

Vol. 35, No. 9

March 2, 2015

## **BIS Adds Pressure on Exporters to Use License Exception STA**

Firms that apply for licenses for exports that are eligible for License Exception Strategic Trade Authorization (STA) may begin to face delays in getting those licenses approved, Bureau of Industry and Security (BIS) Under Secretary Eric Hirschhorn warned Feb. 23. Even though the agency has said individual licenses would still be available as an alternative to STA, Hirschhorn told the BIS Export Control Forum in Newport Beach, Calif., that limited resources may force the agency to shift its priorities to other licenses. The growth of STA use began to flatten late in 2015, BIS officials have reported.

“Yes, you can get a license if you want to, but if it’s eligible for STA, your license may not be the first one to be processed,” Hirschhorn told attendees. “So please, if you’re eligible for STA, we urge you to use it. As the license volumes grow, we may have to give priority to applications for exports that are not eligible for STA, so don’t make us stop this car. Use STA when and however you can,” he added (see **WTTL**, Dec. 15, page 7).

Exporters have claimed STA requires more diligence than a license. “We recognize that at first glance STA can leave the impression that more work is required than for a license, but that’s really not true,” Hirschhorn said. “A lot of the things we make you do under STA are things you should have already been doing,” he said.

Asked if the policy was intended to punish exporters choosing not to use STA, he said absolutely not. “It’s a question of how much you can do with the number of people you have and the budget you have,” he said. “As the licensing volumes rise, we may have to be some prioritization within our licensing of what gets processed first. In all fairness, the whole point of STA is that it’s there so that you don’t have to get a license.”

## **Yellen, Levin Split over Currency Manipulation Proposals**

The Obama administration’s effort to block inclusion of anti-currency manipulation objectives in fast-track trade promotion authority (TPA) legislation or the Trans-Pacific

Partnership (TPP) got a boost Feb. 25 from Federal Reserve Board Chairman Janet Yellen. In response to a question during a Senate Banking Committee hearing, Yellen said she would oppose inclusion of currency language in trade agreements. “I would really be concerned about a regime that would introduce sanctions for currency manipulation into trade agreements,” she replied to Sen. Bob Corker (R-Tenn.). “It could be the case that it would hamper or even hobble monetary policy,” she said.

If currency were part of trade agreements, “I would really worry greatly about that approach,” she said. Yellen said the international community should guard against the manipulation of currency to alter the competitive landscape or to give one country an advantage. But she said many factors influence currency values, including economic growth and capital flows.

In reaction to her testimony, Rep. Sander Levin (D-Mich.), ranking member of the House Ways and Means Committee, issued a statement defending legislation that would include currency manipulation as a goal in TPA and other measures that would declare currency manipulation a form of subsidy that can be subject to countervailing duties. He disagreed with her assessment that such measures would impede monetary policy.

“Dr. Yellen noted that currency manipulation is not the same as the secondary impact that monetary policies can have on exchange rates. That is why the International Monetary Fund already distinguishes between the two,” he said. Actions such as quantitative easing “would not be considered currency manipulation,” he argued. “Under the IMF guidelines, which I have proposed using as a basis in TPP, currency manipulation is about government interventions in the foreign exchange markets, not about other policies that may have a secondary impact on foreign exchange rates,” he declared.

## **Hatch Tries to Keep Talks on TPA Alive with Democrats**

Senate Finance Committee Chairman Orrin Hatch (R-Utah) is trying to keep the door open to a bipartisan fast-track trade promotion authority bill (TPA), but the gap between Democrats and Republicans appears unbridgeable for now. Hatch reacted to Sen. Ron Wyden’s (D-Ore.) public objections to a planned Feb. 26 hearing on TPA by cancelling the session with no new date announced.

“Given concerns expressed by Senator Wyden, we’re going to postpone tomorrow’s hearing and continue our discussion on how best to advance America’s trade agenda, including legislation to renew job-creating Trade Promotion Authority,” Hatch said in a late statement the day before the hearing was to take place.

Wyden has long called for changes in the TPA bill that Hatch had cosponsored with then-Finance Chairman Max Baucus (D-Mont.) and then-House Ways and Means Committee Chairman Dave Camp (R-Mich.). Although Democratic and Republican staffers have been working on trying to come up with a compromise bill, differences remain over the inclusion of currency manipulation objectives, rules for allowing members of Congress and their senior staff to read draft trade deals, the possible revocation of fast-track procedures when Congress doesn’t like a deal and the inclusion of Trade Adjustment Assistance inside a TPA bill. A demonstration of the strong opposition to TPA and TPP among progressive Democrats was seen Feb. 26 when a half-dozen senators came to the

Senate floor for an hour of lambasting TPA and the trade deal. Speaking in opposition to TPA were Democratic Sens. Sherrod Brown (Ohio), Bob Casey (Pa.), Tammy Baldwin (Wis.), Jeff Merkley (Ore.), Edward Markey (Mass.), Sheldon Whitehouse (R.I.), and Elizabeth Warren (Mass.), plus Independent Bernie Sanders (Vt.). Warren also authored an op-ed piece in the Washington Post criticizing a proposal to include investor-state dispute-settlement provisions in TPP and other pending trade deals.

Both trade supporters and opponents have become almost shrill in their statements for or against TPA and TPP. They have distorted statistics and exaggerated claims and forecasts on trade, jobs, health and the environmental impact of trade. No wonder the public is confused about the issue.

## **Boeing v. Airbus Battle Erupts Again at WTO**

The European Union (EU) launched another dispute with the U.S. at the World Trade Organization (WTO) Feb. 23 over alleged new subsidies provided to Boeing, drawing a sharp reaction from the U.S. At the EU's request, the WTO Dispute-Settlement Body (DSB) agreed to establish a panel to determine whether an incentive program that Washington State established in 2013 to keep Boeing from moving some operations from the state to South Carolina violates the WTO subsidies agreement.

The new dispute comes as the WTO is still trying to sort out a 10-year-old fight between the U.S. and EU in cross complaints against aid given to Boeing and Airbus. The WTO has ruled that both trade partners violated anti-subsidy rules in the support they have given the two large aircraft builders. A WTO arbitration panel that was supposed to decide by early last year whether the U.S. and EU were complying with those rulings notified the WTO in May that it couldn't render an opinion until mid-2015.

The EU asked for consultations with the U.S. on the Washington program in December but talks Feb. 2 failed to satisfy its complaints (see **WTTL**, Dec. 22, page 11). The Europeans cited the state's expansion of tax incentives aimed at inducing Boeing to manufacture its new 777X model in Washington State, claiming the change provided billions of dollars of subsidies to Boeing. The incentives were contingent on Boeing producing the wings and final assembly for the new plane in Washington and maintaining those operations exclusively in the state.

At the DSB meeting, a U.S. representative protested formation of the panel, which will operate under a special "fast-track" procedure under WTO rules. "We are disappointed that the EU has chosen to request the establishment of a panel with regard to this matter. As we have explained to the EU, the measures identified in its request are fully consistent with U.S. obligations under the relevant WTO agreements," the representative said in a statement. "We must express our strong view that the EU's actions should not be allowed to delay further the first aircraft dispute – EC – Large Civil Aircraft (or the 'Airbus' dispute) – which has already suffered significant delays. The compliance proceeding has been pending for nearly three years, and written submissions have been finished for some time," the representative added.

"The subsidies that the EU continues to provide, contrary to the recommendations and rulings of the DSB, are continuing to cause great harm to the United States," the USTR

staffer said. “If the EU’s decision to initiate a new aircraft dispute is allowed to delay the Airbus dispute, this will prolong the time that the current and substantial secretariat resources are devoted to that dispute,” the statement said. “And to be clear, the EU’s request is a brand new, free-standing WTO dispute on large commercial aircraft. There is no basis to accept the EU’s construction that this new, free-standing dispute is merely a new procedural step or somehow a continuation of the current disputes,” the statement added.

## Conn. Man Pleads Guilty to Attempted Export of F-35 Data

Questions about why Justice only charged a Connecticut man with interstate transfer of stolen property and not export control violations last July were answered Feb. 25 when Mozaffar Khazaei pleaded guilty to violating the Arms Export Control Act (AECA). After he was initially indicted, a Justice spokesman confirmed the department was looking at additional charges. It now appears the stolen property charges were just a placeholder while Justice developed its AECA case (see **WTTL**, July 21, page 5).

In a new one-count criminal information filed the day of his plea in the Hartford, Conn., U.S. District Court, Khazaei was charged with attempting to export defense articles without a license. The articles were export-controlled material relating to jet engines for the F35 Joint Strike Fighter and the F-22 Raptor. In court documents, the government claimed he had stolen some 50,000 documents related to those programs from unnamed companies where he had worked. One of the companies was United Technologies, according to company sources.

“From at least 2009 through and including late 2013, Khazaei attempted to use trade secret proprietary and export controlled material that he had obtained from his employers to gain employment in Iran,” the information charged. “In November and December 2009, Khazaei corresponded by email with an individual at a state-controlled university in Iran to whom he attempted to send, and in some cases did send, power point presentations containing trade secret, proprietary and export controlled material relating to the Joint Strike Fighter Program,” it said.

In November 2013 Khazaei, a dual national of the U.S. and Iran, sent a load of documents by truck to a freight forwarder in California for shipment to Iran. Inspection of the shipment by federal agents found numerous boxes and digital media containing technical manuals, specification sheets, technical drawings and data, and other proprietary material relating to military jet engines subject to control under Category XIX(g) of the U.S. Munitions List.

Khazaei was arrested Jan. 9, 2014, at the Newark Liberty International Airport before departing for Iran. He has been in jail since then. As part of his plea agreement he agreed to forfeit the \$59,645 in cash he had in his carry-on luggage when he was arrested. As part of the plea, the government agreed to recommend a three-level reduction in the adjusted offense level under U.S. Sentencing Guidelines because he accepted responsibility for his crime and entered the plea but raised its recommendation by two levels because he had abused a position of trust. The net changes could mean a fine of \$10,000 to \$100,000 plus a prison sentence of 57 to 71 months. The court is not required to follow that advice at his sentencing hearing, which is set for May 20. “After

sentencing, the government will move to dismiss any prior indictment(s) because the conduct underlying the dismissed counts will have been taken into account in determining the appropriate sentence,” the agreement noted.

## **FCPA Hotline Tip Leads to SEC Case Against Goodyear**

A tip Goodyear Tire & Rubber received on its company hotline led it to submit a voluntary disclosure to the Securities and Exchange Commission (SEC) about potential violations of the Foreign Corrupt Practices Act (FCPA). The disclosure resulted in SEC charges against Goodyear and a Feb. 24 settlement agreement under which the company will disgorge \$14,122,525 and pay prejudgment interest of \$2,105,540.

As part of an SEC order, Goodyear also must report its FCPA remediation efforts to the SEC for three years. The SEC cease-and-desist order claimed that from 2007 through 2011, Goodyear subsidiaries in Kenya and Angola routinely paid bribes to employees of government-owned entities and private companies to obtain tire sales. It said they also paid bribes to police, tax, and other local authorities. More than \$3.2 million in payments were made, the SEC charged. They payments were recorded as legitimate expenses in Goodyear books.

“In 2011, Goodyear received an allegation through its confidential ethics hotline regarding improper payments in Kenya and from an employee in Angola about improper payments in Angola. Goodyear immediately launched an investigation,” said Keith Price, Goodyear’s director of national media relations, in an email to WTTL. “The company voluntarily disclosed the results of its investigation to the DOJ and SEC and cooperated with those agencies in the review of the allegations. As a result of its review, the company has implemented, and is continuing to implement, appropriate remedial measures. Goodyear divested its ownership interest in the Kenyan business in 2013 and the company is in the process of selling the Angolan business,” he said.

Goodyear acquired minority ownership of Treadsetters, the Kenyan subsidiary charged with making the bribes, in 2002. Treadsetters continued to be run by its founders and the local general manager. The SEC said Treadsetters paid over \$1.5 million in bribes to employees of government-owned or affiliated entities including the Kenya Ports Authority, the Armed Forces Canteen Organization, the Nzoia Sugar Company, the Kenyan Air Force, the Ministry of Roads, the Ministry of State for Defense, the East African Portland Cement Co., and Telkom Kenya Ltd.

The Angolan subsidiary, Trentyre, paid over \$1.6 million in bribes to employees of government-owned or affiliated entities, and private companies, to obtain tire sales, the SEC charged. In addition to direct payments to certain government officials, Trentyre bribed employees of government-owned or affiliated entities. Among those entities were the Catoca Diamond Mine, UNICARGAS, Engevia Construction and Public Works, the Electric Company of Luanda, National Service of Alfadega, and Sonangol.

“In determining to accept the offer, the commission considered remedial acts promptly undertaken by respondent and cooperation afforded the commission staff. After receiving information about the bribes, Goodyear promptly halted the improper payments and reported the matter to commission staff,” SEC explained. “Respondent acknowledges

that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action,” it said.

## **Fokker Appeals District Court Decision Rejecting Settlement**

Two weeks after a federal judge Fokker Service’s deferred prosecution agreement (DPA) with Justice on charges of exporting aircraft parts to Iran, the firm appealed the decision to the U.S. Court of Appeals for the D.C. Circuit Feb. 18. “After careful review of the Court’s decision, Fokker Services decided to file a Notice of Appeal. Fokker Services has noticed recent press articles which contain highly speculative assumptions and amounts, not based on facts. Fokker cannot run ahead of the outcome of its appeal and will make further announcement only if and when applicable,” a company statement said.

D.C. U.S. District Court Judge Richard Leon Feb. 5 issued an order denying a technical motion that would have ratified the government’s 18-month DPA with Fokker (see **WTTL**, Feb. 9, page 1). He specifically took issue with Justice’s proposed \$21 million fine, which he considered inadequate, the fact that no individuals were prosecuted and the lack of a requirement to have an independent monitor verify the company’s compliance.

If Leon’s ruling is upheld, the government would have to decide whether to revise the DPA with Fokker to satisfy his objections, go ahead with criminal prosecution of the firm or drop the case. If the appellate court decides Leon overstepped his authority, the original DPA might be allowed to be implemented.

## **State Licenses Dropping Faster Than BIS Is Adding Them**

As a result of export control reform (ECR), the number of license applications submitted to State’s Directorate of Defense Trade Controls (DDTC) is dropping faster than the number of licenses that BIS is handling for items transferred to the 600 series on the Commerce Control List (CCL), officials told the annual BIS Export Control Forum in Newport Beach, Calif., Feb. 23. “The initiative is working,” declared Gerry Horner, director of BIS Office of Technology Evaluation.

Horner presented DDTC data that show a dramatic drop in the average number of license applicants the agency received each month between October 2013 and Jan. 2, 2015. For aircraft and gas turbine engines, the first U.S. Munition List (USML) categories that had items transferred to the CCL, the average number of license received decreased 65.3% from 1513 to 525.

In the March 2 Federal Register BIS and DDTC asked for comments on the impact of the transfer of these two USML categories (XIII and XIX) on the first anniversary of the transition. “This is an opportunity for the export community to provide us with feedback on how the reform effort is going,” BIS Under Secretary Eric Hirschhorn told the forum.

For vehicles and vessels in four USML categories, DDTC saw a 40.2% drop during those 14 months, from 483.6 to 289.4 average applications per month. The average number for missiles and explosives in two USML categories declined from 500 to 304.5

(39.1% decrease). For satellites, for which transfers became effective Nov. 10, 2014, DDTC has already seen a 74.8% drop in average monthly license applications from 369.2 to 93.2. During the same time, BIS received an average of 530 license applications per month for transferred aircraft and gas turbine engines. It received an average of 94 for vehicles and vessels; 88 for missiles and explosives; and 35 for satellites, Horner reported. “You’ll notice that these [BIS] numbers don’t equate to the differences between these [DDTC] numbers. Where did the rest of the stuff go?” he asked. As ECR was designed, the others have gone out “either under a license, license exception, No License Required, or they’re under the .y paragraph, which is more or less equivalent to No License Required,” he said.

BIS statistics show a minority of all 600-series exports during the 14-month period (47.1%) were shipped under a license. Of the rest, 14.4% were shipped as No License Required (NLR) to Canada or under new Export Control Classification Number (ECCN) 9A515.e, which covers radiation hardened microcircuits that don’t need a license. Another 13% with a value of \$302.1 million were shipped under License Exception Strategic Trade Authorization (STA). The rest used NLR for .y 600-series or such exceptions as GOV, RPL, BAG, LVS, TMP or TSU.

“One of the themes of export control reform when we first started this... that the most sensitive items would be controlled at the highest level. This is what this is showing.” Horner said. In November, State had announced a 64% reduction in license volume in 13 USML categories that had products transferred to Commerce (see **WTTL**, Nov. 10, page 9). Officials expect another major drop in DDTC licenses as the transfer of electronics products from USML Category XI to the CCL, which became effective Dec. 30, 2014, starts to show up in monthly statistics.

## **Labor Issues Remain Weak Spot for Trade Deals**

Two new reports have underscored the weakness of trade agreements to protect labor rights and the high hurdle the Obama administration faces in winning union support for TPA or new trade deals. One report from the AFL-CIO Feb. 24 examined the violation of labor rights in four TPP countries. A Labor Department report Feb. 27 offered a detailed review of labor violations in Honduras.

The AFL-CIO report focused on labor practices in Mexico, Malaysia, Vietnam and Brunei. “By not requiring fundamental changes of these countries first, the TPP gives away leverage that could be used to protect workers and raise standards,” the labor group said in a press release.

“Corruption, abuse and impunity are also root causes of the near absence of genuine industrial relations in Mexico, which artificially depresses wages and limits economic growth. Many workers are covered by collective agreements (‘protection contracts’) they have never seen or ratified through a vote,” the AFL-CIO found. In Malaysia there are “grave problems with forced labor and human trafficking, especially in the electronics, garment and palm oil sector, which also contains child labor,” it said.

Vietnam’s “authoritarian government tightly controls political rights, freedom of speech and other civil liberties,” the union group said. “Many of the clothes produced in

Vietnam contain textiles from small workshops subcontracted to larger factories. These workshops frequently use child labor, including forced labor involving the trafficking of children from rural areas into cities,” it added. The AFL-CIO cited Brunei’s “repressive regime” that “offers few human rights protections.” The country has had emergency measures in place for 65 years, “Further, the government prohibits strikes, and the law makes no explicit provision for the right to collective bargaining,” the report said.

Labor’s report responded to an AFL-CIO petition three years ago seeking a review of labor conditions in Honduras. The 132-page report prepared by Labor’s Office of Trade and Labor Affairs (OTLA) mostly confirmed the unions’ complaints. OTLA found that Honduras’ Secretariat of Labor and Social Security (STSS) has not enforced the country’s labor laws.

The office said it has “serious concerns” about STSS’ inspection of worksites, imposition of fines for violations and enforcement of remedial measures. The STSS did not appear to be imposing sanctions when employers denied inspectors access to factories; ensuring that firms pay fines for unlawful dismissals of union leaders; investigating violations of country’s labor code when labor leaders are forced to resign from jobs; implementing a process for the negotiation and registration of collective pacts; and enforcing laws to protect legitimately organized independent unions from employer-dominated unions.

AFL-CIO President Richard Trumka said he was pleased with the report but disappointed it took so long to respond to the petition. “The delay is yet another reminder that our government is operating under a broken trade model and it’s failing to protect labor rights. The administration has failed to investigate violations and deliver timely relief to workers in countries with which we have trade agreements. This encourages governments like Honduras to continue to avoid their commitments,” he said in a statement.

USTR Michael Froman said the OTLA report’s findings “underline this administration’s dedication to upholding labor rights around the world and leveling the playing field for American workers here at home.” He said he appreciates the government of Honduras’ “pledge to work closely with the United States in addressing these serious concerns.”

## **Fast-Track Talk in Washington Helping TPPs, Cutler Claims**

Washington’s increased focus on fast-track trade promotion authority (TPA) is being watched by negotiators working on the Trans-Pacific Partnership (TPP) deal and spurring progress in the talks, according to Acting Deputy U.S. Trade Representative (USTR) Wendy Cutler. “Our TPP partners have taken note of the stepped up debate in Washington on trade both in the administration at the highest level but also in our Congress,” she told a Feb. 26 program at the Center for Security and International Studies (CSIS).

“Other TPP countries are encouraged to see that trade appears to be poised to move forward in Congress,” she said. “This has provided additional momentum to the negotiations,” Cutler added.

The veteran USTR official, whose regular post is responsible for Asia and Japan and negotiations with Japan on agriculture and autos, provided no details on status of TPP talks or target date for when they would be completed. She noted that small groups have

been meeting or talking on specific issues and chief negotiators will meet in Hawaii the week of March 2. Trade ministers of the 12 negotiating countries also plan to meet “soon” but no date has been scheduled, Cutler said

“There is a real sense of not only momentum but that we are in the end game,” she said. “You can see this, for example, on issues where for years countries did not move, countries really beginning to move on the issue and we are narrowing the issues,” Cutler said. There are fewer issues, “but they are really, really tough,” she added. “We sense across the table among our 11 other trading partners a real commitment and a real urgency to try to get this deal done as quickly as possible,” she said.

**\* \* \* Briefs \* \* \***

PAPER: Coalition for Fair Paper Imports filed countervailing duty petitions Feb. 26 with ITA and ITC against imports of supercalendered paper from Canada.

NUCLEAR TRADE: In Feb. 23 Federal Register, Department of Energy (DOE) issued first comprehensive updating of regulations concerning assistance to foreign atomic energy activities since 1986. “In a new approach to deemed exports, Section 810.6(b) of this final rule generally authorizes nuclear technology transfers to citizens or nationals of specific authorization destinations who are lawfully employed by or contracted to work for nuclear industry employers in the United States, subject to such individuals meeting NRC unescorted access requirements and executing a confidentiality agreement to prevent unauthorized disclosure of nuclear technology to which those individuals are afforded access,” rule noted (see **WTTL**, April 2, 2012, page 2).

TRADE PEOPLE: Aerospace Industries Association President and Chief Executive Officer Marion C. Blakey leaving association to become president and CEO of Rolls Royce North America....Jay L. Eizenstat has left McDermott, Will & Emery to become director for global trade and incentives at candymaker Mars, Inc. in McLean, Va.

EXPORT ENFORCEMENT: Iteru Masui of Japan was sentenced Jan. 28 in Rochester N.Y. District Court to 30 months in prison followed by two years’ supervised release for attempting to export AN/PRC-152 radios made by Harris Corp. in 2013 without license. He pleaded guilty in October 2014. He was arrested in Seattle in January 2014 after being caught by ICE sting operation and has been in custody since then.

ZEROING: CIT Chief Judge Timothy Stanceu upheld Commerce remand determination Feb. 25 on zeroing in 16th administrative review of antidumping order on ball bearings from Japan (slip op. 15-18). “The court concludes that use of the zeroing methodology was in accordance with law,” he ruled in *JTEKT Corporation v. U.S.*

RURAL EXPORTS: White House launched new initiative Feb. 26 aimed at increasing exports from rural U.S. Program will sponsor reverse trade shows to bring foreign buyers to U.S. plus partnering with U.S. Postal Service with “Grow Your Business” at 75 post offices. Commerce will also set up new National Rural Export Innovation Team to help more rural businesses access export-related assistance, information and events.

EAST AFRICA: USTR Michael Froman and trade ministers from East African Community (EAC) signed cooperation agreement Feb. 26 to build capacity in trade facilitation, sanitary and phytosanitary (SPS) measures, and technical barriers to trade (TBT).

TRADE ADJUSTMENT ASSISTANCE: Sen. Sherrod Brown (D-Ohio) and Reps. Sander Levin (D-Mich.) and Adam Smith (D-Wash.) Feb. 25 introduced Trade Adjustment Assistance Act (S. 568/H.R. 1088) to extend Trade Adjustment Assistance (TAA) program through 2020.