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CELEBRATING 40 YEARS

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DDTC Changes Regulations to Address Pandemic

State's Directorate of Defense Trade Controls (DDTC) April 23 announced a series of temporary and retroactive changes to its compliance and licensing procedures under the International Traffic in Arms Regulations (ITAR), designed to mitigate the impact of the global pandemic on U.S. companies and supply chains.

> The agency is extending registration renewals for two months and is "granting an additional 30 days for responses to its request-for-information letters related to voluntary and directed disclosure matters," DDTC said on its website. In addition, it is extending any export license that expires between March 13 and May 31 for six months, provided "there is no change to the scope or value of the authorization and no Name/Address changes are required."

Without giving specifics, DDTC said it is also pursuing a "one-time temporary reduction in registration fees for certain categories of DDTC registrants." A senior administration official told WTTL this would be a "signification reduction" for tier 1 and tier 2 companies, meaning small and medium-sized businesses, that would start in May. The change could reduce fees up to 75%, the official said.

To support telework, the agency suspended its requirement that a regular employee work at the company's facilities, "to allow the individual to work at a remote work location, so long as the individual is not located in Russia or a country listed in ITAR § 126.1." The suspension is backdated and effective March 13. In addition, the department has moved to electronic submissions of congressional notifications of proposed Direct Commercial Sales (DCS) and Foreign Military Sales (FMS).

Italian Firm Settles SEC Bribery Charges… Again

Italian oil and gas company Eni S.p.A. agreed April 17 to pay $24.5 million in disgorgement and prejudgment interest to settle Securities and Exchange Commission (SEC)

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charges of violating the Foreign Corrupt Practices Act (FCPA) in connection with an improper payment scheme in Algeria by subsidiary Saipem S.p.A. Eni, whose American Depositary Receipts (ADRs) are listed on the New York Stock Exchange, held a 43% interest in Saipem at the time of the violations, the SEC said

> Between 2007 and 2010, Saipem "entered into four sham contracts with an intermediary to assist in obtaining contracts awarded by Algeria's state-owned oil company. Saipem conducted little or no due diligence before entering into the contracts, received no legitimate services from the intermediary, and falsely characterized its payments to the intermediary as lawful 'brokerage fees' in its books and records, which were consolidated into Eni's during the relevant period," the SEC complaint noted.

"Separately from the Algeria Settlement, the SEC informed Eni that, based on the information currently available to the SEC, it is otherwise closing its pending investigation of Eni, which also encompassed inquiries into the OPL 245 matter and Eni's activities in Congo, without recommending further enforcement action," the company said in a statement.

In July 2010, Snamprogetti Netherlands B.V. and its former parent, Eni, jointly agreed to pay $125 million in disgorgement to settle a separate SEC civil complaint relating to FCPA violations in connection with bribery of Nigerian officials to win contracts to build liquefied natural gas facilities on Bonny Island, Nigeria (see **WTTL**, July 12, 2010, page 4).

FEMA Outlines Exceptions to PPE Export Restrictions

In the Federal Register April 21, the Federal Emergency Management Agency (FEMA) outlined several exemptions to its surprising and controversial temporary rules blocking exports of certain personal protective equipment (PPE). Many of the carveouts are expected, including exports to Canada and Mexico, military and diplomatic shipments, and those for donation to foreign charities.

> Two weeks earlier, FEMA issued a temporary rule "to allocate certain scarce or threatened materials for domestic use, so that these materials may not be exported from the United States without explicit approval by FEMA," the previous Federal Register notice said (see **WTTL**, April 13, page 1).

Specifically, the exemptions include: shipments to U.S. commonwealths and territories; exports of covered materials by nonprofit or non-governmental organizations that are solely for donation to foreign charities or governments for free distribution; intracompany transfers of covered materials by U.S. companies from domestic facilities to company-owned or affiliated foreign facilities; and shipments of covered materials that are exported solely for assembly in medical kits and diagnostic testing kits destined for U.S. sale and delivery.

FEMA also exempted: sealed, sterile medical kits and diagnostic testing kits; declared diplomatic shipments from foreign embassies and consulates to their home countries; shipments to overseas U.S. military addresses, foreign service posts and embassies; in-transit merchandise; shipments for which the final destination is Canada or Mexico; and shipments by or on behalf of the U.S. federal government, including its military.

> "Negative impacts to workers, including a lack of PPE, in these and other critical sectors in Canada and Mexico may cause significant interruptions to the corresponding supply chains in the United States, and in turn, may disrupt the large flow of cross-border trade with our neighbors. In addition, the United States maintains close economic and diplomatic ties with these nations, which would be negatively impacted by the restriction of exports of covered materials into these countries," the latest notice said.

For certain of the exemptions, FEMA will require a letter of attestation to be submitted via Customs and Border Protection's (CBP) document imaging system and placed on file with CBP, "certifying to FEMA the purpose of the shipment of covered materials. The letter should be submitted to CBP with other documentation related to the shipment," FEMA said.

Industry Urges BIS to Make Huawei General License Permanent

Given a bit of extra time, industry trade groups and a few individual firms urged the Bureau of Industry and Security (BIS) to extend the narrow and temporary Huawei General License (GL) permanently, or at least in much longer increments than the current 45-day renewal cycles. Groups cited the global coronavirus pandemic and efforts to comply with Federal Communication Commission (FCC) rules around replacing equipment.

A group of Republican lawmakers previously urged the administration to issue regulations confirming that U.S. participation in 5G standards-setting is exempt from any export control regulations, especially given Chinese firm Huawei's designation on the Entity List in May 2019 (see **WTTL**, April 20, page 1). BIS extended the GL authorizing some transactions with Huawei and 114 non-U.S. affiliates for the third time in March.

In its comments, the Rural Wireless Association (RWA) urged BIS to continue the GL as long as necessary to coordinate with the FCC rules. "The FCC has already established a comprehensive rulemaking regarding the continued use of Huawei equipment and services in the United States. RWA recommends that [Commerce] and the FCC coordinate their respective actions while being mindful of the need to keep legacy systems active as the U.S. pushes to deploy replacement wireless broadband systems that do not pose a national security risk," the group commented.

The Computing Technology Industry Association (CompTIA) recommended that "BIS incorporate activities authorized by the TGL into the actual Entity List designation for Huawei and its named affiliates, rather than subjecting businesses to the uncertainty of short-term license extensions. Rather than continuing short-term extensions, a permanent codification of the TGL will allow companies to focus and develop long-term plans and transition strategies as opposed to focusing on short term (45-90 day) mitigation strategies."

> The group commented that BIS should: remove the certification requirement that requires that exporters obtain a copy of the contract between Huawei and a third party; remove the limitation on upgrades and enhanced functionality, which has a significant impact on network stability; and authorize the sharing of technology with Huawei for purposes of jointly troubleshooting issues.

Mavenir Systems recommended that the TGL be amended to remove the limitation that support and maintenance must be limited to networks and equipment that were fully operational as of May 16, 2019; and to specify that the TGL will remain in effect until revoked by BIS. "If a United States software supplier is unable to provide the assurance to its customers of ongoing support and maintenance, there is a substantial risk that those customers will simply opt to acquire comparable software products from foreign competitors that are not subject to restrictions on interactions with Huawei in providing maintenance and support for their products," the company said.

Competitive Carriers Association (CCA) and NTCA—The Rural Broadband Association cited the current global pandemic and said that a 3 to 6-month extension of the TGL would be appropriate. "The top priority of the Associations and their members during this crisis is maintaining and enhancing connectivity for their customers. Any action that would require service providers to forgo updates or maintenance of existing telecommunications equipment would jeopardize the remarkable efforts taken by CCA and NTCA members and the rest of the industry during this crisis," the groups wrote.

The GSM Association (GSMA) requested that BIS extend the TGL for a minimum of an additional 18 months. "Additional time is critical to U.S. and global consumers, operators, and manufacturers, especially as the United States continues to work through policy issues related to supply chain regulation and the promotion of viable alternatives to Huawei. GSMA also requests that BIS reinstate and modify the authorization for activities in furtherance of or for the development of global telecommunications standards."

Network solutions provider Hughes recommended that BIS: continue to extend the current TGL, as amended, through at least Dec. 31, 2022, including authorizing "engagement in transactions … necessary to maintain and support existing and currently fully operational networks and equipment, including software updates and patches"; allow such maintenance and support for existing and fully operational networks and equipment to continue; and create a new authorized transaction for releases of certain technology in connection with non-U.S. telecommunications networks.

Delay in Tariff Payments Gets Mixed Response

After first rejecting press reports that the administration planned to delay certain tariff payments, the administration April 19 announced a 90-day deferment of tariff payments. Industry groups quickly responded to the plans, which do not include antidumping and countervailing duties (AD/CVD), or Section 201, 232 and 301 trade remedies.

> In response to a question during a coronavirus task force briefing in late March, the president adamantly denied the reports (see **WTTL**, April 6, page 3). "I didn't do anything about tariff payments. I don't know who's talking about tariff payments. They keep talking about tariff payments. And we haven't done that. China is paying us — we made a deal with China. Under the deal, they're paying us 25% on $250 billion, and they pay it," Trump said.

In the Federal Register April 22, Customs and Border Protection (CBP) amended its regulation "to temporarily postpone the deadline for importers of record with a significant financial hardship to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days."

Rep. Ron Kind (D-Wisc.) welcomed the announcement. "Tariffs on goods that companies need to import are harmful during a normal economic time. With COVID-19 stagnating the world economy, these same tariffs could be life or death for small businesses. Many companies are not currently operating as business as usual; if these duties were still collected as scheduled this week, these companies might have been forced to make hard choices like firing employees or closing altogether," he said in a statement.

National Retail Federation (NRF) agreed. "We encourage the administration to broaden these deferrals for additional relief. Retailers don't build stores, buy products and hire associates only to close their doors for weeks at a time. The challenges to the retail industry brought on by this pandemic are severely acute, at best," NRF President and CEO Matthew Shay said in a statement.

In contrast, domestic industry groups denounced the plan. "Postponing some tariffs on imports from trade-cheating or low-wage countries -- especially in a pandemic downturn -- will harm recovery efforts. We are urging President Trump to hold the line on further tariff reductions," Coalition for a Prosperous America (CPA) Chair Dan DiMicco. "Deferring tariffs will simply increase imports and make it harder for our members to avoid laying off employees," he added.

"At a time when domestic textile producers and its workforce have mobilized to transform their production lines to manufacture the personal protective equipment (PPE) supplies for frontline healthcare and medical workers fighting the COVID-19 pandemic, the administration's decision to defer duties for 90 days on the vast majority of products imported into the United States is counterproductive," National Council of Textile Organizations (NCTO) President and CEO Kim Glas said.

Korean Bank Settles Bank Charges that Led to Sanctions Violations

Industrial Bank of Korea (IBK) agreed to pay a total of $86 million to Justice and N.Y. State Department of Financial Services (DFS) to settle charges of willfully failing to establish, implement, and maintain an adequate anti-money laundering (AML) program at IBK's New York branch (IBKNY). The bank's failure permitted the processing of more than $1 billion in transactions in violation of U.S. sanctions on Iran, Justice said April 20.

> "From January 2011 until July 2011, Kenneth Zong, an American citizen, and various primarily Iranian co-conspirators exploited bank accounts that had been established at IBK and at another bank to permit certain forms of trade between Korea-based entities and Iran, to unlawfully transfer U.S. Dollars (USD) to Iranian-controlled entities," according to the Statement of Facts filed with the two-year deferred prosecution agreement (DPA).

"Zong and his co-conspirators set up shell companies in Korea, Iran, and elsewhere, which engaged in sham trade transactions and submitted fictitious documentation to Korean banks, including IBK, in order to facilitate the transfer of Iranian funds from the CBI Won Account to Korean entities' accounts, the conversion of the funds into USD, and the subsequent transfer of USD from those entities to other accounts controlled by participants in the Zong Scheme," the DPA added.

"IBKNY only reviewed and identified Zong's transactions as unlawful more than five months after they began to be processed through IBK, after IBK had already processed more than $1 billion worth of such transactions," the document added. IBK agreed to pay Justice $51 million under the DPA, in addition to a $35 million penalty to the DFS in connection with its concurrent settlement of a related regulatory action.

"While IBKNY filed a suspicious activity report regarding the subset of Zong's transactions that had been processed through IBKNY (approximately $10 million worth of transactions) and made a disclosure regarding those transactions" to Treasury's Office of Foreign Assets Control (OFAC) in August 2011, IBK never self-reported to OFAC its involvement in the remaining $990 million worth of Zong's illegal transactions, Justice said in a press release. "Similarly, IBK did not self-disclose its willful violations of the Bank Secrecy Act prior to the Government's investigation," it added.

USMCA Will Take Effect July 1, USTR Tells Congress

After much outcry and expressions of concern, the U.S.-Mexico-Canada Agreement (USMCA) will go into effect July 1, the U.S. Trade Representative's (USTR) office told Congress April 24. Three days earlier, the agency gave North American vehicle producers until that date to submit draft alternative plans to comply with the rules of origin (ROO) for automotive goods under the deal.

"Following that notification to Congress, the United States became the third country to notify the other Parties that it had completed its domestic procedures to implement the agreement-the final step necessary for the USMCA to enter into force," the USTR's office said. In March, five automotive industry groups, including dealers and manufacturers, expressed concern about the imminent effective date of USMCA.

"Even if it were reasonable to divert our attention to USMCA compliance, the United States, Canada and Mexico have yet to issue, even in draft form, the uniform automotive rules of origin regulations. Without them, many questions remain unanswered regarding how to interpret the new rules," the groups wrote at the time (see **WTTL**, March 23, page 1).

> "The alternative staging regime differs from the standard staging regime by providing additional time and a different phase-in of the new requirements. It provides an alternative to certain rules of origin requirements for passenger vehicles and light trucks, but does not replace any other rules of origin or any provisions of general applicability for these goods to claim preferential treatment under the USMCA," the Federal Register notice said.

"For instance, under an alternative staging regime, importers of certain passenger vehicles and light trucks will have an additional two years—five years instead of three—to meet the requirements, and the vehicles will have different RVC [regional value content] and LVC [labor value content] thresholds," it added. To be assured of consideration, a vehicle producer must submit a draft petition no later than July 1, and a final petition no later than Aug. 31.

WTO, IMF Leaders Urge Open Trade Policies, Caution

As more than 80 countries and customs territories have introduced export prohibitions or restrictions in response to the global health crisis, the heads of the International Monetary Fund (IMF) and the World Trade Organization (WTO) April 24 urged nations to pay "more attention to the role of open trade policies in defeating the virus, restoring jobs, and reinvigorating economic growth," the leaders said in a joint statement.

"In particular, we are concerned by supply disruptions from the growing use of export restrictions and other actions that limit trade of key medical supplies and food," IMF Managing Director Kristalina Georgieva and WTO Director-General Roberto Azevêdo wrote. WTO rules "allow for temporary export restrictions 'applied to prevent or relieve critical shortages' in the exporting country. We urge governments to exercise caution when implementing such measures," they said.

The two leaders were also "concerned by the decline in the supply of trade finance. Adequate trade finance is important to ensure that imports of food and essential medical equipment reach the economies where they are most needed," they said. "The WTO and the G20 offer two forums for global policy coordination on these important matters," Georgieva and Azevedo noted.

Following a similar statement from their respective leaders, the G20 trade ministers in March assured industry that they would keep markets and logistics networks open during the coronavirus pandemic, while emphasizing measures would be proportionate, temporary and consistent with WTO rules (see **WTTL**, April 6, page 4).

* * * Briefs * * *

ITAR EXPORTS: In annual Section 655 report to Congress, covering fiscal year 2019, which ended Sept. 30, 2019, DDTC said it approved export of approximately $55.1 billion in defense articles and services.

VENEZUELA: OFAC April 21 issued General License (GL) 8F, extending previous GL that authorized transactions involving Petróleos de Venezuela, S.A. (PdVSA) necessary for maintenance of operations for Chevron, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International. Specifically, OFAC extended GL expiration date to Dec. 1 from April 22.

SODIUM SULFATE: In 5-0 final vote April 23, ITC found U.S. industry is not materially injured by dumped imports of sodium sulfate anhydrous from Canada.

ALUMINUM SHEET: In 5-0 preliminary votes April 22, ITC found U.S. industry may be injured by allegedly dumped imports of common alloy aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey, and subsidized imports from Bahrain, Brazil, India and Turkey.

VAQUITAS: In light of recent U.S. government change of heart, Court of International Trade (CIT) Judge Gary Katzmann April 22 lifted preliminary injunction and granted motion for voluntary dismissal of legal battle Natural Resources Defense Council (NRDC) filed to save endangered vaquita porpoises (Slip Op. 20-53). National Marine Fisheries Service (NMFS) announced in March it would ban imports from Mexico of almost all fish caught in the northern Gulf of California (see **WTTL**, March 9, page 2). Katzmann in July 2018 granted preliminary injunction requiring U.S. government to ban imports of all fish and fish products from Mexican commercial fisheries that use gillnets within vaquita's range.

CHINA: Rep. Ted Yoho (R-Fla.) April 24 introduced *Enforcing Accountability and Transparency in International Trade Act,* which requires USTR to report on plans to facilitate full implementation of WTO agreements. Bill would also prevent nations like China from qualifying for "special and differential" treatment in trade deals. "China has repeatedly abused WTO rules by deploying illegal export restraints (e.g. quotas, licensing, minimum prices, duties, and other restrictions) on an array of products and raw material inputs (RMI). These restraints are aimed at benefiting Chinese producers exclusively and at the expense of foreign producers," Yoho said in statement.