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BIS to Post Consolidated Interagency Denied Party List

The export community's long-desired wish for consolidation of U.S. government denied party lists will get partially fulfilled early in 2011 when the Bureau of Industry and Security (BIS) posts a unified list on its website. As part of the Obama administration's export control reform effort, BIS will publish a combined list that will include its own denied party lists, plus lists from a dozen other federal agencies, including State's Directorate of Defense Trade Controls (DDTC) and Treasury's Office of Foreign Assets Control (OFAC), according to BIS sources.

In addition to the BIS Denied Party List and Entity List, the consolidated list is expected to include OFAC's Specially Designated Nationals (SDN) and blocked parties' lists and DDTC's list of parties that are under statutory debarment from defense export licensing for violating the Arms Export Control Act or administrative debarment for violating other trade-related statutes.

While BIS will maintain the consolidated list, each export enforcement agency will continue to publish and maintain its own sanctioned parties' lists independently. Those agencies, however, will be required to alert BIS to any additions, deletions or changes to their lists at the same time as they update their own lists. There will be no attempt at this stage to unify the content or format of the lists maintained by each agency. The BIS consolidated list will include all fields used by different agencies. Where information for a field is on a list, it will be on the consolidated list. If the information is not provided, the field will be left blank.

The decision to publish a consolidated list cuts the Gordian Knot that has prevented creation of a unified U.S. government list of years. The General Services Administration maintains a list of all debarred parties under all federal laws on its web-based Excluded Parties List System. An earlier effort to create a single list just for export control screening failed after getting mired in interagency disagreements on formats and control, as well as the cost of revising the information technology systems of all agencies involved. Although the BIS list will include all U.S. lists, it won't include foreign or international lists such as those of the United Nations, Japan or the United Kingdom, which are available in some private-sector screening systems.

New GOP Tea Party Members Will Back Trade Deals, Brady Says

New House Republicans who were elected with tea party backing are expected to support pending free trade agreements and other free-trade legislation, says Rep. Kevin Brady (R-Texas), who will become chairman of the House Ways and Means Committee's trade subcommittee in



January. “My sense is that for new Republican members, their default position is less government, less restrictions, more freedom to trade,” Brady said in an exclusive interview with WTTL. “They understand the importance of competing to win in a global market,” he said. “Many of the tea party challengers ran on the issue of freedom. They see this issue as the freedom to buy, to sell and compete with as little government interference as possible. They don’t want Washington or labor unions or any other special interest to dictate what they can buy and at what price,” Brady told WTTL. While the fate in the Senate of the House-passed China currency bill (H.R. 2378) in the current lame-duck session of Congress is still uncertain, if the Senate doesn’t act, similar legislation is not likely to come out of Ways and Means next year, Brady said. The following is Part 2 of our exclusive interview with Brady.

WTTL: What do you think are the chances for Panama and Colombia FTAs?

BRADY: In my view, we have done both countries a great disservice by not having submitted and taken up those agreements long before now from both a strategic and economic point of view. There is no justification for having not voted both those agreements through. It is really time to work on the side issues, and it is time to submit both of those agreements and let Congress act on them.

WTTL: The conventional wisdom is that there more Republican votes for these trade deals than Democratic votes. With the election you have more Republican votes, but it is still uncertainty about how the new members are going to vote. Some tea party people sound like they side more with Democrats, are more skeptical about trade. Do you have a sense about how the new members will vote on trade?

BRADY: My sense is that many of the freshman Republicans have small businesses or agriculture backgrounds. They understand the need for customers whether they are next door or in another country. They understand the importance of competing to win in a global market. Many of the tea party challengers ran on the issue of freedom. They see this issue as the freedom to buy, to sell and compete with as little government interference as possible. They don’t want Washington or labor unions or any other special interest to dictate what they can buy and at what price. So I think for many new members this will be seen as an issue of expanded freedom versus restricted freedom.

WTTL: Have you had a chance to talk to any of them yet?

BRADY: I have, a number of them. What struck me is two things: One, trade is very much a regional perspective. States that have struggled have lawmakers who are less supportive; others who are selling to those new markets are more supportive. I don’t think that has changed. The other thing that struck me is how many races where trade was not raised as an issue and candidates chose not to make it an issue. Often times, you see that lawmakers studying those agreements realized they opened the possibility for two-way trade. In this case, trade campaigns were fairly limited and actually were helpful. My sense is that for new Republican members, their default position is less government, less restrictions, more freedom to trade.

WTTL: Obviously, another big issue is China currency legislation. Do you expect the Senate to act during the lame-duck session, and if it doesn’t what is likely to happen next year?

BRADY: From our subcommittee standpoint, we are not going to be viewing China just through a currency vacuum. We’re going to look at a whole range of issues, substantive barriers, including indigenous innovation, directed lending, subsidies, government procurement, all that. I don’t know if the Senate will act or not. Mr. Camp has indicated that he doesn’t see that as likely. I have two points to make: the Republicans absolutely agree that the China currency must appreciate, but we also recognize that it will take a multilateral approach in order to achieve that.

WTTL: So the chance for a China currency bill going through Ways and Means next year is pretty slim?

BRADY: If I understand Mr. Camp’s view of it, yes.

WTTL: Is there some other type of China bill that is likely, if you do look at these broader issues that are probably more important than currency for China trade?

BRADY: I don’t know yet what form that will take. One thing we are going to do is hold hearings to bring out the impact of these barriers to access so lawmakers can understand the whole range of issues, how complex this relationship is with China and how we can deal with it.

Small Business Cleared to Export Computers to Sudan

Thanks to a limited waiver that President Obama issued Nov. 19 to U.S. sanctions on Sudan, a small U.S. technology business can now export computers and software in support of democracy in that country. Planson International, a woman-owned company in New Gloucester, Maine,

that supplies technology to the foreign aid and development community, will receive a \$1.5 million revolving working capital loan guarantee from the Export-Import Bank to export computers and software to the United Nations Development Program in Sudan. Bank of America will provide the loan. The equipment will be used to support the Jan. 9, 2011, referendum on self-determination in southern Sudan, specifically for voter registration, demographic data analysis, vote tallying and post-referendum policy development.

Without the waiver, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) prohibits U.S. government assistance, including foreign assistance, export assistance, and any credit or guarantees for exports to Cuba or for commercial exports to Iran, Libya, North Korea, or Sudan.

According to the presidential order, "it is in the national security interest of the United States to waive the application of section 908(a)(1) of TSRA to allow export assistance to be made available for the export of computers and related equipment that enables the United Nations to facilitate the referendum in Southern Sudan pursuant to the Comprehensive Peace Agreement." Planson's website claims it is a trusted supplier to the UN system, nongovernment organizations, the U.S. government, international finance institution borrowers, USAID projects, and emerging market private-sector clients.

Lawmakers Will Try to Pass Second Miscellaneous Tariff Bill

House and Senate committees are pushing for passage of a second Miscellaneous Tariff Bill (MTB) comprising tariff reductions or suspensions on some 300 items during the current agenda-crowded lame-duck session of Congress. The Senate Finance Committee and the House Ways and Means Committee released Nov. 24 a draft bill containing the tariff modifications. "The bill is expected to be considered in the coming weeks," said a Ways and Means statement. Included in the measure is a provision that would make the changes retroactive to Jan. 1, 2010, for those items whose duty suspensions had lapsed awaiting new legislation.

Excluded from the draft bill are proposed amendments that the Obama administration had opposed for various reasons, including the fact that domestic production of the item exists. The lack of domestic production of the imported product is one of the criteria a proposed change must meet to be included in a MTB.

If the MTB gets a vote in the lame-duck, it will be the second tariff measure that Congress will pass this year. In August, President Obama signed H.R. 4380, which included hundreds of other tariff changes. "The second MTB includes: (1) new House bills included in H.R. 4380 (as introduced), but not included in the Manager's Amendment to H.R. 4380, enacted as P.L. 111-227 (Title I); (2) new and existing Senate bills (Title II); (3) re-liquidation provisions (Title III); and (4) technical corrections (Title IV). Bills extending expired provisions are subject to retroactive treatment effective January 1, 2010," Ways and Means explained. "All bills included in the second MTB have been cleared through the MTB process," it added. This included identification of the name of the company that will benefit from the change.

More Delays Expected in Adopting Cargo Security Systems

After years of effort, international officials are still far from creating a common electronic security system to protect cargo moving through the global supply chain and ports, recent meetings of standards groups and a report from the Government Accountability Office (GAO) indicate. Work on container and cargo identification systems has been dropped from the agenda for the International Telecommunications Union's (ITU) 2012 treaty conference to revise the Radio Regulations, according to regulators attending an ITU information meeting the week of Nov. 22. Officials were told that the International Maritime Organization (IMO) had not received clear proposals for well-balanced requirements for the systems, an IMO executive said. Earlier in November, a U.S.-European Union panel on supply chain security sponsored by

the American National Standards Institute (ANSI) discussed use of the International Organization for Standardization's (ISO) 28000 series of management standards as a solution. Some in industry are skeptical of this approach. Management standards won't achieve the desired aim for a safer supply chain, said Craig K. Harmon, president & CEO of Q.E.D. Systems, noting that adherence to various ISO standards hasn't prevented recalls, oil spills or cyber hacking.

The long preparatory work for the ITU conference has been working on harmonizing spectrum for radio frequency identification (RFID) systems. RFID tags and readers might use frequencies different than those to communicate with control systems in the future when satellite and cellular technologies are added to the systems, industry executives say.

The IMO asked ITU to identify technical solutions and spectrum requirements suitable for the entire intermodal supply chain. Any needed amendments to operational regulations or frequency allocations would be included in a future conference, one IMO executive said. The 2012 conference probably will approve the agenda and work program for the next ITU conference. That generally means proposals for future regulatory action not approved at the 2012 conference could have to wait eight years

The Department of Homeland Security (DHS) is concerned that existing cargo container doors and seals do not provide adequate security for their contents, said Stephen L. Caldwell, director of a GAO team dealing with maritime and coastal security issues, in a cover note to a GAO report in September (GAO-10-887). Just 4.6% of all containers arriving at U.S. seaports in 2009 were scanned because they were deemed high risk, the GAO report said. Approximately 99% arriving by sea were scanned for radiation. DHS has made only limited progress with \$60 million aimed at developing technologies to detect container tampering, the GAO reported.

The GAO said industry support and operational details would be needed even if technologies matured enough for deployment, but a GAO survey of industry representatives found them opposed to use of such devices. Some firms threatened to withdraw from the Customs-Trade Partnership Against Terrorism (C-TPAT) program if trusted shippers were asked to use the technologies even voluntarily, Caldwell noted. DHS appears to recognize this industry opposition, which may explain why it is being cautious in adopting any new systems.

* * * Briefs * * *

EXPORT ENFORCEMENT: Pinnacle Aircraft Parts, Inc., of Miami, paid \$225,000 fine in settlement with OFAC to resolve charge that it violated reporting regulations when it failed to provide documents in response to OFAC administrative subpoena. OFAC was seeking information on firm's alleged sale and delivery of jet engine to customer in Iran. "Pinnacle apparently relied in good faith on the advice of legal counsel in determining not to produce the e-mail and other documents in response to the subpoena," OFAC noted in Nov. 16 notice of settlement.

RUSSIA: EU and Russian officials said they reached agreement in Brussels Nov. 24 on outstanding bilateral issues in talks on Russia's accession to WTO. Moscow apparently satisfied EU concerns about Russia's export duty regime and railway fees. "The negotiations resulted in a balanced outcome on all the issues concerned by these bilateral talks, in a spirit of taking into account mutual interests," negotiators said in joint statement. They said they are aware "of the remaining multilateral issues to be resolved in such areas as agricultural trade, technical regulations, including sanitary and phytosanitary rules, and the investment regime in the automotive sector, in order to complete this process."

FCPA: After seven-year legal fight, judge in Manhattan U.S. District Court fined Mercator Corp \$32,000 Nov. 19 for FCPA violation. Firm pleaded guilty in August to one count of giving two snowmobiles to senior Kazakh official (see WTTL, Aug. 16, page 4). Its chairman, James Giffen, was sentenced to time served on misdemeanor charge to which he pled guilty.

FARM SUBSIDIES: WTO Agriculture Committee Nov. 18 heard complaints that some countries have exceeded allowed farm subsidies or export rules in reaction to concerns about food security and higher prices. Meeting focused particularly on notifications from Costa Rica, Israel, Norway, Poland and Ukraine.