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

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Congress Protects Confidential Export License Data

Congress has stepped in to protect export license application data from release under the Freedom of Information Act (FOIA) and short-circuited a lawsuit seeking release of licensing information because of the lapse of the Export Administration Act (EAA) and its Section 12(c) data protections. The House passed the measure, which was included in the Naval Vessel Transfer Act (S. 1683), Dec. 10 after the Senate cleared it Dec. 4, both on voice votes (see **WTTL**, April 14, page 1). The bill also confirms State's authority to approve licenses for items subject to the Commerce Control List (CCL).

> Section 209 of the legislation declares that "Section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)) has been in effect from August 20, 2001, and continues in effect on and after the date of the enactment of this Act, pursuant to the International Emergency Economic Powers Act." It also says 12(c) comes under FOIA provisions excluding certain government information from release.

The measures confirms a presidential order that had given the Directorate of Defense Trade Controls (DDTC) authority to issue licenses for CCL items that were transferred from the U.S. Munitions List (USML) and are integral to an export covered by the International Traffic in Arms Regulations (ITAR).

Section 204 of the bill amends the Arms Export Control Act (AECA) to say that a "license or other approval from the Department of State granted in accordance with this section may also authorize the export of items subject to the Export Administration Regulations if such items are to be used in or with defense articles controlled on the United States Munitions List." It also says separate Commerce approval for such a license is not required. This authority doesn't change the jurisdiction of the item. "Such items subject to the Export Administration Regulations that are exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce with respect to any subsequent transactions," it states.

China Continues to Block Progress on ITA Deal

Despite the widely hailed agreement between the U.S. and China in November to get talks back on track on an Information Technology Agreement (ITA), Beijing continued to

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block progress toward a deal during negotiations in Geneva the week of Dec. 8 (see **WTTL**, Dec. 8, page 1). "Through the consultations over the last few weeks, it became clear that certain Members had important interests that were not fully captured by the bilateral agreement. And those members came a long way toward accepting 99% of that agreement, but asked that small adjustments be made in order to be able to accept the deal," Deputy U.S. Trade Representative (USTR) Michael Punke told the negotiations Dec. 12, according to his prepared statement.

> John Neuffer, vice president of the Information Technology & Innovation Foundation, identified China as one of the countries blocking a deal. "Though it had raised its ambition level in the Beijing package, China was not able to move off that package," he said in a blog.

Although China had agreed to reduce the number of products it wanted to exclude from an updated ITA, the agreement announced with the U.S. did not mention whether it was still insisting on a long phaseout period for the elimination of information technology tariffs. Moreover, other countries still had reservations about specific products. "We have heard clearly that minor adjustments to the agreement would be needed in order to meet other members' interests," Punke said.

The ITA package reportedly would add some 200 products to the original accord. While there was jockeying over the list, several countries made last-minute concessions. Neuffer noted that Korea, Malaysia, Thailand, Israel, Australia, the European Union and the U.S. were among countries that "offered last-minute flexibility that would have allowed several key products to make it across the finish line." He said "Costa Rica and Guatemala, as well, made constructive eleventh-hour shifts."

Nonetheless, the "inability to conclude boiled down to the fact that the Beijing breakthrough achieved on the margins of the Asia-Pacific Economic Cooperation leaders' summit last month included a good package, but one many economies felt needed further tweaking," Neuffer wrote. With the World Trade Organization heading into its end-of-year recess, future progress on an ITA pact will depend on what decisions come from home capitals in the new year.

NASA's Orion Space Program Eligible for STA

The National Aeronautic and Space Administration (NASA) will be able to share all of the data for its Orion space program with its European partners without needing export licenses, technical assistance agreements (TAAs) or manufacturing license agreements (MLAs), Bureau of Industry and Security (BIS) Assistant Secretary Kevin Wolf told the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) Dec. 9.

> Wolf reported on a meeting he held with aerospace developers in Florida the week of Dec. 1 where he told them that all technology being shared with European partners on the Orion project is eligible for License Exception Strategic Trade Authorization (STA).

"I explained that under this new STA for this universe of that I was talking about all of the data that you are dealing with now, all the technology that you will be sharing back and forth to develop a particular component, that's all in [ECCN] 9A515, or a series of

components, 100% of that is now eligible for trade under STA," Wolf said. "You won't need MLAs; you won't need TAAs; you won't need registration; you don't have a de minimis rule; you won't have import limitations," he added. For the regulatory compliance people who are involved in the Orion project, their lives "as of Nov. 10 became radically and wildly more simple," Wolf said.

> NASA's Orion spacecraft, which had its first test launch Dec. 5, is a major new program that aims to take humans "farther than they've ever gone before," the agency says. Lockheed Martin is the prime contractor for the program. The full-service module that is part of the spacecraft will be provided by the European Space Agency.

"Orion will serve as the exploration vehicle that will carry the crew to space, provide emergency abort capability, sustain the crew during the space travel, and provide safe re-entry from deep space return velocities," NASA explains. Its new Space Launch System will be capable of sending humans to asteroids and eventually Mars, it says.

BIS Unveils New Conditions Language for Export Licenses

BIS began Dec. 8 to include a new shorter, standard conditions' statement on approved licenses in an effort to eliminate confusion and clarify the scope of individual licenses. Rather than repeating prohibitions or requirements already in the Export Administration Regulations (EAR), BIS officials say they hope the new language will clarify what has been approved and what obligations the exporter assumes with the license. They also note that the change does not apply to existing licenses.

> "With this we are not doing anything to change a policy-based condition," BIS Assistant Secretary Kevin Wolf told the agency's RAPTAC Dec. 9. "This is a return to first principles; a rationalization of licenses themselves; reducing the number of words; creating fewer negative implications; and being clean about what is an actual limitation on what was sought versus what is a general prohibition that would have existed anyway," he said. Wolf also said BIS might still include a condition or side letter "as a reminder" of agency concerns for certain "high-risk" exports.

The new language reads: "Unless limited by a condition set forth below, the export, re-export or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted."

Wolf offered what he called an "export counseling tip" for getting licenses with few conditions. "If what you describe is clear, precise, with complete information, good supporting documentation and you tell us what you are doing and we're fine with it, it goes much more swimmingly," he said. "If you come in with 'We want the world,' or it's unclear or ambiguous or it's vague or it's open-ended, and we have to start thinking about the limitations that we want on that, then you will get a lot more conditions as a matter of averages," he advised. For a very specific, tailored export application, "there

will be no conditions," Wolf said. In a Frequently Asked Question (FAQ) on the new language, BIS said it is "eliminating conditions specifying requirements and prohibitions included in the EAR from licenses because the EAR's conditions and requirements are applicable to all exports, reexports and transfers (in-country) of items subject to the EAR as a matter of law; inclusion of such conditions on licenses is redundant."

> "As the new language will eliminate the need to include license conditions specifying requirements and prohibitions included in the EAR, BIS expects that licenses issued after December 8, 2014 will generally have a smaller number of conditions as compared to licenses issued before December 8, 2014," BIS added.

"The new language will allow BIS and its interagency partners to process license applications more efficiently, thereby facilitating business activities. License applicants should note that the new language clarifies that BIS's licenses authorize the transaction(s) described in the license application and any letters of explanation. Therefore, license applications submitted with specific and detailed information will be processed more efficiently than those submitting general or incomplete information," the FAQ said.

Pulungan's Quest for Compensation in Export Case Dismissed

The long-running legal battle of Doli Syarief Pulungan ended with a whimper Dec. 9. One day before a scheduled status hearing on his case, a federal district court judge dismissed his suit for a certificate of innocence that would permit him to receive compensation from the government for his later-overturned conviction for exporting riflescopes to Indonesia (see **WTTL**, Sept. 29, page 1).

> Pulungan's legal fight has spawned several precedent-setting court rulings on the enforcement of the Arms Export Control Act (AECA) and the meaning of "willfulness" in criminal prosecutions. The Indonesian was seeking compensation through the U.S. Court of Claims but needed the innocence certificate as a prerequisite for getting any money.

Madison, Wis., U.S. District Court Judge Barbara Crabb first granted a motion by Pulungan's attorney Gregory Everts to withdraw as counsel and then dismissed the case. In her decision, she cited Pulungan's failure to prosecute his suit. "I directed plaintiff to advise the court no later than December 5, 2014, whether he had any objection to his counsel's motion to withdraw from representation of plaintiff. I told him also to advise the court how he intended to prosecute this case if his counsel was relieved of any obligation to represent him," Crabb wrote.

"Plaintiff has not responded to the order. From his failure to respond, I conclude that he does not object to his counsel's request for leave to withdraw from representation of him. I conclude as well that he does not intend to pursue a Certificate of Innocence," she added. A previous hearing in the case had been postponed because Pulungan could not get a visa to travel from Indonesia to the U.S. "Instead, plaintiff's counsel, still operating without any prospect of anything more than token remuneration for his time and costs, agreed with the government to travel to Indonesia to take plaintiff's deposition by video," Crabb wrote. Everts and Justice attorneys were in Indonesia Nov. 3-5 to hear

Pulungan's testimony, according to other court documents. In his Nov. 26 motion, Everts of Quarles & Brady in Madison cited irreconcilable differences with Pulungan. "Differences have arisen between Plaintiff and counsel regarding matters in this case. Counsel has sought to resolve these issues, without success. The differences are irreconcilable and create a conflict of interest between counsel and client. Plaintiff's engagement letter with Quarles & Brady provides additional grounds for counsel's withdrawal," he wrote.

U.S., EU Trade Ministers Prepare to Restart TTIP Negotiations

As they began a "fresh start" toward a Transatlantic Trade and Investment Partnership (TTIP), the U.S. and European Union (EU) trade officials smiled for the cameras, but revealed different levels of candor. After meeting in Washington Dec. 8 with USTR Michael Froman, EU Trade Commissioner Cecilia Malmström said "now is when the real negotiations start," while Froman claimed they weren't "reconfiguring negotiations." The oft-repeated use of the term "fresh start" by trade officials over the last months has raised questions about what that means (see **WTTL**, Nov. 24, page 3).

> "My predecessor and Mike have done a lot, the last year and a little bit more, to put everything on the table, but now is when the real negotiations start, and that's where we felt the urge to take a political stock on where we are, so that we could you know, give to do lists to our team and to agree on how to move forward on the political. So all this is absolutely a fresh start," Malmström told reporters after the meeting.

Froman wouldn't admit it was more substance than process. "I don't think it's reconfiguring negotiations, I think it's an opportunity with this new commission in place," he said. "This gives us an opportunity, collectively on both sides of the table, to look anew at the outstanding issues and to figure out how best to take them forward," he added. The next round of talks is scheduled to take place in Brussels during the week of Feb. 2.

At a Women in International Trade event later that evening, Malmstrom added more about the morning meeting with Froman. "We had a very fruitful discussion today. It was not the formal negotiation; we went through everything that's on the table, looked at it, took stock, agreed and had some ideas on how to move on when the formal negotiations resume again at the beginning of next year," she said.

WTO Still Has Mixed Views on Indian Steel CVD Case

Indian trade officials are calling a mixed World Trade Organization (WTO) Appellate Body (AB) decision on a U.S. countervailing duty (CVD) order on hot-rolled steel from India a "significant victory." In a complicated decision, the AB Dec. 8 reversed some and upheld some of a previous dispute-settlement panel's findings on India's challenge to the CVD order on imports of certain hot rolled carbon steel flat products.

"It will definitely help the domestic manufacturers who had been suffering on account of inconsistent practices," said a statement from India's Ministry of Commerce and Industry Dec. 9. The Appellate Body recommended the U.S. bring its measures found to be inconsistent with its obligations under the WTO's Agreement on Subsidies and Counter-

vailing Measures (SCM Agreement) into conformity with that agreement. The AB actually upheld all but five of the panels findings. It reversed the panel's ruling that India's National Mineral Development Corporation (NMDC) is a public body, but upheld the finding that India provided subsidies through the grant of mining rights for iron ore and coal and other transfers of funds. It also reversed the panel's ruling against India's claim that Commerce's examination of new subsidy allegations in administrative reviews was inconsistent with the SCM (see **WTTL**, July 21, page 6).

> "On the aspect of determining an appropriate benchmark to determine benefit, it has now been clarified that investigating authorities cannot presumptively reject government-related prices as relevant benchmarks; in applying adverse inferences against non-cooperating parties, investigating authorities cannot arbitrarily choose to apply any inference, but instead account for all substantiated facts; and in selecting one fact over another in such cases, the finding is to be supported by reasoning and evaluation," an Indian ministry statement claimed.

The previous panel found in favor of India on a number of its claims, concluding that the U.S. acted inconsistently with various provisions under the SCM Agreement. That panel exercised judicial economy in connection with a small number of India's claims, and rejected India's remaining claims. It didn't agree with India's original challenge of U.S. legislation, as well as some Commerce determinations leading to the imposition of CVD duties. The USTR did not issue any public statement at press time.

Industry Takes Issue with BIS Recordkeeping Requirements

BIS asked for advice on changing recordkeeping requirements in the Export Administration Regulations (EAR) and industry was happy to oblige. In comments posted on the BIS website Dec. 8, companies like GE, Boeing and United Technologies (UTC) cited outdated documents or requirements for exports to countries that are not allowed and rules that don't reflect a modern digital world (see **WTTL**, Oct. 6, page 4). BIS officials say they will use the comments to draft revisions to the EAR and will give industry another chance to comment on any changes.

> Boeing suggested only records that document "essential information related to the export or reexport" should be kept. "As information is more digitized and centralized, the standard for recordkeeping should predominantly consist of the retention of essential information and data elements, *rather than the types of documentary media* (e.g. notes, correspondence, contracts," it wrote (its emphasis). Boeing also noted that integrated express carriers such as FedEx, DHL and UPS don't issue bills of lading but "instead generate package labels that are used as 'Shipment Lading Documents.'"

UTC recommended BIS make "distinctions in the recordkeeping requirements based on the nature of the transaction subject to the EAR. Export and reexport transactions that are not subject to authorization requirements, including based on the general prohibitions, should not warrant the same level of recordkeeping as transactions subject to a license or license exception," it wrote. GE said, "BIS should leave it to the exporter's discretion to decide whether to create records as a mechanism to meet the record retention requirements. Record creation just to meet recordkeeping requirements may be

a greater burden." It also recommended removing Office of Foreign Assets Control license requirements for exports to Libya, which "seems to be an outdated requirement."

Use of License Exception STA Has "Flattened," Wolf Reports

After growing steadily and exponentially during most of 2014, the use of License Exception Strategic Trade Authorization (STA) has "actually flattened out a little bit," BIS Assistant Secretary Kevin Wolf told RAPTAC Dec. 9. While he admitted he didn't know why STA use had stopped growing, he cited several potential reasons raised by exporters, including the claim that many of them are not familiar with the new rules.

> Wolf reported that Japan and the United Kingdom are the two top destinations for exports using STA. Exports to Japan "are virtually all STA-eligible for 600-series items, given domestic export restrictions in place from Japan," he said.

One explanation that BIS has heard from some exporters involves those who export a significant mix of STA and non-STA-eligible items. For them, "the compliance burden associated with trying to create a license exception structure is greater that just getting a license for everything," Wolf said. "That's fine. That's what we expected," he added.

Other firms that export aircraft goods that have already shifted to the Commerce Control List (CCL) from the U.S. Munitions List (USML) and also electronics are waiting for the electronics transfer to become effective Dec. 30, he noted. By the end of 2015, the usage rate for STA for those that have a mix of such products will grow, Wolf predicted. Other excuses that have been cited by exporters for not using STA include trouble getting signed certificates from end-users, the need to train customers on the new rules, and separate recordkeeping requirements.

Export Reforms Cutting Interagency Disputes, Wolf Says

The age-old pattern of interagency disputes over export control policies and licensing decisions has nearly been eliminated by export control reforms, contends BIS Assistant Secretary Kevin Wolf. The change has been seen in decisions involving commodity classifications for 600-series items transferred to the Commerce Control List (CCL) from the U.S. Munitions List (USML) and in commodity jurisdiction (CJ) requests to State, Wolf told RAPTAC Dec. 9. He attributed the shift to export control reforms and the publication of positive control lists that are less open to different interpretations.

> For the past year, BIS has been sharing commodity classification requests that come through the Commodity Classification Automated Tracking System (CCATS) with the Defense Technology Security Administration (DTSA). "With one-year's worth of data on CCATS that meet that category, i.e., 600-series overtly or potentially or something that was licensed under ITAR [International Traffic in Arms Regulations], there was the need for zero escalations in a year on any of these beyond the staff level," Wolf said.

BIS and DTSA staff "100% of the time came to the same conclusion," he said. He noted that there had been massive concern in industry over how companies and the government

would interpret 600-series requirements and the reclassification of transferred items. In light of that, the lack of interagency disagreement "was a rather significant accomplishment," Wolf said.

> Similar interagency peace is seen in CJ decisions. "It has been over a year since we have had to escalate one of these to the assistant secretary [level]," he said. The number escalated to the deputy assistant secretary level "is way down," he added. Under a White House order to speed up the CJs, a process was created to escalate disputes up the chain of command to the political level for resolution. Five years ago, assistant secretaries were being asked to settle 10 to 15 disputes a month, Wolf noted.

When disagreements have arisen about classifications or jurisdiction, they have often generated changes to regulations to clarify policies, Wolf said. This has been a goal of reforms to make decisions more transparent and open to public comment, he added.

Congress Adopts New Sanctions Against Russia, Syria

Congress ignored White House and industry objections to the enactment of new sanctions against Russia, enacting new legislation (S. 2828) Dec. 11 to impose sanctions on Russian entities, including arms exporter Rosoboronexport, and Russia's energy sector. The measure, passed by voice votes in both the House and Senate, puts into statute sanctions President Obama has previously imposed against Russia for its intervention in Ukraine and annexation of Crimea and parties that violate sanctions on Syria (see **WTTL**, Dec. 8, page 7). Even without the legislation, administration officials have been warning that new sanctions against Russia are possible.

> The bill says the president "shall" impose three or more listed sanctions on Rosoboronexport within 30 days of the bill's enactment and within 45 days on entities owned or controlled by Moscow or Russian nationals that transfer defense articles to Syria or assist, sponsor or provide financial, material, or technological support for transfer of those goods or services.

In addition, the measure says the president "may" impose three or more sanctions on any foreign person he determines "makes a significant investment in a special Russian crude oil project." That includes oil extraction in deepwater, shale and the Arctic. The bill, named Ukraine Freedom Support Act of 2014, authorizes BIS and OFAC to impose added licensing requirements or other restrictions on the export or reexport of items for use in the Russian energy sector, including equipment used for tertiary oil recovery.

Moreover, if the president determines that Gazprom is "withholding significant natural gas supplies from member countries of the North Atlantic Treaty Organization, or further withholds significant natural gas supplies from countries such as Ukraine, Georgia, or Moldova," the president shall, not later than 45 days after making that determination, impose the sanctions on Gazprom.

Among the sanctions the president may impose are barring Export-Import Bank financing, excluding from U.S. government procurement, prohibition of arms exports to sanctioned persons, prohibition on licensing of dual-use items, and prohibiting transfer of any property under U.S. jurisdiction or dealing in such property. BIS and OFAC also

may impose licensing requirements and restrictions on exports to Russia energy sector. The president can also restrict banking and financial transactions with sanctioned persons or prohibit investments in equity or debt for those persons.

> "We regret that Congress has legislated additional U.S. sanctions against Russia, which will impede the Administration's ability to calibrate sanctions as part of the U.S./EU effort to change Russia's conduct in Ukraine," said USA*Engage Vice President Richard Sawaya in a statement. "Adding more sanctions perforce will put U.S. businesses with operations and strategic investments in Russia across multiple sectors at further risk, whatever the outcome in Ukraine. We do note, however, the constructive changes in the bill as passed that do collectively preserve presidential flexibility in the sanctions area," he added.

Standard Chartered Gets Three More Years of Scrutiny

Citing new information about recent sanctions violations and less-than-perfect compliance with a previous settlement, Justice Dec. 9 extended a two-year deferred prosecution agreement (DPA) with Standard Chartered Bank (SCB) for three more years, requiring it to retain an independent compliance monitor who will "help to ensure SCB's implementation of an effective U.S. economic sanctions compliance program," the order said.

> As part of the DPA with Justice and N.Y. County in December 2012, the bank agreed to forfeit $227 million for illegally moving millions of dollars through the U.S. financial system on behalf of sanctioned Iranian, Sudanese, Libyan and Burmese entities from 2001 through 2007. N.Y. State bank regulators added an additional $300 million fine in August for the bank's failure to meet the conditions of a separate 2012 settlement it reached with the state (see **WTTL**, Sept. 1, page 3).

In the latest extension, Justice suggested there may be more charges for actions after the period of covered by the previous settlement. "The government has obtained, and continues to obtain, new information related to possible historical violations of U.S. sanctions laws and regulations," Justice noted. "SCB may have been unlawfully processing U.S. dollar transactions for corporate and individual customers with possible ties to U.S sanctioned countries after 2007," it added.

Justice conceded that SCB has taken steps over the past two years to comply with the requirements of the DPA. "Nevertheless, SCB's U.S. economic sanctions compliance program has not yet reached the standard required by the DPA," it said.

These positive steps included forming a special board committee; implementing additional and more rigorous U.S. sanctions policies and procedures; hiring new senior leadership and staff in its legal and financial crime compliance functions; certifying that it has trained relevant employees on complying with U.S. economic sanctions laws and regulations; and recently implementing additional measures to block payment instructions from countries subject to U.S. laws and regulations, Justice noted.

SCB "will work closely with the authorities to make additional substantial improvements to its US economic sanctions programme to reach the standard required by the DPAs," a

company statement said. "The agreement also indicates that the Group is co-operating with an ongoing U.S. sanctions-related investigation, but that additional time is needed to complete the investigation and determine whether any violations have occurred. The Group remains committed to full cooperation with the authorities during this investigation, alongside an extensive programme of compliance improvements," it added.

Congress Opens Way for Sanctions on Venezuelan Officials

In the rush to complete legislation before the end of their lame-duck session, the House and Senate approved legislation (S. 2142) that would authorize the president to impose sanctions on any current or former Venezuelan government official responsible for human rights abuse or suppressing freedom of expression. The measure gives the president the power to block the property and interests of such persons and deny them visas to visit the U.S. The bill was sent to the president, who is expected to sign it.

> The bill focuses on human rights abuse directed at persons "associated with the anti-government protests in Venezuela that began on February 4, 2014." It also is aimed at those who "ordered or otherwise directed the arrest or prosecution of a person in Venezuela primarily because of the person's legitimate exercise of freedom of expression or assembly." The sanctions could also hit anyone who assists, sponsors or provides "significant financial, material, or technological support for, or goods or services" to support these abuses.

Any person that violates rules implementing a blocking order would be subject to penalties under the International Emergency Economic Powers Act. A blocking order on an individual will not impose sanctions on the importation of goods. The president would have authority to waive the sanctions if he finds it in the national interest but would have to inform Congress of the justification for the waiver.

"The people of Venezuela, Mr. Speaker, have been crying out for help. They have been begging the United States and all responsible nations to help protect them against the tyranny and brutality under the Maduro regime, the puppets of the oppressive Castro regime in Cuba," said Rep. Ileana Ros-Lehtinen (R-Fla.) during House debate on the measure Dec. 10. "The human rights situation in Venezuela has actually gotten worse under Maduro since the death of that other Castro sycophant, Hugo Chavez," she added. The Senate passed the bill Dec. 8.

Justice Avoids Charging Export Violations in Technical Data Case

For at least the second time in recent months, Justice has chosen not to charge an export control violation for the attempted export of controlled technical data, opting instead to prosecute on the lesser charge of interstate transportation of stolen property. Yu Long, a Chinese native who is a lawful permanent resident of the U.S., was arrested Nov. 7 on a criminal complaint as he prepared to board a plane for China carrying documents allegedly stolen from two firms that were working on the Air Force Metals Affordability Initiative (MAI). The charges were unsealed Dec. 9. In July, the government charged Mozaffar Khazaee with stealing tech-nical data related to the F-35 Joint Strike Fighter and attempting to take them to Iran (see **WTTL**, July 21, page 5). In both cases, the

documents were labeled as subject to export controls. Trade observers have raised questions about why Justice has not charged export control violations in these two cases, noting that it has long been Justice policy to allege the most serious criminal violation based on evidence available. In this instance, an export control violation would bring much more serious penalties than interstate transportation of stolen products.

> One source suggested the decision stems from doubts about how to seek criminal charges in cases that might involve products that are undergoing jurisdiction changes from State to Commerce. He also noted that the FBI and Homeland Security Investigations no longer have liaison officers based in the Directorate of Defense Trade Controls Compliance office. The officers assigned that duty left about a month ago, he noted.

According to an affidavit filed by FBI Special Agent Timothy Wayne Clifton II with the criminal complaint in the Connecticut U.S. District Court in Bridgeport, Yu worked for a company, identified in court papers as "Company A," which was participating in the MAI. Company A was Pratt & Whitney, according to a company source. Another MAI participant was only identified as Company B. When he was arrested at Newark Airport heading to China, he was found to have in his possession copies of documents from the MAI from both Company A and Company B.

Started in 1999 and run at Wright-Patterson Air Force Base, MAI is a consortium of 16 original equipment manufacturers, component manufacturers, and metals producers that have worked together to reduce metal costs for defense equipment and to share technical data under strict non-disclosure agreements. "Since the MAI's 1999 inception, the government/industry consortium has worked to reduce the costs and improve the performance of metals and alloys, challenging conventional thinking and generating overall savings totaling more than $500 million," according to a Wright-Patterson explanation. Among firms participating in addition to Pratt & Whitney are GE, Northrop Grumman, Lockheed Martin, Allegheny Technology, Howmet Castings and Carpenter.

Documents taken from Yu dealt with advanced titanium alloy microstructure and mechanical property modeling, according to Clifton's affidavit. Some were labeled with a Consortium Restriction statement and others were labeled EXPORT CONTROLLED or ITAR REGULATIONS, he reported. The ITAR warning said, "WARNING, This document contains technical data whose export is restricted by the Arms Export Control Act...or the Export Administration Act....Violations of these export laws are subject to severe criminal penalties."

A spokesman for the U.S. Attorney in Connecticut declined to say why an export violation was not charged. "We do not comment on reasons for charges," he said. Other charges, however, might be made if an indictment is brought against Yu, he noted.

* * * Briefs * * *

SENATE: Sen. Sherrod Brown (D-Ohio) will be ranking member for Senate Banking Committee in next Congress. Committee has jurisdiction over BIS and Export-Import Bank.

BUDGET: BIS Under Secretary Eric Hirschhorn expressed disappointment at BIS appropriation at meeting of President's Export Council Subcommittee on Export Administration (PECSEA) Dec. 10. "I understand from late last night, that we are getting $102.5 million in the appropriation for the fiscal year that started Oct. 1," he said, referring to funds appropriated for BIS in

Fiscal 2015 Continuing Budget Resolution that House passed Dec.11 while Senate continues its consideration at press time. "We're going to need time and money to do things like the single portal, and I'm quite dubious that the level we've been given is going to allow us to make a lot of progress in the fiscal year. I'm hopeful that we will make some progress, but to be perfectly frank, we were hoping for quite a bit more than this," Hirschhorn told PECSEA.

CHINA: Ahead of U.S.-China Joint Commission on Commerce and Trade (JCCT) in Chicago Dec. 16-18, USTR Michael Froman and Commerce Secretary Penny Pritzker told reporters JCCT "isn't just a meeting, it's a process." Event will include "strategic conversations" with private sector on foreign direct investment, travel and tourism, and excess capacity, Pritzker said Dec. 12. Topics also on agenda include market access, protection of intellectual property, best practices in regulatory enforcement, agriculture, services, manufacturing and China's application of its anti-monopoly law, Froman said.

EXPORT ENFORCEMENT: Sihai Cheng, aka Chun Hai Cheng and Alex Cheng, was extradited from UK to U.S. Dec. 5 to face charges of conspiring to export MKS pressure transducers to Iran between November 2005 and 2012. He appeared in Boston U.S. District Court Dec. 8 and remains in custody. Indictment of Cheng and Seyed Abolfazl Shahab Jamili, along with two Iranian companies, Nicaro Eng. Co., Ltd. and Eyvaz Technic Manufacturing Company, was unsealed in April (see **WTTL**, April 14, page 8).

FCPA: Dallas Airmotive Inc., aircraft engine maintenance, repair and service provider in Grapevine, Texas, agreed Dec. 10 to pay $14 million criminal penalty to settle FCPA charges that it bribed government officials in Argentina, Brazil and Peru to win contracts. Third-party agents and employees involved are no longer with company, and "Dallas Airmotive do Brasil and our South American sales team are operating under new leadership," company spokesperson said in email to WTTL. "The DOJ has acknowledged our substantial cooperation with its investigation. The DOJ has also recognized the improvements we have made to date in our compliance and control programs, and our commitment to further enhancements," spokesperson added.

ENCRYPTION: PECSEA's new subcommittee on data transmission jumped on cloud bandwagon Dec. 10. Subcommittee chair Michelle Schulz of Gardere Wynne Sewell told PECSEA group is looking at possible license exception to "would allow encrypted information to be placed on the cloud legally without having licensing issues." State's Defense Trade Advisory Group recommended similar exclusion in May 2013 (see **WTTL**, May 13, 2013, page 1). BIS officials have also said that encryption is larger than just their agency or State and involves other agencies.

SEYCHELLES: WTO General Council Dec. 10 approved Seychelles accession terms. Island nation has until June 1, 2015, to ratify deal. Country originally applied for WTO membership in 1995 and Working Party concluded negotiations in October 2014.

AES: Automated Export System (AES) will move to ACE Single Window spring of 2015, Omari Wooten, senior advisor in Census Foreign Trade Division, told RAPTAC Dec. 9. Once system has moved, exporters will be able to obtain all data on past exports through ACE without having to request it from Census with only one-year available. In summer 2015, Census will test AES Direct on ACE system, he said. Full transfer of AES expected spring 2016.

CENSUS: Joe Cortez, trade ombudsman in foreign trade division, retiring at end of December.

ELECTRONICS: State and Commerce will publish clarifications and revisions to changes to USML Category XI (electronics) and 600-series before transition of those items from USML to CCL goes into effect Dec. 30, Sarah Heidema, chief of DDTC's regulatory and multilateral affairs division, told Practicing Law Institute Dec. 11 (see **WTTL**, Nov. 17, page 1). Rule will include clarification of controls on monolithic microwave integrated circuits (MMICs).