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## State's End-Use Checks Produce More "Unfavorable" Results

As the State Department's Blue Lantern end-use checks program conducts more visits of foreign consignees, it is also finding more "unfavorable" results, the Directorate of Defense Trade Controls (DDTC) revealed Dec. 29 in its annual report on inspections conducted in fiscal year 2010, which ended Sept. 30, 2010, the most recent year for which data are available. The agency said it conducted a record 1,046 end-use checks during the year, and of the 723 cases closed, 21% resulted in "unfavorable" findings. An unfavorable determination means the findings of fact were not consistent with the license application or approval.

The most common reason for such a finding was the discovery of derogatory information or a foreign party deemed unreliable. In the fiscal year 2009, DDTC conducted 774 Blue Lantern visits, and of the 649 closed cases, found only 13% to be unfavorable. A Government Accountability Office report in November criticized DDTC end-use checks, particularly regarding those dealing with exports of night-vision products (see **WTTL**, Nov. 28, page 2).

"Unfavorable Blue Lantern cases may result in the rejection, denial, or revocation of a license application, removal of a party, update of the DDTC Watch List, or referral to the office's Enforcement Division (END) for appropriate action," DDTC noted. "In FY 2010, of the 74 referrals to END, 18 resulted in directed disclosures and 26 went to federal law enforcement for possible criminal investigation. As of January 2011, there were 7 open law enforcement investigations related to Blue Lantern checks," it reported.

## Congressional Trade Agenda: Busy or Blocked?

Whether or not Congress gets to vote this year on fast-track negotiating authority or a Trans-Pacific Partnership (TPP) agreement, it could have a busy agenda of trade legislation (see related story, page 2). How much can actually get enacted will depend on whether the issues that blocked action in 2011 can be overcome or partisan bickering will intensify as the November elections get nearer. Some of the agenda items will be headline grabbing, such as bills to combat China's currency manipulation and to grant Russia permanent-normal-trade-relations (PNTR) status, while others will be more workaday, such as Customs reauthorization and miscellaneous tariffs. Subcommittee chairman Rep. Kevin Brady (R-Texas) says he wants to pursue an "aggressive, strategic, proactive, trade agenda." While applauding passage of the free trade agreements with Colombia, Korea and Panama, he says "we still have unfinished



business” to get those deals implemented. “It took us a long time to get on the field, we can’t just walk back to the sidelines,” he said in a December speech.

A Miscellaneous Tariff Bill (MTB), a supposedly noncontroversial periodic measure that is intended to provide tariff reductions or suspensions for hundreds of imports that have no U.S. competition, is still caught up in the ban on earmarks that House Republicans adopted in 2010, Brady conceded. “We have to take steps to move this bill. Provisions are not earmarks in my view,” he said. When pressed on a plan for an MTB, Brady said, “I don’t know what the timing will be. Hopefully we can find a path forward next year.”

Other trade legislation that either languished or was blocked in 2011 will have to get attention again in 2012. Among those bills are measures to recharter the Export-Import Bank, impose additional trade sanctions on Iran, North Korea and Syria, and extend third-country fabric rules under the Africa Growth and Opportunity Act (AGOA). Although the White House doesn’t intend to send Congress a bill this year to implement Phase III of its export control reform initiative, several measures are pending to amend the Arms Export Control Act, the Export Administration Act and licensing jurisdiction for satellite export licensing.

## **Congress Unlikely to See TPP or TPA before Election**

Based on past experience with trade agreements, it’s unlikely that Congress will have to vote on approving a Trans-Pacific Partnership (TPP) agreement or fast-track negotiating authority – also known as Trade Promotion Authority (TPA) – in 2012. Although the White House has set a goal of completing TPP talks by the end of the year, that doesn’t mean the final text of an agreement will be ready for congressional consideration this year, and forcing a vote on TPA before the election probably wouldn’t be popular for Democratic lawmakers, Washington observers contend.

One reason TPP won’t be ready this year is the pure complexity of the discussions. Negotiations for the Korea-U.S. free trade agreement took 11 months to complete, then four more years to reach the halls of Congress (see story below). Those talks involved only two countries, not the nine diverse economies already in the TPP talks and three more – Japan, Mexico and Canada -- that are considering joining them (see **WTTL**, Dec. 12, page 2).

When the negotiations are finally done, President Obama will have his hands full with lawmakers on both sides of the aisle, former U.S. Trade Representative (USTR) Susan Schwab warned Jan. 4 at the Center for Strategic and International Studies (CSIS). She said Obama needs to remember who his friends are and “who you need to get a trade agreement through the United States Congress.” The current environment doesn’t seem conducive to Obama and House Republicans working together to get a deal passed, like they did on the three free trade agreements in 2011, she argued.

## **Froman Fuzzy on U.S. Stand on Labor and Environment in TPP**

Torn between congressional Democrats who want tougher labor and environment provisions in any Trans-Pacific Partnership (TPP) agreement and Republicans who don’t want to go beyond a May 10, 2007, deal on such provisions, the Obama administration is avoiding any commitment on how it will deal with the topic in the talks. When asked during a speech in Washington Jan. 4 about the administration’s position, Michael Froman, White House deputy national security adviser for international economic affairs, gave a fuzzy answer regarding labor standards.

“We’ve had very good consultations with colleagues in the labor community,” he said. The administration is taking a “holistic, broad-based approach” to helping American workers, which includes more than just the labor chapter of the text, he tried to explain. The White House is

also treading very lightly on specific commitments on the timing and sequencing of TPP talks. “We’re not going to present to Congress an agreement we’re not comfortable with, but we’re not going to rush to a false deadline either,” Froman told the Center for Strategic and International Studies (CSIS). “Substance will dictate timing,” he said.

On the labor chapter, House Ways and Means Trade subcommittee chairman Kevin Brady (R-Texas) warned in December that any administration attempt to go beyond the May 10<sup>th</sup> agreement, which was included in the final free trade agreements with Peru and Colombia, would be an obstacle. “Going beyond May 10<sup>th</sup> will significantly undermine negotiations,” he told the Washington International Trade Association Dec. 13.

The May 10 agreement was negotiated between the administration of George W. Bush and congressional Democrats and spelled out labor and environment conditions that should be included in any free trade agreement. The agreement was supposed to win House Democratic support for the Colombia FTA, but then-House Speaker Nancy Pelosi reneged and refused to allow a vote on the accord when Bush sent it to Congress for approval.

## **Settlement Caps 4-Year Prosecution for Exports to Iran**

A settlement agreement the Bureau of Industry and Security (BIS) reached Dec. 30 with Nelson Galgoul marks the end of a four-year enforcement case targeting the export of controlled software to Iran via Brazil. Under the agreement, BIS has denied export licensing privileges for Galgoul for three years, noting that the deal reflects his plea agreement in 2008 with the U.S. attorney in New Orleans and his sentencing to 13 months in prison, three year’s probation, a \$100,000 criminal fine and forfeiture of \$109,000 (see **WTTL**, June 9, 2008, page 3).

Galgoul, a dual U.S.-Brazilian citizen, was part of the prosecution of Engineering Dynamics, Inc., (EDI) and the company’s two owners, John Fowler and James Angehr, for the export of the software to Iran via Galgoul’s company in Brazil. As part of the global settlement in 2008, EDI paid a \$132,791 civil fine to BIS and Fowler and Angehr each paid \$250,000 criminal fines and were placed on five year’s probation. After his prison term, Galgoul was allowed to return to Brazil to serve his probation.

At this May 2008 sentencing hearing, Galgoul claimed he made a mistake exporting the software and only did it because of his evangelical work in Iran. “I was just careless, that’s all I can say,” he told the court. “I was told to evangelize in Iran, that was my only motivation,” he said. District Court Judge Lance Africk didn’t buy Galgoul’s excuse. “It sounds like you went through all types of imaginations to justify what you were doing,” Africk said before imposing his sentence. “That’s what it sounds like to me, and quite frankly you don’t sound very repentant, you sound like somebody who justified the criminal acts and has an answer or response of denial for each of the things that I’ve confronted you with that indicate to me that what you did at the bottom line was against the national security of the United States,” the judge declared.

## **Commerce Competitiveness Report Cites Foreign Tax Rules**

In a report to Congress Jan. 6, the Commerce Department acknowledged what U.S. business has been complaining about for years: U.S. tax rules that put American firms at a disadvantage. “There are also inefficiencies due to the way the United States taxes the foreign income of U.S. multinational corporations. The lower foreign corporate tax rates, along with the fact that other countries use a territorial system of corporate taxation, places U.S. multinational companies at a cost disadvantage,” the report declares. The 160-page report, “The Competitiveness and Innovative Capacity of the United States,” provides a broad look at issues that have hurt U.S. competitiveness in recent years. These factors include a decline in school enrollment in science, technology, engineering and math (STEM), declining federal investment in research

and infrastructure and the need to open foreign markets to U.S. exports. No mention is made of U.S. export controls. It points to studies that show “that between one-quarter to more than one-half of the lost manufacturing jobs in the 2000s was the result of import competition from China.” Between 1972 and 2001, low-wage U.S. industries saw an average decade-long decline in employment of 12.8 percent, while industries that faced little low-wage import competition saw an increase in average decade-long employment of 2.3 percent, the report notes.

In a section addressing the impact of trade policy on U.S. competitiveness, the report touts President Obama’s push for approval of the free trade agreements with Colombia, South Korea and Panama and his launching of talks on the Trans-Pacific Partnership (TPP). It also cites the president’s National Export Initiative and administration backing of more export financing support from the Export-Import Bank. It also notes unfair trade practices of foreign countries. “For example, in some instances, countries do not allow the foreign exchange rates of their currencies to be fully flexible and market determined,” the report adds.

While acknowledging that the U.S. has the second-highest statutory corporate income tax rate among industrial countries, it says the U.S. doesn’t rate high in terms of the average effective tax rate paid because of numerous special deductions and credits that benefit certain activities. “The combination of a high statutory rate and numerous deductions and exclusions results in an inefficient tax system,” the report concedes. It cautions, however, that changes in tax rules could change investment strategies. “There are tradeoffs to moving to a more simplified corporate tax code, and changes could dampen innovation,” it states, citing the preferential tax credits given to research and development expenditures.

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

FOREIGN TRADE ZONES: Daniel Griswold, who was director of Center for Trade Policy Studies at the Cato Institute in Washington, was named president of National Association of Foreign-Trade Zones Jan. 5. He succeeds Willard Berry, who served as NAFTAZ president from 2004 until his retirement in November.

CUSTOMS: Alan Bersin, who resigned Dec. 30 when Senate failed to confirm his recess appointment as commissioner of Customs and Border Protection, has been appointed to newly created position of assistant secretary of international affairs and chief diplomatic officer in Department of Homeland Security (DHS), DHS Secretary Janet Napolitano announced. In that role, he “will oversee the strategic development and execution of DHS’s international plans and policies and will be responsible for forging new partnerships with foreign governments and international organizations,” Napolitano said (see **WTTL**, Jan. 2, page 4).

BYRD AMENDMENT: Three-judge CIT panel Jan. 3 rejected new challenge to constitutionality of Byrd Amendment, rejecting claim of New Hampshire Ball Bearing, Inc., which sought share of antidumping and countervailing duty payments on imports of ball bearings even though it didn’t support original petitions. “Plaintiff’s as-applied First Amendment and equal protection challenges are also foreclosed by the holding in *SKF USA II* and must be dismissed pursuant to USCIT Rule 12(b)(5) for failure to state a claim upon which relief can be granted,” court ruled (slip op. 12-2).

PIPE AND TUBE: ITC reached unanimous 6-0 “sunset” determination Jan. 5 that terminating antidumping order on light-walled rectangular pipe and tube from Taiwan would lead to renewed injury to U.S. industry.

EXPORT ENFORCEMENT: PPG Industries Inc. Dec. 19 agreed to pay \$275,000 civil fine to settle 16 BIS charges of violating EAR by exporting triethanolamine (TEA) to Brazil without required licenses from February 2007 and March 2010. TEA with 99% purity is classified under ECCN 1C350. PPG neither admitted nor denied charges. It settled separate charges with BIS in 2010 (see **WTTL**, Nov. 21, page 4)

EXPORT ENFORCEMENT: FedEx Express (FedEx) agreed to pay \$370,000 civil penalty to settle BIS allegations of six EAR violations relating to its freight forwarding services, BIS announced Jan. 4. The charges include attempted unlicensed export of electronic components to Mayrow in UAE in 2006, unlicensed export of flight simulation software to Beijing University of Aeronautics and Astronautics, which is on BIS Entity List, and unlicensed export of printer components to end users in Syria in 2004. FedEx neither admitted nor denied charges.

KOREA: Working-level KORUS implementation talks scheduled for Jan. 9-10 in Seoul.