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Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301.570.4544 Fax: 301.570.4545

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Baucus Retirement Will Leave Gap in Democrat's Trade Lineup

Senate Finance Committee Chairman Max Baucus' (D-Mont.) April 23 announcement that he won't seek reelection in 2014 will mean the departure from the Senate of one of the few Democrats who could be counted on reliably to support trade agreements and trade legislation. While always protective of the ranching and lumber industries in Montana, Baucus has helped usher free trade agreements (FTAs) and trade bills through the Senate, often in the face of opposition from his own party. At the same time, he has not shied from criticizing both Democrat and Republican administrations for their trade policies.

> Baucus said he will spend the rest of his term working on issues of closest concern to him. "I'm not turning out to pasture because there is important work left to do, and I intend to spend the year and a half getting it done," he said in statement. "At a national level, I will continue to work on simplifying and improving the tax code, tackling the nation's debt, pushing important job-creating trade agreements through the Senate, and implementing and expanding affordable health care for more Americans," he said.

At an April 24 hearing on the Trans-Pacific Partnership (TPP), Baucus also put renewal of fast-track negotiating authority on his agenda before retirement. "I am also looking forward to working with all of you to renew Trade Promotion Authority and Trade Adjustment Assistance this year," he said. "I would like to see a bipartisan TPA bill introduced by June," he added.

Although control of the Senate in 2015 is much more uncertain now, speculation over who will succeed Baucus as Finance chairman has already started. If Democrats retain a majority in two years, Sens. Ron Wyden (D-Ore.) and Charles Schumer (D-N.Y.) could vie for the post. Ranking Member Orrin Hatch (R-Utah) could return to the chair if Republicans gain control, but other GOPers who might seek the job include Sens. Mike Crapo (R-Idaho), Pat Roberts (R-Kan.) and Mike Enzi (R-Wyo.).

BIS Imposes $2.8 Million Fine for Transfers to Syria

The dominos of a two-year investigation into the export of Internet monitoring equipment to Syria are beginning to fall with the imposition of a $2.8 million civil fine April 24 on

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the United Arab Emirates (UAE) firm that facilitated the exports. Under a settlement agreement with the Bureau of Industry and Security (BIS), Computerlinks FZCO of Dubai, will pay the fine for its role in the transfers in 2010 and 2011 of equipment made by Blue Coat Systems, Inc., of Sunnyvale, Calif. In December 2011, BIS placed the actual exporters of the equipment in the UAE, Infotec and Waseem Jawad, on its Entity List (see **WTTL**, Jan. 2, 2012, page 4).

> While not mentioned in the BIS announcement of the settlement, it appears the investigation is continuing and additional legal action is still possible for officials of Computerlinks and Infotec. In the agreement, BIS noted that Computerlinks' managing director and financial manager exchanged emails with Infotec concerning past due balances, "which eventually were paid via a wire transfer from Syria."

Computerlinks was a distributor for Blue Coat, which terminated that relationship in 2011. "We commend the BIS for pursuing and penalizing the third parties responsible for the unlawful transfer of our products to Syria without our knowledge," said a statement by David Murphy, Blue Coat's COO and president. "We take care to ensure that our products are sold in accordance with laws that prohibit the sale of our technology for certain end uses and to certain destinations and end users. We have cooperated extensively with the U.S. government and will continue to support its ongoing investigation into the unlawful diversion of our products as required," he added.

Computerlinks, which neither admitted nor denied the BIS charges, allegedly cooperated with Infotec in obtaining the monitoring equipment, which could not be exported to Syria due to the U.S. embargo on the country. "During this period, Computerlinks FZCO was asked to provide, and provided, support on or about April 6, 2011, designed to help the end user of the devices monitor the Web activities of individual Internet users from navigating around censorship controls. Computerlinks knew that the end user was in Syria," BIS charged. Computerlinks did not respond to a request for comment on the settlement.

House Hearing Skims Surface of Export Control Reforms

The first chance members of the House Foreign Affairs Committee had to question the Obama administration officials on the final rules implementing the administration's export control reform initiative showed that most lawmakers have little understanding of the mechanics of export licensing and enforcement. The committee's April 24 hearing came just a week after the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) issued final rules to implement Phase 1 of the reforms and complete the first transfers of items from the U.S. Munitions List (USML) to the Commerce Control List (CCL) (see **WTTL**, April 22, page 1).

> Committee Chairman Ed Royce (R-Calif.) acknowledged that the reforms aim to "better tailor U.S. export controls to our national security interests." Another goal, he said, is to help industry "shed needless bureaucracy and compete in a global marketplace, strengthening our economy."

The reforms "will affect a broad swath of American business, including the defense industry, aerospace, the commercial satellite and space industry, electronics, semiconductors, information and communications technology. The goal is a more transparent and

efficient system," he said. "However, some caveats are in order," Royce cautioned. "The primary beneficiaries of the current reforms are expected to be small and medium sized enterprises. But they and others in industry initially may struggle to adapt to the intricacies of a new regulatory regime," he said in his opening statement.

> "Likewise, it is uncertain whether Executive Branch agencies themselves are fully prepared for these changes, both with respect to licensing and enforcement functions. Effective outreach to business will be critical. Missteps in implementation are inevitable. The Committee will be watching, and lend a hand when we can," the California Republican said. Royce also said it "is long past due to reassess the status of the lapsed Export Administration Act" (EAA).

Concern about the impact of reforms on U.S. jobs was raised by Rep. Brad Sherman (D-Calif.), who raised similar questions while he chaired the committee's nonproliferation subcommittee. Sherman quizzed administration witnesses on whether making it easier for U.S. industry to transfer technology and blueprints abroad would lead to more firms moving offshore. He placed in the record a letter from the International Association of Machinists and Aerospace Workers that called for a comprehensive review of how the export control reforms would affect U.S. employment and suppliers in the aerospace industry.

"We continue to warn that, in some cases, the less stringent controls provided under the CCL could lead to further transfers of technology or production from the U.S. to another country," said the union's March 19 letter to Royce and Ranking Member Eliot Engel (D-N.Y). "Claims that moving products to the CCL will lead to more exports and job creation should be carefully scrutinized," the letter said.

The administration officials testifying at the hearing were BIS Assistant Secretary Kevin Wolf, Acting Assistant Secretary of State Thomas Kelly and James Hursch, director of the Defense Technology Security Administration. While the administration isn't interested in renewing the EAA – planning instead to replace it with a new law creating a single licensing agency and export control list – Wolf said legislation is needed to renew BIS' non-enforcement authorities, which expire in 2013. "We believe this authorization, in addition to the confidentiality protections of Section 12 (c) of the Export Administration Act, should be made permanent," he testified.

In WTO Race: Then There Were Two

World Trade Organization (WTO) members have trimmed off three more candidates in the selection process for the organization's next director-general, leaving just two in the race: Herminio Blanco of Mexico and Roberto Carvalho de Azevedo of Brazil. Tim Groser of New Zealand, Taeho Bark of South Korea and Mari Elka Pangestu of Indonesia withdrew from the contest, it was announced April 26 at a WTO General Council meeting. The results of talks were "clear and unambiguous," a trade official told WTTL citing Shahid Bashir, the chairman of the WTO General Council.

One country, believed to be Kenya, abstained from naming preferences in talks to reach consensus on the next director-general. Kenya and Ghana had complained about the selection process during the previous round of eliminations (see **WTTL**, April 15,

page 6). While Kenya has not formally withdrawn its candidate, Ambassador Amina Mohamed, from the process, Kenyan President Uhuru Kenyatta has nominated her to be the country's next secretary of foreign affairs, a press release said April 25.

> Blanco's support is "worldwide," Fernando de Mateo, Mexico's WTO ambassador, told reporters after the meeting. His support crosses the three levels of development: least developed countries, developing and developed countries, Mateo said. Bali would be Blanco's first order of business, followed by concluding the Doha Round and then making the WTO better able to cope with the needs of the 21st century, he said.

The selection process is not a battle between Brazil and Mexico, Mateo said in response to a reporter's question on whether the choice is between Mexico's vision of more liberal trade and Brazil's more protectionist view. Each of the candidates has his own philosophy, Mateo said. In a March CNN interview, Blanco said he was the most experienced negotiator in the world, having been head of Mexico's NAFTA negotiations. Mexico exports $1 billion in trade every day and has had the experiences of both the developed and developing world, he said. He also noted his work in the private sector for more than a decade.

Appointment of the WTO's four deputy directors-general may be in play as leverage in lobbying efforts for the next DG, one trade official suggested. There has been strong past support for maintaining geographical diversity of the officials in those positions, he said. Lamy posted job vacancy notifications for these posts. It's not clear what the process will be for the incoming director-general, the official said. In the past, the slots have been used as bargaining chips to garner support, he said.

The third round of consultations will start May 1 and will run through May 7, said Bashir, who is Pakistan's ambassador to the WTO, according to his prepared remarks. The results of that process will be circulated starting May 7, he said.

TPP Trade Ministers Agree to Let Japan Join Talks

Just a week after the U.S. gave its approval to Japan entering the Trans-Pacific Partnership (TPP) negotiation, the other ten negotiating partners followed suit. Meeting on the margins of the Asia-Pacific Economic Cooperation (APEC) trade ministers meeting in Indonesia April 20, the 11 TPP ministers "confirmed that each TPP member has concluded bilateral consultations with Japan regarding Japan's interest in joining the TPP," the ministers said in a joint statement (see **WTTL**, April 15, page 4).

> "Ministers agreed by consensus to finalize with Japan the process for entry in a manner that allows the negotiations to continue expeditiously toward conclusion – as was done with other members that joined the negotiations in progress. Japan can then join the TPP negotiations upon completion of current members' respective domestic processes," the statement added.

It is not clear yet whether that process will be completed in time for Japan to participate in the next round of TPP talks in Lima, Peru, May 15-24. The minister directed negotiators to complete their work on some chapters and "to accelerate progress on

more challenging issues that remain including intellectual property, competition/State-owned enterprises, and environment, as well as on the market access packages for goods, services/investment, and government procurement." They said they are still aiming for a "high-quality, ambitious, and comprehensive agreement this year."

> The announcement by the TPP ministers drew some of the expected criticism. "In automotive, given the huge trade deficit between our two countries and Japan's history of the most closed auto market in the world, and the negative economic consequences of that history, the onus is precisely on Japan to change before receiving any benefit through TPP negotiations," noted House Ways and Means Committee Ranking Member Sander Levin (D-Mich.), long a critic of talks with Japan.

Acting U.S. Trade Representative (USTR) Demetrios Marantis moved quickly after the TPP meeting to send Congress notice April 24 of the inclusion of Japan in the talks. The notification triggers a 90-day consultation period with Congress and the public on U.S. negotiating objectives with respect to Japan. "The participation of Japan, a major U.S. trading partner as well as close ally, further increases the economic significance of a TPP Agreement. With Japan's entry, TPP countries would account for nearly 40 percent of global GDP and about one-third of all world trade," Marantis wrote in the letter to Congress.

Ralph Lauren Rewarded for Cooperating on FCPA Investigation

Sometimes good deeds do indeed go unpunished. Ralph Lauren Corporation (RLC), the N.Y. apparel company, agreed April 22 to pay a $882,000 penalty and more than $700,000 disgorgement as part of non-prosecution agreements (NPAs) with the Securities and Exchange Commission (SEC) and Justice on charges of violating the Foreign Corrupt Practices Act (FCPA) by bribing Argentine government officials to obtain improper customs clearance of merchandise. This is the first NPA that the SEC has entered involving FCPA misconduct, the agency noted.

> From 2005 through 2009, "RLC Argentina's General Manager and others who worked at RLC Argentina approved bribe payments to be made to Argentine customs officials through Customs Broker A to assist in improperly obtaining paperwork necessary for RLC products to clear customs, to permit clearance of items without the necessary paperwork, to permit the clearance of prohibited goods, and to avoid inspection of products by Argentine customs officials," the SEC NPA said.

"The NPA in this matter makes clear that we will confer substantial and tangible benefits on companies that respond appropriately to violations and cooperate fully with the SEC," said George S. Canellos, acting director of SEC's Enforcement Division in a statement. "When they found a problem, Ralph Lauren Corporation did the right thing by immediately reporting it to the SEC and providing exceptional assistance in our investigation," he said. SEC said Ralph Lauren has ceased operations in Argentina.

Ralph Lauren said it fully cooperated in the investigations and conducted a worldwide risk assessment. "We also enhanced our compliance program and training and severed relationships with all responsible vendors. There was no evidence that the improper

activity in Argentina was known or authorized by anyone outside of Argentina or that similar practices were occurring at other foreign operations," the company said in its own statement. "The conduct at the Argentina subsidiary was wholly inconsistent with the culture of compliance and integrity that we have worked diligently to establish and, as our reaction demonstrates, such conduct is not and will not be tolerated at Ralph Lauren Corporation," RLC added.

> Separately, Argentina's tax and customs administration is investigating the parties in Argentina who may have been involved in the case. The agency has sent a letter to the U.S. ambassador in Argentina, Vilma Martinez, asking her to have the SEC cooperate in its investigation and to provide the evidence of wrongdoing by those in Argentina.

Court Refuses to Block NAFTA Trucking Pilot Program

A pilot program under NAFTA for Mexican truckers to operate in the U.S. beyond the border has withstood its latest legal challenge. U.S. Court of Appeals for the D.C. Circuit refused to review the program in an April 19 decision in a suit brought by Owner-Operator Independent Drivers Association and the International Brotherhood of Teamsters. "The Drivers Association advances seven distinct arguments that the pilot program violates various statutes and regulations. We find none to be persuasive," Circuit Judge Brett Kavanaugh wrote for the court.

> "U.S. law permits Mexican truckers to use their Mexican commercial drivers' licenses and to rely on those licenses as proof of medical fitness to drive. And the pilot program's drug-testing rules are valid under U.S. law. The pilot program therefore does not substitute compliance with Mexican law for compliance with U.S. law; as a result, this catchall argument by the Drivers Association is unavailing," Kavanaugh noted.

The Teamsters raised six more legal and environmental arguments, which were also rejected. "The Teamsters acknowledge that Mexico has granted U.S.-domiciled trucks *legal* authority to operate in Mexico, but complain that, as a practical matter, it is very difficult for American trucks to operate in Mexico. Because the statute requires Mexico to grant only legal authority to American trucks, the Teamsters' argument fails," he added. The court agreed, however, that the two organizations have legal standing to contest the rule (see **WTTL**, April 8, page 8).

Bill Would Give ITC Bigger Role in Tariff Measures

Ever since the first Congress passed the first tariff bill as its first order of business in 1789, Congress has struggled to pass tariff measures under various political pressures, but it has always closely guarded its prerogative to control tariff rates. The nicknames given to some legislation, such as the Tariff of Abomination and the Mongrel Tariff, reflect the controversy that surrounds tariff legislation, and the Smoot-Hawley Tariff has generated a reputation of its own. Legislation (S. 790) reintroduced April 23 would allow Congress to duck the controversy by giving the International Trade Commission (ITC) a larger role in developing miscellaneous tariff bills (MTBs). Action on an MTB has been stymied in Congress over the last three years because

Republicans have claimed such bills are "earmarks," which they are opposing on a blanket basis (see **WTTL**, Nov. 26, page 3). The Duty Suspension Process Act, introduced by Sens. Rob Portman (R-Ohio) and Claire McCaskill (D-Mo.), is the same as a measure they introduced in the last Congress and is aimed, they say, at simplifying the way manufacturers can seek duty suspensions or reductions that are normally included in a biennial MTB. "Seeking tariff relief shouldn't boil down to the relationship you have with a lawmaker—it should be based on the merits—and that's exactly what this bill aims to accomplish," McCaskill said in the press release announcing the measure.

> To avoid having the fingerprints of any lawmaker on a proposed suspension bill, the proposed measure would shift the process to the ITC, which now reviews tariff bills after they are introduced. Firms requesting a new or renewed suspension would petition the ITC, which would review the request, receive public comment and hold a hearing. The ITC would send Congress draft legislation comprising all the bills it has deemed appropriate for consideration by committees of jurisdiction.

"The bill authorizes the new process to be used for three rounds (2013, 2015, and 2018). While it requires a comprehensive review by the ITC of all possible eligible items in 2015 and 2018, an exception is included for the 2013 round so that it can be completed under a truncated timeline." the release said.

Judge Cuts Court Costs Awarded in Magnesium Case

While continuing to chastise Tianjin Magnesium International Co., Ltd. (TMI) and its lawyers at Riggle & Craven for "misconduct," Court of International Trade (CIT) Senior Judge Nicholas Tsoucalas agreed April 23 to cut the costs and fees they will have to pay to Commerce and U.S. Magnesium, LLC (USM) for bringing a suit that Tsoucalas had thrown out in November for being frivolous (see **WTTL**, Dec. 10, page 2). In adjusting the amount TMI and Riggle & Craven are jointly liable to pay, the judge said he applied what is known as the "Laffey Matrix" to determine fees for lawyers in the Washington, D.C., area (slip. op. 13-53).

> In its request for costs and fees, Commerce had already adjusted the amount to apply the matrix and only asked for an award of $8,120 in fees and $182.20 in costs. Tsoucalas awarded the department that full amount.

USM asked for reimbursement of $216,020.50 in fees and $1,551.93 in costs based on bills from its lawyers at King & Spalding and consultants at Economic Consulting Services. The actually billed legal fees "range from $150 per hour for a paralegal's work to $645 per hour for a partner's legal work," the court ruling noted. Tsoucalas, however, agreed to award USM a combined $34,042.72 in fees and costs.

"Although TMI does not object to the fee rates Commerce and USM applied in their bills of costs, the court declines to award fees based on the rates counsel for USM actually billed," he wrote. "Other courts have determined the Laffey Matrix to be a reasonable manner of assessing attorneys' fees for complex federal litigation in the Washington, D.C. area," he explained. "TMI's repeated efforts — through counsel — to obstruct Commerce's exercise of its statutory duties, to delay proceedings through frivolous argumentation and filings, and to mislead the court on material matters of

fact and law constitute an intolerable level of vexatiousness and bad faith." Tsoucalas declared. "Given TMI's persistent misconduct before this Court and before Commerce, an award of fees and costs related to its problematic filings in this case is warranted and necessary to deter additional costly distractions in future trade proceedings," he wrote.

> TMI has already appealed Tsoucalas's original ruling to the Court of Appeals for the Federal Circuit (CAFC). In an April 23 brief asking for more time to file its brief in the case, attorneys at Riggle & Craven noted the new CIT order and said it needed time to review the decision. "Additional time is necessary to consider the new order and its implications for this appeal. For example, it may be necessary for another appeal to be filed on the basis of that order, and if that occurs, it may be appropriate for this appeal to be consolidated with that appeal," they told the CAFC.

Universities Want Visa Process to Speed Deemed Exports

While members of the university community say they are generally pleased with new export control rules, especially changes to License Exception TSU, they still want the deemed export licensing process streamlined by more stringent visa screening. The Council on Governmental Relations (COGR), an association of research universities, was "very pleased to see that BIS did incorporate the ITAR [International Traffic in Arms Regulations] university bonafide employee exception into the EAR in the final rule," Robert Hardy, COGR's director, contracts and intellectual property, told the BIS Emerging Technology and Research Advisory Committee (ETRAC) April 25.

> "We understand that Commerce's hands may be somewhat tied with regard to certain end-use restrictions that are not part of that exception in the ITAR. Maybe BIS could consider adopting an expedited process licensing for university employees in these areas who otherwise would be covered by bonafide license exception," Hardy added.

University organizations and advisory groups have previously recommended moving some of their background checking and certification effort that are now part of deemed export license reviews to the original visa intake process. "Some of these issues really should be dealt on the front-end with the visa and immigration process," Tobin Smith, VP for policy, Association of American Universities (AAU), told ETRAC. "We have the Visa Mantis process, and we believe that that is the mechanism that should be used, and that would allow us to not to have to do additional work on the export control front," Smith said. "We should be making sure that if there are people we don't want to do research, to study, that we have concerns about, we should keep those folks out at the front end," he continued (see **WTTL**, Oct. 20, 2008, page 3).

ETRAC chair Tom Tierney added some institutional memory. "The committee did recommend at one point that there be an examination of whether we could use Visa Mantis as a way to control the dissemination of technology. The firepower coming from the Department of State on that recommendation was amazing; they did not like that, they felt it was probing too deeply," he recalled. "The arguments that we made were, if a person is of concern coming in, and from an exporting technology perspective,

they should be a concern coming into the country flat out. You can't con-trol where that person is and what they have access to on a daily basis," Tierney noted.

> "On the whole, the reform initiative does not necessarily address some of these conundrums we face with deemed exports," Hardy noted. "We're very concerned about possible changes to the definition of fundamental research or technical data, as well as possible changes to the use technology 'and/or' distinction," he added. "We believe preservation of academic freedom, and the open university research environment is at least as high a national security priority for this country as export controls, and we need to continue to try to maintain the appropriate balance," Hardy noted.

APEC Trade Ministers Back Quick ITA Deal

Trade ministers from Asia-Pacific region have called for swift conclusion of WTO talks on expanding the Information Technology Agreement (ITA) but were silent on negotiations on a plurilateral accord on services. At the meeting of "ministers responsible for trade" from the 21 members of the Asia-Pacific Economic Cooperation (APEC) forum in Surabaya, Indonesia, April 21, the ministers also raised concerns about the lack of progress on reaching agreements that are supposed to be presented at the WTO ninth ministerial conference (MC9) in Bali in December.

> In a statement, the ministers called on ITA participants "to swiftly conclude negotiations to expand the product coverage of the WTO ITA by the middle of the year and seek expanded membership of the ITA."

The ministers' concerns about Bali mirror those raised by Deputy USTR Michael Punke in April (see **WTTL**, April 15, page 1). "There is broad convergence of views that the negotiation as it stands now is not on course to lead to a successful outcome at MC9 on 3-6 December 2013 in Bali," the ministerial statement said.

Reversal of CJ Advice Puts Firm at Commercial Disadvantage

Being conscientious and getting a commodity jurisdiction (CJ) ruling from State has put Lattice Materials, Inc., at a disadvantage to its U.S. and foreign competitors, Lattice engineer Mike Foster told the BIS Sensors and Instruments Technical Advisory Committee (SITAC) April 23. The latest advice it received from State's Directorate of Defense Trade Controls (DDTC), which said plano blanks used in thermal imaging devices are subject to the International Traffic in Arms Regulations (ITAR), was a reversal of CJ decisions the firm received twice before that the blanks are not military and classified as EAR99, Foster told the SITAC.

Because the CJ (No. 270-09) was confidential, other U.S. exporters continue to export the blanks without State licenses and foreign producers, including in Bulgaria, Russia and China, sell ITAR-free blanks in the EU, he noted. This has cost the firm thousands of dollars in lost sales, he said. Foster said Lattice wants the blanks returned to EAR99 status or placed in a new emerging technology Export Control Classification Number (ECCN) OC521. The CJ covers plano blanks made of germanium and

silicon and greater than 5" in diameter or greater than 3" in diameter and 1.5" in thickness. Foster said the blanks have no function or capability until after they are ground, polished and coated, usually to customer specifications.

> The CJ determination came "totally off the wall," he complained. DDTC gave no explanation for the reversal of its opinion. "We asked why and got no answer," he said. BIS Deputy Assistant Secretary Matthew Borman said foreign availability doesn't affect whether an item is placed on the U.S. Munitions List (USML), although BIS will raise the issue during consideration of CJs . He suggested that Lattice file a new CJ seeking reconsideration of the previous ruling.

SITAC also heard a plea for the decontrol of optical materials made of zinc selenide, zinc sulphide and fused silica, which are now controlled under ECCN 6C004, from Gary Wiese, an engineer with Lockheed Martin. These infrared material are available from many foreign sources, he said. Zinc selenide and zinc sulphide products are produced in Russia, Japan, Lithuania, Israel, Germany, China and Korea, while fused silica is sold by firms in Germany, Japan and China, Wiese told the SITAC. He said most data on infrared materials is decades old and out of date. A working group of engineers from several companies and professional groups has been formed to update information on the properties of these materials and their measurement and to develop standards for them, he reported.

Proposal on USML Category XII Behind Schedule

Because of the priority given to other proposals for transferring items from the U.S. Munitions List (USML) to the Commerce Control List (CCL), work on moving items now in USML Category XII (fire control, range finders and optical equipment) has fallen behind schedule, BIS Assistant Secretary Kevin Wolf told the agency's Sensors and Instruments Technical Advisory Committee (SITAC) April 23. BIS and State still aim to publish a proposal for the category, which includes focal plane arrays for thermal imaging cameras, this summer, he said.

> "I have not actually sat down and gone through the last draft from last March," Wolf conceded. Work on other categories "blew the schedule" for Category XII, he said.

He suggested that firms that make optical products look at a soon-to-be-published proposal on Category XV (satellites), which will include provisions dealing with optics in satellites. The Category XV proposal and a proposed new ECCN will also address concerns about the inadvertent control of items that are radiation hardened "where a company is making an item and they are not aware of anything they are doing for radiation tolerance or hardening purposes," he said. "We have text to address that," he added. "When you look at the new 9A515.d, let us know if you think we have addressed that properly without basically an incentive to people simply to not ask questions," Wolf said.

When the Category XII proposals are published, Wolf urged SITAC members to read the parameters for controls carefully. "We are trying to get to a technical description that controls those [items] that are used in military applications without just using

broad catchall design intent concepts," he said. "Make sure you read the parameters and then look at things used in normal commercial use and let us know how they do, in fact, meet those parameters and what those applications are instead of just saying it," he advised.

> Wolf also said a planned reproposal of changes for Category XI (electronics) will try to address comments that raised concerns about how Defense funding for the development of a product might result in it being on the USML. He noted the comments complained about the use of the term "predominant" to determine when Defense funding matters. "Some comments said predominant is impossible to define," he said. "The predominant concept creates chaos," he added.

"The concept is still in there because the thought is – in the categories we are describing what it is we want to control, but what we don't know about is what we don't know about – the way to have a presumptive catch on that is that which DoD considers significant enough to pay for and develop," Wolf said. The "hook" would be having Defense funding and development, he added.

"But in having that general philosophical approach to capturing the unknown until we say otherwise, we need to describe it in a way that is workable," he conceded. "That is why we are coming out again with a second proposal," he added.

Wolf also reported on the status of proposals for categories I, II and III, which cover firearms, guns and ammunition. Proposals for the three categories were scheduled for publication in December but were pulled back after the massacre in Newtown, Conn. "It's still on the agenda, but we are still waiting to see how the larger discussion of gun policy works out to see if what we are doing on I, II and III would be affected by any larger decisions," Wolf said.

* * * Briefs * * *

STEEL WIRE: Davis Wire Corp. of Irwindale, Calif., and Insteel Wire Products Company of Mount Airy, N.C., petitioned ITC and ITA April 23 to investigate alleged dumping of imports of prestressed concrete steel rail tie wire from China, Mexico and Thailand.

ZIMBABWE: OFAC April 24 issued general license authorizing all transactions involving two Zimbabwe banks -- Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe – except for transactions involving blocked parties.

BURMA: In speech in Rangoon April 26, Acting USTR Demetrios Marantis said U.S. and Burma have begun discussions on entering into Trade and Investment Framework Agreement (TIFA). "A TIFA would make sure that our countries engage regularly on trade and investment – identifying issues that are important to us both, looking for opportunities and solving problems," he said in his prepared remarks. "A TIFA would be an important step in normalizing our bilateral commercial relationship," he added. Week earlier, USTR's office called for public comments on granting Burma GSP status (see **WTTL**, April 22, page 9).