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## Export Agencies Move Forward on Single Application Form

With all the export agencies now looking at license applications on the same back-end platform, officials from Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) are starting the next step in the reform effort: building a single export license application process visible to exporters.

Patricia Peterson, director for nonproliferation and export controls at the National Security Council (NSC), described the effort to BIS' President's Export Council Subcommittee on Export Administration (PECSEA) March 16. The project will have two phases: first is a landing page where exporters would "select entries that would take you to either DTrade, OASIS if it's OFAC, or SNAP-R," she said. The team just sent the landing page around for clearance in the inter-agency, Peterson noted.

The second phase would be a single process that would have new rules for processing the licensing application, Peterson noted (see **WTTL**, Nov. 9, page 7). Officials have not decided on which platform the application process will live, or even which site will host the first landing page. "We're still exploring where we want to put that page. We'd like to put it on a site that everyone can get to, and that's already up and handling export control issues. But we continue to work that behind the scenes," she said.

"We'd love if at all possible by the end of this administration to put up victory and have all of this up and running. From what I've heard, this is a very difficult task." Peterson responded to the inevitable question about timing. "We have to go through and see what terms are we using that are the same, what terms are different, how can we reduce or eliminate the redundancy in the things that we're asking for?" she added.

## Obama Administration Eases Travel, Exports to Cuba

As President Obama heads to Cuba for two days of sun and baseball, his administration took further steps March 16 to ease travel to and trade with the island nation. While some

members of Congress are concerned about the lack of commitment to reform shown by Havana, others are urging the administration to go further to encourage investment.

Specifically, Bureau of Industry and Security (BIS) changed its regulations to: allow vessels departing the U.S. on temporary sojourn to Cuba with cargo for other destinations to travel a license exception; authorize exports of certain items to persons authorized by Treasury to establish and maintain a physical or business presence in Cuba; and adopt a case-by-case license review policy for exports and reexports of items that would facilitate export of items produced by the private sector in Cuba, subject to certain limitations.

At the same time, Treasury's Office of Foreign Assets Control (OFAC) authorized "individual people-to-people educational travel" to Cuba. Previously, OFAC required such trips to take place under the auspices of a U.S. organization and required all travelers to be accompanied by the organization's representative.

Administration officials were quick to argue that this is not opening the door to general tourism. Authorized travelers must engage in a "full-time schedule of meaningful activities," Acting OFAC Deputy Director Andrea Gacki told a press call March 15. And while this is a general authorization, they must also keep records of their Cuban travel for five years. "This is something we will monitor," Gacki said.

In addition, OFAC authorized U.S. banking institutions to process "U-turn transactions" in which Cuba or a Cuban national has an interest. "This provision will authorize funds transfers from a bank outside the United States that pass through one or more U.S. financial institutions before being transferred to a bank outside the United States, where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction," the agency fact sheet noted.

Financial institutions now are also authorized to process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions, and to open and maintain U.S. bank accounts for Cuban nationals in Cuba.

These changes come just a few weeks after the administration signed agreements on airline travel (see **WTTL**, Feb. 22, page 3). Two days before the announced changes, United Airlines said it submitted its latest filing to Transportation for authority to begin commercial air service to Cuba from Newark/New York, Houston, Washington and Chicago. More than 15,000 customers, employees, elected officials and business leaders have supported the filing, the airline said in a statement.

Sen. Amy Klobuchar (D-Minn.), who is traveling with the president to Cuba, applauded the administration's changes. "These are good initial steps that will help improve the quality of life for Americans and Cubans, but we cannot stop until both travel and trade embargos are lifted," she said in a statement. Klobuchar in February 2015 introduced the Freedom to Export to Cuba Act (S.491), which would lift the embargo and which currently has 23 Senate cosponsors. Prior to the administration's announcement, Klobuchar urged Treasury Secretary Jacob Lew and Commerce Secretary Penny Pritzker to allow American

hotels to operate in Cuba. “We have already begun to see what will happen if we fail to take action: other countries will continue to expand their hotel and travel opportunities in Cuba while U.S. companies are excluded,” she wrote in a letter March 8.

On the other side of the aisle, House Foreign Affairs Committee Chair Ed Royce (R-Calif.) said he was “very concerned these moves pose significant risks to the integrity of the U.S. financial system, U.S. companies doing business in Cuba, and certified claims of American citizens against the Castro regime. The state-run financial system is opaque and unregulated, and in the past has conducted plenty of business with terrorist organizations and likely narcotics traffickers.”

### **New Sanctions Target North Korean Financial, Mining Sectors**

As if complete embargo wasn’t quite tough enough, President Obama issued an executive order (EO) March 16 blocking the government of North Korea and the Workers’ Party of Korea, and prohibiting the exportation and reexportation of goods, services (including financial services), and technology to North Korea; as well as prohibiting new investment in the country.

These sanctions come just days after State and Treasury implemented tough sanctions imposed by the United Nations (UN) Security Council (see **WTTL**, March 7, page 3). Under the EO, Treasury’s Office of Foreign Assets Control (OFAC) added 17 Korean government officials and organizations and 20 vessels to its Specially Designated Nationals (SDN) list.

Treasury posted new Frequently Asked Questions (FAQs) explaining that the designations also implement certain U.S. obligations under the UN resolution and provisions of the North Korea Sanctions and Policy Enhancement Act of 2016 (H.R. 757), which President Obama signed in February.

Additions include Ilsim International Bank and Korea United Development Bank in the financial services industry and Singwang Economics and Trading General Corporation and the Korea Foreign Technical Trade Center in the mining sector. In addition, OFAC designated the following entities in the transportation industry: Korea Ocean Shipping Agency (KOSA), Korean Buyon Shipping Co. Ltd., Thaephyongsan Shipping Co. Ltd., Chongbong Shipping Co. Ltd., Ocean Bunkering JV Co., Korea Samilpo Shipping Co., Mirim Shipping Co. Ltd., Korean Polish Shpg Co. Ltd., Hoeryong Shipping Co. Ltd., and Korea Zuzagbong Maritime Ltd.

Along with the president’s EO, OFAC issued nine general licenses including authorizations for: North Korean Mission to the UN and UN employees; certain legal services; entries in certain accounts for normal service charges; noncommercial, personal remittances; certain services in support of nongovernmental organizations’ activities; third-country diplomatic and consular funds transfers; transactions related to telecommunications and mail; certain transactions related to patents, trademarks and

copyrights; and emergency medical services. Two days later, State blocked Strategic Force, aka Strategic Rocket Force of the Korean People's Army, for engaging in activities or transactions "that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons)," the department said in the Federal Register March 18. While the document was dated Dec. 8, 2015, it was not received by Federal Register office until March 10.

## European Commission Discusses Trade Defense, China

Under mounting pressure to act swiftly on China's economic status, European governments and trading stakeholders met in Brussels March 17 to discuss trade defense in relation to China.

Provisions in China's World Trade Organization (WTO) accession protocol expire Dec. 11, and China believes it should be granted market economy status as a result (see **WTTL**, March 14, page 5). Because China has non-market economy status, WTO rules allow for calculating dumping by using export prices from a third country with market economy status as a reference value.

EU Trade Commissioner Cecilia Malmstrom told the European Commission and stakeholders that the Commission has only three choices: it can do nothing and leave the legislation as is; it can change the method of dumping calculation; or it could change the method of dumping calculation and enact other changes.

Malmstrom criticized those who believe the first option is best. "Let's be clear. Doing nothing would initiate disputes at the WTO and beyond, with unknown outcomes. It will create uncertainty, and uncertainty has costs - at least investment and financial costs. And it may well create a new and serious frictions in our bilateral relationship with China, impossible to measure in economic terms," she said.

China is the EU's second-largest exporting market. Three million jobs in Europe depend on exports to the Chinese market, Malmstrom said in her remarks. The European Commission is taking public comments on a change in China's economy status through April 20.

On this side of the pond, prominent U.S. manufacturing associations March 16 announced the formation of the Manufacturers for Trade Enforcement, a coalition designed to oppose China's potential designation as a market economy. "The Chinese economy does not meet the basic requirements set forth by U.S. statutes and the Department of Commerce for a functioning market economy, and we will work together in this coalition to speak loudly, and with one strong voice, to prevent China from gaining a status that it does not deserve," Heidi Brock, president and CEO of the Aluminum Association, said in a statement. Other coalition members include Alliance for American Manufacturing,

American Fiber Manufacturers Association, American Iron and Steel Institute, Narrow Fabrics Institute, National Council of Textile Organizations, PET Resin Association, and U.S. Industrial Fabrics Institute.

## More Work Needed on Intellectual Property Rights in TPP

Industry experts picked apart intellectual property rights (IP) protections in the Trans-Pacific Partnership (TPP) agreement, with most concluding that more work needs to be done to garner support to pass the trade deal.

The pharmaceutical industry will likely follow the lead of Sen. Orrin Hatch (R-Utah) when it comes to TPP, Brian Pomper, an attorney with Akin Gump Strauss Hauer & Feld LLP, said at a panel discussion in Washington March 17. The Senate Finance Committee chairman was responsible for the 1984 Drug Price Competition and Patent Term Restoration Act, colloquially known as the Hatch-Waxman Act, and is viewed as a champion of intellectual property rights.

Under the Affordable Care Act, biologics receive 12 years of protection and per a mandate in Trade Promotion Authority, USTR was supposed to negotiate for that same level during TPP negotiations. Instead, TPP allows for either eight years of data protection or five years plus “other measures and market circumstances.”

The pharmaceutical industry is upset with this outcome, as is Hatch. “He is a true believer in IP” because it’s our “competitive advantage,” Pomper said. In a recent Finance hearing, Hatch pointed out that partner TPP countries already have outstanding IP obligations that have not been met, but Pomper believes if assurances can be made that TPP countries will meet their obligations, perhaps Hatch and the industry can be swayed to support the trade agreement.

“There's no question in my mind that there can be a deal. There can be some way to get some comfort to Chairman Hatch and everyone that TPP can move forward but it takes time. I think it could be done quickly if there were people really putting their shoulder to the wheel and I have every indication that's starting to happen,” said Pomper.

On the issue of fair use, Michael Castellano, vice president for government relations at the Walt Disney Company, and Jeremy Malcolm, senior global policy analyst at the Electronic Frontier Foundation (EFF), took strongly opposing views on provisions within TPP.

EFF began lobbying USTR in 2012 to include compulsory fair-use language in the trade agreement, but instead the TPP has a provision that says “each party shall endeavor to achieve an appropriate balance between its copyright and related rights system including things like criticism, comment, news reporting, teaching, scholarship, research and other similar purposes, but what it does not say is that companies must do so....because the rights holders fought against the extension of fair use in the TPP,” said Malcolm. Castellano pushed back, saying that compulsory fair-use language would create

uncertainty in the market because the U.S. is the only country with developed fair-use protections that cannot be exported to other countries that use civil law rather than common law. Besides, websites like YouTube and Google that rely on fair use operate in countries without the same U.S. protections Castellano noted. In fact, he said, “YouTube has a higher market share in countries outside the U.S. that don't have fair use.”

Malcolm rebutted by stating that YouTube videos are frequently blocked in other countries and lack of access to legal means of sharing content drives users to piracy.

Patrick Kilbride, executive director of international intellectual property for the Global Intellectual Property Center at the U.S. Chamber of Commerce, replaced Probir Mehta of the U.S. Trade Representative's office at the panel discussion. Kilbride stated that the “rule of law and intellectual property” are two of the “core competitive advantages the United States enjoys in the global economy” and emphasized that TPP “reinforces those advantages...enshrined in the Constitution.”

### **Appellate Court Rejects Customs Interpretation of “Trademark”**

The term “trademark” under the Tariff Act is not limited to names that are registered with the Patent and Trademark Office (PTO), the Court of Appeals for the Federal Circuit (CAFC) ruled March 2. The court reversed and remanded a Court of International Trade (CIT) ruling that had upheld Customs and Border Protection's (CBP) action against imports of blue jeans by JBLU, Inc.

“The word ‘trademark’ in Section 134.47 unambiguously includes trademarks without a pending application. This is consistent with the dictionary definition of record and the Lanham Act definitions from 1946 and today,” wrote CAFC Judge Kimberly Moore for the three-judge panel in *JBLU, Inc. v. U.S.*

“We do not see a distinction between the clear meaning of the term in dictionaries and in the intellectual property context and the use of the term in Section 134.47. There is nothing in the record indicating that the plain meaning of ‘trademark’ is limited to registered trademarks and trademarks with pending applications. Nor is there anything in the record calling into question the unambiguousness of the term ‘trademark’,” she added.

CBP had claimed that JBLU had violated the Trade Act because the Made-in-China label in the jeans was not close enough to the “C'est Toi Jeans Los Angeles” brand name on the jeans. The importer had argued that it was entitled to the agency's more lenient interpretation of the rule.

“JBLU argues that the trial court erred because an agency's interpretation of a regulation is entitled to deference only if the regulation is ambiguous. It argues that ‘trademark’ in Section 134.47 unambiguously includes federally registered and common law trademarks. We agree,” Moore ruled.

## Report Details China's Efforts to Undermine U.S. Influence in Asia

Although China benefits from the stability the U.S. and its allies bring to the Asia-Pacific region, Beijing is actively seeking opportunities to lessen its military's vulnerability should a conflict occur by using economic and political coercion, according to the U.S.-China Economic and Security Review Commission (USCC) staff research report released March 15.

The committee found that "China uses economic engagement and economic coercion to attempt to shape the behavior of U.S. allies and partners Beijing considers instrumental to supporting U.S. presence and force projection capability within the U.S. Pacific Command's area of responsibility."

Among current challenges cited in the USCC report is Beijing's aim to undermine the U.S.-Australia relationship. Much of Australia's economic growth the past few years is attributed to exports of raw materials to China, which the authors of the report warned could "lead to reticence to adopt policies that could anger China." Likewise, in 2013 China became New Zealand's largest trading partner, and there is concern in New Zealand about the implications of China's growing economic influence translating into undermining New Zealand's independent foreign policy.

China has used economic integration to strengthen ties with South Korea and has also played up security concerns both nations have about maritime territorial disputes with Japan. Andrew Nathan of Columbia University and Andrew Scobell of the RAND Corporation are cited in the report as stating that "China is likely seeking to maintain stable relations with South Korea to 'build trust and eventually...reassure the Koreans that they would not need American troops on their soil to feel secure.'"

National security officials within the Obama administration have warned the business community that failure to approve the Trans-Pacific Partnership (TPP) trade agreement would pave the way for China to set the rules via its own free trade agreements "for the next 50 years." An official recently went as far as to say that other Pacific-facing countries want the U.S. to set precedent as a bulwark against China.

To prevent erosion of the U.S. influence and access to the region, the report suggests that the U.S. shore up alliances with Japan, South Korea, Australia, New Zealand, the Philippines and Thailand where the U.S. maintains military outposts; find ways to partner with Indonesia, Malaysia, India and Vietnam to ensure political and military presence in those countries; and ensure "freedom of navigation operations" in the South China Sea as a show of good faith to its allies in the region.

## Four Years Later, KORUS Still Contentious

The U.S. Trade Representative's office (USTR) tried to put a positive spin on fourth anniversary of the Korea-U.S. Free Trade Agreement (KORUS) March 15, but trade

lawyers and observers question USTR statistics as just one side of the story. A USTR press release cited “growth and resurgence for the American economy, with 2015 recording solid GDP growth, a net gain of 2.6 million private-sector jobs, and the sixth consecutive year of net gain in manufacturing employment.”

Specifically, in the auto sector, exports to Korea increased by 208% by value between 2011 and 2015, more than 14 times faster than the increase of U.S. auto exports to the world (up 14%), thanks to Korea’s 50% tariff reduction (from 8% to 4%) when KORUS entered into force, USTR said. Exports of passenger vehicles in particular grew from \$418 million in 2011 to \$1.287 billion in 2015.

These claims were questioned by Terence Stewart of Stewart and Stewart law firm in his own blog post March 16. “Nowhere in the press release from USTR is there any mention of imports from Korea or our ballooning merchandise trade deficit with Korea, or the fact that our deficit in Chapter 87 products (which includes passenger vehicles) grew by \$8 billion in the first four years,” Stewart wrote.

“There is no doubt that expanding U.S. exports is positive and certainly worth noting and encouraging. But in the period 2011-2015, our merchandise trade deficit with Korea grew from \$14.7 billion to \$28.4 billion,” Stewart noted. “The largest increase in the trade deficit occurred in products entered under HS Chapter 87 which includes passenger cars and trucks – from a deficit of \$11.2 billion to a deficit of \$19.2 billion,” he added.

“Logically, we can therefore assume that a billion dollar increase in imports means a loss of 5796 jobs. If so, then the trade deficit with Korea should reflect a loss of 164,606 jobs in 2015, roughly double the number of lost jobs flowing from our deficit with Korea in 2011. Jobs in auto manufacturing are good paying jobs whether in assembly facilities or parts manufacturers or input suppliers,” Stewart noted.

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

EXPORT ENFORCEMENT: Chemical Partners Europe S.A. (CPE) of Brussels, Belgium, agreed March 14 to pay BIS \$350,000 to settle six charges of evasion in connection with export of coatings, pigments and paints to Iran via Belgium between January 2010 and March 2011. Items were worth approximately \$244,358 and were “suitable for use in nuclear facilities or have marine applications,” BIS order said. CPE neither admitted nor denied charges.

MORE EXPORT ENFORCEMENT: Amir Abbas Tamimi was deported March 15 to Iran after serving part of 46-month sentence for conspiracy to violate IEEPA (see **WTTL**, Dec. 2, 2013, page 10). Tamimi pleaded guilty in July 2013 to exporting helicopter component parts to Iran through South Korea. Philadelphia ICE officers issued expedited removal order in July 2014.

ENTITY LIST: BIS in Federal Register March 21 will add 44 entities under 49 listings in China, Germany, Hong Kong, India, Iran, Malaysia, Netherlands, Singapore, Switzerland and UAE to Entity List. Additions include Skylinks FZC, whose managing director Seyed Amin Ghorashi Sarvestani was sentenced to 30 months in prison in 2013 for conspiring to export electronic equipment, including satellite technology and hardware, to Iran via UAE without OFAC approval

(see **WTTL**, Aug. 19, 2013, page 7). Agency also will remove five entities in Ukraine and UAE based on information provided by entities in their appeal and further review conducted by End-User Review Committee. At same time, BIS adds aliases and addresses to two entries in China.

**OFAC: MasterCard International** received Finding of Violation from OFAC March 16 for alleged violations of Reporting, Procedures and Penalties Regulations (RPPR). MasterCard failed to properly report accounts in which blocked Iranian banks Bank Melli and Bank Saderat had interest, OFAC charged. “While no MasterCard personnel appear to have had actual knowledge of the conduct that led to the violations, MasterCard had reason to know that it maintained funds associated with two banks on the SDN List,” agency said.

**PLASTIC TAPE:** In 4-2 “sunset” vote March 15, ITC said revoking antidumping duty orders on pressure sensitive plastic tape from Italy would renew injury to U.S. industry. Chairman Meredith Broadbent and Commissioner F. Scott Kieff voted no.

**TIRES:** In 4-2 preliminary vote March 11, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of truck and bus tires from China. Chairman Meredith Broadbent and Commissioner F. Scott Kieff voted no. “Chinese dumping and subsidization totally distort the U.S. tire market and other manufactured products. They fight for their own industry and jobs by targeting the U.S. market. It is our responsibility to fight for our own people,” United Steelworkers (USW) President Leo Gerard said in statement.

**SILICOMANGANESE:** In 6-0 final vote March 11, ITC found U.S. industry is not materially injured by dumped imports of silicomanganese from Australia.

**AGOA:** President Obama March 14 officially revoked impending suspension of AGOA benefits for South Africa after deal to allow U.S. poultry, pork and beef products (see **WTTL**, March 7, page 9). “Suspending the application of duty-free treatment to certain goods is no longer necessary to promote compliance by South Africa with such requirements,” president said in proclamation.

**MORE AGOA:** Per Trade Preferences Extension Act passed in June 2015, USTR in Federal Register March 18 established petition process to review sub-Saharan African countries’ eligibility for African Growth and Opportunity Act (AGOA). New process supplements annual (normal cycle) request and allows any interested party to submit petition at any time. Public comments on process are due April 18.

**GUNS:** At President’s Export Council Subcommittee on Export Administration (PECSEA) meeting March 16, BIS Assistant Secretary Kevin Wolf hedged on progress of proposed rules for categories I, II and III (firearms and ammunition). “We commit to completing a review of all categories in 2016. Beyond that, I don’t have any other information,” Wolf said. “The gun rules are different than the rest of the rules, in the sense that everything else pertains to military items and these are civil items on the USML.” Wolf previously had not mentioned firearm categories in list of what was achievable before elections (see **WTTL**, March 14, page 1).

**BEEF:** Peru agreed to remove barriers to U.S. beef exports that had been in effect since 2003, USTR Michael Froman and Agriculture Secretary Tom Vilsack announced March 14. U.S. and Peru agreed to changes in certification statements that will now make all beef and beef products from federally inspected U.S. establishments eligible for export to Peru. Before this new agreement, only beef and beef products from participants in USDA Marketing Service Export Verification programs were eligible. U.S.-Peru FTA went into force in 2009. U.S. exported \$25.4 million in beef and beef products to Peru in 2015.

**TARIFF TOOL:** Commerce has updated its FTA Tariff Tool to include information on tariffs of U.S. products exported to TPP partners. Users can search by keyword or tariff code to see how TPP and FTA partner tariffs impact individual products. Importers and exporters can also see current and future tariffs applied to products and what year those products become duty-free. Find it here: [export.gov/fta/ftatarifftool/](http://export.gov/fta/ftatarifftool/)

**BACARDI:** Bacardi Limited filed amended complaint with D.C. U.S. District Court March 15 as part of ongoing trademark dispute with Cubaexport and Havana Club Holding S.A (see **WTTL**, Feb. 22, page 9). Bacardi seeks four actions from court: striking Havana Club registration from principal register; declaration that Bacardi owns common law rights to Havana Club mark for rum; declaration that Bacardi's use of trademark does not infringe on Cuban government's or its joint venture's mark; and injunction prohibiting defendants from using or registering any mark using words Havana Club.

**TTIP:** USTR Michael Froman and Deputy USTR Michael Punke traveled to Belgium March 17-19 for the German Marshall Fund's 2016 Brussels forum and meetings with EU Trade Commissioner Cecilia Malmstrom. "Looking forward to spend the day with @MikeFroman to push TTIP negotiations forward," Malmstrom tweeted March 18.

**ROCK LOBSTER:** Sweden's Environment Ministry reportedly is asking EU to ban imports of U.S. lobsters, citing disease and parasites. "This is a complete overreaction on the part of Sweden. We have safely exported live lobster to dozens of countries for decades, and even if it's true that a few Maine lobsters have been found in foreign waters, regulators need to look at the problem more carefully and not just jump to conclusions," Rep. Chellie Pingree (D-Maine) said in statement March 18. "We will work with our European colleagues to better appreciate their apprehensions. We need to understand how 32 lobsters found in EU waters over an 8-year period constitutes an 'invasion,'" said statement from John Connelly, president, National Fisheries Institute.

**PERU:** Submission by International Labor Rights Forum, Perú Equidad, and seven Peruvian workers' organizations citing violations of U.S.-Peru Trade Promotion Agreement (PTPA) "raises questions about labor law enforcement," Labor Department said in report released March 18. "Today's report fails to provide clear next steps regarding how Peru will remedy the use of short-term contracts that deprive workers of the ability to freely associate. Further, the report merely 'raises questions' about labor law enforcement when there are clear examples of the Peruvian government failing to enforce its laws and meet the labor standards in the agreement," House Ways and Means Committee Ranking Member Sander Levin (D-Mich.) said in statement.