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Advisors Call for Tripling Computer Control Threshold

The Bureau of Industry and Security's (BIS) Information Systems Technical Advisory Committee (ISTAC) has urged the U.S. to seek a tripling of the threshold for computer controls and a six-fold increase in controls on computer technology during the Wassenaar Arrangement's list review in 2015. As part of a package of recommendations the committee has submitted for interagency consideration for next year's Wassenaar agenda, the advisors called for increasing the Adjusted Peak Performance (APP) for high-performance computers to 24 Weighted TeraFlops (WT) from 8.0 WT and for software and technology to be lifted to 6.0 WT from 0.6 WT (see related story page 7).

In July, President Obama notified Congress the U.S. would implement APP changes that Wassenaar adopted at its December 2013 plenary (see **WTTL**, July 7, page 1). BIS amended the Commerce Control List (CCL) in August to implement those changes and other revisions that Wassenaar adopted.

BIS revised the APP for Export Control Classification Number (ECCN) 4A003 to 8.0 WT; for software in 4D001 to 1.0 WT from 0.5 WT, and for technology eligible for License Exceptions TSR and Strategic Trade Authorization (STA) in 4E001 to 1.0 WT from 0.5 WT. The control parameter for software for digital computers was raised to 0.6 WT from 0.25 WT in 4E001.b.1. In addition to adopting the Wassenaar standard, the Federal Register notice said BIS was making the change because "multi-core processor technology has continued to advance rapidly as feature size shrinks."

ISTAC wants the U.S. to include its recommendations in the changes to be proposed for Wassenaar review next year. Before that step, however, interagency agreement is needed to support the proposal. The computer industry has been pushing for higher APP levels for several years because of the rapid jump in microprocessor computing power. ISTAC members also noted that current limits on technology create problems for research and development, including the need for deemed export licenses, because technology work is often many years ahead of the computers that are actually on or near the market.

Phone Call Reveals Troubles with TTIP Talks

Two words in a statement the U.S. Trade Representative's (USTR) office issued on the phone call USTR Michael Froman made Nov. 3 to new European Union (EU) Trade

Commissioner Cecilia Malmström reveal the troubled state of transatlantic trade negotiations. Froman called Malmström to congratulate her on appointment to the EU trade post. “They agreed on the economic and strategic importance of the Transatlantic Trade and Investment Partnership (TTIP) and shared commitment to working on a fresh start for the talks,” the statement said. The need for a “fresh start” reflects the problems the negotiations faced before Karel De Gucht left the EU job (see **WTTL**, Sept. 15, page 1).

In September, the U.S. and EU put “substantive” TTIP talks on hold supposedly as a courtesy to await the installation of new EU leadership in November. Sources, however, say the stall in the negotiations was due to EU frustration with the lack of meaningful U.S. proposals in several areas and an increasingly testy relationship between Froman and De Gucht.

Froman’s warm welcome to Malmström may signal hopes that the two trade officials may have a better relationship. Industry sources say they expect Malmström, who is Swedish, to be more eager than De Gucht to reach a TTIP deal. They note that Sweden was among the first EU countries to press for the launch of TTIP talks and to support a deal. During her confirmation hearing before the EU Parliament’s international trade committee, she expressed support for TTIP and continuation of the trade policies of the outgoing commission. Despite opposition to an accord among some sectors in Europe, EU leaders still see a deal as a needed boost to the sagging European economy.

Froman and Malmström are expected to meet in Washington before the end of the year to do a “stocktaking” of the state of the TTIP talks and to map plans for the talks going forward. TTIP negotiators are not likely to hold another round of talks until January or February, sources say.

Census Concedes Problems with Numbers for Canada, Mexico

The quality of U.S. trade statistics has improved due in part to the introduction of the Automated Export System (AES), but problems remain with trade data for Canada and Mexico, concedes a Census Bureau report issued in October. There are two main problems with data for trade with Canada and Mexico. One involves the accounting for goods in transit through the U.S. to those two countries. The other problem deals with exports to Canada that are destined for reexport.

“When transiting goods are shipped under bond, they are not subject to duties and are excluded from the merchandise trade statistics,” the report notes. “As many U.S. tariffs have been reduced or eliminated, the benefits of shipping goods under bond have decreased,” it points out.

As a result, companies often enter transiting goods into the U.S. using the import entry summary and file Electronic Export Information [EEI] when they leave the U.S. for the final country of destination. The practice results in the inclusion of the transiting goods in the trade statistics. “While the practice of entering transiting goods does not affect the total trade balance, it does affect bilateral trade balances. For example, if goods shipped from Canada destined for Mexico enter the United States and are then re-exported to Mexico, the U.S. statistics will show an import from Canada (thus overstating our deficit with Canada) and an export to Mexico (understating our deficit with Mexico),” Census states. Another problem with Canadian data are shipments destined for reexport. “The

movement of U.S. goods northbound through Canada en route to another destination can result in under coverage in filing U.S. export statistics,” the report concedes. “Most shipments to Canada do not require an EEI, as they are collected through the U.S.-Canadian Data Exchange. However, an EEI is required for goods that cross the Canadian border and are shipped to another country from a Canadian port,” it adds.

“Exporters may not comply with the reporting requirements for several reasons. In some cases, exporters may mistakenly believe that they are not required to file EEI, as this is not required for most goods shipped to Canada. In other cases, shippers may choose not to file the EEI because of a lack of enforcement of the reporting requirement. Ongoing education and border security efforts help minimize this problem,” Census says.

USTR Files First Shot in Arbitration Case Against Guatemala

In its initial written submission to an arbitration panel in the dispute over labor rights violations, the USTR’s office claimed Nov. 3 that Guatemala has failed to enforce its existing labor laws as required by the U.S.-Central American Free Trade Agreement (CAFTA) “through a sustained and recurring course of inaction, in a manner affecting trade.” In its submission, the USTR outlined 402 separate violations of the Central American country’s labor obligations.

The violations fall into three categories where Guatemala failed to: (a) secure compliance with court orders requiring employers to reinstate and compensate workers wrongfully dismissed for union activities and have employers pay a fine for their retaliatory action; (b) conduct investigations in accordance with the Labor Code and impose the requisite penalties when the Ministry of Labor has identified employer violations; and (c) register unions or institute conciliation processes within the time required by law.

The U.S. reactivated an arbitration case against worker rights violations in Guatemala in September after suspending the process three times (see **WTTL**, Sept. 22, page 3). The decision to renew the complaint came after the U.S. said Guatemala failed to implement an 18-point labor action plan (LAP) to fix problems the AFL-CIO identified in a petition to the USTR’s office six years ago.

“Guatemala’s failures involve workers at over a dozen companies, each in one of four of Guatemala’s major exporting sectors: shipping, apparel, steel and agriculture. At each company, Guatemalan products are either exported to the United States or other CAFTA-DR Parties, or compete in Guatemala with imports from the United States or other CAFTA-DR Parties,” the USTR wrote.

BIS Imposes “China Rule” on Exports to Venezuela

Adding to existing restrictions against Venezuelan military officials for ongoing human rights violations, BIS has extended the same licensing requirements it had imposed on exports under the so-called China Rule in 2007 to Venezuela. The final rule effective immediately would impose license requirements on the export, reexport or transfer (in-country) of items under 32 Export Control Classification Numbers (ECCNs) to or within

Venezuela when intended for a military end-use or end-user. The agency said it was responding to “the Venezuelan military’s violent repression of the Venezuelan people,” the notice published in the Nov. 7 Federal Register said. “This change complements an existing U.S. arms embargo against Venezuela for its failure to cooperate in areas of counterterrorism,” it added (see **WTTL**, Sept. 22, page 1).

In July 2014, State had imposed visa restrictions against Venezuelan government officials, including members of the Venezuelan military, who “participated or were complicit in human rights violations and undermined democratic processes,” BIS noted. The agency recently added Russia to the China rule in a slew of additional sanctions imposed in September.

The final rule also adds a paragraph (h) to Section 744.21 of the Export Administration Regulations (EAR) to exclude from these new license requirements transactions under contracts signed prior to Nov. 7. “Applications to export, reexport, or transfer items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC, Russia, or Venezuela, and would result in advancing the country’s military activities contrary to the national security interests of the United States. When it is determined that an export, reexport, or transfer would make such a contribution, the license will be denied,” the notice said.

The U.S. and Venezuela have had a rocky relationship for several years, which has shown up in trade relations. After growing steadily from 2004 to 2008, U.S. exports to Venezuela dropped during the recession in 2008. They rebounded through 2012 when they peaked at \$17.5 billion due to a surge in petroleum products, which is the largest category of exports. Exports declined in 2013 to \$13.2 billion. Even with the arms embargo, a low level of military product sales have continued for non-military users.

Fast Track in Lame Duck Session Remains Long Shot

Although the business community has become excited about the prospect that Congress might pass a fast-track trade promotion authority (TPA) bill during the coming post-election lame-duck session, the chances for the legislation this year remain slim. Senate Finance Committee Chairman Ron Wyden (D-Ore.) apparently woke up recently, read the polls, and realized he would not be chairman in January and needed to get moving on his dormant proposal for his “smart track” version of TPA. Trade observers and congressional sources note the many obstacles that would face a TPA measure this year.

Wyden’s staff reportedly is discussing with their Republican counterparts some proposed changes to the TPA legislation (S. 1900) that then-Finance Chairman Max Baucus (D-Mont.) introduced with Ranking Member Orrin Hatch (R-Utah) and Ways and Means Chairman Dave Camp (R-Mich.). While Hatch has been a strong supporter of TPA, there is no sign that he would accept Wyden’s proposed changes to the Baucus-Hatch bill.

“Hatch won’t accept major changes to his bill,” one source told **WTTL**. In addition, he would want to wait until he is formally chosen to be Finance chairman by the Republican conference later in November and has had a chance to discuss the legislation with other GOP members. “The members aren’t here yet and he wouldn’t want to dump a bill on

them in the lame-duck session that they haven't seen," the source added. Other sources say Hatch might want to wait until next year when he is chairman to bring up a fast-track measure that Republicans will control. "Hatch made all kinds of compromises and surrenders [with Baucus] to get a package that would move," one former congressional staffer said. Nonetheless, "he would likely change it" when he is in charge, he speculated (see **WTTL**, Sept. 29, page 1).

Moreover, Hatch is unlikely to support a bill in the lame-duck session unless he knew Senate Majority Leader Harry Reid (D-Nev.) would allow it to come to the Senate floor for a vote and President Obama was prepared to lobby to get Democratic votes for the measure. "Hatch doesn't want fast track to pass by one vote again," one source said. He also would need assurances that House Speaker John Boehner (R-Ohio) would be willing to move a fast-track bill in the House.

Congressional sources also were waiting to hear the results of the lunch the president hosted at the White House with congressional leaders Friday afternoon to find out if there was any agreement on trade issues and timing. If there were a deal on TPA, action could move quickly, sources say.

Reid is still the biggest obstacle, sources say. He refused to move the legislation so far this year despite the president's support for it. He also has announced a busy agenda for the lame-duck session, including votes on numerous judicial nominations and passage of another continuing resolution to keep the government operating after Jan. 1. Reid "hates trade and is personally opposed to TPA," one trade observer told **WTTL**. While he blocked action before the election to avoid forcing Democrats to vote on a trade bill, after the election he may be concerned about continuing union opposition to fast track.

Unions backed Democratic candidates in the just-passed election and will be needed again in 2016. After the election, the Communications Workers of America (CWA) issued a statement saying it was turning its "attention to stopping the Trans-Pacific Partnership (TPP)." It also said it was kicking off a campaign against TPA. "We'll be demanding that the White House and Congress put its citizens before the corporate and financial interests that already define and dominate the global economy," the union said.

The speculation about a lame-duck session vote comes as Obama and Republican leaders have said trade might be one of the areas where they could find common ground in the new Congress. During dueling press conferences Nov. 5, both Obama and incoming Senate Majority Leader Mitch McConnell (R-Ky.) said they saw trade as an area where they could cooperate. "The president and I were just talking about that right before I came over here," McConnell told his press conference. "I've got a lot of members who believe that international trade agreements are a winner for America. And the president and I discussed that right before I came over here and I think he's interested in moving forward. I said send us trade agreements. We're anxious to take a look at them," he said.

State Allows for Some Maritime Security Exports to Vietnam

As expected, State's Directorate of Defense Trade Controls (DDTC) officially lifted the ban on the provision of maritime security-related items to Vietnam. In a notice to be published in the Nov. 10 Federal Register, it amends the International Traffic in Arms

Regulations (ITAR) to allow for some exports of “lethal defense articles and defense services to enhance maritime security capabilities and domain awareness” on a case-by-case basis. This policy was announced in October after a meeting between Secretary Kerry and Vietnamese Deputy Prime Minister Minh (see **WTTL**, Oct. 6, page 8). At that time, State spokesperson Jen Psaki said the department “has taken steps to allow for the future transfer of maritime security-related defense articles to Vietnam.”

State “determined that is in the best interests of U.S. foreign policy, national security, and human rights concerns that exports of lethal defense articles and defense services to Vietnam may be authorized on a case-by-case basis when in support of maritime security and domain awareness,” the Federal Register notice said. In her October briefing, Psaki said the change in policy was “in part, in order to fully integrate Vietnam into maritime security initiatives that we have partnerships on throughout the region. But there are also components of steps in progress on reforms that they made in the country that prompted the action.”

Election Could Open New Debate on Crude Oil Exports

The Republican takeover of the Senate after the Nov. 4 election could open the way for legislation to repeal the ban on crude oil exports. Even ahead of the election, the oil industry formed a new coalition, Unlock Crude Exports, to lobby for a change to the 40-year-old law to allow for crude exports. The push for a change in the law comes as more firms, including BHP Billiton, begin to export oil that has been converted into petroleum condensate (see **WTTL**, Aug. 4, page 1).

One major legislative factor is the expected choice of Sen. Lisa Murkowski (R-Alaska) to head the Senate Energy and Natural Resources Committee. She has been a strong advocate for lifting the ban on crude oil exports.

The recent drop in crude oil prices may also spur action on legislation because of concerns that lower prices might cool the boom in shale oil production that has helped make the U.S. the world’s largest oil producer. With oil stocks growing, producers want to be able to export the excess overseas. Another factor that will support legislation is the European Union’s (EU) demand to include an energy chapter in the proposed Transatlantic Trade and Investment Partnership (TTIP) to assure European access to U.S. oil and natural gas. The EU position is bolstered by concerns about European reliance on Russian oil and gas in the wake of the crisis over Ukraine and sanctions imposed on Russia and Moscow’s potential retaliation.

Unlock Crude Exports was formed by the American Council for Capital Formation, which supports changes in tax and energy policies. The current restriction “holds America back from significant economic, geopolitical and price-related benefits,” it said in announcing its new effort. “If our leaders will embrace an up-to-date crude oil export policy to match today’s energy reality, our economy, job creation, and U.S. competitiveness will be strengthened with our trade deficit and gasoline prices predicted to fall,” it added.

After Commerce issued a commodity classification to two Texas firms in May confirming their interpretation of Export Administration Regulations language allowing the export of condensate that has been processed through a distillation tower, numerous other firms

reportedly have filed classification requests to get similar advice. BHP Billiton, however, decided to self-classify its condensate product and is preparing to export its processed oil. “BHP Billiton plans to export processed condensate that has been fractionated in distillation towers at our Eagle Ford operations in south Texas,” a company spokesperson said in a statement.

“After taking the necessary time to thoroughly examine the issues involved, we concluded that processed condensate is eligible for export. BHP Billiton has worked through robust due diligence, secured a dedicated supply chain, and has taken steps to ensure the quality of our product for export. The processed condensate that BHP Billiton plans to export is not classified as crude oil under BIS regulations,” the statement explained.

Other firms are likely to follow Billiton’s example, one trade lawyer told WTTL. “As long as they have documentation to make the technical case that they distilled to fall under the condensate” provision, they should be able to export, the attorney suggested. The strong defense that Commerce officials made of their commodity classification decision suggests that the department is comfortable with this form of export. It is still not clear how big the market is for condensate, so this exemption is not likely to forestall the push for legislation to allow crude oil exports.

APEC Leaders Meet Amidst Disputes, Little Progress in TPP

As WTTL went to press, expectations were low for a meeting in Beijing of the trade ministers of the Asia Pacific Economic Cooperation (APEC) Nov. 7-8 and the leaders’ meeting directly following. The ministers involved in the Trans-Pacific Partnership (TPP) were scheduled to meet “on the margins” of the larger group, but USTR Michael Froman had already said he didn’t expect a final agreement on TPP during the trip (see **WTTL**, Nov. 3, page 1). In his opening remarks to the APEC ministers meeting Nov. 7, Froman mentioned the word TPP only once.

A senior U.S. trade official told reporters Nov. 5 that Froman was not scheduled to meet with Japanese economic minister Akira Amari to discuss the deadlocked U.S.-Japan talks on TPP. The official said he “imagined they will have contact while they’re both in Beijing.” Froman, however, will have a “series of bilaterals” with trade ministers in China, he said.

In his opening remarks, Froman did take aim at the host country’s role in unlocking negotiations toward updating an Information Technology Agreement (ITA). “We are hopeful that economies will continue to work to adhere to the level of ambition necessary to reach an ITA agreement. It would be a concrete contribution to strengthening the WTO system at a time when such a boost is needed,” Froman said.

Wassenaar Expected to Ease Some Encryption Controls

The Wassenaar Arrangement’s plenary meeting in December is expected to approve some easing of controls on computers and original equipment parts with encryption capabilities. The proposed change would be made to Note 1 of the information security language in Category 5 Part 2 of the Wassenaar control list. The regime is also expected

to clarify other provisions of the information security rules, sources report. The clarifications to the rules were suggested in a “thought paper” the United Kingdom submitted to Wassenaar. The change has been described as a “clean up” of the list.

The changes come as members of the BIS Information Systems Technical Advisory Committee (ISTAC) raised concerns at their Nov. 5 meeting about the expansion of controls as encryption becomes a standard part of electronic products from smart phones to vending machines. Category 5 is “swallowing up everything,” one member said. “It’s like a gerrymandered district,” another member suggested.

Aside from complaints about encryption controls, ISTAC also approved a series of recommendations it wants the U.S. to propose for the Wassenaar list review in 2015. Its proposals will go through interagency review before the U.S. decides on a position to take to the regime next year. Among the committee’s proposals are: relaxation of controls on analog-to-digital converters in Category 3, deletion of controls on FPGA controls, deletion of 3A1.a.9, which is an “empty box” controlling neural networks, deletion of controls on secondary cells in 3A1.e.1.b because they are becoming used in many consumer products, deletion of controls in 3D3 for physics-based software, updating vector process controls in 3E2a., and updating DSP controls in 3E2c, which were last revised in 2006.

China’s Growing Presence in Caribbean Has Mixed Impact

China’s growing economic presence in the Caribbean is being seen as an important aid to development but is also raising concerns about its impact on local industries, former Jamaican Ambassador to the U.S. Richard Bernal argued at an event in Washington Nov. 6. Chinese investment in construction, which Bernal called “stadium diplomacy,” has helped build major sports facilities for Caribbean countries.

Chinese financing became more important during the global economic decline and due to a downturn in U.S. aid, Bernal noted. In addition, Chinese financing for project includes conditionalities that are less restrictive than U.S. requirements, particularly about environmental concerns, he said.

On the other hand, most of the trade between the region and China involves inexpensive Chinese goods that are starting to displace traditional suppliers as well as domestic manufacturers, Bernal said. Caribbean exports to China are almost insignificant due to the relative lack of energy resources and raw materials, he added.

One irritant in the relationship, which the Chinese consider an “annoyance,” is the continued recognition by several Caribbean countries of Taiwan as the government of China. It is “very much of a competition,” Bernal said. Six Caribbean countries still recognize Taiwan, including Belize, Dominican Republic, Haiti, St. Kitts, St. Lucia and St. Vincent. Before China increased its activities in the Caribbean, Taiwanese manufacturers had made significant investments in the region, including in Central America, in the apparel and other industries. Bernal earlier this year published a book on the subject, called *Dragon in the Caribbean: China’s Global Re-dimensioning – Challenges and Opportunities for the Caribbean*.

*** * * Briefs * * ***

TRADE FIGURES: U.S. merchandise exports in September increased 2.75% from year ago to \$136.1 billion, Commerce reported Nov. 4. Services exports gained 2.9% to \$59.5 billion from same month in 2013. Goods imports went up 2.5% from September 2013 to \$198.7 billion, as services imports increased 3.1% to \$39.9 billion.

OFAC: Houston-based Indam International, Inc. agreed Oct. 31 to pay OFAC \$44,850 to settle charges of violating Iran sanctions between July 2006 and October 2008. Firm allegedly attempted or exported nine shipments worth \$27,846 to UAE “with reason to know that the shipments were intended specifically for supply, transshipment, or reexportation to two oil drilling rigs destined for or located in Iranian waters,” OFAC said. Indam did not voluntarily self-disclose apparent violations.

FCPA: Bio-Rad Laboratories, medical diagnostics and life sciences manufacturing and sales company in Hercules, Calif., agreed to pay \$55 million Nov. 3 to settle SEC and Justice charges of violating FCPA by making improper payments to officials in Russia, Vietnam and Thailand to win business. Under non-prosecution agreement with Justice, company will pay \$14.35 million penalty, and will pay \$40.7 million in disgorgement and prejudgment interest to SEC. Company has also agreed to future reporting, compliance and self-monitoring provisions over next two years. “The actions that we discovered were completely contrary to Bio-Rad’s culture and values and ethical standards for conducting business,” said Bio-Rad President and CEO Norman Schwartz in a statement. Bio-Rad voluntarily disclosed matter.

SHELVING: ITC Nov. 4 voted to expedite five-year “sunset” reviews of countervailing and antidumping duty orders on certain kitchen appliance shelving and racks from China. “All six Commissioners concluded that the domestic group response for these reviews was adequate and the respondent group response was inadequate and voted for expedited reviews,” ITC said.

IRAN: Treasury Nov. 4 updated FAQ on payments to Iranian civil aviation authorities. “U.S. persons and U.S.-owned or -controlled foreign entities cannot participate in transactions related to the payment of overflight or emergency landing fees to the Government of Iran, nor can such transactions transit the U.S. financial system, unless the transactions fall within the scope of 31 C.F.R. Section 560.522 or a specific license issued by OFAC and the payments in connection with such authorized transactions are consistent with 31 C.F.R. Section 560.516,” it said.

EXPORT CONTROL REFORM: State has seen 64% reduction in license volume in 13 USML categories with products already transferred to Commerce, department said Nov. 3 on ECR’s anniversary. “This leads to more flexible licensing authorizations for the export of less sensitive items to allies and partners, while increasing the number of U.S. enforcement officials available to safeguard against illicit attempts to procure sensitive defense technologies,” it noted.

IMPORT ENFORCEMENT: Former U.S. Army Sergeant Dextroy Germaine Hamilton was sentenced Oct. 31 in El Paso U.S. District Court to six months in prison for violating ITAR by stealing U.S. military items, including optical sights, night-vision equipment and infrared lasers, during service in Afghanistan between July 2013 and March 2014 and importing items into U.S. for resale. Hamilton pleaded guilty in August.

NON-ORIENTED ELECTRICAL STEEL: In 4-1 final votes Nov. 6, ITC determined that U.S. industry is materially injured by dumped imports of non-oriented electrical steel (NOES) from China, Germany, Japan, Korea, Sweden and Taiwan and subsidized imports from China and Taiwan. Chairman Meredith Broadbent was only no vote and Commissioner F. Scott Kieff did not participate in investigations. Commission also made negative critical circumstances findings with respect to NOES from China, Germany, Japan and Sweden.