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OMB Completes Review of USML Firearms Rules

That was fast. Office of Management and Budget (OMB) Nov. 7 completed its interagency review of final rules transferring items from U.S. Munitions List (USML) categories I, II and III (firearms and ammo) to the Commerce Control List. Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) sent the final rules to OMB just two weeks earlier (see **WTTL**, Oct. 28, page 6).

> State and BIS have learned the lesson of the past seven years and declined to comment on internal deliberations, but sources told WTTL that agencies revised the final rules to address the publication of technology for 3D printing firearms. The rules should also put to rest a lawsuit that the administration settled with Defense Distributed over online posting of 3D gun blueprints.

Now that the review is complete, the agencies shortly will resubmit the rules to Congress for a 30-day formal notification period. Sen. Robert Menendez (D-N.J.), who put an official hold on the rules in February, will not be "fully happy" with the new rules, but did get his changes on 3D printing, one source said. The final rules could then be published in mid- to late December with a 45-day implementation period.

Arms control advocates were quick to repeat their earlier opposition to the transfers. "The proposed change in policy makes it easier to sell U.S. weapons abroad and might help the bottom line of a few gun makers, but it threatens to undermine long-term global security and decades of more responsible U.S. arms transfer policy," Jeff Abramson, Arms Control Association senior fellow, said in a statement.

USMCA Goodwill Tour Heads North

It was only fair that House Ways and Means Committee Chair Richard Neal (D-Mass.) led a bipartisan congressional delegation to Canada to discuss updates to NAFTA, or the U.S.-Mexico-Canada (USMCA) trade agreement, as he had previously traveled to Mexico in

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October (see **WTTL**, Oct. 14, page 4). During meetings with Canadian Prime Minister Justin Trudeau and Foreign Affairs Minister Chrystia Freeland, Neal "shared that significant progress is being achieved through discussions with the Trump Administration, and emphasized his hope that ultimately USMCA will garner strong bipartisan backing in the United States as well as broad-based support in Canada and Mexico," the committee said in a statement.

"The House Democratic Working Group on NAFTA 2.0 has made substantial progress with USTR [U.S. Trade Representative] Robert Lighthizer and his staff. Democrats now seek to resolve the remaining critical questions, which include those regarding worker protections and labor-specific enforcement mechanisms," the committee said.

> "The meeting was an occasion to discuss the ratification process for the new NAFTA and the shared commitment between Canada and the United States to support the implementation of important labour reforms in Mexico," according to a readout from Freeland's office. During the previous visit to Mexico, lawmakers were positive about the meeting, but they took a wait-and-see attitude about promised changes to Mexico's labor laws.

"Canada's goal remains to move forward with ratification in tandem with the United States, to the extent possible. Minister Freeland has been in frequent and close touch, including this week, with… Lighthizer to discuss this process," the readout noted.

Senators Hint at Bipartisan Agreement on Section 232 Tariffs

Nothing brings lawmakers together better than a negative report on government agency business. A bipartisan group of senators Nov. 8 requested a briefing on a Commerce inspector general's (OIG) report that the Section 232 exclusion process is perceived as "neither transparent nor objective."

Specifically, certain actions that the Bureau of Industry and Security (BIS) has taken during its Section 232 exclusion request reviews, including an unofficial appeals process, communications with an objector, and off-record discussions, give that perception (see **WTTL**, Nov. 4, page 6).

"It is unacceptable that the current Section 232 tariff exclusion process is set up for only a select few to succeed. Our hard-working manufacturers and small businesses are disadvantaged by these types of unofficial processes identified by the OIG, and they deserve better," Sens. Tom Carper (D-Del.), Doug Jones (D-Ala.) and Pat Toomey (R-Pa.) wrote to Commerce Secretary Wilbur Ross and BIS Assistant Secretary Richard Ashooh.

"The federal government should not be in the business of picking winners and losers through our trade policy. There should be clear rules of the road so that businesses in our states and across the country can be confident that their applications for tariff relief will be reviewed fairly and on the merits of their case," they added.

While Republican senators have introduced several bills to limit the president's authority to impose tariffs under Section 232, Senate Democrats have been hesitant to join forces in the effort. However, Finance Committee leaders Nov. 5 hinted at a truce that could allow the two parties to work together.

"I've agreed to Senator Wyden's request to introduce a Chairman and Ranking Member's mark that does not unwind the Section 232 measures on steel and aluminum. Many problems with those tariffs and quotas have been well-documented, but I've been in the Senate long enough to know that getting things done requires compromise," Committee Chair Chuck Grassley (R-Iowa) said in a floor speech.

> Rep. Ron Kind (D-Wis.) and Sen. Rob Portman (R-Ohio) in February introduced parallel bills (H.R. 1008/S. 365) amending Section 232 "to require the Secretary of Defense to initiate investigations and to provide for congressional disapproval of certain actions." Toomey, Rep. Mike Gallagher (R-Wis.) and two dozen cosponsors introduced similar bills (H.R.940/S. 287) in January.

Grassley acknowledged the issues with approving a bill. "Every time we get close to marking up a Section 232 bill, Senator Wyden hears from stakeholders who are profiting from tariff protection. Meanwhile, I get calls from colleagues who say: Mr. Chairman, the President won't like us taking away his tariff law, and we don't want to make the President upset."

Committee Ranking Member Ron Wyden (D-Ore.) responded to Grassley's sentiments, but highlighted the bipartisan concerns. "I share the chairman's goal of legislation to discipline Donald Trump's erratic use of trade authorities that could gain overwhelming bipartisan support, and I look forward to working toward that goal. As of now, that legislation does not exist, due to concerns on both sides of the aisle," Wyden said in a statement.

Agencies Still Need to Address Uncollected Duties, GAO Says

While Commerce and Customs and Border Protection (CBP) have taken some steps to address weaknesses in antidumping (AD) and countervailing (CVD) duty rate-setting and mitigating uncollected duties, CBP needs to strengthen its liquidation process and employ a risk model to identify high-risk importers and adjust bond amounts, according to a new report by the Government Accountability Office (GAO) published Nov. 7 (GAO-20-50R).

A 2016 GAO report noted that over the previous 15 years, the U.S. government had not collected $2.3 billion in AD/CVD duties. Moreover, CBP did not expect to collect most of that debt, according to the GAO findings (see **WTTL**, Aug. 22, 2016, page 1). As of August 2019, the latest report found, the U.S. government had collected an additional $1.6 billion in revenue during fiscal years 2001 through 2018 "as a result of upward adjustments of the final AD/CV duty rates," but also had $4.5 billion in open and uncollected AD/CV duty bills for that period, GAO noted.

GAO recommended in 2016 that CBP (1) collect and analyze data on a regular basis to find and address the causes of AD/CVD liquidation errors and track progress; (2) regularly conduct a comprehensive risk analysis related to duty nonpayment; and (3) take steps to use its data and risk assessment strategically to mitigate AD/CVD duty nonpayment.

> "In response to these findings, CBP is in the process of developing and implementing a risk-based framework to mitigate risk by using statistical models to identify risk factors associated with importers at greater risk for AD/CV duty nonpayment. As part of the framework, CBP has also analyzed and tested bonding options that incorporate the risk factors identified in the models and is planning to require importers identified as being at greater risk for AD/CV duty nonpayment to purchase additional security," the most recent GAO report noted.

In addition, "Commerce has made changes to its quality assurance processes to improve the accuracy of its AD/CV duty rates, but continues to have calculation errors that require amended duty rate determinations, which the agency attributes to historically high workloads, loss of experienced staff, and little increase in overall staff levels," the report said.

* * * Briefs * * *

<u>TRADE FIGURES</u>: Merchandise exports in September dropped 2.8% from year ago to $136.8 billion, Commerce reported Nov. 5. Services exports gained 0.22% to $69.2 billion from September 2018. Goods imports dropped 4.3% from September 2018 to $208.5 billion, as services imports jumped 4.3% to $49.9 billion.

<u>FILE CABINETS</u>: In 5-0 final vote Nov. 8, ITC found U.S. industry is materially injured by dumped and subsidized imports of vertical metal file cabinets from China.

<u>GLASS CONTAINERS</u>: In 5-0 preliminary vote Nov. 8, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of glass containers from China.

<u>ANTIBOYCOTT</u>: Patterson Pump Company received BIS warning letter Oct. 9 for failing to report receipt of request to engage in restrictive trade practice or boycott on three occasions from October 2014 through June 2015. Letters of credit regarding sales to Qatar requested "certificate... from the shipping co./owner/agent/captain of the carrying vessel... confirming that it is permitted to enter Arab ports."

<u>SUDAN</u>: Apollo Aviation Group, LLC (now dba Carlyle Aviation Partners Ltd.) agreed Nov. 7 to pay OFAC $210,600 civil penalty to settle 12 violations of Sudan sanctions from July 2013 through March 2015. Apollo allegedly leased three aircraft engines to entity incorporated in UAE, which then subleased engines to Ukrainian airline, which then installed engines on aircraft wet leased to Sudan Airways (Sudan Air), agency noted. At time, Sudan Air was on OFAC's SDN List, but was removed in October 2017. Apollo voluntarily self-disclosed apparent violations.

<u>NICARAGUA</u>: OFAC Nov. 7 designated three Nicaraguan government officials who "have had a role in directing entities engaged in human rights abuses, election fraud, and corruption," agency said. Officials included deputy director general of Nicaraguan National Police (NNP), president of Nicaraguan Supreme Electoral Council (CSE), and director of Nicaraguan Social Security Institute

(INSS). OFAC in September published framework of Nicaragua Sanctions Regulations to implement November 2018 Executive Order 13851 (see **WTTL**, Sept. 9, page 8).

FCPA: Lawrence Hoskins, former Alstom Power senior VP in Asia, was convicted Nov. 8 after two-week trial in New Haven, Conn., U.S. District Court on charges of violating FCPA for his role in multi-company scheme to bribe Indonesian officials to secure power contracts. Sentencing is set for Jan. 31, 2020. Alstom executive Frederic Pierucci was sentenced in September 2017 to 30 months in prison less time served for related charges (see **WTTL**, Oct. 2, 2017, page 6). David Rothschild, former regional sales VP at Connecticut subsidiary, pleaded guilty in November 2012 and awaits sentencing. GE completed acquisition of Alstom's power and grid businesses in November 2015 just before company was formally sentenced for violating FCPA and agreed to pay previously announced record $772,290,000 fine.

EXPORT ENFORCEMENT: Four individuals, including two Chinese nationals, active-duty U.S. Navy officer and his wife, were indicted Oct. 31 in Jacksonville, Fla., U.S. District Court on charges of conspiracy to unlawfully smuggle military-style inflatable boats, with Evinrude MFE military outboard motors, to China from September 2018 through October 2019. Defendants were arrested on Oct. 17 and are currently in custody. All four were charged with conspiring to submit false export information and to fraudulently attempt to export articles from U.S. In addition, three of four were charged with causing submission of false and misleading information into Automated Export System.

IRAN: On 40th anniversary of 1979 hostage-taking, OFAC Nov. 4 designated Iran's Armed Forces General Staff and nine appointees of Ali Khamenei, country's Supreme Leader, including chief of staff, senior advisor and head of Iran's Judiciary. "Action seeks to block funds from flowing to a shadow network of Ali Khamenei's military and foreign affairs advisors who have for decades oppressed the Iranian people, exported terrorism, and advanced destabilizing policies around the world," agency said. OFAC in July designated Iranian Foreign Minister Mohammad Javad Zarif for acting on behalf of Khamenei (see **WTTL**, Aug. 5, page 7).

VENEZUELA: OFAC Nov. 5 issued updated General License (GL) 34A, which authorizes transactions with certain Venezuelan government individuals, to add exception for "current employees and contractors of the Government of Venezuela who provide health or education services in Venezuela, including at hospitals, schools, and universities." At same time, agency issued GL 35, which "authorizes U.S. persons to pay taxes, fees, and import duties to the Government of Venezuela, and to purchase or receive permits, licenses, registrations, certifications, and public utility services from the Government of Venezuela, so long as these transactions are necessary and ordinarily incident to such persons' day-to-day operations," OFAC said in FAQ.

IMPORT ENFORCEMENT: Security equipment company Aventura Technologies in Commack, N.Y., and seven current and former employees, including managing director and CEO, were charged Nov. 7 in Brooklyn U.S. District Court with importing networked security products from Chinese manufacturers with known cybersecurity vulnerabilities from 2006 through 2019. Defendants then allegedly resold items, including surveillance cameras, automated turnstiles and related equipment, to U.S. military and other government installations claiming that products were American-made. In fact, Aventura does not manufacture anything in U.S., Justice said.