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BIS Implements Remaining 2019 Wassenaar Controls

The Bureau of Industry and Security (BIS) March 29 implements the remaining controls that members agreed at the Wassenaar Arrangement's (WA) annual plenary in December 2019, including changes to two dozen Export Control Classification Numbers (ECCNs) and the elimination of reporting requirements for certain encryption items.

> The changes "further clarified existing controls regarding ballistic protection, optical sensors, ball bearings, and inorganic fibrous and filamentary materials," the chair noted after the plenary. In October, BIS implemented "multilateral controls on six recently developed or developing technologies," as members agreed at the December plenary (see **WTTL**, Oct. 5, 2020, page 1).

On encryption items, the rule: eliminates the e-mail notification requirement for 'publicly available' encryption source code and beta test encryption software, except for 'publicly available' encryption source code and beta test encryption software implementing "non-standard cryptography"; and eliminates the self-classification reporting requirement for certain 'mass market' encryption products;

The rule also allows self-classification reporting for ECCN 5A992.c or 5D992.c components of 'mass market' products (and their 'executable software'). The agency estimates an 80% reduction in notifications regarding publicly available encryption software. The other 22 revised ECCNS are: 0A502, 0A503, 0A606, 1A002, 1A005, 1A006, 1A613, 1B002, 1C001, 1C002, 1C006, 1C010, 2A001, 3B001, 3E002, 5A002, 6A004, 6A005, 6A008, 9A011, 9D515 and 9E003.

USTR Continues Investigations on Digital Taxes

Wasting no time getting to work, the U.S. Trade Representative's (USTR) office is continuing investigations into digital services taxes (DSTs) adopted by Austria, Spain, the United Kingdom (UK), India, Italy and Turkey, the agency announced March 26. At the

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same time, it formally ended its investigations into Brazil, the Czech Republic, the European Union (EU) and Indonesia, which have not adopted or not implemented DSTs that were under consideration.

In January, the agency said these six countries' DSTs discriminate against U.S. companies, are inconsistent with prevailing principles of international taxation, and burden or restrict U.S. commerce, but also took no action (see **WTTL**, Jan. 18, page 1).

> "The United States remains committed to reaching an international consensus through the OECD [Organization for Economic Cooperation and Development] process on international tax issues. However, until such a consensus is reached, we will maintain our options under the Section 301 process, including, if necessary, the imposition of tariffs," USTR Katherine Tai said in a statement.

USTR will request public comments on "possible trade actions to preserve procedural options before the conclusion of the statutory one-year time period for completing the investigations," the office said. At press time, those Federal Register notices were not yet published.

Trade observers disagreed with this approach. "What bothers me specifically is talking about the possibility of tariffs here without a WTO ruling that the DSTs violate WTO obligations and retaliation has been authorized," Cato Institute's Simon Lester tweeted.

OFAC Designates Two Chinese Government Officials

In a coordinated effort with allies, Treasury's Office of Foreign Assets Control (OFAC) March 22 sanctioned two Chinese government officials in connection with "serious human rights abuses against ethnic minorities" in the Xinjiang Uyghur Autonomous Region (XUAR). Specifically, the agency sanctioned Wang Junzheng, the Secretary of the Party Committee of the Xinjiang Production and Construction Corps (XPCC), and Chen Mingguo, director of the Xinjiang Public Security Bureau (XPSB).

In December, Customs and Border Protection (CBP) issued a withhold release order (WRO) on cotton and cotton products originating from XPCC and its subordinate and affiliated entities). A month later, the agency broadened the WRO to include cotton products and tomato products produced in the XUAR (see **WTTL**, Jan. 18, page 3).

The foreign ministers of Canada and the United Kingdom and Secretary of State Tony Blinken said in a joint statement: "We have taken coordinated action on measures, in parallel to measures by the European Union, that send a clear message about the human rights violations and abuses in Xinjiang. We are united in calling for China to end its repressive practices against Uyghur Muslims and members of other ethnic and religious minority groups in Xinjiang, and to release those arbitrarily detained."

Lawmakers welcomed the move by western allies. "Sanctions are most impactful when applied in coordination with other countries, and I commend the administration's effort to working with our transatlantic allies and partners. Today's announcement demonstrates the United States' return to a strong leadership role in combating serious human rights abuses and working with like-minded partners to promote accountability for grave and serious violations of human rights," Rep. Gregory Meeks (D-N.Y.) said in a statement.

> As expected, Chinese officials denounced the sanctions, which "are utterly based on lies and false information. That is to say, the premise and basis for their sanctions against China are completely non-existent," Chinese Foreign Ministry Spokesperson Hua Chunying told reporters. "We will not turn a blind eye to anything that undermines China's sovereignty, security and development interests, or impairs China's honor and dignity. We will make legitimate and necessary reactions," she added.

In response, China designated nine UK officials including academics, lawyers and researchers. "The MPs and other British citizens sanctioned by China today are performing a vital role shining a light on the gross human rights violations being perpetrated against Uyghur Muslims. Freedom to speak out in opposition to abuse is fundamental and I stand firmly with them," UK Prime Minister Boris Johnson tweeted.

Industry Group Redoubles Anti-Tariff Efforts

Two months into the new administration, more than 35 business and agriculture groups March 24 relaunched the Tariff Reform Coalition (TRC), an effort to convince the president's team to remove existing Section 232 on steel and aluminum imports and reassess Section 301 tariffs on Chinese imports.

The tariffs "place American manufacturers, distributors, farmers and ranchers at a disadvantage against foreign competitors and cause ongoing uncertainty for thousands of American businesses and workers already struggling with the economic downturn caused by the COVID-19 pandemic. They have been particularly harmful to small businesses, which are least able to afford the higher costs and complexity they impose," TRC wrote.

With an introductory letter, a smaller list of groups first formed the Coalition in September 2019. In addition to the NFTC, other signers include: Beer Institute, Consumer Technology Association, Farmers for Free Trade, National Retail Federation and United States Fashion Industry Association.

The coalition also urged Congress to "provide oversight regarding the purpose of the existing Section 232 and Section 301 tariffs, whether they are achieving their objectives and at what cost to the stakeholders involved, and when they can be removed." In addition, the groups suggested Commerce and USTR should consider revising the existing exclusion processes.

"While TRC does not believe that having an exclusions process is an adequate substitute for removal of the tariffs, the Section 232 and Section 301 exclusion processes do provide some relief to affected industries. However, as currently structured, they do not provide adequate opportunities to obtain exclusions."

A bipartisan group of senators a week earlier continued a years-long process to reform the Section 232 tariff process, re-introducing a bill (S. 746) that would "require the Secretary of Defense to initiate investigations and to provide for congressional disapproval of certain actions" (see **WTTL**, March 22, page 1).

U.S., EU Pledge New Push to Replace Privacy Shield

The U.S. and the European Union (EU) will "intensify negotiations" to replace the U.S.-EU Privacy Shield set up to protect consumer's data but was ruled invalid by European courts, the two partners announced March 25 following a virtual meeting between Commerce Secretary Gina Raimondo and EU Justice Commissioner Didier Reynders.

> "These negotiations underscore our shared commitment to privacy, data protection and the rule of law and our mutual recognition of the importance of transatlantic data flows to our respective citizens, economies, and societies," the two ministers said in a joint statement. The EU requested a rework of the deal in a public, comprehensive and thoughtful white paper in December (see **WTTL**, Dec. 14, page 6).

Industry welcomed the announcement. Software & Information Industry Association (SIIA) President Jeff Joseph called for "a moratorium on regulatory actions and guidance that could disrupt these negotiations by unduly restricting data transfers," he said in a statement. Without a deal, "the result will be a catastrophic disruption of transatlantic data flows to the detriment of European and American businesses and consumers alike," Joseph added.

"This joint U.S.-EU announcement is welcome news for businesses of all sizes following the invalidation of Privacy Shield. Data flows underpin over 16 million jobs and more than $5.6 trillion in commercial sales annually," said Information Technology Industry Council (ITI) President and CEO Jason Oxman.

WTO Dispute Meeting Benched over Venezuelan Request

A meeting of the World Trade Organization (WTO) Dispute Settlement Body (DSB) ended abruptly March 26 after a diplomatic tussle over Venezuela's request to establish a dispute panel to examine U.S. measures imposed on Venezuelan goods and trade dealings with certain Venezuelan persons. The U.S. claimed "the item was not requested by the legitimate government of Venezuela, and therefore could not be placed on the agenda," a Geneva trade official said.

Venezuela first requested WTO dispute consultations with the U.S. in January 2019 over recent sanctions actions (see **WTTL**, Jan. 14, 2019, page 3). The country claimed that certain U.S. regulations covering goods of Venezuelan origin, the liquidity of Venezuelan public debt, transactions in Venezuelan digital currency, and the Specially Designated Nationals (SDN) List are inconsistent with WTO provisions.

> "The United States will reject any effort by Maduro to misuse the WTO to attack U.S. sanctions aimed at restoring human rights and democracy to Venezuela. The United States exercised its rights as a WTO Member to object to this illegitimate panel request because representatives of the Maduro regime do not speak on behalf of the Venezuelan people," U.S. Trade Representative (USTR) spokesperson Adam Hodge said in a statement.

At the meeting, the European Union (EU) delegation noted that the U.S. measures "appear justified by the security exceptions, so the challenge at issue cannot in any event succeed," it said. "The EU has to react **for systemic reasons** and express its concern at the prospect of the DSB being prevented from holding its meeting on all items of today's agenda simply because that agenda is not adopted," the EU delegation added.

EU Expands Vaccine Export Authorization Program

As developed countries debate whether to unlock vaccine patents to provide supply to the rest of the world, the European Union (EU) March 24 introduced the concepts of "reciprocity and proportionality" to its vaccine export authorization program and added 17 previously exempt countries to the plan.

Facing mounting pressure from both members states and constituents, and a public spat with AstraZeneca over vaccine shortfall, the EU imposed an authorization requirement for exports of Covid-19 vaccines made within the 27-nation bloc in January (see **WTTL**, Feb. 1, page 2). The EU then extended the measures through June.

"Open roads should run in both directions," European Commission President Ursula von der Leyen said in a statement. "The EU has an excellent portfolio of different vaccines and we have secured more than enough doses for the entire population. But we have to ensure timely and sufficient vaccine deliveries to EU citizens. Every day counts," she added.

Under the program, "reciprocity" means: does the destination country restrict its own exports of vaccines or their raw materials, either by law or other means? "Proportionality" entails: are the conditions prevailing in the destination country better or worse than the EU's, in particular its epidemiological situation, its vaccination rate and its access to vaccines?

Countries added to the program include: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Israel, Jordan, Iceland, Lebanon, Libya, Liechtenstein, Montenegro, Norway, North Macedonia, Serbia and Switzerland. Since the start of the program, 380 export requests to 33 different destinations have been granted for a total of around 43 million doses. Only one export request was not granted, the EU noted.

Biden Expects Competition, Not Confrontation with China

At his first news conference March 25, President Joe Biden told reporters that since coming to office, that he has no illusions that President Xi Jinping of China would become a democratic leader. Biden said he made clear to Xi on several occasions, that the U.S. is not looking for confrontation, but expects fierce, steep competition. However, he insisted that "China must play by international rules: fair competition, fair practices, fair trade," in that endeavor.

> Chinese officials traded sharp disagreements with Secretary of State Tony Blinken and National Security Advisor Jake Sullivan in Alaska a week earlier (see **WTTL**, March 22, page 3). Much of the dispute centered around how China has dealt with what it considers internal affairs, such as Xinjiang, Hong Kong, Tibet and Taiwan.

"I see stiff competition with China. China has an overall goal, and I don't criticize them for the goal, but they have an overall goal to become the leading country in the world, the wealthiest country in the world, and the most powerful country in the world. That's not going to happen on my watch because the United States are going to continue to grow and expand," Biden warned.

In response, Chinese Foreign Ministry Spokesperon Hua Chunying noted that China's position on China-U.S. relations has been "clear and consistent," she said in her own press briefing. "China is ready to earnestly implement the important common understanding reached between the two heads of state and hopes that the U.S. can work with China toward the same direction," Hua added.

However, for the U.S. to win the economic competition against the Chinese, Biden argued America must put its own house in order, starting with providing American workers with the skills to compete in 2021, but with 2% of GDP. "Back in the '60s, we used to invest a little over 2% of our entire GDP in pure research and investment in science. Today, it's 0.7%," Biden said.

* * * Briefs * * *

<u>NOMINATIONS</u>: Senate March 25 confirmed Adewale "Wally" Adeyemo to be first Black deputy Treasury secretary by voice vote. "Wally is everything the Treasury Department needs right now: He has spent his career working at the intersection of America's national security interests and our economic ones," Secretary Janet Yellen said in statement after vote.

<u>SILICON METAL</u>: In 5-0 final vote March 24, ITC found U.S. industry is materially injured by dumped imports of silicon metal from Bosnia and Herzegovina and Iceland and subsidized imports from Kazakhstan. Commission also made negative finding on critical circumstances on dumped imports from Iceland.

TWIST TIES: In 3-2 final vote March 23, ITC found U.S. industry is materially injured by dumped and subsidized imports of twist ties from China. Chair Jason Kearns and Commissioner David Johanson voted no.

POLYETHYLENE: In 5-0 final vote March 22, ITC found U.S. industry is not materially injured by dumped imports of ultra-high molecular weight polyethylene from Korea.

IRAN SANCTIONS: Nordgas, S.r.l., Italian company that produces and sells components for gas boiler systems and applications, agreed March 26 to pay $950,000 civil penalty to settle OFAC charges of violating Iran sanctions from March 2013 to March 2017. Company "knowingly reexported 27 shipments of air pressure switches procured from a U.S. company intended for as many as ten customers in Iran and caused a U.S. company to indirectly export its goods to Iran," agency said. Nordgas used "code words to avoid referencing Iranian end-users in its communications" with U.S. company, OFAC said. Firm did not voluntarily self-disclose apparent violations. Of penalty, $650,000 will be suspended "pending satisfactory completion" of enhanced compliance commitments, agency noted. Cleveland instrument manufacturer UniControl agreed week earlier to pay OFAC $216,464 civil penalty to settle related charges (see **WTTL**, March 22, page 6).

FCPA: Jose Luis De Jongh Atencio (De Jongh), dual U.S.-Venezuelan citizen and former official at Citgo Petroleum, Houston-based subsidiary of Venezuela's state-owned energy company Petróleos de Venezuela S.A. (PDVSA), pleaded guilty March 22 in in Houston U.S. District Court to laundering proceeds of bribery scheme. He was charged in August (see **WTTL**, Aug. 10, page 7). De Jongh is 27th individual charged, 20 of whom have pleaded guilty, as part of larger investigation into PDVSA bribery. Sentencing is set for Aug. 19.

BURMA: OFAC March 25 issued four Burma General Licenses (GLs) authorizing: official U.S. government business, official activities of certain international organizations and other international entities, certain transactions in support of nongovernmental organizations' activities; and wind-down of transactions involving two military holding companies, Myanma Economic Holdings Public Company Limited (MEHL) and Myanmar Economic Corporation Limited (MEC), through June 22. At same time, OFAC designated MEHL and MEC, companies that "dominate certain sectors of the economy, including trading, natural resources, alcohol, cigarettes, and consumer goods," agency said. BIS previously added both companies to Entity List (see **WTTL**, March 8, page 1). …Three days earlier, OFAC designated Than Hlaing, chief of the Burma Police Force and deputy home affairs minister; 33rd Light Infantry Division of Burmese Army (33 LID) and 77th Light Infantry Division of Burmese Army (77 LID); and Lt. Gen. Aung Soe, Bureau of Special Operations commander.