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## Militarily Critical Technology List Still Outdated, GAO Contends

The Militarily Critical Technology List (MCTL), which is supposed to guide export control agencies on technologies that needs to be controlled, hasn't been updated since 2011, and Defense has cut funding for the program that was assigned to keep the list up to date, the Government Accountability Office reported Jan. 23 (GAO-13-157). Unless Defense takes steps to resume updating the list, it should seek changes to legislation that now mandate creation and maintenance of the list, the GAO recommended.

After MCTL program funding was cut to \$1.5 million from \$4 million, Defense "removed the public version of the list from the Internet, and officials posted a disclaimer for the restricted version noting that the list should only be used for informational purposes as it had not been updated," the GAO noted. "Similarly, the compendium of emerging technologies is outdated and two sections have not been updated since 1999," it added.

Program officials have devised a plan to improve the list by relying on contributions from the user community, but implementation of the plan has been limited due to funding constraints. "However, program officials have yet to get input from users to agree to this approach and would still require additional funding to implement it," the GAO said.

In 2006, the GAO criticized Defense for not keeping the MCTL up to date, after which the department took measures to improve the list (see **WTTL**, Aug. 6, 2006, page 2). Most of those efforts have not ceased, the GAO said. Because the list is used for other purposes, including cybersecurity, the GAO said Defense should determine how to meet those needs. Otherwise, it should "seek necessary relief from DOD's current responsibility," the GAO recommended.

## Fraud Claims in Trade Cases Can Be Filed Late, Court Rules

Allegations that a respondent in an antidumping or countervailing duty case has committed fraud can be filed even after the deadline for submissions in the case has passed, Court of International Trade (CIT) Senior Judge Nicholas Tsoucalas ruled Jan. 22 (slip op. 13-9). In his remand order to the International Trade Administration (ITA), the judge said the agency must consider charges that U.S. Magnesium (USM) raised against Tianjin Magnesium International Co., Ltd., (TMI) as well as ITA's

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determinations on the surrogate values for bank rates, freight costs, financial ratios and labor. “Here, the court finds that Commerce abused its discretion because it failed to address prima facie evidence of fraud USM raised while the record was still open,” Tsoucalas wrote. “Courts have clearly indicated that prima facie evidence of fraud is to be treated differently than other untimely submitted factual information, allowing and even ordering consideration of such evidence after the closure of administrative proceedings,” he ruled.

“In dismissing USM submission, Commerce limited its analysis to one factor: some of the documents were available before the deadline. Because of this single-minded focus, Commerce overlooked the possibility that TMI deliberately failed to report information to which it also clearly had access. Prima facie evidence of fraud concerning proper classification of FOP undermines the accuracy and fairness of a review,” Tsoucalas declared. If ITA does find the submission was fraudulent, it may decide to apply adverse facts available, he added.

## **Antigua and Barbuda Seeks Retaliation Against U.S. Gambling Laws**

At a Jan. 28 meeting of the World Trade Organization’s (WTO) Dispute-Settlement Body (DSB), Antigua and Barbuda is scheduled to renew its request for authority to retaliate against the U.S. for its failure to comply with a WTO ruling that restrictions on online gambling violate WTO rules. The Caribbean nation will ask the DSB for authority to implement a WTO arbitrator’s December 2007 decision that it is entitled to \$21 million annually in retaliation (see **WTTL**, Jan. 7, 2008, page 4).

If the DSB approves its request, Antigua and Barbuda said it will take its retaliation by suspending its obligations to protect U.S. copyrights, trademarks, industrial designs and undisclosed information under the terms of the WTO agreement on Trade-Related Intellectual Property Rights (TRIPS). This would allow operators in the country to violate U.S. intellectual rights without legal repercussions.

“Since the release of Award, Antigua and Barbuda has been working in good faith to obtain a fair negotiated settlement to DS285 with the United States, but all efforts have proven fruitless,” it told the DSB in a December notice. The long-running bilateral dispute has been over U.S. laws barring online gambling sites, including those based in Antigua and Barbuda. Former Rep. Barney Frank (D-Mass.) sought legislation to repeal the prohibition but his efforts repeatedly failed.

## **Improving Supply Chains Beats Cutting Tariffs, Report Claims**

Many trade professionals have complained that the cost of complying with import and export rules at the border is greater than the cost of tariffs. That complaint appears to be substantiated in a new report that claims reducing supply chain barriers would improve global GDP and trade more than eliminating all tariffs. Prepared for the World Economic Forum by the World Bank and Bain & Co., the report, released in Davos Jan. 23, says world domestic production would increase 4.7% and world trade 14.5%, if nations adopted global best practices for administering trade and improving border infrastructures even halfway. This compares to an increase of 0.7% in global GDP and 10.1% in global trade, if all tariffs were completely eliminated. Even applying regional best practices would increase global GDP by 2.6% and world trade by 9.4%, the report suggests. “Of course, reducing

supply chain barriers requires investment, while tariff reductions require only the stroke of a pen. However, many barriers can be traced to regulation,” it cautions.

The need to improve supply-chain administration and infrastructure has already been recognized at the World Trade Organization (WTO) and in Trans-Pacific Partnership (TPP) talks where negotiators are working on trade facilitation agreements. The WTO will try to break out a trade facilitation agreement separately from the Doha Round.

The World Bank report identifies four broad types of supply-chain barriers that need to be addressed: market access, border administration, telecom and transport infrastructure and the business environment. Within these categories, barriers include quotas, import fees, tax schemes, local content requirements, rules of origin, technical, sanitary and phytosanitary measures and import and export licenses. Border administration also includes facilitation payments, a polite way to say the need to bribe customs agents in many countries to get legitimate goods into a country. “Border delays and burdensome requirements can extend beyond a customs administration to include a lack of coordination between border agencies and compliance with import-export standards,” the report states.

## **As Expected, USTR Kirk Announces Departure**

President Obama faces another Cabinet opening, as U.S. Trade Representative (USTR) Ron Kirk announced Jan. 22 that after four years in office he intends to depart the position in late February. His announcement had been expected for months as well as his possible nomination for another post in the Obama administration – which has not shown signs of coming.

“Together, we have made great strides to bring about the president’s vision of a more robust, responsible, and responsive trade policy that opens markets to products stamped ‘Made-in-America’ and enforces Americans’ trade rights around the world – and does so in a way that is more consistent with America’s core values on issues like the rights of workers and the environment,” Kirk said in a statement.

President Obama praised Kirk for his work. “From bringing home new trade agreements with Korea, Colombia and Panama and negotiating to open up new markets for American businesses, to cracking down on unfair trade practices around the world, he has been a tremendous advocate for the American worker. As a former mayor, Ron was relentless in making the case to the American public that a balanced, thoughtful trade policy can contribute to a stronger economic future for America,” Obama said in a statement.

Kirk’s tenure in the USTR post was mostly undistinguished, reflecting the Obama administration’s ambivalence about trade rather than his own capabilities. Faced with strong opposition to trade among House Democrats, labor organizations and environmentalist, the White House eschewed any new free trade agreements (FTA), didn’t push for a deal on the Doha Round and never sought new trade negotiating authority. With this narrow mandate, Kirk tried to present a positive message on trade and keep the U.S. engaged on trade domestically and internationally.

Kirk’s main tasks, however, included completing or carrying on initiatives launched by the Bush administration. These included reaching deals with Korea, Colombia and Panama to provide cover to congressional Democrats that allowed some of them to vote for the FTAs with those countries and

picking up the effort to negotiate a Trans-Pacific Partnership (TPP). Nonetheless, Kirk did oversee the start of WTO talks on services and information technology and brought more disputes to the WTO for enforcement of U.S. trade rights, particularly with China. He also oversaw the negotiation of the final agreement that opened the way for Russia to join the WTO in 2012 and for the U.S. to end its Jackson-Vanik Amendment restrictions on Moscow.

## **Speculation Begins over Kirk's Replacement at USTR**

USTR Ron Kirk's announcement Jan. 22 that he is leaving his post at the end of February has sparked speculation over whom President Obama will pick to replace him and what signal that selection will send about the administration's plans for trade in the president's second term. None of the names "mentioned" as possible successors indicate that the next four years will be much different than the last four (see related story above).

One potential candidate who would have signaled a more robust trade policy because of his closeness to the president is Deputy National Security and Economic Advisor Michael Froman. Some press reports, however, suggest that won't happen. Froman played a key role in negotiating new terms to the U.S.-Korea FTA, which allowed the deal to get approved by Congress, and he has also been closely involved in U.S.-European Union (EU) trade relations.

Another name is current Under Secretary of Commerce for International Trade Francisco Sanchez, who has been traveling ceaselessly for four years in the U.S. and abroad promoting U.S. exports. While getting high marks for his work, Sanchez is not known to be close to the president or his inner circle and has not been seen as a policymaker. Nor has he been involved much in trade negotiations.

Also mentioned is Fred Hochberg, the current president and chairman of the Export-Import Bank. Hochberg has invigorated a near-dormant institution and doubled the level of its support for export financing. In particular, he steered the bank to take an aggressive approach to helping fund exports during the financial crisis and recession when private-sector financing nearly dried up. While Hochberg would bring a lot of energy to the USTR post, he has little trade negotiating experience.

New names being thrown into the mix include Jeffrey Zients, the acting director of the Office of Management and Budget, Lael Brainard, the Treasury under secretary, plus Kirk's two deputy USTRs, Demetrios Marantis and Michael Punke. Brainard is seen as more of an economic expert than a trade person, but her appointment might help Obama overcome some of the criticism he has faced for naming no women to the Cabinet yet for his second term. Zients has been working on the White House proposal for consolidating all trade functions in one Cabinet department, which is not a popular idea in Congress. The two deputies certainly have the trade and negotiating expertise and experience to move up but might not have the political muscle needed to push a strong trade agenda.

## **Trade Outlook Estimate Up but Reduced**

World trade in goods and services will be stronger in 2013 than in 2012, but not as strong as earlier estimates, the International Monetary Fund (IMF) forecast Jan. 23. In its midterm World Economic Outlook Update, the IMF predicted the volume of world trade will grow 3.8% compared to 2.8% in

2012. This projection is 0.7% below a forecast in made in October. The good news, however, will come in 2014, when the IMF foresees trade growing by 5.5%, which is still below the 2011 level of 5.5% and even better growth in 2010.

The IMF report predicts that advanced economies in 2013 will see imports rise 2.2% and exports go up 2.8%. These estimates are down 1.1% and 0.8%, respectively, from earlier projections. For emerging markets and developing economies, imports are forecast to increase 6.5% and exports 2.8%, with both numbers reduced 0.1% and 0.2%, respectively, from October.

For 2014, the IMF predicts advanced economies will see imports increase 4.1% and exports go up 4.5%. Emerging markets and developing economies will increase imports 7.8% and exports 6.9% in 2014, the IMF suggests. These 2014 projections are all lower than original estimates in October.

Despite these downward revisions for 2013, including for overall economic growth, IMF economists say they are more optimistic that many of the economic crises that marked 2012, including debt problems in the European Union and the fiscal cliff in the U.S., seem to have stabilized. “Recovery remains slow, much too slow,” Olivier Blanchard, the IMF’s economic counselor and director of its research department, told reporters.

He said the U.S. economy is in better shape with improvements in housing, consumer spending and investment. The IMF predicts a 2% rise in the U.S. economy in 2013, compared to 2.3% in 2012. It sees the Euro area declining 0.2% this year, Japan growing 1.2% and China rising 8.2% after seeing growth slip to 7.8% in 2012. China and other emerging markets, including India and Brazil, appear to have offset the decline in exports to advanced economies with domestic demand, he indicated.

## Service Talks to Focus on the How Before the What

Technical talks that are scheduled to begin Jan. 28 in Geneva on an International Services Agreement (ISA) will focus initially on how the negotiations are to be conducted and how commitments will be made before negotiators can start to talk about what services sectors they will opened. Negotiators will discuss the logistics of preparing offers among about 20 WTO members, which will include the U.S. following the USTR’s formal notice to Congress of the administration’s intent to join the talks (see **WTTL**, Jan. 21, page 3). In the Jan. 24 Federal Register, the USTR’s office asked for public comments on ISA negotiations and scheduled a public hearing for March 12.

Methodologies for presenting so-called “schedules” of commitments will be one of the main topics of discussion during the week, a services trade negotiator said. The meetings will try to figure out what a schedule of commitments will look like, said Pascal Kerneis, managing director of the European Services Forum. An agreement late last year called for a hybrid approach for scheduling commitments.

A hybrid approach would be a mix of a positive list of specific sectors that would covered by the ISA and a negative list of specific sectors that are excluded. The U.S. has wanted to use a negative list, but some countries said such an approach would not fit well into the procedures in the WTO’s General Agreement on Trade in Services (GATS), one trade official told **WTTL**. The EU has sought a structure that would simply allow schedules to be submitted to the WTO, she said. A negative list

can be a problem if a country neglects to make a reservation on an area of interest, she noted. Also to be negotiated is how the concept of “national treatment” will be applied and whether it will be a default principle that once a market is open to foreign companies, all foreign companies would be treated in the same way that the domestic players albeit with some likely exceptions, Kerneis said. National treatment would be offered on horizontal basis for all modes of supply unless exemptions are listed in a schedule, another negotiator suggested.

## Services Talks Could Get Linked to Immigration Reform

One of the more sensitive issues in coming WTO talks on an International Services Agreement (ISA) – rules on the transborder movement of people under the accord – could become part of the expected debate in the U.S. on immigration reform. In the past, congressional concerns about changing immigration laws to accommodate services agreements have blocked U.S. commitments for the provision of services through what is known as Mode 4 (see related story above).

ISA negotiations may be able to spur the movement of skilled workers without changing the U.S. limits associated with existing rules, Jake Colvin, a vice president at the National Foreign Trade Council (NFTC), told WTTL. Some of the possible debate on immigration reform later this year could address how to “attract and welcome” immigrants who could help boost the U.S. economy, he said.

Colvin said it is too early to say what domestic resistance could hinder the talks. “It depends what’s negotiated,” he said. Trade in services is an area that has a lot of upside to be gained from liberalization and not much downside risk, Colvin asserted. The U.S. has well-known sensitivities to changing the rules governing temporary entry of persons, but there is also a history of Mode 4 commitments in U.S. trade agreements, Colvin pointed out. He cited the increased interest in how many new work visas are being created. A lot could be considered that doesn’t involve changing numbers, but rather makes it easier to navigate the system for citizens of participating countries, he suggested, noting the trusted traveler programs, facilitating applications and entry into the country.

“There is certainly room for negotiation on Mode 4 issues,” Colvin said. It is helpful that the talks are among current participants who would be opening their service markets and would not apply to all WTO members, he said. Momentum is developing for consideration of immigration reform legislation this year, Colvin said.

## Trade Negotiating Authority Needed, Chamber Argues

President Obama needs to seek “fast-track” trade negotiating authority – also known as Trade Promotion Authority (TPA) – early in his second term to be able to complete talks on a Trans-Pacific Partnership (TPP) and expected negotiations on a U.S.-European Union (EU) trade agreement, argues Chamber of Commerce Senior Vice President for International Affairs Myron Brilliant. “It’s time we started talking about TPA,” Brilliant told reporters Jan. 24. “We don’t want to wait ten months to start those conversations,” he said. “We’re going to need a broader TPA than we’ve had,” Brilliant said, while declining to say what that might include. “It’s premature to get into a discussion of the scope of TPA....Too early to tell you what we would support,” he said. The Chamber is pressing the administration to pursue a more aggressive trade agenda in the president’s second term than in his

first term (see WTTL, Jan. 14, page 5). It is calling for concluding a “high-quality” TPP this year. “We want to see progress in Singapore,” Brilliant said, referring to the next negotiating round to be held there March 4-13. The Chamber’s other priorities include the U.S.-EU talks, a WTO services deal in the first half of 2013, export control modernization, a WTO trade facilitation agreement, expanding the Information Technology Agreement, bilateral investment treaties with India and China and new free trade agreements.

## TSRA License Applications Down for Iran, Up for Sudan

Trade sanctions on Iran appear to be cutting even legitimate trade that is permitted under the Trade Sanctions Reform and Export Enhancement Act (TSRA), according to a Jan. 23 report from Treasury’s Office of Foreign Assets Control (OFAC). Continuing a trend seen over the course of fiscal year 2012, which ended Sept. 30, 2012, license applications to export agricultural commodities, medicine and medical devices to Iran under TSRA dropped in the fourth quarter (July through September) from the same period in 2011, OFAC reported. While applications for Iran went down, the number for Sudan increased.

In the last quarter of 2012, OFAC received 383 TSRA applications for Iran, 11% fewer than the 430 it received in the same period in 2011. Applications for Iran exports in for all of 2012 declined 20% to 1,293 from 1,616 a year ago.

While OFAC continues to approve licenses, exporters complain that their bigger problem is getting paid by Iranian customers because of restrictions on bank transfers involving the Iranian government, which is the main purchaser of many of these products, particularly medical devices. Payments often have to go through intermediate financial institutions and banks in other countries, especially the United Arab Emirates. Despite payment problems, applications for medical devices exports of both Iran and Sudan went up to 307 in 2012, from 272 in 2011. In contrast, the number of applications for agricultural exports to both decreased almost 50% to 77 in 2012, down from 152 in 2011.

At the same time, processing times for both countries increased to an overall average of 76 days in the fourth quarter of 2012 versus 62 days in 2011. It took OFAC an average of 90 days to approve licenses in the fourth quarter 2012 compared to 81 at the end of 2011. It sent 41 returned without action (RWA) letters in the last quarter of 2012, down from 79 RWAs in same period in 2011. In the fourth quarter of 2012, OFAC did not deny any licenses, while in 2011, one application for medical devices in Iran was denied. That 2011 denial took 122 days to process.

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

SENATE: Republicans announced members who will serve as ranking members of Senate committees in 113<sup>th</sup> Congress Jan. 22. Among top GOPers on committees with key trade jurisdiction are Sens. Mike Crapo (R-Idaho) on Banking, Orrin Hatch (R-Utah) on Finance and Bob Corker (R-Tenn.) on Foreign Relations.

WASHERS: ITC made final determination Jan. 23 on 6-0 vote that imports of subsidized large residential washers from Korea and dumped washers from Korea and Mexico are injuring U.S. industry.