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Wassenaar Members Update High-Performance Computer Controls

Give thanks for small mercies. The Wassenaar Arrangement (WA) was able to hold its annual plenary Dec. 23 and updated the performance level on high-performance computers for the first time in three years. Other changes to the WA control lists include “the introduction of controls for computer-assisted-design software tools for high-end components and new classes of metallic and organic substrates used in highly sophisticated application,” the plenary chair said.

> After three years, members updated the computer controls in Category 4, changing the Adjusted Peak Performance (APP) from 29 to 70 Weighted TeraFLOPS (WT). In 2019, members made no changes to that parameter, leaving the APP at 29 WT for the second year in a row (see **WTTL**, Dec. 16, 2019, page 6). Other 2021 changes included new entries for Electrical Computer-Aided Design (ECAD) software and Gate-All-Around Field-Effect Transistor (GAAFET).

The December 2020 Wassenaar plenary and all other 2020 meetings were canceled due to COVID restrictions. “Control Lists adopted by the December 2019 Plenary will remain in force and discussions on possible updates will continue based on proposals submitted in 2020 and 2021,” the chair said in a statement at the time.

“Although COVID-19 related disruptions continued to affect the WA work programme, Participating States resumed some in-person meetings and cooperated intersessionally in order to exchange information and experiences in the effective export control of conventional arms and dual-use goods and technologies, as well as to continue the comprehensive and systematic review of the WA Control Lists, thus ensuring their ongoing relevance,” the chair noted after the most recent plenary.

Canada Challenges Softwood Lumber Duties Under USMCA

Continuing a decades-long dispute, the Trudeau administration Dec. 21 challenged the final results of Commerce’s second administrative reviews of antidumping and counter-

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vailing duty orders on softwood lumber from Canada under the U.S.-Mexico-Canada Agreement (USMCA). Specifically, Ottawa took issue with the U.S. doubling the duty rate applicable to most Canadian softwood lumber producers in November.

> The softwood lumber dispute figured prominently in previous bilateral and trilateral meetings when the leaders of the U.S., Canada and Mexico met in Washington in November, along with potential Buy America credits for electric vehicles, USMCA labor disputes, immigration questions, covid recovery and supply chain disruptions (see **WTTL**, Nov. 22, page 2).

Under USMCA Chapter 10, binational panels will be tasked with determining whether the duty rates in question were reached in a manner consistent with U.S. law. "Rulings on this issue have consistently found Canada to be a fair trading partner, and Canada is confident that rulings will continue to find Canada to be one. Filing these notices is another step that Canada is taking to defend the forestry sector and Canada's national interests," Canadian Trade Minister Mary Ng said in a statement.

"Canada has repeatedly communicated to the United States that it is willing to work toward a negotiated solution to this long-standing trade issue that would allow a return to predictable cross-border trade in softwood lumber for the benefit of workers in both countries. Canada will always defend its softwood lumber industry and the workers and communities it supports," she added.

The U.S. Lumber Coalition welcomed Commerce's November ruling. "Trade law enforcement maximizes long-term domestic production and lumber availability and has already resulted in dramatic growth of U.S. made lumber to meet strong demand to build more American homes," Coalition Chairman Jason Brochu said at the time.

TD Bank Settles More OFAC Sanctions Charges

Delaware-based financial institution TD Bank, N.A. (TDBNA) agreed Dec. 23 to pay Treasury's Office of Foreign Assets Control (OFAC) a $115,005.04 civil penalty to settle charges of violating North Korea and other sanctions. Specifically, the bank "processed 1,479 transactions totaling $382,685.38 and maintained nine accounts on behalf of employees of the North Korean mission to the United Nations without a license from OFAC," the agency said.

In addition, TD maintained two accounts for more than four years for a U.S. resident who was on OFAC's Specially Designated Nationals (SDN) list. Violations "resulted from multiple sanctions compliance breakdowns, including screening deficiencies and human error, and highlight the importance of maintaining and following proper escalation procedures and ensuring adequate employee training," OFAC added.

The bank voluntarily self-disclosed the violations. In addition, TD undertook the following remedial measures: enhancing its controls for identifying government officials of sanctioned countries; updating its operating procedures to specify that reviews of customers in or affiliated with sanctioned jurisdictions must be escalated; and providing targeted training to address the appropriate adjudication criteria for determining whether potential customers may be Politically Exposed Persons (PEPs) from a sanctioned country.

"We believe the settlement is a fair resolution of these matters. In both cases, TD Bank, N.A. self-identified and remediated technical issues and mistakes that were limited in scope," the company said in a statement. "At TD Bank, we have stringent processes and procedures in place that reflect our strong and unwavering commitment to U.S. sanctions compliance," it added.

In January 2017, TD Bank previously agreed to pay OFAC $516,105 to settle apparent violations of Cuba and Iran sanctions (see **WTTL**, Jan. 16, 2017, page 12). Between 2007 and 2012, TD Bank processed 167 transactions totaling $2.13 million through the U.S. on behalf of customers, including a sales agent of a blocked Iranian entity and Cuban nationals residing in Canada.

OFAC Authorizes Certain Humanitarian Transactions with Taliban

Almost four months after withdrawing troops from Afghanistan, the Biden administration Dec. 22 authorized certain transactions with the Afghan government "to facilitate the continued flow of humanitarian assistance and other support for the Afghan people." Specifically, Treasury's Office of Foreign Assets Control (OFAC) issued three General Licenses (GLs) authorizing transactions and activities involving the Taliban or the Haqqani Network.

> At an October hearing on recent sanctions review, Deputy Treasury Secretary Wally Adeyemo outlined one of five initiatives that emerged from the review: "expanding sanctions exceptions to support the flow of legitimate humanitarian assistance" (see **WTTL**, Oct. 25, page 5).

Simultaneous with the troop withdrawal, the Bureau of Industry and Security (BIS) suspended all licenses for exports to the Afghan government and is continuing to monitor the situation, agency officials told the Update conference in September (see **WTTL**, Sept. 6, page 6). State's Directorate of Defense Trade Controls (DDTC) said it was reviewing all export licenses to the country's government in a similar announcement two weeks earlier.

GL 17 authorizes conduct of the official business of the U.S. government by employees, grantees, or contractors; GL 18 authorizes conduct of the official business of certain international organizations and other international entities, including the United Nations and the Red Cross.

GL 19 authorizes transactions that are ordinarily incident and necessary to the following activities by nongovernmental organizations (NGOs): humanitarian projects to meet basic human needs; activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects; education; non-commercial development projects directly benefitting the Afghan people; and environmental and natural resource protection.

The new GLs "explicitly do not authorize financial transfers to the Taliban or the Haqqani Network, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services related to the activities specified," OFAC noted.

CIT Sends Steel Nails Case Back to Commerce

The Court of International Trade (CIT) Dec. 22 remanded Commerce's second remand results in its antidumping duty investigation of certain steel nails from Oman "for reconsideration and further explanation of the choice of Hitech's financial statements for determining constructed value profit," Chief Judge Mark Barnett wrote in *Mid Continent Steel & Wire v. U.S* (Slip Op. 21-172).

Eight days after the ruling, Mid Continent Steel & Wire filed countervailing and anti-dumping duty (AD) petitions against imports of steel nails from Oman and four other countries (see Briefs, page 5).

> "To the extent that Commerce wishes to rely on Hitech's financial statements, the agency must seriously engage with the possible inclusion of subsidies in those statements. Specifically, Commerce must address why the above quoted language in the financial statements is sufficient to be considered 'evidence of a subsidy' in Steel Wire Garment Hangers from China yet may be ignored in this case," Barnett wrote.

"Commerce must also address whether a comparative analysis inclusive of the other financial statements on the record is appropriate," he added. "To be clear, the court does not seek to impose a particular result on Commerce; however, a serious analysis of any deficiencies in the various data sources before the agency is required before Commerce's conclusions may be sustained," Barnett wrote.

"Should Commerce find that Hitech's financial statements contain deficiencies requiring the agency to engage in a more expansive comparative analysis of its potential data sources, the agency may reconsider any such data source on the record. Similarly, while the agency is not required to reopen the record, such a decision is within the agency's discretion if it determines that reopening would provide the most reasonable path forward," he added.

* * * Briefs * * *

EXPORT ENFORCEMENT: Ye Sang "Ivy" Wang, former U.S. Navy sailor, was sentenced Dec. 21 in San Diego U.S. District Court to 30 months in prison and $20,000 fine for conspiracy to export sensitive military equipment, including ballistic helmets and plates, to China. She pleaded guilty in July. Her husband and co-defendant Shaohua "Eric" Wang was sentenced in February 2020 to 46 months in prison for his role in scheme. He pleaded guilty in September 2019. Wangs were indicted in May 2019. In November 2017, Ivy Wang "used her military email address to request a price quote for a high-altitude, low-opening parachutist oxygen system only made available to military personnel and falsely advised she was doing so in her official capacity on behalf of the United States Navy," indictment noted.

MORE EXPORT ENFORCEMENT: Jorge Orencel of Silver Spring, Md., pleaded guilty Dec. 17 in Baltimore U.S. District Court to charges of attempting to export goods, including five ionization chambers and one fission chamber, to Hong Kong without required licenses. He owned and operated export and logistics business Sumtech. Sentencing is set for Feb. 22, 2022. In October 2017, Orencel admitted to law enforcement agents that "he had never intended to ship the fission chamber to Argentina and that he had listed Argentina as the final destination in order to convince Company A to release the fission chamber for shipment," his plea agreement noted.

STEEL NAILS: Mid Continent Steel & Wire, Inc. filed countervailing and antidumping duty (AD) petitions Dec. 30 with ITA and ITC against imports of steel nails from India, Oman, Sri Lanka, Thailand and Turkey. In June 2015, ITC found U.S. industry is materially injured by dumped imports of certain steel nails from Korea, Malaysia, Oman, Taiwan and Vietnam and subsidized imports from Vietnam (see **WTTL**, June 22, 2015, page 8).

LEMON JUICE: Ventura Coastal, LLC filed antidumping duty (AD) petitions Dec. 30 with ITA and ITC against imports of lemon juice from Brazil and South Africa.

HABLA ESPANOL: BIS Dec. 21 released two Spanish-language guidance documents, Elementos de un ECP (Elements of an ECP) and Directrices de Cumplimiento Para Las Exportaciones (Export Compliance Guidelines). Elements of an ECP can be found here: https://bis.doc.gov/index.php/documents/compliance-training/export-management-compliance/2888-elements-of-an-export-compliance-program-spanish/file Spanish version of Export Compliance Guidelines is here: https://bis.doc.gov/index.php/documents/compliance-training/export-management-compliance/2889-jk-417-699-ecp-spanish/file

CENTRAL AFRICAN REPUBLIC: OFAC Dec. 17 Central African Republic (CAR) militia leader Ali Darassa "for serious human rights abuses" as head of militia group Union for Peace in CAR (UPC). In August 2020, OFAC designated CAR militia leader Bi Sidi Souleymane (see **WTTL**, Aug. 10, 2020, page 7). Month earlier, DDTC revised CAR export licensing policy of denial to add exemptions approved in recent UN Security Council resolutions.

NOMINATIONS: In slew of voice votes before leaving for holiday recess, Senate Dec. 18 confirmed Elizabeth Rosenberg as Treasury assistant secretary for terrorist financing and Matthew Axelrod as BIS assistant secretary for export enforcement. Two days earlier, Senate confirmed Marisa Lago as Commerce under secretary for international trade and Lisa Wang as assistant secretary for enforcement and compliance by voice vote. Senate previously confirmed Thea Kendler to be BIS assistant secretary by voice vote (see **WTTL**, Dec. 20, page 9).

RUBBER: In 4-0 preliminary vote Dec. 29, ITC found U.S. industry may be injured by allegedly dumped imports of emulsion styrene-butadiene rubber from Czechia, Italy and Russia. Vice Chair Randolph Stayin did not participate in these investigations.

FORCED LABOR: President Biden Dec. 23 signed Uyghur Forced Labor Prevention Act (H.R. 6256), which bans imports from Xinjiang region of China and imposes sanctions on foreign individuals responsible for forced labor in region. Senate unanimously passed bill week earlier, two days after House passed compromise bill by voice vote (see **WTTL**, Dec. 20, page 6).

MORE FORCED LABOR: Customs and Border Protection (CBP) Dec. 20 issued withhold release order (WRO) on imports of disposable gloves produced in Malaysia by Brightway Group "based on information that reasonably indicates the use of forced labor in that entity's manufacturing operations," agency said. CBP previously issued WRO on imports of disposable gloves produced in Malaysia by Smart Glove for similar reasons (see **WTTL**, Nov. 8, page 5).

OLIVES: Both parties declined to appeal World Trade Organization (WTO) dispute panel ruling on European Union's (EU) complaint against U.S. countervailing duties (CV) on ripe olives from Spain. Panel in November accepted most of EU's claims that U.S investigations were inconsistent with WTO rules (see **WTTL**, Nov. 22, page 1). Although disappointed with some findings, U.S. "has decided to allow the report to be adopted in light of all the circumstances, including the overall quality of the panel report and the U.S. desire to work with the EU to resolve this dispute," Geneva trade official noted.