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## Administration Faces Risks Sending Export Notices to Congress

The Obama administration risks a backlash from Capitol Hill if it goes ahead with plans to submit the first notifications to Congress on planned transfers of U.S. Munitions List (USML) items to the Commerce Control List (CCL), according to congressional sources. Administration officials say they intend to submit those notices in September or October with or without prior agreement from Congress on the process (see **WTTL**, June 18, page 5).

“It is my understanding that State expects to send the first Section 38(f) notifications to Congress in late summer or early fall,” Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn told the BIS Update conference July 17. “Meanwhile the agencies continue to work with key committee staffers and are doing all they can to answer their questions and provide as much information as possible,” he added.

The administration could face “political landmines” if it tries to push through the notifications without an agreement with lawmakers, one congressional source warned. Provisions added to the House version of the 2013 National Defense Authorization Act (NDAA) would require State to provide more explanations to justify transfers in 38(f) notices. Other language blocking the transfers could be “slipped in” to last-minute bills Congress will enact as it rushes to recess at the end of an expected “lame-duck” session in December, one congressional staffer noted.

Assistant Secretary of State Beth McCormick told the conference the first two 38(f) notices will cover aircraft and gas turbine engines. “I think we’ll see here in the next couple of weeks the process to actually move the first items off the munitions list and I suspect it to be first Category VIII, which is aircraft, and then Category XIX, which is gas turbine engines,” she said. Tim Hoffman, deputy director of the Defense Technology Security Administration, said the administration has to work with Congress. “If we don’t work with Congress, shame on us. They have to understand and support us, but I’m not always sure they understand entirely what we are trying to get at, and because of that, they don’t necessarily support us,” he said.

## Congress Could Pass Russia PNTR Before August Recess

Gridlock in Congress can be easily overcome if legislation is loaded up with enough amendments to satisfy enough people, the Senate Finance Committee showed July 18 as it approved legislation on a 24-0 vote to grant Russia permanent-normal-trade-relations (PNTR) status along with language attaching the version of the Magnitsky Act (S. 1039) passed by the Senate



Foreign Relations Committee and PNTR for Moldova (see WTTL, July 2, page 2). It also approved by voice votes the ENFORCE Act to strengthen enforcement of antidumping and countervailing duty orders and bills to extend the third-country fabric rules in the Africa Growth and Opportunity Act (AGOA), amend rules of origin under CAFTA-DR, extend Burma sanctions legislation to July 2015 and create a citrus, cotton and wool trust fund.

Chances for Congress to pass all these measures improved with House Ways and Means Chairman Dave Camp (R-Mich.) and Ranking Member Sander Levin (D-Mich.) introducing legislation (H.R. 6156) comprising many of the Finance-passed provisions. Ways and Means is expected to mark up the bill July 26, giving both the House and Senate time to act on the legislation before they start their August recess. “As a long-time supporter of the Magnitsky legislation, I am advocating that it be paired with PNTR before a House vote,” Camp said in a statement.

Sen. Ron Wyden’s (D-Ore.) Enforcing Orders and Reducing Circumvention Evasion Act (ENFORCE) (S. 1133), which is cosponsored by Sen. Olympia Snowe (R-Maine), would set deadlines for Customs and Border Protection (CBP) to respond to allegations of duty evasion and to take other steps to ensure duties are collected. Another amendment to the PNTR bill would require the U.S. Trade Representative (USTR) – in Trans-Pacific Partnership negotiations with Canada – to make it a priority to seek the elimination of Canada’s alleged market-distorting subsidies and practices at the national and provincial levels.

In addition to dropping Russia from the restrictions of the Jackson-Vanik Amendment, the PNTR bill would require the USTR to report annually on Russia’s implementation of its WTO obligations, particularly on sanitary and phytosanitary rules and intellectual property protection. The report must also cover Moscow’s progress on joining and implementing the WTO Information Technology Agreement and Government Procurement Agreement. Also, if the USTR believes Russia isn’t fully implementing a WTO agreement or making adequate progress in acceding to those agreements, the USTR would be required to include in the report its plans for addressing the situations. In preparing the report, the USTR must provide an opportunity for public comment, including by holding a public hearing.

Another provision requires Commerce to set up a phone hotline and secure website accessible in the U.S. and Russia to allow U.S. citizens and businesses to report on corruption, bribery and attempted bribery in Russia and to request assistance from the U.S. government. The Finance bill also would extend Customs user fees for passengers, cargo and conveyances.

## **U.S. Mostly Wins WTO Complaint Against China on Bank Cards**

After wending its way through the labyrinth of Chinese regulations and policies for the use of credit cards and electronic payment services, a World Trade Organization (WTO) dispute-settlement panel mostly agreed July 16 with a U.S. complaint that these rules discriminate against U.S. suppliers and violate WTO requirements. While the panel said the U.S. failed to prove that some of the Chinese requirements were inconsistent with China’s market access commitments, it found many of the requirements inconsistent with Beijing’s obligation to grant national treatment to foreign financial service providers.

The panel said the U.S. “failed to present a *prima facie* case that the issuer, terminal equipment or acquirer requirements, considered either individually or jointly, are inconsistent with Article XVI:1 of the GATS [General Agreement on Trade in Services] in respect of China’s Sector 7.B(d) mode 3 market access commitment.” At the same time, it found that “the issuer requirements are inconsistent with Article XVII:1 of the GATS, because contrary to China’s Sector 7.B(d) mode 1 and mode 3 national treatment commitments, these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers.” The panel issued a mixed judgment on the U.S. complaint that China maintains China Union Pay (CUP) as an across-the-board monopoly for the processing of all domestic renminbi (RMB) payment card transactions. Nonetheless,

it found that China maintains CUP as a monopoly for clearing certain transactions through Hong Kong and Macau. “The panel found that China acted inconsistently with its mode 3 market access commitment under Article XVI:2(a) of the GATS by granting CUP a monopoly for the clearing of these types of RMB payment card transactions. The panel found no inconsistency with China's national treatment commitments,” the ruling stated.

## Hirschhorn Outlines Wish List for Second Obama Term

BIS Under Secretary Eric Hirschhorn has a wish list of things he would want to accomplish if President Obama were reelected for a second term. At the BIS Update 2012 conference July 17, Hirschhorn outlined “some potential future projects to make the system more rational and more user friendly.” He was careful to emphasize that “not all of these projects have yet been reviewed by our sister agencies.” He told Update:

- “We need to finish the effort to systematically review the CCL.
- “We need to complete the effort to harmonize the terms in the EAR, the ITAR, and other relevant export control regulations.
- “The EAR must be made easier to use.
- “Our encryption rules, which were streamlined somewhat in 2010, need to be more clear and concise in the 2nd rule we plan.
- “The intra-company transfer proposal should be revisited.
- “The deemed export rule often has been criticized and merits discussion.
- “We would like to expedite the interagency review of license applications and perhaps do more to harmonize or standardize license conditions.
- “The levels of at least some License Exception LVS [low-value shipments] thresholds might be adjusted to reflect inflation and market realities.
- “Our rules governing recordkeeping antedate today’s widespread reliance on electronic databases, and accordingly should be updated.
- “The General Prohibitions need to be revised.
- “We need to work with the international regimes to help them revise their procedures so that we can get more proposed changes through their systems.
- “Finally, we may review—if only for clarification’s sake—the rules relating to cloud computing.”

## U.S. Loses Softwood Lumber Arbitration Complaint

The U.S. was unable to convince the London Court of International Arbitration (LCIA) that British Columbia has unfairly underpriced lumber exports based on the claim the lumber was damaged by pine beetle infestation. In a 130-page report, the LCIA July 18 rejected the U.S. complaint under the terms of the Softwood Lumber Agreement (see **WTTL**, Jan. 24, 2011, page 4). It said the U.S. could not show that the misgrading of the lumber was due to a specific action of the B.C. government. “It is important to note that the tribunal did not sanction the pricing practices in British Columbia. Rather, as a result of a flawed approach to evaluating the evidence before it, the tribunal concluded that it was unable to find a conclusive link to action by the Government of Canada,” said USTR Ron Kirk in a statement.

“This is a total victory for British Columbia and Canada and is great news for B.C.’s lumber workers and their families,” boasted Pat Bell, B.C. minister of jobs, tourism and innovation. His office also noted that the province has attempted to diversify its export markets in recent years, focusing more on Asia and China. Exports to China have doubled each of the last three years, it said.

## BIS Expects More Use of STA with Coming of 600 Series

While use of License Exception Strategic Trade Authorization (STA) started off slowly, BIS officials expect its use to ramp up significantly when items from the USML begin to transfer to the CCL 600 Series. At the BIS Update conference July 17, agency officials said momentum is

already building for STA. They reported that from the time STA became available in July 2011 through March 2012, it was used for just 80 shipments valued at \$7.18 million, but by the end of April, the cumulative number had jumped to 412 shipments valued at \$25 million. More than 60 companies used the license exception, avoiding the need for over 300 licenses. “We’re certainly seeing use of STA, but the big use of STA is going to come when the USML items come over to Commerce. But it’s building,” BIS Under Secretary Eric Hirschhorn told reporters. “The big use of it is ahead of us because the transfers have not begun yet,” he said.

## Firm to Pay \$1 Million for Trade Agreements Act Violations

ADC Telecommunications Inc., a subsidiary of Tyco Electronics, agreed July 9 to pay \$1 million to settle charges that it submitted false claims to federal agencies, including Defense, Homeland Security and Interior, when it sold telecommunications goods from countries prohibited by the Trade Agreements Act (TAA). The act allows agencies to purchase goods from countries that are signatories of the WTO Government Procurement Agreement (GPA) but not from non-participants. Settlement papers didn’t reveal the source of the equipment.

From October 2005 through December 2008, before it was acquired by Tyco, ADC sold the government telecommunications hardware through a General Services Administration Multiple Award Schedule contract, according to the settlement filed in D.C. U.S. District Court. In reaching the settlement, ADC didn’t admit liability and the government didn’t concede its claims.

In May 2012, Direct Resource Inc. paid a \$450,000 fine to settle similar charges relating to sales of office supplies from China to U.S. agencies. In October 2005, Staples paid \$7.4 million for similar violations. Earlier that year, Justice reached a \$9.8 million settlement with Office Max, Inc. and a \$4.75 million settlement with Office Depot, Inc. based on the same charges.

### \* \* \* Briefs \* \* \*

FCPA: Nordam Group Inc., Tulsa, Okla., provider of aircraft maintenance, repair and overhaul (MRO) services, agreed July 17 to pay \$2 million under three-year nonprosecution agreement with Justice to resolve FCPA charges of allegedly bribing Chinese airline employees to secure MRO contracts. In addition to monetary penalty, Nordam agreed to cooperate with department, to report periodically on compliance efforts and to continue to implement enhanced compliance program and internal controls, Justice said.

XANTHAN GUM: On 5-0 vote July 19, ITC made preliminary determined that U.S. industry may be materially injured by imports of xanthan gum from Austria and China sold at less than fair value.

EXPORT ENFORCEMENT: Parviz Khaki, citizen of Iran, and Zongcheng Yi, resident of China, were charged in superseding indictment July 13 in D.C. U.S. District Court with attempting to export to Iran U.S.-origin materials to construct, operate and maintain gas centrifuges to enrich uranium, including maraging steel, aluminum alloys, mass spectrometers, vacuum pumps and other items, without required Treasury license. Both were charged with one count of conspiracy to violate International Emergency Economic Powers Act (IEEPA); one count of conspiracy to defraud U.S.; two counts of smuggling; two counts of illegally exporting U.S. goods to Iran in violation of IEEPA; and one count of conspiracy to commit money laundering. Khaki was arrested May 24 in Philippines, while Yi remains at large.

MORE EXPORT ENFORCEMENT: Saeed Talebi, Iranian national, was indicted July 13 in Manhattan U.S. District Court with illegally exporting industrial parts and goods to Iran through Dubai. Talebi was charged with one count of conspiring to violate IEEPA, Executive Orders and Treasury regulations, and one count of conspiring to commit money laundering. Talebi was arrested July 12 at JFK International Airport.

TRADE PEOPLE: Jonathan C. Poling, formerly with counterespionage unit in Justice’s national security division, has become partner in Baker & McKenzie’s DC office...Serena D. Moe has become of counsel with Wiley Rein from general counsel for economic sanctions at Citigroup...Charles A. Hamilton, long-time DC trade consultant, including for Airbus and Thales, and former official at Defense and ITC, died July 5.