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Agencies Implement Cuba Policy Reversal

In a move that while not surprising might give U.S companies and travelers whiplash, State, Treasury's Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS) Nov. 9 formally implemented the Trump administration's new Cuba policy, reversing President Obama's move toward more open relations with Havana.

In a slew of fact sheets, Frequently Asked Questions and Federal Register notices, the agencies tightened trade and travel restrictions (see **WTTL**, June 19, page 1). To start, State listed 179 entities under the control of Cuban military, intelligence or security services or "personnel with which direct financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba."

The list included two ministries, five holding companies, dozens of hotels, marinas, stores and other subsidiaries, even including soft drinks and rum trademarks and a photography service. In addition, BIS amended Cuba licensing policy and portions of three license exceptions. OFAC made parallel amendments with respect to financial and travel transactions, educational activities, and support for the Cuban people. For example, the new rules require that "people-to-people educational travel be conducted under the auspices of an organization that is subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact," OFAC noted.

As expected, the Cuban government denounced the actions. "These measures will damage the Cuban economy and Cuba's state and non-state sectors," said Josefina Vidal, Cuban Foreign Ministry's director general for U.S. affairs, in a statement.

Indictment, Guilty Pleas in Rolls-Royce Foreign Bribery Scheme

A federal indictment against Petros Contoguris, a Greek citizen residing in Turkey, was unsealed in Columbus, Ohio, U.S. District Court Nov. 7, for his role in a long-running

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scheme to bribe officials of state-owned oil and gas companies for the benefit of a U.S.-based Rolls-Royce subsidiary in exchange for contracts from 2000 to 2013.

Contoguris, founder and CEO of Gravitas & CIE International Ltd., is charged with conspiracy to violate the Foreign Corrupt Practices Act (FCPA), conspiracy to launder money, seven counts of violating the FCPA and 10 counts of money laundering. The indictment was filed Oct. 12, and Contoguris is at large. Separately, four other individuals involved in the scheme have pleaded guilty in Columbus federal court since 2016, all of which were unsealed Nov. 7.

> Rolls-Royce plc agreed in January 2017 to pay Justice nearly $170 million to settle charges the company and a U.S. subsidiary, Rolls-Royce Energy Systems Inc. (RRESI), conspired to violate the FCPA (see **WTTL**, Jan. 23, 2017, page 1). The payment under a deferred prosecution agreement (DPA) was part of an $800 million global resolution to investigations by the department, UK and Brazilian authorities.

James Finley, a former senior executive in energy at Rolls-Royce, pleaded guilty in July to one count of conspiracy to violate the FCPA and one count of violating the FCPA; Keith Barnett of Houston, a former regional director in energy at Rolls-Royce; Aloysius Johannes Jozef Zuurhout of the Netherlands, a former energy sales employee at Rolls-Royce; and Andreas Kohler of Austria, a managing director at an international engineering and consulting firm, all pleaded guilty to conspiracy to violate the FCPA.

The indictment against Contoguris alleges that he and others, including Kohler, devised a scheme with Rolls-Royce executives and employees, including Zuurhout, Barnett and Finley, in which Rolls-Royce would pay kickbacks to the consulting firm's employees, and bribes to at least one foreign official, and disguise these payments as commissions to Gravitas, in exchange for helping Rolls-Royce win contracts with Asia Gas Pipeline LLP.

"Rolls-Royce has committed to full ongoing co-operation with the Department of Justice and cannot comment on action against individuals," a Rolls-Royce spokesperson wrote in an email to WTTL. The company completed a deal to sell its energy gas turbine and compressor business to Siemens in 2014.

Trump Travels to Asia Hoping to Sell Bilateral Deals

While little was expected during the president's five-country trip, even less was achieved. Speaking at the Asia-Pacific Economic Cooperation (APEC) Summit Nov. 10, President Trump laid out his vision for bilateral trade in the Indo-Pacific region, using familiar "America-first" talking points. But other Pacific economies did not seem eager to buy into the administration's vision for bilateral deals.

"For many years, the United States systematically opened our economy with few conditions. We lowered or ended tariffs, reduced trade barriers, and allowed foreign goods to flow freely into our country. But while we lowered market barriers, other countries didn't open their markets to us," said Trump. He eviscerated the World Trade Organization (WTO), saying the U.S. adhered to WTO principles while other countries "ignored the rules to gain advantage over those who followed the rules causing enormous distortions in commerce and threatening the foundations of international trade itself."

Trump vowed to make bilateral trade agreements, not more restrictive multilateral deals. "I will make bilateral trade agreements with any Indo-Pacific nation that wants to be our partner and that will abide by the principles of fair and reciprocal trade. What we will no longer do is enter into large agreements that tie our hands, surrender our sovereignty, and make meaningful enforcement practically impossible," he said.

> Despite Commerce Secretary Wilbur Ross' announcement of approximately $250 billion in deals between U.S. and China, there didn't seem to be any takers. In fact, 11 other countries were busy during the APEC Summit ironing out the details of the Trans-Pacific Partnership, from which the administration withdrew in its early days (see related story, page 4).

The president's comments stood in contrast to Chinese President Xi Jinping, who spoke after his American counterpart. "We should support the multilateral trading regime and practice open regionalism to allow developing members to benefit more from international trade and investment," Xi said. Following APEC's conclusion, Trump will visit the Philippines.

While in Japan, Trump told business leaders that the U.S. has "suffered massive trade deficits" when it comes to automobiles. "We want fair and open trade. But right now, our trade with Japan is not fair and it's not open, but I know it will be, soon. We want free and reciprocal trade, but right now our trade with Japan is not free and it's not reciprocal. And I know it will be. And we've started the process, and it's gone on for a long time, but I know that we will be able to come up with trade deals and trade concepts that are going to be fair to both countries, and, actually, I think will actually be better for both countries," he said. Trump left Japan without any commitment to a bilateral trade deal.

Though the threat of North Korea loomed over the president's visit to South Korea, Trump and Korean President Jae-in Moon did touch on the fate of the Korea-U.S. Free Trade Agreement (KORUS). "I feel confident that we'll be able to reach a free, fair and reciprocal trade deal as we renegotiate our current five-year-old trade document," Trump said. While Moon echoed Trump's sentiments, South Korean Trade Minister Kim Hyun-chong is nonetheless laying groundwork to terminate the agreement if it harms national interests (see **WTTL**, Nov. 6, page 7).

China Pushing for Market Economy Status at WTO

China is once again pursuing consultations with the U.S. at the WTO in another attempt to buck its non-market economy (NME) labeling. In light of a recent Commerce memo that affirmed China's NME status (see **WTTL**, Nov. 6, page 4), China Nov. 3 added a supplement to its initial request for consultations. “Regrettably, [Commerce] issued a determination on 30 October 2017 that China remains a ‘non-market economy’ under U.S. law, with the result that the United States will continue to violate its obligations under the covered agreements. China is therefore compelled to seek further consultations with the United States in the interests of securing a positive resolution to this dispute,” reads the consultation request. China first requested consultations in December 2016 and an initial round was held in February 2017, which did not resolve the dispute.

> The determination in question states that China is a non-market economy “because it does not operate sufficiently on market principles to permit the use of Chinese prices and costs for purposes of the Department’s antidumping analysis.” U.S. industry praised the decision.

China maintains that per its WTO accession protocols it should be treated as a market economy as of December 2016. “Regretfully, the U.S. ignored that the 15th article of the Protocol on China’s accession to the WTO was due and insisted on its wrongdoings, continuing to use the ‘surrogate country’ approach in the anti-dumping investigations against the Chinese products. This breaks its obligations under the WTO rules,” a Chinese Ministry of Commerce official said in a statement.

“This kind of action has damaged the legitimate rights and the interests of the Chinese enterprises and the authority of the WTO rules. China thus put forward supplementary consultation request and will firmly safeguard its rights under the WTO disputes settlement system,” the official added.

TPP-11 Countries Will Keep Talking

Will they or won’t they? Things looked dicey for the future of the Trans-Pacific Partnership 11 (TPP-11) Nov. 10 after Canadian Prime Minister Justin Trudeau skipped a planned leaders’ meeting after bilateral talks with Japan broke down. In contrast to other celebratory tweets as the day progressed, Canadian Trade Minister Philippe-François Champagne tweeted that “despite reports, there is no agreement in principle on TPP.” But by late that evening, the countries had come to an agreement on “core elements” of the deal.

“We are pleased that progress is being made towards a possible agreement, but there is still some work to be done. Our priority is to ensure that it is the right deal for Canadian workers and businesses. We will only sign onto a deal that reflects Canada’s interests and meets our objectives to create and sustain well-paying middle class jobs in today’s competitive global economy,” Champagne said in a statement. Earlier in the day, he had cited the intellectual property and auto sectors as potential sticking points.

At press time, an official statement was expected to be released Nov. 11. Initially Japan had been reluctant to move forward without the U.S. Fearing Chinese influence in the Asia-Pacific region with its planned Regional Comprehensive Economic Partnership trade pact, Japan has lobbied hard in favor of concluding the TPP-11. Japan had wanted talks wrapped up by the Asia-Pacific Economic Cooperation (APEC) November meeting (see **WTTL**, Sept. 4, page 8).

* * * Briefs * * *

PTFE RESIN: In 4-0 preliminary vote Nov. 9, ITC found U.S. industry may be injured by allegedly dumped imports of polytetrafluoroethylene resin from China and India and subsidized imports from India.

PET RESIN: In 4-0 preliminary vote Nov. 8, ITC found U.S. industry may be injured by allegedly dumped imports of polyethylene terephthalate (PET) resin from Brazil, Indonesia, Korea, Pakistan and Taiwan.

NORTH KOREA: Customs and Border Protection (CBP) is undertaking "significant communications outreach to trade stakeholders" after passage of Countering America's Adversaries Through Sanctions Act (H.R. 3364), which included provision affecting merchandise with "a nexus to North Korean nationals or citizens," agency said in press release Nov. 7. Under law, "any significant merchandise mined, produced, or manufactured wholly or in part by North Korean nationals or citizens is prohibited from entry into the United States unless CBP finds through clear and convincing evidence that the merchandise was not produced with a form of prohibited labor. Where CBP finds such evidence of North Korean labor, CBP will deny entry," it added.

MORE NORTH KOREA: Senate Banking Committee Nov. 7 unanimously passed substitute Otto Warmbier Banking Restrictions Involving North Korea (BRINK) Act of 2017 (S. 1591), which would "strengthen and expand U.S. sanctions on North Korea and its financial facilitators and supporters," committee press release noted (see **WTTL**, Nov. 6, page 8).

BIODIESEL: Commerce Nov. 9 announced affirmative final determinations in countervailing duty investigations of imports of biodiesel from Argentina and Indonesia. Commerce calculated subsidy rates of 72.28% for LDC Argentina S.A. and 71.45% for Vicentin S.A.I.C., partially based on adverse facts available. Commerce determined 71.87% for all other Argentinian producers and exporters. In Indonesia CVD investigation, Commerce calculated subsidy rates of 34.45% for Wilmar International Ltd., 64.73% for P.T. Musim Mas and 38.75% for all other Indonesian producers and exporters. Petitioner is National Biodiesel Board Fair Trade Coalition.

VENEZUELA: OFAC Nov. 9 designated ten current or former Venezuelan government officials, including members of National Electoral Council (CNE), Constituent Assembly (AC), director general of National Telecommunications Commission and president of country's National Telephone Company, pursuant to Executive Order 13692, for "undermining electoral processes, media censorship or corruption in government-administered food programs," according to Treasury statement.

FINCEN: Treasury Nov. 8 named Kenneth Blanco director of Financial Crimes Enforcement Network (FinCEN). He currently serves as acting assistant attorney general of Justice criminal division. "I am excited to take my 28 years of prosecutorial experience with me to FinCEN, and to join a fabulous team at Treasury. [Treasury's Office of Terrorism and Financial Intelligence] is dedicated to protecting the American people and securing the integrity of our financial system from bad actors who commit acts of terror or other crimes against our nation," Blanco said in statement.

COTE D'IVOIRE: In Nov. 13 Federal Register OFAC is removing Côte d'Ivoire Sanctions Regulations "as a result of the termination of the national emergency on which the regulations were based." President Obama lifted economic sanctions on country in September 2016 (see **WTTL**, Sept. 19, 2016, page 10).

BREXIT: Trade Bill introduced in United Kingdom (UK) Parliament Nov. 7 will create powers to transition over 40 existing trade agreements between EU and other countries, enable UK to become independent member of Government Procurement Agreement, establish Trade Remedies Authority, and ensure UK government has legal abilities to gather and share trade information. "We are getting on with delivering a successful Brexit, by seeking a deep and special partnership with the EU, and by boosting our existing trading relationships with old partners while opening up access to new and exciting markets across the world," UK International Trade Secretary Liam Fox said in statement.

MTB: House Ways and Means and Senate Finance committee leadership Nov. 9 introduced Miscellaneous Tariff Bill (MTB) Act of 2017 (H.R. 4318). House members want MTB passed by end of year (see **WTTL**, Oct. 30, page 5). "Bipartisan MTB reform is smart policy for American businesses, American workers, and American consumers, as it will lead to the elimination or reduction of duties on imports that are not available or manufactured in the United States. This will directly result in long-needed duty relief for American companies, providing capital for reinvestment in the American workforce, research & development, and reduction on prices for American families," Rick Helfenbein, president and CEO of American Apparel & Footwear Association, said in statement.

FCPA: Anthony "Tony" Mace and Robert Zubiate, former executives at SBM Offshore, Dutch oil and gas services company, pleaded guilty week of Nov. 6 in Houston U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) for their roles in scheme to bribe foreign government officials in Brazil, Angola and Equatorial Guinea. Mace's sentencing is set for Feb. 2; Zubiate's for Jan. 31. Mace was SBM's CEO from 2008 to 2011 and former board member of wholly owned Houston subsidiary. Zubiate was former sales and marketing executive at same subsidiary.

WTO: WTO Appellate Body Nov. 9 upheld initial finding that Indonesia's import licensing regimes for horticultural products, animals and animal products are inconsistent with WTO rules. Panel was established in 2015 and report released at the end of 2016. Indonesia appealed in February 2017 (see **WTTL**, Feb. 20, page 7). USTR Robert Lighthizer called it "significant win for U.S. farmers and ranchers" in statement.

ETHANOL: Three trade groups intend to petition USTR for suspension of Brazil's designated country status under Generalized System of Preferences (GSP). In letter to USTR Robert Lighthizer Nov. 9, Growth Energy, Renewable Fuels Association and U.S. Grains Council cited country's "protectionist and market distorting actions" in implementing immediate, two-year tariff of 20%. As U.S. represents over 99% of ethanol exports to Brazil, "the TRQ effectively only applies to imports of U.S. ethanol," groups wrote.