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. 37, No. 17 **April 24, 2017**

State Certifies Iran's Compliance, Yet Will Review Sanctions

Just as Secretary of State Rex Tillerson certified that Iran is compliant with its commitments under the Joint Comprehensive Plan of Action (JCPOA) April 18, he suggested that the administration is reviewing Tehran's policies in any case. In the certification letter sent to House Speaker Paul Ryan (R-Wis.), Tillerson said that a National Security Council-led interagency review of JCPOA is underway.

"The JCPOA fails to achieve the objective of a non-nuclear Iran it only delays their goal of becoming a nuclear state. This deal represents the same failed approach of the past that brought us to the current imminent threat we face from North Korea. The Trump administration has no intention of passing the buck to a future administration on Iran," Tillerson told reporters April 19.

President Trump issued his own condemnation of the deal at a joint press conference with Italian Prime Minister Paolo Gentiloni April 20. "They are not living up to the spirit of the agreement, I can tell you that. And we're analyzing it very, very carefully and we'll have something to say about it in the not-too-distant future. But Iran has not lived up to the spirit of the agreement. And they have to do that. They have to do that. So, we will see what happens," said Trump.

Census Scraps Used Electronics Field in AES

What a difference an administration makes. After months of Census officials saying they were going ahead with plans to include a controversial "yes-no indicator" for exports of used electronics in the Automated Export System (AES), the bureau formally dropped plans in a final rule April 19. The checkbox faced strenuous concerns from industry, but just a few months ago officials said that Census and the Environmental Protection Agency (EPA) were moving ahead with the indicator, which the EPA requested to track scrap electronics moving around the world (see **WTTL**, Dec. 19, page 7). In the Federal Register

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

notice, Census said it "acknowledges these concerns and held multiple discussions" with EPA. "The comments received reflected concerns about the clarity of and the burden related to the proposed requirement. At this time, the Census Bureau has decided to eliminate the requirement to report used electronics in the Final Rule," it added.

The rule cited several specific reasons from comments opposing the idea. These reasons include: the requirement is not mandated or justified; the addition will increase the reporting burden and add excessive costs on the trade community; the definition is overly broad; the filing requirements are unclear; the notice does not indicate what confidential data elements will be shared; and information could be obtained elsewhere.

> Other changes in the final rule include the addition of a new original Internal Transaction Number (ITN) data element. "The addition of the original ITN will assist the export trade community and enforcement agencies in verifying that a filer completed the mandatory filing requirements for the original shipment and any additional shipment(s)," Census noted.

Census also amended one section to add language requiring the authorized agent to provide the filer name in addition to the ITN and date of export, when requested by the U.S. Principal Party in Interest in a routed transaction. In addition, the rule amended two sections to add Country Group E:2 to ensure consistency with the Export Administration Regulations (EAR).

Administration Launches Steel Imports Investigation

Just one day after Commerce self-initiated an investigation into whether foreign steel imports compromise national security, President Trump April 20 invited unions and U.S. steel companies to a ceremonial signing of an executive order expediting the process. The signing comes amid a flurry of executive orders just before the 100-day mark of this administration.

Under Section 232 of the Trade Expansion Act of 1962, the president has "broad power to adjust imports—including through the use of tariffs—if excessive foreign imports are found to be a threat" to U.S. national security, Commerce said in a factsheet. Steel imports currently make up 26% of the U.S. marketplace and the domestic industry is only operating at 71%, Commerce noted.

In its last 232 investigation in October 2001, Commerce found that imports of iron ore and semifinished steel did not threaten national security and no remedial action was needed (see **WTTL**, Jan. 14, 2002, page 2). At the time, the department found that domestic supplies were adequate to meet defense needs and foreign sources were secure and diverse enough to pose no threat.

This time around Commerce is concerned by overcapacity, a senior administration official explained. "If you look at the capacity charts, particularly from China, you would now find

China has over one billion tons of capacity. That represents one-half the capacity in the whole world. They use about 700 million tons directly in their own country, and they export over 100 million tons. That still leaves 200 million tons of unutilized capacity, and their exports of that 100 million tons -- which is, itself, about the total U.S. consumption -- has created all sorts of follow-on effects in other countries," the official said.

Per the statute, the investigation must be completed within 270 days, but the executive order directs Commerce to expedite the report. "Given the number of trade cases and, therefore, the consequent amount of research that we've done, we think it will be accomplished a lot sooner than that," Commerce Secretary Wilbur Ross told reporters. He added that at least one public hearing will be held. No preliminary calculations have been completed as Commerce is "still in the research stage," according to Ross.

> During the signing ceremony, Trump said the investigation could be completed in just over a month. "We'll be back over a period of the next 30 to 50 days, I would say, and maybe sooner than that. But statutorily, we probably want to take a very good, strong, hard study. And we're going to do something really great for our industry, but in this particular case, for the steel industry," he said.

Unions applauded the expedited investigation. "Steel is the backbone of our country, our infrastructure and our military. The president's action today will reveal to policymakers in Washington what every American already knows: We must have a strong steel sector to be a strong country," United Steelworkers (USW) International President Leo Gerard said in a statement. In addition to USW, executives from Nucor Corporation, U.S. Steel and ArcelorMittal attended the signing ceremony.

"China's continuing overproduction of steel and other products is a particularly intractable problem that has defied solution, despite global efforts to force China to rein in its overcapacity. This investigation, initiated by the administration, should form the basis for taking comprehensive action to ensure that America has the steel it needs," added Gerard.

For his part, Trump insisted that "this has nothing to do with China." The executive order and investigation has to do with "worldwide, what's happening. The dumping problem is a worldwide problem," the president said.

American Institute for International Steel (AIIS), which represents steel importers, is "concerned about the nature and scope of this investigation," AIIS President Richard Chriss said in a statement. "At the very least, we hope the Secretary will consider the national security and economic implications of protectionist policies that would limit the availability of steel and drive up its price," Chriss added.

Industry Takes Aim at Export Regulations

In response to the Trump administration's call for comments about the effects of regulations on domestic manufacturing, industry had a few things to say about export controls. While much of the responses targeted environmental regulations, Commerce's Export Administration Regulations (EAR), State's International Traffic in Arms Regulations (ITAR) and Treasury's sanctions programs are not off the hook.

> In the March 7 Federal Register, Commerce requested comments on "the impact of Federal permitting requirements on the construction and expansion of domestic manufacturing facilities and on regulations that adversely impact domestic manufacturers." In total, the department received more than 170 comments of which only a handful referred to export controls.

The National Association of Manufacturers (NAM) cited the last several years of export control reform as positive steps but noted the previous administration "failed to make important systemic changes that would remove unnecessary, duplicative and time-consuming licensing procedures." The group again suggested agencies made specific changes, including: simplify encryption controls; establish an effective program license; create an intra-company transfer license exception; negotiate new multilateral controls on intrusion and surveillance items; consolidate licensing jurisdiction for technologies subject to the EAR; and revise the ITAR.

NAM also repeated calls for Customs & Border Protection (CBP) to retain Option 4 post-departure filing for eligible companies and "to consider carefully the potentially negative impacts on exporters if they proceed with plans to require advance electronic manifests in all modes of transportation" (see **WTTL**, June 15, 2015, page 7).

FTC Commercial Corp., in Los Angeles, had a number of suggestions including: better outreach by regulators to new exporters, simplified duty drawback and removal of Russian sanctions within consumer tech industries. FTC President Kenneth Wengrod cited a local software company that "caters to the apparel industry, had an order $600,000 to ship their technology to Russia, but sanctions killed that deal $600,000 and related business of another $400,000 with their suppliers in Asia and Eastern Europe."

Rache Corporation, a small manufacturing facility in Camarillo, Calif., included ITAR on a list of regulations that "are routinely imposed on us by our customers. The customer doesn't take into account that following all their various regulations adds additional cost in which they are unwilling to pay for. These federal regulations would require another full time indirect labor person. We have come to the conclusion that these are (PO) Purchase Order boiler plate clauses. We never receive compliance direction," the company noted.

Douglas Eddy, a machinist in Twain Harte, Calif., suggested that ITAR registration and annual fees should be waived or eliminated for all veteran-owned businesses as long as they are owned and operated in the U.S. "After all they are continuing to serve this country and putting Americans to work, so why penalize them," he asked. Eddy also commented that "any and all foreign based companies should not be allowed participation in the ITAR program and for obvious reasons or at least reduce their access to sensitive programs."

Pence Flirts with Possibility of U.S.-Japan Bilateral FTA

During a whirlwind travel through the Asia-Pacific, Vice President Mike Pence talked tough on trade with Korea, launched the U.S.-Japan Economic Dialogue and celebrated commercial deals in Indonesia. Most notably, Pence hinted at the possibility of a future bilateral free trade agreement while speaking with Japanese Deputy Prime Minister Taro Aso April 18.

"President Trump truly does believe that it's in the interests of the United States of America to negotiate trade agreements on a bilateral basis," he said. "We're beginning that conversation today, beginning to identify areas that we can enhance and strengthen the economic interaction between our two nations. And at some point in the future, there may be a decision made between our nations to take what we have learned in this dialogue and commence formal negotiations for a free-trade agreement," Pence added.

Commerce Secretary Wilbur Ross also met with his Japanese counterpart Trade Minister Hiroshige Seko in Tokyo April 18. Regarding a potential FTA, Ross told reporters, "It's a little bit early to say just what forms things will take, but we are certainly eager to increase our trade relationships with Japan and to do so in the form of an agreement."

> For its part, Japan has preferred to pursue the multilateral Trans-Pacific Partnership (TPP), rather than a bilateral FTA. Days after his meeting with Pence, Aso reportedly announced that discussions toward a TPP without the U.S. would begin at the Asia-Pacific Economic Cooperation (APEC) meeting in May.

In Tokyo, Pence and Aso outlined the three pillars under the Economic Dialogue: common strategy on trade and investment rules/issues; cooperation in economic and structural policies; and sectoral cooperation. The two agreed that "concrete results" should be generated in the "near term." President Trump and Japanese Prime Minister Shinzo Abe agreed to the Dialogue in February during Abe's visit to the White House (see **WTTL**, Feb. 13, page 1).

Speaking before the Korean business community April 16, Pence noted the strong economic ties between the two countries since the implementation of the U.S.-Korea Free Trade agreement (KORUS) five years ago. Despite those ties, "we have to be honest about where our trade relationship is falling short. Most concerning is the fact that the United States' trade deficit with South Korea has more than doubled since KORUS came into effect. That's the hard truth of it," said Pence.

"We're reviewing all of our trade agreements across the world to ensure that they benefit our economy as much as they benefit our trading partners," added Pence. He pledged to the Korean business community that he would work with them as KORUS is reformed "in the days ahead."

Pence and Indonesian Vice President Jusuf Kalla April 21 celebrated more than $10 billion in trade and investment agreements between the two countries. "These deals represent the tremendous excitement that American companies feel about opportunities in Indonesia," said Pence. Two agreements were signed to enhance aviation and defense cooperation.

During the trip, Pence confirmed that President Trump will travel to the Philippines in November for a summit with leaders of the Association of Southeast Asian Nations (ASEAN) and is expected to attend the APEC summit in Vietnam, also in November.

Trump Signs 'Buy American and Hire American' Executive Order

President Trump dusted off his populist America-first message April 18, signing a "Buy American and Hire American" executive order (EO) while visiting a Wisconsin tool manufacturer. The EO directs agencies to evaluate their Buy American policies, and it could limit future H-1B visas that allow companies to hire foreign workers in specialty occupations.

The EO requires that within 150 days of the order all agencies will: assess the monitoring, enforcement, implementation and compliance with their Buy American laws; assess the use of waivers; and develop and propose policies that maximize use of domestic products. In addition, it requires the Commerce Secretary and U.S. Trade Representative (USTR) to assess the impacts of all U.S. free trade agreements (FTAs) and the World Trade Organization (WTO) Government Procurement Agreement on the operation of Buy American laws. Commerce, in consultation with State, Office of Management and Budget (OMB) and USTR, will submit a final report within 220 days of the order.

> The EO does not end the H-1B visa program. It orders the secretaries of State, Labor, Homeland Security and the Attorney General to suggest reforms to "help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."

Union and industry groups took their predictable sides. "If President Trump is serious about strengthening Buy American and delivering on his pledges to create more American manufacturing jobs, he could immediately withdraw with 60 days written notice from World Trade Organization procurement rules with no penalty and invoke his executive authority to reverse all 59 trade pact Buy American waivers," said Lori Wallach, director, Public Citizen's Global Trade Watch, in a statement. (The WTO Agreement on Government Procurement covers 45 countries; NAFTA and other free trade agreements cover 14 countries.)

"We welcome efforts to improve the effectiveness of "Buy America" and "Buy American," both of which commit taxpayer funds to support good jobs and businesses in America. Today's executive order is a good first step toward making Buy America provisions more effective and discouraging excessive waivers, but more needs to be done to pivot the U.S. economy toward steady wage and job growth," AFL-CIO President Richard Trumka said in a statement.

U.S. Chamber of Commerce Senior Vice President Neil Brady criticized the EO April 18. It would be a mistake to "close the door on high-skilled workers from around the world who can contribute to American businesses' growth," he said. Brady added that his organization wants a "Buy American, Sell American" strategy. "If the goal is to grow the economy and create jobs, which the administration has indicated, it's important to open more procurement markets for American companies and attract the best and brightest talent," he concluded.

Administration Milks Criticism of Canadian Dairy Tax

President Trump used Canadian dairy policy to reiterate that change could be coming soon via NAFTA negotiations. "I wasn't going to do this – but I was in Wisconsin the other day, and I want to end by saying that Canada, what they've done to our dairy farm workers is a disgrace. It's a disgrace," Trump said during the signing of a presidential memorandum on steel April 20 (see related story page 2).

> "The fact is, NAFTA – whether it's Mexico or Canada – is a disaster for our country. It's a disaster. It's a trading disaster. And we'll be reporting back sometime over the next two weeks as to NAFTA and what we're going to do about it," he added. Whether a report will be forthcoming within two weeks, as other reports have been promised, remains to be seen.

Canada recently imposed a tax on ultra-filtered milk often used for cheese-making, which had previously been duty-free. U.S. dairy industry and Democratic senators urged the administration to fully investigate if Canada is keeping its NAFTA and World Trade Organization commitments (see **WTTL**, April 17, page 7).

Canadian Prime Minister Justin Trudeau responded to Trump's earlier criticism. "The U.S. has a $400 million dairy surplus with Canada, so it's not Canada that is the challenge here, and the way we approach our very constructive relationship with the United States on trade and on other thing is to base both around the facts of the issues and a shared desire to see citizens on both sides of our border succeed," said Trudeau, according to Canadian press.

* * * Briefs * * *

STEEL TUBING: ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, PTC Alliance Corp., Webco Industries and Zekelman Industries April 19 filed antidumping and countervailing duty petitions at ITA and ITC against imports of cold-drawn mechanical tubing of carbon and alloy steel from China, Germany, India, Italy, Korea and Switzerland.

FERROVANADIUM: In 5-0 final vote April 19, ITC found U.S. industry is materially injured by dumped imports of ferrovanadium from Korea.

HEDP: In 5-0 final vote April 21, ITC found U.S. industry is materially injured by dumped and subsidized imports of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from China.

<u>ALUMINUM FOIL</u>: In 5-0 preliminary vote April 21, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of aluminum foil from China.

<u>SILICON METAL</u>: In 5-0 preliminary votes April 21, ITC found U.S. industry may be injured by allegedly dumped imports of silicon metal from Australia, Brazil and Norway and subsidized imports from Australia, Brazil and Kazakhstan.

<u>DDTC</u>: Alisa Forby assumed duties as chief of Sea, Land and Aircraft Systems Division within State's Office of Defense Trade Controls Licensing, DDTC posted in web notice April 17. Bob Warren is retiring from State April 30, notice added. Forby's previous position of division chief of Plans, Personnel, Programs and Procedures "will be vacant until filled at a later time," DDTC noted.

<u>FSB</u>: In Federal Register April 18 BIS updated Entity List entry for Russia's Federal Security Service (FSB) in keeping with General License (GL) OFAC issued in February (see **WTTL**, Feb. 6, page 6). Rule "modifies the license requirement column for this entity to specify that the Entity List's license requirements do not apply to items subject to the EAR that are related to transactions authorized by OFAC pursuant to new General License No. 1." Cyber-related GL authorizes certain transactions with FSB that are "necessary and ordinarily incident to requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by" FSB.

<u>EXPORT ENFORCEMENT</u>: BIS April 14 accelerated two remaining installment payments under settlement with Streit USA Armoring, LLC, armored vehicle manufacturer in North Charleston, S.C., on charges related to unlicensed export of armored vehicles to Venezuela via Canada and other destinations in 2008 (see **WTTL**, Sept. 7, 2015, page 3). Company missed November 2016 payment. Streit USA, its parent company in UAE, another UAE subsidiary, and two corporate officers agreed in September 2015 to pay BIS $3.5 million to settle export charges.

<u>TRADE DEFICITS</u>: Commerce and USTR will hold public hearing May 18 and are accepting public comments on "omnibus" assessment of trade deficits President Trump requested in March (see **WTTL**, April 3, page 1). Trading partners with which U.S. had significant goods trade deficit in 2016 were Canada, China, EU, India, Indonesia, Japan, Korea, Malaysia, Mexico, Switzerland, Taiwan, Thailand and Vietnam, ITA noted in April 17 Federal Register.

<u>RUSSIA</u>: Treasury April 21 rejected Exxon's request for waiver from U.S. Russia sanctions. "In consultation with President Donald J. Trump, the Treasury Department will not be issuing waivers to U.S. companies, including Exxon, authorizing drilling prohibited by current Russian sanctions," Treasury Secretary Steve Mnuchin said in statement. Exxon reportedly tried to get waiver that would allow it to drill in parts of Russia subject to U.S. sanctions based on Russia's occupation of Crimea under deal with state oil company Rosneft.

<u>EX-IM BANK</u>: White House said April 14 it will nominate former Reps. Spencer T. Bachus III (R-Ala.) and Scott Garrett (R-N.J.) to Export-Import Bank (Ex-Im) board. Garrett, who if confirmed would serve as Ex-Im Board president, has been outspoken bank critic. He twice voted against reauthorizing Ex-Im and has called bank "fund for corporate welfare." President Trump reversed his previous opposition to bank two days earlier (see **WTTL**, April 17, page 7). Garrett served in House from 2003-2015 and was defeated by former Clinton speechwriter Josh Gottheimer. Bachus served in House from 1993 until his retirement in 2015. Both men require Senate confirmation. Former Senate Banking Committee Chairman Richard Shelby (R-Ala.) refused to hold hearings; it remains to be seen what current Chairman Mike Crapo (R-Idaho) will do.

BREXIT: British Prime Minister Theresa May April 18 called for early election ("snap election") to be held June 8. British lawmakers approved May's request following day in 522-13 vote. May had previously vowed not to call for early vote, but deemed it necessary to conducting Brexit negotiations with EU. She accused opposition parties of trying to get government to change course on Brexit. "Division in Westminster will risk our ability to make a success of Brexit, and it will cause damaging uncertainty and instability to the country. So we need a general election and we need one now, because we have at this moment a one-off chance to get this done while the European Union agrees its negotiating position and before the detailed talks begin," May said.

TRADE PEOPLE: Todd Ricketts, president's nominee to be deputy Commerce secretary, withdrew his nomination April 19. Ricketts, part of Chicago Cubs' ownership group, reportedly withdrew due to difficulties untangling his financial holdings to Office of Government Ethics' satisfaction. Ricketts was nominated Nov. 30 (see **WTTL**, Dec. 5 2016, page 6). Trade sources say administration is having hard time filling vacant Commerce positions due to financial conflicts and political disagreements.

INDIA: At World Trade Organization (WTO) Dispute Settlement Body (DSB) meeting April 19, U.S. blocked India's request for establishment of compliance panel to determine whether India's recent measures bring it into compliance with earlier WTO ruling condemning India's restriction on U.S. poultry imports. U.S. said that despite claims to contrary, India still maintains complete ban on U.S. poultry and other agricultural products. U.S. requested authorization to retaliate last summer (see **WTTL**, July 25, 2016, page 4).

TTIP: U.S. will look for "path forward" on Transatlantic Trade and Investment Partnership (TTIP), House Speaker Paul Ryan (R-Wis.) said in address to UK think tank April 19. U.S. "will continue to work closely with our EU friends, and chart a path forward on TTIP negotiations. At the same time, we are committed to work with President Trump and your government to achieve a bilateral trade agreement between the United States and Great Britain," said Ryan.

TRADE BENEFITS: OECD Secretary-General Angel Gurría denounced protectionism in speech in Minnesota April 19. "Protectionism harms those it's supposed to protect. Trade delivers affordable products and services that underpin everyday well-being. It gives people the ultimate freedom of choice. When you tax imports, costs go up for everyone, but it hurts most those who can least afford it," he said.