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## DOT Approves Commercial Flights to Cuba

While travelers to Cuba's capital city will have to wait a bit longer, Transportation (DOT) June 10 approved the applications of six domestic airlines to begin scheduled flights between five U.S. cities and nine cities in Cuba other than Havana as early as this fall. The U.S. cities are Miami, Fort Lauderdale, Chicago, Philadelphia and Minneapolis/St. Paul.

Seven U.S. carriers had applied to provide flights to nine Cuban international airports, Commerce announced in March (see **WTTL**, March 28, page 4). Of the seven, DOT approved six airlines' applications: American, Frontier, JetBlue, Silver, Southwest and Sun Country.

"DOT did not approve the application of Eastern Airlines. Eastern's current operating authority limits it to providing charter flights only. Furthermore, since Eastern's eligibility to provide scheduled services is at issue in the larger Havana comparative selection proceeding, this order defers action on Eastern's request until a decision is reached in the Havana context," according to a DOT fact sheet.

Under the new arrangement, each country has the opportunity to operate up to 10 daily roundtrip flights between the U.S. and each of Cuba's nine international airports, other than Havana, for a total of 90 daily roundtrips. Longer term, the arrangement also provides for up to 20 daily roundtrip flights between the U.S. and Havana. Thirteen U.S. airline carriers have applied to provide direct flights to the capital, Commerce previously noted. The department expects to reach a final decision in the Havana carrier selection later this summer.

## Two Companies Get First Pass Under FCPA Pilot

Two unrelated companies were the beneficiaries of Justice's pilot program to get more companies to voluntarily self-disclose conduct potentially violating the Foreign Corrupt

Practices Act (FCPA). Justice June 7 dropped its cases against Massachusetts-based internet services provider Akamai Technologies and Rhode Island-based residential and commercial building products manufacturer Nortek Inc. connected to bribes paid to Chinese officials by a foreign subsidiary of each company. At the same time, the Securities and Exchange Commission (SEC) announced non-prosecution agreements (NPA) with the two firms. The companies promptly self-reported the misconduct and cooperated extensively with the SEC's investigation, the agency noted.

Under its NPA, Akamai will pay \$652,452 in disgorgement plus \$19,433 in interest. "The bribes were paid to induce the end customers' employees, including the employees of the Chinese state owned entities (hereinafter the 'Chinese government officials'), to contract to purchase up to 100 times more network capacity from the Channel Partner than each company actually needed," the NPA said.

Under its NPA, Nortek will pay \$291,403 in disgorgement plus \$30,655 in interest. "The improper payments and gifts to local Chinese officials included cash payments, gift cards, meals, travel, accommodations, and entertainment. Linear China made the illicit payments to local officials from multiple different governmental departments, including customs, tax, fire, police, labor, health inspection, environmental protection, and telecommunications," it said.

Justice launched the one-year pilot program April 5, increasing mitigation credit for companies that disclose conduct and cooperate with the department (see **WTTL**, April 11, page 6). In its letter to Akamai counsel Ropes & Gray dated June 6, Justice cited a number of factors in its decision to not bring charges. These factors included: Akamai's prompt voluntary self-disclosure, the thorough investigation and fulsome cooperation by the company and its agreement to continue to cooperate in any ongoing investigations of individuals, and the steps that the company has taken to enhance its compliance program and its internal accounting controls.

DOJ also cited the company's "full remediation (including promptly suspending at the start of the investigation the individual involved in the China misconduct who then resigned shortly thereafter, terminating the relationship with the channel partner involved in the misconduct, and disciplining five other employees who should have prevented other violations of the Company's policies," the letter said.

"When companies self-report and lay all their cards on the table, non-prosecution agreements are an effective way to get the money back and save the government substantial time and resources while crediting extensive cooperation," said Andrew Ceresney, director of the SEC Enforcement Division, in a statement.

## **Fokker Case Ends in Whimper**

After so much hand-wringing, the case against Fokker Services BV (FSBV) on charges of violating Iran, Sudan and Burma sanctions ended June 9 when Justice formally dismissed the case under an 18-month deferred prosecution agreement (DPA). "FSBV voluntarily

disclosed its violations to the United States government, has fully cooperated with the United States, complied with all of the terms and obligations under the DPA, paid \$21 million in penalties which is an amount equal to the gross revenue FSBV earned as a result of the unlawful conduct and approximately three and one-half times the company's earned profit related to the unlawful conduct, and not otherwise violated the DPA," the unopposed Justice motion said.

A trio of D.C. U.S. Court of Appeals judges in April sent the case back to D.C. U.S. District Court Judge Richard Leon after he had rejected the 2014 DPA (see **WTTL**, April 11, page 2). Since that decision, FSBV paid \$10.5 million to satisfy the forfeiture obligation imposed by the DPA and an additional \$10.5 million civil fine paid to the Bureau of Industry and Security (BIS) to resolve allegations by Treasury's Office of Foreign Assets Control (OFAC).

From 2005 to 2010, FSBV "knowingly initiat[ed], either directly or indirectly, 1,153 shipments of aircraft spare, repaired, or exchanged parts, or a combination thereof, which had a U.S. nexus to FSBV customers who FSBV knew were located in U.S.-sanctioned countries," said the information filed in D.C. federal court as part of the DPA. The agreement with BIS also settles 253 separate violations of the Export Administration Regulations (EAR). The charges include 99 violations of the temporary denial order against Iran Air.

### **Progress on Steel Concerns, BIT at U.S.-China S&ED**

During the U.S.-China Strategic & Economic Dialogue (S&ED) held in Beijing June 6-7, China promised to reduce its steel production, but did not come to an agreement on aluminum and other industries U.S. and other trading partners have complained are over capacity.

"Excess capacity has a distorting and damaging effect on global markets, and implementing policies to substantially reduce production in a range of sectors suffering from overcapacity, including steel and aluminum, is critical to the function and stability of international markets," Treasury Secretary Jack Lew said in his opening remarks June 6.

China's State's Council announced plans "to close 100 to 150 million metric tons of steel capacity, and to strictly prohibit the expansion of crude steelmaking capacity over the next five years," Treasury noted.

Industry reacted warily, questioning whether China will keep its commitments. "We appreciate the continued efforts of our government to engage China at the highest levels on the steel overcapacity issue and welcome the new commitments by Chinese leaders to adopt measures to strictly contain steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity, and dispose of 'zombie enterprises' through restructuring, bankruptcy and liquidation, as appropriate," Thomas Gibson, American Iron and Steel Institute president and CEO, said in a statement.

“China’s participation in further efforts to address global excess capacity at the OECD Steel Committee is also positive. But these commitments will only be meaningful if they lead to real results that produce a significant net reduction in excess steel capacity in China,” Gibson added.

The two countries agreed to speed up bilateral investment treaty (BIT) negotiations. The U.S. and China started BIT negotiations in 2008 and held 24 rounds of talks in advance of the S&ED. Chinese Vice Premier Wang Yang said via an interpreter that the countries will exchange a new “negative list” – meaning sectors that remain off-limits to U.S. investors – in mid-June. U.S. officials maintain that in order to reach a deal, the new list must reduce the number of off-limit sectors.

“The United States stands ready to advance the ongoing bilateral investment treaty negotiations provided that China is prepared to move forward in negotiating a high-standard and mutually beneficial agreement,” Lew said.

According to Treasury, the U.S. “secured a commitment” that China will “continue market-oriented exchange rate reform, allowing for two-way flexibility of the [Renminbi] RMB” and China agreed to “avoid competitive devaluation and not target the exchange rate for competitive purposes.” China also committed to work toward G20 data standards for fiscal and financial data.

U.S. officials also pressed Beijing on market access for U.S. firms and investors. In a fact sheet, Treasury noted, “Firms in the United States will have expanded access to China’s onshore financial markets through an RMB Qualified Institutional Investor (RQFII) quota of RMB 250 billion (\$38 billion), the largest in the world after Hong Kong.” Building on President Xi’s visit to Washington in September 2015, China will designate RMB clearing banks in the U.S.

## **U.S. to Invest in India’s Renewable Energy Sector**

Indian Prime Minister Narendra Modi received a warm welcome from President Obama June 7 and spoke before a joint session of Congress June 8 about his ambitious economic goals. By 2022, the 75<sup>th</sup> anniversary of India’s independence, Modi plans to create a “vibrant rural economy with robust farm sector” that provides for “a roof over each head and electricity to all households.” To that end, India and the U.S. agreed to work on renewable energy projects.

Obama and Modi announced June 7 that Westinghouse Electric Co. has begun engineering and design work to build six AP 1000 civil nuclear reactors in India by 2030 (see **WTTL**, June 6, page 1). The Export-Import Bank (Ex-Im) intends to put together a financing package, but the lack of quorum on the Ex-Im Board prohibits the approval of projects worth more than \$10 million. This could put a significant damper on the joint energy projects Ex-Im and the Indian Renewable Energy Development Agency are supposed to pursue, as each reactor could cost between \$5 billion and \$6 billion.

During Modi's visit, the U.S. announced 5.4 gigawatt (GW) of new commitments from U.S. renewable companies investing in India. 8minutenergy Renewables will pursue a 4 GW solar photovoltaic project pipeline in India, and SunLink Corporation will partner with Indian companies to reach 1.4 GW over five years.

The U.S. is open to India's interest in joining the Asia-Pacific Economic Cooperation forum. The two leaders also "welcomed the enhanced engagement on intellectual property rights under the High Level Working Group on Intellectual Property" and committed to working bringing industry leaders from both countries together to work on outstanding IPR issues, according to a White House fact sheet.

"Prime Minister Modi has shown strong leadership and there have been some positive developments since he took office in 2014. However, we continue to have significant challenges and frustrations with respect to India's current trade and investment practices, including in the areas of foreign direct investment, tariffs and customs procedures, local content and localization requirements, standards and technical regulations, and intellectual property rights," House Ways and Means Committee Chair Kevin Brady (R-Texas) said ahead of Modi's speech.

Amazon CEO Jeff Bezos announced June 7 that his company will invest an additional \$3 billion in India, bringing its investment in the country to more than \$5 billion. Bezos said India is Amazon's fastest growing region and will soon be home to a Web Services Cloud Region.

### **CIT Remands "Country-of-Origin" Ruling on Solar Panels**

Commerce changed its standard "country-of-origin" policy without adequate explanation, Court of International Trade (CIT) Senior Judge Donald Pogue ruled June 8 in remanding to the department its antidumping (AD) and countervailing duty (CVD) orders on solar panels from China. Commerce's convoluted attempt to deal with the shift in production of solar cell components to Taiwan responded to a second petition from SolarWorld Americas, which sought to stem imports of competing solar panels from China.

"Commerce's final scope determinations departed from the agency's prior rule for determining national origin for solar panels without adequate consideration or discussion of the continuing relevance, if any, of Commerce's prior factual finding that the assembly of imported solar cells into panels is insufficient to change the product's country-of-origin from the country of cell-production to the country of panel-assembly," Pogue ruled (slip op. 16-56).

SolarWorld won an earlier AD/CVD decision against solar panels from China (Solar I PRC). Afterward, however, Chinese firms shifted production of the cell components to Taiwan and assembled the imported cells into panels for export to the U.S. SolarWorld then petitioned to block imports with Taiwanese cells (Solar II PRC). Chinese producers challenged the second ruling, claiming Commerce had departed from its country-of-origin scope from the ruling from the first case.

“The production process for solar panels complicates Commerce’s national origin determination,” Pogue acknowledged. “Commerce therefore decided, in Solar I PRC, that either constituent cell-production or ultimate panel-assembly must determine the country-of-origin. Accordingly, Commerce concluded that an AD/CVD order on merchandise from China may cover either cells produced in China, regardless of where they are subsequently assembled into panels, or panels assembled in China, regardless of the origin of the cells, but not both,” he noted.

“Historically, however, it appears unprecedented for Commerce to apply more than one country-of-origin determinative rule to products within the same class or kind of merchandise. Rather, when faced with merchandise produced in more than one country, Commerce has consistently held that AD/CVD liability for such products is based on an analysis of the market in a single country-of-origin for the product, and that such origin rule will generally be applied consistently to all products within that class or kind of merchandise,” Pogue ruled.

“Here in the Solar II PRC proceedings, however, Commerce adopted a different policy, without explicitly acknowledging it as such, that provides an exception from the otherwise generally applicable origin rule for solar panels. And while Commerce is correct that the use of multiple orders ensures that no individual product is simultaneously deemed to originate from two different countries, Commerce has nonetheless applied two different rules to similarly situated products within the same class or kind of merchandise,” he decided.

In a separate solar panel-related case involving crystalline silicon photovoltaic products from Taiwan, CIT Judge Jane Restani granted a temporary injunction June 9 barring the liquidation of imports of products made by Neo Solar Power Corporation. Neo sought the injunction while it pursues its challenge of Commerce’s refusal to accept the company’s request to be included as individual respondent in case (slip op. 16-58).

## **Commerce Implements Final Determinations in China WTO Case**

Three weeks after China requested consultations in the case, Commerce is implementing determinations of countervailing duties (CVD) the U.S. placed on items from China, the department said in a Federal Register notice June 9. China notified the World Trade Organization May 13 of its request for consultations with the U.S. regarding alleged non-compliance with the Dispute Settlement Body’s ruling regarding those countervailing duties (see **WTTL**, May 16, page 2).

Recalculated CVD rates for line pipe, oil country tubular goods, magnesia bricks, and seamless pipe remain unchanged from the preliminary determinations of each company. Amended CVD rates for magnesia bricks and seamless pipe saw the most significant changes. RHI Refractories Liaoning Co., Ltd., was revised from 24.24% to 3% and Tianjin Pipe (Group) Co., was revised from 13.66% to 8.24%, for example.

Many of the revised CVD rates stayed the same as they were when the Commerce investigation was launched, as in the case of Liaoning Northern Steel Pipe Co., Ltd (40.05%), or decreased slightly, as in the case of Huludao Seven-Star Steel Pipe Group, Co., Ltd., which had an original CVD rate at 33.43% and now has a revised rate of 32.65%.

The U.S. “was found to have acted inconsistently with several obligations in the Subsidies and Countervailing Measures (SCM) Agreement relating to countervailing duty determinations with respect to methodologies pertaining to key SCM concepts,” according to the WTO. The U.S. had until April 1 to comply, but China alleges that the U.S. continues to place countervailing duties on pressure pipe, line pipe, lawn groomers, wire strand, and other related products.

The WTO panel looked into 17 CVD investigations conducted by Commerce between 2007 and 2012 and found that Commerce “incorrectly determined, or did not have a sufficient basis to determine, that certain [Chinese] State-owned enterprises (SOEs) are ‘public bodies’ within the meaning of that provision in certain investigations.”

## **U.S., Cuba Meet on Counterterrorism**

While the Senate continues debate on its version of the National Defense Authorization Act (NDAA), which includes language that would prohibit the participation of Cuba in certain military exercises, the U.S. and Cuba held the first Counterterrorism Technical Exchange in Havana June 8.

“The two delegations agreed on the importance of advancing cooperation in the sphere and agreed to continue to hold technical meetings on the issue in the future. The encounter took place in a respectful and professional climate,” noted a statement on the Cuban state-run newspaper Granma.

“Coordination and cooperation on counterterrorism has been one of several important topics discussed in law enforcement dialogues between the United States and Cuba. We welcome the opportunity to bring together technical experts to discuss this topic of common interest,” State said in a statement announcing the meeting.

In a statement of administration policy (SAP), President Obama said he would veto the NDAA bill (S. 2943) if it reached his desk, specifically citing the Cuba language. “The Administration strongly objects to the additional restrictions that would be placed on U.S.-Cuban military-to-military interactions. The proposed restriction would hamper pragmatic, expert-level coordination between the United States and Cuba on issues that benefit the United States,” it said.

“While section 1204 carves out an exception for exercises and operations related to humanitarian assistance and disaster relief, it does not provide an exception or waiver for counter-narcotics,” the SAP added. The president previously issued an SAP on the House version of the NDAA (H.R. 4909), which that chamber passed in 277-147 vote May 18 (see **WTTL**, May 23, page 8).

## Deemed Export License Applications Increased in 2015

Context is important. In calendar year 2015, the number of BIS applications for deemed exports increased 26% from 1,052 in 2014 to 1,316. That would seem like a big jump, except for one important fact: in 2014, the number decreased 27.7% from 1,489 in 2013. Looking at the last five years of data, the number of licenses has gone up and down, with no clear pattern.

BIS official Stephen Hall gave several reasons for the most recent increase, including transfers from State jurisdiction and an increase in foreign subsidiaries, he told his agency's Emerging Technology and Research Advisory Committee (ETRAC) June 9.

Drilling down, BIS approved 1,210 licenses in 2015, rejected 18 and returned without action (RWA) 88. Most of those RWAs resulted from a lack of information from the applicants, Hall told ETRAC. In 2014, BIS approved 961, rejected 17 and RWA'd 74.

Other interesting statistics emerge from 2015: BIS approved 13 deemed export licenses from Japan, up from zero in 2014. Approvals from India increased 269% to 107, and from Brazil up 550%, from two to 13. China receives far and away the most licenses, getting 676 (56% of licenses) approvals in 2015, up from 643 in 2014. Iran has consistently been second, with 154 approvals in 2015 (13%).

The most common Export Control Classification Numbers (ECCNs) haven't changed much in the last few years: ECCNs 3E001, 3E002 (electronics) and 5E001 (telecommunications) have moved up and down the top three spots since 2012. In 2015, BIS approved 618 licenses under ECCN 3E001, 509 under 3E002 and 488 under 5E001. In 2014, BIS approved 401 licenses under ECCN 3E001, 384 under 3E002 and 433 under 5E001.

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

EX-IM FRAUD: Guillermo Sanchez-Badia was sentenced to 12 years in prison June 9 in Miami U.S. District Court for conspiracy to commit wire fraud, wire fraud, and conspiracy to commit money laundering in scheme to defraud Ex-Im Bank from 2007 through 2012. Sanchez pleaded guilty in March. Daughter Isabel C. Sanchez, who owned Miami export company Ex-Im of America, Inc., and her husband Gustavo Giral were sentenced to prison May 13 (see WTTL, May 16, page 8). Defendants allegedly created fictitious invoices for sales of merchandise that never occurred. Sanchez-Badia was also sentenced to three years supervised release and \$11.5 million in restitution.

EXPORT ENFORCEMENT: Weiss Envirotronics, Inc of Grand Rapids, Mich., agreed June 3 to pay \$575,000 to settle 20 BIS charges of exporting environmental test chambers to China via Hong Kong or Japan without licenses between 2010 and 2013. Test chambers were worth \$3.6 million and classified under ECCN 9B106, controlled for missile technology reasons. Of civil penalty, \$400,000 will be suspended for two years and then waived if Weiss commits no further violations. Company also agreed to conduct two audits of export controls compliance program. Weiss Envirotronics voluntary disclosed transactions.

**MORE EXPORT ENFORCEMENT:** Michael Andrew Ryan, of Manhattan, Kans., pleaded guilty June 6 in Topeka U.S. District Court to six counts of exporting and attempting to export firearms illegally to Australia, England, Ireland and Scotland. Items included Beretta and Glock pistols, revolvers, UZI and ammunition. Ryan admitted that he used hidden internet marketplace website to make sales. Sentencing is set for Sept. 12.

**EVEN MORE EXPORT ENFORCEMENT:** Federal jury in Ft. Lauderdale U.S. District Court June 9 convicted Wenxia Man of San Diego on charges of violating Arms Export Control Act after five-day trial. Man conspired to export and cause export of Pratt & Whitney and General Electric fighter jet engines, General Atomics unmanned aerial vehicle and related technical data to China. Indictment was unsealed in September 2015 after Man's arrest. Sentencing is set for Aug. 19.

**TISSUE PAPER:** In 6-0 "sunset" vote June 8, ITC said revoking antidumping duty order on certain tissue paper products from China would renew injury to U.S. industry.

**IRAQ:** BIS in Federal Register June 7 proposed removing Special Iraq Reconstruction License (SIRL) from Export Administration Regulations (EAR). "SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq," notice said. Agency established SIRL in July 2004. Comments are due July 7.

**CIT:** Senate June 6 approved by voice vote two Court of International Trade (CIT) judges: Jennifer Choe Groves, CEO of Titanium Law Group PLLC and Choe Groves Consulting LLC and former senior director of intellectual property and innovation at USTR's office, and Gary Stephen Katzmann, Massachusetts Appeals Court Associate Justice. Both were nominated in July 2015 to replace Gregory Carman and Jane Restani, who retired but have taken senior judge posts (see **WTTL**, Aug. 3, 2015, page 8). Elizabeth Drake, who was nominated to replace Richard Eaton at same time, is still waiting for confirmation.

**MYANMAR:** U.S. Chamber of Commerce issued white paper June 6 calling for normalization of U.S.-Myanmar ties. Paper calls for lifting economic sanctions on Myanmar under International Economic Emergency Powers Act and inclusion of Myanmar in Generalized System of Preferences. Obama administration eased some sanctions on Myanmar, aka Burma, May 17 (see **WTTL**, May 23, page 5).

**COMMERCE:** Commerce Secretary Penny Pritzker June 7 appointed 19 private and public sector leaders to new U.S. Investment Advisory Council (IAC). IAC members advise Pritzker on programs that benefit foreign direct investment. Jane Garvey, chair, Meridiam North America and Board Director, LaGuardia Gateway Partners, named IAC chair; Catherine Smith, commissioner, Connecticut Department of Economic and Community Development, named IAC Vice Chair. "U.S. affiliates of foreign companies directly employ 6.1 million people across our nation and pay higher than average wages which positively impacts nearly every facet of our economy," said Pritzker.

**TTIP:** American Apparel & Footwear Association, European Confederation of the Footwear Industry, Footwear Distributors and Retailers of America released joint statement June 8 to U.S. and EU TTIP negotiators. Industry wants TTIP that eliminates tariffs on footwear products; harmonizes labeling, product safety, testing regulations, prohibited substances; facilitates customs provisions; allows flexibility in rules of origin determination; promotes regulatory convergence/mutual recognition of regulations and standards. Footwear exports from U.S. to EU rose 9% in number of pairs and 19% in value from 2014 to 2015, statement noted.

TPP: Twenty-seven House Democrats in June 9 letter asked Obama to renegotiate TPP to include LGBT protections. Signatories included Reps. Donna Edwards (D-Md.), Rosa DeLauro (D-Conn.) and Brad Sherman (D-Calif.). “Given the continued prevalence of attacks on the LGBT community in Malaysia and Brunei, we urge you to consider renegotiating the agreement to include protections for gender and sexual minorities and further demand that these countries treat all of their citizens as equal under the law regardless of sexual orientation or gender identity,” they wrote.

ETHANOL: EU General Court June 9 annulled 9.5% (\$83.03/metric ton) antidumping duties on U.S. ethanol imports in place since February 2013. Court said European Commission required to give each sampled U.S. company own antidumping rate. Renewable Fuels Association and Growth Energy filed May 2013 joint complaint on behalf of U.S. ethanol producers. “From the beginning, we believed the implementation of an EU duty on imported ethanol violated EU law. We would like to thank the EU General Court for its fair and logical ruling, and we are pleased by their decision,” Emily Skor, Growth Energy CEO, said. Nine congressmen urged USTR Michael Froman in letter March 21 to convince EU allies to reduce ethanol tariffs during TTIP negotiations (see **WTTL**, March 28, page 6).

AUSTRALIA GROUP: BIS in Federal Register June 7 implemented recommendations from February 2015 Australia Group (AG) intersessional meeting and understandings from June 2015 AG Plenary meeting. Final rule amended ECCN 1C350.d to reflect addition of chemical diethylamine to AG’s “Chemical Weapons Precursors” common control list. In addition, BIS added two viruses to ECCN 1C351. Rule also changed names of 17 AG-controlled viruses and renumbered whole list. Rule updated controls on equipment capable of handling biological materials including biocontainment chambers, isolators, and biological safety cabinets, as well as controls on aerosol inhalation equipment and freeze-drying (lyophilization) equipment. BIS also updated regulations to reflect addition of Angola and Burma as States Parties to Chemical Weapons Convention.

CIVIL PENALTIES: State is implementing “catch-up” adjustments to maximum amounts of civil monetary penalties (CMPs) it assesses under Arms Export Control Act (AECA), DDTC said in web notice posted June 7. Under new rule, for each violation of AECA section 38(e), new maximum adjusted penalty level will be \$1,094,010 (previously \$500,000); section 39A(c), \$795,445 (previously \$500,000); and section 40(k), \$946,805 (previously \$500,000). “While DDTC is making this required adjustment to the maximum amounts of CMPs it may assess, it is important to note that the 2015 Act does not impede the discretion of agencies to assess CMPs lower than the maximum amount should circumstances warrant,” web notice said. Updated CMP amounts will apply to all penalties assessed after Aug. 1, 2016, DDTC said.