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U.S. to Withdraw from Arms Trade Treaty

In what has become a recurring theme, the U.S. will "un-sign" the United Nations (UN) Arms Trade Treaty, which establishes common standards for regulating international conventional arms trade, the president announced April 26 during a speech at the NRA annual conference. The U.S. signed the treaty in September 2013, but Congress failed to ratify it primarily due to opposition from the gun lobby.

> "The United States export controls have long been considered the gold standard for engaging in responsible arms trading and we will continue to use them under our own laws," the White House said in a fact sheet released after the speech.

Lawmakers responded immediately. House Foreign Affairs Committee Chairman Eliot Engel (D-N.Y.) said his committee will hold a hearing to "shine a bright light on this shameful decision," adding that "it is abhorrent to use international diplomacy for blatant political pandering."

Rep. Mike Kelly (R-Pa.) applauded the decision. "I have long been concerned that this treaty does not expressly recognize the fundamental right of individuals to keep and bear arms, and that it hinders the U.S. from fulfilling its commitment to key allies such as Taiwan and the State of Israel," he said in a statement.

The treaty entered into force without the U.S. in December 2014. Since then, more than 100 countries have joined the accord. In 2017, Ottawa introduced legislation that would move Canada closer to accession to the pact, even though it has not formally signed the treaty (see **WTTL**, April 17, 2017, page 1).

Administration Halts Iranian Oil Exemptions

Six months after granting waivers, and almost a year after withdrawing from the Joint Comprehensive Plan of Action (JCPOA) or the Iran nuclear deal, the U.S. will no longer

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grant sanctions waivers to nations that import Iranian oil, effective May 2, the administration announced April 22. The U.S. "has taken Iran's oil exports to historic lows, and we are dramatically accelerating our pressure campaign in a calibrated way that meets our national security objectives while maintaining well supplied global oil markets. We stand by our allies and partners as they transition away from Iranian crude to other alternatives," Secretary of State Mike Pompeo said in a press statement.

The U.S. in November granted exemptions to China, India, Italy, Greece, Japan, South Korea, Taiwan and Turkey for reducing their purchase of Iranian oil (see **WTTL**, Nov. 12, page 4). Taiwan, Italy, and Greece have reportedly stopped their imports, but the other five countries could be subject to U.S. secondary sanctions.

> "With this decision today, we expect to see more positive impacts to deny Iran the revenue it needs to conduct its foreign policy, to fund its proxies and satellites around the region, to fund its missile program," Special Representative for Iran Brian Hook said in a press briefing. "The point of this is not to negatively impact other countries. We are doing everything we can to ensure a well-supplied oil market and that there aren't any supply interruptions," he added.

China denounced what it called the "unilateral" sanctions and "so-called 'long-arm jurisdictions'" imposed by the U.S. "Our cooperation with Iran is open, transparent, lawful and legitimate, and thus should be respected. Our government is committed to upholding the legitimate rights and interests of Chinese companies and will play a positive and constructive role in upholding the stability of the global energy market," Chinese Foreign Ministry Spokesperson Geng Shuang said in a press conference.

Turkey said the U.S. decision "will not serve regional peace and stability" and would harm the Iranian people. "Turkey rejects unilateral sanctions and impositions on how to conduct relations with neighbors," Turkish Foreign Affairs Minister Mevlut Cavusoglu tweeted.

Senate Foreign Relations Committee Chair Jim Risch (R-Idaho) applauded the U.S. move. "Oil supplies make up a significant portion of the regime's revenue, and I support denying it the financial resources needed to pursue its malign agenda. Currently, market conditions are strong and we have confidence that other nations can and will fill any future gaps in the global oil supply," he said in a statement.

U.S. Steps into Russia-Ukraine WTO Dispute

In a case that could set the stage for future World Trade Organization (WTO) disputes, the U.S. April 26 called a recent panel's decision on Ukraine's complaint against Russian traffic restrictions "seriously flawed." The panel's decision clarified the use of national security exceptions in WTO rules, a defense the U.S. could use in future disputes over Section 232 tariffs.

The dispute concerned multiple restrictions on traffic in transit from Ukraine through Russia to third countries. "Russia asserted that the measures were among those that it considered necessary for the protection of its essential security interests, which it took in response to the emergency in international relations that occurred in 2014, and which presented threats to Russia's essential security interests," the WTO said.

In its finding released earlier in April, the panel found that "essential security interests" could be generally understood as referring to those interests relating to the quintessential functions of the state. The panel "observed that the specific interests at issue will depend on the particular situation and perceptions of the state in question and can be expected to vary with changing circumstances," it noted.

> At the regular meeting of the Dispute Settlement Body (DSB), where the decision was adopted, the U.S. also said it found the panel's analysis "unpersuasive" and "problematic for systemic reasons." While it did not go into specific details citing its own ongoing disputes, the U.S. did mention that the panel did not sufficiently examine Russia's assertion that invocation of national security was "self-judging."

Conclusions were premature and not consistent with the interpretation standards of the Dispute Settlement Understanding and customary international law, the U.S. said. The panel made the case for the respondent on defining what constituted an "emergency" in international relations. It is not the role of an adjudicator to make the case for the respondent, the U.S. said.

Ukraine did not appeal the decision, saying it confirms that a DSB panel has jurisdiction to decide over such cases and scrutinize invocations of the security clause. Eight other members express general support for the decision.

USTR Issues Annual Shame Lists of Countries, Notorious Markets

In its annual Special 301 report on intellectual property (IP) rights April 25, the U.S. Trade Representative's (USTR) office returned to a sense of normalcy, moving Canada and Colombia back to the Watch List after adding them to the Priority Watch List in 2018. At the same time, the office issued its separate Out-of-Cycle Review of Notorious Markets, highlighting 33 online markets and 25 physical markets that are "reported to engage in and facilitate substantial copyright piracy and trademark counterfeiting."

Canada was a surprise addition, as it was the only G7 country identified in the 2018 report (see **WTTL**, April 30, 2018, page 5). In the 2019 report, the USTR's office cited "important" IP provisions in the U.S.-Mexico-Canada Agreement (USMCA) as a reason for the move. "Once implemented, these commitments will substantially improve the IP environment in Canada, including with respect to areas where there have been long-standing concerns, including enforcement against counterfeits, inspection of goods in transit, transparency with respect to new geographical indications (GIs), national treatment, and copyright term," the report noted.

"Colombia's meaningful progress, particularly its enactment in July 2018 of copyright reform legislation to meet CTPA [U.S.-Colombia Trade Promotion Agreement] obligations, and Colombia's steps to clarify and resolve concerns about Articles 70 and 72 of the NDP [National Development Plan], warrant the change in designation from the Priority Watch List to the Watch List," the USTR report said.

USTR added Saudi Arabia to the Priority Watch List "for failing to address long-standing IP concerns and further deteriorating IP protection and enforcement within its borders. Specifically, concerns remain regarding the lack of IP protection for innovative pharmaceutical products, including the lack of adequate and effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval," the USTR's office noted.

> The Priority Watch List now includes Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Saudi Arabia, Ukraine and Venezuela. On the Watch List USTR listed: Barbados, Bolivia, Brazil, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Jamaica, Lebanon, Mexico, Pakistan, Paraguay, Peru, Romania, Switzerland, Thailand, Turkey, Turkmenistan, United Arab Emirates (UAE), Uzbekistan and Vietnam.

Paraguay returned to the Watch List in 2019 after being removed in 2015. "Although Paraguay has made minor progress in the face of structural challenges and resource constraints, it has failed to meet key commitments," the report said. These include "adopting and enforcing penalties such as imprisonment and monetary fines sufficient to deter future acts of infringement, establishing an interagency 'Coordination Center' to provide a unified government response to IP violations, and ensuring that government institutions use computer software with a corresponding license," it added.

While seven of the 25 identified physical markets are in China, others exist in Argentina, Brazil, Cambodia, Ecuador, India, Indonesia, Malaysia, Mexico, Paraguay, Peru, Philippines, Russia, Spain, Thailand, Turkey, Ukraine, UAE and Vietnam. The 33 identified online sites are hosted around the world, including in China, France, Indonesia, Poland, Russia, Saudi Arabia and Singapore.

In 2018, USTR named Pacific Mall in Markham, Ontario, a Canadian notorious physical market but removed the mall from its 2019 list (see **WTTL**, Jan. 15, 2018, page 4). "Local police raided Pacific Mall in June and September 2018 and seized thousands of suspected counterfeit goods. While no charges have been brought yet, police say the investigation is ongoing, and additional search warrants are expected to be issued at storage facilities related to the kiosks searched by police," the agency noted.

Space Industry Asks for Streamlined Controls

In response to a request for comments on ways to streamline export controls in U.S. Munitions List (USML) Categories IV (launch vehicles) and XV (spacecraft), and their parallel entries in the Commerce Control List (CCL), the space industry urged that many items in commercial use be moved to the CCL, or even be eligible for license exceptions where possible. State and the Bureau of Industry and Security (BIS) in March requested the comments consistent with the Space Policy Directive that the president signed in May 2018 (see **WTTL**, March 11, page 6). Controlled items included launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines; and spacecraft and related articles.

> Johns Hopkins University Applied Physics Laboratory (JHU/APL) asked for a "less stringent licensing requirement" for sending hardware back to a foreign vendor, "especially if the U.S. user can document the fact that the hardware does not bear any indication of what it was used for or the data that it produced during use by the U.S. individual," it wrote. "Hardware purchased from a foreign vendor often needs to be sent back to the vendor for various reasons, including repair, maintenance, calibration, or exchange," it wrote.

Honeywell compared the lunar gateway to the International Space Station (ISS) and should be controlled on the CCL. "There is no technical reason for listing [it] on the USML given [the] ISS is similar (identical) technology and is on the CCL. Accordingly, [Export Control Classification Number] 9A004 is the logical choice… This approach should also be extended to lunar surface based vehicles," the company wrote.

Boeing cited the example of star trackers controlled under USML Category XV "that are commonly used on commercial communications satellites." The company recommended that "star trackers specially designed for spacecraft be transitioned from ITAR to EAR control. U.S. industry is not on the leading edge of this technology, and there is ample availability of this technology abroad," Boeing wrote.

If such star trackers need to remain on the USML, the company recommended a clarification to the control text. "As written, it is unclear whether an item is controlled in this paragraph if it meets **one** of these thresholds—specified angular accuracy or tracking rate—during normal operation, or if it must meet both parameters **at the same time** during normal operation. Star trackers used on commercial communication satellites generally meet these two criteria, but do not meet both at the same time during normal operation," it noted.

SpaceX suggested adding a license exemption for exports related to ocean launch and landing activities. "The ITAR and EAR do not clearly identify where in the ocean the United States begins and ends, making it difficult to determine what constitutes an 'export' when a U.S. person taking items into the ocean for launching or landing a rocket or spacecraft. In addition, if a U.S. person owns and remains in possession and control of such items when taking them from U.S. soil into the ocean, the current regulations still appear to require a license, even if there is no foreign person involvement," it wrote.

Harris Corporation proposed an increase in the clear aperture diameter threshold for space-qualified optics in USML Category XV and ECCN 9A515 from 0.50 meters to 0.80 meters. "The U.S. has been building high-resolution commercial imaging satellites with similar sized optics since the 1990's. Today, U.S. industry faces global competitors from at least eight countries that can produce one meter-class space-qualified optics," it argued.

* * * Briefs * * *

CHINA: USTR Robert Lighthizer and Treasury Secretary Steven Mnuchin will travel to Beijing April 30 "for continued negotiations on the trade relationship," White House announced April 23. Subjects of discussion will include intellectual property, forced technology transfer, non-tariff barriers, agriculture, services, purchases and enforcement. Chinese Vice Premier Liu He is scheduled to return to Washington for additional talks May 8.

VENEZUELA: In latest move against "illegitimate" Venezuelan government officials, OFAC April 26 designated foreign affairs minister and judge. Week prior, OFAC designated Banco Central de Venezuela, or Central Bank of Venezuela, for operating in country's financial sector, and bank director (see **WTTL**, April 22, page 6).

WHEELS: In 3-2 final vote April 24, ITC found U.S. industry is materially injured by dumped and subsidized imports of steel wheels from China. Chairman David Johanson and Commissioner Meredith Broadbent voted no. Commission also made negative critical circumstances findings with respect to wheels from China.

CHERRIES: Dried Tart Cherry Trade Committee filed countervailing and antidumping petitions April 23 with ITA and ITC against dried tart cherries from Turkey. Petitioner alleges dumping margins of 628.90%.

USTR: Skadden Arps partner Joseph Barloon will replace Stephen Vaughn as USTR general counsel, agency announced April 22. Vaughn will depart "in the coming weeks," USTR said. Barloon "comes to USTR with over 20 years of experience, specializing in government enforcement actions as well as civil and criminal investigations and actions," it noted.

EXPORT ENFORCEMENT: Oben Cabalceta of Atco, N.J., pleaded guilty April 23 in Camden U.S. District Court to wire fraud and conspiracy to violate Arms Export Control Act (AECA) by providing non-conforming military equipment parts to DoD and illegally accessing technical information. Sentencing is set for Aug. 2. Cabalceta's brother-in-law Roger Sobrado pleaded guilty in October 2018 to conspiracy to commit wire fraud, conspiracy to violate AECA and income tax evasion. Sobrado's sentencing is pending.

SANCTIONS: N.J.-based Haverly Systems, Inc., agreed April 25 to pay OFAC $75,375 civil penalty to settle two charges of violating Ukraine sanctions. From May 2016 to January 2017, Haverly dealt in new debt of greater than 90 days maturity of Russian oil company JSC Rosneft, blocked entity OFAC identified on Sectoral Sanctions Identification List (SSI List) in July 2014. Haverly did not voluntary self-disclose apparent violations to OFAC. In August 2015, Haverly issued two separate invoices to Rosneft related to licensing of software and purchase of software support services. Rosneft paid first invoice in May 2016 and second invoice in January 2017.

DEPARTURES: DDTC Chief of Staff Anthony (Tony) Dearth will depart from government service in mid-July, Dearth announced April 25. He has been with DDTC since November 2003. Prior to current post, Dearth served as military detailee working agreements, senior licensing analyst, licensing division chief, and director of licensing. "DDTC will further announce succession plans via their website in the future," he wrote in email to WTTL.