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Senators Urge Export Control Exemption for Standards-Setting

A group of Republican lawmakers April 14 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.

As a result of that designation, "U.S. technology leaders have been constrained from full participation in 5G standards-setting bodies because of uncertainty over whether such participation is prohibited by the Commerce Department's export control regulations," the six senators wrote in a letter to Commerce Secretary Wilbur Ross, Energy Secretary Dan Brouillette, Defense Secretary Mark Esper, and Secretary of State Mike Pompeo.

"It is critical for U.S. companies to participate fully in these standards-setting bodies to ensure that their technologies are represented in the standards. When U.S. export controls restrict U.S. companies from participating in standards-setting bodies, China-based Huawei is well positioned to fill any gaps," they added.

In March a separate, bipartisan group of lawmakers introduced the NETWORKS Act (S. 3469/H.R. 6235), which would add foreign companies producing 5G technology, like Huawei, to Treasury's Specially Designated Nationals (SDN) List "should they engage in economic or industrial espionage or sanctions violations," a joint statement noted (see **WTTL**, March 16, page 1). The bills would also allow "participation in international standards-setting bodies," the lawmakers' statement noted.

OFAC Clarifies Humanitarian Exceptions to Sanctions Programs

Amid criticism of maintaining restrictive sanctions during a global pandemic, Treasury's Office of Foreign Assets Control (OFAC) April 16 highlighted the "the most relevant

exemptions, exceptions, and authorizations for humanitarian assistance and trade” under various sanctions programs, including Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia.

More than 30 House members and senators in March urged the administration to end Iran sanctions during the pandemic (see **WTTL**, April 6, page 5). “Rather than continue to invoke new sanctions in the Iranian people’s hour of need, we urge you to substantially suspend sanctions on Iran during this global public health emergency in a humanitarian gesture to the Iranian people to better enable them to fight the virus,” they wrote.

Under the Iran sanctions program, OFAC clarified in a fact sheet, U.S. and non-U.S. persons may provide such humanitarian goods — including medicine and medical devices – under existing authorizations. Specifically, “most medicine and medical devices ... already qualify for export and reexport to Iran under general licenses, without the need for further authorization from OFAC,” the agency noted.

These devices include certain personal protective equipment and other items used for COVID-19-related treatment such as medical gowns, medical eyeshields and goggles, surgical gloves, face shields, certain respirators and masks such as N95, N99, and N100 masks, and certain ventilators, OFAC said.

In addition, there are “certain limited categories of items that may also be helpful for COVID-19-related assistance ... for which OFAC’s regulations set forth a specific licensing policy for review of license applications on a case-by-case basis due to concerns about potential end use of these specific items. OFAC is prioritizing and expediting review of these license requests,” it added.

Ex-Im Restricts Export Coverage for Medical Equipment

Just days after the administration announced it would block exports of certain personal protective equipment (PPE), the Export-Import Bank (Ex-Im) board April 14 approved a resolution to “restrict Ex-Im coverage for exports of medical supplies and equipment necessary in the fight against the COVID-19 pandemic.” At the same time, Ex-Im extended previously announced relief measures for six more weeks.

The Federal Emergency Management Agency (FEMA) April 10 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 Federal Register notice said (see **WTTL**, April 13, page 1).

“The urgency of combatting the COVID-19 pandemic requires a whole-of-government approach to protect the American people,” said Ex-Im President Kimberly Reed. “The steps we are taking here will help ensure EXIM is doing its part to stem the horrific effects of coronavirus here in the United States,” she added.

In addition to restricting export coverage, the board's temporary actions include: contacting "exporters insured under existing Single Buyer or Multibuyer Insurance Policies and work to ensure existing agreements that currently cover exports of medical equipment and supplies reflect the new EXIM policy to exclude coverage for COVID medical supplies," the bank said.

The bank extended previously announced relief measures for U.S. exporters and financial institutions through May 31. These measures include "waivers, deadline extensions, streamlined processing, and flexibility, to its customers for an initial period of 30 days (with the possibility of a further extension of the period, at Ex-Im's discretion)" for the following programs: Working Capital Guarantee; Multi-Buyer and Single-Buyer Short-Term Insurance; and Medium-Term Single-Buyer Insurance Policies Issued to Exporters.

USTR to Request Withdrawal of Solar Exclusion

The bifacial solar panel exclusion is undermining the objectives of the Section 201 safeguard measure, the U.S. Trade Representative's (USTR) office announced April 17. Based on public comments and consultations with other administration agencies, USTR will request that the Court of International Trade (CIT) lift the preliminary injunction on the exclusion.

"By disincentivizing domestic producers' production of bifacial solar panels, interfering with their ability to increase sales of monofacial and bifacial products into the utility segment, and having a depressive effect on prices for monofacial solar panels, the bifacial exclusion is hindering the domestic industry's adjustment to import competition," the Federal Register notice said.

In January, the agency requested comments on whether it should maintain the exclusion, withdraw or take other action (see **WTTL**, Jan. 27, page 7). A month earlier, CIT Judge Gary Katzmann approved Solar Energy Industries Association's (SEIA) motion for a preliminary injunction to allow the exclusion to remain in place.

"Withdrawal of the exclusion for bifacial solar panels from application of the safeguard measure will apply to imported panels if the Court lifts the preliminary injunction but in no case earlier than May 18," USTR said. The agency received 15 comments on the bifacial exclusion and 49 subsequent comments responding to the initial comments, it added.

SEIA denounced USTR's decision. "The industry initially sought this exclusion because there is, and will be for the foreseeable future, an acute shortage of domestic panels used in utility-scale solar projects. Throughout this process, the solar industry has sought to find a middle ground solution that addressed this shortage in a way that did not undermine the objectives of the underlying Section 201 safeguard measure," John Smirnow, SEIA VP and general counsel, said in a statement.

Organizations Ask WTO Members to Set Aside Trade Talks

As the World Trade Organization (WTO) moved its proceedings online and agencies around the world have postponed hearings and conferences, more than 250 civil society organizations April 17 urged WTO members to put aside any trade negotiations, even sanctions and trade rules, and focus on fighting the global coronavirus pandemic.

“We call on WTO Members to ensure that all countries have the flexibilities to set aside trade rules that constrain their ability to resolve the pandemic crisis, without fear of repercussions, and to cease other negotiations and activities that divert their energy and resources from that goal,” the groups wrote in an open letter to trade ministries and the WTO.

“The first and only priority for trade negotiators at this time should be to remove all obstacles, including intellectual property rules, in existing agreements that hinder timely and affordable access to medical supplies, such as lifesaving medicines, devices, diagnostics and vaccines, and the ability of governments to take whatever steps are necessary to address this crisis. Unilateral sanctions that prevent countries from obtaining essential medical supplies must end,” they added.

“It is not feasible for many developing and least developed countries to participate, given the digital divide and the need to focus all governmental resources on this public health emergency. Nor should countries be diverting their resources into negotiating rules for a world that will be unimaginably different once the pandemic subsides.” Signatories include: Friends of the Earth, Greenpeace, Institute for Agriculture & Trade Policy (IATP), Oxfam International and Public Citizen.

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DISPUTE SETTLEMENT: European Union (EU) Council April 15 approved Multi-party Interim Appeal Arbitration Arrangement (MPIA), alternate system to temporarily replace WTO Appellate Body (AB), which has been frozen since December 2019. “There will be 10 arbitrators on the MPIA roster. The EU has the option of nominating a candidate. The nominee will need to be submitted by the end of May,” EU Trade Commissioner Phil Hogan told meeting of EU trade ministers next day. EU and 15 other WTO members, notably excluding U.S., agreed to temporary arrangement in March (see **WTTL**, March 30, page 3).

FALSE CLAIMS: Florida-based Blue Furniture Solutions, its successor XMillenium, and two of companies’ former executives—CEO Yingqing Zeng and CFO Alex Cheng—agreed April 14 in Austin Texas U.S. District Court to pay more than \$5.2 million to settle charges of violating False Claims Act by evading customs duties and fees on wooden bedroom furniture (WBF) imported from China. “In or around 2012 Blue Furniture Solutions began to misleadingly describe its imported furniture. For example, it used descriptions such as ‘Beds (steel)’ and ‘nightstands (steel).’ Upon information and belief, this furniture was not steel but WBF. This same pattern continued throughout 2014. In 2015, Blue Furniture Solutions changed tactics slightly and began misleadingly describing furniture as metal storage cabinets or metal file cabinets,” original 2015 complaint noted.

FCPA: Eberhard Reichert, former Siemens AG executive, was sentenced April 17 via telephone to time served for his role in bribery scheme to retain \$1 billion government contract to produce national identity cards for Argentine citizens. He pleaded guilty in Manhattan U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) in March 2018. Andres Truppel, former chief financial officer (CFO) of Siemens Argentina, was sentenced in March in Manhattan federal court to time served for related charges for his role in scheme (see **WTTL**, March 23, page 5). He previously agreed to pay SEC \$80,000 civil penalty.

MORE FCPA: Former Goldman Sachs banker Asante Berko, who is currently managing director for Tema Oil Refinery, was charged April 13 in Brooklyn U.S. District Court with violating Foreign Corrupt Practices Act (FCPA). From 2015 through 2016, Berko allegedly schemed to bribe various Ghanaian government officials so Turkish energy company would win contract to build and operate electrical power plant in Ghana and in turn sell power to Ghanaian government, SEC complaint noted. “Berko and the Energy Company timed the largest transfers of funds to coincide with key milestones in the approval process of the Power Plant Project so that funds would be available to bribe the corrupt officials who were in positions to help accomplish those milestones,” it added.

POLYETHYLENE: In 5-0 preliminary vote April 17, ITC found U.S. industry may be injured by allegedly dumped imports of ultra-high molecular weight polyethylene from Korea.

RASPBERRIES: USTR April 9 requested ITC prepare Section 332 report that “provides an overview of the U.S. raspberry industry in Washington state and assesses the conditions of competition between U.S. and foreign suppliers of raspberries meant for processing.” Industry group Washington State Red Raspberry Commission and its producer members have cited unfair practices, USTR noted. “They have also raised concerns with increased pesticide residue violations of imported product, and with misleading labeling of frozen mixed berry packs imported from Canada, which do not accurately identify the source of raspberries in the pack.”

GARLIC: CIT April 13 remanded Commerce’s final results and partial rescission of 22nd administrative review (AR22) of antidumping duty order on fresh garlic from China. Question revolved around status of certain members of Coalition for Fair Trade in Garlic (CFTG) as domestic garlic producers, including Stanley Crawford, owner and operator of El Bosque Farm of Dixon, N.M. “Commerce’s summary reliance on evidence submitted in AR21 and a single contradiction regarding a payment that is not directly related to whether Crawford is a domestic garlic producer is insufficient to support Commerce’s disregard of Crawford’s evidence of garlic production. Accordingly, on remand, Commerce must reconsider and further explain its basis for questioning Crawford’s credibility in this review to the extent necessary to determine the CFTG’s standing to request an administrative review or it must otherwise evaluate Crawford’s status as a domestic garlic producer,” Judge Mark Barnett wrote in *Coal. for Fair Trade in Garlic v. U.S.* (Slip Op. 20-48).

STEEL WIRE STRAND: Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation filed countervailing and antidumping duty petitions April 16 with ITA and ITC against imports of prestressed concrete steel wire strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine and UAE. In separate “sunset” votes in 2015, ITC said revoking antidumping and countervailing duty orders on imports from China, Brazil, India, Japan, Korea, Mexico and Thailand would renew injury to U.S. industry (see **WTTL**, Sept. 21, 2015, page 7).