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Administration Will Try to Renegotiate Cyber Controls

The effort to renegotiate agreed-upon controls on cybersecurity products at the 2017 Wassenaar Arrangement plenary will continue despite a lack of clarity from the new administration and the slow pace of appointing assistant secretaries at State and Commerce and other deputies. Negotiators failed to reach an agreement at the 2016 plenary despite industry outcry.

The deadline for 2017 proposals was the end of February, and sources say there are several proposals in the works building on the progress made in 2016. While career professionals will continue working on the proposals and move towards an experts meeting this summer, industry sources are concerned that the slow pace of filling lower-level appointees means the issue is off the radar of many in Washington.

Whether there are administration people focused on this is hard to say at this point, one told WTTL. "I'm sure it will be once they start to name people at the assistant secretary level," she added. In addition, the administration has not made its position clear on the future of export controls, either to industry or to those very career professionals who are moving forward. "The beat goes on," one source noted.

Sen. Ron Wyden (D-Ore.) and Rep. Jim Langevin (D-R.I.) with leaders of House Homeland Security and Oversight committees urged the Trump administration in separate letters Feb. 10 to continue the effort to renegotiate the controls first agreed on in 2013 (see **WTTL**, Feb. 13, page 8).

Trump Trade Agenda Puts WTO on Notice

In its 2017 Trade Policy Agenda released March 1, the U.S. Trade Representative's (USTR) office drew a line in the sand against multilateral trade agreements and other international organizations. While the nominated USTR, Robert Lighthizer, has not yet

had a confirmation hearing and needs to get a congressional waiver to serve in the post, the administration outlined its key trade principles and objectives. The report calls for “resisting efforts by other countries – or members of international bodies like the World Trade Organization (WTO) – to advance interpretations that would weaken the rights and benefits of, or increase the obligations under, the various trade agreements to which the United States is a party.”

As was often repeated on the campaign trail, the administration’s objectives include renegotiating and revising existing trade agreements, focusing on bilateral rather than multilateral deals, breaking down trade barriers for U.S. exports, and enforcing U.S. trade law.

Though the final report’s language was softened from an earlier draft, it remains clear that the White House is putting WTO’s Dispute Settlement Body on notice. The report contends that Congress made clear at the time of the Uruguay Round that “Americans are not directly subject to WTO decisions.”

“The Uruguay Round Agreements Act states that, if a WTO dispute settlement report ‘is adverse to the United States, [the U.S. Trade Representative shall] consult with the appropriate congressional committees concerning whether to implement the report’s recommendation and, if so, the manner of such implementation and the period of time needed for such implementation,’ confirming that these WTO reports are not binding or self-executing,” read the report.

“The Uruguay Round Agreements Act also specifically provides that ‘No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.’ In other words, even if a WTO dispute settlement panel – or the WTO Appellate Body – rules against the United States, such a ruling does not automatically lead to a change in U.S. law or practice,” it noted.

“Consistent with these important protections and applicable U.S. law, the Trump administration will aggressively defend American sovereignty over matters of trade policy,” the report continues. However, at a press gaggle March 1, White House Press Secretary Sean Spicer said, “No, no, no” when asked if the administration would ignore WTO rulings.

The trade agenda also went through the familiar laundry list of ongoing and concluded trade agreements, including the Transatlantic Trade and Investment Partnership (TTIP), which stalled in late 2016 with Trump’s election (see **WTTL**, Jan. 30, page 5). “Substantial negotiations on several critical issues will be required to complete the agreement during the Trump administration. The administration is currently evaluating the status of the negotiations,” USTR noted.

Authorities Search Caterpillar Offices over Swiss Exports

A years-long investigation into Caterpillar's tax structure involving its Swiss subsidiary, culminated March 2 when law enforcement authorities from three agencies including Bureau of Industry and Security (BIS), searched the company's three Peoria, Ill.-area facilities, including the corporate headquarters, under a search warrant.

"While the warrant is broadly drafted, we believe the execution of this search warrant is regarding, among other things, export filings that relate to the CSARL [Swiss subsidiary matter] first disclosed in a February 2015 filing at the Securities and Exchange Commission (SEC) and updated in the most recent filing Feb. 15, the company said in a statement. The other participating agencies were the Federal Deposit Insurance Corporation (FDIC) inspector general and IRS criminal investigations.

The Senate Permanent Subcommittee on Investigations addressed Caterpillar's tax structure in a report and hearing in April 2014 (see **WTTL**, April 7, 2014, page 5). The main subject of the hearing and report involved how Caterpillar set up an affiliate in Switzerland through which to funnel all its foreign parts and service sales, resulting in the shifting of \$8 billion in profits to the Swiss entity and the saving of \$2.4 billion in U.S. taxes from 2000 to 2012.

In the most recent SEC filing, the company said it had received subpoenas from the U.S. District Court for the Central District of Illinois and the IRS. The company has "received additional subpoenas relating to this investigation requesting additional documents and information relating to, among other things, the purchase and resale of replacement parts by Caterpillar Inc. and non-U.S. Caterpillar subsidiaries, dividend distributions of certain non-U.S. Caterpillar subsidiaries, and Caterpillar SARL and related structures," it noted.

The Illinois court's spokesperson would not comment on any ongoing or future investigation, including the subject matter of the search or whether the search produced any fruitful results, though she did confirm what she called "law enforcement activity."

Congress, Industry Respond to Trade Agenda

The USTR's 2017 Trade Policy Agenda was roundly criticized by Democrats, but also by pro-trade Republicans (see story, page 1). "This report is short on specifics and raises more questions than it answers," said House Ways and Means Ranking Member Richard Neal (D-Mass.) in a statement. "It does identify a number of legitimate issues that I and many other House Democrats have been raising for years, such as foreign government subsidies, theft of intellectual property, and currency manipulation. But it doesn't provide anything approaching an actual 'agenda' for how to address any issues."

"The administration is right to criticize the WTO international dispute settlement process, but when it says it will 'aggressively defend American sovereignty over matters of trade policy,' it sounds like the administration is considering a far too drastic response," Neal

continued. Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) echoed Neal's sentiments in a withering statement. "Despite a law that requires Trump to spell out what actions he intends to take to achieve his objectives on trade, the American people still know as little about his trade agenda as his plans to replace the Affordable Care Act, reform the tax code, rebuild America's infrastructure, or defeat ISIS."

House Ways and Means Chairman Kevin Brady (R-Texas) disagreed with the administration's negative portrayal of the WTO. "I strongly believe that our current trade agreements - including the WTO - have been successful for Americans because these agreements establish a firm rule of law to hold our competitors in check and open markets for us to sell our goods, services, and farm products. They have also made a broad array of products available to American families at affordable prices. And when other countries don't follow the rules, our agreements give us powerful tools through a dispute settlement process to retaliate against them," Brady said in a statement.

"However, I agree with President Trump that we should improve our agreements to make them better serve American workers. NAFTA, for example, is decades old, and we need new disciplines on digital trade, state-owned enterprises, labor, and other unfair trade barriers. Congress has set forth in statute many detailed negotiating objectives that we want to see to improve our trade agreements," he added.

The Committee to Support U.S. Trade Laws (CSUSTL) welcomed the president's agenda. "The more aggressive approach to international trade issues laid out by the Trump Administration could well be an important turning point for U.S. manufacturers and growers in the battle to overcome market-distorting unfair trade practices such as dumping and government subsidies," said CSUSTL President Thomas M. Sneeringer in a statement. "Especially welcome is the recognition of - and the need to restore - U.S. sovereignty over our trade policy," Sneeringer added.

Wilbur Ross Outlines Vision for Commerce Department

In his inaugural address to Commerce, new Secretary Wilbur Ross committed to "rebalancing a trade system that has gutted American manufacturing," relieving the "crushing burden of regulation" - in line with President Trump's decree that for every new government regulation, two must be eliminated - and playing a "major role" in renegotiating trade deals. Ross was sworn in Feb. 28, following a 72-27 Senate vote the day prior.

"President Trump has already given us at the department more responsibility than ever before. If we perform well both at our normal tasks and at our new assignments, I have no doubt that our scope will continue to expand," Ross told Commerce March 1. While he listed several agencies and specific responsibilities by name, he did not mention the words "export controls" or "export promotion."

He also used the speech to lay out a few "rules of the road." "First, there will be no tolerance for any kind of prejudice or inappropriate behavior of any sort - None! Second,

material in preparation for meetings must be concise. A few pages that are substantive will get you much farther with me than thick binders with lots of repetition, pretty blue pages, and fluff,” said Ross.

“Third, if a problem is developing, we will work together to solve it ourselves. I can take bad news if I learn about it from inside our department and I will stand alongside all of you as we confront whatever challenges may arise,” he added. Ross previously said he will divest from his private equity firm WL Ross & Co., per his ethics agreement, but not from all of his business holdings. He has an estimated net worth of \$2.9 billion.

Congressional leaders welcomed him to Washington. “Throughout the confirmation process and his career, Mr. Ross has made it clear he is committed to pro-growth solutions that empower our workers and job creators to compete and win anywhere in the world. I look forward to working with him and President Trump on economic policies—such as reforming our broken tax code and creating strong, enforceable trade agreements—that will improve the lives of all Americans,” House Ways and Means Chairman Kevin Brady (R-Texas) said.

Coalitions Squabble over Border Adjustment Tax Plan

A coalition of retailers opposed to the Republican border adjustment tax (BAT) plan is battling a pro-BAT association of multinational corporations. Anti-BAT Americans for Affordable Products issued a memo Feb. 27 to cable television producers and bookers that accuses the pro-BAT companies and their executives of lying about current tax rates.

“Chief executives associated with the American Made Coalition have made clear they support a [BAT] to pay for comprehensive tax reform that lowers rates. But as they argue in favor of the BAT to lower rates, American Made Coalition members aren’t telling Americans about the current tax rates they pay – often significantly lower than the 35% rate which is frequently cited as the need for tax reform,” reads the memo.

The memo specifically calls out American Made Coalition members GE as taxed at 9%, Eli Lilly’s 19%, Boeing’s effective tax rate of slightly over 12%, and Dow Chemical less than 1%. House Ways and Means Chairman Kevin Brady (R-Texas) has been making the rounds in support of the BAT (see **WTTL**, Feb. 6, page 3).

The American Made Coalition released its own memo the same day touting a poll it commissioned that found of 100 voters polled in 14 states and D.C., 58% supported the BAT proposal, with strong support among Republicans. “Regardless of party affiliation or registration, voters strongly prefer a tax code that incentivizes American manufacturing over one that incentivizes foreign goods imported for lower prices.”

The anti-BAT coalition supports lowering the corporate income tax rate and eliminating loopholes that allow companies to pay far less tax than the current rate. The memo urges producers and bookers to consider the following questions when booking pro-BAT guests

on their programs: “Wouldn’t moving to a territorial system effectively address an obsolete code that taxes profits from U.S. companies wherever they are earned? Wouldn’t lowering the corporate tax rate immediately make all U.S. companies more competitive across the globe, including American Made Coalition members?”

The National Retail Federation (NRF), which also opposes BAT, announced a print and digital campaign Feb. 28. An anti-BAT commercial, which NRF sponsored, spoofing a well-known “As Seen on TV” infomercial, was set to air during Saturday Night Live March 4.

*** * * Briefs * * ***

PAINT: DDTC Feb. 22 posted notice that it does not require DSP-83 for licensing of Chemical Agent Resistant Coatings (CARC) paint now classified in USML category XIV(f)(7). CARC paint does not possess “substantial military utility or capability,” DDTC noted. Paint was reassigned to category XIV(f)(7) as “result of a multi-agency review of export controls and the implementation of Export Control Reform (ECR),” it added.

EXPORT ENFORCEMENT: Alexander Posobilov of Houston was sentenced Feb. 28 in Brooklyn U.S. District Court to 135 months in prison on charges of unlicensed export of microelectronic products to Russian military and intelligence agencies between 2008 and 2012. He was convicted in October 2015 with two others. Shavkat Abdullaev, legal U.S. permanent resident, was sentenced in December to 36 months in prison on related charges (see **WTTL**, Jan. 2, page 10). Codefendant Svetalina Zagon was sentenced in September to time served. She pleaded guilty in May 2015. Alexander Fishenko, dual U.S.-Russia citizen, was sentenced in July to 10 years in prison and more than \$500,000 in forfeiture. He pleaded guilty in September 2015 to more than 20 charges, including conspiracy to violate IEEPA and AECA, and obstructing justice. Codefendant Anastasia Diatlova also was convicted in October 2015 and awaits sentencing.

MORE EXPORT ENFORCEMENT: United Medical Instruments (UMI) of San Jose, Calif., agreed Feb. 28 to pay OFAC \$15,400 to settle 56 charges of violating Iran sanctions between 2007 and 2009. UMI made sales of medical imaging equipment “with knowledge or reason to know that the goods were intended specifically for supply or re-exportation to buyers located in Iran,” OFAC said. UMI did not voluntarily self-disclose the apparent violations. UMI previously agreed to pay BIS \$500,000 to settle 22 related charges (see **WTTL**, Oct. 7, 2013, page 13).

ANTIBOYCOTT: Video security manufacturer Pelco of Clovis, Calif., agreed Feb. 17 to pay \$162,000 to settle 66 violations of BIS antiboycott regulations. Pelco allegedly refused to do business and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. from 2011 through 2016 during transactions with Kuwait and UAE.

WHITE HOUSE: Ray Starling was named Feb. 27 to be named as special assistant to president for agriculture, trade and food aid. Starling previously was chief of staff for Sen. Thom Tillis (R-N.C.). National Pork Producers Council (NPPC) applauded appointment, noting position had been vacant during previous administration. “By picking a true champion of American agriculture to serve in this key advisory role, President Trump is sending a clear signal of his commitment to reverse unnecessary regulations inhibiting pork producers and all U.S. farmers from doing what they do best,” said John Weber, NPPC president, in statement.... Andrew Quinn to serve as special

assistant to the president for international trade, investment and development, White House announced Feb. 27. Quinn previously worked as deputy assistant USTR where he focused on trade agreements with countries in Asia and Western Hemisphere.

RCEP: Regional Comprehensive Economic Partnership (RCEP) countries met in Kobe, Japan, Feb. 27-March 3, first meeting since U.S. withdrew from TPP in January. Six TPP countries are also part of RCEP negotiations: Japan, Australia, New Zealand, Singapore, Malaysia, Vietnam and Brunei. RCEP countries contain half of world population and about one-third of global trade.

WTO: World Trade Organization (WTO) members agreed by consensus Feb. 28 to appoint WTO Director-General Roberto Azevedo to second four-year term to begin Sept. 1. Azevedo was only candidate when process closed in December (see **WTTL**, Nov. 7, 2016, page 7). Azevedo thanked members for their support and said WTO “is on the right path... But we can do much more – particularly for the smaller players and those who feel cut off from the economic benefits of trade. We must build a more inclusive trading system.”

KEYSTONE: TransCanada Corporation suspended \$15 billion lawsuit against U.S. regarding Keystone XL pipeline after President Trump signaled project can go forward. Company filed NAFTA challenge in 2016 (see **WTTL**, July 4, 2016, page 5). Legal process before International Centre for Settlement of Investment Disputes suspended until March 27, pursuant to parties’ agreement on Feb. 27. “Today’s announcement does little to change the fact that the Keystone XL pipeline remains a dirty and dangerous proposal that serves only TransCanada’s interests -- not the American people’s. It was rightfully rejected and it should remain so,” Sierra Club Executive Director Michael Brune said in statement.

KOREA: Commerce announced Feb. 28 its affirmative final determination in antidumping (AD) investigation of imports of phosphor copper from Korea. Commerce found final dumping margin of 8.43% for mandatory respondent Bongsan Co., Ltd., as well as all other Korean producers/exporters. Metallurgical Products Company petitioner in case. Imports of phosphor copper from Korea valued at \$4.3 million in 2015. ITC set to announce its final determinations April 13.

CIT: Commerce must reconsider its surrogate country selection in fifth administrative review of antidumping duty order covering steel wire garment hangers from China, CIT Judge Leo Gordon ruled March 2 in *Shanghai Wells Hanger Co., Ltd., v. U.S.* (Slip op. 17-24). Court agreed that “Commerce never compared the Philippine and Thai financial statements to determine which was best, and that by sidestepping this comparison (one Commerce made for import and labor data), Commerce failed to apply its surrogate country selection criteria reasonably,” he wrote.

NAFTA: Commerce Secretary Wilbur Ross reportedly told House Ways and Means Democrats that White House will notify Congress in mid-March its intention to renegotiate NAFTA. Once White House formally communicates its intent to Ways and Means and Senate Finance committees, it has 90 days to consult with Congress on objectives of trade talks.