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®

Publisher: Martin Kalin • Editor: Meredith Gilston

Vol. 39, No. 32 **August 12, 2019**

Hopes for China Deal Fade Quickly

Industry executives who follow the administration policy on China could be better served by rolling a dice or shaking a Magic 8 Ball. Just days after the president announced tariffs on almost all Chinese imports, China announced it was suspending all new agriculture purchase from U.S. farmers, and then Treasury designated the country a currency manipulator, a decision the agency has resisted for years.

> On the day after U.S officials returned from a negotiating trip to Shanghai that the White House called "constructive" and "positive," the president Aug. 1 announced on Twitter he would impose 10% tariffs on almost all remaining Chinese imports that the administration first proposed in May (see **WTTL**, Aug. 5, page 1).

China's Ministry of Commerce (MOFCOM) Aug. 6 called the Twitter move "a serious violation of the meeting between the heads of state" of the two countries. "The Customs Tariff Commission of the State Council will not rule out import tariffs on newly purchased U.S. agricultural products after August 3, and Chinese related companies have suspended purchasing U.S. agricultural products," the MOFCOM press office said.

"The Chinese authorities have acknowledged that they have ample control over the RMB exchange rate," Treasury said in announcing the currency designation. In addition, a People's Bank of China (PBOC) statement the same day is "an open acknowledgement by the PBOC that it has extensive experience manipulating its currency and remains prepared to do so on an ongoing basis," it added.

Administration Steps up Sanctions on Venezuela

If it looks like a duck. After the White House issued an executive order (EO) Aug. 5 blocking Venezuelan government property and interests in property within U.S.

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional users pay only $100 each with full-priced subscription. Site and corporate licenses are also available. Phone: 301-460-3060 Fax: 301-460-3086

jurisdiction, the administration rushed to say it should not be considered an embargo. At the same time, Treasury's Office of Foreign Assets Control (OFAC) updated 12 general licenses (GLs) and issued 13 new GLs, authorizing a wide range of transactions exempt from the order.

All property and interests in property of the Venezuela government that are in the U.S., that hereafter come within the U.S., or that are or hereafter come within the possession or control of any U.S. person are "blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in," the EO noted. The administration previously designated Venezuelan President Maduro, other government officials and business partners (see **WTTL**, July 29, page 6).

> "While this is not an embargo, this significant action is in response to the continuing usurpation of power by Maduro and persons affiliated with him," Secretary of State Mike Pompeo said in a statement Aug. 6. He also cited "human rights abuses, including extrajudicial killings, torture, arbitrary arrest and detention of Venezuelan citizens, interference with freedom of expression, including for members of the media, and ongoing attempts to undermine" the exercise of legitimate authority.

OFAC's 13 new GLs authorized certain transactions including those relating to: the receipt and transmission of telecommunications, mail and packages; services, software, hardware and technology incident to Internet communications; provision and receipt of nonscheduled emergency medical services; and nongovernmental organizations in support of humanitarian projects, democracy building, education, non-commercial development projects directly benefiting the Venezuelan people, and environmental protection in Venezuela.

Existing GLs include authorization for exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices; noncommercial, personal remittances involving certain financial institutions; and the wind-down of operations or existing contracts involving the Venezuelan government.

"As a general matter, OFAC expects financial institutions to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked," the agency said in a new Frequently Asked Question (FAQ). "With regard to other types of transactions where a financial institution is acting solely as an intermediary and fails to block transactions involving a sanctions target, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction to determine what, if any, regulatory response is appropriate," it added.

Mexican Growers Throw Tomatoes in Antidumping Probe

The dispute between Florida and Mexican tomato growers turned rotten Aug. 7 with U.S. groups and their Senator accusing their southern neighbors of "blatant blackmail" and "inflammatory rhetoric" when they made a proposal to resolve the dispute. If a deal isn't reached, the International Trade Commission will hear the dispute in September. Commerce in May terminated its 2013 suspension agreement with Mexican tomato exporters and resumed its antidumping investigation of fresh tomato imports from Mexico (see **WTTL**, May 13, page 1). The department announced its intent to withdraw from the deal in February.

> "The proposal would increase the reference prices on most tomato products from the prices the growers submitted in their last proposal, which was made in June," the Mexican Tomato Growers said in a press release. "The offer would also increase reference prices by up to 33% from the June proposal for non-organically grown products, while proposing up to a 35% premium on top of that for organically grown tomatoes in all product areas," they added.

The Mexican growers continue to reject a Commerce proposal that would put in place a 100% border inspection requirement for all trucks transporting Mexican tomatoes into the U.S., the group added. "This is a very strong proposal that builds on the unprecedented enforcement measures that we proposed to Commerce in June. Let's hope we can make progress over the next two weeks," said Oscar Woltman, president of AMHPAC, Mexico's largest growers' association.

"Mexican tomato growers and the Mexican government are trying to blackmail the U.S. government into backing down on President Trump's commitment to strong and aggressive enforcement of U.S unfair trade law," the Florida Tomato Exchange said in its own statement. "Mexico's tomato growers are now demanding that the Mexican government retaliate against American agricultural products that are exported to Mexico if [Commerce] doesn't eliminate its proposal for border inspections of Mexican tomatoes under a new suspension agreement. This blatant blackmail should not be tolerated," the U.S. group added.

Sen. Marco Rubio (R-Fla.), who represents the Florida growers and has been outspoken in the dispute, joined the chorus. "The fact remains that the Mexicans have avoided serious negotiations for well over a year, preferring to use scare tactics and inflammatory rhetoric to try to force President Trump and Secretary Ross to back down on their commitment to ensure that American tomato growers are able to fairly compete in our own domestic market," he said.

"If the Mexican growers remain unwilling to compromise to achieve a mutually-beneficial agreement, I look forward to the resolution of this issue in September when U.S. trade law enforcement mechanisms are finally able to reach a determinative conclusion on what I believe is clear and convincing evidence of produce dumping and injury," Rubio continued.

Former Officials, Political Rivals Debate China Trade

More than two years ago, President Trump boasted that he would not only force China to buy more American goods but change the way it deals with America. Two years later, he is nowhere closer to that reality than when he first started. In fact, U.S.-China trade relations have gotten worse (see related story, page 1).

On the same day the administration designated China as a currency manipulator, it faced a fierce and unapologetic pushback from former Treasury Secretary Larry Summers. He not only said that China's yuan was depreciating naturally to market forces but accused current Treasury Secretary Steven Mnuchin of doing the president's bidding. Moreover, he sounded the alarm on Twitter: "We may well be at the most dangerous financial moment since the 2009 Financial Crisis with current developments between the U.S. and China," Summers charged.

> Part of the reason trade talks have stalled is because the administration itself is unclear of its objectives. One camp wants engagement, the other wants decoupling; while at times, the president wants both. As leader of the free world, the president needs to choose one and work with allies to achieve it.

Georgetown University's U.S.-China Initiative called on the president to act quick and decisive. "Both the state of the world and deep political and ideological divides make structured dialogue between the United States and China vitally important—not to reach consensus, but to clarify areas of mutual interest and to facilitate cooperation," the group urged.

But it's not only the administration that has no clear consensus on how to resolve the trade impasse, neither do Democratic presidential candidates. Former Vice President Joe Biden has argued that the president's tariffs hurt U.S. farmers, consumers and workers and what's needed is a return to an updated version of the Trans-Pacific Partnership (see **WTTL**, Aug. 5, page 4).

Sen. Kamala Harris (D-Calif.) has no announced plan but seeks the removal of tariffs, while Sen. Elizabeth Warren (D-Mass.) has argued for Trump's tariffs to remain in place, as well as stricter environmental and labor standards, much like the Democrats have called for in NAFTA 2.0. She also wants a broader negotiating bench at trade deals, consisting of workers, farmers, small business and environmentalists.

OFAC Updates Iran Rules to Include New Sectors

Three months after the White House authorized further sanctions on Iran's iron, steel, aluminum and copper sectors, OFAC Aug. 7 updated its regulations to reflect the changes. Changes include a new section to implement authorized sanctions, definitions of the specific sectors and a new section name. The White House authorized the sanctions on these sectors, which account for 10% of its export economy, on the first anniversary of the administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) or Iran nuclear deal (see **WTTL**, May 13, page 5).

In the Federal Register notice, OFAC added a new section to implement the "correspondent account or payable-through account sanctions," as well as the blocking sanctions in the May 8 Executive Order (EO 13871). OFAC also added new definitions of aluminum, aluminum products, aluminum sector of Iran, copper, copper products, copper sector of Iran, iron, iron products, steel, steel products, iron sector of Iran, and steel sector of Iran.

> The agency also made conforming edits relating to: the effective date of applicable prohibitions, facilitation, determinations of significance, an authorization for transactions related to closing a correspondent or payable-through account, and the delegation of authority by the Treasury secretary. In addition, OFAC renamed the Iranian Human Rights Abuses Sanctions Regulations to the Iranian Sector and Human Rights Abuses Sanctions Regulations.

It is the policy of the U.S. to "deny the Iranian government revenue, including revenue derived from the export of products from Iran's iron, steel, aluminum, and copper sectors, that may be used to provide funding and support for the proliferation of weapons of mass destruction, terrorist groups and networks, campaigns of regional aggression, and military expansion," the EO noted.

OCTG Dispute Referred to WTO Arbitration

At a special meeting of the World Trade Organization (WTO) Dispute Settlement Body (DSB) Aug. 9, South Korea and the U.S. hashed out Korea's requested authorization to suspend concessions on $350 million of U.S. imports as a result of U.S.'s alleged failure to comply with an earlier WTO ruling on U.S. antidumping (AD) duties on imports of oil country tubular goods (OCTG) from Korea.

South Korea claimed a partial victory in November 2017 when a WTO dispute panel upheld several claims challenging the U.S. antidumping (AD) duties (see **WTTL**, Nov. 20, 2017, page 1). Specifically, the panel found the "profit determination" Commerce used to calculate dumping margins and duty rates on targeted imports was inconsistent with the Anti-Dumping Agreement and recommended the U.S. bring its measures into conformity. The U.S. did not appeal the ruling.

A WTO arbitrator will now review Seoul's request, a move that was automatically triggered when the U.S. objected to its proposed level of retaliation. A U.S. status report circulated to WTO members three weeks earlier stated that it has already implemented the DSB's recommendations in the dispute, noting that Commerce had published a final memorandum revising certain aspects of its antidumping duty determinations, a Geneva-based trade official noted.

* * * Briefs * * *

<u>EXPORT ENFORCEMENT</u>: Russian national Vladimir Kuznetsov was charged Aug. 6 in Brooklyn U.S. District Court with illegally exporting, attempting to export and conspiring to export rifle parts and accessories to Russia without State licenses from February 2017 to present. Parts included Accuracy International AICS AX MK II rifle chassis, Timney Sportsman trigger assembly

and Dakota bolt shroud for Mauser 98 rifle, .375 caliber gas checks, magazines, "H-S Precision" aluminum rifle stock for Remington 700 series bolt action rifle, "Kinetic Research Group" Savage 180-Alpha rifle chassis, and "Wilcox" L4 helmet mounts for night-vision goggles. "To avoid detection, Kuznetsov provided false descriptions of the items contained in each package, and hid rifle parts inside the packages," Justice said. Kuznetsov was released on $75,000 bond.

<u>SANCTIONS</u>: Bellevue, Wash., truck manufacturer PACCAR Inc. agreed Aug. 6 to pay OFAC $1.7 million to settle 63 apparent violations of Iran sanctions by DAF Trucks N.V. (DAF), wholly owned PACCAR subsidiary in Netherlands. Between October 2013 and February 2015, DAF sold or supplied 63 trucks to German and Bulgarian customers "that it knew or had reason to know were ultimately intended for buyers in Iran," OFAC said. PACCAR voluntarily disclosed apparent violations.

<u>CAFC</u>: CAFC Aug. 7 affirmed CIT decision relating to appeal of antidumping duties on chlorinated isocyanurates from China. CIT held it lacked jurisdiction to consider complaint under § 1581(i), as "this type of claim is properly brought under a different jurisdictional provision, specifically § 1581(c)," Circuit Judge Evan Wallach wrote for three-judge panel in *Juancheng Kangtai Chemical Co. v. U.S.* "Kangtai could have sought relief under § 1581(c) because the true nature of Kangtai's action is a challenge to Commerce's determination to assess antidumping duties on entries, rather than on sales, made during the relevant POR [period of review]," he added.

<u>REPORTING</u>: OFAC Aug. 8 issued two Findings of Violation for reporting violations: one to DNI Express Shipping Company (DNI), in McLean, Va., the other to Southern Cross Aviation, LLC. Specifically, DNI violated reporting regulations by "providing information to OFAC during the pendency of OFAC's investigation, including a subpoena response, that contained contradictory, false, materially inaccurate, materially incomplete, and misleading statements." OFAC in May 2015 issued Administrative Subpoena to investigate DNI's involvement in facilitation of shipment, supply and sale of farm equipment to Sudan. Southern Cross violated rules by "failing to provide complete information to OFAC in response to an Administrative Subpoena" in June 2016 relating to sale of several helicopters destined for Iran via Iranian businessman based in Ecuador.