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CELEBRATING 40 YEARS

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Phase One China Deal Gets Dispute Resolution Office, Just in Case

Forget the ceremonious signing event in January, and China's subsequent announcement that it would cut tariffs on $75 billion worth of U.S. imports. The phase one deal with Beijing will get its very own Bilateral Evaluation and Dispute Resolution Office, the U.S. Trade Representative (USTR) announced Feb. 14, the day the tariff cuts take effect.

> China announced a week earlier it would cut by half the tariffs on more than 1,500 products it imports from the U.S. (see **WTTL**, Feb. 10, page 2). The tariff on some goods would be cut from 5% to 10%, while others would decrease from 5% to 2.5%. China said it would leave in place tariffs on an additional $35 billion worth of U.S. products. Deputy USTR Jeffrey Gerrish will head the dispute office, which can be reached at (202) 395-3900.

Pro-trade groups took the occasion to press the administration on a phase-two deal. "It's encouraging to see some of the Phase One Deal come to fruition. American businesses, farmers, consumers, and workers certainly need these reductions, as they have been paying the price for these tariffs since the trade war began. While this progress is a good first step, the administration must negotiate a Phase Two Deal that completely lifts all tariffs," Americans for Free Trade spokesperson Jonathan Gold said in a statement.

And then there are facts. "Average U.S. tariffs on imports from China will remain elevated at 19.3%, [which is] more than six times higher than before the trade war began in 2018," Peterson Institute senior fellow Chad Bown wrote in a blog post. The resulting tariffs "remain more than 7 percentage points higher than the same period from one year earlier, when the Trump administration and China were first negotiating a deal," he added.

As Huawei Faces New Charges, BIS Extends General License

In a case of give with one hand and take with the other, the Bureau of Industry and Security (BIS) Feb. 13 extended a narrow and temporary General License (GL) autho-

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rizing some transactions with Huawei through April 1. On the same day, a 16-count superseding indictment was filed in Brooklyn U.S. District Court charging the Chinese firm and several subsidiaries with racketeering and conspiracy to steal trade secrets.

"The 45-day extension is necessary to allow existing telecommunication providers—particularly those in rural U.S. communities—the ability to continue to temporarily and securely operate existing networks while they identify alternatives to Huawei for future operation," Commerce said in press release. The formal notice will be published in the Federal Register Feb. 18. BIS previously extended the GL in November (see **WTTL**, Nov. 25, page 5).

> The misappropriated intellectual property alleged in the indictment included trade secret information and copyrighted works, such as source code and user manuals for internet routers, antenna technology, robot testing technology, a base station designed for use in wireless network, a networking device, and architecture for memory hardware. The six unidentified U.S. technology companies are based in Northern California, Illinois, New York and Washington state.

Also included in the newest indictment are further details related to the company's involvement in business and technology projects in sanctioned countries, such as Iran and North Korea. "Huawei representatives and employees repeatedly denied to some of the Victim Institutions that Huawei was involved in numerous projects in North Korea. For example, in or about March 2013, Huawei employees told representatives of Financial Institution 4 that, in sum and substance, Huawei had no business in North Korea. These representations were false," the indictment noted.

"Huawei and Huawei Device USA made efforts to move witnesses with knowledge about Huawei's Iran-based business to the PRC, and beyond the jurisdiction of the U.S. government, and to destroy and conceal evidence in the United States of Huawei's Iran-based business. By impeding the government's investigation, Huawei and Huawei Device USA sought to avoid criminal prosecution with respect to Huawei's Iran-based activities, which would subject Huawei and its U.S. affiliates and subsidiaries, including Huawei Device USA, to the threat of economic harm," it added.

In a statement, Huawei called the charges "political persecution, plain and simple. These charges do not reveal anything new. They are based largely on resolved civil disputes from the last 20 years that have been previously settled, litigated, and in some cases, rejected by federal judges and juries."

"None of our products or technologies have been developed through the theft of trade secrets. Huawei's development is the result of our huge investment in R&D and the hard work of our employees over the past three decades. We rely on the trust and support that our customers, suppliers, and partners place in us," the company added.

"The Chinese government encourages Chinese enterprises to conduct overseas business cooperation in accordance with local laws, the market principle and international rules.

The U.S. has been misusing its national power to oppress specific Chinese companies with no proof of any wrongdoing," Chinese Foreign Ministry Spokesperson Geng Shuang said in a press briefing Feb. 14.

U.S. Increases Aircraft Tariffs, Swaps in Other Imports

In response to multiple requests for comments and advice from industry after a World Trade Organization (WTO) dispute ruling in its favor, the USTR's office will increase the additional duty rate imposed on aircraft imports from the European Union (EU) to 15% from 10%, and will update the list of non-aircraft products from certain current and former EU member states subject to additional 25% duties, effective March 18, the USTR's office announced Feb. 14.

> The EU in December appealed a second WTO panel report rejecting its claims that the EU and four of its member states -- France, Germany, Spain and the United Kingdom (UK) – have complied with an earlier ruling that the EU maintained illegal subsidies for aircraft manufacturer Airbus (see **WTTL**, Dec. 9, page 3).

Formally blessed by WTO members, the U.S. in October imposed import duties on EU products to counteract the Airbus subsidies after WTO members agreed to authorize the U.S. countermeasures at a Dispute Settlement Body (DSB) meeting. With all the changes, "the annual trade value of the list of tariff subheadings subject to additional duties under the revised action remains at approximately $7.5 billion, which is consistent with the WTO Arbitrator's finding on the appropriate level of countermeasures," the latest notice said.

In addition to new airplanes and other civil aircraft, targeted products include: single-malt Irish and Scotch Whiskies and sweaters; coffee, tools and books; cheese and olive oil; liqueurs and cordials; olives and wine; as well as pork and cherries.

Peace Bills Could Block Commercial Arms Exports

In a larger package outlining a "Pathway to Peace," Rep. Ilhan Omar (D-Minn.) Feb. 12 introduced two bills that could impact commercial export licenses and the administration's authority to impose economic sanctions. It remains unclear how these bills would interact with existing country groups and arms embargoes, not to mention whether the bills would get bipartisan support from lawmakers.

The Stop Arming Human Rights Abusers Act (H.R.5880) would establish "red lines based on internationally recognized gross violations of international human rights and international humanitarian law," Omar said at an event in Washington. Countries that cross those lines, as determined by a bipartisan commission, would face prohibitions on "arms sales including those controlled by the Commerce Department," such as tear gas, as well as other security assistance programs and law enforcement exchanges, she added.

While Omar mentioned Commerce rules, the bill only specifies items under State jurisdiction. "The President shall prohibit the issuance of licenses to export defense articles, defense services, and munitions items, as such terms are defined for purposes of the Arms Export Control Act, to the government of the foreign country or any agent or instrumentality of such government," the bill says.

> Another bill, the Congressional Oversight of Sanctions Act (H.R.5879) would require a joint resolution of Congress to approve sanctions issued under the International Emergency Economic Powers Act (IEEPA), as well as congressional approval to renew existing sanctions.

"If a joint resolution to extend the emergency is not enacted in … within 60 days after the first day on which either House of Congress is in session following the date of the declaration, the President may not declare a new national emergency based on substantially similar facts during the 1-year period following such 60-day period," the bill says.

John Glaser, director of foreign policy studies at the Cato Institute, called the package of bills "a welcome addition to the public discussion on global peace and security." Former Deputy National Security Advisor Ben Rhodes agreed, saying the proposal is "an ambitious and comprehensive package that outlines progressive approaches to some of the most important issues facing the United States and our world today."

Solar Safeguard Measure Brought Little Sunshine, ITC Says

Following the imposition of a Section 201 safeguard measure, imports of crystalline silicon photovoltaic (CSPV) products, while domestic production results were mixed, according to the International Trade Commission's (ITC) latest midterm review released Feb. 7.

"The price declines for CSPV cells and modules were directionally consistent with the historical downward trend in prices for CSPV products, though parties agreed that the prices were higher than they would have been without the safeguard measure," the ITC report said. "Following the imposition of the safeguard measure, the domestic industry experienced decreased capacity and production for CSPV cells but increased capacity and production for CSPV modules," it added.

At the same time, imports of CSPV cells increased from 2017 to 2018 and were higher in the first half of 2019 compared with the first half of 2018. Imports of CSPV modules initially declined from 2017 to 2018 but were higher in the first half of 2019 compared with the first half of 2018. Multiple large CSPV module producers opened U.S. production facilities particularly in the first half of 2019, the ITC reported.

According to U.S. CSPV cell producer Suniva, "the [June 2019] exclusion of bifacial CSPV modules from the safeguard measure have delayed and diluted the remedial effects of the intended relief and hampered its efforts to restart CSPV cell production," the report said.

Suniva also noted that "the current safeguard remedy incentivizes domestic CSPV module assembly more than domestic CSPV cell production, which it claims is vital to advancing U.S. national security interests, ensuring grid reliability, and fostering product research and development," the ITC noted.

> In the Federal Register Jan. 27, USTR requested comments on whether the agency should maintain the exclusion of bifacial solar panels from the safeguard measure, withdraw the exclusion or take other action (see **WTTL**, Jan. 27, page 7). Comments are due Feb. 17. In December, Court of International Trade (CIT) Judge Gary Katzmann approved Solar Energy Industries Association's (SEIA) motion for a preliminary injunction to allow the exclusion to remain in place.

SEIA President and CEO Abigail Ross Hopper urged the administration to moderate solar tariffs. The ITC report "confirms what we've been saying all along. While the solar tariffs have resulted in some new U.S. manufacturing investments, total domestic cell and module capacity falls far short of demand. The tariffs have effectively constrained solar development in the United States," Hopper said in a statement.

White House Submits Long-Shot Budget to Congress

In its proposed fiscal year (FY) 2021 budget released Feb. 11, the administration gave a little and took a little. While the budget is not binding until Congress approves it, which is unlikely, the numbers reveal the White House policy priorities. Several House members already have said it is a non-starter, as it has been for the last three years, because of cuts to social programs and a Democratic majority.

For one, Commerce would receive $7.9 billion, a $7.3 billion (48%) decrease over 2020 enacted levels. It supports $474 million for the International Trade Administration (ITA) "to support the administration's aggressive approach to a global market that allows U.S. businesses to compete fairly," the department said in its budget request.

Under the budget decrease, "ITA will rescale Global Markets export promotion and trade analysis efforts by reducing personnel worldwide and closing overseas and domestic offices," the department said. "To accomplish this rescaling, ITA estimates the need to close 32 offices overseas, 18 offices domestically, and reduce personnel," it noted. In addition, the budget requests $137.7 million for BIS. "This funding will augment the Bureau's efforts to curtail illegal exports of sensitive products and technologies while facilitating secure trade with U.S. allies and close partners," Commerce noted. That is $10 million more than the 2020 budget request.

The budget request for USTR is $73 million, $4 million (5.8%) more than the FY 2020 appropriation. "At this level, the budget will enable USTR to continue effectively leading President Trump's ambitious trade agenda by: (1) adopting trade policies that support our national security; (2) strengthening the U.S. economy; (3) negotiating better trade deals that work for all Americans; (4) enforcing U.S. trade laws and U.S. rights under existing trade agreements; and (5) reforming the multilateral trading system," the agency said. The budget requests nearly $41 billion in base funding for State and USAID, a $11 billion (21%) decrease from the 2020 enacted level. Like in previous years, the budget "proposes to eliminate funding for several independent agencies, including for the U.S. Trade and Development Agency (USTDA), as part of the administration's continued effort to move the nation towards fiscal responsibility, to redefine the proper role of the federal government, to prioritize rebuilding the military and to make critical investments in the Nation's security," the State budget justification noted.

USTR Delivers Eulogy on Barely Breathing Appellate Body

Now that the WTO Appellate Body (AB) has nothing more than a faint pulse, the USTR's office Feb. 11 released its official post-mortem, what it called "in-depth assessment of the Appellate Body's failure to comply with WTO rules and interpret WTO agreements as written."

> The Feb. 6 ruling on supercalendered paper from Canada was one of the AB's last cases as it has lost its quorum (see **WTTL**, Feb. 10, page 3). The last member left his post in December, after the U.S. refused to choose a replacement for years.

"Specifically, the Appellate Body has added to U.S. obligations and diminished U.S. rights by failing to comply with WTO rules, addressing issues it has no authority to address, taking actions it has no authority to take, and interpreting WTO agreements in ways not envisioned by the WTO Members who entered into those agreements. This persistent overreaching is plainly contrary to the Appellate Body's limited mandate," the USTR report noted, mincing no words.

Examples of the persistent overreaching include: consistently ignoring the mandatory deadline for deciding appeals; prohibiting a "common-sense method" of calculating the extent of dumping ("zeroing"); insisting that dispute settlement panels treat prior Appellate Body interpretations as binding precedent; erroneous interpretation of the term "public body"; and its "stringent and unrealistic test for using out-of-country benchmarks."

The Committee to Support U.S. Trade Laws (CSUSTL) applauded the report's findings. "These longstanding problems with the WTO Appellate Body have weakened the ability of U.S. companies and workers to address trade law violations like dumping, subsidies, and distortions caused by state-owned enterprises," said Tim Brightbill, chair of the CSUSTL Executive Committee.

AI, Quantum Computing Get Boost in White House Budget Request

While the White House decreased budgets for overall research and development (R&D) spending in its fiscal year (FY) 2021 budget request Feb. 11, the administration proposed doubling spending on non-defense artificial intelligence and quantum information science

(QIS). In the past, these were two areas where a bipartisan group of congressional leaders have found common ground. The administration is preparing proposed rules on emerging technology controls, which could include AI, but the timeline for those rules keeps shifting. BIS published the first of what could be several upcoming rules, controlling geospatial imagery software in January (see **WTTL**, Jan. 6, page 1).

In the area of AI, the White House proposes spending more than $830 million at the National Science Foundation (NSF); $125 million at Agriculture; $50 million at the National Institutes of Health (NIH); and at the Defense Department's DARPA, $459 million. While in quantum computing, the NSF would get $230 million and Energy's Office of Science spending on QIS research will increase to $237 million, "which will boost QIS efforts at the national laboratories and in academia and industry," the White House said.

> The budget also includes investments in education and job training that would "create a diverse and highly skilled American workforce to support the Industries of the Future," the White House said. "At the [NSF], an additional $50 million will go toward AI and QIS workforce development, with a focus on community colleges, Historically Black Colleges and Universities, and Minority Serving Institutions," it added.

The Information Technology and Innovation Foundation (ITIF) applauded the proposal. "These increased investments are urgently needed, as competitors from Europe to Asia are devoting significant resources and designing coordinated strategies to wrest technological leadership away from the United States. America cannot take its own leadership position in advanced technologies as a given—we must constantly earn and maintain it," ITIF Vice President for Global Innovation Policy Stephen Ezell said in a statement.

But not everyone is happy with the administration's R&D spending proposals. Martijn Rasser, senior fellow at Center for a New American Security, tweeted: "Stunning R&D funding numbers coming out of [White House] today. How will this have America compete? NIH: -7% DOE: -17% NASA: -11% ARPA-E: -173% (not a typo - agency is eliminated, plus $311 million must be returned to Treasury)." Rasser cited the boost in AI and QIS spending as one of the "few silver linings."

* * * Briefs * * *

<u>TRADE SECRETS</u>: Shan Shi of Houston was sentenced Feb. 10 in D.C. U.S. District Court to 16 months in prison for conspiracy to commit theft of trade secrets involving development of syntactic foam, dual-use marine product. He was convicted in July following nine-day trial (see **WTTL**, Aug. 5, 2019, page 7). Shi was originally charged in May 2017 along with six others including three U.S. citizens, Canadian and two Chinese nationals. Four of Shi's codefendants previously pleaded guilty to related charges, and two testified as cooperating witnesses at trial, Justice noted.

<u>EX-NOMINATIONS</u>: President Feb. 12 withdrew nomination of Jessie Liu, former U.S. attorney for D.C., to be Treasury under secretary for terrorism and financial crimes, same day as scheduled Senate Banking Committee hearing. White House nominated Liu in January, replacing Sigal Mandelker. Liu previously served as Treasury deputy general counsel and in Justice National Security Division.

XANTHAN GUM: CAFC Feb. 10 affirmed in part and reversed in part CIT decision involving antidumping duty on xanthan gum from China. Court affirmed decision to uphold Commerce's treatment of *X. Campestris* as asset and reversed its decision on department's use of Thai Fermentation financial statements to calculate surrogate financial ratios. "To be clear, we do not decide today whether Commerce must accept or refuse a partial translation of financial statements in every case, or that it is required to do so. But we are satisfied that here, with its third redetermination, Commerce sufficiently explained its reason for choosing between two flawed financial statements," Circuit Judge Kimberly Moore wrote for three-judge panel in *CP Kelco US, Inc. v. U.S.*

SANCTIONS: Five men were arrested Feb. 11 and charged in Philadelphia U.S. District Court with violating Iran sanctions from July 2019 to February 2020. Defendants allegedly conspired to arrange for purchase of oil from Iran for sale to refinery in China. Nicholas Hovan of New York; Zhenyu Wang, aka "Bill Wang," Robert Thwaites and Nicholas James Fuchs of Dallas; and Daniel Ray Lane, president of Dallas-based Stack Royalties, were charged with "attempting to facilitate the purchase of petroleum directly from Iran, to mask the origins of the petroleum due to sanctions, and to sell the petroleum to China under masked origins," criminal complaint noted.

FIREARMS: National Shooting Sports Foundation (NSSF) and Washington gunsmith Fredric's Arms & Smiths, LLC filed motion Feb. 11 in Seattle U.S. District Court opposing lawsuit 22 states filed to block final rules transferring firearms and ammunition from USML to CCL. "The attorneys general target only the export reforms treatment of technical data related to 3D-printed firearms, yet seek an injunction against, or to vacate altogether, the reforms that make American businesses more competitive. This is an unacceptable overreach by states to dictate federal export policy," Lawrence Keane, NSSF senior VP and general counsel, said in statement. States filed preliminary injunction Feb. 6, two weeks after rules' publication (see **WTTL**, Feb. 10, page 10). Rules are scheduled to go into effect March 9.

EXPORT ENFORCEMENT: Former Raytheon engineer Wei Sun pleaded guilty Feb. 14 in Tucson, Ariz., U.S. District Court to charge of export of arms and munitions without required State licenses. Superseding indictment against Sun was filed Jan. 29 (see **WTTL**, Feb. 10, page 9). Specifically, Sun transported computer with four files that "constituted defense articles in the form of technical data controlled by the ITAR under USML Category XI(d)" and one file of technical data controlled under USML Category IV(i). Sentencing is set for April 28.