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Presidential Advisors Press for Trusted Exporter Program

The President's Export Council (PEC) has dusted off an idea that has been bouncing around the export community for some 25 years – creation of a Trusted Exporter Program (TEP) to give exporters with good compliance records an easier path to exports. In a letter to President Obama that the PEC approved Nov. 16, the group said a TEP would allow the government "to prioritize scarce resources on higher risk transactions with an audit mechanism in place to ensure compliance of participants in the program." It cited the Customs-Trade Partnership against Terrorism (C-TPAT) that supposedly speeds up imports for participants as a model for a TEP.

> The idea of some form of special status for exporters with good compliance records goes back to the Reagan administration when the concept of a "Gold Card" for such exporters was floated. The Trusted Exporter suggestion was raised again during the administration of George W. Bush. "A TEP also is ideally suited to deal with the 'deemed export' issues that are a particular struggle to understand and address properly for academia," the letter added.

The PEC letter also called for the administration to notify Congress about proposed changes to control lists no later than March 31, 2012. It recommended clarification and harmonization of export control regulations among export agencies. In a separate letter to the president, the PEC urged the administration to support the launching of negotiations to expand and update the World Trade Organization's (WTO) Information Technology Agreement (ITA).

Inclusion of Japan, Canada, Mexico to TPP Changes Game

If Japan, Canada and Mexico move from their announced interest in consulting on joining talks on a Trans-Pacific Partnership (TPP) to actually becoming part of the negotiations, the scope of the deal would significantly change as well as its impact on the U.S. economy. Japan's inclu-ion, however, could slow progress on the talks. The addition of the three countries would also put pressure on other Pacific Rim nations, such as South Korea, Colombia and the Philippines, to join the talks to avoid losing their competitive access to the U.S. market.

U.S. Trade Representative (USTR) Ron Kirk told the PEC Nov. 16 that the interest of the three countries in the TPP is the result in part of congressional approval of the three trade pacts with Colombia, Panama and South Korea, as well as the deadlock in Doha Round negotiations. "We have gone from where some people think this [TPP] is the only game in town, to some people thinking this is going to be the best game in town," he said. Despite the difficulties in bringing Japan into a TPP, Kirk asserted that the talks won't slow down with more countries participating. "We have also made it plain, 'If you are going to join, this is going to be a merge into the stream we are going. We are not going to slow down the process; we are not going to lower the ambition. We welcome interest of all economies, but understand, you're going to have to seek that same level of ambition'," Kirk told the PEC.

> The interest of Mexico and Canada in the talks was expected because of their membership in NAFTA and their integration into the North American industrial production base. Mexico, in particular, would face competitive disadvantages, if Vietnam entered the TPP, especially in textiles and apparel.

For Japan, the hurdles to TPP participation are high. Thirty years of intractable disputes between Washington and Tokyo over Japan's closed markets in numerous sectors, such as agriculture, autos, insurance and services, present a formidable history of problems to overcome. The USTR's annual report for 2011 on foreign trade barriers, for example, contains 18 pages of Japanese restrictions that hurt U.S. business. Senior members of Congress were quick to voice doubts about Japan joining the TPP talks.

Many of the barriers cited in the USTR report "are deeply embedded in Japan's economy, and to date, have persisted notwithstanding existing trade rules and years of bilateral engagement," said a letter Kirk from the chairmen and ranking members of the Senate Finance Committee and House Ways and Means Committee. "Japan's inclusion would add dramatically new dimensions and complexities to the TPP negotiations. For that reason, we urge you to closely consult with Congress and stakeholders well in advance of any decisions," they added.

Leaders Endorse TPP Goals But Recognize Hurdles

The heads of the nine nations negotiating the Trans-Pacific Partnership (TTP) agreement praised the work negotiators have already accomplished, but noted that difficult issues will need more work. "We recognize that there are sensitive issues that vary for each country yet to be negotiated, and have agreed that together, we must find appropriate ways to address those issues in the context of a comprehensive and balanced package, taking into account the diversity of our levels of development," they said in a statement during a meeting Nov. 12 on the sidelines of the Asia-Pacific Economic Cooperation Forum (APEC) in Hawaii.

> TPP negotiators presented a broad outline of what a final TPP might look like to the leaders. Among the many areas being negotiated are market access, trade facilitation, regulatory coherence, investment, services, government procurement, telecommunications, intellectual property rights, environment and labor. The negotiating groups have developed consolidated legal text in virtually all areas, but all texts contain brackets indicating that no final agreement has been reached.

On rules of origin, negotiators "have agreed that TPP rules of origin will be objective, transparent and predictable and are discussing approaches regarding the ability to cumulate or use materials from within the free trade area in order to make a claim that a product is originating," the outline said. The deal also would be considered a "living agreement to enable the updating of the agreement as appropriate to address trade issues that emerge in the future as well as new issues that arise with the expansion of the agreement to include new countries."

BIS Chief Says Administration Still Backs Export Control Reform

There is no truth to a rumor in Washington that top Obama administration officials are losing interest in export control reform, Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn asserted Nov. 14. "I want to make it very clear how inaccurate it is," he told the President's Export Council Subcommittee on Export Administration (PECSEA). "Let there be no misunderstanding about the commitment of this administration to keep at it," he said; noting a meeting he had with other officials at the White House Nov. 7 with President Obama, "who was very supportive of it continuing and doing everything we can do from a regulatory standpoint," Hirschhorn added. He also reported progress in working with congressional staffers in trying to come up with a plan to speed up the process under which lawmakers are given an opportunity to review and approve proposals to move items from the U.S. Munitions List (USML) to the Commerce Control List (CCL). "It is fair to say that there have been frank discussions. Not everyone agrees immediately with what we say," he acknowledged.

> "We are discussing with congressional staff a process that gives them ample but finite time to review the list of items proposed for transfer before we start the 30-day statutory clock," Hirschhorn reported. Under Section 38(f) of the Arms Export Control Act congressional committees must be notified 30 days in advance of any proposed change to the USML. That process now can take up to 200 days.

BIS officials also told the PECSEA the agency plans to add 24 staffers to handle the extra work that will come from the transfer of USML items to the CCL. "We're creating within licensing a group of 24 people, new to BIS, to focus specifically on this topic, that is, the increase in licenses that will come from the State Department, to the extent that license exceptions are not available, an increase in outreach and education for this new system for companies," said BIS Assistant Secretary for Export Administration Kevin Wolf.

On the enforcement side, BIS also plans to create a new intelligence and counterterrorism (IC) unit and has asked Congress for an extra $10.5 million in the 2013 budget to beef up enforcement. The new unit won't duplicate IC work of other agencies, but "will focus on performing a liaison function with those members of the IC community to make sure that the data that we have access to in exports is factored into the equation in terms of the larger picture," BIS Assistant Secretary for Export Enforcement David Mills said. "These people will be vetting license applications to consider the bona fides of the parties to the transactions. They will be processing applications for the Entity List and also the renewal of that list," he explained.

New Round of Complaints Lodged against China

Just as American officials were heading to Chengdu, China, for the next meeting of the Joint Commission on Commerce and Trade Nov. 20-21, China was hit with a new barrage of U.S. complaints about its trade policies and its military buildup. During a Nov. 14 press conference at the Asia-Pacific Cooperation Forum (APEC) meeting, President Obama said the U.S. wants to continue cultivating a constructive relationship with China. "But we're going to continue to be firm in insisting that they operate by the same rules that everybody else operates under. We don't want them taking advantage of the United States or U.S. businesses," he said.

> A few days later on Nov. 16, the U.S. China Economic and Security Review Commission released its annual report, which included a long litany of concerns about China's trade and security policies. "Even more disturbing, China has stepped backward from its original promise to lower trade barriers and to treat foreign products and services fairly," said Commission Chairman Bill Reinsch at a press conference releasing the report.

Obama complained about China's failure to protect intellectual property rights and the undervaluation of the renminbi. "Most economists estimate that the RMB is devalued by 20 to 25 percent," he said. Beijing's efforts to allow the currency to appreciate, to decrease reliance on exports and build domestic consumption, face opposition, Obama acknowledged. "The problem is, is that you've got a bunch of export producers in China who like the system as it is, and making changes are difficult for them politically," he said.

Among the China commission's concerns was Beijing's favoritism for state-owned-enterprises (SOE). "China's privatization reforms during the past two decades appear in some cases to have been reversed, with a renewed use of industrial policies aimed at creating SOEs that dominate important portions of the economy, especially in the industrial sectors, reserved for the state's control," it said. The commission also warned about the risk of government-owned Chinese companies doing business in the U.S. "Due to the considerable government ownership of the Chinese economy, provision by Chinese companies of critical infrastructure to U.S. government or acquisition by Chinese companies of U.S. firms with sensitive technology or intellectual property could be harmful to U.S. national interests," it contended.

Economists at the Peterson Institute for International Economics issued a new estimate of the undervaluation of the RMB Nov. 11. They said modest appreciation of the currency against the dollar, combined with higher inflation in China than in the U.S., has narrowed the undervaluation to 11% from 16% in April, but on a bilateral basis it is still undervalued by 24%. The report also found currencies of several major U.S. trading partners in Asia to be undervalued.

* * * Briefs * * *

WTO: Dispute-Settlement Body agreed Nov. 18 to appoint Thomas Graham, senior counsel with King & Spalding law firm in DC and Ujal Singh Bhatia of India to Appellate Body (see **WTTL**, Sept. 12, page 4).

MEAT LABELING: WTO dispute-settlement panel report Nov. 18 said U.S. violated its WTO obligations with law and regulations requiring country of origin labeling (COOL) for beef and pork in dispute brought by Canada and Mexico. Panel found rules come under Technical Barriers to Trade (TBT) Agreement and did not meet legitimate objective of giving consumers information on origin of meat. "We are pleased that the panel affirmed the right of the United States to require country of origin labeling for meat products," said USTR Press Secretary Andrea Mead in statement. "Although the panel disagreed with the specifics of how the United States designed those requirements, we remain committed to providing consumers with accurate and relevant information with respect to the origin of meat products that they buy at the retail level. In that regard, we are considering all options, including appealing the panel's decision," she added.

EXPORT ENFORCEMENT: OFAC has fined two firms for violating Iranian Transactions Regulations. Wilson Tool International, Inc, White Bear Lake, Minn., will pay $15,000 fine for allegedly exporting punch press tooling equipment to Iran without OFAC license. It did not voluntarily disclose actions, OFAC said....ASF, Inc., Mobile, Ala., was fined $5,400 for allegedly engaging in transaction related to goods destined for Iran and facilitating exportation of goods from a third country to Iran by a foreign person, without OFAC license. It didn't make voluntarily disclosure either, agency said.

MORE EXPORT ENFORCEMENT: Xun Wang, former managing director of PPG Paints Trading (Shanghai) Co., Ltd., wholly-owned Chinese subsidiary of U.S.-based PPG Industries, Inc., pled guilty Nov. 15 to conspiring to violate International Emergency Economic Powers Act with export of high-performance coatings to nuclear reactor in Pakistan. As part of plea, she agreed to enter administrative settlement with BIS and pay civil fine of $250,000 with $50,000 of payment suspended. She also will be placed on Denied Persons List for 10 years with five years suspended. Wang is latest of multiple pleas and settlements that arose from PPG case (see **WTTL**, July 18, page 4).

ITC: President Obama nominated Meredith Broadbent Nov. 8 to be member of International Trade Commission. She was Assistant USTR for industry, market access, and telecommunications from 2003 to 2008. Previously, she was senior professional staff member on House Ways and Means Committee.

LIECHTENSTEIN: BIS in Nov. 14 Federal Register revised Liechtenstein destination status to match treatment given to exports to Switzerland as result of two countries ratifying customs union treaty.

SUNSET REVIEWS: ITC has made three "sunset" review determinations that U.S. industry is likely to face renewed injury if existing antidumping orders were revoked. On Nov. 15 it voted 4-2 on injury from solid urea from Russia and Ukraine; on Nov. 17 it voted 6-0 on welded stainless steel pipe from Korea and Taiwan and 5-0 on gray portland cement and cement clinker from Japan.

TRIPS: Least-developed-countries need two more years to come into compliance with agreement on Trade-Related-Intellectual Property Rights (TRIPS), trade body's TRIPS Council recommended Nov. 17. LDCs already had six-year extension beyond 2005 deadline to meet requirements adopted in Uruguay Round. Council approved two recommendation that it wants WTO ministers to endorse at Eighth Ministerial Conference Dec. 15-17. One would direct council to extend deadline and second would call on countries to refrain from filing "non-violation" complaints at WTO against LDCs that haven't implemented TRIPS requirements. Proposal doesn't effect pharmaceutical patents, which are covered by separate agreement giving LDCs until 2016 to comply with TRIPS rules.