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®

Vol. 42, No. 32 August 8, 2022

Aerospace Sanctions Expand

Last week BIS updated its list of sanctioned aircraft flying in Russia and Belarus to include 25 Airbus models identified as apparently violating the EAR's *de minimis* threshold for U.S. components. There are now a total of 183 aircraft identified on the list for apparent violations of U.S. export controls. "Today's identification of 25 foreign-produced aircraft further degrades Russian airlines' ability to operate their fleets of both U.S. and EU airplanes," said Assistant Secretary of Commerce for Enforcement Matt Axelrod.

Any subsequent actions taken with regard to any of the listed aircraft, including, but not limited to, refueling, maintenance, repair, or the provision of spare parts or services, are subject to the prohibitions outlined in General Prohibition Ten of the EAR (Section 736.2(b)(10)). Any aircraft manufactured in the United States, or that is manufactured in a foreign country and includes more than 25 percent by value of U.S.-origin controlled content, is subject to a license requirement.

The Russia and Belarus Civil Aviation fleet includes more than 500 leased western-origin aircraft, according to Cirium, with about 435 remaining in Russian hands. As compliant maintenance, repair and operating (MRO) resources dry up, expect continued enforcement actions in the MRO market, and heed Deputy Secretary Alan Estevez's advice given BIS Update attendees in June: "If I were you, I wouldn't fly on a Russian airplane."

Canada, US Saw on Lumber

Commerce issued its final determination in the third annual review of softwood lumber imports from Canada. Trade groups have argued that the total duty rate of 8.59% effectively declares that Canadian lumber imports are "unfairly traded" into the U.S. market. In response, the Canadian government has declared that it would challenge the imposition of US duties on softwood lumber, saying the tariffs have caused "unjustified harm" to the industry and workers. The two countries are likely to use the dispute-resolution mechanism in the USMCA agreement.

www.wttonline.com
Publisher: Martin Kalin Editor: Frank Ruffing +1.703.283.5220. fruffing@traderegs.com

CFIUS 2021 Annual Report

The Committee on Foreign Investment in the United States (CFIUS) released the public version of its Annual Report.
Canadian investors accounted for the most Declarations filings in 2021. Investors from Canada accounted for the largest proportion of declarations for the three-year period with 14 percent (54 declarations). Investors from Japan and the United Kingdom accounted for the second and third-most declarations from 2019 to 2021 with 11 percent (43 declarations) and 8.6 percent (33 declarations), respectively. Declarations, while expedited, may in fact delay a review should a full Joint Voluntary Notice be required.

The highest number of Joint Voluntary Notices were from Chinese investors, accounting for 16.5 percent (44 notices), followed by Canadian and Japanese investors, accounting for 10.3 percent and 9.6 percent, respectively (28 and 26 notices)

While CFIUS reviewed a record number of “covered transactions”, including 164 declarations and 272 notices, no Presidential action was taken on any deal. This is the first year since 2016 when no Presidential decision was taken. The number of notices withdrawn after commencement of investigation rose markedly, so questionable deals may have been nixed prior to decision.

The agency recommended measures to resolve national security concerns in investment deals in 26 cases, or ten percent of the total.

40% of the “covered notices” were related to the Finance, Information and Services sector, with “Professional, Scientific, and Technical Services,” at 39% the largest sub-segment. Manufacturing at 38%, followed (Computer & Electronics: 34%). Nearly all transactions in Mining, Utilities and Construction were in the Utilities sub-sector.

WTO This Week

India has sought consultations with the UK at the World Trade Organization (WTO) over the latter’s proposed extension of safeguard tariffs and quota restrictions on import of certain steel products for two more years, till 2024. This follows the publication of the organization’s annual report, which provided that India topped the list of trade-related concerns at WTO in 2021 with 35% share.

Meanwhile, South Africa has launched a dispute at the against the European Union’s measures on **South African citrus fruit imports**. In what will be the first-ever WTO dispute settlement case initiated by South Africa, the country has challenged the EU’s phytosanitary requirements for imports of oranges and other citrus products.

Finally, the Director-General highlighted WTO’s new report, “Implementing the WTO Agreement on **Fisheries Subsidies:** Challenges and Opportunities for Developing and Least-Developed Country Members” to underline the utility of the WTO Fisheries Funding Mechanism in promoting sustainable fisheries. Recognizing the scope of the challenge, the Director General called upon countries to focus on integrating fisheries-related elements into subsidy policies, and meet new notification requirements.

CBP Anaheim Summit

Customs and Border Protection's Trade Facilitation and Cargo Security Summit last month gathered more than 1,000 trade practitioners in Anaheim, with another 2,000 attending virtually. Briefings and panels discussed forced labor, CBP's Green Trade Strategy, and the 21st Century Customs Framework initiative to modernize Customs.

"1993 is when we last experienced a major, comprehensive overhaul of our customs authorities. That was 29 years ago," said Garrett Wright, CBP's director of trade modernization, who moderated the panel. "Twenty-nine years ago, trade was largely containerized whereas today we're processing one billion small packages a year. Twenty-nine years ago, Canada was our No. 1 importer into the United States. Today, it's China. We're seeing a lot of risk coming from that part of the world. The landscape in which we operate has changed drastically."

CTPAT, the Customs Trade Partnership Against Terrorism marked its 20th anniversary at the conference. Manuel Garza, CBP's director of the CTPAT program, discussed innovation in program validations. "Even prior to virtual validations, there were still a lot of areas that were 'no-go zones,' travel restricted by the Department of State. So, we're now trying to figure out the next phase of this and an immersive style of audit is the direction we're heading." The immersive audit uses a 360-degree camera that would allow a CTPAT validation team to obtain extensive views of a CTPAT applicant's facility remotely.

Commissioner Chris Magnus spoke to CPB's efforts to addressed forced labor in the supply chain. "CBP's trade experts are leading the global fight against forced labor, a practice with more than 25 million victims worldwide. We know forced labor hurts vulnerable workers of all kinds, legitimate businesses and consumers. I am incredibly proud of the work CBP has done to address this issue," said Magnus. "Over the past year, CBP has issued five new withhold release orders and two findings. So far in this fiscal year 2022, CBP has detained approximately 2,000 shipments worth an estimated $358 million."

Chamber Chimes on Forced Labor

In comments on USTR's "Trade Strategy to Combat Forced Labor" the Chamber called for incentives to invest in comprehensive supply chain mapping and due diligence tools. Advocating multilateral rules international standards, import restrictions or CBP enforcement actions should be a tool of "last resort". Citing "worker engagement tools" and "supply chain solutions," the Chamber said that due diligence and reporting requirements must be "flexible and practicable" without being "overly prescriptive". Citing its reports examining supply chain tracing technologies, the Chamber suggested that Administration partner with foreign governments to "strengthen domestic measures protecting workers," and allow firms ample time to adapt.

*** Briefs ***

The US Trade Deficit for June was $79.6 Billion, the Census Department reported. The June decrease in the goods and services deficit reflected a decrease in the goods deficit of $4.9 billion to $99.5 billion and an increase in the services surplus of $0.3 billion to $19.9 billion.

Year-to-date, the goods and services deficit increased $134.1 billion, or 33.4 percent, from the same period in 2021. Exports increased $246.2 billion or 20.0 percent. Imports increased $380.3 billion or 23.3 percent. The deficit with China increased $4.7 billion to $36.9 billion in June. Exports decreased $0.6 billion to $11.9 billion and imports increased $4.1 billion to $48.8 billion.

YMTC Action Pending. *Reuters* reports that Biden Admininstration is planning to limit the export of American chipmaking equipment to memory chip makers in China including Yangtze Memory Technologies Co Ltd (YMTC). The measure would target factories in China that manufacture advanced NAND chips used in smartphones, personal computers, and data canters. If implemented, the move would mark the first effort to use export controls to target Chinese production of memory chips without specialized military applications, a broader definition of national security.

Mahan Airways, the sanctioned Iranian airline attempted to transfer a 747-300M cargo aircraft to a Venezualian carrier, only to have Justice issue a seizure request to the the Argentine government, where the plane was grounded.

OFAC issued more sanctions on Russian Elites, including A.G. Guryev, owner of Witanhurst, the second-largest estate in London after Buckingham Palace. His yacht, the 267 foot Alfa Nero, was sanctioned, but has disabled its AIS transponder and cannot be located, according to the release. **Guryev's company PhosAgro, a major exporter of fertilizer remains free of sanctions,** OFAC emphasized in FAQ 1075. OFAC also cited Victor Rashnikov, chief of MMK, the Russian Steelmaker.

*** Worth the Read ***

USTR Details Sec. 301 Tariff Exclusion Rationale

Responding to a remand by the Court of International Trade, August 1 the USTR submittted a 90 page discussion of the rationale for the imposition and selective waiver of the 2018 Section 301 Tariff Action against China. The filing is good beach reading. For those still our desks, a summary:

The Remand Determination provides further explanation of the Trade Representative's determination, at the direction of the President, to impose additional tariffs and the rationale for the decisions to retain or remove certain tariff subheadings from the *Final List* 3 and *Final List 4* modifications.

In selecting subheadings to include, the "selection process took account of likely impacts on U.S. consumers and involved the removal of subheadings identified by analysts as likely to cause disruptions to the U.S. economy, as well as tariff lines subject to legal or administrative constraints."

With these considerations in mind, of the 6,031 lines proposed for the final list, the Trade Representative determined to remove 297 HTS lines (286 full 8-digit lines and 11 partial 8-digit lines).

These 297 HTS lines had an import value in 2017 of approximately $19 billion. The removed lines included:

Rare earths and critical minerals, including tungsten and molybdenum, accounted for 98 of the 297 lines removed. Rare earths and critical minerals are key industrial inputs with limited supply and were the subject of disputes at the World Trade Organization, where the United States, European Union, and Japan challenged China's restrictions on the export of various forms of rare earths, tungsten, and molybdenum, which are used in the production of various kinds of electronic goods. Based on public comments, as well as recommendations through the interagency process by the Departments of Defense, Interior, Energy, and Commerce, the Trade Representative determined to remove certain tariff subheadings from List 4 for national security reasons.

The Alaska Seafood Marketing Institute asserted that Alaska's seafood industry relies heavily on Chinese processing of U.S.-caught seafood in order to remain competitive globally. Alaska accounts for 60 percent of U.S. commercial fishing. The USTR determined to remove seven of the 10 proposed subheadings pertaining to seafood.

HTS subheading 8517.62.00, covers a large variety of products related to the transmission of electronic data, such as routers and modems, as well as consumer goods, such as smart watches, and wireless headphones. The proposed HTS subheading had an estimated annual trade value of $22 billion (2018) and accounted for over 10 percent of the aggregate trade value of the proposed modification. This was, by far, the largest HTS subheading by trade value for which additional duties had been proposed.

USTR worked with the U.S. International Trade Commission, Customs and Border Protection, and the Census Bureau to create a **new 10-digit statistical code that separated routing and switching apparatus from other, more consumer electronics**. This allowed USTR to include on *Final List 3* the *Made in China 2025* products, while excluding consumer products.

Health and Safety Products included, rubber and plastic gloves, precursor chemicals used to manufacture pharmaceuticals, bicycle and all other safety helmets, and children's safety furniture. When considering "larger product categories like vinyl exam gloves, 97 percent [of production] is in China. Surgical drapes, it's 90 percent plus in China."

Pharmaceuticals were never proposed for additional duties. Following the recommendation of HHS, and based on health and safety concerns for consumers, due to their limited availability outside of China, the Trade Representative determined to remove certain pharmaceutical inputs from *Final List 3*.

There is either no domestic or limited domestic supply of particular chemicals included in 300 HTS subheadings. Chinese suppliers which accounted for 90 percent or more of U.S. imports were excluded from the tariffs. This resulted in the removal of 76 eight- digit subheading. **USDA recommended the removal of the subheading covering glyphosate acid**, an herbicide input which USDA determined, was only available from China for generic producers. USTR determined to remove 14 eight-digit subheadings for which China accounted for 70 percent or more of U.S. imports, and one ten-digit statistical reporting number for glyphosate acid.

Finished apparel accounts for 93.5 percent of textile imports from China and is not included in the tariff action. Inputs such as fibers, yarns, and fabrics, totaling just 6.5 percent of textile imports from China, are subject to tariffs. USTR allowed exemption certain chemicals, dyes, and finishes integral to the textile manufacturing process, including goose and duck down.

Inputs used in the production of **lithium-ion batteries, lightbulbs, and faucets** benefited from the removal of eight tariff subheadings for certain critical inputs for manufactured goods. Moen Incorporated noted that 90% of global faucet component volume is in China. Other comments noted that with no viable source of inputs for lithium-ion batteries outside of China, tariffs will undermine the competitiveness of domestic automakers

Numerous comments from industrial importers cited "**labor and environmental constraints"** with one stating it "would be cost-prohibitive to produce glucosamine in the United States, because the production process creates a tremendous amount of wastewater, which would violate domestic environmental policies." USTR included no discussion of the benefits to the U.S. of offshoring such processes.

White Goods suppliers Whirlpool and Carrier failed to get the relief they sought, in part because the USTR noted, removing all HTS subheadings requested by Whirlpool and the four additional HTS subheadings requested by Carrier would have reduced the aggregate level of the proposed action by an aggregate value of approximately $10.5 billio). This is more than half of the total lines removed from *Proposed List 3* (approximately $19 billion).

Proposed List 1 included many steel products, however, the Trade Representative decided not to include the subheadings on List 1 because the products were already subject to additional duties under Commerce's Section 232 investigation. Of the 515 subheadings removed from List 1, approximately one-third of the subheadings removed were subject to additional duties under Section 232.

On grounds of national emergency and military readiness, USTR removed four tariff subheadings for cranes and lifts from *Final List 4,* along with intermodal containers, of which there are no domestic manufacturers.

Approximately one third of the comments regarding Printed Materials related to the inclusion of religious texts, including Bibles. Comments asserted that due to the unique paper, printing, and binding needs of Bible production, there are no domestic facilities with the ability to produce the volume needed to meet the demand of the U.S. market. "An unhampered circulation of knowledge and religious thought is a fundamental characteristic of the United States," added HarperCollins Christian Publishing. USTR determined to remove specifically religious texts contained in 4901.99.0040, from the final list.

Loyal readers,

The Washington Tariff & Trade Letter and sister publication The Export Practitioner are being re-imagined for the next four decades, graphically and editorially.

This is your journal. Please take a moment to share with us your thoughts on how we can better serve the Trade community.

Sam, Meredith, Marty and I will be most grateful. Thank you.

Frank Ruffing, Editor +1.703.283.5220. *fruffing@**traderegs**.com*