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CBP Opens C-TPAT to Exporters

Almost a year after releasing guidance for exporters who want to join its Customs-Trade Partnership Against Terrorism (C-TPAT), Customs and Border Protection (CBP) officially opened the program to shippers May 16. CBP will start accepting new applications for the program after that date with new security profile requirements.

CBP released guidance in July 2014 on conditions exporters would have to meet to be eligible to join C-TPAT (see **WTTL**, July 28, 2014, page 3). At that time, Customs officials said 286 exporters had already indicated interest in joining an export version of C-TPAT. The original goal was to have the volunteer program in place by the end of 2014.

According to a CBP fact sheet published in September 2014, benefits to exporters under the program will include: heightened facilitation from foreign partners under Mutual Recognition Arrangements; reduced examination rates and time; priority processing; access to individually assigned C-TPAT Supply Chain Security Specialist (SCSS); eligibility to attend C-TPAT training and seminars; access to the C-TPAT portal system; and application of a common set of security requirements.

The guidance defines an exporter as: “A person or company who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States.” To be eligible for the program, an exporter must be an active U.S. exporter that exports from the U.S.; has a business office staffed in the U.S. and has an Employee Identification Number (EIN) or Dun & Bradstreet (DUNS) number. In addition, it must “have a documented export security program and a designated officer or manager who will act as the C-TPAT program main point of contact. An alternate point of contact is also needed in case the designated point of contact is unavailable.”

Portman to Introduce Revised Currency Amendment

Sen. Rob Portman (R-Ohio) plans to introduce a modified version of his currency manipulation bill as an amendment to pending fast-track trade promotion authority (TPA) when the legislation comes up for debate in the Senate the week of May 18. The new

version seeks to address concerns of the Obama administration and the business community that his original plan could trigger retaliation against countries, including the U.S., that adjust their monetary policies for non-trade reasons. The amendment “has been redrafted in the last week to address some of the concerns that have been raised by my colleagues,” Portman told WTTL in an exclusive interview. “It’s been clarified to make it crystal clear that it does not impact monetary policy because there was concern raised even though we addressed the issue directly on the IMF standards,” Portman said.

“In other words, it had to be consistent with IMF, that the language is consistent with IMF,” he added. “People thought it would affect monetary policy. So we added an additional element just saying that this should not apply to governments using monetary policy,” he explained.

Portman and Sen. Debbie Stabenow (D-Mich.) first tried to attach the original amendment to the TPA bill when it was under consideration by the Senate Finance Committee (see WTTL, April 27, page 1). The amendment was defeated by an 11-15 vote. Portman told WTTL he was not sure he would have the votes to pass the amendment on the Senate floor, where a 60-vote majority is likely to be required. TPA backers want to keep the Senate bill (H.R. 1314) as clean as possible to avoid the need for a conference committee to resolve differences with an expected House version.

Portman’s amendment, which would make the elimination of currency manipulation for trade purposes a negotiating objective in trade talks and subject to dispute settlement, drew strong opposition from the Obama administration and especially Treasury Secretary Jacob Lew. Whether it gets added to a House TPA bill or survives a conference committee remains doubtful.

Meanwhile, a provision to make currency manipulation subject to countervailing duty (CVD) remedies, which is included in a separate Customs enforcement bill (H.R. 644) that the Senate passed May 14 on a 78-20 vote, continues to face objections from the administration and Senate Finance Committee Chairman Orrin Hatch (R-Utah). Sponsored by Sen. Charles Schumer (D-N.Y.), the provision is not included in the Customs bill the House Ways and Means Committee reported out April 23.

President Obama praised the Senate for moving on TPA and passing Customs and trade preferences measures, but said he still had objections to the currency CVD provisions. “I have expressed concerns about how the currency language in the bill is drafted, but I have talked with Senator Schumer, Sherrod Brown and others about how we can work on language that does not end up having blowback effect on our abilities to maintain our own monetary policies,” he said at a May 14 press conference at Camp David.

On the Senate floor, Hatch criticized the provision as being very problematic. “First of all, it is likely not compliant with our existing international trade commitments,” he said. “It would effectively require the imposition of trade sanctions that, under the language of the legislation, could be based on presumptions without support. And it will almost certainly invite retaliatory trade sanctions from our trading partners,” he added.

“This provision, unfortunately, simply won’t work, since it assumes accurate knowledge and abilities to determine some fundamental equilibrium exchange rates that the IMF and the economics profession simply do not have. Under the questionable provision of the bill which allows for investigation of currency undervaluation, and potential ensuing

trade actions, I believe that the authors of the provision were overly heroic, and mistaken in their belief about the precision of currency valuation technology,” Hatch said.

Drama, Drama, Drama Marks Senate Action on Trade Bills

The drama in the Senate over fast-track trade promotion authority (TPA) the week of May 11 is likely to be repeated when the legislation gets taken up by the House probably in early June, congressional sources predict. The ability of Democrats to force a Senate vote on Customs enforcement and trade preferences measures before a cloture vote on moving forward on a debate of TPA will be the model for House Democrats who want to be able to vote on TPA, one congressional aide told WTTL.

The revolt of 13 pro-trade Democrats who voted against cloture on a motion to proceed to debate on a TPA bill (H.R. 1314) May 12, reflects in part President Obama’s lame-duck status as well as recognition that Sen. Charles Schumer (D-N.Y.), who maneuvered the defeat along with Minority Leader Harry Reid (D-Nev.), is expected to become Democratic leader in 2017.

After two days of negotiations between Republicans and Democrats, Majority Leader Mitch McConnell (R-Ky.) bowed to Democratic demands for a vote first on a Customs enforcement bill (H.R. 644) and a trade preferences bill (H.R. 1295) before moving on to a cloture vote. In the end, the Customs measure passed on a 78-20 vote and the preferences bill cleared by an overwhelming 97-1 margin.

Then cloture was invoked on a 65-33 vote with 13 Democrats joining the majority. The Democrats voting for cloture were Michael Bennet (Colo.), Maria Cantwell (Wash.), Tom Carper (Del.), Chris Coons (Del.), Dianne Feinstein (Calif.), Heidi Heitkamp (N.D.), Tim Kaine (Va.), Claire McCaskill (Mo.), Patty Murray (Wash.), Bill Nelson (Fla.), Jeanne Shaheen (N.H.), Mark Warner (Va.) and Ron Wyden (Ore.).

With cloture invoked, the Senate will begin debate on TPA late Monday, May 18, with amendments to be proposed over the following two to three days. Congressional sources expect McConnell to introduce another cloture motion on Tuesday to bring the debate to a close and vote on final passage even while amendments continue to be offered. The goal is to finish votes on amendments and debate and have a final vote on passage by Friday, May 22, before lawmakers leave for their week-long Memorial Day recess.

The decision of Democrats, including Wyden, who was co-author of the TPA bill, to vote against cloture caused hard feelings among Republicans, especially Finance Committee Chairman Orrin Hatch (R-Utah), who thought he had a deal to move TPA and trade adjustment assistance (TAA) together with no deal on the other two bills. “I’m a little uptight because I believe words have been broken,” Hatch told reporters.

Wyden supported Democratic demands for votes on all four trade bills, but he looked like a bank manager who was being forced to open the vault for bank robbers because his wife and children were being held hostage at their home. The first cloture vote was defeated on a 52-45 vote, with Carper being the only Democrat backing the motion, which needed 60 votes to pass. After 5:30 P.M. when the Senate reconvenes May 18, several amendments to TPA are already on deck, including one to restore funding levels for TAA and one to make religious freedom a TPA negotiating objective. Both are likely

to fall short of the 60-vote threshold. On the following days, more amendments will be offered, including Sen. Rob Portman's (R-Ohio) currency amendment (see related story page 1) and Democratic attempts to attach the enforcement and preferences measures to TPA to create a single bill to send to the House.

Democratic supporters of TPA in the Senate say their maneuvering should help Democratic backers of the bill in the House when it gets there in early June, along with the Customs enforcement legislation. They contend a vote on the Customs measure could provide some political cover for House Democrats who will be able to argue in their home districts that they voted for stronger trade enforcement rules that address many of the objections that unions, environmentalists and consumers have to trade deals.

After the Senate votes May 14, House Ways and Means Committee Chairman Paul Ryan (R-Wis.) issued a statement indicating that he will bring all four measures, TPA, TAA, Customs enforcement and trade preferences, to the House floor for votes. "Enacting TPA will hold the administration accountable and help us achieve better trade agreements for American workers and job creators. In addition, we must enact a trade preferences bill as well as legislation updating our customs and trade enforcement laws. My concerns with some of the provisions in the Senate customs bill are well known, but I look forward to reconciling the differences between the House and Senate bills so that we can ensure strong enforcement of our trade laws," he said.

Senators Introduce Legislation to Lift Crude Oil Export Ban

Senate Energy and Natural Resources Committee Chairman Sen. Lisa Murkowski (R-Alaska) and Sen. Heidi Heitkamp (D-N.D.), along with 11 other Republican senators, introduced legislation (S.1312) May 12 to end the export ban on domestic crude oil. For now, Murkowski told WTTL she does not intend to push the measure as a standalone bill, but will try to attach it to broader energy legislation her committee is drafting.

She also said she might try to attach it as an amendment to pending fast-track trade promotion authority. Murkowski had announced plans for her bill in April (see **WTTL**, April 27, page 1).

Murkowski told WTTL that she recognizes the opposition in the Senate to lifting the ban, including from Sen. Edward Markey (D-Mass.). "He is one vote. All I have to do is find 60," she said. "Everyday I am more encouraged by the progress" we're making, she added. "I am very sensitive to the fact that we have had this policy in place from when I graduated from high school," Murkowski said.

The new legislation will be part of a June 4 hearing her committee will hold as part of a series of hearings aimed at producing a broad energy package. "Right now I'm not thinking about moving it standalone," she said, indicating that she wants it as part of a bigger energy bill. "It makes sense in there as part of a bigger, broader updating of our energy architecture," she added. The Alaska Republican also dismissed Commerce's willingness to clarify its regulations on what petroleum condensates can be exported without a license. "That's an itty bitty drop," she said. Murkowski's bill, the Energy Supply and Distribution Act of 2015, would authorize U.S. exports of all crude oil and condensate without federal license, "on the same basis as exports of petroleum

products are currently authorized,” a committee factsheet noted. “An exception is made for oil stored in the Strategic Petroleum Reserve. This provision builds on analysis conducted by the Energy Information Administration (EIA), the Congressional Budget Office, the Government Accountability Office, and many other organizations,” it added.

In addition, the bill would direct the Department of Energy (DOE) to create a standard definition of “condensate”; authorize DOE and the Interior Department to assess condensate separately from crude oil; and affirm the Commerce Department’s 2014 decision to treat processed condensate as a petroleum product, which may be exported without a license.

The bill also would direct the secretary of Energy to improve the understanding of “energy security” across the federal government; authorize the secretary to lead inter-agency efforts on “shared infrastructure” analysis and training related to cross-border energy projects; and authorize a program requested by EIA to share data with Mexico and Canada on cross-border energy flows.

While Murkowski’s bill will be referred to her committee, Heitkamp said she also plans to “introduce complementary legislation to that will hopefully be combined with this bill to make sure our legislation to lift the ban is as strong and comprehensive as possible.” Heitkamp’s version will be referred to the Senate Banking Committee which has jurisdiction over the now-expired Export Administration Act.

How Much Will TPP Add to U.S.-Asia Trade?

The worst fears of opponents of the Trans-Pacific Partnership (TPP) and the best hopes of its supporters are both likely to be realized based on current trade trends. Trade with the 11 Asia-Pacific countries participating in TPP talks has already been growing and is likely to continue, given the region’s growing economies and rising wealth. The question for TPP is whether it will accelerate that trade only incrementally or exponentially above normal growth rates. Based on current economic projections, the pact will add only incrementally to trade flows (see chart next page).

In the last five years, U.S. merchandise exports to the 11 TPP countries have grown 45%, which is slower than the overall growth of U.S. exports, which increased 53% during that period. Imports from those TPP countries rose 54.5% from 2009 to 2014, while total U.S. imports gained 50%.

The rise of trade during those five years was somewhat distorted by the use of 2009 as the base year because trade had dropped 18% that year during the Great Recession. The strong bounce back in the following two years has not been sustained. In the coming years, the World Trade Organization (WTO) has projected even slower growth in world trade, which is seen rising 3% to 4% annually compared to the 5% to 6% pace of the 1990s and early 2000s.

Some economists play down the moderate picture of merchandise trade growth. They say the real benefit from a TPP deal will be in the growth of services trade and foreign investment. In addition, while overall growth may be incremental, there will be a significant growth in certain goods sectors that still face high tariffs in some TPP countries, notably Japan. Future trade growth with TPP countries also is skewed by the large

portion of trade that Canada and Mexico, existing NAFTA partners, account for. When those two neighbors are excluded from the data, the remaining size of trade drops significantly. When all six current free trade agreement (FTA) partners are subtracted from the TPP figures, the number becomes even smaller, with Japan accounting for most of

the balance. The U.S. now runs a \$155 billion trade deficit with the 11 TPP partners.

If trade with those countries were to grow at the same rate in the next five years as it has in the last half decade, U.S. exports would grow by about \$327 billion, but the trade deficit could balloon to more than \$300 billion, which trade critics will jump on.

Canada, Mexico and Japan account for most of the current deficit, although the U.S. also has a \$25 billion deficit with Vietnam.

Trade supporters discount the deficits with Canada and Mexico, noting the shortfall is due mostly to oil, which they don't count in their merchandise numbers. Autos and auto parts also contribute to the deficits with Canada, Mexico and Japan.

Thus, the main focus of future TPP trade clearly falls on three countries with which the U.S. now has trade deficits, Japan,

U.S. Trade with 11 TPP Countries 2009-2014

(in billions – * Current FTA Partners)

Country (population)	U.S. Exports 2009	U.S. Exports 2014	% Change	U.S. Imports 2009	U.S. Imports 2014	% Change
Australia* (225 million)	\$19.6	\$26.7	36%	\$8.0	\$10.7	33%
Brunei (422,000)	0.1	0.55	450%	0.04	0.03	-24%
Canada* (34 million)	249.3	312.1	25%	226.2	346.0	53%
Chile* (17.4 million)	9.3	16.6	78%	5.9	9.5	61%
Japan (127 million)	51.1	66.9	31%	95.8	133.9	39%
Malaysia (30 million)	10.4	13.1	26%	23.3	30.4	30%
Mexico* (120 million)	128.9	240.3	86%	176.6	294.1	41%
New Zealand (4.4 million)	2.1	4.26	103%	2.56	3.97	55%
Peru* (30 million)	4.9	10.0	104%	4.2	6.0	43%
Singapore* (5.5 million)	22.2	30.5	37%	15.7	16.5	5%
Vietnam (93 million)	3.0	5.7	90%	12.3	30.6	149%
TOTAL	500.9	726.7	45%	570.6	881.7	54.5%
Ex-Mexico, Canada	122.7	174.3	40%	167.8	241.6	44%
* All FTAs	434.2	636.2	46.5%	436.6	682.8	56.5%
All Non- FTAs	66.7	90.5	35%	134	198.9	48%

Malaysia and Vietnam. The U.S. has been fighting for access to the Japanese market for nearly 30 years with trade growing but moderately. For more than a decade, U.S. exports to Japan have been restrained by Japan's continuing economic slump, and a significant increase in trade will depend on a strong Japanese economic uptick. Moreover, while certain service and trade sectors will certainly benefit from a deal with Tokyo, Japan's encrusted business practices could continue to hinder growth for U.S.

exporters. Malaysia and Vietnam are growing economies that will be good markets for U.S. exports and services, but the U.S. trade deficits with those two countries are likely to persist and possibly expand. If those countries get duty-free access to the U.S., they are likely to benefit from the already apparent movement of production from China to them, especially for apparel manufacturing in Vietnam. The remaining non-current FTA countries, Brunei and New Zealand, have small populations that won't become significant customers or competing producers.

Ex-Im Will Stop Handling Major Financing Deals

In anticipation that it will fail to get it reauthorized by June 30 when its current charter expires, the Export-Import Bank (Ex-Im) will stop processing major project financing deals valued at over \$100 million after May 21. That is the date of the next Ex-Im board meeting and the latest day that would give it enough time to send Congress required advance notification of the financing.

While bank sources say Ex-Im is continuing to accept applications for all-size financing, there reportedly is a push to work on cases that can be completed by June 30. Although the bank handles few transactions valued at more than \$100 million annually, industry sources say smaller deals also face the possibility of not getting approved unless the charter is extended.

As House Financial Services Committee Chairman Jeb Hensarling (R-Texas) continues to block reauthorization legislation, bank supporters say they hope Senate Banking Committee Chairman Richard Shelby (R-Ala.) will introduce or support a Senate bill to keep the bank open. Shelby plans to hold hearings on Ex-Im June 2 and 4.

In an interview with WTTL, Shelby said he wasn't certain about introducing a bill of his own. "We're going to hold hearings first," he said, noting that support for Ex-Im in the Senate "is probably mixed." He said he recognizes that the bank is controversial and a lot of people are against it. When asked if he supports Ex-Im's renewal, he said "if we could ever reform it, I'd be for it probably, but I've got some questions."

Ex-Im's industry supporters admit they are uncertain about the chances for getting legislation passed that will keep Ex-Im running. John Hardy, president of the Coalition for Employment Through Exports (CEE), said he is confident that House leaders recognizes the risk facing the bank and will "find a path" to renew the bank. But for now, "there is no clear path forward," Hardy told reporters May 11.

Hardy conceded that any reauthorization bill that passes will include some bank reform requirements that industry is willing to accept even if Ex-Im objects. In particular, industry is likely to support one bill (H.R. 597), introduced by Rep. Stephen Fincher (R-Tenn.), which includes several bank reforms. Other pending reauthorization bills include measures introduced by Rep. Maxine Waters (D-Calif.) (H.R. 1031), Sens. Mark Kirk (R-Ill.) and Heidi Heitkamp (D-N.D.) (S. 819) and Sen. Jeanne Shaheen (D-N.H.) (S. 824).

Meanwhile, the U.S. Chamber of Commerce launched an ad campaign May 11 in dozens of congressional districts to support Ex-Im reauthorization. "Time is running out. If Ex-Im's charter is not renewed, there will be real consequences — lost sales and lost jobs in communities all across America," said Chamber President Tom Donohue.

* * * **Briefs** * * *

EXPORT ENFORCEMENT: Yong Guo, Chinese national illegally in U.S., was sentenced May 8 in Seattle U.S. District Court to three years in prison for exporting firearms, firearms parts, including 22-caliber rifle parts, and ammunition, to Hong Kong and China without licenses from August 2012 to June 2014. He is currently undergoing removal and asylum proceedings and remains an illegal alien, Justice sentencing memo noted. Guo pleaded guilty in February.

MORE EXPORT ENFORCEMENT: Navy veteran Alexandre Astakhov was sentenced May 7 in Philadelphia U.S. District Court to 39 months in prison, followed by three years' supervised release. Federal jury found Astakhov guilty in February 2014 of attempting to export L-3 CNVD-T thermal clip-on night vision devices and L-3 mini thermal monoculars to Russia without State licenses in 2012 (see **WTTL**, Feb. 10, 2014, page 6). Devices were classified under Category XII of U.S. Munitions List.

EVEN MORE EXPORT ENFORCEMENT: Bilal Ahmed of Bolingbrook, Ill., owner of Trexim Corporation, was sentenced May 14 in Chicago U.S. District Court to 24 months in prison for exporting carbon fiber and microwave laminates and attempting to ship thermal imaging camera to Pakistan's Space and Upper Atmosphere Research Commission (SUPARCO) without Commerce licenses. He pleaded guilty in October 2014 to violating International Emergency Economic Powers Act (see **WTTL**, Oct. 13, 2014, page 7).

FOREIGN TRADE REGULATIONS: In Federal Register May 15, Census published final rule eliminating requirement to file Electronic Export Information (EEI) for temporary exports, including Carnets, and goods previously imported on Temporary Import Bond (TIB). Census posted interim final rule in September and received only one comment. "The Census Bureau clarifies here that reporting of EEI is not required for exports moving under either a U.S. or foreign issued Carnets. All Carnet shipments are exempt from EEI filing under Foreign Trade Regulations," notice said.

HEZBOLLAH: House May 14 passed Hezbollah International Financing Prevention Act of 2015 (H.R. 2297), which "targets the ability of Hezbollah to finance its destructive activities," House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) said in statement. Passed by 423-0 vote, bill imposes new sanctions on Hezbollah's fundraising channels and targets Hezbollah's media outlet, al-Manar.

SECTION 337: Court of Appeals for Federal Circuit May 11 reversed ITC ruling that patent holder for certain kinesiotherapy devices meets domestic industry requirements. "Because the ITC's domestic industry analysis and determination was based on qualitative factors, we reverse," wrote Circuit Judge Jimmie Reyna for three-judge panel in *Lelo Inc. v. ITC*. Although ITC ALJ hearing case had found petitioners didn't meet domestic industry standard, commission reversed that ruling. "This appeal turns on the single question of whether qualitative factors alone are sufficient to satisfy the 'significant investment' and 'significant employment' requirements of Section 337," Reyna noted. Court's answer was no. Neither petitioner in case, Standard Innovation (U.S.) Corp. or Standard Innovation Corporation, "manufactures in the United States," he wrote. They source parts and components for its devices from third-party suppliers in the U.S. and other countries. "It contracts Chinese manufacturers to assemble its devices from those parts and components. Once finished, the devices are exported from China to over fifty countries worldwide," he noted.