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. 10 **March 9, 2020**

BIS Needs to Improve End-Use Checks, IG Says

Bureau of Industry and Security (BIS) needs to improve its efforts to effectively track and monitor end-use check (EUC) performance to ensure the appropriate foreign end-users receive and use controlled U.S. exports in accordance with the Export Administration Regulations (EAR), the department's Inspector General found in a report (OIG-20-019-A) released March 2.

> Specifically, BIS is unable to adequately determine whether EUCs met its targeting criteria for four main reasons: specialists used different methodologies for selecting export transactions for EUCs; data did not align with targeting criteria, were inaccurate, or were not entered timely; lack of a final rating left some EUCs open for years; and regular screening for proscribed parties of unlicensed exports is not performed. In addition, "BIS did not fully screen export transactions that used the Strategic Trade Authorization [STA] license exception," the report noted.

The IG report recommended BIS should develop: standard operating procedures for staff responsible for selecting and reviewing EUCs; a process that ensures that reasons for selecting EUCs align with the criteria; and a contingency plan to conduct enhanced monitoring of certain export filings and reinforce guidance for screening export transactions that used the STA license exception whose consignees were associated with ineligible countries.

In response to the report, BIS said that it provides specialists with written guidance for targeting EUCs. "However, based on interviews with nearly all compliance specialists responsible for EUC selection, we found that each one has developed specific processes and methods for selecting EUCs for their geographical areas of operation," the IG noted.

Lawsuit over USML Transfers Comes Down to Deadline

With the conclusion to the 10-year export control reform effort resting on lawyers' shoulder, the legal fight over final rules transferring firearms and ammunition from the

U.S. Munitions List (USML) to Commerce Control List (CCL) is uncertain at press time, just days before the rules are scheduled to go into effect. At the oral argument Feb. 28 in Seattle U.S. District Court on the preliminary injunction 22 states filed to block the transfers, the judge did not rule from the bench as expected. In his ruling that must come before the March 9 deadline, based on his questions, it seems likely he will not dismiss the state attorneys general's (AGs) case on jurisdictional grounds.

Observers find it likely that the judge will enter a preliminary injunction in favor of the states but limit it to just new language controlling software and technology for 3D printing. The judge could reject the state AGs' argument that he must enjoin the rules in their entirety, even though they only complained about the dissemination of 3D printed firearms technology.

In parallel, more than 100 gun control organizations urged Congress to prevent implementation of the new rules." If allowed to take effect…, this dangerous regulation will thwart congressional oversight and exacerbate gun violence, human rights abuses, and armed conflict around the world," the groups, including Amnesty International, Win Without War and Brady Center, wrote in a letter to Congress March 4.

"The regulation will also transfer control of the technical information and blueprints for potentially undetectable 3D-printed guns from State to Commerce, a move that could facilitate printing of 3D guns worldwide, make these weapons readily available to terrorist groups and other criminal elements, and endanger American embassies, military bases, and passenger aircraft at home and abroad," they added.

On the other side, the National Shooting Sports Foundation (NSSF) and Washington gunsmith Fredric's Arms & Smiths, LLC filed a motion opposing the lawsuit (see **WTTL**, Feb. 17, page 8). "This is an unacceptable overreach by states to dictate federal export policy," Lawrence Keane, NSSF senior VP and general counsel, said in a statement.

U.S. Bans Mexican Fish Imports, Protects Vaquitas

In a win for environmentalists and the endangered vaquita porpoises, the National Marine Fisheries Service (NMFS) will ban imports from Mexico of almost all fish caught in the northern Gulf of California, including "all shrimp, curvina, sierra, chano, anchovy, herrings, sardines, mackerels croaker, and pilchard fish and fish products, caught with gillnets inside the vaquita's range …or associated with the fisheries for which a comparability finding has been revoked," the agency says in Federal Register notice March 9.

Court of International Trade (CIT) Judge Gary Katzmann in July 2018 granted a preliminary injunction requiring the U.S. government to ban imports of all fish and fish products from Mexican commercial fisheries that use gillnets within vaquita's range (see **WTTL**, July 30, 2018, page 12). "The Government, though opposing the motion, acknowledges that the vaquita may soon disappear from the planet forever," Katzmann said in *Natural Resources Defense Council, Inc.* [NRDC] *v. U.S.*

"NMFS bases its determination to revoke comparability findings for the specified Mexican fisheries on the lack of a regulatory program comparable in effectiveness to the U.S. regulatory program for mitigating fishery bycatch of marine mammals," the notice said.

> "Mexico has failed to implement the regulatory plan that formed the basis for the comparability findings. Furthermore, the Government of Mexico has failed to authorize (e.g., provide fishing permits) shrimp trawls for small vessels (e.g., pangas), the only legally mandated gear type for harvesting shrimp and for which a comparability finding has been made," NMFS notes.

"This is exactly how the law protecting marine mammals is supposed to work: if Mexico's fisheries kill vaquita at a rate that violates U.S. standards, the U.S. must ban imports," Zak Smith, NRDC senior attorney, said in a statement. "It's the only hope the vaquita has for survival, and it is required if Mexico wants to resume exporting these products to the United States," Smith noted.

Senators Call on UK to Rescind Huawei's 5G Role

A bipartisan group of 20 senators March 3 called on United Kingdom (UK) Prime Minister Boris Johnson to reverse his decision on allowing Chinese telecom giant Huawei from having any role in its 5G network. Johnson in January allowed Huawei a 35% role in the periphery of the UK's 5G network despite months of pressure from the Trump administration to dump the Chinese behemoth (see **WTTL**, Feb. 3, page 4).

"Given the significant security, privacy, and economic threats posed by Huawei, we strongly urge the United Kingdom to revisit its recent decision, take steps to mitigate the risks of Huawei, and work in close partnership with the U.S. on such efforts going forward," the senators said. Signers included Sens. Richard Burr (R-N.C.), Intelligence Committee chair; Mark Warner (D-Va.), the committee's vice chair; and Senate Minority Leader Chuck Schumer (D-N.Y.).

"We understand the challenges the U.K. faces regarding a lack of diverse, secure, and affordable suppliers. These are challenges we also face here in the United States. However, the security and integrity of our telecommunications infrastructure cannot be compromised for convenience," they wrote. In January, a bipartisan group of 42 House members sent a similar letter to the Tory leader.

Many analysts believe that the UK made the decision in an attempt to alienate neither Beijing or Washington, since London is in the very difficult process of leaving the European Union (EU), and Johnson would like to get a trade deal with both nations, the number-one and two leading economies of the world (see related story, page 4). France's largest telecom company, Orange, announced in January it had chosen Nokia and Ericsson for its 5G rollout.

U.S. Covers Ears, Eyes over WTO Paper Dispute

In the dispute between the U.S. and Canada on supercalendered (SC) paper at the World Trade Organization (WTO), it appears that the two countries are playing two separate games, or the same game with very different rules. Not only is the U.S. blocking new members of the WTO Appellate Body (AB), it will not agree to the adoption of a panel ruling decided after the AB lost its quorum.

In one of its last gasps, the AB in February upheld an earlier dispute panel ruling on SC paper, agreeing with Canada's claims that U.S. countervailing duties (CVD) applied to SC paper imports and Commerce's use of "adverse facts available" (AFA) were inconsistent with WTO rules (see **WTTL**, Feb. 10, page 3).

> At a March 5 meeting, the WTO Dispute Settlement Body (DSB) formally adopted the panel report. However, the U.S. objected to the adoption of the rulings, arguing that all three Appellate Body members reviewing the appeal were ineligible to serve. Two members had served past theirterm and the third, Hong Zhao, is affiliated with the Chinese government, the U.S. argued.

The U.S. has "serious substantive concerns about the appellate document," the American delegation noted. "But given the invalidity of this individual to serve on the Appellate Body, it is not necessary to consider that document further. There is no Appellate Body report before the DSB today," it said. China called the U.S. accusations groundless.

"Canada added that it looked forward to discussing with the U.S. the deadline for the U.S. to comply with the ruling," the WTO said in its summary of the meeting, as if this was a normal agenda item. The next regular meeting of the DSB will take place on 30 March.

In a speech four days before the DSB meeting, Chinese Ambassador to the WTO Zhang Xiangchen said, "Like any other mechanism, the Appellate Body is not perfect. But its imperfection cannot be used as the mere excuse to block the selection process of the AB members and paralyze the system."

"We surely can reflect and should reflect on issues of Members' concerns, but the purpose of such reflections shouldn't be to degrade the system or to deny its value. Over the past decades, many disputes have been effectively resolved through the Appellate Body, and we cannot simply overwrite its credit," he added.

UK Releases Trade Deal Objectives

Now that the United Kingdom (UK) has gone through Brexit, it can turn its attention to negotiating trade deals with other trading partners, most importantly the U.S., its largest bilateral trading partner. UK trade officials March 2 released its overall negotiating objectives, which could be seen as incompatible with U.S. interests.

In comments submitted in January 2019, U.S. industry urged the U.S. Trade Representative (USTR) and the UK to learn from previous experience and not let strained trade relations affect talks toward a robust U.S.-UK trade agreement (see **WTTL**, Jan. 21, 2019, page 3). The USTR's office announced potential trade deals with the UK, EU and Japan the previous October.

Specifically, the UK's overall negotiating objectives are to: agree an ambitious and comprehensive free trade agreement with the U.S.; increase UK GDP by opening up opportunities for British businesses and investors, and facilitating greater choice and lower prices for British producers and consumers; rigorously protect the UK's freedom to provide public services in the national interest; ensure high standards and protections, including food safety and animal welfare, and build on existing international obligations; and futureproof the agreement in anticipation of rapid technological developments.

"Striking ambitious free trade agreements with our partners around the world is one of the key opportunities of Britain becoming an independent trading nation once again. This deal with our biggest single trading partner will cut red tape for our small businesses, cut tariffs for our great products from dairy to cars and increase growth in all four nations," International Trade Secretary Liz Truss said in a statement.

The government will set out negotiating objectives for Australia, Japan and New Zealand "shortly, with the aim of having 80% of total UK external trade covered by free trade agreements by 2022," the UK statement noted.

President Inks Energy, Military Equipment Deals in India

Before the president's first trip to India, it was clear there was going to be no 'huge' Indian trade deal. So, what was achieved on the trip? Apart from Prime Minister Modi's promise of the millions lining the streets, and tens of thousands in the cricket stadium, President Trump nabbed both energy and military deals.

> In the year before Trump's visit Feb. 24-25, the two countries had gone back and forth over tariffs. After three years of discussions, the administration imposed tariffs on Indian steel and aluminum in 2019, as it did with other allies running a surplus with the U.S. India imposed higher tariffs on agricultural goods and restrictions on U.S. medical devices in response to the U.S. decision to remove the country from the Generalized System of Preferences (GSP) in May 2019 (see **WTTL**, June 10, page 9).

Since the cold war days, India imported the majority of its military equipment from Russia. Now the U.S. would be getting $3 billion worth. In terms of energy, Iran was a principal exporter. With Trump's new deal, ExxonMobil will be selling more Indian liquified natural gas.

"We just did a lot of business with India, where they're buying $3 billion worth of helicopters — great helicopter. We have helicopters like — we make the best military equipment in the world, by far. And, you know, the Prime Minister actually said, 'If you were President 30 years ago, we'd have all your equipment.' But they started buying many years ago from another nation and others. And now they're starting to buy from us," Trump said during a business roundtable in New Delhi.

On the energy deal, Energy Secretary Dan Brouillette told the same event, "In last two years, we've seen a remarkable uptick in the purchases of U.S. oil and gas by India. And when the president was elected in 2017, that number was approximately 25,000 barrels per day of crude oil. It is now over 250,000 barrels per day. A tenfold increase."

ExxonMobil India LNG Limited Feb. 24 signed a letter of cooperation with Indian Oil Corporation Limited and Chart Industries, Inc. "to establish a system of transportation infrastructure to expand gas access in India. Virtual pipeline systems deliver liquefied natural gas by road, rail and waterways to areas not connected by physical pipelines," the oil company announced. "The initiative seeks to develop a pilot project and create a roadmap for mobile gas infrastructure expansion at scale, improving access to an abundant and cleaner fuel source," it added.

OECD Calls for Coordinated G20 Response to Coronavirus

The world economy is in the most precarious moment since the global financial crisis of 2008, and only a coordinated response by the G20 will be able to stem the tide, the Organization for Economic Cooperation and Development (OECD) said March 2.

> "If countries announced coordinated fiscal and monetary support, confidence effects would compound the effect of policies. This would help reverse the drubbing in confidence that a more widespread outbreak would provoke. It would also be more effective than working alone," OECD Chief Economist Laurence Boone wrote in a blog post. Trade groups, including the textile industry, and individual firms such as Apple have been sounding the alarm for weeks, aside from the sell-off evident in the stock market around the globe (see **WTTL**, March 2, page 5).

"Some would say it is trite to call for international cooperation. However, in this globally connected economy and society, the coronavirus and its economic and social fallout is everyone's problem, even if firms decide in the wake of this virus shock to repatriate production and make it a bit less interdependent," he added. Even prior to the Coronavirus, global growth was cooling for the past two years to a subdued level. OECD said. Indicators such as coal demand, suggest the Chinese economy slowed sharply in the first quarter of 2020.

"As China accounts for 17% of global GDP, 11% of world trade, 9% of global tourism and over 40% of global demand of some commodities, negative spillovers to the rest of the world are sizeable. There is mounting evidence of sharp declines in tourism, supply chain disruptions, weak commodity demand and falling consumer confidence," Boone said.

The epidemic spreads will determine the economic prospect of the world. “We have revised our projection for the year from an already low 3% in November to only 2.4%, lower than in any year since the financial crisis. In a downside-risk scenario where epidemics break out in some other countries across the globe, the slowdown will be sharper and more prolonged,” he added.

> OECD said that its modelling suggests that the level of world GDP would fall as low as 1.5% this year, halving the OECD’s previous 2020 projection from last November of 3%. Containment measures and fear of infection would hit production as well as spending hard and drive many of the epidemic affected countries into outright recession, it noted.

OECD warns that delay in action by governments would prove fatal. “Regardless of where the virus spreads, the world economy, previously weakened by persistent trade and political tensions, has already suffered a sharp setback. Households are uncertain and apprehensive. Firms in sectors such as tourism, electronics and automobiles are already reporting supply disruptions and/or a collapse in demand. The world economy is now too fragile for governments to gamble on an automatic sharp bounce-back,” the chief economist argued.

OECD pleaded for supporting vulnerable households and firms. “Increasing liquidity buffers to firms in affected sectors is also needed to avoid debt default of otherwise sound enterprises. Reducing fixed charges and taxes and credit forbearance would also help to reduce the pressure on firms facing an abrupt falloff in demand,” the international body said.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in January dipped 0.9% from year ago to $136.4 billion, Commerce reported March 6. Services exports gained 5.1% to $72.2 billion from January 2019. Goods imports dropped 3.6% from January 2019 to $203.4 billion, as services imports jumped 3.0% to $50.5 billion.

EXPORT ENFORCEMENT: Aiden Davidson, aka Hamed Aliabadi, naturalized U.S. citizen, pleaded guilty March 2 in Concord, N.H., U.S. District court to smuggling goods, including motors, pumps, valves, and other items, to Iran between December 2016 and February 2017. Davidson, manager/member and registered agent of N.H. company, Golden Gate International, admitted to “falsely identifying the Ultimate Consignee of the shipment in accompanying Electronic Export Information” as Turkish company, plea agreement noted. Superseding indictment was filed in January 2019. Sentencing is set for June 17.

MORE EXPORT ENFORCEMENT: Randy Lew Williams, of Edmond, Okla., was charged March 3 in Oklahoma City U.S. District Court with illegally shipping firearms, including multiple Glock pistol slides and various disassembled Glock 19 parts, to UAE in 2018 without required State licenses. Parts were “concealed inside tool boxes and tools,” criminal complaint noted. Commercial invoice for shipment “only indicated the following items within the shipment: ‘5 Sawzalls, 3 Punch sets, 3 Hitch Pins, 3 patches.’”

POLYETHYLENE: Celanese Corporation filed antidumping duty petitions March 4 with ITA and ITC against imports of ultra-high molecular weight polyethylene from Korea.

DIFLUOROMETHANE: In 5-0 preliminary vote March 5, ITC found U.S. industry may be injured by allegedly dumped imports of difluoromethane (R-32) from China.

ELECTRODES: In 5-0 "sunset" vote March 4, ITC said revoking antidumping duty order on imports of small diameter graphite electrodes from China would renew injury to U.S. industry.

NICARAGUA: Treasury's Office of Foreign Assets Control (OFAC) March 5 designated Nicaraguan National Police (NNP) and three NNP commissioners, Juan Antonio Valle Valle, Luis Alberto Perez Olivas and Justo Pastor Urbina, for role in "serious human rights abuse." At same time agency issued two General Licenses (GLs) authorizing official business of U.S. government and wind-down of transactions involving NNP, "including the processing of salary payments from the NNP to its employees," through May 6, OFAC said in FAQ. Blocking sanctions do not apply to "individual, non-designated NNP police officers," agency added. OFAC in December designated Rafael Antonio Ortega Murillo, son of Nicaraguan president and VP, and two companies he owns or controls, along with chain of gas stations controlled by Ortega family (see WTTL, Dec. 16, page 7).

CURACAO: WTO members agreed March 3 at General Council meeting to establish working party for Curacao's accession to organization. "We believe in, and will actively support, the role of the WTO in organizing and nurturing effective global economic governance, especially where it concerns the interests of small island developing states within the WTO," Caryl M.C. Monte, Curaçao's chief negotiator for WTO accession, said in statement. Request for separate membership was fully supported by Netherlands, WTO said.

SECTION 232: American Institute for International Steel (AIIS) will appeal CAFC decision on constitutionality of Section 232 steel and aluminum tariffs to Supreme Court, group said March 4. As expected, CAFC week earlier affirmed CIT decision, citing Supreme Court Algonquin decision that declares Section 232 not to violate nondelegation doctrine (see WTTL, March 2, page 6). "While disappointed, we are not surprised by the Appeals Court ruling," AIIS President Richard Chriss said in statement. "We have expected all along for this constitutional question, ultimately, to be decided by the nation's highest court. We intend to seek Supreme Court review promptly, and we are hopeful that the court will act before it adjourns in June." Supreme Court in June 2019 denied AIIS and two members' petition for writ of certiorari before CAFC judgment.

STEEL NAILS: CIT Judge Claire Kelly March 4 remanded Commerce's remand results in case of whether strike pin anchors were included in scope of antidumping duty (AD) order covering certain steel nails from China. "Ultimately, Commerce's interpretation posits that any fastener that has a nail incorporated within it is within scope. Commerce's clarification of the phrase 'nails . . . constructed of two or more pieces' cannot withstand scrutiny," Kelly wrote in *Midwest Fastener Corp. v. U.S.* (Slip Op. 20-28). "The scope of the order in this case does not reach nails included within other products. The scope reaches nails, whether one piece, or constructed of two or more pieces. Either the entire strike pin anchor is a nail, or it is not," she added.