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Senate Confirms Hirschhorn as BIS Under Secretary

The Senate ended Eric Hirschhorn's two-year wait and confirmed his nomination to be Bureau of Industry and Security (BIS) under secretary Oct. 31 by unanimous consent. President Obama first nominated Hirschhorn in September 2009, but Senate action was blocked by a "hold" placed on his confirmation, reportedly by Sen. Jon Kyl (R-Ariz.). When Hirschhorn's confirmation languished in the Senate, Obama gave him a "recess appointment" in March 2010. Under the Constitution, that interim appointment was set to expire at the end of 2011.

Industry sources say Kyl's hold may have been encouraged by one of his staff, who subsequently left in early 2011. With a new person reviewing Hirschhorn's confirmation, Kyl appears to have relented and allowed the vote to go ahead.

Kyl apparently was concerned that Hirschhorn's long experience as a lawyer who represented exporting companies while he was a partner with the D.C. law firm of Winston & Strawn would make him too lenient in enforcing export controls. In addition, Hirschhorn had served as executive secretary of the Industry Coalition on Technology Transfer (ICOTT), which lobbied for the easing of export controls.

In September, 13 trade associations jointly wrote to Sen. Richard Shelby (R-Ala.), ranking member of the Senate Banking Committee, urging his support for Hirschhorn's confirmation. At a Banking Committee hearing Oct. 13, Chairman Tim Johnson (D-S.D.) included in his written opening statement an endorsement of Hirschhorn's confirmation, but he did not read the paragraph when he read the rest of the statement (see **WTTL**, Oct. 17, page 4). "I want to reiterate my strong support for his immediate confirmation," he said in his prepared text.

Bills Aim to Tighten Sanctions on Iran, North Korea, Syria

An alleged loophole in current Iran sanctions laws, which allows some foreign subsidiaries of U.S. companies to continue to do business with Iran, would be closed by legislation (H.R. 1905) the House Foreign Affairs Committee approved Nov. 2. Called the Iran Threat Reduction Act, the measure includes provisions that could hit U.S. companies with penalties under existing sanctions laws, if the president determines that one of their foreign subsidiaries engaged in acts that would violate the law if committed by a U.S. person. It also agreed on the Iran, North Korea and Syria Nonproliferation Reforms and Modernization Act (H.R. 2105), which adds new sanctions against those three countries. The Iran bill also would require State to issue guidelines describing goods, services and technologies that would be considered "sensitive



technologies.” Another provision would require U.S. banks to file certifications with Treasury that they have no corresponding relations or business activity with non-U.S. banks that handle transactions with designated Iranian banks. The measure would bar export licenses for items on the U.S. Munitions List or subject to the Export Administration Regulations to any country if it is determined that any state-owned enterprise of that country’s government has supported Iran’s Islamic Revolutionary Guard Corps (see **WTTL**, Oct. 17, page 1).

A change to the Comprehensive Iran Sanctions, Accountability and Divestment Act would revise the “special rule” that has allowed State to withhold sanctions against companies doing business in Iran when they promise to end those relationships. The provision would require the divestment to occur within one year.

U.S. firms have complained that the proposed legislation could force the U.S. to impose sanctions on countries such as Russia, China and India for the relations that firms in those countries still have in Iran. H.R. 2105 would place a “straitjacket on the complex bilateral relations between the United States and the Russian Federation,” said a statement by the trade group USA-Engage. Both measures “would have counterproductive consequences” and “could produce a major increase in world oil prices to the extent it constrained Iranian crude sales,” it added.

BIS Issues Advisory Opinion on Carbon Fiber Materials

“Small changes in facts can result in significant differences in the control status of technologies,” said a BIS advisory opinion Oct. 25 on commodity classification requests for production or development technology for carbon fiber organic matrix material systems and related structures. The advice responded to questions about items under Export Control Classification Number (ECCN) 1E001. “The rules pertaining to the classification of composite-related information are complex largely because composite-related technology is complex,” BIS said.

“Thus, if a classification request for composite-related information does not describe carefully and address all the potentially applicable regulatory, definitional, and technical issues associated with a particular item at issue (as opposed to broad categories of items), then the classification determination will not likely be as reliable or useful as it should or could be,” the BIS guidance said. “A key variable in determining whether composite-related information is controlled by ECCN 1E001 is whether it is ‘required’ technology,” it added.

“Those drafting classification requests asserting that a particular type of composite-related technology is not ‘required’ should be sure to address whether any of the following examples and commentary on different types of technologies that are often ‘required’ to produce or develop controlled composites would apply to the technology at issue in the request,” it noted. Among the examples cited were technology for the development or production of 1c010.e materials, 1c210 materials or 1c010.b fibers, 1a002.a-controlled structures or laminates; and other development and production technology generally not peculiarly responsible for achieving the controlled performance levels, characteristics, or functions of 1a002.a-, 1c010.b-, 1c010.e-, or 1c210-controlled items, BIS advised.

EU Approves New General Authorizations For Dual-Use Goods

The European Union (EU) General Council adopted a regulation Oct. 25 establishing new general export authorizations under its regime for the control of dual-use exports. The new regulation set up “an EU regime for the control of exports, transfer, brokering and transit of dual-use items, which requires dual-use items to be controlled when they are exported from or transit through the EU. These controls are designed in particular to prevent the proliferation of weapons of mass destruction and meet the objectives set by the United Nations Security Council resolution 1540(2004),” the EU said. In addition to current regulations that allow exports from the EU to Australia, Canada, Japan, New Zealand, Norway, Switzerland, Liechtenstein and

the U.S., the revised rules add to the list Argentina, Croatia, Iceland, South Africa, South Korea and Turkey. The new rules identify which items are eligible under the new rules by classification number. The new regulation “is important because it introduces five new Community General Export Authorisations (CGEAs), which are like OGELs [Open General Export Licences] under the UK system but issued by the EU,” David Hayes, Director, David Hayes-Export Controls, told WTTL. “Think license exceptions under EAR as an analogy. Items that are currently covered by national general licences, like OGELs, will have to be removed from those licences if they are not covered by new CGEAs,” he explained.

BIS Urged to Ease Encryption Controls on Modems

Faced with increasing competition from international companies not constrained by U.S. export controls, some U.S. satellite manufacturers are urging BIS to exclude commercial satellite modems from encryption controls. In a presentation to the Nov. 2 meeting of the BIS Information Systems Technical Advisory Committee (ISTAC), Daryl Hunter, director of regulatory affairs at ViaSat, said international markets will continue to expand, resulting in more license applications and reporting. Current thresholds in U.S. regulations are not keeping up with advancements in technology, he argued.

To allow U.S. companies to compete with European and Israeli manufacturers in the same market, Hunter presented three options. The first would be to add “Commercial satellite user modems” to Note 5.A.2 of the Wassenaar Agreement, which currently lists various carve-outs to encryption controls. Hunter said another option would be to decontrol the modems unilaterally, such as adding an exception to Section 742.15(b) of the Export Administration Regulations (EAR) that says, “with the exception of commercial satellite user modems.”

The third option would be to remove or increase the transmission threshold currently allowed under License Exception ENC (EAR Section 740.17(b)(1)(a)(3)). ViaSat suggested raising the threshold for transmission over satellite at data rates from 10 mbps to 250 mbps. Alternately, BIS could create a control exclusion under that section for commercial satellite user modems.

Digital Industry Calls for Talks on Cross-Border Data Flows

U.S. companies and trade associations in the services, software and Internet industries called on the U.S. Nov. 3 to press for negotiations to harmonize rules on access to the Internet and prevent “digital protectionism” in the form of “forced localization” that requires companies to locate data centers in the countries where they operate. While many countries restrict the use of personal information under privacy protection laws, including in the European Union (EU), Australia, Canada and Japan, the group is more concerned about the use of data restriction for political and economic reasons in countries such as China, Russia, Vietnam and Indonesia.

The U.S. offered a proposal on e-commerce at the last session of the Trans-Pacific Partnership talks in Peru and recently also presented a joint paper to the World Trade Organization’s (WTO) e-commerce committee (see **WTTL**, Oct. 31, page 1). U.S. industry, however, also wants the subject raised at the upcoming meeting of the Asia-Pacific Economic Cooperation Forum (APEC) and also as a future topic of WTO negotiations.

The objectives for any negotiations on cross-border data flow, the group recommended, should include: express prohibitions on restrictions to legitimate cross-border information flows, prohibitions on local infrastructure or investment requirements, international standards, transparency and predictability, addressing legal issues such as open access to the Internet, security, privacy and jurisdiction, trade in digital goods, services and infrastructure and coverage of digital services in trade agreements. The group, organized by the National Foreign Trade Council, includes companies such as Citi, Google, IBM, GE, Microsoft, MasterCard and Visa.

Study Sees More Gains from Doha Deal

After several economic reports diminished the expected gains that would come from the successful completion of the WTO Doha Round, a new EU-funded study released Oct. 31 says a deal would raise world exports by \$359 billion annually by 2025, with most of the benefits from “trade facilitation” going to developing countries. The report claims the major beneficiaries from an agreement would still be industrialized countries, although it appears to support U.S. concerns that the deal on the table now doesn’t help American industries as much as those of other countries.

The study is based on new data for the world economy, which includes the impact of the financial and economic crisis. It has “a significantly higher degree of specification” based on the use of a “state-of-the art” computer model and the most recent negotiating texts published in December 2008 and updated in April 2011, an EU press release explained. Numerous previous studies tried to quantify the effects of a Doha Round agreement, “but few really managed to grasp the complexity of the proposals at the most detailed level” or how the flexibilities included in the draft agreement would be used, it said.

The EU and China are the main beneficiaries from a goods and services scenario, the report said, with each reaping 22% of world GDP gains. U.S. gains are “less spectacular” with 7%, although the U.S. and ASEAN countries benefit from the scenario combining agriculture and industry, with 8% and 9%, it said. The Caribbean, Mexico and Sub-Saharan African countries would “suffer small losses,” the report said. Trade facilitation would wipe out the losses in the Caribbean and African countries, it suggested. Taiwan, Japan, the ASEAN and North African countries benefit from sizable gains in allocative efficiency due to specialization in activities in which they have advantages, it said.

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RUSSIA: Deal or No Deal? Conflicting reports say Georgia and Russia may or may not have reached agreement on Russia’s accession to the WTO (see **WTTL**, Oct. 31, page 4). Issue may be clarified at next meeting of WTO Working Party on Russia’s accession Nov. 10. “We are happy that Georgia supported the draft agreement and that finally an agreement has been reached,” Maxim Medvedkov, Russia’s chief negotiator in accession talks, was quoted in Reuters report. U.S. and Georgian officials are reportedly pleased with progress, but agreement is not yet final. “We welcome that Russia agreed and now we are traveling to Geneva to hold meetings where the agreement can be signed by Nov. 10,” Georgian Deputy Foreign Minister Sergi Kapanadze was quoted in another report.

EXPORT ENFORCEMENT: Zurigo Trading, Inc. in Weston, Fla., has been assessed \$7,000 civil penalty for violating Iranian Transactions Regulations (ITR), OFAC announced Oct. 27. According to OFAC, in September 2006, Zurigo attempted to export goods valued at \$7,168 to Iran on behalf of foreign customer. OFAC said it determined that Zurigo did not voluntarily self-disclose violation.

ANTIBOYCOTT: JAS Forwarding (USA) Inc. in Carson, Calif., agreed to pay \$19,200 civil fine Oct. 6 to settle three BIS charges of violating antiboycott regulations by furnishing information about business relationships with boycotted countries or blacklisted persons. JAS neither admitted nor denied charges.

ITC: Senate confirmed David Johanson to be ITC commissioner Oct. 31 (see **WTTL**, Oct. 17, page 4).

LIBYA: State in Nov. 4 Federal Register amended ITAR to reflect additional modifications to UN Security Council arms embargo of Libya adopted in September 2011. Changes allow “supply, sale, or transfer to Libya of arms and related materiel, including technical assistance, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related materiel for the sole use of UN personnel, representatives of the media, and humanitarian and development workers,” it said.

EX-IM BANK: Guillermo O. Mondino, owner of Texon Inc., was sentenced Nov. 1 in D.C. U.S. District Court to 46 months in prison for his role in scheme to defraud Ex-Im Bank of approximately \$24 million. Mondino was also sentenced to three years of supervised release and was ordered to pay \$13.3 million in restitution and \$2.7 million in forfeiture. Mondino pleaded guilty on June 23, 2010, to one count of conspiracy to commit mail fraud and one count of money laundering (see **WTTL**, July 12, 2010, page 4).