

ISSN 0276-8275

WTTOnline.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 47

November 28, 2022

## Customs Slams Door on Big Sugar Slavers

Big sugar suffered an uncommon setback when US Customs and Border Patrol issued a Withhold Release Order (WRO) against a Dominican affiliate of Florida's Fanjul organization, based on information that "reasonably indicates the use of forced labor in its operations."

The DR receives the largest single-country allocation for raw sugar under the U.S. Tariff Rate Quota (TRQ). For FY 2020, the DR's share of the TRQ was around 17 percent, with the sanctioned firm, Central Romana, the largest beneficiary of the program. Central Romana is controlled by brothers Alfonso "Alfy" and Jose "Pepe" Fanjul, Florida-based owners of Domino Sugar, Florida Crystals, Tate & Lyle and other holdings.

Customs' action comes on the heels of a scathing [congressional report](#) in July which highlighted "a culture of fear... [where] workers described being directed to stay quiet and not speak to anyone about their conditions before our visit." In September 2022, the U.S. Department of Labor identified sugarcane from the Dominican Republic in its List of Goods Produced by Child Labor or Forced Labor, and the U.S. Department of State placed the Dominican Republic on its Tier 2 list in their July 2022 Trafficking in Persons Report.

The WRO represents an uncharacteristic setback for one of Florida's most influential dynasties and an industry with serious political chops. In the US, fewer than 4,500 farmers grow sugar (cane or beets) and the existing market allotment supports prices at roughly twice the world levels. This amounts to a subsidy of over \$700,000 per grower, according to the [American Enterprise Institute](#). The Fanjul brothers share of the subsidy is estimated between \$150 million and \$200 million a year, while the cost per US consumer is estimated around \$10 per year.

Senators Marco Rubio (R-FL) and Rick Scott (R-FL) have been loyal defenders of the Fanjul brothers' sugar subsidies, though support in the house of Representatives has grown less steadfast. Rep. Sheila Cherfilus-McCormick (D-FL) reportedly did not take money from the sugar industry, while Rep. Brian Mast (R-FL) has said he's probably "the only representative in the history of this district to vote against the sugar industry." Florida Gov. Ron DeSantis has long shared little love with Big Sugar, which threw its considerable weight behind his opponent, Agriculture Commissioner Adam Putnam, during the 2018 gubernatorial race.

## WTO - TRIPS Extension Up in the Air

*Geneva (via Washington Trade Daily)* – Attempts seem to be underway to kick the can down the road on the first major deadline of the World Trade Organization's 12th ministerial conference that requires members to agree whether or not to extend the decision on the TRIPS Agreement to COVID-19 diagnostics and therapeutics by December 17, WTD has learned.

At the WTO's TRIPS Council meeting last week, it has become almost clear that a decision on paragraph eight of the TRIPS Agreement that says "no later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics," is unlikely to materialize by the deadline due to stonewalling tactics adopted by several major industrialized countries.

It has been an open question whether the major industrialized countries such as the United States, Switzerland, the European Union, Japan and the United Kingdom among others would comply with paragraph eight within six months, said a TRIPS negotiator who asked not to be quoted. From the numerous questions raised by Switzerland, Mexico, the European Union, Japan and the UK about the need to extend the TRIPS Agreement decision to diagnostics and therapeutics, it seemed pretty clear that key members seemingly adopted a stonewalling tactics to delay the deadline, the negotiator said.

### Consultations

TRIPS Council Chair Lansana Gberie of Sierra Leone apparently informed members that he held consultations with members on November 8-9 about process-related issues, and asked whether members had any suggestions as to what can be done in the absence of consensus on extending to diagnostics and therapeutics. Despite several meetings between the lead negotiators for complying with the paragraph 8 TRIPS waiver decision on the one side, and those opposing any decision on extending TRIPS Agreement decision to diagnostics and therapeutics, the divide continued to persist on the issue, said another person who asked not to be quoted.

Apparently, several members suggested that the General Council, as and when it is convened, should be informed before the December 17 deadline. The demanders such as South Africa, India, Sri Lanka, Nepal, Nigeria and Indonesia among others reiterated their earlier positions that paragraph eight can be implemented without any textual proposals at this juncture.

### Indonesia

Indonesia, which held a successful G20 leaders meeting in Bali last week, said there can not be any delay in complying with paragraph eight while millions of people died due to a lack of diagnostics and therapeutics. Indonesia said the ministerial decision on the TRIPS Agreement is "not only narrow in scope but also limited in time." More importantly, the South East Asian giant said while concerns are being raised as to why the developing countries have not used the TRIPS agreement on vaccines, those raising the concerns are seemingly not ready to comply with paragraph eight. Indonesia said the adoption of the Ministerial Decision has politically helped enhance cooperation with the framework of the World Health Organization, the Coalition of Epidemic Preparedness Innovations and G20.

As noted by WHO Director-General Tedros Adhanom Ghebreyesu, “the manufacturing capacity for medicines, diagnostics, vaccines and other tools is concentrated in few countries,” while others continue to have less access to COVID-19 vaccines and treatment, Indonesia said. It argued that while IP system forms part of the broader infrastructure for innovation in health technology, regulatory flexibilities are crucial for protecting public health, including access to medicines for all during emergencies.

China said the discussion “on para 8 of the Declaration has yet to witness any substantial progress.” Expressing sharp concern over the continuing COVID-19 pandemic, with developing countries being the worst hit by the pandemic, China said “the accessibility and affordability of diagnostic and therapeutic products remain a big challenge for many developing members, and China is no exception.” “Therefore, we fully understand the concerns and requests raised by proponents, and call for effective and prompt solutions in this regard,” China said, adding that “to fulfill our mandate within the remaining limited time, we have to accelerate the discussion in a more pragmatic and focused manner, and do not let perfect be the enemy of good.”

### Meet Half Way

China expressed hope that “the entrenched camps could meet each other half way, and through our collaborative hard work, we will be able to harvest the expected outcome by the deadline.” However, several other countries mooted the idea of agreeing to a limited extension based on the configuration of a list of products covering both therapeutics and diagnostics. Mexico and Taiwan took the floor to support this approach.

As reported in WTD about the joint proposal of Switzerland and Mexico, the two countries stuck to their hard-line stance that if a systemic problem regarding access to COVID-19 therapeutics and diagnostics is demonstrated conclusively and such lack of access is caused by the current IP system, steps should be taken to improve the situation to ensure unimpeded access.

The naysayers to therapeutics and diagnostics such as Singapore, Switzerland, Japan, Korea, the EU and the United States continued with their earlier positions demanding concrete evidence that IPRs posed barriers before considering an extension to therapeutics and diagnostics, said people familiar with the discussions.

## **\*\* Briefs \*\***

**FCC - Huawei & ZTE pose “Unacceptable Risk”** The Federal Communications Commission adopted new rules prohibiting communications equipment deemed to pose an unacceptable risk to national security from being authorized for importation or sale in the United States. In addition to telecommunication equipment from Huawei and ZTE, banned items include surveillance devices from *Hytera US, Hikvision, and Dahua*.

The [Report and Order](#) applies to future authorizations of equipment identified on the [Covered List](#) published by the FCC’s Public Safety and Homeland Security Bureau pursuant to the Secure and Trusted Communications Networks Act of 2019. Commission also adopted a Further Notice of Proposed Rulemaking seeking further comment on additional revisions that should be made to the rules and procedures prohibiting the authorization of “covered” equipment

**Diet Approves Beef Under the U.S.-Japan Trade Agreement.** The Upper House of Japan's Diet approved the Protocol Amending the Trade Agreement Between Japan and the United States of America regarding the beef safeguard mechanism under the U.S.-Japan Trade Agreement (USJTA). The updated agreement will amend the beef safeguard trigger level under the USJTA with a new, three-trigger safeguard mechanism. . "We are excited that Japan's consumers can enjoy high-quality U.S. beef that is a staple of our agricultural industry," said Ambassador Katherine Tai in a statement. The agreement can be viewed [here](#).

**OFAC – Russia Oil Trade Rules Issued.** OFAC has published a Determination pursuant to Executive Order (E.O.) 14071 to implement the price cap policy for crude oil of Russian Federation origin along with a guidance on the implementation of the price cap policy for crude oil of Russian Federation origin.

OFAC has also issued 3 new Russia-related general licences which relate to the maritime transport of crude oil of Russian Federation origin

General License 55 authorises certain services related to Sakhalin-2 which relate to the maritime transport of crude oil,

General License 56 which relates to the importation of crude oil into the Republic of Bulgaria, the Republic of Croatia, or landlocked European Union Member States as described in Council Regulation, and

General License 57 which authorises certain services related to vessel emergencies.

(Notice)

**OFAC - Venezuela Talks Resume, Chevron G/L issued** The US-Backed Opposition "Unitary Platform" and the Maduro regime announced the resumption of talks in Mexico City; leading to an easing of US Sanctions on the OPEC nation. Press reports suggest parties will announce an agreement to unfreeze and direct nearly \$3 billion in Venezuelan funds for humanitarian assistance. The UN will directly oversee this aid and will prioritize access to health care and essential medicine, addressing child malnutrition, and restoring electricity and other critical infrastructure.

Treasury's Office of Foreign Asset Control (OFAC) issued Venezuela-related General License 8K, "Authorizing Transactions Involving Petr leos de Venezuela, S.A. (PdVSA) Necessary for the Limited Maintenance of Essential Operations in Venezuela or the Wind Down of Operations in Venezuela for Certain Entities" and Venezuela-related General License 41, "Authorizing Certain Transactions Related to Chevron Corporation's Joint Ventures in Venezuela". Additionally, OFAC is issuing two new Venezuela-related Frequently Asked Questions (FAQs 1098 and 1099). The FAQs clarify the permissibility of supporting Chevron in country.

**OFAC / More Iran Officials** Designating three Iranian security officials for the Iranian regime's continued crackdown on ongoing protests throughout the country, including most recently in Kurdish areas. Sanctioned individuals include the Governor of Sanadaj, the regional head of the National Police, and IRGC Ground Forces commander overseeing Iran's West Azerbaijan province which includes the city of Mahabad.

**US-Vietnam Labor Talks Held** US and Vietnam officials have resumed a dialogue on labor issues aimed at helping Hanoi to update its labor laws. Deputy Undersecretary of Labor for International Affairs Thea Lee was in Vietnam last week to resume the US-Vietnam Labor Dialogue that began in 2002. The meeting covered issues including freedom of association and collective bargaining, child labor, digital upskilling and

workplace safety and health. Ms. Lee and Vice Minister Lê Van Thanh represented their respective governments in the dialogue. Ms. Lee also met separately with the country's Labor Minister Đào Ngc Dung.

**State – DDTC Cyprus: Licensing now Open to Review.** Following the Secretary of State's certification to congress that the Republic of Cyprus meets the statutory requirements to remove the policy of denial for exports, re-exports, and transfers of defense articles to the Republic of Cyprus for fiscal year 2023, exemptions to licensing requirements are now available, provided the conditions for use of those exemptions are met. Applications for licenses and other authorizations submitted to the Directorate of Defense Trade Controls involving the Republic of Cyprus and nationals of the Republic of Cyprus are subject to case-by-case review. [[87 FR 71250](#)]

**Commerce – ITA Supply Chain Committee** International Trade Administration (ITA), seeks nominations for immediate consideration to fill positions on the Advisory Committee on Supply Chain Competitiveness [[87 FR 71579](#)]. The Committee advises the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness. Play a key role in formulating recommendations to address current global supply chain challenges, including identifying key bottlenecks in supply chains and actionable solutions to address them, advising on the latest advances in supply chain management technology and how to apply them to the current challenges in the economy, and developing long term recommendations to make supply chains for resilient. The Department seeks members who, by virtue of their current roles and past experience, bring a track record of effective senior executive leadership on issues impacting the U.S. and global supply chains. ITA will accept nominations received by 5 p.m. on December 8, 2022, for membership on the Committee until the current two-year charter term ends November 9, 2023.

**BIS - Comment Request: Antiboycott Reporting.** This information is used to monitor requests for participation in foreign boycotts against countries friendly to the U.S. The information is analyzed to note changing trends and to decide upon appropriate action to be taken to carry out the United States' policy of discouraging United States persons from participating in foreign restrictive trade practices and boycotts directed against countries friendly to the United States. Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at [mark.crace@bis.doc.gov](mailto:mark.crace@bis.doc.gov) or to [PRAComments@doc.gov](mailto:PRAComments@doc.gov)). [[87 FR 71298](#)]

### **BIS - Comment Request: Foreign Availability Procedures**

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective. To ensure consideration, comments regarding this proposed information collection must be received on or before January 23, 2023. [[87 FR 71299](#)]

**BIS – Comment Request - Entity List and Unverified List** To provide a procedure for persons or organizations listed on the Entity List and Unverified List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 4, and the Unverified List



appears at 15 CFR part 744, Supp. No. 6. The Entity List and Unverified List are used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR parts 730-799) requires a license from the Bureau of Industry and Security (BIS). Requests for removal from the Entity List would be reviewed by the Departments of Commerce, State, and Defense, and Energy and Treasury as appropriate. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. Requests for removal from the Unverified List would be reviewed by the Department of Commerce. The decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. [[87 FR 72446](#)].

## **BIS / Comment Request: Voluntary Self-Disclosure of EAR Violations**

Information is needed to detect violations of the Export Administration Act and Regulations and determine if an investigation or prosecution is necessary and to reach a settlement with violators. Voluntary self-disclosure of EAR violations strengthens BIS's enforcement efforts by allowing BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. BIS evaluates the seriousness of the violation and either (1) Informs the person making the disclosure that no action is warranted; (2) issues a warning letter; (3) issues a proposed charging letter and attempts to settle the matter; (4) issues a charging letter if settlement is not reached; and/or (5) refers the matter to the U.S. Department of Justice for criminal prosecution. Comments regarding this proposed information collection must be received on or before January 17, 2023. [[87 FR 69251](#)]

**State / DDTC - Suspension of Capacitors on U.S. Munitions List** DDTC temporarily suspended for a period of six (6) months the applicability of § 120.11(c) of the International Traffic in Arms Regulations (ITAR) for certain capacitors described in U.S. Munitions List (USML) Category XI(c)(5). The Department assessed that it is in the security and foreign policy interests of the United States to facilitate commercial uses of certain capacitors when integrated into any item not described on the USML (for example, certain items used in energy exploration and commercial aviation).

Order is for the temporary suspension of ITAR § 120.11(c) with respect to capacitors described in USML Category XI(c)(5) that have a voltage rating of one hundred twenty-five volts (125 V) or less and have been integrated into, and included as an integral part of, any item not described on the USML. Such articles are licensed by the Department of Commerce when integrated into, and included as an integral part of, items subject to the EAR. Capacitors described in USML Category XI(c)(5) remain subject to the controls of the ITAR in all other circumstances, including as stand-alone articles. The export, reexport, retransfer, or temporary import of technical data and defense services directly related to all defense articles described in USML Category XI(c)(5) remain subject to the ITAR. [[Notice](#)]

## **\*\*\* Calendar \*\*\***

**EU Export Control Forum** on Dec. 6. The European Commission and the Czech Presidency of the Council will hold the 2022 Annual Export Control Forum, an opportunity for experts from EU Member States and the European Parliament, industry, academia and civil society to review and discuss the latest export control developments in the EU and globally. The Forum will convene selected panels of experts, to be followed by dialogue with stakeholders. [[Registration](#)]

## ITA - Renewable Energy and Energy Efficiency Advisory Committee (REEEAC)

will hold a hybrid meeting, accessible in-person and online, on Wednesday December 7, 2022, at the U.S. Department of Commerce in Washington, DC. 9:30 a.m. to 3:30 p.m. Eastern Daylight Time EDT. Members of the public wishing to participate must register in advance with Cora Dickson at [Cora.Dickson@trade.gov](mailto:Cora.Dickson@trade.gov) by 5:00 p.m. EDT on Friday, December 2, 2022

## Census Webinar: DDTC and BIS - Modernizing Technology in Support of Collaboration

Join **Karen Wrege**, Directorate of Defense Trade Controls (DDTC) **Annie Pearson, Michael Palmer** and **Alek-CheMponde**, Bureau of Industry and Security (BIS) December 8, 2022 at 2:00pm (EST) to learn about how export and trade compliance communities can support regulatory IT modernization efforts. Hosted by the U.S. Census Bureau, Census Academy. *"We will describe how we are enhancing our respective application platforms via customer-centered approaches to better understand the needs of the defense and dual-use trade communities. We will also discuss opportunities for cross-agency collaboration and data sharing."*

Items of particular focus in this session will be:

- Recent DDTC IT updates and DECCS system enhancements
- BIS's IT Modernization roadmap
- DDTC and BIS's collaboration efforts on data sharing and customer experience opportunities

Registration. [Register Here](#)

## Australia Hosting First IPEF Round

Australia will be hosting the first round of in-person negotiating round for the Indo-Pacific Economic Framework December 10-15 in Brisbane. This will be the first time that negotiators sit down to hammer out the details of the four pillars that make up IPEF – trade, supply chains, the clean economy and anti-corruption.

**State Dept - Advisory Committee on International Law** will meet on Monday, December 12, 2022, from 9:00 a.m. to 3:15 p.m. at the George Washington University Law School, Michael K. Young Faculty Conference Center, 716 20th St. NW, 5th Floor, Washington, DC. Acting Legal Adviser Richard Visek will chair the meeting, which will be open to the public up to the capacity of the meeting room. The meeting will include discussions on the future of the international rules-based order, a special tribunal on the crime of aggression in Ukraine, and developments in international law concerning state responsibility in outer space. Members of the public who wish to attend should contact the Office of the Legal Adviser by December 8 at [rangchitm@state.gov](mailto:rangchitm@state.gov) or (202) 485-6590

**Dear Reader,**

**The Washington Tariff and Trade Letter and her sister publication The Export Practitioner are getting a makeover after forty years.**

**We are planning a major relaunch of the titles at year end, Design and editorial. We look forward to you and your colleagues continuing to find our material useful for your work, and we thank you for your readership.**

**Frank Ruffing, Editor**

**+1.703.283.5220.**

**[fruffing@tradereqs.com](mailto:fruffing@tradereqs.com)**