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BIS Tightens Cuba Export Rules

In what could be a major policy change, Bureau of Industry and Security (BIS) Oct. 21 took another step toward tightening exports to Cuba. Perhaps most importantly the agency establishes a general 10% de minimis level for Cuba and a licensing policy of denial for aircraft leases to Cuban state-owned airlines.

> Just a month ago, Treasury's Office of Foreign Assets Control (OFAC) tightened its Cuba regulations, capping family remittances and removing the authorization for funds transfers originating and terminating outside the U.S., which are commonly known as "U-turn" transactions (see **WTTL**, Sept. 9, page 1).

In the latest Federal Register notice, the agency also amends License Exception Aircraft, Vessels and Spacecraft (AVS) to "clarify that aircraft and vessels are not eligible for the license exception if they are leased to or chartered by a national of Cuba or a State Sponsor of Terrorism." Finally, the rule revises License Exception Support for the Cuban People (SCP) to "make the Cuban government and communist party ineligible for certain donations, removes an authorization for promotional items that generally benefits the Cuban government, and clarifies the scope of telecommunications items that the Cuban government may receive without a license," the agency said.

"The Cuban government has generated revenue or otherwise benefited from certain exports and reexports to Cuba. Consequently, BIS is amending the EAR to further restrict the Cuban government's access to items subject to the EAR, thereby supporting the Administration's policy to hold the Cuban regime accountable for its malign activities at home and abroad," the notice said.

Turkish Bank Faces Charges of Evading Iran Sanctions

Just as sanctions against Turkey were imposed then withdrawn, Turkish state-owned bank Türkiye Halk Bankasi A.S., aka Halkbank, was indicted Oct. 15 in Manhattan U.S.

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District Court on charges related to the bank's participation in a multibillion-dollar scheme to evade U.S. sanctions on Iran by conducting international financial transactions on behalf of the Iranian government and other blocked entities.

Former Halkbank deputy general manager Mehmet Hakan Atilla was sentenced in May 2018 in the same court to 32 months in prison for his role in the scheme (see **WTTL**, May 21, 2018, page 9). A jury convicted Atilla after a four-week trial.

> "Halkbank and its officers, agents, and co-conspirators directly and indirectly used money service businesses and front companies in Iran, Turkey, the United Arab Emirates, and elsewhere to violate and to evade and avoid prohibitions against Iran's access to the U.S. financial system, restrictions on the use of proceeds of Iranian oil and gas sales, and restrictions on the supply of gold to the Government of Iran and to Iranian entities and persons," the indictment noted.

"Halkbank knowingly facilitated the scheme, participated in the design of fraudulent transactions intended to deceive U.S. regulators and foreign banks, and lied to U.S. regulators about Halkbank's involvement," it added.

"The proceeds of Iran's sale of oil and gas to Turkey's national oil company and gas company, among others, were deposited at Halkbank, in accounts in the names of the Central Bank of Iran, the National Iranian Oil Company (NIOC), and the National Iranian Gas Company," the indictment said.

"Because of U.S. sanctions against Iran and the anti-money laundering policies of U.S. banks, it was difficult for Iran to access these funds in order to transfer them back to Iran or to use them for international financial transfers for the benefit of Iranian government agencies and banks," it added.

Vice President Pence addressed the issue during a press conference in Turkey Oct. 17. In response to a question about whether the Turkish government brought up the issue of the bank charges, he said, "Not in the context of these negotiations. I think when we had concluded the negotiations, I know the topic was raised. And we informed them that that was a matter for the Southern District of New York and the Justice Department."

USTR Imposes Duties on European Cheese, Wine, Whiskey

Formally blessed by World Trade Organization (WTO) members, the U.S. Oct. 18 imposed import duties on European Union (EU) products to counteract EU subsidies for Airbus after WTO members agreed to authorize the U.S. countermeasures at a Dispute Settlement Body (DSB) meeting four days before. The WTO is still considering a case against similar subsidies on Boeing.

After the WTO arbitrator approved the measures Oct. 2, the U.S. issued its list of products that will be subject to the duties (see **WTTL**, Oct. 7, page 1). Targeted products include:

new airplanes and other civil aircraft, single-malt (or straight) Irish and Scotch Whiskies and sweaters; coffee, tools and books; cheese and olive oil; liqueurs and cordials; olives and wine; pork and cherries.

French Finance Minister Bruno LeMaire met with the U.S. Trade Representative (USTR) Robert Lightizer Oct. 18. “To single out our winemakers is an aggressive act. The U.S. must look to negotiate, it's the path of wisdom. If they do not take that path, Europeans are ready to retaliate with heavy sanctions within the framework of the WTO,” he told reporters before the meeting.

> After the meeting, Le Maire tweeted, “I regret the American sanctions that are a political and economic mistake. I called for the opening of negotiations with the European Commission to find an agreement as soon as possible.”

Despite the fact that the U.S. wins many cases at the WTO, the president in remarks before a meeting with Italian President Sergio Mattarella at the White House Oct. 16 took credit for the concessions allowed by the organization’s members. “I think the WTO award has been testament to a lot of good work by the Trump administration. We never won with the WTO, or essentially never won. Very seldom did we win. And now we’re winning a lot. We’re winning a lot because they know if we’re not treated fairly, we’re leaving. Because we were a piggybank that every other country was robbing,” he said.

Three days before the tariffs went into effect, dozens of industry groups and individual companies asked the USTR to “take appropriate technical steps to minimize the impact of the tariffs on American buyers of affected products,” the groups wrote in a letter to Lighthizer Oct. 15. These technical steps include a request that all goods exported from Europe Oct. 2 or earlier be exempt from tariffs, saying that had been done with China. “This was an appropriate technical accommodation. We ask for its use again in this case,” they wrote.

Details on China Trade “Deal” Still Sketchy

One week after President Trump boasted he had achieved what no other U.S. president was able to secure - a trade agreement with China - his administration has had to work overtime to convince Americans and the world of the deal’s veracity. Trump is combatting the boomerang effect of what he has perfected as a slur or vulgar epitaph: “fake news.”

Reporters both in Washington and in Beijing worked overtime to verify what exactly was agreed upon at the end of U.S.-China trade talks Oct. 11 to justify the suspension of a proposed tariff increase (see **WTTL**, Oct. 14, page 1).

The first sign that things were not going well for the administration was Oct. 16 when Trump, while hosting the Italian president at the White House, took pains to put the rumors to rest. “There was some misreporting, which does not — frankly, I’m not at all surprised — but there’s been some misreporting that China will start purchasing when the deal is signed. The deal is being papered right now," Trump tried to reassure a skeptical audience. And the president then doubled down, "But there have been some reports that China is not buying until the deal is signed. No, China has started buying already from the farmers. It'll be anywhere from $40 [billion] to $50 billion, which is far more than anybody thought or expected," Trump added, clearly frustrated.

At two press conferences Oct.14 and 17, Chinese reporters peppered Foreign Ministry Spokesperson Geng Shuang with questions. Several times reporters asked variations of: "The U.S. says China agrees to buy 50 billion dollars' worth of U.S. agricultural goods annually. I wonder if China is confident that this phase one agreement will last?"

> Geng simply repeated the formal Chinese Ministry of Commerce (MOFCOM) statement the same day. "Under the guidance of the important consensus of the leaders of the two countries, sincere, efficient and constructive discussions on economic and trade issues of both sides' concerns were conducted," the MOFCOM statement said.

"The two parties gained substantive progress on agriculture, intellectual property, exchange rate and financial services, expanding trade cooperation, technology transfer and disputes settlement. The two parties also discussed the follow-up arrangement of consultations and agreed to make joint efforts to achieve the final agreement," it added.

None of the Chinese officials mentioned the words "phase one, two or three." Nor did they discuss a specific timeline for signing the agreement when the two presidents meet in Chile at the APEC summit Nov. 16-17. There seem to be some confusion on when both presidents would sign a full or partial agreement. Treasury Secretary Mnuchin had said at the APEC summit; Trump said before.

There has been no mention by both sides on China's Huawei and on Trump's Dec. 15 threat of a 10% tariff on $156 billion of Chinese imports. Both USTR Robert Lighthizer and Mnuchin, Trump's point persons in the negotiations, are tightening loose ends with their counterparts in Beijing by phone. They are expected to resolve issues up until the Chile meeting, including one such major discussion schedule for the week of Oct. 21.

Commerce Needs to Balance Trade Enforcement Resources, IG Says

Two of Commerce's top management and performance challenges in fiscal year (FY) 2020 are related to trade and enforcement promotion and involve BIS and the International Trade Administration (ITA) resources, according to the department Inspector General's report (OIG-20-001) published Oct. 16.

These challenges are: refining existing processes for adjudicating Section 232 exclusion requests to ensure requests for existing and future products are processed objectively and timely; and ensuring processes and staff capacity to address new covered transactions subject to foreign investment reviews.

As of Sept. 22, the department had received more than 128,000 Section 232 exclusion requests and had made determinations on more than 75,000, the IG report noted. "With the current administration committed to using this authority to promote fair trade, both BIS and ITA face challenges ensuring that resources are available, and processes are in place, to facilitate these comprehensive, time-sensitive evaluations," it added.

The report cited two reasons for these challenges. One, "the impending expiration of approved requests, which are generally valid for one year or until the entire amount of the excluded order has been imported, will likely lead to requests for renewals." In addition, "there will possibly be new products subject to exclusion requests—namely automobiles and their parts, as well as titanium sponges—if tariffs are levied on those imports. This may require additional personnel to process an increasing number of requests, as well as develop knowledge of these new products through trainings and other assistance.

Another challenge will be the expanded number of covered transactions that the Committee on Foreign Investment in the U.S. (CFIUS) will need to review under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (see **WTTL**, Sept. 23, page 1). BIS predicts that without additional resources, the number of reviews per analyst will nearly quadruple from 32 to 125, the report noted. "Ensuring that ITA and BIS staff are capable of performing reviews of these new covered transactions may require additional training and capacity building," it added.

CAFC Sends Another Steel Nail Dispute Back to Commerce

In another antidumping dispute involving Mid Continent Steel & Wire and steel nail products, the Court of Appeals for the Federal Circuit (CAFC) Oct. 17 affirmed a lower trade court's judgment in part and vacated and remanded the decision to secure further explanation from Commerce about the department's "refusal to consider the effect of subsidies on whether the information it selected was accurate for the relevant statutory purpose."

> The CAFC Oct. 3 in a case involving the same U.S. company affirmed the lower trade court's judgment in part and vacated and remanded the decision "upholding Commerce's choice of a simple averaging in calculating the pooled variance" (see **WTTL**, Oct. 7, page 6).

In the latest case, "Oman Fasteners (OF) challenges several aspects of Commerce's calculation of constructed value: Commerce's initial choice of method; Commerce's selection of certain information as an input into the calculation required by the chosen method; and Commerce's conclusion that it could not calculate a 'cap' limiting the profit component of the constructed value," Circuit Judge Richard Taranto wrote for the three-judge panel.

"We do not prescribe an ultimate result. Rather, we require that Commerce reconsider an important aspect of its determination. Whatever result it reaches upon such reconsideration, it must articulate an explanation of why its result is a reasonable one, given relevant statutory duties, including the broad duty to strive for accuracy. We remand to give Commerce an opportunity to conduct this analysis and provide this explanation," Taranto added.

IMF, World Bank Urge Leaders to Strengthen Trade

The heads of both the International Monetary Fund (IMF) and World Bank took the opportunity of their annual meetings Oct. 17 to call on world leaders, including President Trump and Chinese President Xi Jinping, to work towards a reformed trade system, a better world economy and a less violent world.

World Bank Group President David Malpass said at the opening press conference that there is an "urgency" with which the world, both rich and poor, needs to act because of the "challenges facing development." A huge part of the problem is that "global growth is slowing, investment is sluggish, manufacturing activity is soft, and trade is weakening. The challenges of climate change and fragility are making poor countries more vulnerable," he added.

> IMF Managing Director Kristalina Georgieva argued at a separate press conference the same day that while she is encouraged that both the U.S. and China, the two largest economies in the world, have temporarily ended their trade assault, which has damaged world growth, it is now time to "make progress in moving from a trade truce to a trade peace."

Tariffs between China and the U.S. has been a blow to world economic growth, she argued. "We came with a fairly dire projection of 0.8% by 2020, shaved from the world economy should these tariffs continue. This is an equivalent of $700 billion," the IMF head cautioned. In a passionate plea to world leaders, she said, "We need to go forward to a system that is enhanced, and it is enforced so we can see trade to return to its role of an engine of the world economy," Georgieva argued.

Turning her attention to what Brexit would mean for the United Kingdom (UK), the European Union (EU) and the world economy, the IMF chief said, "The IMF has done quite extensive work on Brexit, on the scenarios of exiting with a deal and exiting without a deal, and the difference is quite dramatic."

"Exiting without a deal could cost the UK economy 3.5% or more, up to 5% of lost GDP, and it would cost the EU up to half a percentage point loss of GDP. That is quite significant. We also have done some work on what the implications of are exiting with a deal. There are still implications for the UK economy of that, significantly more modest, in the order of 2%, with the caveat that a lot of that impact has already been absorbed because the anticipation of the UK leaving the EU has been built over a three-year period," Georgieva said.

* * * Briefs * * *

EXPORT ENFORCEMENT: Chinese national Tao Li was sentenced Oct. 16 in Phoenix U.S. District Court to 40 months in prison, followed by three years' supervised release, for conspiring to export military- and space-grade technology, including TriQuint radiation-hardened power amplifiers and Intersil supervisory circuits, to China between December 2016 and January 2018 without required licenses. Li was arrested in September 2018 at Los Angeles International Airport and pleaded guilty in April.

FCPA: Miami financial advisor Frank Roberto Chatburn Ripalda (Chatburn), dual U.S. and Ecuadorian citizen, pleaded guilty Oct. 11 in Miami U.S. District Court to conspiracy to commit money laundering related to scheme to pay bribes to officials of Ecuador's state-owned and state-controlled oil company, PetroEcuador. Between 2013 and 2015, Chatburn conspired with foreign official to "conduct financial transactions that were designed to conceal bribe payments" from Brazilian construction conglomerate Odebrecht S.A. Odebrecht and Brazilian petrochemical company Braskem S.A. agreed in December 2016 to pay combined penalty of $3.5 billion to settle FCPA charges with U.S., Brazilian and Swiss authorities related to schemes to pay hundreds of millions of dollars in bribes to government officials in 12 countries (see **WTTL**, Jan. 2, 2017, page 1).

CIT: President Oct. 17 nominated Stephen Alexander Vaden to be CIT judge. Vaden currently serves as Agriculture general counsel. Before joining department in 2017, Vaden was appellate litigator in private practice.

EX-IM BANK: Month after announcing intent, President Oct. 15 formally nominated Peter Coniglio to be Ex-Im Bank inspector general. He has worked in General Services Administration (GSA) Office of Inspector General (OIG) since 2006.

DDTC: Neal Kringel Oct. 15 was named DDTC director of management staff, replacing former Chief of Staff Tony Dearth who left in July (see **WTTL**, July 22, page 5). Kringel previously was acting deputy assistant secretary in State's Conflict and Stabilization Operations (CSO) bureau. Prior to that, he served as director of CSO's Africa office.

VENEZUELA: OFAC Oct. 17 issued general license (GL) 13D, extending previous GL that authorized certain activities involving Nynas AB. Specifically, OFAC extended GL expiration date to April 14, 2020, from Oct. 25.