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More Companies Settle Privacy Shield Violations

Four more companies have settled the Federal Trade Commission (FTC) charges of making false claims of participating in the European Union (EU)-U.S. Privacy Shield framework. The settlements involve mobile services provider Click Labs Inc., performance development company Incentive Services, disaster recovery firm Global Data Vault and managed services provider TDARX.

> Under the proposed settlements, "all four companies are prohibited from misrepresenting their participation in the EU-U.S. Privacy Shield framework, as well as any other privacy or data security program sponsored by any government or any self-regulatory or standard-setting organization," the agency said Jan. 29. Five other companies reached separate settlements with the agency in September (see **WTTL**, Sept. 16, page 3).

In addition to the false claims, Global Data Vault and TDARX "also substantively violated the Privacy Shield principles by failing to verify annually that statements about their Privacy Shield practices were accurate and failing to affirm that they would continue to apply Privacy Shield protections to personal information collected while participating in the program," the FTC noted.

Industry Sees Red in Annual Trade Figures

If only promises and bluster could lead to economic results. While imports and exports both fell in 2019, imports decreased even more, leading to a drop in the goods trade deficit for the first time in six years.

Total merchandise exports dipped 1.1% to $1.65 trillion in 2019, while goods imports dropped 1.7% from last year to $2.5 trillion, Commerce reported Feb. 5. Services exports

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increased 2.4% to $846.7 billion from 2018, as services imports increased 5.3% to $597.5 billion. Merchandise exports in December inched up 0.9% from a year ago to $137.75 billion. Services exports gained 4.1% to $71.9 billion from December 2018. Goods imports dropped 4.6% from December 2018 to $207.5 billion, as services imports gained 4.2% to $51.0 billion.

Preliminary 2019 vs. 2018 U.S. Merchandise Trade Figures (in billions)

	2019 Exports	2018 Exports	% Change	2019 Imports	2018 Imports	% Change
Total	**$1,645.5**	**$1,664.1**	**-1.1%**	**$2,498.5**	**$2,542.8**	**-1.7%**
BY COUNTRY/REGION						
Canada	292.7	298.7	-2.0	319.7	318.5	0.4
Mexico	256.4	265.0	-3.3	358.1	346.5	3.3
European Union (28)	337.0	318.6	5.8	514.9	487.9	5.5
Germany	60.3	57.6	4.6	127.5	125.9	1.2
France	37.8	36.3	4.0	57.4	52.5	9.4
United Kingdom	69.2	66.2	4.4	63.2	60.8	3.9
Japan	74.6	74.9	-0.4	143.6	142.6	0.7
China	106.6	120.3	-11.4	452.2	539.5	-16.2
NICs: HK, Singapore, Taiwan, Korea	150.5	157.2	-4.3	162.9	153.6	6.0
South/Central America	162.6	163.8	-0.7	108.8	122.3	-11.0
BY SECTOR						
Agriculture	$136.7	$139.7	-2.1%	$131.3	$128.8	1.9
Aircraft, parts, engines	125.5	130.4	-3.8	62.7	55.5	13.0
Autos, parts, engines	161.8	158.6	2.0	376.1	372.3	1.0
Clothing	3.2	3.2	0.0	92.4	92.0	0.4
Chemicals- Organic	36.5	38.5	-5.2	49.1	51.3	-4.3
Chemicals -Inorganic	10.7	11.5	-7.0	11.8	12.1	-2.5
Petroleum, total categories	180.2	172.4	4.5	193.9	225.6	-14.1
Iron & steel	12.1	14.1	-14.2	31.9	39.4	-19.0
Metalworking machines	4.8	5.3	-9.4	11.1	11.4	-2.6
Pharmaceuticals	60.8	54.5	11.6	149.1	133.1	12.0
Semiconductors	49.9	48.4	3.1	54.4	54.1	0.6
Telecommunications	35.8	37.2	-3.8	62.5	74.1	-15.7

A tariff war with China caused exports there to drop 11.4% in 2019, continuing a trend from 2018 when they fell 7.7%. Imports from China also fell 16.2% from the year before, compared to growing the previous year by 6.7%, and reduced the trade deficit with Beijing to $345 billion. Due to the drop in Chinese trade, Mexico surpassed China and Canada as the U.S. top individual trading partner with bilateral trade totaling $614.5 billion in 2019. With the phase-one trade deal in the books, 2020 might see Beijing reclaim the crown.

Coalition for a Prosperous America (CPA) Chair Dan DiMicco called the reduction in the trade deficit “excellent news for America’s manufacturers and agricultural producers.” “Tariffs work. Trade cases work. Washington must continue to hold firm—and support domestic manufacturers as they fight against subsidized and unfair trade,” DiMicco added.

Be My Valentine: China Will Cut Some Import Tariffs

Despite the devastating impact of the coronavirus outbreak, China will cut by half the tariffs on more than 1,500 products it imports from the U.S., Beijing announced Feb. 6. The tariff on some goods would be cut from 5% to 10%, while others would decrease from

5% to 2.5%. The tariff cut on $75 billion worth of U.S. imports will take effect Feb. 14, while leaving in place an additional $35 billion worth of U.S. products.

> President Trump and China's Vice Premier Liu He ceremoniously signed a phase-one trade deal with China Jan. 15 (see **WTTL**, Jan. 20, page 3). While the deal itself removes no tariffs, the Chinese Foreign Ministry said that the decision was a gesture to improve U.S.-Chinese relations. The news brought a surge in Chinese, Japanese and Hong Kong markets, as well as strengthened the Chinese yuan.

Due to the Coronavirus outbreak, the Chinese New Year, which is usually a time of much spending has been muted, manufacturing has seen a steep drop, the stock market has been experiencing severe swings and reduction, and factories remain shuttered. These may all have a direct bearing on whether China can keep its promise under the phase-one agreement to buy the promised amount of goods, some $200 billion dollars' worth.

In conversation with reporters, White House economic advisor Larry Kudlow said that the tariff reductions by China were great and despite the virus outbreak, the president was reassured that President Xi would still try to achieve the import targets coming out of the 'Phase One' agreement.

WTO Appellate Body Affirms Canadian Paper Claims

In one of its last gasps, the World Trade Organization Appellate Body (AB) Feb. 6 upheld an earlier dispute panel ruling on supercalendered (SC) paper, agreeing with Canada's claims that U.S. countervailing duties (CVD) applied to SC paper imports and Commerce's use of "adverse facts available" (AFA) were inconsistent with WTO rules.

The U.S. appealed the WTO panel report in August 2018 (see **WTTL**, Sept. 3, 2018, page 9). Now that the AB no longer has a quorum, the paper dispute was one of the last cases on its docket. The other two were Russia's case on railway equipment (DS499) and the Australian case on tobacco plain packaging (DS441/DS435).

Specifically, the AB upheld the panel's finding that the Commerce's application in certain situations of AFA in its CVD investigations exists as "ongoing conduct," and that this measure could be challenged in WTO dispute settlement. In addition, the AB upheld the panel's subsequent finding that the measure is inconsistent with WTO commitments regarding the use of "facts available" in CVD investigations.

"The consistent manner in which [Commerce] refers to the OFA-AFA measure, the frequent reference to previous applications of the measure in USDOC determinations, the fact that the USDOC refers to the measure as its 'practice,' and the USDOC's characterization of a departure from the measure as an 'inadvertent error' all support the conclusion that the measure is likely to continue to be applied," the AB said.

Commerce Finalizes Rule for Adding Currency to CVD Rules

Now that Treasury had added, then quickly removed China from its list of currency manipulators during trade negotiations, other parts of the administration are stepping in. Commerce Feb. 3 published its final rule for imposing countervailing duties (CVDs) on countries that act to undervalue their currency. The final rules go into effect April 6.

Commerce proposed the rules in May (see **WTTL**, May 27, page 1). At the time, Commerce did not identify all the "currency-related fact patterns that might satisfy the legal criteria for countervailability" in the proposed rule and request for comments.

> In contrast, "the final regulation identifies the criteria the Department would use to determine if countervailing duties should be imposed for subsidies in the form of currency undervaluation that results from government action on the exchange rate during the relevant period," Commerce said. The final rule "does not alter the general statutory requirements related to injury. Thus, these requirements will continue to limit the application of CVDs," it added.

Commerce received 47 comments on the proposed rule, it said in the Federal Register notice published Feb. 4. In response, the department revised the proposed rule's regulatory text "with respect to specificity," it said. Specifically, Commerce removed the word "primarily" from the description of the enterprises that buy or sell goods internationally that may comprise a group of enterprises. It also changed the phrase "may consider" to "normally will consider."

Other changes include new text that "explains that Commerce normally will determine the amount of the benefit by comparing the amount of domestic currency a firm received to the amount it would have received absent the U.S. dollar rate gap," the Federal Register notice said. Other new text "specifies that Commerce will seek an evaluation and conclusion from Treasury regarding the issues of undervaluation, government action, and the U.S. dollar rate gap," it added.

Commerce preempted reporters' questions by including talking points right in the announcement. For example, in response to the question of whether the rules are directed at China or related to trade talks, Commerce noted, "U.S. law and Commerce's regulations provide rules for determining whether a subsidy is countervailable, without targeting any single country. The Currency Rule is not part of any international negotiations."

Some trade observers denounced the new rules, while others welcomed the announcement. "These new rules are poorly considered and, especially, do not belong in the hands of a Commerce Department that has overseen an unsavory steel and aluminum tariff exemption process that could inspire the next Martin Scorsese film," Cato's Dan Ikenson said in a blog post.

"First, without knowing the true market value of a currency, it is impossible to calculate accurate countervailing duties to offset the effects of currency manipulation," he wrote. "Second, this doesn't account for the costs incurred by exporters on their imported intermediate goods," Ikenson added. Michael Stumo, CEO of the Coalition for a Prosperous America (CPA), called the new rule "extremely helpful," but noted that "dollar overvaluation persists even when other countries do not actively manipulate their currencies," he said in a statement. "Washington is waking up to the serious challenge posed by exchange rate manipulation and must now move to address dollar overvaluation - caused by excessive inflows of foreign capital - as well," Stumo added.

Trade Deficit with FTA Partners Hinges on North America

As the administration hails the signing of the U.S.-Mexico-Canada agreement (USMCA) updating one of its largest free trade agreements (FTAs) and continues to bemoan trade deficits as the root of all economic evil, statistics released Feb. 5 show that the U.S. racked up an $108.1 billion trade deficit with the 20 countries with which it already has FTAs.

2019 Trade with FTA Countries (in millions)

	U.S. Exports	U.S. Imports	Balance
Australia	$26,025.2	$10,854.4	$15,170.8
Bahrain	1,407.9	1,044.8	363.1
Canada	292,693.1	319,736	-27,043
Chile	15,776.2	10,393.9	5,382.4
Colombia	14,780.1	14,137.7	642.4
Costa Rica	6,205.9	5,149.6	1,056.3
Dominican Republic	9,207.8	5,554.2	3,653.5
El Salvador	3,378.8	2,479.4	899.4
Guatemala	6,830.5	3,989.4	2,841.1
Honduras	5,475.1	4,826.0	649.1
Israel	14,376.8	19,506.9	-5,130.1
Jordan	1,474.4	2,170.3	-695.9
Korea, South	56,897.3	77,511	-20,614
Mexico	256,374.1	358,126	-101,752
Morocco	3,479.3	1,581.0	1,898.3
Nicaragua	1,652.5	3,885.5	-2,233.1
Oman	1,937.7	1,159.5	778.2
Panama	7,720.7	452.1	7,268.6
Peru	9,687.3	6,144.9	3,542.3
Singapore	31,549.6	26,381.0	5,168.5
TOTAL	**766,930.1**	**875,083.7**	**-108,154.1**

With all the talk of a renegotiated NAFTA agreement, the deficit with Mexico alone (record-high -$101.75 billion) accounts for almost all the FTA deficit.

Barring those two countries, the other 18 FTAs would produce a $20 billion merchandise trade surplus (see chart this page).

Goods exports to the 20 FTA partners fell to $766.9 billion from 2018, while imports grew to $875.1 billion. Imports from Mexico reached the highest level in seven years.

The U.S. imported $62.7 billion in crude oil from Canada in 2019 and $12.0 billion from Mexico. Total U.S. exports of crude oil reached $65.3 billion last year, an increase of more than $17 billion from 2018.

Along with oil, autos are another large factor in NAFTA that has drawn major complaints from U.S. unions about trade with Mexico. While the U.S. has a surplus with Canada for all trade in cars, trucks and parts, it has a $99.6 billion deficit with Mexico.

The $20.6 billion deficit with South Korea creates another public relations challenge for trade supporters. But as with Mexico, the main cause of that shortfall is almost entirely the auto trade, with the U.S. suffering a $22.3 billion deficit with Seoul in this sector. Among other FTA partners, the U.S. is running a surplus with CAFTA-DR nations, as well as with some countries that have agreed to their own Trans-Pacific Partnership (TPP), including Australia, Chile, Peru and Singapore.

U.S. Needs to Join Forces Against Huawei, Barr Says

If there were any questions about the relationship between Beijing and Washington, since the Trump administration came to office, it was all put to rest by Attorney General Bill Barr in remarks at an event in Washington Feb. 6. Barr took a historical perspective on the long dispute with China, but he had practical advice for U.S. companies to protect themselves against Huawei and other Chinese security threats.

For one, Barr argued for the use of export controls and the Committee on Foreign Investment in the U.S. (CFIUS) to stop malevolent players. "Outside cyberspace, defendants pose as U.S. customers to avoid export controls and recruit U.S. employees or co-opt insiders to steal trade secrets. And at academic and other research institutions, China uses talent programs to encourage the theft of intellectual property. And finally, China complements its plainly illicit activities with facially legal but predatory behavior: the acquisition of U.S. companies and other investments in the United States," he argued.

> "In 2015, the Chinese leadership launched its "Made in China 2025 plan," -- a sustained, highly coordinated campaign to replace the United States as the dominant technological superpower. The dictatorship has mobilized all elements of Chinese society, all government, all corporations, all academia, and all of its industrious people, to execute seamlessly on an ambitious plan to dominate the core technologies of the future," the attorney general said.

On the 5G front, he said the U.S. needs to move urgently, because China is ahead of the game. "China has built up a lead in 5G, capturing 40% of the global infrastructure market. And for the first time in history, the United States is not leading the next technological era. It has been estimated that the industrial internet powered by 5G could generate new economic opportunities in the range of $23 trillion by 2025. If China establishes sole dominance over 5G, it will be able to dominate the opportunities arising from a stunning range of emerging technologies that will be dependent on and interwoven with the 5G platform," Barr argued.

Moreover, he said, there is a five-year window before it's all over. "Within the next five years, 5G global territory and application dominance will be determined. The question is whether, within this window, the United States and our allies can mount sufficient competition to Huawei to retain and capture enough market share to sustain the kind of long-term and robust competitive position necessary to avoid surrendering dominance to China," Barr cautioned.

A Jan. 31 decision by France's largest telecom company, Orange, could be the sweet music Barr wants to hear. Orange has chosen European, not Chinese companies for its 5G rollout. Specifically, the company announced it has chosen Nokia and Ericsson to deploy its 5G network. “The two companies have demonstrated the quality of their products, their support and commitment to a high-quality customer experience on the mobile network for many years,” it said.

> Barr’s not only echoed those sentiments and pleaded for the U.S. to join forces with the only other players that can give Huawei a run for its money. “While much has to be done, it is imperative to make two decisions right away. First, we have to deploy the spectrum necessary for a robust 5G system in the United States. We haven’t done this,” Barr warned.

The second is to recognize that “there are only two companies that can compete with Huawei right now: Nokia and Ericsson. They have the reliable products. They can guarantee performance. They have proven successful in managing customer migration from 4G to 5G,” he said.

“The main concern about these suppliers is that they have neither Huawei’s scale nor the backing of a powerful country with a large embedded market, like China. Now, there have been some proposals that these concerns could be met by the United States aligning itself with Nokia and/or Ericsson through American ownership of a controlling stake, either directly or through a consortium of private American and allied companies,” Barr argued.

Mexican Tomato Imports Will be Inspected, Commerce Says

The Agriculture Department (USDA) will begin inspections of almost all fresh tomatoes from Mexico in 60 days, as promised under the 2019 tomato suspension agreement, Commerce announced in the Federal Register Feb. 4.

In a 4-0 final vote in November, the International Trade Commission (ITC) found U.S. industry is materially injured by dumped imports of Mexican tomatoes, ensuring that the Commerce suspension agreement will remain in effect (see **WTTL**, Nov. 25, page 9).

“Beginning 60 days from the date of publication of this notice, all Fresh Tomatoes from Mexico, with the exception of Tomatoes on the Vine, Specialty tomatoes, and grape tomatoes in retail packages of 2 pounds or less, shall be subject to a USDA inspection for quality and condition defects,” the notice said.

“USDA will perform inspections (an unrestricted certification) in accordance with its normal practice to determine quality, condition, and grade pursuant to the appropriate USDA standard covering fresh tomatoes and greenhouse tomatoes and using shipping point tolerances,” Commerce noted.

Huawei Takes Verizon to Court over Patents

The list of court filings involving Huawei and U.S. entities got longer Feb. 5, when the Chinese firm sued Verizon in two Texas federal courts for using 12 of its patents without permission. The two companies have met six times in attempts to resolve the issue going back to February 2019. Huawei said when those attempts failed, it was left with no other recourse but to file suit.

The patents at issue are required to implement the G.709 Standard. "Verizon has made, used, sold, offered to sell and/or imported into the United States systems and/or devices that comply with the G.709 Standard in connection with Verizon's optical transport network systems, including systems relying on or using Verizon's various types of networks," according to the complaint filed in Waco and Marshall U.S. district courts.

> "Verizon's products and services have benefited from patented technology that Huawei developed over many years of research and development," Song Liuping, Huawei's chief legal officer, said in a statement. Since 2015, the company says it has received more than $1.4 billion in patent license fees. To date, it has paid over $6 billion for the legitimate use of patented technologies developed by industry peers, Huawei added, noting that 80% of these license fees have gone to U.S. companies.

In its own statement, Verizon said that Huawei's lawsuit is a sneak attack whose real target is anyone that defies Huawei. "Huawei's lawsuit filed overnight, and sent to us in the very early morning, is nothing more than a PR stunt. This lawsuit is a sneak attack on our company and the entire tech ecosystem. Huawei's real target is not Verizon; it is any country or company that defies it," it said. "The action lacks merit, and we look forward to vigorously defending ourselves," the U.S. IT company added.

"This is the common practice in the industry. Huawei is simply asking that Verizon respect Huawei's investment in research and development by either paying for the use of our patents or refraining from using them in its products and services," Song explained.

The company has spent more than $70 billion on R&D in the past decade, resulting in more than 80,000 patents worldwide, including over 10,000 patents in the U.S. alone. "These innovations are not just the cornerstone of Huawei's own success; they are also widely used by companies around the world, delivering value both in the United States and elsewhere," the Chinese company said.

* * * Briefs * * *

<u>TRADE PEOPLE</u>: Mike Moore, third WTO director-general and former New Zealand ambassador to U.S., died Feb. 2 at his home in Auckland. "A stronger U.S.-New Zealand partnership is one of his many legacies," Secretary of State Mike Pompeo said in statement. "He was deeply committed to a WTO that worked for all of its members, big and small," WTO Director-General Roberto Azevedo added.

ANTIBOYCOTT: In order posted Feb. 7, Kuwait Airways Corporation (New Jersey) agreed to settle 14 BIS charges of violating antiboycott regulations. Company agreed to pay $700,000 civil penalty to settle charges of refusing to do business from August 2014 through November 2015 during transactions with UK. Airline refused boarding of individuals holding Israeli passports en route from N.Y. to London Heathrow. Of penalty, $100,000 will be suspended for three years and then waived if company commits no further violations.

EXPORT ENFORCEMENT: Superseding indictment against former Raytheon engineer Wei Sun was filed Jan. 29 in Tucson, Ariz. U.S. District Court on charges of export of arms and munitions without required State licenses. 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). Change of plea hearing is set for Feb. 14.

KENYA: After meeting with Kenyan President Uhuru Kenyatta Feb. 6, administration announced it intends to initiate trade agreement negotiations with Nairobi under Trade Promotion Authority (TPA). Trade between two countries totaled $1.1 billion in 2018. Over 70% ($466 million in 2018) of Kenya's exports to U.S. entered under AGOA, U.S. Trade Representative's office noted in announcement.

CORROSION INHIBITORS: Wincom Inc. filed countervailing and antidumping duty petitions Feb. 5 with ITA and ITC against imports of certain corrosion inhibitors from China. Alleged dumping margins range from 388.28% to 420.32%.

ALUMINUM OXIDE: In 5-0 "sunset" vote Feb. 4, ITC said revoking antidumping duty order on imports of refined brown aluminum oxide from China would renew injury to U.S. industry.

STEEL ROD: In 5-0 "sunset" vote Feb. 4, ITC said revoking antidumping duty order on imports of steel threaded rod from China would renew injury to U.S. industry.

NEW TOOL: Registration and licensing applications will be released on DECCS platform Feb. 18, DDTC announced Feb. 3. "Until that time, please continue to process requests as normal," agency said. DDTC launched new collection format for Commodity Jurisdiction form DS-4076 on DECCS portal in December (see **WTTL**, Jan. 6, page 5).

MALI: Treasury's Office of Foreign Assets Control (OFAC) Feb. 6 issued regulations to implement July 2019 Executive Order (EO) 13882 regarding Mali. Agency "intends to supplement this part 555 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy," it said. OFAC in December designated four Malian individuals for "threatening the peace, security, or stability of Mali" and one individual for "obstructing humanitarian assistance" (see **WTTL**, Jan. 6, page 5).

VENEZUELA: OFAC Feb. 7 designated Venezuelan state-owned airline Consorcio Venezolano de Industrias Aeronauticas y Servicios Aereos, S.A. (CONVIASA) and dozens of CONVIASA aircraft as blocked property of Venezuelan government. "The illegitimate Maduro regime relies on the Venezuelan state-owned airline CONVIASA to shuttle corrupt regime officials around the world to fuel support for its anti-democratic efforts," said Treasury Secretary Steven Mnuchin. OFAC Jan. 21 identified 15 aircraft as blocked property of Petroleos de Venezuela, S.A. (PdVSA) (see **WTTL**, Jan. 27, page 7).

STEEL: CAFC Feb. 7 affirmed CIT decision on ITC's "domestic like product" determination in antidumping duty investigation on imports of carbon and alloy steel cut-to-length plate (CTL plate). "Hitachi fails to cite a single antidumping investigation that involved the same subject merchandise as this case and where tool steel was excluded from the Commission's definition of domestic like product," Circuit Judge Jimmie Reyna wrote for three-judge panel in *Hitachi Metals, Ltd. v. U.S.* "Hitachi does not contest any specific aspect of the Commission's factual findings. Instead, Hitachi faults the Commission for having 'failed to fully collect' the information relevant to its like product analysis," he added.

FIREARMS: Two weeks after publication of parallel final rules transferring firearms and ammunition from USML to the CCL, including new language controlling software and technology for 3D printing, 22 states filed preliminary injunction Feb. 6 in Seattle U.S. District Court against rules. Though states took issue with online posting of 3D gun blueprints, injunction would block both rules. States announced court action same day as rules' publication (see **WTTL**, Jan. 27, page 1).