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Environmental Groups Ask for Consultations under USMCA

A quartet of environmental groups took a dual approach to save the vaquita porpoise Aug. 11, asking the U.S. Trade Representative's (USTR) office and interagency groups to begin enforcement action under the U.S.-Mexico-Canada Agreement (USMCA).

During her trip to Mexico City in July, USTR Katherine Tai separately met with Mexican officials where they “discussed the implementation of USMCA’s environment chapter – including concerns related to the conservation and protection of the vaquita, illegal fishing in the Gulf of Mexico, and sea turtle bycatch,” according to a USTR readout (see **WTTL**, July 12, page 4).

In its submission to the Interagency Environment Committee for Monitoring and Enforcement (IECME), the groups, including the Natural Resources Defense Council (NRDC), documented “the Mexican government’s ongoing failure to effectively enforce its environmental laws, including its fishing and trade regulations, which has caused the near-extinction of the vaquita.” “By agreeing to the USMCA, the Mexican government committed to comply with numerous environmental legal requirements, which the government is now violating,” the groups wrote. “We ask that the IECME urge the Trade Representative to initiate consultations immediately,” they added.

“The times of putting corporate profits before the interests of workers and the environment must end, especially in the context of the climate and biodiversity crises. The United States should use the tools it has under the USMCA to ensure Mexico meets its obligations under the agreement to enforce its laws and keep the vaquita from going extinct,” NRDC senior attorney Zak Smith said in a statement.

Keysight Technologies Settles DDTC Export Charges

Keysight Technologies in Santa Rosa, Calif., agreed Aug. 9 to pay \$6.6 million to settle charges of violating the International Traffic in Arms Regulations (ITAR) by exporting its

Signal Studio for Multi-Emitter Scenario Generation (MESG) software while waiting for a commodity jurisdiction (CJ) ruling from State's Directorate of Defense Trade Controls (DDTC).

Keysight, a designer and manufacturer of electronic test and measurement equipment and software, previously agreed in September 2020 to pay Treasury's Office of Foreign Assets Control (OFAC) a \$473,157 civil penalty to settle charges that Finnish subsidiary Anite reexported test measurement equipment to Iran, violating U.S. sanctions (see **WTTL**, Sept. 28, 2020, page 8).

Between January and April 2018, while the CJ was under review, the company "exported without authorization the MESG software on eight separate occasions to the PRC, Russia, Japan, Israel, and Canada. Respondent claims that these exports were based on a good faith but misguided belief that the MESG software was not subject to ITAR controls and once Respondent learned of DDTC's formal CJ determination, it stopped any further unlicensed exports of MESG software and treated MESG software as ITAR controlled," the proposed charging letter noted.

In July 2018, Keysight "submitted its full disclosure in which it disclosed unauthorized exports to multiple countries of its MESG software, as described above. Respondent's disclosure stated the exports of the MESG software were conducted pursuant to the Export Administration Regulations (EAR), under Export Control Classification Number (ECCN) EAR99," it added.

"Keysight has cooperated with DDTC's review of this matter and has already undertaken several remedial compliance measures. We take this matter seriously and are looking forward to working with the special compliance officer, as well as DDTC and the State Department to continue to improve and enhance our ITAR compliance program," Jeffrey Li, senior vice president, general counsel and secretary, wrote in an email to **WTTL**.

Administration Imposes Further Sanctions on Belarus

A year after an election widely considered fraudulent, the administration Aug. 9 imposed further sanctions on Belarus, citing the "continuing violent crackdown on peaceful protests" and the takedown of a European flight. For its part, OFAC designated 23 individuals and 21 entities, and the White House issued an executive order (EO) authorizing further sanctions.

In June, OFAC designated 16 individuals and five entities, including the president's press secretary, the former presidential chief of staff, the Belarusian KGB and its chairman, and the country's deputy minister of internal affairs (see **WTTL**, June 28, page 3).

OFAC designated two major Belarusian state-owned enterprises (SOEs): Belaruskali OAO, one of the world's largest producers of key fertilizer ingredient potassium chloride (potash), and Grodno Tobacco Factory Neman (GTF Neman), a state-owned tobacco factory

and a major source of illicit cigarettes in the European Union (EU). The latest EO “authorizes the imposition of blocking sanctions on persons operating in certain identified sectors of the Belarus economy, including the defense and related materiel sector, security sector, energy sector, potassium chloride (potash) sector, tobacco products sector, construction sector, transportation sector, or any other sector of the Belarus economy,” OFAC explained in a new Frequently Asked Question (FAQ).

At the same time, the agency issued General License (GL) 4 that authorizes through Dec. 8, 2021, all transactions and activities “that are ordinarily incident and necessary to the wind down of transactions involving Belaruskali OAO, or any entity in which Belaruskali OAO owns, directly or indirectly, a 50% or greater interest, subject to the terms of the license. GL 4 does not authorize the entry into new purchase contracts, or the stockpiling of inventory, involving Belaruskali OAO,” OFAC noted.

In response to the sanctions, Belarus withdrew its agreement for a U.S. ambassador and asked the U.S. embassy to reduce its staff. “It is a pity that the brazen and openly hostile actions of the United States and some of its individual representatives, that hardly fit the concept of diplomacy and professionalism, have eroded the gains achieved by their predecessors and forced us to withdraw the previously issued agreement for U.S. Ambassador-Designate to Belarus Julie Fisher,” Belarusian Foreign Affairs Ministry spokesman Anatoly Glaz said in a statement.

USTR Gets Commitments in Second Mexico Labor Dispute

Second time’s a charm. The USTR’s office and Tridonex, a subsidiary of Cardone Industries, agreed Aug. 10 to address allegations filed on behalf of employees at the Tridonex automotive parts facility in Matamoros, Mexico, that workers are being denied the rights of free association and collective bargaining.

The Tridonex agreement was the result of the U.S.’ second request under the novel Rapid Response Labor Mechanism (RRM) in the U.S.-Mexico-Canada Agreement (USMCA). The U.S. and Mexico in July announced a course of remediation in the U.S.’ first request under the RRM concerning a General Motors (GM) facility in Silao (see **WTTL**, July 12, page 1).

Under the latest agreement, Mexico agrees to “help facilitate workers’ rights training for Tridonex employees, monitor any union representation election at the facility, and investigate any claims of workers’ rights violations reported by employees at the plant,” the USTR’s office noted. Tridonex agrees to: provide severance and backpay to dismissed workers, support its workers’ right to determine union representation, remain neutral in any union election, and maintain and strengthen COVID-19 safety protocols.

“Workers at home and abroad deserve the right to collectively bargain for a fair wage and decent working conditions without the fear of retaliation,” USTR Katherine Tai said. The agreement “shows our determination to leverage the USMCA’s innovative enforcement

tools to address long-standing labor issues and support Mexico's implementation of its recent labor reforms," she added. "With this important step, we are safeguarding worker rights and holding our trading partners accountable for the commitments they have made," Reps. Richard Neal (D-Mass.) and Earl Blumenauer (D-Ore.) said in a statement. "We look forward to continuing to work with Ambassador Tai and the Biden administration to ensure that the rights of workers at the Tridonex facility are protected and that the USMCA is aggressively enforced at workplaces across our supply chains," they added.

BIS, OFAC Rules Allow Cuban Internet Access

While the Cuban embargo is still in effect, the Cuban people will still be able to access the wide and interesting variety of information on the internet, for better or for worse, OFAC and the Bureau of Industry and Security (BIS) emphasized in a joint fact sheet Aug. 11.

The fact sheet outlined the "most relevant exemptions and authorizations pertinent to supporting the Cuban people through the provision of certain internet and related telecommunications services," it said. "While most transactions between persons subject to U.S. jurisdiction and Cuba continue to be prohibited under the embargo, the U.S. government allows for certain activities to support the Cuban people's access to information on the internet," the fact sheet noted.

Specifically, the agencies outlined several OFAC General Licenses (GLs) that authorize software and services for Cuban internet users, provision of telecommunications services and establishment of telecommunications facilities, in-country presence of internet and telecommunications providers, internet-based distance learning and educational training, and information and informational materials.

In addition, BIS regulations offer License Exceptions Consumer Communications Devices (CCD) and Support for the Cuban People (SCP) that "authorize the export and reexport to Cuba of items intended to improve telecommunications and internet infrastructure and certain consumer communications items for use by eligible recipients," it said.

Under License Exception CCD for example, "items may include, but are not limited to, mobile phones, television and radio receivers, memory drives, network access controllers, modems, and consumer software. Note that there are some restrictions on reexports of foreign-produced commodities by U.S.-owned or -controlled entities in third countries," the fact sheet noted.

U.S., Canada Denounce Tit-for-Tat in Huawei Case

The U.S. has joined Canada in calling for the immediate and unconditional release of two Canadians, businessman Michael Spavor and former Canadian diplomat Michael Kovrig, who many believe were arrested in response to Canada's role in the U.S. case against

Huawei CFO Meng Wanzhou. Spavor was convicted and sentenced Aug. 10 in Chinese court to 11 years in prison for espionage. Both men were arrested in 2018, when Canada arrested Meng on a U.S. warrant, in which the previous administration alleged she violated U.S. sanctions against Iran (see **WTTL**, June 1, 2020, page 5). Meng's case is still making its way through the Canadian judicial system in its final stages.

Canadian Prime Minister Justin Trudeau calls the conviction not only unacceptable but unjust. "The verdict for Spavor comes after more than two and a half years of arbitrary detention, a lack of transparency in the legal process, and a trial that did not satisfy even the minimum standards required by international law," Trudeau argued.

Secretary of State Tony Blinken said that the U.S. is very troubled by China's arbitrary detentions of both U.S. and Canadian citizens and called for the prisoners' immediate and unconditional release. "The practice of arbitrarily detaining individuals to exercise leverage over foreign governments is completely unacceptable. People should never be used as bargaining chips," Blinken said.

Spavor and Kovrig "have not received the minimal procedural protections during their more than two-and-a-half-year arbitrary detention, and we stand with more than 60 countries who endorsed the recent Declaration Against Arbitrary Detention in State-to-State Relations," he added.

Deputy Secretary of State Wendy Sherman met China's new ambassador to Washington Qin Gang Aug. 12; it is unclear if this matter was discussed. "The deputy secretary reviewed issues from her meetings with PRC officials in Tianjin last month and expressed the United States' commitment to continuing discussions," State spokesman Ned Price said in a statement.

*** * * Briefs * * ***

NOMINATIONS: President Biden Aug. 9 sent Senate nomination of Lisa Wang to be Commerce assistant secretary and next day, Owen Herrstadt to be Ex-Im Bank board member for term expiring Jan. 20, 2025. Wang has been partner with Picard, Kentz and Rowe LLP since 2016, and previously served in senior roles at USTR and Commerce. Herrstadt currently serves as chief of staff to international president and director of trade and globalization of International Association of Machinists and Aerospace Workers.

MORE NOMINATIONS: Jessica Lewis, nominee to be assistant secretary of State for political-military affairs, was on list blocked by Senate Republicans Aug. 11. Sen. Ted Cruz (R-Texas) cited Nord Stream sanctions as reason for block, just as other GOP lawmakers have blocked other nominees (see **WTTL**, Aug. 2, page 3). "All of the senators in this chamber know precisely why these nominees have not moved forward. The reason is because the Biden administration is currently engaged in open defiance" of Congress, he said on Senate floor.

USTR: President Biden Aug. 10 announced intent to nominate María Luisa Pagán to be deputy USTR in Geneva and Christopher Wilson to be first USTR chief innovation and intellectual property (IP) negotiator. Pagán is currently USTR deputy general counsel, and Wilson serves as

assistant USTR for South and Central Asia. Congress created IP role in 2016, intended to be parallel to chief agriculture negotiator, but position has never been filled.

IRAN: OFAC Aug. 13 designated Omani broker Mahmood Rashid Amur Al Habsi, four entities and one vessel involved in international oil smuggling network that supports Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). "As part of his oversight of shipping operations, Al Habsi has tampered with the automated identification systems that are onboard vessels, forged shipping documents, and paid bribes, circumventing restrictions related to Iran," agency said.

RUBBER: In 5-0 preliminary vote Aug. 13, ITC found U.S. industry may be injured by allegedly dumped imports of acrylonitrile-butadiene rubber (NBR) from France, Korea and Mexico.

FERTILIZER: In 5-0 preliminary vote Aug. 13, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of urea ammonium nitrate (UAN) solutions from Russia and Trinidad and Tobago. "The preliminary ITC decision is an important step towards leveling the playing field for U.S. UAN producers and their workers," said Tony Will, CF Industries president and CEO, in statement.

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