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Obama Eases Computer Controls But Not Enough for Industry

President Obama notified Congress July 1 that the Bureau of Industry and Security (BIS) will raise the control level on high-performance computers (HPCs) to allow more powerful computers to be exported without a license. While the change will represent more than double the current control level, it still falls below what industry has said it needs to keep up with the state of computing.

The change, which would increase the adjusted peak performance (APP) level for computers under Export Control Classification Number (ECCN) 4A001, would implement revisions the Wassenaar Arrangement adopted in December to its control lists (see **WTTL**, Dec. 16, page 1). The new control would go into effect when BIS amends the Export Administration Regulations (EAR) to adopt the Wassenaar rule changes.

As required by the National Defense Appropriations Act, Obama notified lawmakers that the APP for computers would jump to 8.0 Weighted TeraFLOPS from the current level of 3.0 Weighted TeraFLOPS. “I have made this change based on the recommendation of the Departments of State, Defense, Commerce, and Energy,” he wrote.

In December, Wassenaar approved the leap in controls for digital computers under Categories 4.A.3.b. and 4.E.1.b.1 of the regime’s control list. It also revised upward the control level for computer technology to 0.60 from 0.25 weighted teraFLOPS. A note under A4001 allows exports of computers that meet these thresholds with no license required (NLR) to all countries except those in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. It also covers “electronic assemblies” under 4A003.c.

The last time the APP was changed for HPCs was in July 2012. Since then industry advisors have urged BIS to raise the level higher because chip makers expect to be able to ship semiconductors operating at 20 teraFLOPS by 2017.

U.S. Disappointed by Chinese Offer in BIT Talks

China doesn’t seem ready to open its market significantly to U.S. investment under a Bilateral Investment Treaty (BIT), Treasury Secretary Jacob Lew indicated July 1, a week

before he and other top administration officials are heading to Beijing for the July 9-10 annual meeting of the U.S.-China Security and Economic Dialogue (SAED). A list the Chinese gave the U.S. June 30 of investment sectors they were willing to open “at first glance doesn’t appear to be areas of major interest for U.S. market access,” Lew told the U.S.-China Business Council (see related story page 3).

While the U.S. hasn’t had time to “fully digest” the Chinese offer, “it seems to be items that give you a number of things that are open but not a lot of business activity,” Lew said. He said the U.S. is putting its focus on opening the Chinese financial services sector and other markets.

There appeared to be a breakthrough in the BIT talks during last year’s SAED meeting in Washington in 2013 when the Chinese agreed to base an agreement on pre-establishment, national treatment and a negative list of excluded areas (see **WTTL**, July 15, 2013, page 5). Since then, progress in negotiations have been slow, and Lew said he didn’t expect any major movement at this year’s meeting. “It’s not realistic to think that there is going to be a concluded BIT in a couple of weeks. It’s a very long process,” he said.

This year’s SAED meeting could be overshadowed by cybersecurity issues and U.S. charges against Chinese hackers, as well as territorial disputes between China and its neighbors over the South China Sea and concerns about North Korea. Lew said there were some 60 items on the agenda for the meeting, and, as in past years, the goal appears to be maintaining steady progress rather than any major agreements.

Lew indicated frustration with China’s slow implementation of changes that were adopted at the Chinese Communist Party’s Third Plenum last year, which said there would be a presumption that markets are open and not closed. After the plenum, “China then proceeded to list almost everything of value to say that it would be closed,” he said.

Also as at past meetings, China’s exchange rate policies and intellectual property protection (IPR) will be top agenda items, Lew said. The Chinese renminbi has appreciated 14% since 2010 on an inflation-related basis, but “it still needs to appreciate more,” Lew said. “It’s fundamentally not fair in terms of trading practices,” he added. He applauded moves by Beijing to widen the trading ban for the currency and to raise its target rate, “but we seem to take two steps forward and part of a step back,” he said. On IPR, he also said there has been some progress, but he “has not seen a sustained, continuous effort that makes it the rules of the road.”

WTO Still Can’t Agree on Implementing Trade Facilitation Deal

The World Trade Organization’s (WTO) effort to implement the trade facilitation agreement that ministers reached at their meeting in December in Bali remains blocked by African and least developed country (LDC) concerns that they won’t get the economic aid they were promised to help them meet the accord’s goals.

A meeting July 2-3 of the Preparatory Committee on Trade Facilitation (PCTF), which is supposed to translate the Bali deal into actual actions, failed to make progress because of continued objections from African and LDC members (see **WTTL**, June 2, page 1). Members will try to break the impasse at the next PCTF meeting July 11, sources in Geneva said. WTO Director General Roberto Azevedo has recognized the African and

LDC concerns and says he is working on a proposal to address the issue. In a speech to the African Union Forum July 1, he said he aims to propose plans for a “facility” or fund to help those countries adopt facilitation measures.

The chairman of the PCTF, Ambassador Esteban Conejos of the Philippines, urged members to find a compromise so they will have an implementing protocol ready to present to the WTO General Council at its July 24-25 meeting. A representative from Norway reportedly told the committee that he was greatly concerned about the impasse. He said the countries that object to the agreement have the option of not ratifying it, but should not block other members from going forward, according to a source in Geneva.

African representatives again raised concerns about WTO members keeping their promise to provide aid to developing countries to implement trade facilitation measures that would require modernizing customs operations and improving infrastructure. They note other unfulfilled promises to help cotton producers in Africa and adopt duty-free, quota-free trade for poor countries. They continued to call for only provisional or conditional adoption of the trade facilitation instead of its permanent adoption as foreseen in Bali.

At a Trade Negotiation Committee meeting a week earlier, a representative of the African group said his colleagues are committed to the principle of single undertaking, which was supposed to be the basis for Doha Round negotiations, meaning everything would be adopted at the end of the talks. “This principle was conceived with a view to providing some insurance policy to the effect that the negotiated outcomes will be balanced. The principle importantly guards against cherry picking and mercantilization of the Global Trading System. We are therefore all obliged to preserve this principle in every aspect of our work,” he said in a prepared statement.

Meanwhile, Azevedo is trying to draft a plan to assure developing countries that they will get the aid they need. “We have been working very hard to address these issues and ensure the provision of technical assistance to everyone, without exceptions,” he said in his speech. “My team and I have been talking to donors and consulting with members to try to find a solution that would allow the WTO to assist those seeking technical assistance and capacity building support,” he added. “We expect to be able to set out a new WTO facility along these lines before the summer break,” Azevedo promised.

He said his goal is to enable the flow of information between donors and recipients on their needs and options; assist members in preparing and updating their needs assessments; help members develop technical assistance projects; identify possible development partners for countries that might have had difficulties doing so by themselves; and ensure that resources are available for all those seeking technical assistance.

WTO Review Shows Some Progress, Some Steps Back in China

Despite hopes of market-opening progress in China after the Chinese Communist Party adopted economic reforms at its Third Plenum in November 2013, a WTO review of Beijing’s trade policies says it has work to do to comply with its WTO obligations. Even getting actual information to conduct reviews of the country’s policies is difficult, the U.S. Trade Representative’s (USTR) Deputy Chief of Mission in Geneva Chris Wilson said at the WTO’s Trade Policy Review of China July 1. “It has been our

experience that many aspects of China's trade and investment policies and practices seem to remain hidden away in unpublished measures, internal instructions, oral directives and confidential documents – or for some other reason are simply unavailable," Wilson said in a statement at the review (see related story, page 1).

Wilson listed the long-standing substantive concerns Washington has about China's trade and investment policies in the areas of intellectual property rights enforcement, subsidies, services and agriculture. "China continues to deploy export quotas, export duties, variable value-added tax rebates and other export restraints, particularly on raw material inputs where it holds the leverage of being among the world's leading producers," Wilson said.

"China also pursues discriminatory policies promoting 'indigenous innovation,' maintains investment restrictions, mandates the use of unique national standards and imposes many other kinds of direct and indirect restrictions on foreign companies and their goods and services," he added. As far as subsidies, "China has failed to notify any agricultural support provided after 2008, even though it appears that China has significantly increased its subsidies for many agricultural products in recent years – including what appears to be the world's largest subsidies in the area of cotton," Wilson said.

In the area of services, the concern is "Chinese regulators' continued use of discriminatory regulatory processes, informal bans on entry and expansion, restrictions on the cross-border supply of services, overly burdensome licensing and operating requirements and other measures," Wilson said. In the area of agriculture, it "appears that China has still not fully embraced international standards and science-based rulemaking with regard to both sanitary and phytosanitary barriers and other measures," he added.

BNP Paribas Paying Almost \$9 Billion for Violating U.S. Sanctions

A widespread, interagency investigation of 4,000 transactions over eight years has led to an almost \$9 billion penalty against BNP Paribas (BNP), one of the world's largest banks. BNP agreed June 30 to pay \$8.9736 billion in forfeiture and fines in settlements with Treasury's Office of Foreign Assets Control (OFAC), Justice and the N.Y. State Department of Financial Services (DFS) for violating U.S. sanctions against Sudan, Cuba, and Iran.

The announcement of the settlement came after weeks of leaked stories in the press about the size of the potential penalty and efforts by European officials, especially the French, to get the U.S. to reduce the fine. That effort appears to have failed.

As part of the settlement, BNP agreed to plead guilty to charges Justice filed in a criminal information in Manhattan U.S. District Court, accusing the bank of violating the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). "Through these widespread illegal practices, BNP knowingly processed more than \$500 million in illicit U.S. dollar transactions involving a company controlled by an Iranian energy group – headquartered in Tehran and owned in full by an Iranian citizen," said Attorney General Eric Holder in announcing the settlements. "The bank also processed thousands of transactions – totaling more than \$1.7 billion – with sanctioned entities in Cuba. And BNP enabled the Government of Sudan and related

institutions to avail themselves of the U.S. financial system, engaging in billions of dollars in illegal transactions,” he added.

Of the total, \$963 million of the payment will go to Justice to satisfy the bank’s settlement with OFAC for BNP’s “systemic practice of concealing, removing, omitting, or obscuring references to information about U.S.-sanctioned parties” in 3,897 transactions routed to or through banks in the United States between 2005 and 2012.

“The specific payment practices the bank utilized in order to process sanctions-related payments to or through the United States included omitting references to sanctioned parties; replacing the names of sanctioned parties with BNPP’s name or a code word; and structuring payments in a manner that did not identify the involvement of sanctioned parties in payments sent to U.S. financial institutions,” an OFAC statement noted.

Under the order BNP signed with DFS, it will pay a civil penalty of \$2.24 billion and suspend U.S. dollar-clearing operations through its New York branch or its other U.S. affiliates for one year for business lines in which the misconduct centered. In addition, at DFS’ direction, the bank fired or separated 13 individuals as a result of the investigation, including a group chief operating officer, a former group head of compliance, a group head of debt capital markets, a group head of structured finance for the corporate investment bank (CIB), and the head of ethics and compliance for North America.

Finally, the bank will extend for an additional two years the term of an independent monitor DFS installed at its New York branch to conduct a review of Bank Secrecy Act/Anti-money Laundering (BSA/AML) and sanctions compliance, DFS said.

“We deeply regret the past misconduct that led to this settlement. The failures that have come to light in the course of this investigation run contrary to the principles on which BNP Paribas has always sought to operate. We have announced today a comprehensive plan to strengthen our internal controls and processes, in ongoing close coordination with the U.S. authorities and our home regulator to ensure that we do not fall below the high standards of responsible conduct we expect from everyone associated with BNP Paribas,” BNP CEO Jean-Laurent Bonnafe said in a statement. The Paris-based bank had revenue of euro 38.8 billion in 2012 (\$53 billion) and euro 4.8 billion (\$6.57 billion) in income. It was ranked the fourth largest bank in the world in 2012 by Bloomberg and Forbes.

BIS, State Issue Final Transfer Rules for Category XI

After two proposals and two public comment periods, BIS and the Directorate of Defense Trade Controls (DDTC) issued final rules in the July 1 Federal Register, transferring some items from U.S. Munitions List (USML) Category XI (military electronics) to the Commerce Control List (CCL). In its rule, BIS created new Export Control Classification Numbers (ECCNs) 3A611, 3B611, 3D611 and 3E611 to control military electronics and related test, inspection, and production equipment, software and technology.

The transfers will be effective Dec. 30, 2014, as has been the pattern for other category transfers. BIS had proposed two options in transferring less sensitive items to the CCL: one “mega” category for all electronics or five different ones, depending on the specific applications. As expected, the agency received diverse and contradictory advice (see

WTTL, Sept. 16, 2013, page 5). In the end, it decided on the former to avoid making the Export Administration Regulations (EAR) more complicated than they already are. “BIS has concluded that attempting to spread the contents of proposed ECCN 3A611 over five CCL categories (one each for radar, acoustic sensors, telecommunications equipment, computers and electronic parts and component that are common to multiple categories) would unnecessarily complicate and lengthen the EAR,” it said.

The rule also transfers analog-to-digital converters currently covered under State jurisdiction to ECCN 3A101. “These converters are being moved to the CCL and continue to be controlled for MT reasons because they are identified on the MTCR [Missile Technology Control Regime] Annex. Placing such items in this ECCN, rather than the new ECCN 3A611, makes it easier to identify, classify, and control such items,” BIS wrote.

In addition, the rule also added software and technology for the “development” of certain wing folding systems for aircraft powered by gas turbine engines to its “holding” ECCNs 0D521 and 0E521, while the U.S. seeks to have such software and technology added to the Wassenaar Arrangement Dual-Use List. This transfer is effective immediately and will be valid for a year or until “the software or technology is re-classified under a different ECCN, the 0Y521 classification is extended, or the software or technology is designated as EAR99,” it explained.

In a separate rule also published July 1, BIS is seeking comments on specific products, including microwave “monolithic integrated circuits” (MMICs), that have potential civil applications. MMICs were discussed during the transfer review process and mentioned by industry in their comments.

“Specific information that identifies actual uses of the MMIC power amplifiers and discrete microwave transistors that were included in ECCN 3A611 in the BIS final military electronics rule is needed. To the extent feasible, the information should identify product names, models, quantity, and total value of the MMIC power amplifiers and discrete microwave transistors used in those products,” it said.

In its rule, State’s Directorate of Defense Trade Controls (DDTC) clarified which items would still be controlled. Specifically, DDTC added language to cover electronic sensor systems or equipment for non-acoustic antisubmarine warfare (ASW) or mine warfare; electronic sensor systems or equipment for detection of concealed weapons; test sets specially designed for testing defense articles controlled in other paragraphs; and direction finding equipment specially designed for articles in select paragraphs of USML Categories IV (launch vehicles) and VIII (aircraft).

* * * Briefs * * *

TRADE FIGURES: U.S. merchandise exports in May jumped 4.9% from year ago to \$136.7 billion, Commerce reported July 3. Services exports increased 3.3% to monthly record of \$58.8 billion from same month in 2013. Goods imports went up 3.3% from May 2014 to \$200 billion, as services imports gained 3.9% to \$39.9 billion.

BANGLADESH: USTR-led interagency review July 2 concluded that Bangladesh has made some important progress in addressing worker rights and worker safety issues that led to suspension of its GSP trade benefits in June 2013, but must do more to implement Action Plan. “We

remain concerned about the large number of factories that have yet to be inspected, the lack of progress on needed labor law reforms, and continuing reports of harassment of and violence against labor activists who are attempting to exercise their rights,” USTR Michael Froman said in statement. House Ways and Means Committee Ranking Member Sander Levin (D-Mich.) and Rep. George Miller (D-Calif.) welcomed report: “We need to continue to ensure that workers in Bangladesh are assured basic safety and internationally recognized rights in the workplace. We look forward to working with the administration and the Bangladeshi government to continue to make progress in this regard,” they said in statement. GSP program itself expired in July 2013.

JORDAN: During second meeting June 25-26, Labor Subcommittee of U.S.-Jordan Free Trade Agreement (FTA) “reaffirmed the Parties’ labor commitments under the FTA and further clarified the domestic mechanisms, institutions, and procedures that each Party has established to advance the implementation of the FTA’s labor provisions,” said joint statement. Two governments signed Labor Implementation Plan in 2013. Subcommittee also held “in-depth discussions on several topics, including: (1) activities to strengthen institutional capacity and labor law enforcement and compliance; (2) child labor and the protection of vulnerable populations; and (3) areas of common interest, such as protections against gender discrimination and sexual harassment in the workplace, occupational safety and health, and the promotion of tripartite social dialogue,” statement noted.

ORGANIC FOOD: In agreement that went into effect July 1, U.S. and Korea said organic processed products certified in U.S. or Korea can now be labeled as organic in either country, USTR announced. Deal covers organic condiments, cereal, baby food, frozen meals, milk, and other processed products. Senate Finance Committee Chairman Ron Wyden (D-Ore.) applauded accord. “This agreement will eliminate unnecessary restrictions that for too long have prevented U.S. organics exporters from using the organic label in Korea,” he said in statement.

ENVIRONMENT: In July 2 Federal Register, USTR requested public comments on pending environmental reviews of proposed Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TISA). Trade Policy Staff Committee (TPSC) invited comments on “topics that should be included in the scope of the environmental review, including potential positive or negative environmental effects that might result from the trade agreement and potential implications for U.S. environmental laws and regulations,” notices said.

TPP: In letter to USTR Michael Froman and Treasury Secretary Jacob Lew July 1, 13 manufacturing and textile trade groups urged administration to “include strong and enforceable provisions prohibiting currency manipulation in all future U.S. free trade agreements, including the Trans-Pacific Partnership (TPP).” Groups suggested three-prong test: (1) Did country have current account surplus over six-month period in question? (2) Are its foreign exchange reserves more than sufficient (i.e., greater than three months normal imports)? (3) Did it add to its foreign exchange reserves over that same six-month period? If parties were found to have breached currency commitments, “other parties would be entitled to suspend the benefits of the agreement with respect to the violating party for at least a year,” groups stated. Signers included American Iron and Steel Institute, American Automotive Policy Council and National Council for Textiles Organization.

EAT YOUR VEGETABLES: Court of Appeals for Federal Circuit July 3 affirmed CIT ruling that Customs correctly classified certain tempura vegetables and vegetable Bird’s Nests from Thailand as vegetables under subheading 2004.90.85 with duty rate of 11.2% and not duty free. “Because the subject merchandise is not ‘potatoes’ it is properly classified under subheading 2004.90, which encompasses ‘mixtures of vegetables.’ Furthermore, because the subject merchandise is not ‘antipasto’ or ‘beans,’ it is properly classified under subheading 2004.90.85 for ‘Other: Other, including mixtures,’” wrote Judge Evan Wallach for three-judge panel.