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PECSEA Bids Farewell, Leaves Honey-Do List

At its last meeting of the Obama administration Dec. 7, the President's Export Council Subcommittee on Export Administration (PECSEA) expressed appreciation for the work done on export control reform (ECR) and hoped the next president will continue the progress. Administration officials say they have reached 85-90% of what could be accomplished, but PECSEA still has a long to-do list for the next president.

Bureau of Industry of Security (BIS) Under Secretary Eric Hirschhorn was scheduled to meet with Trump's transition team the next day to brief them on progress to date. "I will bring the switches," he joked, referring to the examples that have been used to illustrate the differences (or lack thereof) between civilian and military parts and components.

Hirschhorn also told PECSEA that BIS is "very close to final rules" on a second round of changes to U.S. Munitions List (USML) Category XV (satellites) and the corresponding entries on the Commerce Control List (CCL). While he was hopeful the rule would be published by the end of the month, he warned, "Don't believe it until you see it, because there's always some hitch." BIS and State issued a second round of changes to aircraft and engines in November (see **WTTL**, Nov. 21, page 1).

Unlike other BIS technical advisory committees (TACs), PECSEA and its parent, the President's Export Council, are at the discretion of the sitting president. The two groups did not meet during George W. Bush's administration, so it's not clear whether President-elect Trump will approve the groups' charters and who will sit on each committee.

China's WTO Anniversary Not Likely to Change Status

While China insists that World Trade Organization (WTO) members must treat it as a market economy beginning Dec. 11, per the terms of the country's accession to the

organization, major trading partners including the U.S., European Union and Japan, have all said it would not grant the country the status (see **WTTL**, July 25, page 7). Industry groups urged the U.S. to maintain that stance.

In a press briefing Dec. 9, China's Commerce Ministry spokesperson Shen Danyang threatened the country would take "necessary measures" under WTO rules. "China urges those World Trade Organization members, who have not yet implemented their obligations under clause 15, to fulfill their obligations as soon as possible to avoid affecting the normal development of bilateral economic and trade relations. For the small number of members who insist on using surrogate country approaches after December 11, China will take necessary measures in accordance with WTO rules to firmly protect our legitimate rights," he said.

Think tanks and union groups disagreed. "Trade with China has been one step forward, two steps back for 15 years. Each time China claims to move toward opening up trade, it turns around and introduces another new mercantilist trade barrier to counteract it," Robert Atkinson, president of the Information Technology and Innovation Foundation (ITIF), said in a statement. "Now we know that what China really bought from Geneva was a "get out of jail free" card. President-elect Trump's pledge to get tougher on China's mercantilism should be a top priority in January to turn China's false promises into real ones," he said.

"While China has taken advantage of an open world market for the past decade in a half, it hasn't done much on its own end to open its own market or compete in a fair way. We've seen the impact of China's continued trade cheating here in the United States, as more than 5 million factory workers have lost their jobs since China entered the WTO," Alliance for American Manufacturing, a union industry group, wrote Dec. 9.

Negotiators Fail to Conclude Environmental Goods Talks

Despite high hopes for an Environmental Goods Agreement (EGA) in the midst of other stalled trade talks, negotiators failed to finalize a deal by the time the Dec. 3-4 ministerial meeting in Geneva concluded. EGA negotiations, aimed at cutting tariffs on environmental goods, have dragged on since they were launched in July 2014.

Leading up to the ministerial, Australia prepared two lists: an "A" list of approximately 250 items, which had consensus, while a "B" list contained sensitive items. The EGA chairs then put forward their own list that added some items to the "A" list. But it was China's submission of its own list Dec. 4 that some negotiators said gummed up the works (see **WTTL**, Dec. 5, page 2). China had long wanted to include goods in the negotiations, such as vacuums, that are not necessarily for environmental use only.

U.S. Trade Representative (USTR) Michael Froman and European Union (EU) Trade Commissioner Cecilia Malmstrom took a neutral stance on China in their post-meeting statement. The U.S. and EU "worked with all WTO members involved to achieve the

broadest possible consensus through creative solutions to bridge the gaps in the negotiations. Many EGA participants engaged constructively and brought new contributions to the table. The Chairs issued documents designed to stabilize the text of the agreement and produced a revised products list that balances priorities and sensitivities. The participants will now return to capitals to consider next steps,” they said.

House Ways and Means Committee Chair Kevin Brady (R-Texas), a trade proponent, said while he’s “disappointed that China was not prepared to conclude the agreement this weekend, I hope that a strong agreement can be reached very soon.” Brady encouraged the new administration “to take these negotiations up and work to conclude a robust Environmental Goods Agreement that is a good deal for American manufacturers, consumers and workers,” he added.

The Coalition for Green Trade offered its support to Froman and Malmstrom and echoed Brady’s disappointment with China. “To spur successfully the development of cost-effective innovative new technologies to meet global environmental challenges, major countries, including China, must be fully engaged. While we are disappointed that China lacked the ambition to move forward at this juncture, we will continue to look for paths forward with all 18 negotiating parties so that potential benefits to our economies and the environment are ultimately realized,” the coalition said in a statement.

China shrugged off the criticisms from its peers. China’s Vice Minister of Commerce Wang Shouwen told a Chinese news agency Dec. 5 that China had sought to “make great contributions to the negotiation” and address all parties’ concerns. Shouwen pushed back on Malmstrom’s assertion that China had submitted a new goods list too late.

“Wang Shouwen said China made great efforts and proposed a new goods list after two hours to break the ice. This list showed flexibility and tried to solve the most concerned issue of all parties. Though this list was not accepted by all parties, most of the participants expressed their appreciation to China’s efforts,” China’s Commerce Ministry said in a statement.

EGA negotiations weren’t the only talks that fell apart. A ministerial meeting scheduled for Dec. 5-6 to finalize the Trade in Services Agreement (TISA) was canceled. The Global Services Coalition urged negotiators to maintain existing progress. “It is essential that you find a way to ensure that the progress made in the core text of the agreement, the impressive work that has been done by the negotiators to come close to finalizing texts of annexes on horizontal and sector specific disciplines, and the efforts made by most of the participating countries to improve their market access offers be retained, so that none of the progress to date is lost when formal negotiations resume in earnest,” the group said.

Commerce Places Antidumping Duties on Samsung, LG Washers

Samsung and LG dumped clothes washers made in China into the U.S. market in violation of international trade laws, Commerce said Dec. 9. In response, the department

imposed antidumping margins of 52.51% and 32.12% on Samsung and LG, respectively, according to a statement from Whirlpool, the original complainant in the December 2015 case against South Korean rivals (see **WTTL**, Oct. 31, page 2). The duties will not take effect until they are published in the Federal Register the week of Dec. 12.

Commerce's ruling is "an important victory in the continuing efforts to hold companies accountable when they systematically violate trade laws to gain a competitive advantage," Jeff Fettig, Whirlpool's chairman and CEO, said in a statement. "We are strongly committed to the application and enforcement of trade laws, which support fair competition, a solid U.S. manufacturing base and continued investments in innovation that improve the lives of our consumers," he added.

For its part, LG said the final margin was "dramatically lower" than the 109% originally alleged by Whirlpool, but LG's "margin is still much higher than required by law," it said in a press release. LG executives testified before the International Trade Commission (ITC) Dec. 7 domestic injury hearing and maintained that their imported washers from China are not causing "material injury" to U.S. producers. ITC is expected to vote on whether dumped imports caused injury to U.S. washer industry on Jan. 10, 2017.

Samsung said it is pleased that Commerce's ruling "confirms that we did not inappropriately increase imports prior to the preliminary determination, leading to no retroactive duties," the company said in a statement. "We are, however, disappointed by the Department's final duty rate calculations. These calculations were based on an unrealistic benchmark price that did not reflect market realities," it added.

Next Administration Will be Tough on Russia, Experts Say

What will the West's relationship to Russia look like under the next administration? According to some panelists at a Dec. 6 discussion, despite the president-elect's complimentary words for Russian President Vladimir Putin, the next administration will take a tough stance toward Russian aggression.

"The Trump administration is not going to monkey with sanctions," former U.S. Ambassador to Ukraine John Herbst said. He added that the president-elect has surrounded himself with people who "understand the dangers of Putin's aggressive agenda." Tightening sanctions on Russia has support from both parties in Congress, he noted.

But just because the U.S. is willing to renew sanctions doesn't mean that European counterparts will renew their sanctions that expire Jan. 31. "We can't fool ourselves. Western Europe may not go along," said David Aufhauser of Williams & Connolly LLP. Like Herbst, Aufhauser agreed that Trump will be "very muscular" when it comes to Russian sanctions.

Dr, Sergey Aleksashenko, nonresident senior fellow at Brookings Institution and author of a new report on the subject, concluded that sanctions put in place in mid-2014 did not curb the Kremlin's aggression toward Ukraine and other countries in the region. While the Russian economy did take a hit in 2015, the ruble has since stabilized. The sanctions regime -- only a fraction of the sort of sanctions put on Iran, the panelists noted -- did show that the West can unite, but if the U.S. and European Union want to see real change then the scope of sanctions would need to escalate.

*** * * Briefs * * ***

PAPER: In 6-0 "sunset" vote Dec. 6, ITC said revoking antidumping and countervailing duty orders on coated paper suitable for high-quality print graphics using sheet-fed presses from China and Indonesia would renew injury to U.S. industry.

IRON CASTINGS: In 6-0 "sunset" vote Dec. 2, ITC said revoking countervailing duty order on iron construction castings from Brazil and antidumping duty orders on same product from Brazil, Canada and China would renew injury to U.S. industry.

STEEL PLATE: In 6-0 "sunset" vote Dec. 9, ITC said revoking countervailing duty order on stainless steel plate from South Africa and antidumping duty orders on product from Belgium, South Africa and Taiwan would renew injury to U.S. industry.

TRADE FIGURES: Merchandise exports in October slipped 0.15% from year ago to \$123.1 billion, Commerce reported Dec. 6. Services exports gained 1.53% to record-high \$63.3 billion from October 2015. Goods imports inched up 0.2% from October 2015 to \$186.5 billion, as services imports gained 3.4% to \$42.4 billion.

ITAR: In Federal Register Dec. 5 State amended ITAR to "clarify recent revisions made pursuant to" export control reform effort. Changes include: moving definition of "classified" from § 121.1(e) to § 120.46; replacing word "enumerated" with word "described" in three places; and correcting references for gas turbine engine hot sections. In addition, rule amended 13 USML categories "to clarify that commodities, software, and technology subject to the Export Administration Regulations (EAR) and related to defense articles in a USML category may be exported or temporarily imported on the same license with defense articles from any category, provided they are to be used in or with that defense article," notice said. Comments due Jan. 4, 2017.

CUBA: U.S. and Cuba held fifth Bilateral Commission meeting in Havana Dec. 7. Acting Assistant Secretary of State for Western Hemisphere Affairs Mari Carmen Aponte led U.S. delegation. Josefina Vidal, Foreign Ministry's director general for U.S. affairs, led Cuban delegation. According to Cuban government website Granma, Vidal told press "country is willing to identify new opportunities and work to build a different kind of relationship with the U.S. - a civilized one based on respect, without making any kind of concession or renouncing principles to which the island is committed," site noted. Day before, EU ambassadors approved political and cooperation agreement to normalize relations with Havana.

BRIBERY: James C. Bedford of Dumfries, Va., pleaded guilty Dec. 7 in Alexandria U.S. District Court to conspiracy to commit bribery and bribery of public official from 2010 through 2011. He admitted to conspiring with former BIS official Raushi J. Conrad to gain over \$1 million in profits from BIS data migration project. Bedford was released on \$250,000 bond. Conrad was indicted on related charges in same court in August and is awaiting trial (see **WTTL**, Aug. 8, page 2).

TRADE PEOPLE: As expected, BIS Assistant Secretary for Export Enforcement David Mills retired from government Nov. 30. New job is director of sanctions compliance at Citibank. Mills previously served as OFAC's licensing chief before moving into private practice law firms.

FLASHLIGHTS: Court of International Trade (CIT) Judge Mark Barnett Dec. 7 upheld Customs determination that country of origin of Energizer second-generation military flashlight was China, not U.S., for government procurement purposes. "The court finds that Energizer's imported components do not undergo a change in name, character, or use as a result of the post-importation processing in the United States, and that the nature of Energizer's post-importation assembly process is not sufficiently complex to give rise to a substantial transformation," Barnett wrote.

TTIP: David O'Sullivan, EU Ambassador to U.S., in panel discussion Dec. 7, remained hopeful that Transatlantic Trade and Investment Partnership (TTIP) could go forward under new U.S. administration. "We stand ready to continue these negotiations and bring them to successful conclusion," O'Sullivan said. However, given anti-trade rhetoric used during presidential campaign he said he's not sure where new administration stands on trade, "so we are being respectful of that." If president-elect were to take up TTIP, O'Sullivan predicted deal could be concluded in one or two years.

TPP: Japan's upper house of government voted 165-70 Dec. 9 to approve proposal to ratify Trans-Pacific Partnership (TPP). Prime Minister Shinzo Abe continues to press U.S. president-elect to reconsider withdrawal from TPP, according to Japanese media. Japan's lower house ratified agreement Nov. 10 (see **WTTL**, Nov. 21, page 5).

NOMINATIONS: President-elect Trump Dec. 7 named Linda McMahon, co-founder of World Wrestling Entertainment Inc. and unsuccessful Senate candidate, to run Small Business Administration. Trump also named former SouthCom commander Gen. John Kelly to head Homeland Security and former CentCom commander Gen. James Mattis to lead Defense. Fast-food CEO Andy Puzder was tapped for Labor secretary, and former Labor Secretary Elaine Chao for Transportation. Goldman Sachs president Gary Cohn was named to National Economic Council.

MORE NOMINATIONS: Gov. Terry Branstad (R-Iowa) announced Dec. 7 as president-elect's pick as U.S. ambassador to China. Branstad reportedly has close relations with both Trump and China's President Xi Jinping, who he calls "old friend." China is top destination for Iowa pork and soybeans. Ag groups welcomed nomination. Branstad "clearly understands the global nature of the agricultural economy, and knows what American farmers and Chinese buyers mean to one another," American Soybean Association (ASA) President Richard Wilkins said in statement.

PLYWOOD: During preliminary ITC hearing Dec. 9, American Alliance for Hardwood Plywood took issue with new antidumping and countervailing duty petitions against hardwood plywood products from China (see **WTTL**, Nov. 21, page 9). Group Chairman Greg Simon cited previous loss at ITC and federal court. "Now their solution is to use the same playbook and bring another case in the hopes of disrupting proven fair trade that is fostering the production of U.S.-made goods employing tens of thousands of U.S. workers," Simon said in statement.

NOAA: Seafood Import Monitoring Program, administered by NOAA Fisheries, to curb Illegal Unreported and Unregulated (IUU) fishing practices, agency said Dec. 8. Importers required to report and maintain records on harvest, landing and chain of custody on fish and fish products for priority species by Jan. 1, 2018. Implementation for U.S. farmed shrimp and abalone to be effective at later date. U.S. will use International Trade Data System to collect documentation.

Presidential Task Force on Combating IUU Fishing and Seafood Fraud called for international agreement in 2014 (see **WTTL**, Dec. 22, 2014, page 14).

BREXIT: UK Supreme Court heard arguments Dec. 5-8 on whether Parliament should have say in country's separation from EU. Lord David Neuberger, president of UK Supreme Court, said decision would be handed down "as soon as possible." Experts predict decision will likely be given in January 2017. At same time, UK parliament Dec. 7 agreed to motion that "recognizes that it is Parliament's responsibility to properly scrutinize the Government while respecting the decision of the British people to leave the European Union" and calls on government to invoke Article 50 by March 31, 2017, according to Parliament website.

WTO: WTO initiated membership talks for Somalia and Timor-Leste at organization's General Council meeting Dec. 7. Members agreed to establish working parties to negotiate membership terms for two countries and to welcome them as observers, WTO noted.... Working party on Comoros membership held its first meeting Dec. 2. Comoros government applied for accession in February 2007, and working party was established in October 2007.

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