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Return to Wassenaar for Cybersecurity Rule Is Option

As the Bureau of Industry and Security (BIS) considers how to respond to some 200 mostly negative comments it has received on its proposed cybersecurity regulation, one potential option is to go back to the Wassenaar Arrangement to seek a change in its 2013 list change. “We haven’t discussed it interagency yet, but there is always the possibility of going back to Wassenaar and talking to them about possibly amending the language. That would be an obvious step at the conclusion of the process,” Randy Wheeler, director of BIS’ Information Technology Controls Division, told the agency’s Information Systems Technical Advisory Committee (ISTAC) July 29.

“I am simply postulating that that is a possibility but I am certainly not speaking for the government, the interagency or even BIS to say that’s what we are going to do,” she said. It’s just one way of addressing the issues raised, she suggested.

Wheeler said BIS has “a lot of reading and categorizing and identifying of issues going forward.” The comments on the proposal have come from a wide range of companies, organizations and researchers, Wheeler noted. “I think it is appropriate now to refer to what we are dealing with as one eco-system rather than an industry,” she told ISTAC.

Wheeler reiterated what other BIS officials have said about plans to publish a second proposal of the rule. “The working plan is to issue another proposed rule that we believe will be somewhat or quite different from the original proposed rule and have a second round of public comments,” she said (see **WTTL**, July 27, page 9). Even though the U.S. has flexibility to interpret the Wassenaar language, “we would want a common interpretation” with other Wassenaar members, she said.

Boehner Backs Lifting Oil Export Ban as Senate Bill Moves

The push for legislation to repeal the U.S. ban on crude oil exports got a significant boost July 29, with House Speaker John Boehner’s (R-Ohio) announcement that he supports lifting the ban. The effort also was helped July 30, with the Senate Energy and Natural Resources Committee passing and sending the Senate a package of energy legislation with a provision to end the ban. “I would support lifting the ban, and I hope that

we can work together in a bipartisan fashion to bring our energy policies into this century,” Boehner told a press conference. “Lifting the ban would create an estimated one million jobs here at home – jobs that would frankly get created in every state. It would help bring down prices at the pump for consumers. And it would be good for our allies. If the administration wants to lift the ban for Iran, certainly the United States should not be the only country left in the world with such a ban in place,” he said.

Boehner said energy legislation will be “a top priority here in the House.” He said the House Energy and Commerce Committee will mark up legislation in the fall and he would work with Committee Chairman Fred Upton (R-Mich.) to get a measure passed. “Until recently, our nation’s energy policy was rooted in a scarcity mindset that went back to the 1970s. But now, America is experiencing an energy boom, and our policy needs to follow suit,” Boehner said.

The Senate committee’s legislation included language from bills sponsored by its chairman, Sen. Lisa Murkowski (R-Alaska) and Sen. Heidi Heitkamp (D-N.D.) (see **WTTL**, May 18, page 4). Title V of the legislation, now called the “Offshore Production and Energizing National Security Act of 2015,” states: “Notwithstanding any other provision of law, to promote the efficient exploration, production, storage, supply, and distribution of energy resources, any domestic crude oil or condensate (other than crude oil stored in the Strategic Petroleum Reserve) may be exported without a Federal license to countries not subject to sanctions by the United States.”

“Our committee today took bold steps to update and modernize our nation’s energy policies. Our broad energy bill drew overwhelming bipartisan support, and a majority of our committee supported my legislation to expand revenue sharing, increase offshore development, and lift the oil export ban,” Murkowski said in a statement.

Mead Johnson Settles FCPA Charges of Bribery in China

Four years after first learning about possible violations, Mead Johnson Nutrition Company, a major supplier of baby formula worldwide, agreed July 28 to pay \$12 million to settle Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act (FCPA). From 2008 through 2013, Mead Johnson China paid over \$2 million to health care professionals (HCPs) in improper payments, deriving profits of approximately \$7,770,000, SEC charged.

“Despite the prohibitions in the FCPA and Mead Johnson’s internal policies, certain employees of Mead Johnson China improperly compensated HCPs, who were foreign officials under the FCPA, to recommend Mead Johnson’s infant formula to, and to improperly provide contact information for, expectant and new mothers,” the SEC order noted.

In 2011, Mead Johnson learned of possible FCPA violations in connection with the Distributor Allowance in China, the agency said. “In response, Mead Johnson conducted an internal investigation, but failed to find evidence that Distributor Allowance funds were being used to make improper payments to HCPs,” it noted. “Thereafter, Mead Johnson China discontinued Distributor Allowance funding to reduce the likelihood of improper payments to HCPs, and discontinued all practices related to compensating HCPs

by 2013. Mead Johnson did not initially self-report the 2011 allegation of potential FCPA violations and did not thereafter promptly disclose the existence of this allegation in response to the Commission's inquiry into this matter," the order said.

"We are pleased to have reached this final resolution with the SEC. Integrity and compliance with laws and regulations are central to the success of our operations around the world. We will continue to reinforce these operating principles in all our interactions with customers and business partners," said Mead Johnson CEO Kasper Jakobsen in a statement.

"Our China business is one of Mead Johnson's most important operations, and we remain confident in its continued long-term growth," he said. A company spokesperson told WTTL that Justice has closed its inquiry into possible FCPA violations. The company neither admitted nor denied the allegations.

Ryan Tries to Stay Upbeat on Customs Conference

House Ways and Means Committee Chairman Paul Ryan (R-Wis.) tried July 29 to calm concerns about the failure of the House to name conferees to meet with the Senate in a House-Senate Conference Committee on the different versions of customs enforcement legislation (H.R. 644) the two chambers approved in June (see **WTTL**, June 15, page 3). The House adjourned for its August recess July 31 without naming conferees, putting off a final agreement until the fall.

Despite the lack of a formal conference, Ways and Means and Senate Finance Committee staffs have been meeting regularly for the last month to iron out differences in the two versions before their bosses meet. Congressional sources say those working sessions have gone well, although many tough issues won't be addressed until the members meet.

Ryan's statement confirmed the staff effort. "I am pleased that we have made significant progress, and I expect this will allow us to move to a formal conference committee soon after Congress returns from this district work period. I am confident the bill we send to the president will include important House priorities and provide the United States the enforcement tools needed to ensure American workers and businesses are competing on a level playing field," he said in his statement.

Congress Fails to Renew Ex-Im in Highway Bill

The worst fears of Export-Import Bank supporters were realized July 30 as the Senate bowed to the House and approved a three-month extension of the Highway Trust Fund without provisions to reopen the now-lapsed bank. With the House leaving town for its August recess July 31 and the Senate Aug. 3, Ex-Im will remain closed until at least September or October or longer. President Obama signed the short-term highway bill July 31 but expressed disappointment with Congress' failure to act on Ex-Im.

As Ex-Im supporters warned, the House refused to pass a long-term extension of the highway bill or of Ex-Im and passed only a measure extending highway funding until Oct. 31. Without House backing, the Senate effort to renew the bank was futile (see

WTTL, July 27, page 1). After the Senate agreed to an amendment adding an Ex-Im extension to a six-year highway bill (H.R. 22) July 27 on a 64-29 vote, it approved the final measure July 30 by a 65-34 vote. But after passing that long-term extension of the fund, it then passed the House's short-term extension (H.R. 3236) by a 91-4 margin.

"We now leave for another month the Export-Import Bank," Democratic Whip Steny Hoyer (D-Md.) said during House debate on its highway bill July 29. He noted that Rep. Stephen Fincher (R-Tenn.), who has sponsored a Ex-Im reform bill (H.R. 597), has said he expects his measure to be "brought to the floor in some form or another in September." Hoyer complained that in rejecting Ex-Im renewal Republicans were "tipping their hat" to House Financial Services Committee Chairman Jeb Hensarling (R-Texas), who has staunchly opposed renewal of Ex-Im.

Another WTO Deadline; Another Missed WTO Deadline

The high spirits that marked the end of the World Trade Organization's (WTO) ministerial in Bali in December 2013 have slowly dissipated, and members failed again July 31 to agree on a work program for completing the Doha Round after 14 years. Ministers had originally called for a plan to be developed by July 2014, but having missed that the deadline, the WTO set July 2015 as a new deadline and missed that too.

"Despite all of this activity, I must report that we have not seen the progress we need to deliver a work program, as mandated, by today's deadline," WTO Director-General Roberto Azevedo told the WTO's Trade Negotiations Committee (TNC) July 31, according to his prepared statement. "This conclusion should not come as a surprise," he said; noting that the tough political calls that were needed have not been made and "we have not seen sufficient flexibility in members' positions."

It has become clear that many WTO members have given up hope for a Doha Round deal and have turned their attention to regional pacts such as the trans-Pacific and trans-atlantic talks, as well as plurilateral accords on information technology, services and environmental goods. In addition, big corporations and sectoral groups that normally have pushed for multilateral agreements have decided there is more pain than gain to be achieved from a Doha deal.

Ahead of the TNC meeting, various negotiating committees reported little or no progress in their respective areas. At a July 23 meeting of the group negotiating on non-agriculture market access (NAMA), the chairman of the group, Swiss Ambassador Remigi Winzap, reportedly delivered a negative report on the progress in those talks.

Winzap told the meeting that there have been no new concrete proposals made, and members are just repeating their previously known positions, one source in Geneva said. He also concluded that members were not in negotiating mode and in no mood to compromise, the source noted. A frustrated Winzap reportedly suggested that the group not spend more time in meetings unless new proposals were ready to be offered.

A similarly negative report was made July 29 at a meeting of the negotiating group on rules. Jamaica's ambassador to the WTO, Wayne McCook, who chairs the group, told

members that little progress has been made in finding consensus on what could be presented to ministers at the next ministerial conference in Nairobi, Kenya, in December. The group has been trying without success to hammer out new rules on disciplines on antidumping, subsidies and countervailing measures, fisheries subsidies and WTO provisions applying to regional trade agreements.

“While it comes as no surprise that WTO members would be unable to agree on a credible negotiating program by July, it is nevertheless surprising that missing such an important deadline has hardly been acknowledged by the public and did not give any sense of crisis or urgency,” said a report by the IDEAS Centre in Geneva, a trade consulting firm.

“Clearly, there seems to be no expectations anymore that the WTO delivers anything meaningful or worth reporting. The WTO seems even unable to produce a crisis,” it said. “It is a fact that delegations in Geneva have not started the negotiations. Nobody seems willing to come out and say what they are willing to give in return for some reasonable concession of the other party. As long as this does not happen, the delegations can meet as often and as long as they want without achieving any progress,” the IDEAS Center said in its July 29 newsletter.

OFAC Designates More Individuals in Russia, Ukraine

Following similar action by European Union (EU) and Canada, Treasury’s Office of Foreign Assets Control OFAC July 30 imposed sanctions on 25 more individuals and entities under previous executive orders related to Russia and Ukraine. The agency also identified several subsidiaries that are owned 50% or more by Vnesheconombank (VEB) and Rosneft, which were previously sanctioned.

In June, the EU extended its sanctions against Moscow, and Canada targeted more Russian entities and individuals and expanded restrictions on trade and investment with Crimea (see **WTTL**, July 6, page 1). At that time, one U.S. official said the U.S. is operating in “lockstep” with those countries in developing new Russian sanctions.

Specifically, OFAC designated 13 individuals and entities that have “supported serious and sustained evasion of existing sanctions,” two entities in the Russian arms sector, four former Ukrainian government officials or close associates, five Crimean port operators, and one Crimean ferry operator. Among those designated were: Airfix Aviation Oy and Set Petrochemicals Oy in Finland, Mako Holding in Donetsk, and Izhevsky Mekhanichesky Zavod JSC (aka Baikal) and Open Joint Stock Company Kontsern Izhmash in Russia.

“Today’s action underscores our resolve to maintain pressure on Russia for violating international law and fueling the conflict in eastern Ukraine,” said Acting OFAC Director John E. Smith in a statement. “Our message is clear: we will continue to act to ensure the effectiveness of our sanctions, which will not be rolled back until the Minsk Agreements are fully implemented.”

At the same time, the agency issued a Crimea Sanctions Advisory on “omission or obfuscation of references to Crimea and locations within Crimea in documentation underlying

transactions involving U.S. persons or the United States.” OFAC said it “has become aware that certain individuals or entities have engaged in a pattern or practice of repeatedly omitting originator or beneficiary address information from Society for Worldwide Interbank Financial Telecommunications (SWIFT) messages involving individuals ordinarily resident in, or entities located in, Crimea,” the advisory said.

After Five Years, China Bows to WTO Ruling on GOES

The WTO dispute-settlement system continues to be a slow route to remedy unfair trade practices, the latest case against China indicates. A WTO dispute-settlement panel confirmed July 31 that China had failed to comply with an earlier ruling that its countervailing duty and antidumping orders on grain oriented flat-rolled electrical steel (GOES) from the U.S. violated WTO rules. In anticipation of the ruling, Beijing had already terminated the case in April.

The case illustrates the slow pace of the WTO process. The U.S. first sought consultations on its complaint against China in 2010. After a dispute-settlement panel agreed with the U.S. in 2012, China appealed the ruling to the WTO Appellate Body which upheld the panel ruling. A WTO arbitrator later gave China until July 31, 2013, to comply with those decisions.

China then issued a redetermination in case and claimed it had complied. The U.S. disagreed and asked for the compliance panel in February 2014 to review the Chinese actions. “This compliance challenge was the first time any WTO member had initiated a WTO proceeding to challenge a claim by China that it had complied with adverse WTO findings,” the U.S. Trade Representative’s (USTR) office said in a statement. The release said the illegal duties contributed to over \$250 million in annual export losses for American steel exporters.

Ministers Fail to Reach TPP Deal in Hawaii

It was a “stop the press” moment for WTTL July 31 when the USTR’s office sent out word that ministers from the 12 countries holding negotiations in Hawaii on the Trans-Pacific Partnership (TPP) would hold a press conference at 7:30 P.M. (Eastern) and then postponed the briefing until 10:00 P.M. Extending the talks was for naught, however, because when USTR Michael Froman finally addressed reporters at 10:22, he announced the failure of the ministers to reach a deal.

The four days of talks had gone into overtime with several late-night sessions. The failure of the officials to reach a deal confirmed forecasts of some skeptics who contended the talks were doomed from the start because too many countries were involved and too many issues were on the table.

In a statement on behalf of all 12 countries, Froman said that “after more than a week of productive meetings, we’ve made significant progress and will continue to work to resolve a limited number of remaining issues, paving the way for the conclusion of the Trans-Pacific Partnership.” He said ministers are “committed to build on the momentum of this meeting by staying in close contact as negotiators continue to find common ground.” In response to questions, Froman would not say specifically when the ministers

would meet again, saying they have not set a date. He and the other 11 ministers on the dais also declined to identify the specific issues that kept them from reaching a deal. Froman did say progress was made on intellectual property issues, including geographical indications, but didn't say what that meant. On the other hand, it was clear that auto trade remained a problem for Japan and Mexico.

New Zealand Trade Minister Tim Groser conceded that market access for dairy products was one of the last issues unresolved, but claimed "the undergrowth has been cleared away." He somewhat refuted rumors that New Zealand was prepared to leave the talks, if countries, especially Canada, didn't provide "commercially meaningful" access to foreign dairy. "We will not be pushed out of this agreement," Groser declared.

"It is wise that the Administration did not decide to get a deal done in the Trans-Pacific Partnership negotiations this week, as many key issues remain outstanding while others remain on the wrong track," Rep. Sander Levin (D-Mich.), ranking member of the House Ways and Means Committee, said in a statement. "Critical issues that still must be resolved include securing fair agricultural market access; making sure that Mexico, Vietnam, and Malaysia fundamentally reform their labor laws and practices to live up to basic internationally-recognized labor standards; adopting effective rules against currency manipulation; bringing about real reciprocity and strong rules of origin in auto trade; and ensuring access to affordable medicines," he said.

Expectations were high ahead of the meeting, especially after congressional approval of fast-track trade promotion authority (TPA) in June. The political calendar also seemed to add a tailwind to the talks, as TPP officials hoped to have a deal ready for a vote in Congress before the presidential primary season starts in 2016 and the pact becomes a political issue.

Under new TPA rules, the president is required to show the agreement to Congress 90 days before he signs it and to make it public 60 days before it is signed. If renewed talks can reach a deal in September under a best-case scenario, that schedule might allow the accord to be signed before the end of the year, with a vote in Congress in December.

Before and during the talks, there was speculation that some of the countries in the talks would drop out or be forced out of a final deal because of their refusal to meet the demands of the other participants. Canada was under pressure to ease its restrictions on dairy and poultry imports. Malaysia faced challenges for its human rights records and special preferences for its Malay citizens. Demands on Japan to open its auto and agriculture markets also were tough hurdles to overcome.

U.S. negotiators went into the final week of talks with a bagful of letters from lawmakers and special interest groups urging them to take a stand on various issues in the negotiations. They had probably heard all the advice before, but the letter writers wanted to reiterate their positions.

Canada's restrictions on dairy imports were clearly one of the toughest issues to resolve. In a July 24 letter to Canada's ambassador to the U.S., Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) warned that congressional approval of TPP would depend on Ottawa making meaningful concessions on dairy trade. "Canada's ability to meet the ambition of the other TPP partners and finally

commit to significant and commercially meaningful market access for all remaining agriculture products, including dairy, will have a significant impact on Congress' view of the final agreement," they wrote. "In fact, our support for a final TPP agreement that includes Canada is contingent on Canada's ability to meet the TPP's high standards," the two lawmakers declared.

When Canada joined the TPP talks late, U.S. officials had claimed that advance discussions with Canadian officials had made it clear that access to their dairy and poultry markets would be required. They claimed the Canadians understood that. Apparently not.

Hatch also posted a blog of his own July 29, stressing the need for a TPP deal to include strong protections for intellectual property rights (IPR), another apparently unbridgeable issue in the talks. "Specifically, a strong intellectual property (IP) chapter – including strong patent and regulatory data protections for biologics – is vital to securing congressional support for this trade deal," he said.

Hatch noted that Congress passed legislation providing for 12 years of data protection for biologics in the U.S. "Given the singularity of this American industry and its importance to our economy and global health, it's critical the administration bring home a TPP agreement with this standard," he wrote. In Hawaii, Froman couldn't get that deal.

In a July 29 letter to Froman, 19 House members who had voted for fast-track trade promotion authority (TPA) said their vote for the legislation doesn't mean they will support a TPP deal. "Now that TPA is law, we write to emphasize that our support for TPA does not translate into automatic support for the Trans-Pacific Partnership," they stated. TPP would fail their scrutiny "if it does not incorporate the standards set in the May 10th Agreement reached by House Democrats and the Bush White House in 2007, with respect to the environment chapter," they wrote.

Industry also sent some last-minute advice to Froman July 31. Five trade associations urged him not to accept any carve-outs from a final deal. "It is imperative that all parties recognize that carving out particular products or sectors from core provisions is not a recipe for a successful TPP or for future trade agreements," wrote the American Farm Bureau Federation, Emergency Committee for American Trade, National Association of Manufacturers, National Foreign Trade Council, and United States Council for International Business.

*** * * Briefs * * ***

CIT: President Obama July 30 nominated Elizabeth J. Drake, Jennifer Choe Groves and Gary Stephen Katzmann to be Court of International Trade (CIT) judges, replacing Richard Eaton, Gregory Carman and Jane Restani, who retired but have taken senior judge posts. Drake is currently partner in law firm of Stewart and Stewart and was previously international policy analyst at AFL-CIO. Groves is CEO at Titanium Law Group PLLC and Choe Groves Consulting LLC. Previously, she was senior director of intellectual property and innovation in USTR's office. Katzmann has served as associate justice on Massachusetts Appeals Court since 2004.

EXPORT ENFORCEMENT: Falcon Instrumentation and Machinery FZE, Iranian company formerly known as FIMCO, pleaded guilty in Harrisburg, Pa., U.S. District Court July 24 to conspiracy in scheme to smuggle lathe machine, also known as bar peeling machine, to Iran via UAE in June 2012 without license. FIMCO also agreed to pay BIS \$837,500 civil penalty to settle same charges. Pennsylvania equipment manufacturer, Hetran Inc., and its CEO, Helmut

Oertmann, were sentenced to 12 months' probation in same court in December 2014 for their role in scheme (see **WTTL**, Dec. 8, 2014, page 8). Of BIS penalty, \$250,000 will be suspended for two years, if FIMCO complies with terms of plea agreement.

STEEL: AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation filed countervailing and antidumping duty petitions July 28 at ITA and ITC against certain cold-rolled steel flat products from Brazil, China, India, Japan, Korea, Netherlands, Russia and United Kingdom.

GAMBLING: Long-running dispute between U.S. and Antigua and Barbuda over Caribbean nation's WTO complaint against U.S. bar to online gambling didn't make progress at July 28 talks. "Both sides considered the meeting productive and useful for the exploration of various elements that could ultimately bring closure to the matter. Both governments have undertaken to continue the discussions at an early date with a view to reaching a final settlement," USTR's office said in statement after Assistant USTR for Western Hemisphere John Melle met with Foreign Minister of Antigua and Barbuda, H. Charles Fernandez. Antigua and Barbuda has complained that U.S. has refused to negotiate settlement (see **WTTL**, Sept. 1, 2014, page 8).

ENTITY LIST: In Federal Register July 28, BIS added ten persons in China and South Korea to Entity List for "acting contrary to the national security or foreign policy interests" of U.S. Two Korean entities "have violated U.S. export laws by supporting the illicit procurement efforts of ballistic-missile related parties in Iran since at least 2011," BIS said. Agency also removed Shanghai Hengtong Optics Technology Limited, in China; and Zener Electrical & Electronics, Zener Electronics Services, and Zener Navcom in UAE.

SANCTIONS: Blue Robin, Inc. of Waltham, Mass. agreed July 29 to pay OFAC \$82,260 to settle charges of violating Iran sanctions from January 2009 through July 2010. Company imported Web development services worth \$205,650 from Iranian company PersiaBME. Blue Robin voluntarily self-disclosed violations.

MUSHROOMS: In 6-0 "sunset" vote July 14, ITC said revoking antidumping duty order on preserved mushrooms from Chile, China, India and Indonesia would injury to U.S. industry.

KAZAKHSTAN: WTO members formally adopted Kazakhstan's WTO terms of entry at General Council meeting July 27. Kazakhstan will have until Oct. 31 to ratify deal formally to become WTO member 30 days after it notifies WTO Director-General of ratification. Director-General Azevedo called it "truly historic occasion" after almost 20 years of negotiations.

ITA: Taiwan, known as Chinese Taipei inside WTO, and Thailand have confirmed that they will join deal to expand Information Technology Agreement (ITA) with addition of some 201 products to list of goods that will get duty-free treatment, WTO General Council was told July 28 (see **WTTL**, July 27, page 3). Their late acceptance of agreement had caused some concerns because they are major IT producers and are crucial to deal reaching "critical mass" necessary to go into force next year. "It is somehow fitting for Thailand to be the country to bring 'critical mass' to ITA expansion. Over the course of the past three years, probably no party to the negotiations has come farther in terms of raising its level of ambition than Thailand," John Neuffer, president of Semiconductor Industry Association, said in blog.

SHRIMP: CIT Senior Judge Donald Pogue July 30 upheld Commerce's reconducted fourth administrative review of antidumping order on warmwater shrimp from Vietnam (slip op. 15-82). He agreed with department's decision to continue review even after Grobst & I-Mei Industrial, which had asked for individual rate, withdrew request. "Commerce was not required by any statutory or regulatory authority to abort its court-ordered individual re-examination of Grobst simply because Grobst changed its mind regarding the benefit of such examination," he wrote. Pogue said "uncontested findings regarding Grobst's withhold-ing of information and failure to cooperate" justified department's use of adverse facts available.