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 • Associate Editor: Melissa Apter

Vol. 38, No. 7 **February 12, 2018**

Export Agencies Seek Input on Reform Implementation

As promised, Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) published long-awaited parallel notices of inquiry (NOI) Feb. 12 on the transfer of items from U.S. Munitions List (USML) categories V (explosives), X (protective personnel equipment) and XI (electronics) to Commerce's "600 series."

> Those NOIs had been in the works for several months, despite almost unanimous opinion that the rules are not controversial; in fact, some would say they're the opposite of controversial. BIS Assistant Secretary Richard Ashooh recently called them "an important tool" (see **WTTL**, Dec. 18, page 3). Comments are due April 13.

BIS asked for public comments in order "to ensure that the descriptions of these items on the CCL [Commerce Control List] are clear, items for normal commercial use are not inadvertently controlled as military items on the USML, technological developments are accounted for on the control lists, and controls properly implement the national security and foreign policy objectives of the United States," its Federal Register notice said.

DDTC specifically requested input on "emerging and new technologies that are appropriately controlled by one of the referenced categories, but which are not currently described in subject categories or not described with sufficient clarity." In addition, it would like input on covered defense articles that "have entered into normal commercial use," as well as those "for which commercial use is proposed, intended, or anticipated in the next 5 years." The agencies also are seeking comments on "potential cost savings to private entities from shifting control of specific commercial items from USML to the CCL," both rules noted.

U.S. Exports, Imports in 2017 Rebound

While the change in administration saw an almost immediate change in attitude toward trade, imports and exports both rebounded in 2017, leading to the highest goods trade

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

deficit in nine years. Total merchandise exports grew 6.3% to $1.55 trillion in 2017, while imports jumped 7.0% from last year to $2.3 trillion, Commerce reported Feb. 6. Services exports increased 3.4% to $777.9 billion from 2016, as services imports increased 5.8% to $504.6 billion.

Preliminary 2017 vs. 2016 U.S. Merchandise Trade Figures (in billions)

	2017 Exports	2016 Exports	% Change	2017 Imports	2016 Imports	% Change
Total	$1546.8	$1459.8	6.3%	$2342.9	$2188.9	7.0%
BY COUNTRY/REGION						
Canada	282.4	266.8	5.8	299.9	278.1	7.9
Mexico	242.9	230.9	5.2	314.0	294.2	6.8
European Union (28)	283.5	270.3	4.9	434.9	416.7	4.4
Germany	53.8	49.4	8.4	117.7	114.2	3.1
France	33.6	30.9	8.5	48.9	46.8	4.5
United Kingdom	56.3	55.4	1.7	53.1	54.3	-2.3
Japan	67.7	63.3	7.0	136.5	132.2	3.3
China	130.4	115.8	12.6	505.6	462.8	9.2
NICs: HK, Singapore, Taiwan, Korea	143.8	130.1	10.5	140.6	134.4	4.6
South/Central America	150.2	136.6	10.0	115.9	107.8	7.6
BY SECTOR						
Agriculture	$138.4	$134.7	2.7%	$121.0	$114.4	5.8%
Aircraft, parts, engines	121.1	120.8	0.2	51.4	49.9	3.0
Autos, parts, engines	157.6	150	5.1	359.0	350.1	2.5
Clothing	3	3.1	-3.2	88.3	88.2	0.1
Chemicals- Organic	33.9	31.2	8.7	43.8	47.2	-7.2
Chemicals -Inorganic	11.3	10.1	11.9	10.6	11	-3.6
Petroleum, total categories	124.3	88.6	40.3	186.1	146.6	26.9
Iron & steel	14.7	12.6	16.7	36.9	27.3	35.2
Metalworking machines	4.9	4.7	4.3	10.4	9.3	11.8
Pharmaceuticals	45.1	46.7	-3.4	99.4	95.5	4.1
Semiconductors	47.7	44.1	8.2	53.8	51.5	4.5
Telecommunications	38.2	41.1	-7.1	74.3	71.9	3.3

Ending the year strong, merchandise exports in December grew 8.8% from a year ago to $137.5 billion. Services exports gained 4.3% to record-high $65.9 billion from December 2016. Goods imports jumped 10.3% from December 2016 to $210.8 billion, as services imports gained 6.3% to $45.6 billion.

A turnaround to the economic slowdown in China caused exports there to jump 12.6% in 2017 (primarily crude oil and civilian aircraft engines and parts), compared to 2016 when they dipped 0.4%. Imports from China also grew 9.2% from the year before (primarily cell phones, other household goods and computers), compared to falling the previous year by 4.0%, and produced a $375 billion trade deficit, almost half of the total $796.1 billion.

"I share President Donald Trump's disdain for trade deficits. I can't imagine the record goods deficit with China in 2017 is anything he'll be crowing about. But he can and certainly should do something about it," Alliance for American Manufacturing (AAM) President Scott Paul said in a statement. Paul then cited the ongoing Section 232 investigations, the Section 301 case on intellectual property rights and NAFTA and KORUS talks.

In a flip from the previous year, exports to major markets in Germany, France and the United Kingdom grew, as did exports to the European Union as a whole, primarily crude oil and metallurgical grade coal. The continued consequences of the shift of production of pharmaceuticals offshore and the growth of imports on generic drugs are seen in the 4.1% increase in drug imports. The U.S. steel industry's prior complaints about rising steel imports appear to be justified, as steel imports rebounded in 2017, increasing 35.2%. In 2016, imports fell 25% from the year before.

"It is ironic – but not coincidental – that steel imports increased sharply under a president who campaigned on pledges to restrict them to protect the domestic steel industry. Those promises appear to have encouraged a rush to import steel before restrictions could be put in place, leading to the big swing from the last full year of the Obama administration, when imports decreased 14.9 percent," noted the American Institute for International Steel in a blog post.

Senator Lifts Hold on Deputy USTR Nominees

U.S. Trade Representative (USTR) Robert Lighthizer moved closer to having a full team Feb. 7 after Sen. Tim Scott (R-S.C.) released his hold on deputy USTR nominees C.J. Mahoney and Dennis Shea. Scott placed the hold three weeks prior after expressing disappointment with Lighthizer's lack of communication (see **WTTL**, Jan. 22, page 3). The reversal came after a visit to the White House with other Republican Senate Finance Committee members.

Scott said he made clear to the White House that when it comes to auto rules of origins and the financial services sections he expects to be "involved and informed on their progress," he said in a statement. "As NAFTA renegotiations begin to heat up, it is absolutely essential that we have a clear and open dialogue between the Administration and Congress," Scott said.

After Scott first announced his hold, "Lighthizer was at my office within 15 minutes, and we have since been in contact on these issues. After today's meeting at the White House, I believe my concerns regarding a lack of communications have been addressed, and I will release my holds effective today," he added.

> A week before, Sen. Jeff Flake (R-Ariz.) released his hold on USTR chief agricultural nominee Gregory Doud "after successfully securing commitments on NAFTA-related trade priorities" from USTR and Senate Finance Committee Chairman Orrin Hatch (R-Utah) (see **WTTL**, Feb. 5, page 6).

For his part, Hatch described the White House conversation on trade as "robust." "In our meeting, we underscored that preserving NAFTA is vital for the millions of Americans whose jobs depend on trade in North America, and that weakening the agreement would jeopardize American economic growth. … We also discussed the mutual desire to confront the challenges China poses to American businesses and workers," Hatch said.

The House Ways and Means Committee met with Lighthizer the same day. "Lighthizer shares our commitment to modernizing NAFTA and other trade agreements to make sure

Americans get the best deal possible. I want to make sure we hold our trading partners accountable through strong, enforceable commitments with effective dispute settlement, including ISDS [investor state dispute settlement], because it creates U.S. jobs," said Chairman Kevin Brady (R-Texas) in a statement. As a result of the meeting, Brady added, "there is bipartisan agreement that USTR needs its deputies confirmed by the Senate as soon as possible."

Trade Deficit with FTA Partners Hard to Wish Away

As the Trump administration continues talks to renegotiate two of its largest free trade agreements (FTAs) and bemoans trade deficits as the root of all economic evil, statistics released Feb. 6 show that the U.S. racked up a $76.7 billion trade deficit with the 20 countries with which it already has FTAs.

2017 Trade with FTA Countries (in millions)

	U.S. Exports	U.S. Imports	Balance
Australia	$24,601.3	$10,051.3	14,550.0
Bahrain	907.2	996.4	-89.2
Canada	282,392.0	299,975.2	-17,583.2
Chile	13,608.4	10,551.6	3,056.8
Colombia	13,272.4	13,556.0	-283.7
Costa Rica	6,232.6	4,562.5	1,670.1
Dominican Republic	7,793.3	4,747.1	3,046.2
El Salvador	3,050.8	2,471.0	579.8
Guatemala	6,976.5	4,016.4	2,960.1
Honduras	5,082.6	4,581.1	501.5
Israel	12,543.8	21,946.6	-9,402.8
Jordan	1,962.9	1,687.6	275.3
Korea, South	48,276.6	71,164.1	-22,887.4
Mexico	242,988.7	314,045.2	-71,056.5
Morocco	2,116.4	1,229.7	886.7
Nicaragua	1,583.2	3,263.0	-1,679.8
Oman	2,095.8	1,068.8	1,027.0
Panama	6,447.1	442.4	6,004.7
Peru	8,685.7	7,283.2	1,402.6
Singapore	29,753.1	19,396.8	10,356.2
TOTAL	720,370.4	797,036.2	76,665.7

The deficits with Canada (-$17.6 billion) and Mexico (record-high -$71.1 billion) are the primary reason for the FTA deficit. Without those two countries, the other 18 FTAs would produce a $12 billion merchandise trade surplus (see chart this page).

Goods exports to the 20 FTA partners grew to $720.4 billion from 2016, while imports also grew to $797 billion. Both imports from and exports to Mexico reached the highest levels in five years.

As has been the case for the last several years, the explanation comes down to two sectors: oil and autos. Energy imports from Canada and Mexico account for the bulk of the trade deficit with those two NAFTA partners. The U.S. imported $50.1 billion in crude oil from Canada in 2017 and $9.8 billion from Mexico. Total U.S. exports of crude oil reached $21.7 billion last year, an increase of more than $12 billion from 2016.

Autos are another large factor in NAFTA trade that has drawn major complaints from U.S. unions about trade with Mexico. While the U.S. has almost no deficit with Canada for all trade in cars, trucks and parts, it has an $82.1 billion deficit with Mexico. In both talks to renegotiate NAFTA and the Korea-U.S. FTA (KORUS), auto and other industrial sectors are points of contention.

The $22.9 billion deficit with South Korea creates another public relations challenge for trade supporters. But as with Mexico, the main cause of that shortfall is due almost entirely to the auto trade, with the U.S. suffering a $21.3 billion deficit with Seoul in this sector. Among other FTA partners, the U.S. is running a surplus with CAFTA-DR nations, as well as with some countries that have agreed to their own Trans-Pacific Partnership (TPP), including Australia, Chile, Peru and Singapore.

Clarity Lacking on WTO Appellate Body Issues

Clarity appears in short supply when it comes to the World Trade Organization's (WTO) Appellate Body (AB), panelists at an Asia Society event in Washington argued Feb. 7. The U.S., which has been holding up the appointment of new AB members, needs to better outline what it wants, and WTO members need clarity on jurisdictional issues, panelists noted (see **WTTL**, Nov. 20, page 5).

The U.S. has been vocal in its criticism of the AB, but needs to provide clarity to fellow members as to what outcome it wants, posited John Adank, director of the WTO Legal Affairs Division. "I think a number [of members] are asking, what does the U.S. actually want to do with this sort of system?" he wondered.

> "It's a system that the U.S. continues to use very actively itself. It's initiated panels very recently and is taking them through, but I think we want a clarity in that area before these conversations that will have to take place between the major players can actually go very far," Adank said. "We could be in for a bit of a wait because I don't think something is going to happen next week or next month," said Adank. As reappointment comes up the issue will come into focus, he predicted.

Though it may appear as though the U.S. is gumming up the works, that doesn't mean that all countries think the dispute settlement mechanism is without flaws. "An underlying problem is that the system, when it was set up, thought it had a means for clarifications of agreements, but that has never been used," Terence Stewart, managing partner, Stewart & Stewart, explained. "When mistakes get made, if they were important to a country, a country has no way to get that corrected and the overreach issue which is basically what [USTR Robert] Lighthizer was referring to, is one that virtually every country in the WTO has sought to exploit in given situations," he said.

Overreach is not a Trump administration issue, Stewart said. In 2002 Congress was concerned about WTO overreach and wrote the issue into the Trade Promotion Authority. Another fundamental issue the current administration and past administrations have shared: who has authority? "Does the Appellate Body have the authority through its working procedures or through its actions to disregard limitations that are contained in the [Dispute Settlement Understanding], or is that the responsibility of the [Dispute Settlement Body] to address when the issue comes up?" said Stewart. It's unclear, for example, on the issue of filling vacancies as to whether the DSB or the Appellate Body can rule on the matter.

Paul Blustein, senior fellow at the Centre for International Governance Innovation, and author of a recent paper on the issue, offered a different solution to resolving AB issues: move Werner Zdouc, director of the AB Secretariat, to a new job. Zdouc is "incredibly hard-working and his whole agenda is to protect the Appellate Body from ever admitting that it made a mistake. It seems to be what he regards as his life's mission," Blustein said.

Blustein in his paper argued that Zdouc is unusually powerful. AB members, like other judges, depend on lawyers within the AB Secretariat to assist in cases. "Zdouc not only oversees these Secretariat staffers, he reviews virtually every document they submit to the Appellate Body Members, often revising their work - in other words, he effectively 'holds the pen' in the drafting process for many decisions," wrote Blustein.

"Any court makes mistakes, and if Werner Zdouc is keeping the WTO's top judges from squarely facing theirs, he should find a different job — not because he has acted dishonorably (he has not), but because concerns about his loss of perspective are apt. However, it would be the ultimate loss of perspective — indeed, the ultimate throwing out of the baby with the bathwater — if the United States were to wreck the WTO out of pique over Appellate Body rulings on trade remedies," Blustein's paper concludes.

* * * Briefs * * *

<u>BIS</u>: President Feb. 5 announced intent to nominate Jeffrey Nadaner to be BIS assistant secretary for export enforcement. Currently director of Brute Krulak Center for Innovation & Creativity at USMC, Nadaner previously served as VP of corporate engineering and technology at Lockheed Martin and prior to that, deputy assistant secretary of Defense for partnership strategy and stability operations.

<u>MAGNESIUM</u>: In 4-0 "sunset" vote Feb. 2, ITC said revoking antidumping duty order on imports of pure granular magnesium from China would renew injury to U.S. industry.

<u>TRADE PEOPLE</u>: Kevin Cuddy will serve as Stimson Center's inaugural Trade, Technology and Security Fellow, center announced Feb. 8. He will continue to work as senior manager for international trade compliance at GE. Fellowship "will examine how evolving trade policies intersect with rapid developments in technology, as well as U.S. security and foreign policy objectives," it said. Cuddy will focus on technology transfers, additive manufacturing, and global non-proliferation programs.

<u>JUSTICE</u>: David Laufman, chief of counterintelligence and export control section (CES) in Justice's national security division, left post Feb. 7 to return to private sector. Jay Bratt is acting CES chief. Laufman was appointed in December 2014 (see **WTTL**, Dec. 8, 2014, page 8).

<u>CONGO</u>: OFAC Feb. 5 added four individuals to SDN List from Democratic Republic of Congo (DRC) "who have engaged in destabilizing activities responsible for prolonging the conflict" in DRC

and "contributing to widespread poverty, chronic food insecurity, and population displacement," OFAC said. Individuals include commander of DRC armed forces and three commanders of militia or rebel groups. In June OFAC added François Olenga, head of "Maison Militaire," which oversees Republican Guard, and Safari Beach resort (see **WTTL**, June 5, 2017, page 6).

FALSE CLAIMS: It's always wooden bedroom furniture. Home Furnishings Resource Group Inc. (HFRG) of Hermitage, Tenn., which also operates under name Function First Furniture, agreed Feb. 6 to pay $500,000 to settle government complaint in San Antonio U.S. District Court under False Claims Act. Suit claimed company engaged in scheme to evade antidumping duties on wooden bedroom furniture imported from China from 2009 to 2014. Whistleblower University Loft Company, HFRG competitor, will receive $75,000 as its share of settlement. Bassett Mirror Company of Bassett, Va., agreed Jan. 16 to pay $10.5 million in Savannah federal court in similar suit (see **WTTL**, Jan. 22, page 8).

SOLAR: Three Canadian solar companies and one American distributor filed suit Feb. 7 at Court of International Trade against U.S. federal government, Customs and Border Protection and Acting Commissioner Kevin McAleenan, ITC and Chair Rhonda Schmidtlein, and USTR and Lighthizer. Plaintiffs allege that solar tariffs President Trump announced Jan. 23 "will inflict immediate, severe and irreversible injuries" and are "unlawful as applied to Plaintiffs" (see **WTTL** Jan. 29, page 1). Plaintiffs seek "a declaration that the Proclamation violates the trade act and the NAFTA Implementation Act and an injunction prohibiting its enforcements against Plaintiffs."

WTO: U.S. Feb. 9 blocked India's first request to establish panel to determine whether India is compliant with previous World Trade Organization (WTO) Dispute Settlement Body (DSB) ruling related to imports of solar cells and modules (see **WTTL**, Feb. 5, page 6). U.S. says India is not compliant and U.S. reiterated right to seek retaliation while also remaining open to work with India toward resolution. U.S. requested retaliation at previous DSB meeting … In separate case with Korea, U.S. said it intends to implement, within a reasonable period of time, DSB ruling concerning certain oil country tubular goods (see **WTTL**, Jan. 15, page 5). Korea said it had "fruitful consultations" with U.S. on defining reasonable period of time.

GSP: House Ways and Means Chairman Kevin Brady (R-Texas), Ranking Member Richard Neal (D-Mass.), Trade Subcommittee Chairman Dave Reichert (R-Wash.) and its Ranking Member Bill Pascrell (D-N.J.) along with Rep. Jackie Walorski (R-Ind.) Feb. 8 introduced bill (H.R. 4979) to provide three-year renewal of Generalized System of Preferences (GSP) and retroactively apply benefits. Program expired Dec. 31 (see **WTTL**, Jan. 8, page 3). "GSP expiration has already cost American companies approximately $100 million, a figure that grows by several million dollars every day. A three-year extension will provide American businesses with the certainty needed to continue growing and investing in their workers and communities," Dan Anthony, executive director, Coalition for GSP, said in statement.

NASA: In memo Feb. 8, NASA Inspector General announced it had verified agency actions to implement recommendations of May 2016 report on progress toward protecting export-controlled technologies (see **WTTL**, June 6, 2016, page 1). "During the past year, NASA completed its proposed actions to implement the six recommendations we made to improve the Agency's Export Control and Foreign National Access Management Programs. These actions included expanding annual audits to assess the effectiveness and efficiency of export control and foreign national access processes and ensuring annual audit reports are standardized to evaluate progress across NASA's numerous Centers around the country," memo said.