ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

CELEBRATING 40 YEARS

Publisher: Martin Kalin • Editor: Meredith Gilston

Vol. 40, No. 18 **May 4, 2020**

DDTC Reduces Registration Fees During Pandemic

In its continuing effort to mitigate the impact of the global pandemic on U.S. companies and supply chains, State's Directorate of Defense Trade Controls (DDTC) May 1 announced it will reduce fees for Tier I and Tier II registrants to $500 for registrations whose original expiration date is between May 31, 2020, and April 30, 2021.

Also, DDTC reduced registration fees to $500 for new applicants, who are all in Tier I in their first year, between May 1, 2020, and April 30, 2021. The agency had previously said it was considering such a move when it announced other temporary and retroactive changes to its compliance and licensing procedures (see **WTTL**, April 27, page 1).

Those changes, including a two-month extension of registration renewals, a six-month extension of export licenses and relaxed telework rules, were published in the Federal Register May 1 in parallel with the fee reduction. The changes "are warranted as a result of the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS-COV2 pandemic," the notice said.

The fee structure for Tier III entities remained unchanged, DDTC noted. The previous fee for Tier 1 was $2,250; Tier 2, $2,750. The agency anticipates that this temporary fee reduction will save regulated industry over $20 million over the coming year.

BIS Expands Export Controls on China, Russia, Venezuela

Citing the often-close relationship between civilian and military end-users, the Bureau of Industry and Security (BIS) April 28 took a series of steps to broaden controls on exports to China, Russia and Venezuela. These rules include expanded license requirements and removal of certain license exceptions. Specifically, BIS tightened license requirements on

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WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $747 a year. Additional users pay only $100 each with full-priced subscription. Site and corporate licenses are also available.
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exports, reexports and transfers (in-country) of items intended for military end-use or military end-users in those three countries. In a separate Federal Register notice, the agency removed License Exception Civil End Users (CIV) and required a license for national security-controlled items on the Commerce Control List (CCL) to Country Group D:1 destinations.

In a third rule, BIS proposed removing provisions under License Exception Additional Permissive Reexports (APR). which authorize reexports of certain national security-controlled items on the CCL. Comments on how the proposed change would impact persons who currently use or plan to use License Exception APR are due June 29. The other two rules go into effect on that day.

> Specifically, the military rule expanded the licensing requirements for China to include “military end users,” in addition to “military end use.” It broadened the list of items for which the licensing requirements and review policy apply and expanded the definition of “military end use.” The rule also created a new reason for control and the associated review policy for regional stability for certain items exported to China, Russia or Venezuela, and added Electronic Export Information filing requirements in the Automated Export System for exports to those three countries.

“It is important to consider the ramifications of doing business with countries that have histories of diverting goods purchased from U.S. companies for military applications,” said Commerce Secretary Wilbur Ross. “Certain entities in China, Russia, and Venezuela have sought to circumvent America’s export controls, and undermine American interests in general, and so we will remain vigilant to ensure U.S. technology does not get into the wrong hands.”

Chinese Ministry of Commerce spokesperson Gao Feng denounced the measures. “We have consistently and resolutely opposed the practice of the U.S. side abusing export control measures and impeding normal trade and cooperation among trading partners. This will damage the interests of related U.S. companies more,” he told reporters at a press conference April 30.

“These restrictions will likely have far reaching implications,” Akin Gump attorneys said in a client alert. “In countries such as China that openly adopt the military-civil fusion doctrine, the question becomes whether there is a presumption that exports and reexports of dual-use items subject to the EAR are intended for military end use or end users; and if so, what type of due diligence and certifications can companies obtain to overcome this presumption,” they noted.

Trade groups, including in the semiconductor industry, worried about uncertainty during a global pandemic. “We are concerned these broad rules will unnecessarily expand export controls for semiconductors and create further uncertainty for our industry during this time of unprecedented global economic turmoil. We are reviewing the rules and urge the administration to implement them in a manner that both protects U.S. national security and advances American semiconductor leadership,” Semiconductor Industry Association (SIA) President and CEO John Neuffer said in a statement.

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Commerce Proposes Aluminum Monitoring System

What's good for the goose is good for the gander. Commerce April 29 proposed establishing an Aluminum Import Monitoring and Analysis (AIM) system, which would be similar to the Steel Import Monitoring and Analysis (SIMA) that was first initiated in 2002 as part of President Bush's response to a Section 201 case against foreign steel imports.

> "Specifically, Commerce proposes to require import license applicants to identify the country where the aluminum used in the manufacture of the imported aluminum product was smelted and poured; to release this data on an aggregate basis, as appropriate; and to apply the licensing requirement to cover all imports of basic aluminum products," the Federal Register notice said. Comments on the proposal are due May 29.

"Certain aggregate information collected from the license application system will be posted on the aluminum import surge monitoring website. Subject to comments received, only the aggregate information …will be available to the public. All other information including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered business proprietary information and will not be released to the public," the department said.

The domestic aluminum industry, which has long pushed for such a system, welcomed the proposal. "This is an important step by the administration to fulfill its promise to establish an aluminum-specific import monitoring system. Aluminum monitoring will enable government officials and the industry to better identify trends in trade flows and address misclassification, transshipment and evasion of duties," said Tom Dobbins, president & CEO of the Aluminum Association.

USTR Issues Annual Shame Lists of Countries, Notorious Markets

In its annual Special 301 report on intellectual property (IP) rights April 29, the U.S. Trade Representative's (USTR) office removed Kuwait from the Priority Watch List and moved several other countries from its Watch List. At the same time, the office issued its separate Out-of-Cycle Review of Notorious Markets, highlighting 38 online markets and 34 physical markets that are "reported to engage in or facilitate substantial trademark counterfeiting and copyright piracy."

The Priority Watch List now includes Algeria, Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine and Venezuela. On the Watch List USTR listed: Barbados, Bolivia, Brazil, Canada, Colombia, Dominican Republic, Ecuador, Egypt, Guatemala, Kuwait, Lebanon, Mexico, Pakistan, Paraguay, Peru, Romania, Thailand, Trinidad & Tobago, Turkey, Turkmenistan, the United Arab Emirates (UAE), Uzbekistan and Vietnam.

Kuwait moved from the Priority Watch List to the Watch List for "continued steps to update its copyright law and regulations and for significantly increasing its in-country IP

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enforcement activities, although ongoing concerns remain regarding the protections granted to copyright holders and the availability of counterfeit goods in the country," the report noted.

After four years off the list, USTR returned Trinidad & Tobago to the Watch List. "Progress has stalled since 2016, after TATT [Telecommunications Authority of Trinidad & Tobago] exercised forbearance on enforcement against operators that continue to retransmit U.S. over-the-air broadcast signals without authorization," the report said. "Other concerns include optical disc music and video piracy and nonpayment of copyright royalties, as well as online piracy and counterfeit pharmaceuticals and other goods."

> USTR removed Greece from the Watch List after 12 years "in light of its steps to address the widespread use of unlicensed software in the public sector through the allocation of significant funds to purchase software licenses, progress in online enforcement, and the introduction of legislation to impose fines on those possessing counterfeit products," the agency said.

The announcement "is another element of U.S. support, making Greece [a] more attractive destination for U.S. investment w/progress in enforcement, acquiring licensed software," U.S. Ambassador to Greece Geoffrey Pyatt tweeted.

While seven of the 34 identified physical markets are in China, others exist in Argentina, Brazil, Cambodia, Ecuador, India, Indonesia, Kyrgyz Republic Malaysia, Mexico, Paraguay, Philippines, Russia, Spain, Thailand, Turkey, Ukraine, UAE and Vietnam. The 38 identified online sites are hosted around the world, including in China, France, Indonesia, the Netherlands, Russia and Singapore.

While Saudi Arabia remains on the Priority Watch list, online market beoutQ stopped operating. "The Saudi Authority for Intellectual Property (SAIP) has taken several actions to counteract the cultural acceptance of pirated content that beoutQ encouraged, such as conducting public awareness campaigns and supporting raids on stores selling ISDs, but significant work remains. USTR continues to monitor for the resurgence of beoutQ or any affiliated operations," the report noted.

The American Apparel & Footwear Association (AAFA) welcomed the USTR report. "Consumers are learning the hard way that counterfeits affect more than lost sales for famous brands. They also expose purchasers of everyday basics and essentials to a range of quality concerns and product safety risks. It is essential that both domestic and worldwide marketplaces, and the countries that house them, implement effective and proactive measures to safeguard intellectual property to protect consumers, workers, and their families," AAFA President and CEO Steve Lamar said in a statement.

Industry, Lawmakers Applaud USMCA Progress

With a formal effective date set for the U.S.-Mexico-Canada Agreement (USMCA), lawmakers and industry groups are moving into the implementation phase, with the usual

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cheers and caveats. Those who pushed for the deal, and even those that fought it, want to keep the process honest. The USTR's office told Congress in April the USMCA will go into effect July 1 (see **WTTL**, April 27, page 6). Three days earlier, the agency gave North American vehicle producers until then to submit draft alternative plans to comply with rules of origin (ROO) under the deal.

> The House Ways and Means Committee held a conference call with USTR Robert Lighthizer to discuss the deal. "My colleagues and I emphasized to the Ambassador that the USMCA's new enforcement mechanisms must be more than simply words on a page, particularly with regard to workers' rights and environmental protection. We also reiterated the importance of the new IP provisions that will help patients more quickly access affordable medicines and vaccines," Committee Chairman Richard Neal (D-Ma.) said in a statement.

"We expect that the high level of engagement that occurred between USTR and House Democrats during the process of negotiating revisions to the USMCA will continue as we move forward with the agreement's implementation. The Ambassador provided assurances that our communications will remain frequent and thorough," Neal added.

National Council of Textile Organizations (NCTO) welcomed the announcement, saying that the USMCA is "a critical trade deal that will greatly benefit the U.S. textile industry at a time when domestic producers–facing significant challenges due to the impact of the COVID-19 pandemic–have mobilized to convert their production lines to manufacturing personal protective equipment (PPE) for frontline workers during this crisis," said NCTO President and CEO Kim Glas in a statement.

Some advocacy groups denounced the delayed implementation of the deal, which had been slated to go into effect June 1. "Because the old NAFTA remains in place, delaying implementation of the new NAFTA does not create leverage for change. The interests calling for a delay in implementation are those who were happy with the old NAFTA and dislike requirements to include more North American content in cars and the threat of goods that do not meet labor standards being stopped at the border," Lori Wallach, director of Public Citizen's Global Trade Watch.

Business Groups Urge Extension of Tariff Payment Deferral

More than 470 businesses and organizations April 28 urged the administration to defer all duties and extend the 90-day deferral program to cover imports made during May and June. The group, under the auspices of Americans for Free Trade, understood its audience and was careful to acknowledge that "merely delaying the payment of these additional duties will not harm trade policy."

After first rejecting press reports that the U.S. planned to delay certain tariff payments, the administration announced the deferment in April (see **WTTL**, April 27, page 5). Industry groups quickly responded to the plans, which do not include antidumping and

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countervailing duties (AD/CVD), or Section 201, 232 and 301 trade remedies. "Combined, these two actions would immediately free up billions of dollars of working capital for American companies—like those listed below—to pay suppliers, employees, service providers and other critical stakeholders. This cash is even more important for companies that have had to close their doors because of stay-at-home orders, leaving them with little to no revenue to make ends meet," the letter noted.

* * * Briefs * * *

<u>SANCTIONS</u>: OFAC April 30 issued Finding of Violation to American Express (AMEX) for WMD sanctions. Between March and May 2015, AMEX issued prepaid GlobalTravel Card and processed 41 transactions totaling $35,246.82 on behalf of Gerhard Wisser, Specially Designated National (SDN). "Violations were the result of human error and screening system defects," OFAC said. AMEX remediated and disclosed violations. Firm previously agreed in November 2017 to pay $204,277 to settle OFAC charges of violating Cuba sanctions (see **WTTL**, Nov. 20, 2017, page 6).

<u>DISPUTE SETTLEMENT</u>: EU and 19 other WTO members, notably excluding U.S., April 30 formally notified WTO of Multi-party Interim Appeal Arbitration Arrangement (MPIA), alternate system to temporarily replace WTO Appellate Body (AB), which has been frozen since December 2019. European Union (EU) Council approved MPIA in April (see **WTT**L, April 20, page 4). Members agreed to temporary arrangement in March.

<u>FORCED LABOR</u>: CBP issued withhold release order May 1 on hair products manufactured by Hetian Haolin Hair Accessories Co., operating in Xinjiang region of China. Agency based order "on information that reasonably indicates the use of forced labor," it said. CBP previously issued withhold release order on garments produced by Hetian Taida Apparel Co., Ltd. in Xinjiang (see **WTTL**, Oct. 7, 2019, page 7).

<u>ENGINES</u>: In 5-0 preliminary vote May 1, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of small vertical shaft engines from China.

<u>CERAMIC TILE</u>: In 3-1 final vote April 30, ITC found U.S. industry is materially injured by dumped and subsidized imports of ceramic tile from China. Chairman David Johanson voted no; Commissioner Randolph Stayin did not participate. Commission also made negative finding on critical circumstances.

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