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End to High-Performance Computer Controls Urged

A Bureau of Industry and Security (BIS) advisory committee recommended Nov. 7 that the U.S. seek a sharp increase in the threshold for controls on high-performance computers (HPC) during the 2013 list review of the Wassenaar Arrangement, the multilateral export control regime, and one member called for the elimination of controls on these computers because all the components that go into them are already decontrolled. The Information Systems Technical Advisory Committee (ISTAC) proposed several changes to computer controls in Category 3 and 4 of the Commerce Control List (CCL), including the increase in the Adjusted Peak Performance (APP) control threshold for HPCs to 20 weighted teraflops (WT) from 3 WT and an increase in the technology level to 4 WT from 0.5 WT (see **WTTL**, July 2, page 4).

> ISTAC members complained the controls on HPC hardware and technology are upside down, because many firms conduct research on systems exceeding 4 WT, while foreign sources produce computers exceeding the current 3 WT level. BIS licenses fewer than a dozen HPC exports annually due to previous control liberalization, but continuing technology controls force firms to seek deemed export licenses for foreign employees and restrict access to the technology.

Henry Brandt, a member of the technical staff at IBM's power parallel systems unit in Poughkeepsie, N.Y., proposed a bolder change in controls, arguing that all digital computer controls should be deleted because HPCs can be assembled almost anywhere using uncontrolled microprocessors, memory, interconnection systems, storage and software. Moreover, China is producing many of the components that go into HPCs or has easy access to parts it doesn't produce. Truly sensitive software for national security applications is not dual-use or is restricted as secret by government agencies, he noted. The gap between controlled interconnection systems and publicly available systems, such as Infiniband, is fading, he contended. Setting controls based on hardware performance is obsolete, Brandt asserted. "What is military or for national security use is not controlled by APP," he said.

Small Change Seen in Obama's Second Term-Trade Agenda

Little said during the presidential campaign suggests that President Obama will launch any major new trade initiatives in his second term. Most of the trade agenda for the next four years is likely to be a continuation of efforts already underway, including the Trans-Pacific Partnership (TPP), talks on a U.S.-European Union (EU) trade pact that will be announced in the coming weeks, plus World Trade Organization (WTO) talks on services and information

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technology. The TPP and EU deals will eventually need new fast-track trade negotiating authority, also known as Trade Promotion Authority (TPA), but Obama officials have been in no rush to seek the authority or even indicate when they would ask for it. One source said the TPP and EU talks could "take the political steam out of trade" because they involve mostly developed countries with high labor and environmental standards as well as high labor costs.

> If Obama pushes his trade reorganization proposal, however, that effort could consume much of the energy on trade. It would also complicate the search for a new U.S. Trade Representative (USTR) to succeed Ron Kirk, who is expected to leave the post next year (see **WTTL**, Nov. 5, page 2). It may be difficult to recruit a new USTR if what is now a Cabinet post is perceived as being downgraded to a division of a new Department of Business. That has not stopped speculation about who might be the next USTR, with Michael Froman, deputy national security advisor for international economic affairs, and National Security Advisor Tom Donilon often "mentioned" as potential candidates for the job.

Sources also suggest Obama might face less opposition on trade from Democrats in the House if the next trade agreements are his initiative and not leftover deals negotiated by President George W. Bush. The president will be dealing with a new Congress not much changed from the current one. On the House Ways and Means Committee, 18 out of 22 Republicans and 13 of 15 Democrats will be returning in January. In the Senate Finance Committee, Sens. Jon Kyl (R-Ariz.), Olympia Snowe (R-Maine) and Kent Conrad (D-N.D.) did not run for reelection.

Export Reforms to Continue with Election Results

President Obama's reelection Nov. 6 assures the continuation of his export control reform initiative without interruption and probably an easier time getting congressional approval. While it is uncertain how long senior BIS and State officials will remain in office during the president's second term, the pace of reform is expected to pick up again after a two-month pre-election slowdown in the publishing of new proposals for moving items from the USML to the CCL.

> Since the reform initiative has not been a partisan issue, a Romney administration also could have been expected to continue it. A change in administrations, however, would probably have caused a six-month to one-year delay because of the time it would have taken to nominate and get new political appointees into position and allow them to conduct their own review of the program.

BIS Assistant Secretary Kevin Wolf and Directorate of Defense Trade Controls (DDTC) Managing Director Bob Kovacs told an industry meeting Nov. 8 that they plan to talk with the Office of Management and Budget (OMB) in the next week or so to get seven list proposals that have been sitting at OMB for several months moving again. OMB slowed the publication of new regulatory proposals before the election, but the USML-CCL proposals were stuck there even before then (see **WTTL**, Sept. 17, page 2). Now at OMB are proposals for USML categories I, II, III, IV, XI, XIV and XVI. Still in interagency review are categories XII, XVII, XVIII and XXI. Category XV, which covers satellites, is awaiting legislation authorizing changes.

The administration will be dealing with new leaders of the House Foreign Relations Committee. Due to GOP term limits for committee chairs, Chairman Ileana Ros-Lehtinen (R-Fla.) will step aside for either Rep. Chris Smith (R-N.J.) or Rep. Ed Royce (R-Calif.). Ranking Member Howard Berman (D-Calif.) lost a heated contest against Rep. Brad Sherman (D-Calif.). Berman, who has been a leading lawmaker on export controls and trade sanctions for over 30 years, was thrown into the same district with Sherman as a result of new redistricting and election rules in California. Sherman played a role in export controls while he chaired the committee's terrorism and nonproliferation subcommittee. In all, 16 out of 26 Republicans and 13 of 18 Democrats will be returning to the committee in January. The rest either lost their races, retired or ran for other state offices. In the Senate, the retirement of Sen. Jon Kyl (R-Ariz.) will mean the departure of one of the strongest critics of export control liberalization.

Goal of Doubling Exports in Five Years Seen Fading

President Obama's goal of doubling U.S. exports in five years under his National Export Initiative (NEI) is becoming less and less obtainable as the growth of U.S. exports slows in the face of economic problems in Europe and elsewhere. The five-year target had a built-in advantage because it used 2009 as its base, a year in which goods exports dropped 18% due to the recession. To double exports in five years would require an annual growth rate of more than 14%. Although September goods exports reached an all-time high, trade figures released Nov. 8 by Commerce show a steady decline in the pace of trade growth over the first nine months of 2012 (see table). U.S. merchandise exports in September 2012 rose 3.8% from a year ago to $134 billion. That brings the third quarter total to 393.3 billion, a small drop from the second quarter 2012, but an increase from the third quarter of 2011. In other September numbers, services exports increased 2.72% to a record $52.9 billion from a year ago. Goods imports went up 1.5% from September 2011 to $191.4 billion, as services imports gained 1.5% to $37 billion

Change in Goods Exports in First Nine Months 2012 (in billions)

Quarter	Exports	% Change from Previous Quarter	% Change from 2011 Quarter
1st Quarter	$388.7	1.7%	7.6%
2nd Quarter	394.2	1.4	5.9
3rd Quarter	393.3	- 0.2	2.9

Advisors Press for Easing of Night-Vision Controls

The continued control of key components for night-vision products under the International Traffic in Arms Regulations (ITAR) is seriously injuring U.S. industry and encouraging their indigenous production in foreign countries, including China, members of the BIS Sensors and Instruments Technical Advisory Committee (SITAC) argued Nov. 8. In particular, members proposed the shift of controls for uncooled focal plane arrays (FPAs) to the CCL from the USML. SITAC's view of the current market and technology in the thermal-imaging field follows similar findings in a recent BIS report on the industry (see **WTTL**, Oct. 22, page 4).

> While the ITAR supposedly controls FPAs that are "specially designed for military use," current U.S. government policies control all FPAs as military regardless of design or purpose, SITAC members complained. FPA production capacity has expanded significantly in France and even China is now producing these products, according to a presentation by SITAC Chairman John Goodrich, vice president of DRS Technologies' commercial infrared systems division.

Because U.S.-made uncooled FPAs are ITAR controlled, foreign customers don't want to buy them. "We lost sales in several European countries as soon as they saw the ITAR label on our foreheads," said Greg Hill, director of technologies licensing at DRS. Other SITAC members said they now see sales in the U.S. being lost to foreign FPA producers. While military sales are declining, commercial sales are growing and account for about 10 times the number of annual shipments. Rather than controlling FPAs available from uncontrolled sources, the U.S. should control the final packages with military capabilities, SITAC members argued. Despite claims by administration officials that the export control reform initiative won't cause any rollback of controls, SITAC members voiced concern that existing commodity jurisdiction determinations that have placed their products on the CCL will be revoked and they will end up back on the USML. Sources say the U.S. is planning to seek tighter multilateral controls on some of these products at the Wassenaar Arrangement in 2013.

EU, Latin America Finally Peel Back Banana Dispute

Three years after an agreement was first signed, a deal between the EU and 10 Latin American countries to settle a 20-year dispute over bananas was finally ratified Nov. 8. The EU, the

Latin countries and the U.S. reached the Geneva Banana Agreement in December 2009 (see **WTTL**, Dec. 21, 2009, page 4). "Since then a number of legal steps were required, including each country ratifying the 2009 agreement and the EU introducing legislation and regulations to implement it. Having been accepted by the WTO's membership as part the EU's new commitment, it is now multilateral," a WTO announcement said.

> Under the accord, EU replaced its "complicated and WTO-illegal" banana import regime with a tariffs only system, the WTO said. "The EU shall maintain a MFN [Most Favored Nation] tariff-only regime for the importation of bananas," the agreement said. The tariffs, which started at 148 euros per ton in December 2009, will decline annually to 114 euros per ton by Jan. 1, 2017. The Latin nations agreed the deal "shall constitute the EU's final market access commitments for bananas for inclusion in the final results of the next multilateral market access negotiation for agriculture products successfully concluded in the WTO (including the Doha Round)," the agreement said.

The dispute began in 1991 when Costa Rica raised complaints under the pre-Uruguay Round General Agreement on Tariffs & Trade (GATT) about an impending EU banana import regime that would discriminate against Central American countries. The next year, Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela requested consultations with the EU, which subsequently failed. The U.S. joined the dispute in 1995 (see **WTTL**, Sept. 25, 1995, page 2).

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VSDs: In Federal Register Nov. 7, BIS proposed three changes to EAR. One would require that final, comprehensive narrative account required in VSDs of EAR violations be submitted within 180 days of initial VSD notification. Second would authorize use of delivery services other than registered or certified mail for providing notice of charging letter. Third would remove phrase "if delivery is refused" from provision relating to determining date of service of charging letter.

SOLAR PANELS: ITC Nov. 7 voted 6-0 that imports of crystalline silicon photovoltaic cells and modules from China that Commerce determined are subsidized and sold at less than fair value materially injure U.S. industry. ITC voted 4-2 against declaring critical circumstances, so antidumping and countervailing duties will not apply retroactively to prior imports.

PLYWOOD: ITC on 6-0 vote reached preliminary determination Nov. 9 that allegedly subsidized and dumped imports of hardwood plywood from China are injuring U.S. industry.

RUSSIA: House Rules Committee will hold hearing on bill (H.R. 6156) to grant Russia PNTR status Nov. 13, with House vote likely later in week (see **WTTL**, Aug. 6, page 4). Rules is expected to attach so-called Magnitsky bill (S. 1039) to PNTR measure when it sends legislation to House floor.

SPACE INDUSTRY: In preliminary results from BIS "deep dive" into space industry economy, agency found only 28% of respondents (301 companies) utilizing export controls, either ITAR or EAR. Of those, over one-third said they avoided the export of space-related products or services subject to ITAR-related controls. Half of that group (161) were self-identified small businesses, BIS noted. Survey of some 9,000 organizations is being conducted with Air Force, NASA and National Reconnaissance Office.

IRAN: Treasury's OFAC in Nov. 8 Federal Register expanded Iran sanctions, adding "additional categories of sanctionable activities for which foreign financial institutions may lose their ability to establish correspondent account relationships with United States financial institutions."

ITA: Only nine information and communications technology (ICT) products out of potential 130 that might be covered under expanded WTO Information Technology Agreement (ITA) are import sensitive, ITC found in Nov. 5 Part 1 of report on accord's proposed expansion. These include printing ink, ceramic wares for production or processing of semiconductor devices and optical fibers and cables. Part 2 of report due to USTR in February 2013 (see **WTTL**, Nov. 5, page 2).

ARMS TRADE TREATY: UN's First Committee approved resolution Nov. 7 that it will take to UN General Assembly, calling for relaunching of treaty talks March 18-28, 2013 (see **WTTL**, Oct. 22, page 1).