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## President Increases Steel, Aluminum Tariffs

In a late Friday night news dump, the White House Jan. 24 increased Section 232 tariffs on “certain derivative” steel imports by 25% and aluminum imports by 10% that enter the country on or after Feb. 8. The announcement came minutes after the House impeachment managers completed their opening arguments on the Senate floor.

Argentina, Australia, Canada and Mexico are exempt from the new aluminum duties, while Argentina, Australia, Brazil, Canada, Mexico and South Korea will be exempt from the additional steel tariffs. In December, the president threatened via Twitter to restore Section 232 tariffs on Brazilian and Argentine steel and aluminum, despite public and legislative outcry over his ongoing tariff disputes with the EU and China (see **WTTL**, Dec. 9, page 6).

The president added specific derivative products to the tariffs, including steel nails, tacks, drawing pins, corrugated nails and staples, and aluminum stranded wire, cables and plaited bands. Although steel and aluminum imports have declined since the imposition of the tariffs, imports of certain derivatives of steel and aluminum articles “have significantly increased since the imposition of the tariffs and quotas,” the order said.

“Domestic steel producers’ capacity utilization has not stabilized for an extended period of time at or above the 80% capacity utilization level identified in his report as necessary to remove the threatened impairment of the national security,” the White House order said. “Stabilizing at that level is important to provide the industry with a reasonable expectation that market conditions will prevail long enough to justify the investment necessary to ramp up production to a sustainable and profitable level,” it added.

## Agencies Outline Transition of Firearm Transfers

With the formal publication Jan. 23 of the final rules transferring items from U.S. Munitions List (USML) categories I (firearms), II (guns and armament) and III

(ammunition) to the Commerce Control List (CCL), export control agencies outlined the transition, which will be familiar to loyal readers. As promised, the final rules include a 45-day transition period, with an effective date of March 9 (see **WTTL**, Jan. 20, page 1). “During the transition period, license applications will be accepted by both DDTTC [State’s Directorate of Defense Trade Controls] and the ...Bureau of Industry and Security (BIS) for items moving from the USML to the CCL. BIS will not issue approved licenses for such items until on or after the applicable effective date,” State noted in transition guidance.

“Agreements and amendments containing both USML and CCL items will be adjudicated up to the effective date of the relevant final rule. Agreements containing transitioning and non-transitioning items that are issued prior to the effective date of the relevant final rule will remain valid until expired, unless they require an amendment, or for a period of three years from the effective date of the relevant final rule, whichever occurs first, unless otherwise revoked, suspended, or terminated,” the guidance said.

State also defended the transfers in a fact sheet posted with the final rules. “The U.S. government is not removing the export authorization requirements for any firearms regardless of which agency has licensing jurisdiction or the proposed destination,” it said. The transfer of certain firearms to Commerce control “does not deregulate the export of firearms,” the fact sheet added.

The National Shooting Sports Foundation (NSSF), which pushed for the firearms transfers, offered special training sessions on the new rules during its annual SHOT show in Las Vegas Jan. 22. The sessions offered “to help U.S. manufacturers and retailers better understand changing regulations for export operations. Get first-hand guidance on properly exporting your goods and be ready to ask your most challenging questions,” the conference agenda noted.

Separately, gun control groups rallied against the final rules. “The Administration followed the whims of a president willing to use arms transactions for his own ends, without any regard for the very serious foreign policy concerns that come with this new regulation,” Adzi Vokhiwa, federal affairs manager at gun safety organization Giffords, said in a statement.

## **WTO Members Propose Alternate Dispute Settlement System**

The European Union (EU) and 16 other World Trade Organization (WTO) members Jan. 24 in Davos spearheaded a stopgap arrangement to resuscitate a dying WTO Dispute Settlement Body that has been fading since 2017, and put on life support since December 2019, after President Trump all but killed its operations. Ironically, if the U.S. is going to address upcoming disputes with China on the just concluded phase-one agreement, the WTO will become indispensable.

In talks that started in mid-December 2019, the 17 members, including China, but not the U.S., would create a multi-party interim appeal arrangement that will allow participating

WTO members to preserve a functioning and two-step dispute settlement system to referee disputes until the present impasse ends. At that same time, the Appellate Body became unable to hear disputes due to a lack of quorum (see **WTTL**, Dec. 23, page 3).

The arrangement, which is open to any WTO member, invokes Article 25 of the WTO Dispute Settlement understanding and would be in place until a reformed WTO Appellate Body is fully operational. “The multiparty appeal arbitration arrangement will guarantee that the participating WTO members continue to have access to a binding, impartial and high-quality dispute settlement system among them,” EU Trade Commissioner Phil Hogan argued in a statement announcing the arrangement.

“Let me underline again that this remains a contingency measure needed because of the paralysis of the WTO Appellate Body. We will continue our efforts to seek a lasting solution to the Appellate Body impasse, including through necessary reforms and improvements,” he added. The 16 other members supporting the EU also argued that it is a stopgap measure until a permanent one can be found.

The ministers of Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, EU, Guatemala, Republic of Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland and Uruguay “remain committed to work with the whole WTO membership to find a lasting improvement to the situation,” the group said in a joint statement.

“We believe that a functioning dispute settlement system of the WTO is of the utmost importance for a rules-based trading system, and that an independent and impartial appeal stage must continue to be one of its essential features,” the 16 ministers added. They also addressed the missing partner: the U.S. “We have also taken proper note of the recent engagement of President Trump on WTO reform,” they said.

In Davos the day before the announcement, Trump hinted at what seemed to be a parallel proposal: something that he and WTO Director-General Roberto Azevedo discussed. “Roberto and I have a tremendous relationship, and we’re going to do something that I think will be very dramatic,” Trump promised during a press conference but gave no specifics.

Azevedo said that he and Trump would be discussing an agenda of concern to other members. “I don’t think anybody in Geneva misses the point. I think they understand that the system has not been functioning properly in many areas. That’s something that we’re trying to address,” Azevedo said.

At that press conference, Trump repeated his ongoing resentment of the WTO. “I’ve had a dispute running with them for quite a while, because our country hasn’t been treated fairly. China is viewed as a developing nation. India is viewed as a developing nation. We’re not viewed a developing nation. As far as I’m concerned, we’re a developing nation, too. But they got tremendous advantages by the fact that they were considered ‘developing’ and we weren’t,” Trump argued. The WTO “has been very unfair to the United States for many, many years. And without it, China wouldn’t be China, and China

wouldn't be where they are right now. I mean, China — that was the vehicle that they used. And I give them great credit. And I also don't give the people that were in my position great credit, because, frankly, they let that all happen. But the vehicle was the World Trade Organization," Trump said in disgust.

## States Take Aim at Final USML Firearms Transfers

With the formal publication Jan. 23 of the final rules transferring firearms and ammunition from the USML to the CCL, including new language controlling the software and technology for 3D printing, 21 states wasted no time in filing an injunction in Seattle U.S. District Court against the online posting of 3D gun blueprints.

Observers had hoped the final rules would put to rest a lawsuit that the administration settled with Defense Distributed over the issue, but a Seattle district judge in November granted Washington state's previous motion to halt the posting of such blueprints (see **WTTL**, Nov. 18, page 1).

"If the Final Rules go into effect, Firearm Files will instantly become easily accessible both within the United States—including within the Plaintiff States' borders—and outside the United States. Such files can enable anyone with access to a commercially available 3D printer (or one that is free for public use) to automatically manufacture a working firearm out of plastic," the most recent motion said.

"Why is the Trump Administration working so hard to allow domestic abusers, felons and terrorists access to untraceable, undetectable 3D-printed guns?" Washington Attorney General (AG) Bob Ferguson said in a statement. "We will continue to stand up against this unlawful, dangerous policy," he added.

Connecticut AG William Tong joined the effort. "Proliferation of DIY untraceable weapons would be a public safety nightmare. We're fighting to ensure these 3D-plans stay offline for good," he tweeted Jan. 22.

State addressed 3D printing in a fact sheet published with the final rules. "Certain technology and software posted on the internet that is capable of 3D printing firearms previously controlled by State will continue to be controlled by the Department of Commerce, meaning the U.S. Government will continue to maintain restrictions. Commerce's controls under the EAR will help ensure that U.S. national security and foreign policy interests are not undermined by foreign persons' access to firearms production technologies," the fact sheet noted.

As expected, gun industry groups dismissed the lawsuit. "A cursory review of the complaint including the caption that names the wrong party at Commerce demonstrates the antigun attorneys general have not bothered to read the rule before filing their lawsuit. They are remarkably uninformed about export controls. The industry is weighing its legal options with respect to this frivolous case," National Shooting Sports Foundation (NSSF) Senior VP Lawrence Keane wrote in an email to **WTTL**.

Gun control groups, including the Newtown Action Alliance (NAA), applauded the states' lawsuit. The administration "is working to export America's gun violence crisis," NAA Chair Po Murray said in a statement. "We also implore Congress to pass legislation to ban 3D guns, ghost guns and assault weapons. As technology advances in America, it is the responsibility of the federal, state and local governments to consistently close the loopholes in our gun control laws to keep guns away from dangerous individuals on our soil and abroad," she added.

## Lawmakers Respond to Agreement on Digital Tax

As government officials gathered in Davos for the World Economic Forum Jan. 23, word got around that the U.S and France had made an agreement on potential retaliation to France's recently implemented 3% digital services tax (DST). The issue comes up quickly in diplomatic conversations, and industry responded loudly to recent requests for public comment (see **WTTL**, Jan. 20, page 7).

"The framework that we found with [Treasury Secretary] Steven Mnuchin is excellent news because it will give us time and a chance for international negotiations rather than entering a trade war that would penalize our winegrowers in particular," French Finance Minister Bruno Le Maire tweeted Jan. 23. At press time, the U.S. government had not commented publicly on the deal.

Le Maire was quick to affirm that France would continue its policy. "No, there is no suspension, no withdrawal of the national tax on digital services. We will continue to collect a tax in France in 2020, whether international if an agreement is reached at the OECD [Organization for Economic Cooperation and Development] or national if there is no agreement," he tweeted.

Sens. Chuck Grassley (R-Iowa) and Ron Wyden (D-Ore.) applauded the reported agreement. "If reports are accurate, we're pleased that the United States and France have come to an agreement that would postpone a discriminatory tax on American technology companies until the multilateral process is complete," they said in a statement. "The multilateral OECD process offers the greatest potential for long-term success in resolving complex tax issues created by digitalization. We will continue to support that effort," the senators added.

## First Phase Concludes in Huawei Extradition Case

The extradition case of Huawei Chief Financial Officer (CFO) Meng Wanzhou to the U.S. temporary concluded in a Vancouver court Jan. 23 after four days and has already morphed into a transnational battle between Canada, the U.S. and China with long-lasting consequences. Meng's legal team is due back in court the last week of April. A second phase of the trial, focusing on whether Canadian officials followed the law when they arrested Meng, is set to begin in June. Closing arguments are expected the last week

of September and the first week of October. The U.S. charged Meng, the daughter of billionaire Huawei founder Ren Zhengfei, with bank fraud and accused her of misleading HSBC about Huawei business in Iran (see **WTTL**, Feb. 4, page 1). She was arrested in December 2018, the same night President Trump and President Xi had dinner at the G20 meeting in Argentina, discussing how to avert a combative trade dispute between the U.S. and China.

Canadian Prime Minister Justin Trudeau had requested Trump negotiate the release of two Canadians at the same time as he was signing the “phase-one” deal with China. In a January interview, Treasury Secretary Steven Mnuchin said that Huawei is not a “chess piece” to be negotiated. “Huawei is not part of the economic dialogue. It is part of the national security dialogue, which is ongoing,” he added.

The U.S. has two cases pending against Huawei. Federal criminal charges are pending against Huawei in Brooklyn U.S. District Court relating to alleged violations on Iran, bank fraud, and obstruction of justice, among several other criminal charges (see **WTTL**, Dec. 9, page 3). Commerce pointed to those charges when it placed Huawei on its Entity List in May 2019. Justice is separately prosecuting Huawei in Seattle district court for trade secret theft, fraud and obstruction of justice.

**\* \* \* Briefs \* \* \***

**SANCTIONS:** Former Sen. Alfonse D’Amato’s (R-N.Y.) lobbying firm Park Strategies agreed Jan. 21 to pay \$12,150 civil fine to settle OFAC charges of violating global terrorism sanctions from August to November 2017. Park Strategies voluntarily disclosed violations. Firm “dealt in the property or interests in property of Al-Barakaat Group of Companies Somalia Limited (Al-Barakaat), a Specially Designated Global Terrorist (SDGT), when Park Strategies signed a contract with Al-Barakaat and subsequently received payment for its services,” OFAC said. “The contract terms called for Park Strategies to provide lobbying services for Al-Barakaat, which were outside the scope of generally authorized activities,” including general license for legal services, agency added.

**BREXIT:** Former EU Ambassador to U.S. João Vale de Almeida will move to London as first head of future delegation to UK, EU announced Jan. 24. Most recently, Vale de Almeida served as EU ambassador to UN. He will take up new functions Feb. 1, day after Brexit.

**CLIMATE:** At World Economic Forum in Davos Jan. 23, Switzerland joined Costa Rica, Fiji, Iceland, New Zealand and Norway in Agreement on Climate Change, Trade and Sustainability (ACCTS). Agreement will include measures such as removal of tariffs on environmental goods and establishment of new and binding commitments for environmental services; establishment of disciplines to eliminate harmful fossil fuel subsidies; and development of guidelines to inform development and implementation of voluntary eco-labelling programs and mechanisms, trade ministers said in joint statement. Negotiations will begin in March.

**IRAN:** OFAC Jan. 23 designated four international petrochemical and petroleum companies -- Hong Kong-based broker Triliance Petrochemical, Hong Kong-based Sage Energy HK Limited, Shanghai-based Peakview Industry Co. and Dubai-based Beneathco DMCC – that “have collectively transferred the equivalent of hundreds of millions of dollars’ worth of exports from the

National Iranian Oil Company,” agency said. At same time, State imposed sanctions on Chinese company Shandong Qiwangda Petrochemical and Hong Kong entity Jiexiang Industry Hong Kong Limited, as well as Triliance managing director Ali Bayandarian and Zhiqing Wang, chairman and legal representative of Shandong Qiwangda Petrochemical, “for knowingly engaging in a significant transaction for the purchase, acquisition, sale, or transport of petrochemical products from Iran,” department noted.

**SOLAR:** In Federal Register Jan. 27, USTR requests comments on whether agency should maintain exclusion of bifacial solar panels from Section 201 safeguard measure, withdraw exclusion or take other action. Comments are due Feb. 17. In December, Court of International Trade (CIT) Judge Gary Katzmman approved Solar Energy Industries Association’s (SEIA) motion for preliminary injunction to allow exclusion to remain in place (see **WTTL**, Dec. 9, page 6). If USTR determines that “it would be appropriate to withdraw the bifacial exclusion or take some other action,” agency will request that court lift injunction, notice says.

**FCPA:** Armengol Alfonso Cevallos Diaz (Cevallos), Ecuadorian businessman living in Miami, pleaded guilty Jan. 23 in Miami U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act and conspiracy to commit money laundering for role in scheme to pay \$4.4 million in bribes to officials of Ecuador’s state-owned oil company, PetroEcuador. Sentencing is set for April 2. Frank Roberto Chatburn Ripalda, dual U.S. and Ecuadorian citizen, was sentenced Dec. 18 in Miami court to 42 months in prison for role in similar scheme (see **WTTL**, Dec. 23, page 5).

**OLIVES:** CIT Jan. 17 remanded Commerce’s final determination in countervailing duties (CVDs) for imports of ripe olives from Spain. “Specifically, the court remands to Commerce on issues of (1) Commerce’s determination that the EU and Spain’s subsidies to olive growers are de jure specific; and (2) Commerce’s analysis of subsidies attributed to ripe olives,” Judge Gary Katzmman wrote in *Asociación de Exportadores e Industriales de Aceitunas de Mesa v. U.S.* WTO Dispute Settlement Body established panel in June to rule on U.S. antidumping and CVDs on imported ripe olives from Spain (see **WTTL**, July 1, page 9). U.S. blocked EU’s first request in May after consultations in March failed to resolve dispute.

**VENEZUELA:** OFAC Jan. 21 identified 15 aircraft as blocked property of Petroleos de Venezuela, S.A. (PdVSA) pursuant to Executive Order (EO) 13884, which blocks property of Venezuelan government. At same time, agency issued General License (GL) 20B, which authorizes official activities of certain international organizations... OFAC Jan. 17 issued GL 5B delaying effectiveness until April 22 of authorization of licenses applicable to holders of PdVSA 2020 8.5% bond. Same day, OFAC issued GL 8E, extending previous GL that authorized transactions involving PdVSA necessary for maintenance of operations. Specifically, OFAC extended GL expiration date to April 22 from Jan. 22.

**ANTIBOYCOTT:** In order posted Jan. 23, Honeywell Middle East FZE (Dubai) agreed to settle three BIS charges of violating antiboycott regulations. Company agreed to pay \$26,250 civil penalty to settle charges of refusing to do business and failing to report receipt of request to engage in restrictive trade practice or foreign boycott from June 2015 through March 2016 during transactions with Oman and UAE. Honeywell voluntarily disclosed information on transactions.

**DISTILLED SPIRITS:** Score one for national drinks. U.S. and Bolivia Jan. 24 launched bilateral process to designate Bourbon Whiskey and Tennessee Whiskey as distinctive products of U.S., and to designate Singani as “distinctive product of Bolivia,” USTR’s office announced. Treasury will request public comments in future notice. Singani is made from white Muscat grapes and has been called “national drink” of Bolivia, agency added.