiction, Ocean Duke claimed that it had been aggrieved by agency action when Customs denied its demand for return of the bonds, and had timely filed its action within the two year statute of limitations applicable to such actions. The government disagreed, holding that Ocean Duke’s grievance and cause of action accrued at the time the bonds were posted, and that its action was untimely. Judge Judith A. Barzilay agreed with the government, and dismissed the action, holding that Ocean Duke knew of its claim that the bonds were excessive at the time it posted them, and should have measured its time to bring suit from that date.

## Antidumping: “Section A” Respondent Rates Must be Reasonable: CIT

**A**ntidumping cash deposit rates assigned to “Section A” respondents in antidumping investigations involving non-market economy

(NME) products must be reasonable, according to a recent decision of the U.S. Court of International Trade.

In [Yangzhou Bestpak Gifts & Crafts Co. v. United States, Slip Op. 11-90 \(July 26, 2011\)](#), the plaintiff had been a “Section A” respondent in an antidumping investigation of Narrow Woven Ribbons from the People’s Republic of China. It was not selected as a “mandatory” respondent required to submit extensive price and cost information, but rather submitted information demonstrating that it was independent of Chinese State control. “Section A” respondents usually receive a cash deposit rate equal to the simple average of rates assigned to “mandatory respondents”.

In the Narrow Woven Ribbons investigation, however, one of the mandatory respondents provided information requested by the Commerce Department, and was assigned a de minimis rate. The other mandatory respondent, however, did not cooperate, and was assigned a “facts available” rate in excess of 200% ad valorem. The average of this rate and the de minimis rate yielded a cash deposit rate in excess of 100% ad valorem for the “Section A” respondents, including plaintiff Yangzhou Bestpak.

Bestpak sued, claiming that it was error for the Commerce Department to use a simple average to assign rates to Section A respondents, when one of the respondents did not cooperate as received a punitive “facts available” rate. The CIT rejected this argument, holding that the law, regulations and legislative history supported the use of a simple average method, even when a mandatory respondent received a “facts available” rate.

However, the Court held that Commerce had not shown that it was reasonable to calculate Bestpak’s rate in that manner. Bestpak had shown its independence from Chinese state control, the court noted, yet the cash deposit rate was based in part on a punitive rate assigned to the defaulting

respondent, who was presumed to be part of a Chinese state enterprise. It was unreasonable to calculate Bestpak’s deposit rate with reference to a state-controlled producer, when the record showed that independent producers (i.e., the other mandatory respondent) had little or no evidence of dumping.

The Court remanded the case to the Commerce Department with instructions to calculate a new and more reasonable cash deposit rate for the company.

## Customs Fails to Serve Penalty Suit, Given Extra Time to Do So

**T**he Department of Justice, representing U.S. Customs and Border Protection, failed to properly serve a summons and complaint on a defendant in a Section 592 penalty case, but was given extra time to do so, in a recent decision that departs from the Court’s normal behavior in such cases.

In [United States v. Zatkova, Slip Op 11-102 \(August 11, 2011\)](#), the government sought to sue an individual defendant in California to recover Section 592 civil penalties. Government process servers failed to make service as the defendant’s current address, instead leaving the documents with a former boyfriend of the defendant, at an address where the defendant no longer lived. The defendant had given Customs notice of her new address, and Customs had sent her correspondence at that address.

The defendant moved to dismiss the case for failure to make proper service of process, and to attain personal jurisdiction over her. The Court, per Judge Evan Wallach, noted that the government had not made proper service under either Federal or California state rules for serving suit. However, asserting that the government’s

unsuccessful efforts showed “diligence”, the Court exercised its discretionary power to extend the time for the government to make service on the defendant.

The Zatkova decision represents a departure from several earlier CIT decision, where the government’s failure to effect proper service on defendants in the time provided by the Court’s rules was deemed grounds for dismissal of the case.

## CIT: Surety Liable for Prejudgment Interest in Excess of Bond Amount

**A** customs bond surety may be liable for prejudgment interest on amounts awarded in a collection case, even if that brings the surety’s total liability to an amount greater than the bound amount, according to a recent Court of International Trade decision.

In [United States v. Canex Lumber Sales, Slip Op. 11-98 \(August 5, 2011\)](#), the importer had failed to submit documents required under the U.S.-Canada Softwood Lumber Agreement (SLA), and was subjected to liquidated damages against its bonds. In a prior suit, the Court had ruled that Canex’s products were classifiable under tariff provisions subject to SLA requirements. Even though that case is presently on appeal to the Federal Circuit, the Court rejected the importer’s claim that it could not yet reach the liquidated damages issues presented in separate litigation.

The Court also ruled that the government was entitled to recover prejudgment interest on the liquidated damages, running from the date in 2005 the damages were assessed administratively. Although prejudgment interest is not available on

penalty assessments, the CIT ruled that liquidated damages claims against bonds were not punitive in nature. Furthermore, while the award of prejudgment interest is discretionary with the Court, the CIT (per Judge Jane A. Restani) held that the prejudgment interest was appropriate to compensate the government for the lack of payment of the damages.

Moreover, the Court held that the surety could be liable for prejudgment interest, even if that would bring its total liability to an amount in excess of the face amount of the bonds it had written. The Court rejected this amount, holding that the surety could be responsible for prejudgment interest, even if it did not engage in dilatory conduct.

## NPLLP Attorneys to Address Seminars

**A**ttorneys from Neville Peterson will make presentations on “Advanced NAFTA Techniques” at the upcoming NAFTA Seminar organized by Rudy Pina & Associates. The seminar, which involves a day-long exploration of current developments and issues in NAFTA strategy, enforcement and administration, will be held October 12, 2011, at the El Esplendor Resort in Rio Rico, Arizona.

Persons interested in attending can contact the firm or contact [Rudy@rpina.com](mailto:Rudy@rpina.com).

In addition, our attorneys will participate in the 63<sup>rd</sup> Virginia Conference on World Trade, with a presentation on Negotiating International Contracts. The conference will be held on October 26-27, 2011 and is sponsored by the Virginia Economic Development Partnership. Information is available at the Partnership’s Conference website, <http://www.vacwt.org/agenda/index.html>,

and through Theodora von Hohenstaufen Noll at [tnoll@yesvirginia.org](mailto:tnoll@yesvirginia.org).

New York, NY 10004  
212 635-2730

Washington DC 20036  
202 861-2959

[www.npwtradelaw.com](http://www.npwtradelaw.com)

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## Export Control Reform Proposals Take Concrete Shape

The Commerce Department has published a proposal revising the Export Administration Regulations to move items from the State Department's International Traffic in Arms Regulations (ITAR) to Commerce's Export Administration Regulations (EAR). The proposed regulatory changes are designed to remove "specifically designed or modified" parts that are primarily civilian in nature from the ITAR. They would instead be placed in the EAR, in a special control category under the Commerce Control List (CCL).

Unlike the ITAR, the EAR do not always require licenses to export. Instead, there are varying degrees of control depending on the type of product to be exported and its destination. The Federal Register notice did not provide detail regarding the specific products to be moved, but does discuss the methodology that the agencies propose adopting.

The government initially intends to apply the reforms to United States Munitions List (USML) category VII, with other USML categories to be revised over time. Movement of products from ITAR to EAR coverage will also affect ITAR technical data. As with controls on product exports, the EAR do not require licenses for all products to all destinations and therefore are much less restrictive than the ITAR.

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**NEVILLE PETERSON LLP**

17 State St.

1400 16<sup>th</sup> St., N.W.