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Brexit Could Open U.S. Trade Opportunities

More than three turbulent years after the Brexit referendum, the United Kingdom (UK) Jan. 31 said goodbye to the European Union (EU), giving the U.S. and the UK an opportune time to build a greater trade portfolio while the UK works out its future relationship with Europe.

“This is the moment when the dawn breaks and the curtain goes up on a new act in our great national drama. And yes, it is partly about using these new powers – this recaptured sovereignty – to deliver the changes people voted for. Whether that is by controlling immigration or creating freeports or liberating our fishing industry or doing free trade deals,” Prime Minister Boris Johnson said in an address to the nation.

“In our campaigns for human rights or female education or free trade we will rediscover muscles that we have not used for decades: The power of independent thought and action,” he added. In 2018, the UK’s top trading partners were the U.S., Germany, Netherlands, France and China, in that order. Its top exports to the U.S. were fuel, beverages and tobacco, and material manufactures, while its chief imports from the U.S. were cars, crude oil and gold.

The UK’s EU-departure occurs in the same week when Johnson may have crippled the “special relationship” the UK enjoys with the U.S. by giving the Chinese company Huawei permission to help build its 5G network, despite repeated requests not to do so by President Trump, Secretary of State Mike Pompeo and Treasury Secretary Steve Mnuchin (see related story, page xx).

Airbus Agrees to Pay \$3.9 Billion to Settle FCPA, ITAR Charges

French aircraft manufacturer Airbus SE agreed Jan. 31 to pay more than \$3.9 billion to resolve foreign bribery and export control charges with authorities in the U.S., France and

the United Kingdom (UK). Specifically, the company settled violations of the Foreign Corrupt Practices Act (FCPA) and the International Traffic in Arms Regulations (ITAR).

“Between 2008 and 2015, Airbus SE, through its employees, executives and agents, including members of the Strategy and Marketing Organization (SMO) and others, engaged in and facilitated a massive scheme to offer and pay bribes to decision makers and other influencers, including to foreign officials in multiple countries, in order to obtain improper business advantages and to win business from both privately owned enterprises and entities that were state-owned and state-controlled,” according to the criminal information filed in D.C. U.S. District Court Jan. 28.

The 75 ITAR violations include “providing false statements on authorization requests; the failure to provide accurate and complete reporting on political contributions, commissions, or fees that it paid, or offered or agreed to pay, in connection with sales; the failure to maintain records involving ITAR-controlled transactions; and the unauthorized re-export and retransfer of defense articles,” the order from State’s Directorate of Defense Trade Controls (DDTC) noted.

Specifically, the violations involve sales of the C-295, a twin turboprop tactical military transport aircraft; Advanced Medium Range Air to Air Missiles (AMRAAM) and Paveway IV missiles with the internal software for 15 EF-2000 Eurofighter “Typhoon” aircraft; A400M, “Atlas,” a twin turboprop tactical military transport aircraft with strategic capabilities; H125 and/or H145 helicopters; components and parts for the SKYNET 5D Satellite; and P-3 Orion fixed-wing aircraft.

Countries involved in the exports include Austria, Belgium, Brazil, Canada, Colombia, Egypt, France, Germany, Ghana, Israel, Italy, Japan, Jordan, Indonesia, Kazakhstan, Luxembourg, Malaysia, Mexico, Poland, Russia, Spain, Turkey, the United Kingdom and Vietnam. Under the DDTC consent agreement, Airbus agreed to pay a \$10 million penalty, of which the department is crediting \$5 million.

Separately, the company will pay the U.S. \$527 million for the FCPA and ITAR violations, and an additional €50 million (approximately \$55 million) as part of a civil forfeiture agreement for the ITAR-related conduct. The company also agreed to pay more than 3 billion Euros (more than approximately \$3.38 billion) to French and UK authorities.

In determining the charges, State considered a number of mitigating factors, including the company’s “cooperation with department requests, history of voluntarily disclosing violations, and efforts to mitigate the harm to U.S. national security and foreign policy arising from its violations,” the proposed charging letter noted.

“The agreements approved today with the French, UK, and US authorities represent a very important milestone for us, allowing Airbus to move forward and further grow in a sustainable and responsible way. The lessons learned enable Airbus to position itself as the trusted and reliable partner we want to be,” Airbus CEO Guillaume Faury said in a statement.

President Signs USMCA Implementing Bill, Canada Begins Process

Like the signing of the “phase-one” China deal a week earlier, the president used a ceremonial signing of the implementing legislation (H.R. 5430) for the U.S.-Mexico-Canada agreement (USCMA) Jan. 29 to thank everyone in the room and ignore an entire side of the congressional aisle. On the same day, the Canadian government introduced its own implementing legislation for Parliament’s approval.

After several committees approved the bill during hastily rescheduled markups, the Senate majority leader made quick work, holding a full Senate vote Jan. 16 (see **WTTL**, Jan. 20, page 5). The final tally was 89-10. The House passed the legislation in December in a 385-41 vote. Changes from the deal originally signed in November 2018 include state-to-state dispute settlement, labor, environment, intellectual property (IP) and automotive rules of origin.

During the signing, the president may have resorted to a bit of exaggeration. “The USMCA is the largest, fairest, most balanced, and modern trade agreement ever achieved. There’s never been anything like it,” he said. “For the first time in American history, we have replaced a disastrous trade deal that rewarded outsourcing with a truly fair and reciprocal trade deal that will keep jobs, wealth, and growth right here in America.”

Fact-checkers responded quickly, refuting the claim that it is the largest trade deal of all time. “It is very much not. Aside from GATT/WTO rounds, and aside from this deal being an incremental change to NAFTA, the TPP [Trans-Pacific Partnership] included all three of these countries + nine others,” CNN’s Daniel Dale tweeted.

“Throughout the negotiations, our objective was to defend the national interest, preserve jobs, and foster economic growth across the country. We worked tirelessly to uphold Canadians’ interests and values and achieve a consensus on issues that are important to all Canadians,” Canadian Deputy Prime Minister Chrystia Freeland said in a statement introducing the Canadian implementing legislation Jan. 29.

While the president gave thanks to every Republican member of Congress, the White House invited no congressional Democrats to the event, Lori Wallach, director of Public Citizen’s Global Trade Watch, pointed out in a statement. “After congressional Democrats, unions and consumer groups forced Trump to remove Big Pharma giveaways and improve labor and environmental terms, the final revised deal is better than the original and might reduce some of NAFTA’s ongoing damage to workers and the environment,” Wallach said.

House Ways and Means Chair Richard Neal (D-Mass.) agreed. “House Democrats are the reason President Trump had a USMCA signing ceremony today,” he said in a statement. “When the Trump Administration sent the original USMCA to the House, it was dead on arrival. Only due to Democrats’ tough negotiations did the deal become viable,” he added.

Industry groups applauded the deal’s signing. Business Roundtable thanked the administration and members of Congress for “their bipartisan efforts to bring USMCA

across the finish line,” Cummins CEO Tom Linebarger said in a statement. “Modernizing trade with our two largest trading partners benefits American workers, businesses and communities. USMCA will preserve and strengthen trade that supports over 12 million American jobs,” he added.

Software & Information Industry Association (SIIA) President and CEO Jeff Joseph called it a “win for all parties involved,” especially the inclusion of the digital, financial and intellectual property chapters. “We look forward to even more digitally innovative trade deals, possibly even this year with the EU and the UK,” Joseph added.

The U.S. Chamber of Commerce applauded the signing but took issue with certain provisions. “The deal is not perfect, and the U.S. Chamber and our members remain disappointed to see its intellectual property rules weakened. This action undermines the competitiveness of innovative industries that employ nearly 50 million Americans. These IP rules shouldn’t — and can’t — be a model for future trade agreements,” the group said in a statement.

“Implementation is a necessary step, but it does carry some challenges. The U.S. Chamber will be very focused on making sure the agreement is implemented in a way that maximizes its benefits for American companies, workers, and farmers,” the Chamber added.

Despite Pressure, UK Allows Huawei in 5G Network

Viewed as a “calculated compromise” by some, and a potential risk that could ‘jeopardize U.S.-UK intelligence” by others, United Kingdom (UK) Prime Minister Boris Johnson Jan. 28 allowed Huawei a 35% role in the periphery of the UK’s 5G network despite months of pressure from the Trump administration to dump the Chinese behemoth.

“The recommended cap of 35% will be kept under review to determine whether it should be further reduced as the market diversifies,” according to a UK government press release. This is all occurring as the UK exits one of the world’s oldest trading blocs and eyes bilateral agreements with two of the world’s largest economies, Washington and Beijing (see related story, page 1).

In earlier conversations with Trump during the NATO meeting in December, Johnson indicated he wanted to have his cake and eat it: “On Huawei and 5G, I don’t want this country to be unnecessarily hostile to investment from overseas. On the other hand, we cannot prejudice our vital national security interests, nor can we prejudice our ability to co-operate with other Five Eyes security partners,” he told reporters.

Speaking before the House of Commons Jan. 28, Foreign Secretary Dominic Raab argued that the government’s decision was no small measure, but rather detailed and comprehensive based on reviews and recommendations from the UK’s top spy agency, GCHQ, as well as the UK’s Huawei Cyber Security Evaluation Centre Oversight Board, established by National Cyber Security Centre (NCSC), in arriving at its decision.

“GCHQ have categorically confirmed that how we construct our 5G and full fibre public telecoms network has nothing to do with how we share classified data. And the UK’s technical security experts have agreed that the new controls on high risk vendors are completely consistent with the UK’s security needs,” Raab told the chamber.

“We have looked at the issue of how to maintain network security and resilience over many months and in great technical detail. We would never take decisions that threaten our national security or the security of our Five Eyes partners,” the foreign secretary said.

But his arguments rang hollow in the U.S., where no sooner they were uttered came a barrage of pushback. The concerns range from Secretary of State Mike Pompeo to both Democrats and Republicans in Congress. Pompeo held talks with both Foreign Secretary Dominic Raab and PM Boris Johnson on a two-day visit to the UK and cautioned the UK about its decision.

“We were trying to make the case, as we have made the case to every country in the world, that we think putting Huawei technology anywhere in your system is very, very difficult to mitigate, and therefore not worth the candle,” Pompeo said at an event with Raab. “I’m confident that as we move forward together to make sure that the next generation of technology is right and secure and operates under a Western set of values and systems, that we’ll get to the right place,” he added.

The next day, Pompeo applauded the European Union (EU) Network Information Security Cooperation Group’s measures to mitigate 5G networks security risks. The toolbox “calls on EU member states to exclude high-risk suppliers from critical and sensitive parts of their 5G networks, which includes the Radio Access Network,” he said in a statement.

Sen. Tom Cotton (R-Ark.) was less charitable. “Allowing Huawei to build the UK’s 5G networks today is like allowing the KGB to build its telephone network during the Cold War. The Chinese Communist Party will now have a foothold to conduct pervasive espionage on British society and has increased economic and political leverage over the United Kingdom,” he said in a statement.

Sen. Mark Warner (D-Va.) was also disappointed by the UK’s decision. “Current financial support by China for Huawei puts any Western alternative at a serious disadvantage,” he said in a statement. “Under current circumstances, I remain committed to working with the UK and other key allies to build more diverse and secure telecommunication options.”

CIT Offers Mixed Ruling on Steel Threaded Rod

The Court of International Trade (CIT) Jan. 29 sustained in part and remanded Commerce’s final results in the fifth administrative review of certain steel threaded wire rod (STR) from China. The court sustained Commerce’s selection of Thailand as the primary surrogate country and Commerce’s selection of Global Trade Atlas (GTA) data from Thailand.

However, the court remands Commerce’s determination regarding the calculation of surrogate financial ratios for further explanation or consideration,” Judge Claire R. Kelly wrote in *Jiaxing Brother Fastener Co. v. U.S.* (Slip Op. 20-11). The Court of Appeals for Federal Circuit (CAFC) affirmed a previous CIT ruling in April 2016 that Commerce correctly chose Thailand as surrogate country for the second administrative review (see **WTTL**, April 25, 2016, page 9).

“Commerce’s selection of Thailand, over Ukraine, as the primary surrogate country is supported by substantial evidence, because Thailand was the only country for which Commerce had steel-grade specific values that could be matched to Jiaxing’s low-carbon STR inputs—i.e., wire rod and round bar—as well as financial statements that were fully contemporaneous” with the period of review, Kelly wrote.

“On remand, Commerce may wish to reopen the record. However, Commerce should explain, in any event, the basis for finding record evidence that allows it to conclude that it could capture, and not overstate, labor costs by applying the [National Statistical Office] quarterly data and, as a result, decline to adjust the surrogate financial ratios,” she added.

Chinese Drones Grounded After Security Review

In what has become a pattern, Interior Secretary David Bernhardt Jan. 29 ordered a temporary halt to the use of non-emergency drones or unmanned aircraft systems (UAS) in fleet operations. Chinese drone manufacturer DJI currently corners the market, and the order intends to assist U.S. manufacturers in replacing their Chinese counterparts.

Bernhardt in October ordered more than 800 drones, used by the department to monitor inaccessible terrain such as dams and other natural resources and infrastructure, grounded and reviewed for the security risks they pose to the U.S. (see **WTTL**, Nov. 4, page 7).

“We must ensure that the technology used for these operations is such that it will not compromise our national security interests,” Interior spokesperson Carol Danko said in a press release. After an “ongoing review of Interior’s drone program,” the secretary’s order today affirmed “the temporary cessation of non-emergency drones while we ensure that cybersecurity, technology and domestic production concerns are adequately addressed,” she added.

“Drone operations will continue to be allowed in approved situations for emergency purposes, such as fighting wildfires, search and rescue and dealing with natural disasters that may threaten life or property,” Danko noted.

In June 2019, the president determined that the “domestic production capability for small unmanned aerial systems is essential to the national defense,” the order said. “The department is taking action to ensure that our minimum procurement needs account for such concerns, which include cybersecurity, technological considerations, and facilitating domestic production capability,” it added.

DJI is “extremely disappointed” by the order, “which inappropriately treats a technology’s country of origin as a litmus test for its performance, security and reliability,” it said in a statement. “This action will ground the entire DOI drone program, which relies on drones made with globally sourced components to create the federal government’s largest and most innovative civilian drone fleet,” DJI added. The firm previously stated that the department approved its products’ quality in July 2019.

* * * **Briefs** * * *

RUSSIA: OFAC Jan. 29 designated eight individuals, including seven officials of so-called Republic of Crimea, and Moscow-based private railway company for operating in Crimea region of Ukraine. “The coordinated U.S., EU, and Canadian designations limit the ability of these illegitimate officials to do business internationally and highlights the strength of the transatlantic alliance in standing up to Russia’s continued aggression,” Treasury Secretary Steven Mnuchin said in statement.

IRAN: OFAC Jan. 31 removed Cosco Shipping Tanker (Dalian) Co., Ltd., related companies and one individual from SDN list. Agency in December issued amended GL K-1 extending authorization of maintenance or wind-down of transactions involving Cosco Shipping until Feb. 4 (see WTTL, Dec. 23, page 5). OFAC in September designated six Chinese companies, including Cosco Dalian, and five company executives for “knowingly engaging in a significant transaction for the transport of oil from Iran,” State then said in press statement.

FLUID END BLOCKS: In 5-0 preliminary vote Jan. 31, ITC found U.S. industry may be injured by allegedly dumped imports of fluid end blocks from Germany, India and Italy and subsidized imports from China, Germany, India and Italy.

CIGARETTES: In 5-0 preliminary vote Jan. 31, ITC found U.S. industry may be injured by allegedly dumped imports of 4th tier cigarettes from Korea.

DIFLUOROMETHANE: Arkema Inc. filed antidumping duty petitions Jan. 23 with ITA and ITC against imports of difluoromethane (R-32) from China. Petitioner alleges dumping margin of 87.98%.

JOIN THE CLUB: Ethiopia Jan. 30 resumed WTO accession negotiations eight years after last formal meeting of its Working Party in March 2012. “Ethiopia’s engagement is decisively different from the past – it is pro-active and offensive, as the WTO accession is integral to Ethiopia’s ambitious economic reform agenda,” Working Party chair Morten Jespersen of Denmark said in statement.

BURMA: Eagle Shipping International (USA) LLC, Marshall Islands ship management company with headquarters in Stamford, Conn., agreed Jan. 27 to pay OFAC \$1,125,000 to settle 36 charges of violating Burmese sanctions. Violations involve Eagle Shipping’s dealings in the property interests of blocked entity Myawaddy Trading Limited and “the provision of transportation services from Burma to Singapore for a land reclamation project for the benefit of Myawaddy,” OFAC said. Eagle Shipping voluntarily self-disclosed apparent violations. “We are pleased to have successfully resolved this matter and that the Company can put this legacy issue behind it. Eagle Bulk is committed to observing all regulations – those set forth by OFAC and otherwise – as well as upholding the highest compliance and corporate governance standards.” Eagle Shipping CEO Gary Vogel wrote in email to WTTL.

EXPORT ENFORCEMENT: Iranian citizen Mahin Mojtahedzadeh, president and managing director of ETCO-FZC, was sentenced Jan. 30 in Albany, N.Y., U.S. District Court to time served for conspiring to export gas turbine parts to Iran via Canada and Germany without OFAC license from 2013 through 2017. She pleaded guilty in July. Co-conspirator and German citizen Mojtaba Biria, Energy Republic GmbH's technical managing director, was sentenced in August in same court to time served for related charges (see **WTTL**, Aug. 19, page 5). Olaf Tepper, Energy Republic's founder and managing director, was sentenced in August 2018 to 24 months in prison.

MORE EXPORT ENFORCEMENT: Hany Veletanlic, Bosnian citizen legally residing in Washington state, was sentenced Jan. 27 in Seattle U.S. District Court to 85 months for shipping firearms parts, including Glock lower receiver, to Sweden without State license. He was convicted in February 2019 of violating Arms Export Control Act (AECA); Veletanlic was indicted in June 2018 (see **WTTL**, March 4, 2019, page 5). Receiver was classified under USML Category I.

STILL MORE EXPORT ENFORCEMENT: Pensacola, Fla., business owner James Meharg, CEO and president of Turbine Resources International (TRI), was sentenced Jan. 24 in Pensacola U.S. District Court to 40 months in prison on charges of conspiring to sell and export Solar Mars 90 S turbine core engine and parts to recipient in Iran without OFAC authorization. Meharg and others "concealed from companies, shippers, freight forwarders, and others located in the United States, the ultimate end-user of the U.S.-origin goods was located in Iran," July 2019 indictment said. He "caused to be made materially false, misleading, and incomplete information to be entered in the [Automated Export System] AES," it added.

TRADE PEOPLE: Assistant USTR for Western Hemisphere and chief USMCA negotiator John Melle retired Jan. 31. "John is the best example of a career public servant," USTR Robert Lighthizer said in remarks during USMCA signing (see related story, page xx). Melle joined USTR in 1988. "He's been a trusted friend & leader in the deepening of trade & economic ties between U.S. and Mexico," former Mexican Ambassador to U.S. Arturo Sarukhan tweeted.

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