ISSN 0276-8275

WTTLonline.com

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

# Washington Tariff & Trade Letter®

Publisher: Martin Kalin • Editor: Meredith Gilston • Associate Editor: Melissa Apter

**Vol. 37, No. 41** **October 16, 2017**

## Trump Kicks Iran Deal, Sanctions to Congress

As expected, President Trump will not certify to Congress that Iran is meeting its obligations under the Joint Comprehensive Plan of Action (JCPOA), he announced Oct. 13; however, he is not withdrawing the U.S. from the multilateral agreement yet. Instead, he is instructing Congress to "address the deal's many serious flaws so that the Iranian regime can never threaten the world with nuclear weapons," Trump said in a public address.

> "Key House and Senate leaders are drafting legislation that would amend the Iran Nuclear Agreement Review Act to strengthen enforcement, prevent Iran from developing an intercontinental ballistic missile, and make all restrictions on Iran's nuclear activity permanent under U.S. law," he said. "However, in the event we are not able to reach a solution working with Congress and our allies, then the agreement will be terminated. It is under continuous review, and our participation can be cancelled by me, as President, at any time," added Trump.

The day before the announcement, the House Foreign Affairs Committee passed the Iran Ballistic Missiles and International Sanctions Enforcement Act (H.R. 1698) by voice vote (see **WTTL**, May 22, page 4). The bill "requires a comprehensive investigation to identify and designate the companies, banks, and individuals – both inside and outside Iran – which supply the regime's missile and conventional weapons programs, subjecting them to sanctions, Committee Chairman Ed Royce (R-Calif.) said in a statement.

## OFAC Designates Iranian, Chinese Entities

In parallel with the White House decision, Treasury's Office for Foreign Assets Control (OFAC) designated Iran's Islamic Revolutionary Guard Corps (IRGC) pursuant to Executive Order (EO) 13224 for its activities in support of the IRGC-Qods Force, which in turn was designated in October 2007 pursuant to the same Executive Order, "for providing



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support to a number of terrorist groups, including Hizballah and Hamas, as well as to the Taliban." For those playing along at home, OFAC previously designated IRGC under three separate executive orders.

Today's action "carries some additional consequences that will limit certain activities with respect to the IRGC," OFAC said in a frequently asked question (FAQ). Persons designated under EO 13224 "may not avail themselves of the so called "Berman exemptions" under the International Emergency Economic Powers Act (IEEPA) relating to personal communication, humanitarian donations, information or informational materials, and travel," the agency said.

At the same time, OFAC designated Iran-based entities Shahid Alamolhoda Industries, Rastafann and Fanamoj, and China-based Wuhan Sanjiang Import and Export Co. LTD. under EO 13382, which targets weapons of mass destruction proliferators and their supporters.

## Congress, Allies, Experts Responded Quickly

Response to the White House's decision on the Iran deal came quickly, some even before the formal announcement. Rep. Eliot Engel (D-N.Y.), who voted against the Iran nuclear deal, criticized the president's actions. "Failing to certify the deal is a risky gamble. It's the first step toward withdrawing from the agreement keeping Iran from building the bomb Engel said in a statement.

"Our allies and adversaries alike will see this as a signal that the United States doesn't live up to our commitments, making the United States a source of uncertainty instead of a force for solving serious problems. I have to ask: what major power will trust our word on potential North Korean nuclear negotiations, given how Trump is undermining the agreement with Iran?" he added.

> Other countries that are party to the agreement condemned Trump's actions and reiterated their support for JCPOA. European Union foreign policy chief Federica Mogherini said the JCPOA "is a robust deal that provides guarantees and a strong monitoring mechanism so that Iran's nuclear program is, and will remain, exclusively for civilian purposes only." Trump cannot do away with the deal, she added. "The President of the United States has many powers. Not this one."

British Prime Minister Theresa May, German Chancellor Angela Merkel and French President Emmanuel Macron "stand committed" to the deal and are "concerned by the possible implications" of Trump's decision to back away from the deal in its current form, they said in a joint statement.

Daryl G. Kimball, executive director of the Arms Control Association, called the president's gambit "irresponsible and dangerous," he said in a statement. "It is critical that Congress refrain from any actions that would effectively seek to renegotiate the terms of the JCPOA. Any steps seeking to dictate an extension of the JCPOA restrictions or add additional requirements through U.S. legislation will create a major schism with U.S. allies and could push Iran to resume troublesome nuclear activities restricted under the deal," Kimball said.

## Bombardier Drama Continues, Delta Wades into Fray

The Canadian government is making moves to purchase fighter jets from Australia rather than U.S.-based Boeing in the wake of an ongoing dispute between Boeing and Bombardier. In late August, Canada entered into talks with Australia's government regarding potential purchase of F/A-18 fighter aircraft to supplement Canada's current CF-18 fleet, according to a Canadian government document posted Oct. 9.

On Sept. 29, two days after Commerce hit Bombardier with a preliminary 219.63% countervailing duty on its C Series commercial jets, Canada submitted a formal expression of interest to Australia (see **WTTL**, Oct. 9, page 8). "Separate discussions with Boeing related to the interim purchase of Super Hornet aircraft remain suspended. The Government of Canada continues to engage with the U.S. Government as it explores all options moving forward," it noted.

> The potential Boeing deal with Canada is for 18 Super Hornet fighter jets and associated arms package valued by State at $5.23 billion. Boeing filed petitions at Commerce and International Trade Commission in April against imports of 100- to 150-seat large civil aircraft from Canada.

Meanwhile, Delta Air Lines is vowing not to pay the nearly 300% preliminary tariffs Commerce leveled against Bombardier's C Series planes. "The C Series debate or the decision from Commerce is not just disappointing, it doesn't make a whole lot of sense," Delta CEO Edward Herman Bastian said during a third-quarter earnings call, a transcript of which was published Oct. 11. Last year Delta said it would buy at least 75 C Series jets from Bombardier at a list price of $5 billion.

"We will not pay those tariffs, and that is very clear. We intend to take the aircraft. I can't tell you how it's going to eventually work out. There may be a delay in us taking the aircraft as we work through the issues with Bombardier, who's being a great partner in this. We think that the aircraft needs to come to market, we believe it will come to market, and we believe Delta will get it at the agreed contractual price. We're not going to be forced to pay tariffs or do anything with the deal, so there should not be any concerns on our investors' minds in that regard," Bastian added.

## Senators Highlight Missed Deadline for Russia Sanctions

Ten days past the congressional deadline for implementing further Russian sanctions, Sens. Ben Cardin (D-Md.) and John McCain (R-Ariz.) Oct. 11 questioned the White

House's commitment to the legislation it grudgingly signed two months before. "The delay calls into question the Trump administration's commitment to the sanctions bill which was signed into law more than two months ago, following months of public debate and negotiations in Congress. They've had plenty of time to get their act together," the senators said in a joint statement.

> President Trump Aug. 2 signed the Countering America's Adversaries Through Sanctions Act (H.R.3364) that Congress passed in overwhelming votes almost a week before (see **WTTL**, Aug. 7 page 1). The Senate passed the bill 98-2; two days earlier, the House passed the same bill in another overwhelming 419-3 vote.

In a letter to the administration Sept. 28, the senators noted that by Oct. 1, the law "requires that the administration issue 'regulations or other guidance to specify the persons that are a part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation.' We are very concerned that Russia may attempt to work around sanctions by funneling the arms trade through companies not included in the administration's guidance."

"As the October 1st deadline related to the Russian defense sector sanctions approaches, we request that the Departments of State and Treasury provide us with a briefing on the administration's overall sanctions implementation plan with respect to Russia." Ten days later, this briefing had not happened.

## Businesses Shy Away from Section 301 China Hearing

Only 14 witnesses testified at an interagency panel the U.S. Trade Representative's (USTR) office held Oct. 10 to investigate China's "acts, policies and practices related to technology transfer, intellectual property and innovation," under Section 301 of the 1974 Trade Act, while more than 50 firms and individuals submitted written comments (see **WTTL**, Oct. 9, page 5).

Of this number, few were industry representatives, leading an acting member of the USTR staff to wonder whether intimidation was at play. Acting Assistant USTR for China Terrence McCartin, noting the lack of business witnesses, said companies were concerned "about retaliation or other harm to their businesses in China if they were to speak out in this proceeding."

Perhaps those fears aren't unfounded. Chen Zhou, vice president of the China Chamber of International Commerce, said his organization is "quite confused and greatly concerned about the investigation." Unilateral penalties against China "may trigger a trade war," he testified.

Erin Ennis of the U.S.-China Business Council acknowledged that technology transfer requirements and protection of intellectual property rights are "critically important" to American companies who seek Chinese market access. But she warned that "while there are numerous challenges that companies face, U.S. trade and investment with China supports roughly 2.6 million American jobs across many industries."

As the U.S. looks to eliminate discriminatory practices against U.S. companies doing business in China, the administration "needs a clear plan of what constitutes success. Rather than simply seeking to impose penalties or restrict trade, which could have the effect of inhibiting commercial cooperation that benefits U.S. companies and U.S. citizens, the preferred approach should be to develop and achieve enduring solutions – changes to Chinese policies and practices that resolve the issues," said Ennis.

> Companies who fail to protect their intellectual property in China have "primarily themselves to blame," ABRO Industries Intellectual Property Director William Mansfield testified. "The problem most western brand owners have is not that the Chinese have a bad system, but that the brand owners don't know how to make that system work." ABRO has benefited from administrative raids, customs seizures, criminal raids and the destruction of 2.7 million fake items, Mansfield testified.

"We have developed such a strong reputation as a brand that fights hard to protect our intellectual property that a major counterfeiter recently told an undercover investigator, who was posing as a potential buyer of fake products, that his company would produce whatever fake brands they needed – but not ABRO. 'It's not worth it to make them angry' he told the undercover investigator," Mansfield recounted. Half of ABRO's products are made in China and half in the U.S., though none are sold in the U.S.

Of the 50-plus commenters, only SolarWorld Americas and American Superconductor Corp. (AMSC) testified that intellectual property theft had damaged their companies. Juergen Stein, CEO of SolarWorld Americas, recalled how in May 2014 a grand jury indicted five members of the Chinese military for "hacking, identity theft and economic espionage" to the benefit of Chinese solar producers JA Solar and Trina.

"State-sponsored hacking and theft by China greatly weakened Solar World's first-mover status and again left SolarWorld vulnerable to China's relentless effort to take over the U.S. solar industry through the sale of solar cells and panels below the cost of production," he testified. SolarWorld is currently in the middle of the fight between domestic and international solar producers in its Section 201 global safeguard petition (see **WTTL**, Oct. 2, page 7).

AMSC CEO Daniel Patrick McGahn likewise testified about his company's belief that over 8,000 wind turbines operated by Chinese utility state-owned enterprises are operating on stolen intellectual property. "Such actions should have consequences. The negative impact of Sinovel's IP theft on the financial health of AMSC has been dramatic. AMSC has lost over $1.6 billion in company value and 70% of its workforce since March 2011. Nevertheless, AMSC will continue to pursue its claims in good faith through the Chinese court system in the belief that a fair and equitable outcome is still possible," McGahn said in his prepared testimony.

## U.S. Stokes Tensions in Fourth NAFTA Round

Round four of NAFTA negotiations kicked off Oct. 11 with the announcement that the U.S., Canada and Mexico had closed the chapter on competition and added two more days of negotiating to the schedule. But good feelings quickly gave way to mounting tension over the U.S. push for higher content requirements and the proposal of a sunset clause.

> The U.S. reportedly has proposed a five-year sunset clause, meaning the deal would expire unless all three countries decided to renew the pact. Canadian and Mexican officials have said previously such a clause is a nonstarter because of the uncertainty it would create. According to multiple press reports, the U.S. also proposed raising the automotive rules of origin content requirement from 62.5% to 85% with an added U.S.-only content requirement of 50%.

U.S. Chamber of Commerce President and CEO Thomas J. Donohue warned against such a proposal in a speech Oct. 10, "If the administration's proposal were to move forward, companies would cease trading under NAFTA and simply pay the generally low U.S. tariffs established under the rules of the WTO. So, the impact would be the opposite of what's intended: U.S. industry would source more inputs from Asia and less from the U.S. That's right—this proposal would actually send business overseas," Donohue said.

One Canadian union agreed with the Chamber. "Frankly, I think this is a bully move by the American government. The U.S. is making one-sided demands that they know we can't accept as they would seriously damage Canada's already weakened industry," said Jerry Dias, president of the Canadian auto and auto parts manufacturing union Unifor.

In a visit to Washington Oct. 11, Canadian Prime Minister Justin Trudeau met first with the House Ways & Means committee and then with President Trump. Trudeau's visit with House members was touted as a means of bolstering the case for NAFTA renegotiations, but it may very well have been to lay groundwork for a bilateral deal should trilateral negotiations fall apart. Having a Plan B in place is a wise strategy for Canada, given the U.S. administration's hints that NAFTA may not long survive. Trudeau flew to Mexico City the next day to meet with Mexican President Enrique Pena Nieto.

Speaking alongside Trudeau in front of reporters, Trump said, "It's possible we won't be able to make a deal, and it's possible that we will. … So, we'll see what happens with NAFTA, but I've been opposed to NAFTA for a long time. In terms of the fairness of NAFTA, I said we'll renegotiate. And I think Justin understands this: If we can't make a deal, it'll be terminated and that will be fine."

## Officials Call for Faster Pace, Focus Before WTO Ministerial

At an informal ministerial gathering in Marrakesh Oct. 9-10, trade officials recognized that much more work needs to be done before the World Trade Organization (WTO) 11th Ministerial Conference in Buenos Aires in December. In previous years, trade ministers have come to ministerial conferences without advance agreements on agenda topics and then work them out one way or another at the meeting. "There are some promising issues on the table, but in all areas there is still a lot of work to do. If ministers want to see a successful outcome in Buenos Aires, something more is going to have to happen in the coming days and weeks," WTO Director-General Roberto Azevêdo said in a statement after the meeting.

> "We need to see an approach where everyone is prepared to make some kind of contribution. We can't be in a position where members insist on a particular outcome and expect everyone else to accept that. This is dangerous as one size doesn't always work for all," he added. U.S. Trade Representative's (USTR) office did not provide a readout of its participation in the ministerial meeting.

European Union (EU) Trade Commissioner Cecilia Malmstrom also called for more ambition and a faster pace. "If we want to have a positive outcome in Buenos Aires in December, then we need to focus and pick up the pace. The EU has put forward several proposals on critical issues that today's trade policy must address. We hope and expect that other WTO members will engage constructively," she said in a statement before the meeting.

Canadian Trade Minister François-Philippe Champagne also participated. "We must keep pace with evolving technologies, demographic trends and consumption patterns if we are all to ensure that this system works for developed and developing countries alike," he said in a statement.

## Ways & Means Democrats Want NAFTA Hearing

Democrats, not normally the most vocal trade supporters, want NAFTA renegotiations to succeed, lest the deal be scrapped, but are nervous about the administration's positions, as was evidenced Oct. 11 at a House Ways & Means trade subcommittee hearing on opportunities to expand trade relationships in the Asia-Pacific. Industry also has anxiety over White House threats to withdraw from trade deals.

"Trump has had an incoherent and unpredictable trade policy," said Rep. Bill Pascrell (D-N.J.). He decried Trump's handling of the steel and aluminum Section 232 investigations and called for Congressional oversight in NAFTA negotiations (see **WTTL**, Oct. 9, page 9). "Considering the president has threatened more than once to withdraw the United States from NAFTA, I think it's critical that we have a public hearing on the trade agreement [and what] the renegotiation process or the threat of withdrawal means to our economy, our workers and communities," he added.

Rep. Lloyd Doggett (D-Texas) roundly criticized the administration for failing to explain itself before the committee. Doggett, who favors NAFTA reform, said "There are many things that need to be changed in [NAFTA] after two decades, but the idea of terminating or repealing it will have far-reaching consequences in Texas and it will have far-reaching consequences across our country."

Rep. Kristi Noem (R-S.D.) seemingly tried to quell some nerves. "We're modernizing NAFTA; we're not throwing it out," she said. In the meantime, she asked the witnesses, what bilateral trade deals should the U.S. seek out?

> For Kelley Sullivan, the owner/operator of Santa Rosa Ranch and a member of the National Cattlemen's Beef Association (NCBA), a deal with Japan is critical. Japan is the number-one export market for U.S. beef, but those exports are subject to a 50% tariff on frozen beef. Meanwhile, Australia, which does have a bilateral agreement, enjoys a 27% tariff rate.

NCBA strongly supported the Trans-Pacific Partnership (TPP) because it would have lowered the standard tariff from 38.5% to 9% in 16 years. The beef industry has also benefited tremendously from the U.S.-Korea Free Trade Agreement (KORUS). Should that deal be yanked, tariffs on exports to Korea could go up to 40%.

Matthew Goodman of the Center for Strategic and International Studies likewise stated that the U.S. should not withdraw from NAFTA and KORUS. He testified that leaving the TPP was a two-fold mistake: other countries are moving forward with the deal without the U.S., thus leaving the U.S. behind on beneficial trade barrier reductions, and it has left an opening for China to step up its efforts to pass the Regional Comprehensive Economic Partnership.

Despite the setbacks and changing environment, the U.S. can still take advantage of the Asia-Pacific region, but "we have to have a strategy to back it up," said Goodman.

## * * * Briefs * * *

<u>TITANIUM SPONGE</u>: In 4-0 preliminary votes Oct. 6, ITC found U.S. industry is not injured by allegedly dumped imports of titanium sponge from Japan and Kazakhstan and subsidized imports from Kazakhstan. As result of negative determinations, investigations will end.

<u>BRIGHTENING AGENTS</u>: In 4-0 "sunset" vote Oct. 13, ITC said revoking antidumping duty orders on imports of certain stilbenic optical brightening agents from China and Taiwan would renew injury to U.S. industry.

<u>FCPA</u>: Fernando Ardila Rueda (Ardila) of Miami pleaded guilty Oct. 11 in Houston U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and violating FCPA for role in scheme to bribe purchasing officials from Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Sentencing is set for Feb. 8, 2018. Ardila is 10th defendant in scheme to plead guilty. Most recently, Juan Jose Hernandez Comerma of Weston, Fla., pleaded guilty Jan. 10 in same court (see **WTTL**, Jan. 16, page 11). Ardila admitted to conspiring with U.S. businessmen Abraham Jose Shiera Bastidas and Roberto Enrique Rincon Fernandez. Rincon and Shiera previously pleaded guilty to related charges and will be sentenced at same time.

<u>SUDAN</u>: Per administration action revoking most Sudan sanctions week before, OFAC Oct. 12 removed more than 220 entities from SDN List (see **WTTL**, Oct. 9, page 9). BIS licenses still required to export or reexport to Sudan certain items (commodities, software and technology) that are on Commerce Control List (CCL).