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Administration Could Keep Chinese Tariffs After Deal

Let's see how this works: two partners are negotiating a trade agreement. One hopes to remove tariffs on its exports; the other hopes to achieve structural changes. Who wins? And what triggers the removal of tariffs if one partner commits to structural changes? How much time do they get to implement those changes?

> In the case of U.S. and China trade talks, caution is justified. In response to press questions about tariffs outside the White House March 20, President Trump said: "We're talking about leaving them and for a substantial period of time, because we have to make sure that if we do the deal with China, that China lives by the deal. Because they've had a lot of problems living by certain deals and we have to make sure."

"The deal is coming along nicely. We have our top representatives going there this weekend to further the deal. But, no, we're taking in billions and billions of dollars right now in tariff money. And for a period of time, that will stay," he added.

Treasury Secretary Steven Mnuchin and U.S. Trade Representative (USTR) Robert Lighthizer reportedly will travel to Beijing the week of March 25 to continue talks. Any comments about post-deal tariffs might be premature, as Lighthizer recently testified to the Senate Finance Committee there were still "major, major issues" to tackle (see **WTTL**, March 18, page 3).

President Reverses North Korea Sanctions… Maybe

Blink and you might miss U.S. foreign policy changes. In a seemingly routine move, Treasury's Office of Foreign Assets Control (OFAC) March 21 designated two Chinese shipping companies -- Dalian Haibo International Freight Co. Ltd. and Liaoning Danxing International Forwarding Co. Ltd. -- for the attempted evasion of U.S. and international

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sanctions against North Korea. Even John Bolton, the president's hawkish national security advisor applauded the designations, calling them "important actions" on Twitter. "The maritime industry must do more to stop North Korea's illicit shipping practices. Everyone should take notice and review their own activities to ensure they are not involved in North Korea's sanctions evasion," he added.

Dalian Haibo provided goods and services to or in support of blocked entity Paeksol Trading Corporation, which OFAC designated in March 2017 (see **WTTL**, April 10, 2017, page 5).

Just when trade lawyers thought it was safe to go back in the water: The next day, the president seemed to reverse his administration's action via Twitter. "It was announced today by the U.S. Treasury that additional large scale sanctions would be added to those already existing sanctions on North Korea. I have today ordered the withdrawal of those additional sanctions!" he tweeted March 22.

> The reversal raises more questions than answers. At press time, OFAC did not formally remove these sanctions, as the president announced. It is also unclear how this move will affect North Korea's withdrawal from the joint liaison office with South Korea in the DMZ, which Kirkland & Ellis lawyers see as a direct response to the sanctions.

The administration is engaged in ongoing trade talks with China, so could this reversal be seen as a play to move those talks forward? In any case, this action "would seem to demonstrate that trade and national security are inextricably intertwined," Kirkland & Ellis lawyer Sanjay Mullick told WTTL. Another outstanding question is how large-scale these specific sanctions could be, if these are even the sanctions aimed to reverse.

As surprising as this reversal could be, the administration's critics were ready with statements. "Once again, President Trump is making critical national security decisions on the fly, with tweets that directly conflict with the advice of his cabinet and experts." House Foreign Affairs Committee Chairman Eliot Engel (D-N.Y.) said in a statement.

At the same time as the sanctions, OFAC updated a 2018 shipping advisory with "new information about North Korea's deceptive shipping practices, additional guidance on how to mitigate the risk of involvement in these practices, a new graphic depicting certain ports of call, and three new annexes," the agency said. The new annexes include lists of vessels believed to have engaged in ship-to-ship (STS) transfers with North Korean tankers or exported North Korean coal.

CAFC Affirms Second CIT Decision on Curtain Wall Units

It's about time. The Court of Appeals for Federal Circuit (CAFC) March 18 affirmed a Court of International Trade (CIT) ruling that antidumping (AD) & countervailing duty (CVD) orders on aluminum extrusions from China "cover—and do not exclude—the curtain wall units shipped pursuant to a contract for a full wall," Circuit Judge Richard Taranto wrote for the three-judge panel in *Shenyang Yuanda Aluminum v. U.S.* In 2015, CAFC affirmed a previous CIT ruling upholding Commerce decision that curtain wall units are within the scope of the AD and CVD orders (see **WTTL**, Jan. 26, 2015, page 7). While that matter was pending at the CIT, the petitioners initiated the latest case.

> After a series of remands and resulting agency rulings, "Commerce reconsidered the origin of the relevant exclusion language of the AD & CVD Orders and determined that the Petitioner (seeking those Orders) 'intended for that exclusion to apply only when all the parts making up a finished curtain wall are imported into the United States as one entry and can be fully assembled into a finished curtain wall at that time,' even if the Petitioner may 'not have considered, or known, that, as a rule, curtain walls do not enter the United States as a single entry,'" Taranto wrote.

"We have been pointed to no evidence that made it unreasonable for Commerce to find for that reason that the units at issue are not excluded from the AD & CVD Orders, but are within their scope," he added.

Members of the Aluminum Extruders Council (AEC) applauded the decision. "After years of litigation tactics by the Chinese companies, the courts have conclusively ruled that aluminum extrusions are covered by the AEC's orders in curtain wall end-use applications. Our efforts now turn to enforcement to derail the circumvention stunts employed by the Chinese companies to avoid paying the tariffs and duties," Tom Black, president of Walters and Wolf, Seattle, said in a statement.

OFAC Adds Sanctions on Venezuelan Bank, Mining Company

In response to ongoing political turmoil in Venezuela, OFAC March 22 expanded the scope of sanctions against the country to include the financial sector. The agency that day designated Banco de Desarrollo Economico y Social de Venezuela (BANDES), Venezuela's national development bank, and four additional financial institutions that BANDES owns or controls.

Three days earlier, OFAC designated Minerven, the Venezuelan state-run ferrous metals mining company, and its president, Adrian Antonio Perdomo Mata, "for propping up the inner circle of the corrupt Maduro regime," Treasury Secretary Steve Mnuchin said in a statement. Mata was named Minerven president in July 2018.

"Maduro and his illicit network are misusing Venezuela's gold-mining operations as another way to steal from the Venezuelan people after having mismanaged and plundered Venezuela's crumbling oil industry," a State spokesperson said in a statement. President Trump in November issued Executive Order (EO) 13850, imposing sanctions on persons operating in Venezuela's gold and oil sectors. OFAC designated the country's state-owned oil company Petroleos de Venezuela, S.A. (PdVSA) in January (see **WTTL**, Feb. 4, page 4).

Along with the action against BANDES, OFAC updated one and issued four new general licenses. "U.S. financial institutions that maintain correspondent accounts for Banco de Venezuela or Banco Bicentenario del Pueblo for purposes of General Licenses 4A, 15, 16, and 17, Banco Prodem S.A. for purposes of General License 17, and Integracion Administradora de Fondos de Ahorro Previsional, S.A. for purposes of General License 18 may debit or credit such accounts for transactions consistent with the activity authorized in the relevant general license," the agency wrote in a new Frequently Asked Question.

* * * Briefs * * *

STEEL: In 5-0 preliminary vote March 20, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of fabricated structural steel from Canada, China and Mexico.

PIPE: In 5-0 final vote March 20, ITC found U.S. industry is materially injured by dumped and subsidized imports of cast iron soil pipe from China.

CIVIL PENALTIES: In Federal Register March 19, State adjusted for inflation civil monetary penalties (CMP) for Chemical Weapons Convention Implementation Act and certain penalty provisions of Arms Export Control Act.

EXPORT ENFORCEMENT: Australian national David Levick was sentenced March 21 in D.C. U.S. District Court to 24 months in prison for illegally exporting goods, including light assemblies, transducers and emergency flotation system kit, to Iran without OFAC license. Levick pleaded guilty Feb. 1 to four counts of violating International Emergency Economic Powers Act. Levick and his company, ICM Components Inc., were indicted in February 2012 (see **WTTL**, March 5, 2012, page 4). Australia extradited him in December 2018 and he has remained in custody since.

MORE EXPORT ENFORCEMENT: Russian national Valery Kosmachov was indicted March 20 in San Francisco U.S. District Court on 52 charges of smuggling sophisticated electronic components to Russia through Estonia and Finland. Kosmachov was arrested in Estonia in September 2018 and was extradited to U.S. March 14. Items included digital converters, high-speed static RAM and power amplifiers. Indictment also charges Kosmachov's companies Adimir OU and Eastline Technology OU, along with Eastline co-owner and Russian national Sergey Vetrov, who remains at large. Trident International Corporation LLC and its owner were unindicted co-conspirators. Pavel Semenovich Flider, Russian national and naturalized U.S. citizen, and Trident pleaded guilty in August 2016 in San Francisco federal court to charges of smuggling and money laundering (see **WTTL**, Aug. 22, 2016, page 5).

CONGO: OFAC March 21 designated three senior officials of Democratic Republic of Congo's (DRC) National Independent Electoral Commission (CENI). Action follows "persistent corruption" by CENI officials and former Kabila government "to obstruct and delay preparations for credible and inclusive elections," said Sigal Mandelker, Treasury under secretary for terrorism and financial intelligence, in statement.

USMCA: Business Roundtable March 21 urged Congress to pass U.S.-Mexico-Canada Agreement (USMCA) implementing legislation "this year." Group "supports following the Trade Promotion Authority process and will work closely with Democrats and Republicans in Congress and the Administration to build the necessary support to pass a USMCA bill that will sustain free trade in North America and open new markets for U.S. businesses and farmers," Cummins Chairman and CEO Tom Linebarger said in statement.

IRAN: OFAC and State March 22 designated 14 individuals and 17 entities connected to Iran's Organization of Defensive Innovation and Research (SPND), "whose key personnel played a central role in the Iranian regime's past nuclear weapons effort," agency noted. Sanctions include current SPND subordinate groups, supporters, front companies and associated officials, it added. U.S. "strongly condemns Iran's efforts to maintain its band of former nuclear weapons researchers, preserve their work, and continue sensitive procurement activities," Deputy State Spokesperson Robert Palladino said in statement. State sanctioned SPND in August 2014 for activities that contributed to WMD proliferation.