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. 34 August 21, 2017

BIS Implements 2016 Wassenaar Changes

Bureau of Industry and Security (BIS) Aug. 15 implemented dozens of changes Wassenaar Arrangement (WA) members agreed to at its December 2016 plenary. Changes to the Export Administration Regulations (EAR) include revisions to 50 Export Control Classification Numbers (ECCNs), three new definitions, and additions and expansions to certain license exception eligibility.

> The regime's annual updating of its control lists attempted to address technology advances that are moving into all types of products beyond traditional control categories (see **WTTL**, Dec. 19, 2016, page 3). At the December plenary, Wassenaar continued its annual practice of raising the threshold for computer controls by adjusting adjusted peak performance (APP). This year the regime raised the APP from 12.5 to 16 Weighted TeraFLOPS (WT), which will become effective Sept. 25.

This rule also moves Burma from Computer Tier 3 to Tier 1 under License Exception APP, which will be effective Nov. 24. All other changes became effective on the day of the notice. Like the recent revisions based on changes from the Missile Technology Control Regime, this final rule was deemed significant, but exempt from the two-for-one executive order President Trump signed in January.

One specific revision that got the attention of trade observers involved Category 5—Part 2, which is "being restructured in order to simplify the text and focus the scope of controls," the rule said. "Note 4 is removed and is replaced by the creation of positive text in 5A002.a to specify the items subject to control. Although the wording is different and positively stated, the scope of control remains the same except certain non-primary function uses of encryption are now excluded," BIS noted.

USTR to Investigate Chinese IPR Policies

That didn't take long. Just four days after the president directed the U.S. Trade Representative (USTR) to determine whether to investigate China's intellectual property rights

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(IPR) policies, USTR Robert Lighthizer Aug. 18 announced it would formally initiate an investigation under Section 301 of the Trade Act of 1974. "On Monday, President Trump instructed me to look into Chinese laws, policies, and practices which may be harming American intellectual property rights, innovation, or technology development," Lighthizer said in a statement. "After consulting with stakeholders and other government agencies, I have determined that these critical issues merit a thorough investigation," he added.

> Lawmakers and industry groups previously urged the president to take strong action against China's forced technology transfer policies, but warned against potential risks of tariff retaliation (see **WTTL**, Aug. 7, page 1). Authority under rarely used Section 301 includes taking "any actions that are within the President's power with respect to trade in goods or services, or any other area of pertinent relations with the foreign country," USTR noted.

"We will engage in a thorough investigation and, if needed, take action to preserve the future of U.S. industry. Potentially millions of jobs are at stake for the current and future generations. This will be one of USTR's highest priorities, and we will report back to the President as soon as possible," Lighthizer said in a statement after the president signed the memorandum.

The expected, if muted, response from tech groups and lawmakers from both sides of the aisles arrived even before the final text of the executive memorandum was published. "We hope that China will take the administration's assessment seriously and simply improve our trade relationship by living up to their commitments to make their market more accessible. Doing so will benefit both the Chinese and the American people," Dean Garfield, president and CEO of Information Technology Industry Council, said.

House Ways and Means Trade Subcommittee Ranking Member Bill Pascrell (D-N.J.) was the most candid. "While today's announcement could eventually lead to aggressive action against China, I am concerned it will lead to only another investigation and report. The Trump Administration has called for report after report on the detrimental practices of our trading partners but hasn't actually done anything about it. The time for action is now," he said in a statement.

ITC Hearing Heats Up Over Future of U.S. Solar Industry

Solar industry executives, local and federal elected government officials, and foreign officials from six countries and the European Union showed up to the International Trade Commission (ITC) building Aug. 15 to stand in fierce opposition to a global safeguard petition filed by Suniva Inc. and SolarWorld Americas, Inc. The two financially troubled domestic solar equipment manufacturers are calling on the government to place duties of 40 cents per watt on imported cells and a floor price of 78 cents per watt on solar modules under Section 201 of the 1974 Trade Act.

Suniva and SolarWorld executives argued that overcapacity from China, Japan, Taiwan, Vietnam and others have led to the destruction of U.S. solar manufacturing industry (see

WTTL, May 1, page 1). Though two antidumping cases in 2014 and 2015 aided industry somewhat, prices plunged again in 2016 due to a surge of global imports. "The United States is literally strewn with the carcasses of shuttered solar manufacturing facilities," said Matthew J. McConkey, a lawyer from Mayer Brown, counsel to Suniva.

Suniva filed for bankruptcy in April and filed the petition for relief soon after, stating that 1,200 U.S. manufacturing jobs have been lost and wages fell 27% from 2012-2016, and though U.S. market share fell, there was $4 billion growth of the domestic market. SolarWorld's parent company, located in Germany, filed for insolvency not long after and became party to Suniva's petition.

> SolarWorld successfully brought a trade case against China in 2011 and when those companies moved to Taiwan, SolarWorld again brought a case and won. Now manufacturing is being routed throughout Asia, and the two companies want broad action rather than having to bring lots of individual cases.

The petitioners had the backing of the Oregon Democratic congressional delegation. "Despite two successful U.S. antidumping (AD) and anti-subsidy trade cases, more than 30 U.S. solar manufacturing companies have been forced to close since 2010 due to global overcapacity and exports from countries such as China, Thailand, Vietnam, Malaysia, Singapore and others," Sen. Ron Wyden, along with Reps. Peter DeFazio, Kurt Schrader, Earl Blumenauer and Suzanne Bonamici, argued in a letter to ITC Chairman Rhonda Schmidtlein Aug. 17.

"In order to have a strong solar industry, we need to have a strong solar manufacturing industry as well. The Section 201 investigation will address unfair competition, surging imports, and global overcapacity, and could save a vital part of our technological knowhow and leadership in an industry that was pioneered on U.S. soil since the 1970s," they added. Wyden and his Oregonian House counterparts said they support a remedy that will "save and strengthen" the industry.

In contrast, 16 senators and 53 House members wrote open letters to Schmidtlein urging the chairman to reject the petition. "We are concerned that the requested trade protection would sharply increase the price of solar panels which could lead to a negative impact across the whole solar industry. The increased costs could slow or even stop solar growth, jeopardizing billions of dollars in investment in communities across the country. Moreover, it is projected that the new tariffs could lead to a loss of 88,000 American solar jobs next year," the letters noted.

The facts and figures for those letters were supplied by Solar Energy Industries Association (SEIA), the group that led the sizeable opposition to Suniva and SolarWorld. In a room so packed with SEIA workers that an upstairs cafeteria had to be commandeered to accommodate overflow for the overflow room, Matt Nicely of Hughes Hubbard & Reed LLP, counsel to SEIA, argued that the petitioners' position was not nearly as black and white as they claimed. The standard for relief under Section 201 is higher than in AD/CVD cases, Nicely reminded the commission. Unlike previous AD/CVD cases, domestic industry is growing and costs have fallen as expected. Yes, some companies have failed, but that is due to their own incompetence, said Nicely. Later in the 10-hour hearing, opponents detailed their perception of Suniva and SolarWorld's failings in design and quality standards and failure to keep up with technological advances.

"That the two petitioners would even bring this case demonstrates their poor business judgment and their hubris. They seek a public remedy for their own, private failings. If successful, they will undermine the hard work and innovation that is making solar a viable alternative to conventional energy sources," said Nicely.

Agricultural Exporters Score Three Wins in One Day

Aug. 17 proved to be a good 24 hours for agricultural exporters. That day, the Agriculture Department (USDA) announced that Korea lifted its ban on imports of U.S. poultry and poultry products, exports of U.S. rice to Colombia will increase, and beef exports to Argentina will resume for the first time in 25 years.

Seoul instituted its U.S. poultry and poultry product ban in March as a response to a detection of highly pathogenic avian influenza (HPAI) at a commercial chicken farm in Tennessee. Korea was hard hit by avian flu and had to cull millions of its own birds, leading to an egg shortage. On Aug. 11, the U.S. notified the World Organization for Animal Health that it is now free from HPAI. The notification removed justification for trading partners to restrict imports of U.S. poultry and poultry products.

> Korea is the tenth-largest market for U.S. poultry products. In 2014, Korea purchased $122 million in U.S. poultry products, including eggs, USDA reported. Korea said it will temporarily allow U.S. eggs and egg products to enter the country duty-free because of domestic supply shortages.

"South Korea is one of our best trading partners, and we want to continue being their most dependable supplier of high-quality food and farm products. Korea's lifting of its most recent ban is an important move for our poultry and egg industries, but it is still just the first step," Agriculture Secretary Sonny Perdue said in a statement.

Also Aug. 17, Perdue and USTR Robert Lighthizer announced an agreement with Colombia to allow for greater market access for U.S. exports of paddy rice. Under a previous 2012 agreement, U.S. rice exports were restricted based on phytosanitary concerns and could only reach Colombia through the port of Barranquilla. Colombia is the U.S.' 12th largest export market for food and agricultural products, valued at $2.4 billion in 2016, according to USDA.

U.S. pork, for the first time since 1992, will be allowed to enter the Argentine market, the White House said Aug. 17. The announcement came two days after Vice President Mike Pence met with Argentine President Mauricio Macri in Buenos Aires. According to the White House, this agreement opens up a potential $10 million per year market for U.S.

pork producers. Argentina had implemented a ban citing animal health concerns and will conduct on-site verification before exports resume.

The National Pork Producers Council (NPPC) applauded the announcement. “U.S. pork producers are the most competitive in the world and we have long sought the opportunity to provide affordable, high-quality pork in Argentina. We thank Secretaries Perdue and Ross, and their teams at the USDA and the Department of Commerce, as well as U.S. Trade Representative Lighthizer and his team, for their diligent work to win Argentine market access,” said NPPC President Ken Maschhoff said in a statement.

U.S. Combative in First Round of NAFTA Renegotiations

Speaking third after Canadian Foreign Affairs Minister Chrystia Freeland and Mexican Economy Secretary Ildefonso Guajardo Villarreal, both of whom touted the success of NAFTA, U.S. Trade Representative (USTR) Robert Lighthizer Aug. 16 painted a far darker picture of the trilateral trade agreement in his opening remarks at the inaugural four-day round of renegotiations in Washington.

“The views of the president about NAFTA, which I completely share, are well known. I want to be clear that he is not interested in a mere tweaking of a few provisions and a couple of updated chapters. We feel that NAFTA has fundamentally failed many, many Americans and needs major improvement,” said Lighthizer. He added that the U.S. has had persistent trade deficits.

> Given the Trump administration’s preoccupation with trade in goods deficits, Freeland preemptively addressed the topic in her own remarks. “Canada doesn’t view trade surpluses or deficits as a primary measure of whether a trading relationship works,” she said. At any rate, she claimed that the exchange between the U.S. and Canada is almost perfectly reciprocal in goods and services. “In fact, the United States ran a slight surplus with us of $8.1 billion,” Freeland added.

Canada’s core objectives are to modernize NAFTA, make it more progressive in line with the recently completed European Union-Canada Comprehensive Economic and Trade Agreement (CETA), harmonize regulations, create a freer market for government procurement, ease the movement of professionals, and ensure antidumping and countervailing duties are applied fairly.

Like Freeland, Guajardo’s government “believes that NAFTA has been a strong success for all parties, and we also agree there is room for modernization in order to make this agreement even more successful,” he said. Using Lighthizer’s own words from a Ways and Means Committee hearing, Guajardo said, “Our objective is to have more trade, not less trade and our objective is to first of all, do no harm.” Do no harm has been a rallying cry in the U.S. agricultural sector (see **WTTL**, Aug. 7, page 2). Mexico wants to strengthen North American competitiveness, advance toward inclusive regional trade, take advantage of the

21st century economy, and promote certainty for trade and investment in North America, Guajardo said.

> The thorniest issues that the nations will tackle are those that the U.S. is pushing for, namely, rules of origin. Lighthizer said rules of origin, "particularly on autos and auto parts" need higher NAFTA content and "substantial" U.S. content. The administration wants country of origin verified, not deemed. Investor-state dispute settlement will have to be addressed; Canada and Mexico want to maintain Chapter 19 provisions that protect them from certain U.S. trade cases.

Like previous trade negotiations, specific schedules were closely held. No formal agenda was given to press during the opening session, although The Canadian Press reported that they obtained a schedule showing working groups on government procurement and intellectual property met Thursday, auto parts rules of origin met Friday, and agriculture were expected to meet Saturday. USTR has said negotiating documents are classified.

The next round of negotiations will be in Mexico City in early September, quickly followed by a third round in Canada later that month, negotiators were expected to announce Aug. 20. Mexican officials stressed that they want renegotiations wrapped up before their presidential election year revs up in February 2018.

* * * Briefs * * *

NOTORIOUS MARKETS: In Aug. 16 Federal Register USTR requested comments on online and physical markets based outside U.S. to be included in 2017 Notorious Markets List. List identifies "online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting," USTR noted. Comments are due Oct. 2.

ROLLER BEARINGS: In 3-1 preliminary vote Aug. 11, ITC found U.S. industry may be injured by allegedly dumped imports of tapered roller bearings from Korea. Commissioner Meredith Broadbent voted no.

FLANGES: Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc., and Maass Flange Corporation Aug. 16 filed countervailing and antidumping duty petitions at ITA and ITC against imports of stainless steel flanges from China and India. "Improper subsidies have enabled Chinese and Indian manufacturers to dump products into the U.S. market at prices that are well below fair market value. The import data clearly demonstrate that the volume of Chinese and Indian stainless steel flanges sold in the U.S. has increased significantly this year, and that the foreign producers of these subsidized and dumped imports have taken sales directly from U.S. manufacturers," Coalition said in statement.

TRADE PEOPLE: Former DDTC compliance chief Sue Gainor Aug. 4 joined Boeing as vice president of global trade controls, replacing Kathryn Greaney who retired in 2017. Gainor left DDTC in August 2016 and briefly joined Dallas consulting firm (see **WTTL**, Nov. 7, page 6).

IRAN SANCTIONS: Blue Sky Blue Sea, Inc., doing business as American Export Lines and International Shipping Company (AEL), of Los Angeles agreed Aug. 17 to pay OFAC $518,063 to settle 140 charges of violating Iran sanctions by transshipping used and junked cars and parts via

Iran to Afghanistan from 2010 through 2012. AEL did not voluntarily self-disclose apparent violations, but received "first violation" mitigation of up to 25%, OFAC said.

DUTY EVASION: In first final action under 2016 Enforce and Protect Act (EAPA), Customs and Border Protection (CBP) Aug. 14 found "substantial evidence" that wire hangers were transshipped from China through Thailand to evade antidumping duties. Three days later, CBP issued interim measures in eight other investigations, finding "reasonable suspicion" of importers transshipping wire hangers through Malaysia to evade duties. "Combined, these EAPA investigations on wire hangers have resulted in CBP preventing evasion of over $33 million dollars in unpaid antidumping duties annually," said Acting CBP Commissioner Kevin McAleenan in statement.

TPP-11: New Zealand Aug. 17 approved negotiating mandate for Trans-Pacific Partnership 11 (TPP-11). In May, remaining TPP countries agreed to present proposal by November when they meet in Vietnam as part of Asia-Pacific Economic Cooperation (APEC) leaders' week. "Independent economic modelling shows TPP-11 could add $2.5 billion annually to our economy and eliminate costly tariffs - saving New Zealand companies $222 million each year. This is something that we cannot afford to turn our backs on," New Zealand Trade Minister Todd McClay said in statement.

KORUS: Special session of Joint Committee under U.S.-Korea Free Trade Agreement (KORUS) will take place in Seoul Aug. 22, USTR Robert Lighthizer announced Aug. 17. Lighthizer and Korean Trade Minister Kim Hyun-chong will open meeting via videoconference. U.S. requested meeting July 12 (see **WTTL**, Aug. 14, page 1).

JAPAN: USTR Robert Lighthizer and Japanese Foreign Minister Taro Kono Aug. 17 agreed to accelerate discussions on specific bilateral trade issues. Two, who met as part of U.S.-Japan Economic Dialogue, also discussed Japan's recent safeguard measure that increases tariffs on U.S. frozen beef exports and combatting unfair trade by third countries. "[Commerce] Secretary [Wilbur] Ross and I welcome the acceleration of discussions on trade with Japan that fulfills the Administration's objectives of advancing free and fair trade with one of our largest trading partners," Lighthizer said in statement.

COUNCILS DISBANDED: Two White House councils, Strategy & Policy Forum and Manufacturing Council, disbanded Aug. 16. Several executives resigned in wake of president's response to violence in Charlottesville, Va. previous weekend. Merck CEO Kenneth Frazier was first to resign Aug. 14 from manufacturing council; later that day Under Armour CEO Kevin Plank and Intel CEO Brian Krzanich stepped down. There were two more defections Aug. 15 and two Aug. 16 before president disbanded both councils via Twitter announcement.

BUY AMERICAN: In Federal Register notice Aug. 21, Commerce and USTR are seeking comments on "the costs and benefits to U.S. industry of U.S. international government procurement obligations" for report on "Buy American and Hire American," per Executive Order signed April 18 (see **WTTL**, April 24, page 6). Comments are due Sept. 18. Commerce will submit final report to president by Nov. 24.

EDITOR'S NOTE: In keeping with our 50-week publishing schedule, there will be no issue of ***Washington Tariff & Trade Letter*** on Aug. 28. Our next issue will be Sept. 4.