ISSN 0276-8275

WTTLonline.com

Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Publisher: Martin Kalin • Editor: Meredith Gilston

Vol. 38, No. 50 December 17, 2018

Wassenaar Decontrols Civil, Industrial Internet of Things

Smartphone users rejoice. At the Wassenaar Arrangement's (WA) annual plenary Dec. 5-6, members agreed to relax "some controls, such as for industrial Internet-of–Things [IoT], high-performance continuous-wave lasers, and infrared cameras, where performance thresholds were updated taking into account the fast evolution of the civil market," the plenary chair said in a statement.

> One observer told WTTL the decontrol of civil industrial IoT was the most important change at the plenary; the question now becomes what falls under that rubric. IoT is commonly defined as "the network of devices, vehicles, and home appliances that contain electronics, software, actuators, and connectivity which allows these things to connect, interact and exchange data," according to Wikipedia.

Participating states "adopted new export controls in a number of areas, such as quantum-resistant cryptography algorithms, air-launch platforms for space-launch vehicles, electromagnetic pulse (EMP)-resistant software, and explosives." The changes "further clarified existing controls regarding cryptographic activation, underwater sensors, pre-1946 aircraft and engines, non-magnetic diesel engines, water tunnels, naval nuclear equipment, and production items for integrated circuit," the chair noted.

Unlike previous years, members made no changes to computer controls in Category 4, leaving the Adjusted Peak Performance' (APP) at 29 Weighted TeraFLOPS (WT). As India celebrated its first year as a member, participating states "reviewed the progress of a number of current membership applications," the chair noted.

Chinese Oil Firm Settles BIS, OFAC Sanctions Charges

Chinese oil and gas company Yantai Jereh Oilfield Services Group Co. Ltd. and its affiliated companies and subsidiaries worldwide agreed Dec. 12 to pay a total of $3.3 million to settle Treasury's Office of Foreign Assets Control (OFAC) and Bureau of Industry and Security (BIS) charges of violating Iran sanctions. On three occasions in

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

2014 and 2015, Jereh Group ordered, bought and/or sold coiled tubing valued at $383.881.88 with the intention to export them to Iran via third countries, including China and the United Arab Emirates without the required authorization, the BIS order noted.

"In order to facilitate its business activities in Iran and avoid detection by U.S. law enforcement, Yantai Jereh structured the transactions to conceal from the U.S. suppliers or exporters that the coiled tubing it bought and ordered was ultimately destined for use in Iran," it added.

> "Beginning in late 2013, a former Jereh Group Sales Executive and a former Jereh Group Business Manager arranged meetings in Iran and/or with Iranian customers," OFAC said. The executives "developed a scheme whereby they utilized intermediary companies, including a Chinese based trading company named Jinan Tongbaolai Oilfield Equipment Co., Ltd. (JNTBL) and a distribution company located in the UAE named Dubai Great Technology Trading LLC (DGT), in order to sell and ship Jereh Group products to Iran — many of which relied upon and incorporated U.S.-origin goods," it added.

"An external review of the company's compliance program in late 2015 and early 2016 noted that Jereh Group's compliance controls were largely non-existent and, when in place, were ineffective and easily circumvented. The circumvention could and did go undetected," OFAC said.

The company agreed to pay OFAC $2,774,972 to settle 11 apparent violations, in addition to a $600,000 BIS civil penalty and five-year export denial order. Jereh Group did not voluntarily self-disclose the apparent violations. In March 2016, BIS added several Jereh Group companies and related individuals to its Entity List (see **WTTL**, March 21, page 8).

China Buys Soybeans, USTR Delays Tariff Increase

Despite the U.S. president's incendiary language on Twitter, both U.S. and China seem to be keeping the promises each made after a working dinner at the G-20 summit in Argentina two weeks ago. For its part, the U.S. Trade Representative (USTR) Dec. 14 formally postponed until March 2, 2019, the increase in Section 301 tariffs to 25% from 10% on $200 billion worth of Chinese imports (see **WTTL**, Dec. 10, page 3).

The USTR action came a day after China reportedly agreed to buy U.S. soybeans. In a statement on its website the same day, Chinese Ministry of Commerce (MOC) spokesperson Gao Feng said the two countries had reached consensus on specific issues including agricultural products, energy and automobiles. "Soybean has always been an important kind of agricultural import from the U.S. given the huge demand in China," Gao said.

U.S. soybean growers welcomed the news, but urged the Chinese to remove its retaliatory tariffs on the product. "Beyond yesterday's sale announcement, it is vital that this 90-day process result in lifting the current 25% tariff that China continues to impose on U.S.

soybean imports. Without removal of this tariff, it is improbable that sales of U.S. soybeans to China can be sustained," American Soybean Association (ASA) President Davie Stephens said in statement.

Congress Approves Farm Bill with Cuba Provisions

In one of its last votes before heading out of town at the end of the 2018congressional session, the House Dec. 12 passed the mammoth 2018 Farm Bill (H.R. 2) conference report, sending the bill to the president's desk for his signature, including an amendment that would allow farmers to use trade promotion funds to finance certain agricultural exports to Cuba.

> A bipartisan group of more than 60 agriculture associations, businesses and elected officials from 17 states urged the leadership of the House and Senate agriculture committees to preserve the amendment (see **WTTL**, Sept. 10, page 3). That amendment was co-authored by Sens. Heidi Heitkamp (D-N.D), who lost her reelection in November.

Specifically, the amendment would remove the prohibition on U.S. assistance and financing for certain agricultural exports to Cuba. The bill would also exempt from prohibitions against U.S. assistance to Cuba any exports under the market access program, the export credit guarantee program, and the foreign market development cooperator program, including any federal commodity promotion program obligations or expenditures of funds.

Heitkamp said in a statement she was "proud that priorities I fought to include," such as trade promotion dollars for Cuba, were all included in the bill's final version. "Particularly during a time of uncertainty in farm country due to the administration's ongoing trade war, it's critical that we get this important piece of legislation across the finish line before the end of this Congress to provide much-needed peace of mind for the rural economy, a robust safety net for growers, and expanded— not limited— access to important global markets for our producers," she said.

Industry Urges Removal of U.S.-EU Tariffs, Trade Barriers

As the U.S. and the European Union (EU) begin to lay out the parameters of a trans-atlantic trade agreement, negotiators will have no shortage of ideas, even if certain topics have already fallen off the table. In response to its request for comments on negotiating objectives, the USTR received 164 comments (see **WTTL**, Nov. 19, page 1).

The Association of Global Automakers urged the resolution of "two important trade actions currently adding cost and creating tremendous uncertainty in our trading relationship": the Section 232 tariffs on steel and aluminum and the threat of additional tariffs on autos and auto parts. "Both of these issues should be resolved to the satisfaction of both parties prior to negotiations on a U.S.-EU trade agreement," the group wrote.

The association also pushed for the elimination of all vehicle tariffs and the inclusion of "provisions that prohibit the imposition of localization requirements as well as language to promote e-commerce," as well as customs and facilitation provisions and "the mutual recognition of existing automotive technical standards and embrace global harmonization for future automotive standards and regulations."

> AFL-CIO suggested a five-chapter agreement with the EU: tariffs, labor, environment, enforcement and dispute settlement, and the always-popular "other." On labor, the organization urged the two parties to adopt and maintain the eight International Labor Organization (ILO) core conventions, "to pay living wages for the location in which work is performed, and to establish an independent secretariat to monitor labor obligations," it wrote. Parties also should "agree not to lower their standards, deny labor rights through misclassification, deny labor rights to migrant workers, or to avoid labor obligations in such a way that it constitutes social dumping."

World Wildlife Fund (WWF) cited its previous comments on the Transatlantic Trade and Investment Partnership (TTIP) in 2013. "Given the size of the EU and U.S. economies, it is especially important that any trade agreement between them promote high standards for environmental sustainability and conservation in the many countries linked by global trade to their markets. Further, any agreement should ensure that environmental protection standards in the United States and the EU are not compromised through efforts to facilitate trade, including through provisions on regulatory practices," it wrote.

National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) in a joint comment said they support USTR's "strenuous rejection" of the EU's efforts to exclude agriculture from the talks. "U.S. exports to the European Union are limited by a wide range of measures and practices that make sales in the EU market unduly complicated, costly, or even illegal. Should the U.S. pursue FTA negotiations with the EU, those negotiations must address these barriers."

The groups cited five main priorities: misuse of geographical indications, full recognition of U.S. food safety, enforceable sanitary and phyto-sanitary (SPS) and technical barrier to trade (TBT) commitments, simplified and streamlined border administration, and coordinated dairy tariff elimination.

U.S. Grains Council (USGC) echoed those sentiments, asking the U.S. to push the EU to "eliminate the price reference system and commit to maintaining zero duties on U.S. corn, barley, sorghum, DDGS [distiller's dried grains with soluble] and other co-products. The negotiations should also seek to address the existing asynchronous approval process for biotech events and other regulatory challenges," it wrote.

Rapid7, a security data and analytics firm, suggested the following negotiation objectives: include cybersecurity in a digital trade chapter; encourage interoperable cyber risk management frameworks; build capabilities of national cybersecurity entities; strengthen existing cybersecurity collaboration mechanisms;, identify regulatory restrictions to defensive cybersecurity activity; encourage transparency of consumer internet-of-things (IoT) security; prohibit requirements to weaken encryption; and prohibit requirements to store data locally or use local computing facilities.

"Market access rules requiring weakened encryption would create technical barriers to trade and put products with weakened encryption at a competitive disadvantage with uncompromised products," the company wrote. "Requirements to weaken encryption would impose significant security risks on U.S. companies by creating diverse new attack surfaces for bad actors, including cybercriminals and unfriendly international governments," it added.

Knowledge Ecology International (KEI) proposed negotiating objectives in several areas, including medical technologies, intellectual property rights, quality of life, climate change, access to knowledge and culture, control anti-competitive practices, public goods, cooperation on addressing tax avoidance, and protection against dangerous and hostile cyber risks.

In addition, the group suggested that relevant barriers to trade in goods and services, customs and trade facilitation issues, SPS measures and TBT, and "other measures or practices that undermine fair market opportunities for U.S. businesses, workers, farmers, and ranchers" all should be addressed in the negotiations.

Software & Information Industry Association (SIIA) argued digital trade provisions "will be important in ensuring continued EU market access for innovative American firms and in establishing a model elsewhere in the world. " In addition, SIIA noted that "the EU position is that privacy (intimately related to cross-border data flows) cannot be subject to a trade negotiation, but the U.S. should nonetheless strive to come to an agreement providing for a positive cross-border data flow commitment," SIIA wrote.

* * * Briefs * * *

EXPORT ENFORCEMENT: Shai Gear LLC of Lansing, N.Y., dba Spider Camera, agreed Dec. 10 to pay $8,500 civil penalty to settle BIS charge of exporting camera accessories to Iran via UAE in July 2017 without OFAC authorization. Accessories were designated EAR99 and worth $6,058. "Spider Camera exported the camera accessories to an Iranian customer. Citing 'the governmental problems between our countries,' the Iranian customer stated to Spider Camera that because 'we cannot ship our orders directly to Iran,…we have to ship the orders from New York to Dubai and from there to Tehran,'" BIS order noted.

TRADE PEOPLE: Assistant USTR for South and Central Asian Affairs Mark Linscott joined Atlantic Council's South Asia Center as senior fellow, council announced Dec. 12. He will lead center's U.S.-India Trade Initiative. Linscott previously served as assistant USTR for World Trade Organization (WTO) and multilateral affairs.

HAPPY HOLIDAYS: In Federal Register Dec. 14 BIS extended comment period for advanced notice of proposed rulemaking (ANPRM) on emerging technologies until Jan. 10, 2019, "in response to requests received from members of the public." More than dozen technology and business groups asked BIS for more time to submit comments (see **WTTL**, Dec. 10, page 1).

FIREARMS: OMB Dec. 13 completed review of long-awaited final rules transferring items from USML Categories I (firearms), II (guns and armament) and III (ammunition) to BIS jurisdiction. Agencies got earful in response to parallel proposed rules in May (see **WTTL**, July 16, page 6).

INSURANCE: Treasury and USTR Dec. 11 announced intent to sign covered agreement with UK that covers reinsurance, group supervision and exchange of insurance information between supervisors. Agencies signed covered agreement with European Union (EU) in September 2017 (see **WTTL**, Sept. 25, 2017, page 9). Agreement is "important step in providing regulatory certainty and market continuity" as UK prepares to leave EU in March 2019, agencies said in press release.

SOLAR: CAFC Dec. 12 affirmed CIT ruling that sustained Commerce's final results of administrative review of antidumping duty order covering crystalline silicon photovoltaic cells from China in *SolarWorld Americas, Inc. v. U.S.* Domestic producer SolarWorld argued Commerce erred in its calculation of antidumping duty margins after Customs classified items. "To the extent SolarWorld argues as a legal matter that Customs' rulings must be afforded more weight than other evidence on the record, we disagree," Circuit Judge Evan Wallach wrote for three-judge panel. "We have considered SolarWorld's remaining arguments and find them unpersuasive," Wallach added.

NORTH KOREA: OFAC Dec. 10 designated three senior North Korean officials, including minister of state security, director of Workers' Party of Korea (WPK) Organization and Guidance Department, and director of WPK Propaganda and Agitation Department, in response to "regime's ongoing and serious human rights abuses and censorship," OFAC said. WPK property and interests in property were blocked in 2016.

FCPA: Alfonso Eliezer Gravina Munoz (Gravina) of Katy, Texas, former procurement officer of Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), pleaded guilty Dec. 10 in Houston U.S. District Court to conspiracy to obstruct official proceeding. Sentencing is set for Feb. 19, 2019. Gravina is 15th individual to plead guilty in larger investigation into bribery at PDVSA. Juan Carlos Castillo Rincon, manager of Houston-based logistics and freight forwarding company, pleaded guilty in September to conspiracy to violate Foreign Corrupt Practices Act (FCPA) for paying bribes to former PDVSA official in exchange for favorable business treatment (see **WTTL**, Sept. 17, page 5).

SECTION 232: As of end of November, BIS received 59,000 exclusion requests to steel and aluminum tariffs, and has processed more than 19,000, Eileen Albanese, director of BIS' national security office, told the Practising Law Institute export conference in Washington Dec. 13. Team initially had three people working on 232; now it has close to 25 temp employees. "There were a few hiccups," Albanese added.

TUNA: WTO Appellate Body Dec. 14 upheld 2017 compliance panel ruling on revised U.S. "dolphin-safe" tuna labeling measure. Mexico appealed ruling in December 2017 (see **WTTL**, Dec. 4, 2017, page 7). Body agreed that U.S. modifications to labeling measures in 2016 either removed discriminatory treatment to Mexican tuna products or were justified as exceptions to WTO rules on grounds they were necessary for conservation of exhaustible natural resources. "After more than 10 years and multiple erroneous WTO reports, the latest compliance reports have finally reached the right conclusion, ending this long-standing dispute," USTR Robert Lighthizer said in statement.

SOUTH SUDAN: OFAC Dec. 14 designated two South Sudanese individuals and retired Israeli general, along with six businesses owned or controlled by them, "who have provided soldiers, armored vehicles, and weapons used to fuel the conflict in South Sudan," agency said. In August, BIS added South Sudan to list of embargoed countries, adopting "restrictive license application review policy" for export and reexport of certain items on Commerce Control List (see **WTTL**, Aug. 6, page 6). DDTC in February announced new policy of denial for exports destined for South Sudan.

TELECOM: Reps. Mike Gallagher (R-Wis.) and Ruben Gallego (D-Ariz.) Dec. 11 introduced Telecommunications Denial Order Enforcement Act (H.R. 7255), which would direct president to impose denial orders with respect to certain Chinese telecommunications companies that are in violation of U.S. export control or sanctions laws. Bill specifically calls out Huawei and ZTE, or "any other telecommunications company domiciled" in China, excluding subsidiary of foreign company. Huawei CFO was arrested Dec. 1 in Canada on charges of violating Iran sanctions (see **WTTL**, Dec. 10, page 1).

RUBBER BANDS: In 5-0 final vote Dec. 14, ITC found U.S. industry is materially injured by dumped and subsidized imports of rubber bands from China. Commission also made negative finding of critical circumstances on these imports.

EDITOR'S NOTE: In keeping with our regular schedule of 50 issues a year, there will be no ***Washington Tariff & Trade Letter*** issue Dec. 24 and 31. Our next issue will be Jan. 7, 2019. As always, we wish all our readers a **HAPPY HOLIDAY** and a **HEALTHY AND PROSPEROUS NEW YEAR**.