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Administration Tightens Cuba Sanctions

In just another step to reverse Obama administration policies, Treasury's Office of Foreign Assets Control (OFAC) Sept. 6 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.

> The changes are scheduled to be published in the Federal Register Sept. 9 and will take effect Oct. 9. In June, the administration's move to block certain group travel and cruise ships' passage to Cuba came as a surprise and sent travel agents scrambling (see **WTTL**, June 10, page 1).

OFAC also authorized "such remittances to support the operation of economic activity in the non-state sector by self-employed individuals," in light of the administration's policy to "encourage the growth of the Cuban private sector independent of government control," OFAC said in a fact sheet. Under the new rules, U.S. citizens can send up to $1,000 per quarter to one Cuban national.

"Through these regulatory amendments, Treasury is denying Cuba access to hard currency, and we are curbing the Cuban government's bad behavior while continuing to support the long-suffering people of Cuba," said Treasury Secretary Steven Mnuchin.

"More tough news for everyday Cubans. The Trump administration just drastically reduced the amount of $ Cuban-Americans send to their families on the island. Hurting Americans ability to directly support their families in Cuba is needlessly cruel and helps no one," Engage Cuba, a coalition of private companies and organizations working to end the embargo, tweeted.

After New Tariffs, U.S., China to Keep Talking

During a slow dance, only one party should lead, the other follow; otherwise, someone will step on the other's toes. In the case of U.S.-China trade relations, several toes have been

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broken, but the dance continues. The two sides Sept. 5 agreed to try again, to hold another round of high-level economic and trade talks in Washington in early October. "The working layer will conduct serious consultations in mid-September to fully prepare for the substantive progress of the high-level consultations. The two sides agreed that they should work together and take practical actions to create favorable conditions for consultations," the Chinese Ministry of Commerce posted on its website.

The day before, China requested World Trade Organization (WTO) dispute consultations with the U.S. over the additional tariffs on Chinese imports the U.S. imposed Sept. 1 (see **WTTL**, Sept. 2, page 7). China claims the duties are inconsistent with the WTO commitments "in that they apply solely to products of Chinese origin and exceed the United States' bound duty rates," the WTO said. This is the third complaint filed by China over U.S. tariffs.

Juniper Networks Settles SEC Bribery Charges

Sunnyvale, Calif., networking firm Juniper Networks agreed Aug. 29 to pay $11.7 million to settle Securities and Exchange Commission (SEC) charges of violating the Foreign Corrupt Practices Act (FCPA) through its subsidiaries in Russia and China.

From 2008 through 2013, employees of the Russian office of Juniper's subsidiary JNN Development Corp. (JNN) secretly agreed with third-party channel partners to "increase the incremental discount on sales made to customers through those channel partners without passing those increased discounts on to customers," the SEC order noted.

> "Instead, the channel partners diverted the additional discounts into a fund held by the channel partners for travel and marketing expenses," it added. "The proceeds from the common funds were in part used by local JNN employees and channel partners to fund trips for end-user customer employees, including some trips that were excessive, inconsistent with Juniper policy, predominantly leisure in nature, and had little to no legitimate business purpose."

In addition, from 2009 through 2013, employees of Juniper's Chinese subsidiaries "falsified trip and meeting agendas for customer events that understated the true amount of entertainment involved on the trips. The sales employees submitted these falsified and misleading trip agendas to Juniper's Legal Department to obtain event approval," the SEC said.

Under the settlement, Juniper agreed to pay $4 million in disgorgement, $1.2 million in prejudgment interest, and a $6.5 million civil penalty. The SEC said it took into consideration Juniper's cooperation and remediation in determining whether to accept the company's offer of settlement.

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"In connection with the settlement, the SEC highlighted Juniper's extensive cooperation with its investigation and its strengthened Integrity & Compliance Program. During the pendency of the investigation, Juniper took a number of steps to substantially strengthen and invest in our compliance program," a Juniper spokesperson wrote to WTTL via email. Justice closed its investigation without taking any action, the company noted.

OFAC Designates Iranian Shipping Network

Despite the best efforts of U.S. allies, Treasury's Office of Foreign Assets Control (OFAC) Sept. 4 stepped up sanctions on Iran. The agency designated a large Iranian shipping network of 16 entities, 10 individuals, including Senior Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) official and former Iranian Petroleum Minister Rostam Qasemi, and 11 Iranian vessels.

Not to be outdone, the administration a day earlier sanctioned Iran's space agency for advancing Iran's ballistic missile programs. OFAC designated the Iran Space Agency and two of its research institutes under Executive Order (EO) 13382 for engaging in proliferation-sensitive activities. This is the first time the U.S. designated Iran's civilian space agency.

> The U.S. "will not allow Iran to use its space launch program as cover to advance its ballistic missile programs. Iran's August 29 attempt to launch a space launch vehicle underscores the urgency of the threat. These designations should serve as a warning to the international scientific community that collaborating with Iran's space program could contribute to Tehran's ability to develop a nuclear weapon delivery system," State said in a statement.

Two days later, Iran announced it would no longer comply with limits on its uranium enrichment placed by the 2015 Joint Comprehensive Plan of Action (JCPOA), that U.S. withdrew from a year ago. French President Emmanuel Macron reportedly suggested a plan that would provide Tehran with a line of credit to the tune of $15 billion in exchange for Iran's full compliance with the JCPOA.

"Iran announced it will violate all limits on nuclear research and development. The fact that Iran retains massive uranium enrichment capacity reveals a core weakness of the Iran deal," Secretary of State Mike Pompeo tweeted. "We are confident that the [United Kingdom] UK, France, and Germany - indeed, all civilized nations - will take decisive actions to stop Iran's nuclear extortion," he added.

French officials responded quickly. "If Iran is progressively getting out of the JCPOA, it's because the U.S. have denounced the agreement they had negotiated and imposed sanctions in breach of it," Gerard Araud, former French ambassador to the U.S., tweeted.

Separately, OFAC Sept. 5 updated one frequently asked question (FAQ) and published new FAQs regarding bunkering of non-Iranian and Iranian vessels carrying goods to or from Iran. A week earlier, the agency designated Adrian Darya 1, an oil tanker transporting 2.1 million barrels of Iranian crude oil ultimately benefitting IRGC-QF, and its captain Akhilesh Kumar.

"If a non-Iranian vessel is transporting sanctionable goods to or from Iran (including, but not limited to, petroleum, petroleum products, or petrochemical products from Iran; goods used in connection with the automotive sector of Iran; or iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran), bunkering of that non-Iranian vessel in a country other than Iran — and related payments for these bunkering services — risk being subject to sanctions unless an applicable waiver or exception applies," one FAQ noted.

NAFTA Panel Returns Softwood Lumber Dispute to ITC

As Congress returns to Washington to debate the updated U.S. -Mexico-Canada (USMCA) trade agreement, the dispute settlement provisions in the "old" NAFTA are still giving U.S. regulators heartburn. A NAFTA Chapter 19 binational panel Sept. 5 remanded the decision on U.S. import duties on Canadian softwood lumber back to the International Trade Commission (ITC) for reconsideration.

> "The Commission analysis did not adequately establish the context required for its later injury analysis … to consider the relevant economic factors 'within the context of the business cycle and conditions of competition that are distinctive to the affected industry,'" the panel said. Canada requested the NAFTA panel review in November 2017 (see **WTTL**, Dec. 4, 2017, page 8).

"The failure to do so renders the Commission's determinations not supported by substantial evidence and in accordance with law," it added. The panel directed the ITC to "reconsider the record evidence in relation to the business cycle(s) distinctive to the U.S. lumber industry, and to apply its findings in its analysis of volume, price effects, impact, and causation," the decision said.

Canadian Foreign Minister Chrystia Freeland applauded the decision. "This decision supports what Canada has been saying all along: U.S. duties on Canadian softwood lumber are unfair and unwarranted. The panel's decision is an important step in the right direction in having these duties on Canadian exports removed and the sums collected reimbursed," she said.

BIS Advises Stricter Due Diligence for Pakistan Exports

Exporters to Pakistan should "conduct additional due diligence to identify and resolve red flags associated with transactions potentially destined to nuclear- or missile-related activities," the Bureau of Industry and Security (BIS) advised in new guidance posted on its website Sept. 3.

Recent BIS enforcement "investigations have revealed schemes to export items subject to the EAR to nuclear- and missile-related entities in Pakistan listed on the Entity List without the required licenses," it said.

BIS specifically advised exporters to "determine the full scope of entity listings." Like other country destinations, the agency reminded exporters to thoroughly screen all exports to Pakistan against the Entity List. "It has come to BIS's attention that in some cases, automated screening may not be sufficient to identify entities listed on the Entity List and manual review may be necessary," it said.

> "For example, the Entity List entry for the Pakistan Atomic Energy Commission (PAEC) extends to all nuclear reactors, including power plants. Although they are not specifically identified on the Entity List, PAEC operates two nuclear power plants that are subject to Entity List licensing requirements," BIS said. These are the Karachi and Chashma nuclear power plants.

The agency also identified specific EAR99 items, or some listed on the Commerce Control List (CCL) but controlled only for Antiterrorism reasons, which have been sought by nuclear- or missile (including UAV)-related entities, including certain: connectors, electromechanical relays, gas measurement equipment, global positioning satellite (GPS) systems, power supplies, reflectometers and vacuum pumps.

Most recently, BIS in May added 12 entities to its Entity List in China, Hong Kong, Pakistan and United Arab Emirates (UAE) (see **WTTL**, May 20, page 6). Pakistani entity Impex Trade & Services "has been involved in proliferation to unsafeguarded nuclear activities," BIS noted at the time.

EU Trade Chief Fact Checks U.S. Trade Policy

Dispensing with Pinocchios and fake news, EU Trade Commissioner Cecilia Malmstrom took on U.S. trade policy, without ever mentioning the U.S. president by name. In a speech Sept. 4 under the heading "Truths About Trade," Malmstrom debunked trade myths, including tariffs, trade deficits, environmental protection and WTO reform.

The first myth is "that tariffs target foreign businesses – when they in fact target the consumer. Tariffs are the tool of narrow interests seeking to protect industries at the expense of broader society. The second is that if we make a product at home, we save money, strengthen the economy and create jobs. This is a tempting argument, but it is not true," she said.

"Tariffs are not the answer to a transforming global economy – they are rarely the answer to anything – they are the equivalent of shooting yourself in the foot to hurt the shoe salesman," Malmstrom added. She also took on the Trump administration's obsession with trade deficits. "Another big mistake people make these days is confusing a trade balance with a bank balance. They misread 'exports' to mean profits and 'imports' to mean losses," Malmstrom said. "In fact, a surplus in trade can be a bad sign. It is a sign of weak domestic demand – this can make countries sensitive to changes in the global economy. Balancing the books on trade is not like a household budget," she added.

The trade commissioner also addressed the current U.S. blocking of appointing appellate judges (see **WTTL**, June 3, page 5). "The end of the WTO would be the end of predictability in international trade. Businesses could no longer rely on exports as they once did – trade would become chaotic, unstable. Our trade policy, our economies and global value chains at large would reconfigure – and not always in the most efficient or desirable ways," Malmstrom said.

> To this end, the EU the same day adopted a groundwork that would enable the Commission to enter into interim appeal arbitration arrangements with third countries based on existing WTO rules, similar to what the EU and Canada agreed to in July. "Such interim agreements would apply to disputes between the EU and the trade partner in the event that the Appellate Body is unable to hear appeals and will remain in effect until the Appellate Body is operational," the EU said in a announcing the mandate.

On saving the planet, the EU has inserted environmental provisions into all of its trade agreements, including recent agreement with Mercosur. "Each of our comprehensive agreements has a chapter on Trade and Sustainable Development. Crucially, this helps us lock in commitments to implement international climate conventions, such as the Paris agreement," Malmstrom said.

The Mercosur deal "binds these four countries together with the EU at a time when the U.S. has left the Paris accord and is encouraging others to do so," she said. The president withdrew from the climate deal in June 2017. "A critical part of fighting climate change is improving local production processes. Trade and investment liberalization can provide firms with incentives to adopt the high standards from elsewhere. Changes needed to meet these requirements, in turn, flow backwards along the supply chain," Malmstrom explained.

Huawei Accuses U.S. of Spying, Bullying

It wasn't enough that the administration blocked U.S. companies from doing business with Huawei. Now the Chinese telecom giant has accused the U.S. government of breaking into its Intranet and the FBI of coercing its employees to provide dirt on the company.

In a press release Sept. 2 addressing attacks against Huawei's U.S. subsidiary, the company listed its grievances, most notably accusing the U.S. government of "launching cyber-attacks to infiltrate Huawei's intranet and internal information systems; [and] sending FBI agents to the homes of Huawei employees and pressuring them to collect information on the company."

"Furthermore, it has been using every tool at its disposal – including both judicial and administrative powers, as well as a host of other unscrupulous means – to disrupt the normal business operations of Huawei and its partners, "the Chinese company argued.

The president told reporters the accusations were a "national security concern" during a briefing on Hurricane Dorian Sept. 4. "Huawei is a big concern of our military, of our intelligence agencies. And we are not doing business with Huawei. It'll stop almost completely in a very short period of time," he said. "Huawei has been not a player that we want to discuss, we want to talk about, right now. We're not going to be doing business with Huawei," he added.

> The company still faces the problem of operating system and apps. The Trump administration had put a crimp on that goal when it stopped U.S. companies, including Google whose operating system Huawei has been relying on, from doing business with Huawei. But in August Trump extended a narrow and temporary General License (GL) for an additional 90 days, expiring in November (see **WTTL**, Sept. 2, page 4).

Huawei says that what is most egregious is the Trump administration's attempt to get U.S. allies from doing business with the firm, like what it has done unsuccessfully in its trade war with China more generally. "For the past several months, the U.S. government has been leveraging its political and diplomatic influence, to lobby other governments to ban Huawei equipment," the company said. Among U.S. top allies, only Australia and Japan have taken its warning seriously; Germany, France and Ireland have declined.

Many experts believe that Huawei may be a bargaining chip in Trump's trade war quiver. It is probably why Sens. Marco Rubio (R-Fla.) and Ron Wyden (D-Ore.) have been quick to warn against such a move (see **WTTL**, July 1, page 7).

* * * Briefs * * *

<u>TRADE FIGURES</u>: Merchandise exports in July fell 1.3% from year ago to $138.2 billion, Commerce reported Sept. 4. Services exports gained 0.66% to $69.2 billion from July 2018. Goods imports dipped 1.05% from July 2018 to $211.8 billion, as services imports jumped 5.25% to $49.6 billion.

<u>EXPORT ENFORCEMENT</u>: Roger Sobrado of Marlton, N.J. was sentenced Sept. 4 in Camden U.S. District Court to 36 months in prison for providing non-conforming military equipment parts to DoD and illegally accessing technical information. Sobrado pleaded guilty in October 2018 to conspiracy to commit wire fraud, conspiracy to violate Arms Export Control Act (AECA) and income tax evasion. Sobrado's brother-in-law Oben Cabalceta pleaded guilty in April to related charges (see **WTTL**, April 29, page 6). Sentencing is set for Sept. 17.

<u>MORE EXPORT ENFORCEMENT</u>: Turkish citizen Resit Tavan, owner and president of Ramor Dis Ticaret, Ltd., was sentenced Aug. 29 in Milwaukee U.S. District Court to 27 months in prison for conspiracy to violate U.S. sanctions by exporting specialized marine equipment to Iran via Turkey between 2013 to 2015. Tavan pleaded guilty in April. He was charged in December 2017

(see **WTTL**, Dec. 18, 2017, page 6). Tavan, Ramor and company deputy manager Fulya Oguzturk allegedly arranged purchase and acquisition of marine products, including outboard engines, generators and propulsion systems, manufactured in Wisconsin for shipment to and use by Iranian navy. BIS in January 2017 added Oguzturk, Ramor and Tavan to Entity List for "their involvement in the procurement and/or retransfer of U.S.-origin items to Iran for use by the Iranian military," BIS noted. Oguzturk remains at large.

<u>STEEL PIPE</u>: In 3-0 "sunset" votes Sept. 5, ITC said revoking antidumping and countervailing duty orders on imports of circular welded carbon quality steel line pipe from China would renew injury to U.S. industry. Commissioners Randolph Stayin and Amy Karpel did not participate in these votes.

<u>TRADE PEOPLE</u>: Former DDTC policy official Robert Monjay joined law firm Akin Gump as senior counsel in its international trade practice in Washington, firm announced Sept. 4. Prior to DDTC, Monjay served as BIS policy officer from 2012 to 2014.

<u>MORE TRADE PEOPLE</u>: Current American Apparel & Footwear Association (AAFA) Executive VP Stephen Lamar will become association's president and CEO Jan. 1, 2020, replacing Rick Helfenbein, group announced Sept. 4. Helfenbein has been AAFA president since February 2016. Lamar also serves as board president of Washington International Trade Association.

<u>NICARAGUA</u>: OFAC Sept. 4 published framework of Nicaragua Sanctions Regulations to implement November 2018 Executive Order 13851. Agency intends to supplement regulations with "more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy," it said in Federal Register notice. OFAC in June designated four Nicaraguan government officials, including president of Nicaraguan National Assembly (NNA), general director of Institute of Telecommunications and Postal Service (TELCOR) and health and transportation ministers (see **WTTL**, June 24, page 7).