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Canada Formally Joins Arms Trade Treaty

Just two months after the U.S. announced it would "un-sign" the United Nations (UN) Arms Trade Treaty, which establishes common standards for regulating international conventional arms trade, Canada June 21 formally presented its instrument of accession to the deal. The country will become the 104th State Party to the treaty in 90 days.

> The president announced the withdrawal in April during a speech at the NRA annual conference (see **WTTL**, April 29, page 1). The U.S. signed the treaty in September 2013, but Congress failed to ratify it primarily due to opposition from the gun lobby.

"We are taking a stronger and more rigorous approach to the export of Canadian arms. Today's announcement is a significant milestone in Canada's contributions to international efforts to combat the illicit trade of weapons," Canadian Foreign Affairs Minister Chrystia Freeland said in a statement.

All 28 European Union (EU) member states have joined the treaty and "are determined in pursuing its objectives and its universal ratification and implementation," the EU spokesperson said in a separate statement. The EU "expects all Signatory States to advance their ratification processes and all States, especially the major arms exporters, importers and transit States, to join the ATT without delay," she added.

TechnipFMC Pays Over $296 Million to Settle Foreign Bribery Case

TechnipFMC plc (TFMC), a global oil and gas services provider, and its wholly owned U.S. subsidiary, Technip USA, Inc., agreed June 25 to pay U.S. and Brazilian authorities a combined criminal fine of more than $296 million to resolve foreign bribery charges. The charges involve two independent bribery schemes: one by France's Technip S.A. (Technip) to pay bribes to Brazilian officials and a scheme by FMC Technologies, Inc. (FMC) to pay

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bribes to officials in Iraq. TFMC is the product of a 2017 merger between the two predecessor companies, Technip and FMC. In June 2010, Technip agreed to pay a $240 million penalty in a deferred prosecution agreement (DPA) with Justice to settle charges of violating the Foreign Corrupt Practices Act (FCPA) involving Nigeria's liquified natural gas facility on Bonny Island. Separately, it agreed to pay the Securities and Exchange Commission (SEC) a $90 million fine (see **WTTL**, July 5, 2010, page 4).

TFMC entered into the latest DPA in Brooklyn U.S. District Court. Technip USA and Technip's former consultant pleaded guilty in the same court to conspiracy to violate the FCPA in connection with the resolution.

> Between 2003 and 2014, Technip and others "knowingly and willfully conspired to violate the FCPA by …causing Technip and its subsidiaries to make corrupt 'commission' payments to Consultant and others, knowing that a portion of those payments would be used to pay bribes to Brazilian government officials" for the purpose of securing improper business advantages, and obtaining and retaining business with Petrobras, the DPA noted.

Technip conspired in the Brazilian scheme with Keppel Offshore & Marine Ltd. (KOM), a Singaporean company that operates shipyards and repairs and upgrades shipping vessels. "In total, Technip and its co-conspirators, including KOM, caused more than $69 million in corrupt payments to be made to companies associated with Consultant in furtherance of the bribery scheme," the DPA added.

Of that total, Technip directly paid $20.9 million and "caused approximately $6 million in corrupt payments to be made to the Workers' Party and Workers party officials. Technip and its subsidiaries earned approximately $135.7 million in profits from the corruptly obtained business," it noted.

KOM and its wholly owned U.S. subsidiary, Keppel Offshore & Marine USA Inc. (KOM USA), agreed in December 2017 to pay more than $422 million in separate penalties to U.S., Brazilian and Singaporean authorities for a decade-long scheme to bribe Brazilian officials (see **WTTL**, Jan. 1, 2018, page 1).

In Iraq between 2008 and 2013, "FMC Technologies, together with others, knowingly and willfully conspired to violate the FCPA in connection with seven contracts to provide metering technologies for oil and gas production measurement to the Iraqi government. FMC Technologies, together with others, promised to pay, and paid, bribes corruptly for the benefit of foreign officials… to secure improper business advantages and to influence those foreign officials to obtain and retain business," the DPA said. FMC and its related entities earned profits totaling approximately $5.3 million from business in Iraq obtained through this scheme.

"This conduct dating back over a decade ago, taken by former employees, does not reflect the core values of our Company today. We are committed to doing business the right way, and that means operating with integrity everywhere," TechnipFMC Chairman and CEO Doug Pferdehirt said in a statement.

"Our strong compliance program supports this commitment, and we will continue to enhance our program to ensure that our employees have the practical tools and resources to do business the right way. We will remain focused on rewarding the trust that our clients have put in TechnipFMC by delivering industry-leading innovation, superior client service, and exceptional project execution," he added.

FedEx Files Suit Against BIS Export Regulations

While the delivery service did not name Huawei in its complaint, FedEx June 24 sued Commerce and the Bureau of Industry and Security (BIS) in D.C. U.S. District Court to enjoin the agency from enforcing its Export Administration Regulations (EAR). FedEx claims the regulations, without exemptions for common carriers, impose "such a substantial burden that it deprives FedEx of substantive due process under the Fifth Amendment."

The company specifically called out the requirement "to ensure that packages containing 'items' (a broad term encompassing commodities, software, and technology) subject to the EAR that are described on the Commerce Control List (CCL), are not exported to jurisdictions that require BIS export licenses, unless such licenses are in fact in place."

> FedEx noted it has developed a "sophisticated proprietary risk-based compliance system" to screen for recipients on the Entity List and "takes seriously its response-bility to comply with the law." However, "the determination of whether the tendered package contains an 'item subject to the EAR' and whether a license is required are virtually impossible for common carriers to comply with," it said.

"Typically, the law offers protection for common carriers, excepting them from liability for the contents of packages and communications they transmit, such as internet service providers and telecommunications companies," the complaint noted. "The EAR, however, offer no safe harbor provision. To the contrary, the EAR hold common carriers liable as aiders and abettors of the EAR violations committed by their customers, with steep penalties," it added.

"We have invested heavily in our internal export control compliance program. However, we believe that the EAR, as currently constructed and implemented, place an unreasonable burden on FedEx to police the millions of shipments that transit our network every day. FedEx is a transportation company, not a law enforcement agency," the company said in a statement announcing the suit.

WTO Panel Sides with India on Renewable Energy Measures

A World Trade Organization (WTO) dispute panel June 27 sided with India in its complaint over certain U.S. state measures to promote renewable energy, finding that the measures are inconsistent with the WTO's "national treatment" principle because they provide less favourable treatment to imported products than that accorded to like domestic products. Specifically, India claimed that several U.S. states offer subsidies, including certain financial and taxation incentives, to renewable energy companies contingent on domestic content requirements. The U.S. maintained that India launched the dispute as retaliation for the U.S. successful challenge to India's own domestic solar program content require-ments. WTO established the panel in March 2017 (see **WTTL**, March 27, 2017, page 5).

The incentives in question range from renewable energy credits, through direct and indirect payments and rebates, to tax credits, tax refunds and other tax incentives, offered by the governments of California, Connecticut, Delaware, Massachusetts, Michigan, Minnesota, Montana and Washington.

Administration Targets Iran's Supreme Leader, Military

Four days after Iran shot down a U.S. military drone, Treasury's Office of Foreign Assets Control (OFAC) June 24 designated eight senior commanders of Navy, Aerospace and Ground Forces of Iran's Islamic Revolutionary Guards Corps (IRGC). OFAC designated the IRGC itself in October 2017 and State designated it as a Foreign Terrorist Organization in April.

> The U.S. is "targeting those responsible for effectuating the Iranian regime's destructive influence in the Middle East. IRGC commanders are responsible for the Iranian regime's provocative attacks orchestrated in internationally recognized waters and airspace, as well as Iran's malign activities in Syria," said Treasury Secretary Steven Mnuchin.

At the same time, the president issued an Executive Order imposing sanctions on Iran's Supreme Leader and the Supreme Leader's Office "in light of the actions of the Government of Iran and Iranian-backed proxies, particularly those taken to destabilize the Middle East, promote international terrorism, and advance Iran's ballistic missile program, and Iran's irresponsible and provocative actions in and over international waters, including the targeting of United States military assets and civilian vessels."

Ex-Im Bank Ready for Competition, Reauthorization

While the U.S. Export-Import Bank (Ex-Im) was asleep at the wheel, lacking a full board quorum, export credit agencies (ECAs) in the rest of the world, especially China, stepped into the vacuum, the agency noted in its annual competitiveness report published June 28. Today, there are 112 ECAs worldwide, up from 95 in 2017.

"A number of countries have reported that increasing exports is a lever of domestic growth that they can unilaterally control. Moreover, many foreign governments reported that export finance and promotion programs are a policy priority on the basis of the effectiveness and profitability of these programs," Ex-Im said.

The day before the report's release, new Ex-Im President Kimberly Reed testified before the Senate Banking Committee that the bank was ready to make up for lost time. "At this point, Ex-Im staff estimate that transactions worth more than $20 billion will be ready for consideration by the Board in the first year of full functionality. We expect the Board will vote on some of these applications this summer," she said in her opening statement.

> Reed also addressed the increase in competition. "Emerging markets now import fewer goods and services and instead have their own robust ECAs to promote their exports onto global markets. The ECAs of China, India, and other countries that do not participate in the OECD Arrangement operate without regard to the basic standards of transparency and fairness established among Arrangement Participants.

During the hearing Reed argued for reauthorizing the bank, whose charter expires Sept. 30. "A robust and reformed Ex-Im can help the world to 'Buy USA,' preserve domestic manufacturing supply chains, combat what our stakeholders have reported as increasingly aggressive efforts by foreign governments to undercut the competitiveness of U.S. exporters, further America's national and economic security objectives by facilitating U.S. exports to markets around the world, and protect the U.S. taxpayer," Reed noted.

The House Financial Services Committee began the reauthorization process with a hearing June 4, where there was consensus among the witnesses of the bank's importance (see **WTTL**, June 10, page 4).

China's standard support for medium and long repayment terms (MLT) has trended upward for 10 years, reaching approximately $39 billion last year, the report noted. The next highest levels of official MLT support were from Italy ($12.4 billion), Germany ($12 billion) and Korea ($10.6 billion). "In contrast, Ex-Im's MLT support for U.S. exports was $300 million, due to the lack of a board quorum and the bank's inability to approve transactions requesting financing of more than $10 million," the bank said.

U.S. Doubles Foreign Government Procurement, GAO Says

In a given year, the U.S. procured over twice as much from key trade partners as those countries did from U.S. firms—an estimated $5 billion vs. $2 billion in contracts, according to a new Government Accountability Office (GAO) report released June 24 (GAO-19-414). Canada and Mexico awarded most of the foreign contracts that U.S. firms won, the report noted.

Specifically, in 2015, the "U.S. government awarded contracts valued at about $12 billion to foreign-located firms, of which about $5 billion went to firms with reported locations in the other six main parties" to the WTO Government Procurement Agreement (GPA) and NAFTA, the report said. "Conversely, government procurement databases indicated the central governments of these parties awarded an estimated $7 billion to foreign sources, out of which about $2 billion was U.S.-sourced," it added.

In addition, "the U.S. government awarded more, by contract value, to foreign-owned firms located abroad than to foreign-owned, U.S.-located firms. Moreover, more than 80% of U.S. government contracts awarded to foreign-owned firms located abroad were Department of Defense contracts performed abroad," the GAO noted.

"Globally, government procurement constitutes about a $4 trillion market for international trade. However, little is known about foreign sourcing in government procurement—how much governments procure from foreign-located suppliers or how much they acquire in foreign-made goods," it added. The agency studied government procurement databases used in Canada, the EU, South Korea, Mexico, Norway and the U.S., along with 2014 trade data.

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Thanks to Trump, India and U.S. Have See-Saw Relationship

Days before the G20 meeting in Japan, President Trump sent Secretary of State Pompeo on a shuttle diplomacy tour with friends and allies. Among the people with whom he held discussions were Indian Prime Minister Narendra Modi and External Affairs Minister Subrahmanyam Jaishankar.

> Pompeo was conciliatory. India and America, he said, had made amends and were now reading from the same playbook. Trump was building consensus to tighten the screws on Iran and wanted Modi's vote. Under pressure from the Trump administration, India had stopped purchasing Iranian oil.

But the make-up was temporary. The next day Trump tweeted his real concerns: "I look forward to speaking with Prime Minister Modi about the fact that India, for years having put very high Tariffs against the United States, just recently increased the Tariffs even further. This is unacceptable and the Tariffs must be withdrawn!" the president admonished Modi.

India runs about a $20 billion trade surplus with the U.S. After delaying for months due to negotiations, India imposed tariffs on 28 U.S. products in retaliation for Trump's duties on Indian steel and aluminum and his removal of India in May from the Generalized System of Preferences (GSP) for some $6 billion worth of Indian products (see **WTTL**, June 10, page 9).

By June 28, on the G20 sidelines, Trump met with Modi as if he had never made the earlier statements. Asked repeatedly by the media what he wants from Modi as it relates to trade, Trump said, "We're the hottest country in the world, the United States, right now. And everybody wants a part of it."

He added he and Modi were going to have a "very big trade deal. We're doing some very big things with India in terms of trade, in terms of manufacturing, in terms of — we will be discussing 5G. It's a big subject nowadays," Trump reassured the media. In turn, Modi thanked the president for the kind sentiments and said for the G20 India's focus would be on four issues: Iran, 5G, bilateral relations and defense relations.

In addition, other issues are at play. Trump is concerned that India's rules on local data storage and restrictions on foreign companies' online hurt U.S. competitors. Moreover, weeks earlier, Trump had dissuaded India from buying Iranian oil and Russian-made S-400 surface-to-air missiles and opt instead for U.S. manufacturers. India says it needs the weapons as defenses against China. Similarly, the U.S threatened sanctions on Turkey for buying the S-400 system from Russia.

Iran, Huawei Disputes Hover over G20 Meeting

As of press time June 28, there was no formal G20 communique. But a hint of what is to come came from host Japanese Prime Minister Shinzo Abe. Before the G20, he agreed with Trump to put Japanese-U.S. trade negotiations on speed dial (see **WTTL**, June 3, page 4). The expectation is that the U.S. and Japan are close to an agreement.

> Second, Abe was on a diplomatic mission to Tehran when the U.S. drone was shot down and it looked like war was near. So, expect more discussions if not agreement on Iranian sanctions. Both Japan and Germany have argued that they have given Trump what he wanted, more German and Japanese car plants in the U.S. But it is unclear if this would be enough for Trump to end car tariffs.

But a brewing arrangement with India may affect Huawei and U.S.-Chinese relations, the president revealed in his press briefing with Indian Prime Minister Modi. Asked about his message to Huawei, Trump replied, "We actually sell Huawei many of its parts. A lot of people don't know that, but the United States sells. We have great companies that are the leaders of a lot of what Huawei does, and we sell them a lot. So, we're going to be discussing that and also how India fits in. We'll be discussing Huawei."

It has been seven months since Xi and Trump discussed trade face-to-face. In fact, it was after the last G20 meeting that U.S.-China trade took a downhill trajectory. Trump requested Canada arrest the CFO of Huawei for violating Iran sanctions, which led to a cascade of events. A few days before his trip to Japan, at the White House, Trump joked that he'll clear the air for Canadian Prime Minister Trudeau with Xi at the G20 meeting.

The day before the G20 meeting, Sen. Ron Wyden (D-Ore.) urged the president to think carefully about including Huawei in any trade deal. "Unfortunately, I cannot stop Donald Trump from playing politics with our trade relationships, but I will not allow him to play politics with our national security. Huawei and the other companies placed on the Entity List were added because their structure, financing and controlling powers are a clear and present danger to America's long term security," Wyden said in a statement.

"Removing any of these entities as part of a trade deal is sacrificing the safety of American families for some quick bucks and political points. Republicans who claim to be tough on national security cannot stand by and let Donald Trump trade away Americans' defense against foreign spying," he added.

Meanwhile, the question still remains, what is Trump's ultimate goal with China? Also, should he act alone or with allies? The president has two rapidly approaching deadlines to figure this out. The first is already here: the G20. The next is August 19, the expiration of a lifeline granted by Commerce to U.S. companies in the Huawei's supply chain. Once resolved, Trump still has many other thorny trade negotiations to attend to: among them are the EU, Japan, India, Canada and Germany.

Then the president will have to decide whether his go-it-alone approach is working or not. World markets have been on a wild roller-coaster ride prior to the G20 summit. On Iran, he has chosen to act alone, having left the Joint Comprehensive Plan of Action (JCPOA). On North Korea, he has opted for China and South Korea assistance. On trade, he has favored the "America First" approach. So far, it has delivered little success to celebrate.

* * * Briefs * * *

UNVERIFIED LIST: In June 27 Federal Register BIS removed eight Chinese entities from its Unverified List (UVL). Rule also corrected name of current UVL in China from Beijing Institute of Nanoenergy and Technology to Beijing Institute of Nanoenergy and Nanosystems.

RUSSIA: OFAC June 26 issued general licenses (GLs) 13L and 15F, extending previous GLs that expanded sanctions relief for Russian conglomerate GAZ Group. Specifically, OFAC extended GL expiration date to Nov. 8. GL 15F also includes new authorization for "installation of Electronic Stability Program systems consistent with applicable automotive safety regulatory requirements in vehicles produced by GAZ Group."

VENEZUELA: OFAC June 28 designated son of Venezuela's "illegitimate regime leader" Nicolas Maduro, who is member of country's National Constituent Assembly. "Maduro relies on his son Nicolasito and others close to his authoritarian regime to maintain a stranglehold on the economy and suppress the people of Venezuela," said Treasury Secretary Steven Mnuchin . Agency designated Maduro in July 2017 (see **WTTL**, Aug. 7, 2017, page 7).

MORE VENEZUELA: OFAC June 26 issued amended Venezuela-related General License (GL) 13B extending previous GL that authorized maintenance and wind-down operations in connection with designation of Venezuelan state-owned oil company Petroleos de Venezuela, S.A. (PdVSA). Specifically, OFAC extended GL expiration date to Oct. 25.

MAGNETS: In 5-0 "sunset" vote June 25, ITC said revoking antidumping duty orders on imports of raw flexible magnets from China and Taiwan and countervailing duty order on product from China would renew injury to U.S. industry.

STEEL NAILS: In 5-0 "sunset" vote June 25, ITC said revoking antidumping duty order on imports of steel nails from China would renew injury to U.S. industry.

QUARTZ: In 5-0 preliminary vote June 24, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of quartz surface products from India and Turkey.

STAPLES: Kyocera Senco Industrial Tools, Inc. filed countervailing and antidumping petitions June 6 with ITA and ITC against certain collated steel staples from Korea, China and Taiwan.

<u>SECTION 232</u>: Supreme Court June 24 denied American Institute for International Steel (AIIS) and two members' petition for writ of certiorari before judgment in Section 232 case. Group "is disappointed that the Supreme Court did not agree to hear this case at this time," AIIS President Richard Chriss said in statement. "We continue to believe that we have a strong legal case that section 232 is unconstitutional. Once the Federal Circuit has spoken, we expect that the losing party will ask the Supreme Court to review that decision," he added. Administration May 28 asked court to reject petition (see **WTTL**, June 3, page 7).

<u>FCPA</u>: Surprise, Venezuelan bribery case that doesn't involved PDVSA. Former Venezuelan government minister and former officer at Venezuela's state-owned electricity company, Corporación Eléctrica Nacional, S.A. (Corpoelec), were indicted June 27 in Miami U.S. District Court on charges of laundering proceeds of FCPA violations. According to indictment, 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. OFAC added both men to SDN List on same day. Two businessmen -- Jesus Ramon Veroes of Venezuela and Luis Alberto Chacin Haddad of Miami -- pleaded guilty in Miami court three days earlier to conspiracy to violate FCPA.

<u>MORE FCPA</u>: Julia Vivi Wang, naturalized U.S. citizen, was sentenced June 26 in Manhattan U.S. District Court to time served for her role in scheme to pay $500,000 bribe to Antiguan ambassador to UN to buy diplomatic positions. She pleaded guilty in April 2018 to violating FCPA and conspiring to violate FCPA (see **WTTL**, April 9, 2018, page 5). Wang also admitted to tax fraud. She was arrested in March 2016 and released on $1,500,000 bond. Bribe was "solicited and facilitated" by John Ashe, then Antiguan ambassador who died in 2016, and Francis Lorenzo, then-deputy permanent representative to UN for Dominican Republic, according to original complaint. Ashe and Lorenzo were also connected to Ng Lap Seng, owner of Macau Real Estate Development Company, who was sentenced in Manhattan federal court in May 2018 to 48 months in prison and three years' supervised release.

<u>TARIFFS</u>: Rep. Stephanie Murphy (D-Fla.) June 25 introduced *Reclaiming Congressional Trade Authority Act,* companion to bill (S. 899) Sen. Tim Kaine (D-Va.) introduced in March. Bill would limit authority of president to modify duty rates for national security reasons and limit authority of USTR to impose certain duties or import restrictions. "The time has come for Congress to reclaim its constitutional authority over trade," Murphy said in statement.

<u>WTO</u>: At its regular meeting June 24, WTO Dispute Settlement Body (DSB) established panel to rule on U.S. antidumping and countervailing duties on imported ripe olives from Spain. U.S. blocked EU's first request in May (see **WTTL**, June 3, page 5). Consultations in March failed to resolve dispute. In addition, China said it needed "reasonable period of time" to implement previous panel ruling on China's administration of tariff rate quotas (TRQs) on imports of wheat, rice and corn. Next DSB meeting is scheduled for July 22.