ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

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Vol. 35, No. 13 March 30, 2015

BIS, DDTC to Propose Rules for Data in the Cloud

The Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) plan to propose harmonized rules that will exclude from the definition of "export" controlled technology that is uploaded to the cloud under certain conditions. "We are going to address square on data going into the cloud, something neither of our regs address," BIS Assistant Secretary Kevin Wolf told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) March 24.

> The proposal will be part of a wide-ranging, long-promised rule that will harmonize definitions in the Export Administration Regulations (EAR) and the International Traffic in Arms Regulation (ITAR). The document is going through its final interagency review and is expected to go to the Office of Management and Budget (OMB) the week of March 30 for final review, with publication in the Federal Register sometime in April.

To be exempt from licensing requirements, data in the cloud will need to meet three conditions, Wolf explained. The data must be encrypted end-to-end, the encryption must meet a government-approved standard, and the server holding the data cannot be located in a prohibited country. "What we are doing is certain types of data storage are simply not exports," Wolf said. "If you don't do encryption, it's an export if you put data into the cloud outside the U.S.," he stated. As part of their proposals, the two agencies will ask for comments on whether the final rule should offer a list of representative encryption standards that can be used or an absolute standard, he indicated.

Among the definitions that will be harmonized in the proposal are: "export," "reexport," "retransfer," "deemed reexport," "technology," "public domain," "fundamental research," "required," and "peculiarly responsible." The proposal will also include a common end-user statement, codify standard license language, and other housekeeping steps.

Best Case Scenario: TPA in April; TPP in June

After months of debate and years of negotiations, there is growing expectation that fast-track trade promotion authority (TPA) and the Trans-Pacific Partnership (TPP) could be completed in the next three months. Senate Finance Committee Chairman Orrin Hatch

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional subscriptions with full-priced subscriptions are $100 each. Site and corporate licenses also available.

(R-Utah) says he is aiming to introduce a TPA bill after lawmakers return from their two-week Easter recess April 13, while industry sources say a TPP deal could be wrapped up following a meeting of trade ministers of the Asia-Pacific Economic Cooperation Forum (APEC) at the end of May.

> Sen. Rob Portman (R-Ohio) told WTTL a TPA measure could become an omnibus vehicle that includes several other long-pending trade legislation. "There is also the opportunity to do four or five other things with trade that need to be done – miscellaneous tariff bills would be a wise thing to do, the Generalized System of Preferences for developing nations," said Portman, a former U.S. Trade Representative (USTR).

An omnibus trade bill also might include renewal of Trade Adjustment Assistance (TAA), a major goal for Democrats. TAA needs to be in TPA to provide "protection for folks whose jobs and livelihoods may be harmed by virtue of trade agreements," Sen. Tom Carper (D-Del.) told WTTL. When asked if that would be a "must have" for Democrats, he said, "Oh, sure, for Democrats and a number of Republicans." Carper also said TPA "is likely" and will get enacted.

"Sen. Wyden is in a very difficult position, trying to make sure that at the end of the day we beat down as many trade barriers to our products as we can from the 10 or so countries we are negotiating with and, at the same time, trying to make sure that the concerns we have as Democrats" are addressed, Carper said. He noted that areas of importance to his state include poultry exports and pharmaceutical protection, although he conceded that not all Democrats have the same view on drug patent protection.

Hatch told reporters March 24 that he was making a "final offer" to Finance Ranking Member Ron Wyden (D-Ore.) that day. "Hopefully, he will come onboard," Hatch said. "If we feel we can go ahead, we will do this after we get back in April. We intend to do that," he added. A few days later, a spokesman for Wyden said, "Our staff is continuing to negotiate with Sen. Hatch's. There is not an agreement." He also said it was "too soon to speculate" about expanding TPA into an omnibus trade bill.

Other sources expect Hatch to move quickly on TPA after he introduces his measure the week of April 13, including holding a hearing and getting a committee vote shortly afterward. A full Senate vote could come soon after that. Hatch said he expects House Ways and Means Committee Chairman Paul Ryan (R-Wis.) to introduce the same TPA bill in the House at the same time and begin House action on it. Hatch said he and Ryan meet regularly. "He's a great asset," he said.

Hatch said he would aim to have TPA enacted before Japanese Prime Minister Shinzo Abe visits Washington in April. "It would be nice if we had it by then because I think it's the one thing that would bring Japan into TPP," he said. Abe is scheduled to the guest at a White House state dinner April 28 and has been invited to address a joint session of Congress April 29.

With Senate Republican leaders ready to move on TPA and enough Senate Democrats supporting passage, the main battle will be in the House where a majority of Democrats are expected to oppose the measure despite President Obama's push for it. One business community "nose count" of Democratic votes in the House projects only 12-18 votes for TPA, which would be below some early hopes for at least 20 Democrats. Although some

tea party Republicans are also likely to oppose the measure, there will be enough Republican votes to pass the bill, one source said. Hatch played down any concerns about tea party opposition. "I haven't heard any yet. I think, so far, we have been pretty much together," he said. "They don't know what it is yet, so we'll have to see," he added.

> Meanwhile, some sources say they expect several coming meetings to be the key to closing a TPP deal. With possible passage of TPA and an announcement when Abe is in Washington, another key event will be the meeting of APEC ministers responsible for trade in the Philippines May 23-24. A side meeting of TPP trade ministers could go beyond the usual "landing zone" and "narrowing the issues" double talk and actually set the table for a meeting of senior negotiators a week or so later where the final details could be concluded (see related story, page 9).

Officials Quell Gun Industry Concerns about Reform Reversal

BIS and DDTC officials have denied that they have any plans to reverse export control reforms for shotguns and rifle scopes and move those items from the Commerce Control List (CCL) to the U.S. Munitions List (USML). After gun industry representatives raised concerns about reports that such a move was being considered, officials from the two agencies, in meetings and statements, said the idea was just discussed but never raised to the level of a proposal (see **WTTL**, March 16, page 1).

> At the same time, DDTC officials are saying a proposal to transfer some firearms and ammunition from USML categories I, II and III, which had been pulled back after the tragic shootings in Newtown, Conn., in December 2012, is not in limbo anymore and could be published later this year. Industry sources say they do not expect the proposed transfer to raise the political concerns the Obama administration feared two years ago.

After WTTL reported on industry concerns about a potential move of CCL items to the USML, Ken Handelman, deputy assistant secretary of State for defense trade controls, sent an email March 23 to members of the Defense Trade Advisory Group (DTAG) saying, "There is no such proposal." The idea had been raised inside government and circulated outside informally to get reaction, he said.

"It's in the category of bouncing things around, but there never was and is not currently any such proposal. It did not even rise to the level of trial balloon, but this seems to have taken on a life of its own. Apologies for any confusion. Just to be crystal, pure-as-the-driven-snow, clear: there is nothing in the works, hidden in the desk drawer, sneaking around the corner, percolating up from the deep reaches of our regulatory subconsciousness, that remotely resembles, reflects or countenances moving shotguns, shells, scopes from the CCL to the USML," he wrote.

At a March 24 meeting of BIS' RAPTAC, Assistant Secretary Kevin Wolf also denied that there was any proposal to move items from the CCL to the USML. "We have not as a government made any decision in terms of what to do up or down with I, II, or III. We've talked a lot about a lot of ideas and one of those ideas made it out into the press," he said. "We haven't made any decisions. Don't think we are increasing controls, decreasing controls. A lot of it frankly has to do with resources that are

available to the Commerce Department and that's going to affect what we do or how fast we do or don't do it. But in terms of what is a policy matter what this government does or doesn't do, we the U.S. government has not made any decision, formal, informal. We have just been tossing around ideas among those in the U.S. government that will be making the decisions," Wolf told RAPTAC.

> "When we make a decision, we will let you know and even when we do, as with all other things, it will always be in the form of a proposed rule against which everyone has a right to make a comment. Before we can issue a proposed rule, we have to keep thinking about it," he said.

Handelman also calmed industry fears in a meeting March 25 with Lawrence Keane, senior vice president and general counsel of the National Shooting Sports Foundation, and other industry advisors. Keane had asked for the meeting after reports had surfaced about the reverse shift of controls. "Now that we have had the opportunity to meet with Deputy Assistant Secretary Handelman we are now comfortable that our products that are currently on the CCL will not be transferred to the USML," Keane told WTTL. "We continue to support export control reforms and hope our products will move soon through the reform process in the foreseeable future," he added.

PayPal Fined $7.66 Million for Processing Blocked Accounts

Electronic payment service firm PayPal agreed March 25 to pay $7.66 million to settle Office of Foreign Assets Control (OFAC) charges that it violated U.S. sanctions, including restrictions against Iran, Cuba and Sudan. The company voluntarily self-disclosed the apparent violations.

> "For several years up to and including 2013, PayPal failed to employ adequate screening technology and procedures to identify the potential involvement of U.S. sanctions targets in transactions that PayPal processed. As a result of this failure, PayPal did not screen in-process transactions in order to reject or block prohibited transactions pursuant to applicable U.S. economic sanctions program requirements," OFAC said in a posting announcing its settlement with the company.

"Each of the transactions giving rise to the apparent violations either contained an explicit reference to a country subject to OFAC sanctions or another term linked to the country … or involved a PayPal account in which the Specially Designated Global Terrorists Interpal or Kahane Chai had an interest," the agency noted.

In addition, between October 2009 and April 2013, PayPal, a unit of eBay, processed 136 transactions to or from an account registered to Kursad Zafer Cire, who was designated by State in January 2009. "PayPal's automated interdiction filter appropriately flagged Cire's account five times… for potential matches to the SDN, and on each occasion, separate PayPal Risk Operations Agents dismissed the alerts without requesting additional information to clear the potential SDN name matches," OFAC added.

"Our settlement with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is a result of us voluntarily reporting to OFAC certain payments we processed in possible violation of sanctions regulations from 2009 to 2013. Since then,

we've taken additional steps to support compliance with OFAC regulations with the introduction of real-time scanning of payments and improved processes," a PayPal spokesperson wrote in an email to WTTL.

Schlumberger Unit Pays $232.7 Million for Violating Sanctions

Schlumberger Oilfield Holdings Ltd. (SOHL), a wholly-owned subsidiary of oilfield services company Schlumberger Ltd., pleaded guilty March 25 to a one-count criminal information charging it with conspiracy to violate the International Emergency Economic Powers Act (IEEPA) and agreed to pay more than $232 million in penalties for facilitating illegal transactions and engaging in trade with Iran and Sudan in 2004 and 2010.

> According to court documents, Drilling & Measurements (D&M), a U.S.-based Schlumberger business unit, provided oilfield services to customers in Iran and Sudan through non-U.S. subsidiaries of SOHL. The plea was entered in the D.C. U.S. District Court.

As part of its plea agreement with Justice and BIS, SOHL will pay a $77,569,452 criminal forfeiture and a $155,138,904 criminal fine. "The criminal fine represents the largest criminal fine in connection with an IEEPA prosecution," Justice said. The firm also entered into a three-year period of corporate probation. In addition, Schlumberger Ltd. agreed to continue its cooperation with U.S. authorities during the probation period and hire an independent consultant to review its internal sanctions policies, procedures and company-generated sanctions audit reports.

The government claimed U.S. employees of D&M in Sugar Land, Texas, violated U.S. sanctions against Iran and Sudan by: (1) approving and disguising the company's capital expenditure requests from Iran and Sudan for the manufacture of new oilfield drilling tools and for the spending of money for certain company purchases; (2) making and implementing business decisions specifically concerning Iran and Sudan; and (3) providing certain technical services and expertise in order to troubleshoot mechanical failures and to sustain expensive drilling tools and related equipment in Iran and Sudan.

"Even if you don't directly ship goods from the United States to sanctioned countries, you violate our laws when you facilitate trade with those countries from a U.S.-based office building. For years, in a variety of ways, this foreign company facilitated trade with Iran and Sudan from Sugar Land, Texas," D.C. U.S. Attorney Ronald C. Machen said in a statement. BIS Under Secretary Eric Hirschhorn said the criminal guilty plea "demonstrates the Commerce Department's commitment to aggressively prosecute multinational corporations for violations involving embargoed destinations." The BIS Dallas Field Office investigated the case with Justice's National Security Division.

"Schlumberger has reviewed its long-standing compliance and accountability protocols and made appropriate enhancements to address the issues discovered through the investigation. As previously disclosed, the company voluntarily ceased oilfield operations in Iran as of the second quarter of 2013, and the company ceased oilfield operations in Sudan prior to the date of this plea agreement," a company spokesperson wrote in an email to WTTL. "This plea fully resolves the investigation of the company, and we understand there is no ongoing investigation of company personnel. The company cooperated with the investigation, and we are satisfied that this matter is finally

resolved," the spokesperson added. Previously, a UK Schlumberger subsidiary, Smith International (North Sea) Limited in West Sussex, agreed in December 2013 to pay BIS a civil penalty of $130,000 to settle nine unrelated charges of unlicensed reexports of EAR99 drilling tools and equipment worth $174,000 from the United Arab Emirates to Syria between April 2008 and January 2010 (see **WTTL**, Jan. 6, 2014, page 8).

Business Needs to Make Better Case for TTIP, Executive Argues

After the official "fresh start" in the talks toward a Trans-Atlantic Trade and Investment Partnership (TTIP), the business community on both sides needs to make a better case for the deal, John Cridland, director-general of the Confederation of British Industry, told a program in Washington March 24.

> "TTIP needs to be rebooted, repositioned, reenvisioned as an upside on both sides of the Atlantic, and business community will go out of its way to make a better job of communicating the benefits and a better job of disarming the concerns. Concern is legitimate as long as the answers are evidence based," he said.

Cridland admitted that progress has been slow in the talks so far. "It's always going to be slow; there are really tricky issues, [like] GMOs, chlorinated chicken. This isn't stuff that presidents and prime ministers can wave magic wands or a communiqué can be put together that resolves it. This is months and months of difficult negotiations," he said.

Part of the debate has been over how to handle different regulatory standards between the two negotiating parties. "The more we can get some degree of regulatory convergence through mutual recognition, and I think mutual recognition is much more the likely route than harmonization, then Britain and America, Europe and America can set product standards that will become the dominant standards in world markets," he said.

When asked whether convergence would lower standards to the lowest common denominator, Cridland hedged. "It wasn't business' objective to lower standards. We are in the hands of regulators who are holding these conversations. You know, negotiations involve compromise, don't they? The objectives of business are not to lower standards, the objectives of business are to remove unnecessary regulatory barriers to trade."

Toward that end, Cridland almost showed his hand. "Business is and must be the consumer champion. If we leave it to others to be the consumer champion, we miss a really important trick," he said. Consumer and environmental groups might argue with that.

OFAC Drops Cuban SDNs in Housecleaning Move

Treasury officials claim the removal of 45 Cuba-related individuals, entities and vessels from its Specially Designated Nationals (SDN) list March 24 was just part of the department's regular review of the list. Most of those removed no longer meet the criteria for designation, are defunct, deceased or had their ownership changed, a Treasury spokesperson told WTTL. In addition to the individuals and vessels, many of those removed are based in Panama and included tourist companies, shipping lines, transportation companies, import-export firms and investment advisors. "All of these individuals, entities,

and vessels have been removed from the SDN list as part of an ongoing internal review of older Cuba designation cases," the spokesperson said in email to WTTL. "While these removals are not related to the recent changes to our Cuba sanctions program and rather reflect OFAC's consistent effort to review and update its SDN list, these delistings are in line with the President's Cuba policy. OFAC hopes to reduce the compliance burden on the public by removing out-of-date names from the SDN List where appropriate, which will in turn reduce the number of potential false name matches and expedite processing of lawful transactions at financial institutions," the spokesperson explained.

> Separately, sources report that there have been two exports to Cuba under the newly created export License Exception Support of the Cuban People (SCP). The exports reportedly were for construction materials, which are specifically cited in BIS regulations (see **WTTL**, Jan. 19, page 1).

Azevedo Aims to End Stalemate in WTO Trade Negotiations

The year 2015 will be "of great significance" for the multilateral trading system, World Trade Organization (WTO) Director-General Roberto Azevedo told reporters March 26. On the agenda are implementation of the results of the Bali agreements, adoption of a work program by July 31 to complete the Doha Round and preparation for the December ministerial conference in Nairobi, Kenya (see related story page 8).

> Azevedo said most of the work on the Bali results is happening in WTO subsidiary bodies, including implementation of the trade facilitation agreement (TFA) and the quest for a permanent solution to public stockholding programs for food security. There is a December deadline for working out a permanent solution on food, he said. So far, only four countries, basically those without a legislative process, have submitted TFA instruments of acceptance, he reported.

The negotiations on the Doha Development Agenda (DDA) are "very visibly; very clearly" changing gears, Azevedo asserted. Until late last year, talks were redundant, he said. "That clearly changed," he said. A number of delegations are exploring and suggesting new approaches and the situation is moving from talks on problems and difficulties to finding solutions, he suggested.

Azevedo said there are no miraculous solutions or a silver bullet to resolve remaining issues. Members will have to agree on an approach, "reverse engineer what they have agreed in terms of framework" and then "devise a methodology that would take them there," he said (see **WTTL**, Feb. 23, page 6).

The WTO chief acknowledged that other negotiations are taking place at the plurilateral level, referring expansion of the Information Technology Agreement (ITA), plus talks on a Trade in Services Agreement (TISA) and on environmental goods. While these negotiations are plurilateral, any tariff reductions would apply to all WTO members, Azevedo said. Agriculture will continue to be the key Doha element, but domestic support and market access are big challenges, he said. Members are less distant over export competition, he suggested. While agriculture and non-agriculture market access (NAMA) are the focus of talks, "all the other areas" are still on the table, he said.

Elements Seen for Smaller Doha Deal in Nairobi

Trade officials in Geneva are beginning to talk about a substantial decrease in the ambition and scope of a possible Doha Round agreement with an eye toward closing a smaller deal at the WTO's December ministerial conference in Nairobi, Kenya, our correspondent Scott Billquist reports. The incentive for an agreement is the fear of the negative consequences from letting the stalled negotiations linger indefinitely, according to trade diplomats he spoke with.

> Five years ago, people still had expectations, but today expectations are much lower, one skeptical source said. With several mega deals in the works across the Pacific and Atlantic, developed and developing countries appear to just want to finish the round, he said.

Sources who now seem willing to do something beside complain about the lack of progress say the Doha mandate can be fulfilled by harvesting lower expectations, cobbling together what negotiators are ready to deliver and adding a little "low-cost icing" in time for Nairobi. While something has to be delivered on agriculture, non-agriculture market access (NAMA), services and other goals, the question has become "how much?" one source said. Ambition has to be "dramatically" reduced, he suggested.

A key to an agreement in December would be the new Doha work program that is supposed to be adopted by the end of July. With no hope of reaching an agreement on the big issues that have bogged down negotiations for nearly 14 years, the coming work program could define a new mandate, so the old mandate doesn't continue to hobble countries interested in the multilateral system, one trade source said.

Because of the frustration over the lack of progress in the talks, some countries just want to get rid of the round, he argued. As long as there is no distinction between emerging and developing countries, developed countries such as the U.S. and the European Union (EU) aren't willing to offer blanket preferential treatment in a deal. As a result, it will be very difficult to sell an agreement that won't have much for China, Brazil or India. "We have to get a smaller result and call it off and start new," he opined.

There are several dynamics that might lead to a smaller deal. China, which gained significant market access when it joined the WTO, wants to avoid a weakening of the multilateral system and is afraid it might be encircled by a TPP agreement, this official said. India has only defensive interests and Brazil has no interest, because to get anything in agriculture, it will have to pay significantly in industrial market access, he said. "They're not willing to do that," he added.

The U.S. has no remaining interest in the negotiations and has turned its attention to TTIP, TPP, TISA and the ITA. Because Washington would have to pay for anything it got, "Why would they push," he asked The EU doesn't care either. The EU is willing to sign tomorrow because it won't have to give anything more and doesn't expect anything, he said. Nobody really expects anything from the round, so it can be finished, he added.

Other sources say they see an outline for an agriculture deal under which everybody will have to "cut water" out of their market access offers and accept more disciplines on domestic and export subsidies. The U.S. and EU will have to give something, but not a lot, one source said. Not much will come out of NAMA because advanced developing

countries aren't offering enough cuts and the U.S. and EU don't want to give them benefits without something in return. For developed countries, more will come out of ITA, TISA and environmental talks, the official suggested.

Delayed Surveillance Export Controls Coming Soon

Commerce and State appear to have partly resolved a disagreement that has delayed publication of new rules the Wassenaar Arrangement adopted in December 2013 to control cybersecurity products and network intrusion software. When BIS published rules implementing the 2013 Wassenaar changes in August 2014, it said it would publish a separate rule on cybersecurity in September, but the disagreement on licensing policy has delayed those changes to the Commerce Control List (see **WTTL**, Aug. 11, 2014, page 1).

> Instead of issuing a final rule as it normally does with Wassenaar changes, BIS will publish a proposal with a 60-day comment period, Assistant Secretary Kevin Wolf told RAPTAC March 24. The proposal is going through Commerce legal review but has not yet been sent to OMB for final clearance. The proposal could be published in April or May, Wolf said.

"Because it was such a new idea, new regulatory structure, new licensing structure, we want to get some sort of input from the public in terms of the licensing process and licensing requirements," he said. "There is not much we can do on the actual words of the Wassenaar agreement because we have already agreed to it. Most Wassenaar members have already implemented it," Wolf said; noting that few firms are in this business.

State reportedly has pushed for tougher licensing restrictions for these products because of its concerns about human rights abuse and hacking of commercial and banking data. It has wanted a policy that would require licenses for all destinations, including Canada and NATO countries. The department also has worried about how governments such as Turkey and Hungary might use such technology to monitor or interfere with civil Internet traffic or social media.

Wassenaar in December 2013 added 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." It also adopted 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."

Leaked ISDS Text Stirs Up Heat on TPP

The leak of the secret January version of the investor-state dispute-settlement (ISDS) text from the Trans-Pacific Partnership (TPP) talks and a recent NAFTA arbitration ruling in Canada have stirred up new objections to the trade deal and TPA. First reported by the *New York Times*, Wikileaks posted the ISDS chapter March 24. In a split 2-1 decision, the arbitration panel ruled March 17 that Canada had failed to accord U.S. investors "treatment in accordance with international law, including fair and equitable treatment

and full protection and security," by denying it a license to operate a quarry and marine terminal in Nova Scotia (see **WTTL**, March 16, page 2).

> The leaked TPP text, dated Jan. 20, is mostly free of brackets, although it includes one bracket where Australia exempts itself from coverage of ISDS rules for investment authorization. Most of the draft includes standard language that has been in other trade deals or in bilateral investment treaties.

Lori Wallach of Ralph Nader's Citizens Trade Watch, blasted the ISDS proposal for elevating foreign-owned firms over sovereign governments. "The enactment of the leaked chapter would dramatically expand each TPP government's ISDS liability," she said in a statement. It would allow "9,000 foreign-owned firms in the United States to launch ISDS cases against the U.S. government, while empowering more than 18,000 additional U.S.-owned firms to launch ISDS cases against other signatory governments," she argued.

The draft proposal would allow foreign investors to file claims against TPP governments in the International Centre for Settlement of Investment Disputes (ICSID), an autonomous branch of the World Bank. Among the causes of action in such disputes would be claims that the government did not apply national treatment or most-favored-nation status to the investor or did not treat the investor "in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security," or apply a "minimum standard of treatment."

To assuage fears that the rules could override certain national laws, the draft excludes certain government measures. "Parties have agreed to the following text in the preamble: 'Recognizing the inherent right to regulate and resolving to preserve the flexibility of the Parties to protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, and public morals'."

In the Canadian case, Bilcon v. Canada, the U.S. investor claimed Canadian authorities had changed the rules governing permission to operate the quarry and applied the new rules retroactively. "The Tribunal has concluded, quite apart from considering the impact and implications of the local/national/regional/international matrix, that the JRP's [Joint Review Panel] approach amounted to unequal and unfavorable treatment of Bilcon," two of the three-person NAFTA panel concluded.

"It may bear reiterating, therefore, the Tribunal's view that under NAFTA, lawmakers in Canada and the other NAFTA parties can set environmental standards as demanding and broad as they wish and can vest in various administrative bodies whatever mandates they wish. Errors, even substantial errors, in applying national laws do not generally, let alone automatically, rise to the level of international responsibility vis-à-vis foreign investors. The trigger for international responsibility in this particular case was the very specific set of facts that were presented, tested and established through an extensive litigation process," they wrote.

Rep. Sander Levin (D-Mich.) criticized the ruling in a blog March 27. "What is most striking about the award is that the panel interpreted the vague 'minimum standard of treatment' (MST) obligation in a manner that is clearly inconsistent with how the U.S. government has repeatedly argued the obligation should be interpreted," he wrote. "To

date, U.S. negotiators have been unwilling to seek a clarification of the MST obligation in the TPP negotiations, as reflected in the recently leaked TPP investment chapter and the 2012 U.S. model Bilateral Investment Treaty," he added.

* * * Briefs * * *

EXPORT ENFORCEMENT: Indictment was unsealed March 18 in San Francisco U.S. District Court against Pavel Semenovich Flider, Russian national and naturalized U.S. citizen, and his company Trident International Corporation, LLC. They were charged with shipping electronic components from U.S. companies to Russia using transshipment points in Estonia and Finland. Flider was arrested same day and is in federal custody pending formal detention hearing March 31. BIS in March 26 Federal Register also issued six-month Temporary Denial Order against Flider and Trident. "Trident identified as 'ultimate consignees' companies in Estonia and Finland that BIS has reason to believe were operating as freight forwarders and not end users of the U.S.-origin items," notice said.

MATCHBOOKS: In 6-0 "sunset" vote March 23, ITC said revoking antidumping and countervailing duty orders on commodity matchbooks from India would renew injury to U.S. industry.

DRONES: DDTC announced new requirements for permanent export of unmanned aerial systems (UAS) in industry notice posted on website March 24. "In addition to the required DSP-83, Non Transfer and Use Certificate, DDTC now requires an addendum to paragraph five (5) of the DSP-83 to address this requirement. The DSP-83 with the required addendum, signed by the foreign end user and U.S. applicant, must be submitted at the time of initial application for a permanent export license. The temporary export of U.S. origin military UASs (i.e. marketing) will not require these assurances at the time of export, but any sale and subsequent permanent export must comply with this requirement," DDTC said.

WTO: Organization has hired eight new lawyers to address delays in issuing dispute-settlement reports and to work with Appellate Body, Director-General Roberto Azevedo told reporters March 26. Members wouldn't use system so intensely if they feel it isn't helpful or is inefficient, he said. Heavy use of system, however, could overload WTO resources, he said. The soon-expected "landmark" 500th dispute settlement case is "proof of success" of the system, Azevedo said. Hirings, however, will not have an immediate effect. New lawyers will need to trained to lead cases and that will likely require one to two years, Azevedo said.

TRADE OUTLOOK: Upcoming WTO trade outlook due for release April 14 may follow same recent downward revision tendency as other institutions assessing economic growth, WTO Chief Roberto Azevedo told reporters March 26. U.S. economy is picking up but Europe and Japan haven't been growing fast enough, he said. Whatever happens in EU considerably affects trade expansion numbers, he said, referring to Europe accounting for one-third of global trade. Fast-growing countries like China are now growing at their slowest rates in 25 years, he noted.

CATEGORY XII: BIS and DDTC proposals to move some items from USML Category XII (sensors and night vision) to CCL have cleared OMB review and could be published in Federal Register week of March 30, BIS Assistant Secretary Kevin Wolf told RAPTAC March 24. Proposal for Category XIV (toxins) is right behind and could be published in May.

CANDLES: Little more than month after granting government motion for default judgment against NYCC 1959, importer of candles from China, for being "grossly negligent" for filing materially false import information (slip op. 15-13), CIT Senior Judge Donald Pogue vacated his order March 25 after government filed new motion to reopen action. "Government counsel discovered inaccuracies contained in evidence submitted by the United States in support of its claim, which was relied on by the court in ordering judgment against the defaulted Defendant and quoted in the court's opinion," Pogue wrote (slip op. 15-25).