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Top Democratic Candidates Oppose USML Firearms Transfers

Two Democratic presidential candidates have gone on the record against transferring firearms from U.S. Munitions List (USML) categories I, II and III, including firearms, close assault weapons and combat shotguns, guns and armament, and ammunition and ordnance, to Bureau of Industry and Security (BIS) jurisdiction.

> Industry groups are turning on the "big guns" in support of the transfers (see **WTTL**, Aug. 19, page 1). In fact, after the ouster of former Acting BIS Under Secretary Nazak Nikakhtar, the agency is "hoping still to complete" the USML-CCL transfers, Karen Nies-Vogel told the agency's RAPTAC in September. "I don't have any dates for you," she added.

Most recently former Vice President Joe Biden released his gun violence policy Oct. 2. "Biden will ensure that the authority for firearms exports stays with the State Department, and if needed reverse a proposed rule by President Trump. This will ensure the State Department continues to block the code used to 3D print firearms from being made available on the Internet," he wrote, linking to a comment from gun safety group Giffords in response to a proposed rule on the subject in 2018.

Similarly, Sen. Elizabeth Warren (D-Ma.) included the transfers when she released a plan in August. "We will reverse the Trump administration's efforts to make it easier to export U.S.-manufactured weapons by transferring exports of semi-automatic firearms and ammunition from the State Department to the Commerce Department, and we will prevent the import of foreign-manufactured assault weapons into the United States," Warren wrote.

USTR to Impose Duties on European Cheese, Wine, Whiskey

Blessed by the World Trade Organization, the U.S. Oct. 2 issued its list of European Union (EU) products that will be subject to import duties to counteract EU subsidies for Airbus.

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Earlier that day, the WTO arbitrator allowed $7.5 billion annually in countermeasures. The tariffs will go into effect Oct. 18. Examples include a 10% tariff on new airplanes and other civil aircraft from France, Germany, Spain or the United Kingdom (UK), and 25% duties on: single-malt (or straight) Irish and Scotch Whiskies and sweaters from the UK; coffee, tools and books from Germany; cheese and olive oil from Germany, Spain or the UK; liqueurs and cordials from Germany, Ireland, Italy, Spain or the UK; olives and wine from France, Germany, Spain or the UK; and pork and cherries from other EU countries.

The U.S. had requested authorization to impose $10.56 billion annually in countermeasures, to which the EU objected but did not propose a lower figure (see WTTL, July 8, page 3). The arbitrator determined that the level of countermeasures commensurate with the degree and nature of adverse effects determined to exist would be the aggregated value of lost sales and impedance annualized in 2013 U.S. dollar terms.

> "These countermeasures may take the form of (a) suspension of tariff concessions and related obligations under the GATT 1994, and/or (b) suspension of horizontal or sectoral commitments and obligations contained in the United States' services schedule with regard to all services defined in the Services Sectoral Classification List, except for financial services," the WTO noted.

EU and U.S. officials and industry applauded the decision but urged the two partners to settle their differences quickly. "Both the EU and the U.S. have been found at fault by the WTO dispute settlement system for continuing to provide certain unlawful subsidies to their aircraft manufacturers," EU Trade Commissioner Cecilia Malmstrom said. "Our readiness to find a fair settlement remains unchanged. But if the U.S. decides to impose WTO authorized countermeasures, it will be pushing the EU into a situation where we will have no other option than do the same."

"Finally, after 15 years of litigation, the WTO has confirmed that the United States is entitled to impose countermeasures in response to the EU's illegal subsidies," U.S. Trade Representative (USTR) Robert Lighthizer said. "We expect to enter into negotiations with the European Union aimed at resolving this issue in a way that will benefit American workers."

"Today's WTO decision against Airbus' unfair subsidies is a victory for U.S. manufacturers and all who support true market competition," Sen. Maria Cantwell (D-Wash.) said. The EU and Airbus "now need to reach a comprehensive agreement with the United States to end trade-distorting subsidies and avoid these tariffs," Cantwell noted.

"Airbus will continue working with its U.S. partners, customers and suppliers, to address all potential consequences of such tariffs that would be a barrier against free trade and would have a negative impact on not only the U.S. airlines but also U.S. jobs, suppliers, and air travelers," Airbus CEO Guillaume Faury said in a statement. "Airbus is therefore hopeful that the U.S. and the EU will agree to find a negotiated solution before creating serious damage to the aviation industry as well as to trade relations and the global economy," he added.

The European Dairy Association (EDA) questioned the inclusion of European cheese on the retaliation list. "I cannot see any reason to make basically the U.S. cheese aficionados pay for the aircraft battle, since they would have to pay the higher prices for the dairy products from the EU member states involved in the Airbus project," EDA Secretary General Alexander Anton said in a statement.

U.S., China to Restart Trade Talks Amid Tumult

A screenwriter couldn't make this up even if she tried. Days before China and the U.S. are set to resume trade talks in Washington, President Trump Oct. 3 publicly implored his Chinese counterpart, President Xi to investigate former Vice President Joe Biden and his family for corruption, seeming to connect the two issues.

Trade talks are scheduled to resume with deputy-level discussions Oct. 7-8, followed by Chinese Vice Premier Liu He, U.S. Trade Representative Robert Lighthizer and Treasury Secretary Steven Mnuchin holding discussions Oct. 10-11. When talks ended in September, discussions were deadlocked. To push China back to the table, Trump imposed several tariffs set to come into effect October and November (see **WTTL**, Sept. 16, page 1).

> Responding to a question about the trade talks, Trump told reporters, "I have a lot of options on China. But if they don't do what we want, we have tremendous power." Then within the next few sentences, he said, "And, by the way, likewise, China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened with Ukraine."

"There are many other countries that they scammed, just like they scammed China and Ukraine," Trump said. "And that's probably why China has such a sweetheart [trade] deal that, for so many years, they've been ripping off our country," the president continued. The president said this out loud with cameras running, just days after the Democrats opened an impeachment inquiry into his interactions with the president of Ukraine involving the Bidens.

Beijing was reflexive it its response. "China will not interfere in the internal affairs of the U.S., and we trust that the American people will be able to sort out their own problems," China's Foreign Minister Wang Yi said, according to Chinese media.

By the next day, Trump was almost ambivalent about making a deal. "I view China as somebody we're trying to make a deal with; we have a very good chance of making a deal with. We've had good moments with China. We've had bad moments with China," he told reporters outside the White House.

"Right now, we're in a very important stage in terms of possibly making a deal. If we make it, it will be the biggest trade deal ever made — if we make it," Trump said. "What we're doing is we're negotiating a very tough deal. If the deal is not going to be 100% for us, then we're not going to make it," he added.

House Democrats Hopeful on USMCA Progress

It's almost a weekly mantra: Democrats and Republicans are closer to a deal on the U.S.-Mexico-Canada Agreement (USMCA). Yet in the midst of an impeachment inquiry, the partisan rhetoric inched even more heated, with Democrats highlighting progress, while Republican insist it's all for show.

For example, House Speaker Nancy Pelosi (D-Calif.) announced in her weekly press conference Oct. 2 that Democrats made a counteroffer to the administration's proposal a few days before. As in the past, enforcement appears to be the only issue preventing a deal. "Unless it hits home for our workers and our farmers in terms of enforceability, we can't be there yet. But we are on a path to yes," Pelosi said.

> To that end, a nine-member working group have been meeting with U.S. Trade Representative (USTR) Robert Lighthizer in an attempt to iron out ongoing Democratic concerns in four areas: enforcement, labor and environmental standards and drug pricing provisions (see **WTTL**, Aug. 5, page 5). It appears that both sides expect to iron their difference during the two-week congressional break.

Despite her optimism, the question remains whether the House can walk and chew gum at the same time -- passing legislation while pursuing the impeachment inquiry. "They have nothing to do with each other," Pelosi responded. "The president has said he wants this U.S.-Mexico-Canada trade agreement to go forward, and we are awaiting the language on enforceability. Does it mean he can't do that? That's really up to him," she added.

But no sooner had she uttered those words, the president pushed back on Twitter, seeming to imply that her offer was not realistic. "Nancy Pelosi just said that she is interested in lowering prescription drug prices & working on the desperately needed USMCA. She is incapable of working on either. It is just camouflage for trying to win an election through impeachment. The Do Nothing Democrats are stuck in mud!" Trump tweeted.

Senate Majority Leader Mitch McConnell (R-Ky.) and House Majority Leader Kevin McCarthy (R-Calif.) weighed in the mix a few days before Pelosi's press conference. In an op-ed Sept. 30, they wrote, "Under pressure from progressives to deny the country any successes during the Trump administration, Speaker Nancy Pelosi has tried to run out the clock on the USMCA."

"Leading House Democrats frequently claim to support the deal in the abstract but have spent months finding one excuse after another to delay passing it," they wrote. "Passing the USMCA would bring in 176,000 jobs and $68 billion. It should be an easy bipartisan victory," the lawmakers added.

But in a later television interview, McConnell seemed a little less sanguine. "I know the House has been on this impeachment addiction since the day the president was sworn in, but I hope they can turn their attention to something else. USMCA ought to be right at the top of the list, it is good for the American people," McConnell argued.

Agencies Find Difficulties in Assessing Sanctions Programs, GAO Says

U.S. agencies, particularly Treasury, State and Commerce, that administer dozens of existing sanction programs have a hard time assessing the effectiveness of those programs in achieving broader U.S. policy goals, the Government Accountability Office (GAO) said in a report (GAO-20-145) published Oct. 2.

Existing assessments "analyze the impacts of specific sanctions on a particular aspect of the sanction's target," the GAO report said. "However, these assessments do not analyze sanctions' overall effectiveness in achieving broader U.S. policy goals or objectives, such as whether the sanctions are advancing the national security and policy priorities of the United States," it added.

> "Agency officials cited the difficulty—or, in some cases, the impossibility—of identifying sanctions as the sole or most significant cause of a target's action relative to U.S. policy goals," the report noted. "For example, a sanctioned country may decide to cease certain behavior for any number of reasons that may be unrelated to the sanctions or other U.S. policy measures," it added.

Specifically, officials from Treasury's Office of Foreign Assets Control (OFAC) "also stated that behavioral change can be subtle, incremental, and lacking clear correlations with specific causes," the GAO noted. Other officials told GAO that "reliable data are sometimes lacking," the report said, adding that this "lack of reliable data on certain targets or countries can also make it difficult to assess the effectiveness of sanctions."

Treasury, State and Commerce officials also cited limited resources and shifting policy goals and objectives to explain why such assessments are difficult. "However, Treasury and State officials stated that sanctions policy is continuously evaluated informally by those implementing the sanctions, as new information comes in and as new targets are developed," the GAO said.

India Blocks First Request for Tariff Panel

At a meeting of the WTO Dispute Settlement Body (DSB) Sept. 30, India blocked the U.S. first request for the establishment of a panel to rule on India's decision to impose additional duties with on certain U.S. products. The Indian tariffs stem from the U.S. decision in 2018 to impose Section 232 duties on steel and aluminum imports, including those from India.

The U.S. in July requested WTO consultations over several tranches of tariffs India imposed on U.S. goods in response to U.S. policy, including the decision to remove country from the General System of Preferences (see **WTTL**, July 8, page 5).

"Several WTO Members are unilaterally retaliating against the United States for actions it has taken pursuant to Section 232 that, as national security actions, are fully justified," the U.S. said in a statement. "These members, including India, are pretending that the U.S. actions under Section 232 are so-called 'safeguards,' and further pretend that their unilateral, retaliatory duties constitute suspension of substantially equivalent concessions," it added.

For its part, India said it was "disappointed" with the U.S. decision to request a panel. The country said it believes that consultations held with the U.S. in August were constructive. "During these consultations, India proactively and in good faith, explained its measures," India noted.

CAFC Sends Steel Nail Dispute Back to Commerce

In an antidumping dispute involving steel nail products from Taiwan, the Court of Appeals for the Federal Circuit (CAFC) affirmed a 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."

In its finding, "Commerce relied on a method using the 'Cohen's d test' borrowed from statistics literature, which it had only recently adopted," Circuit Judge Richard Taranto wrote for the three-judge panel Oct. 3 in *Mid Continent Steel & Wire v. U.S.*

> The Taiwanese company (PT) challenged Commerce's use of a simple average, rather than a weighted average, to calculate the pooled variance used in the Cohen's d calculation. "On this issue, we agree with PT that Commerce's explanation is wanting," Taranto wrote. The court affirmed the Court of International Trade's (CIT) judgment on the domestic company's appeal, as well as most of the issues raised in PT's cross-appeal.

"On the record before us, we cannot conclude that Commerce's methodology was a reasonable exercise of its agency discretion in light of the statutory constraints and policies. We therefore vacate Commerce's determination and remand for further proceedings on this issue," he added.

"In so doing, we are not holding that Commerce cannot justify the choice it has made. What is needed is a more thorough consideration by Commerce of the issue than is given in the current record and, upon such consideration, a clear explanation of the choices that Commerce makes on the arguments and evidence presented to it," Taranto added.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in August dipped 0.2% from year ago to $138.6 billion, Commerce reported Oct. 4. Services exports gained 0.56% to $69.3 billion from August 2018. Goods imports dipped 1.1% from August 2018 to $213.0 billion, as services imports jumped 5.2% to $49.7 billion.

VENEZUELA: OFAC Sept. 30 issued two General Licenses (GLs) 3G and 9F extending authorization of transactions "related to, provision of financing for, and other dealings in certain bonds" and those "related to dealings in certain securities" until March 31, 2020.

EX-IM BANK: With just days to spare, Export-Import Bank (Ex-Im) got last-minute extension of its authorization, which was due to expire Sept. 30. Bank now has funding through Nov. 21, thanks to continuing resolution signed Sept. 27. "While it was critical to take action to avoid a shutdown, we cannot keep depending on continuing resolutions," said Aerospace Industries Association (AIA) President and CEO Eric Fanning said in statement after bill signing.

CIT: President Oct. 2 announced intent to nominate 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.

FCPA: Miami businessman Luis Alberto Chacin Haddad was sentenced Sept. 25 in Miami U.S. District Court to 51 months in prison for conspiracy to violate Foreign Corrupt Practices Act (FCPA). Chacin and codefendant Jesus Ramon Veroes of Venezuela pleaded guilty in June (see **WTTL**, July 1, page 9). Three days after pleas, former Venezuelan government minister and former officer at Venezuela's state-owned electricity company, Corporación Eléctrica Nacional, S.A. (Corpoelec), were indicted in Miami court on charges of laundering proceeds of FCPA violations. According to Justice sentencing memo, Luis Alfredo Motta Dominguez and Eustiquio Jose Lugo Gomez awarded three Florida-based companies more than $60 million in procurement contracts with Corpoelec in exchange for bribes paid to them or for their benefit. Veroes' sentencing is set for Oct. 29.

CUBA SANCTIONS: General Electric Company (GE) of Boston, on behalf of three GE subsidiaries -- Getsco Technical Services Inc., Bentley Nevada, and GE Betz -- agreed Oct. 1 to pay OFAC $2.7 million to settle 289 alleged violations of Cuba sanctions between December 2010 and February 2014. GE companies accepted payment from Cobalt Refinery Company, entity on SDN List since June 1995, for goods and services provided to Canadian GE customer. GE voluntarily disclosed apparent violations. "Additionally, goods and services the GE Companies provided to its Canadian customer were, in turn, used to supply utility services and other benefits to Cobalt, which is co-located with GE's Canadian customer," OFAC said.

FORCED LABOR: CBP issued five withhold release orders Sept. 30 against imports produced or mined with forced labor. Blocked products include: garments produced by Hetian Taida Apparel Co., Ltd. in China; disposable rubber gloves produced in Malaysia by WRP Asia Pacific Sdn. Bhd.; gold mined in artisanal small mines in eastern Democratic Republic of Congo (DRC); rough diamonds from Marange Diamond Fields in Zimbabwe; and bone black manufactured in Brazil by Bonechar Carvão Ativado Do Brasil Ltda.