ISSN 0276-8275

WTTLonline.com

Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Publisher: Martin Kalin • Editor: Meredith Gilston

Vol. 41, No. 49 **December 13, 2021**

Agencies Impose More Export Controls on Cambodia

Don't say you weren't warned. In the latest in a string of administration action, the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) Dec. 9 imposed export controls on Cambodia to address corruption, human rights abuses and China's growing influence. Specifically, BIS and DDTC added the country to their respective list of embargoed destinations.

> In November, the U.S. Trade Representative's (USTR) office announced it will assess Cambodia's Generalized System of Preferences (GSP) eligibility (see **WTTL**, Nov. 15, page 8). At the same time, State, Treasury and Commerce cautioned U.S. businesses "to be mindful of interactions with entities involved in corrupt business practices, criminal activities and human rights abuses," the agencies said.

For its part, DDTC imposed an export licensing policy of denial on Cambodia. "The policy of denial applies to licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, with exceptions related to conventional weapons destruction and humanitarian demining activities," the agency's Federal Register notice said.

The BIS rule added Cambodia to four lists: those countries subject to the licensing policy; those subject to military end use and end-user controls; those subject to military intelligence end use and end-user controls; and those in Country Group D:5. "BIS also imposed a more restrictive review policy for license appli-cations containing items controlled for national security, regardless of the end-user. It further renders end users in Cambodia ineligible for, or subject to further restriction with regard to, use of certain license exceptions for exports, reexports, and in-country transfers," the notice said.

Canada Threatens Escalation in Electric Vehicle Dispute

While the Build Back Better Act has only passed one house of Congress, Canadian officials are taking a threat to the trilateral trade relationship quite seriously. In a Dec. 10 letter to congressional leadership, Canadian Deputy Prime Minister Chrystia Freeland and Trade Minister Mary Ng threatened to begin dispute settlement proceedings, impose tariffs on the U.S. auto sector, and potentially suspend concessions under the U.S.-Mexico-Canada Agreement (USMCA), if the tax subsidies for domestic electric vehicle production remain in the bill.

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

"We want to be clear that if there is no satisfactory resolution to this matter, Canada will defend its national interests, as we did when we were faced with unjustified tariffs on Canadian steel and aluminum. In that regard, Canada will have no choice but to forcefully respond by launching a dispute settlement process under the USMCA and applying tariffs on American exports in a manner that will impact American workers in the auto sector and several other sectors of the U.S. economy," Freeland and Ng wrote.

"Beyond possible retaliatory actions, if the U.S. proceeds with the tax credit provisions as drafted, we would see this as a significant change in the balance of concessions agreed to in the USMCA. As such, we would consider the possible suspension of USMCA concessions of importance to the U.S. in return. Those concessions could include suspending USMCA dairy tariff-rate quotas and delaying the implementation of USMCA copyright changes," they added.

"In the coming days, we are preparing to publish a list of U.S. products that may face Canadian tariffs if there is no satisfactory resolution of this issue," the officials noted. At press time, U.S. officials had not responded to the letter.

New Initiative Connects Export Controls, Human Rights

Just in time for International Human Rights Day, the White House and allies Australia, Denmark and Norway Dec. 10 launched the Export Controls and Human Rights Initiative, continuing the Biden administration's focus on the connection between human rights and national security. Other countries, including Canada, France, the Netherlands and the United Kingdom (UK), expressed support for the initiative.

"Over the coming year of action, we commit to working to establish a voluntary, nonbinding written code of conduct around which like-minded states could politically pledge, to use export control tools to prevent the proliferation of software and other technologies used to enable serious human rights abuses. In addition, we will use the year of action to consult with industry and academia in our efforts," the four partners said in a joint statement.

In November, BIS added four companies in Israel, Russia and Singapore to its Entity List, including Israeli firms NSO Group and Candiru that "developed and supplied spyware to foreign governments that used this tool to maliciously target government officials, journalists, businesspeople, activists, academics, and embassy workers," BIS said at the time (see **WTTL**, Nov. 8, page 4).

> Separately, Treasury's Office of Foreign Assets Control (OFAC) designated 15 individuals and 10 entities in China, Bangladesh, Burma and North Korea for their connection to human rights abuse and repression. The agency also imposed investment restrictions on one company -- SenseTime Group Limited -- "in connection with the surveillance technology sector of the [Chinese] economy, highlighting the human rights abuse enabled by the malign use of technology," OFAC said.

"SenseTime 100% owns Shenzhen Sensetime Technology Co. Ltd., which has developed facial recognition programs that can determine a target's ethnicity, with a particular focus on identifying ethnic Uyghurs. When applying for patent applications, Shenzhen Sensetime Technology Co. Ltd. has highlighted its ability to identify Uyghurs wearing beards, sunglasses, and masks," the agency said.

China's WTO Anniversary Makes Strange Bedfellows

There is no shortage of opinions about the 20th anniversary of China's accession to World Trade Organization (WTO). It was either the tipping point in the fall of U.S. manufacturing or a surprisingly successful effort to rein in Beijing's worst tendencies. As anything in trade, the truth is somewhere in the middle.

"China's integration into the rules-based multilateral trading system has generated significantly more stability, predictability, and transparency in the economic relations of the rest of the world with China than existed before China's accession. The WTO has played an important role in opening China's market to foreign goods and services. This opening has produced major economic gains for China and for all its trading partners - not least the United States," Cato experts Inu Manak and James Bacchus wrote in a blog post.

Sen. Marco Rubio (R-Fla.) called the move "a critical mistake." Why? "Because it was rooted in the flawed assumption that global economic integration was more important than anything else: more important than dignified work for Americans, our ability to make things, and even our national security," Rubio wrote.

In a twist, United Steelworkers (USW) International President Tom Conway agrees with Rubio. "It's long been clear that China's entry into the WTO two decades ago was a mistake that has since allowed the Chinese Communist Party to leverage its predatory trade practices against other member nations, even while it continues to exploit workers in its own country," Conway said in a statement.

The National Taxpayers Union (NTU) tried to find the middle ground, debunking the myth of net U.S. job losses due to China joining the WTO. "If China's accession to the WTO led to large-scale U.S. job losses, we would expect to see numerous economic studies of this phenomenon. Instead, there is zero evidence of net U.S. job losses. That doesn't mean some industries didn't suffer. But new jobs were created elsewhere, and the overall economic impact on Americans was positive," the group wrote.

Democracy Summit Puts Focus on Accountability, Sanctions

During President Biden's Dec. 9-10 virtual Summit for Democracy with more than 100 countries, the focus was as much on who wasn't in the room as who was, and as much a push for accountability at home as abroad. Not lost on the participants was that Biden is dealing with an ongoing domestic retreat from democracy, while attempting to set ground rules for those struggles across the globe.

> Top of the agenda at the Summit was the acknowledgement that those breaking international law and human rights violations would face sanctions and export controls. They would not have access to markets, to the U.S. dollar to buy imports, nor to exclusive clubs reserved for democracies. "The strategy includes working with other partners — all of you around the world — to improve transparency, hold corrupt actors accountable, reduce their ability to use the United States and international financial systems to hide assets and to launder money," Biden told the participants.

The Summit came in the same week the president held very animated discussions with Russian President Putin and weeks earlier with Chinese President Xi, neither of whom were invited to the Summit. Biden's calls addressed the issues of international and human rights violations. In the case of China, the human rights of the Uyghurs, Hong Kong and Taiwan; with Russia, it was the sanctions facing Putin should he invade Ukraine. During the Summit, the U.S. and four allies launched an initiative connecting export controls with human rights (see related story, page 2).

Biden also suggested that there was an alternative that Putin could choose. "[He] had told President Putin that there is another option in terms of de-escalation and diplomacy. So, as part of that, the President underscored the United States' continued support for the Normandy Format and ongoing efforts to implement the Minsk Agreements, including U.S. support for that overall process, which, of course, is led by our French and German allies," a senior administration official told the press Dec. 9.

Both the U.S. and the European Union (EU) backed the democratic efforts with funds to both build and sustain democratic projects. "We're going to stand up two rapid-response, cross-cutting initiatives that support the key goals of this summit: the Fund for Democratic Renewal and the Partnership for Democracy program. It's going to allow State Department and USAID to surge funds to support our partners working on democratic frontlines around the world," Biden told the Summit.

On the other hand, the EU has pledged: €704 million ($797 million) for protecting and empowering human rights; €463 million ($524 million) for building resilient, inclusive and democratic societies; €144 million ($163 million) to promote global system for human rights and democracy; and €195 million ($221 million) to harness and addressing the challenges of digital and new technologies, according to the EU website.

Industry Welcomes Ocean Shipping Reform

Every little bit helps. Industry applauded Dec. 8 as the House passed the Ocean Shipping Reform Act (H.R. 4996) in a bipartisan vote of 364-60. The bill would establish reciprocal trade to promote U.S. exports as part of the Federal Maritime Commission's (FMC) mission and would prohibit ocean carriers from declining opportunities for U.S. exports unreasonably, among other provisions.

The White House endorsed the bill in a November blog post on the supply chain backlog. "Current laws also do not require even basic transparency in this sector. For example, there is no public reporting of the detention and demurrage fees carriers are charging their customers. Moreover, Congress should provide the FMC an updated toolbox to protect exporters, importers, and consumers from unfair practices," the post noted.

> "Access to the American market and its consumers is a privilege, not a right," bill cosponsor Rep. John Garamendi (D-Calif.) said in a statement. "Congress must restore balance at our ports and tackle the longstanding trade imbalance our nation has with China and other countries head on," he added.

Both importers and exporters repeated their support of the bill's progress. "Unfair ocean shipping provider practices are driving up shipping rates and, ultimately, prices for consumer goods, while threatening access to chemical products necessary for water treatment, food preservation, agricultural processes, pharmaceutical and vaccine production, and more," National Association of Chemical Distributors (NACD) President and CEO Eric Byer said.

"The problems at our ports have been exacerbated by the unreasonable practices of foreign-owned ocean carriers, including delays of shipments of American made goods to overseas trading partners," said North American Meat Institute President and CEO Julie Anna Potts. "These delays result in major costs to meat and poultry companies as their perishable products await transport," she added.

"The ongoing supply chain and marine port challenges are restricting our farmers' ability to reach overseas opportunities. The Ocean Shipping Reform Act of 2021 provides much-needed improvements to the maritime shipping environment, which has increasingly become too unpredictable and costly for our exporters to remain competitive," Western Growers President and CEO Dave Puglia said.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in October jumped 26.2% from year ago to record-high $158.7 billion, Commerce reported Dec. 7. Services exports grew 13.9% to $64.9 billion from October 2020. Goods imports increased 16.7% from October 2020 to record-high $242.7 billion, as services imports grew 24.8% to $48.1 billion.

IRAN: House Foreign Affairs Committee Dec. 10 made quick work of approving Stop Iranian Drones Act (SIDA) (H.R. 6089) by voice vote. Bill would clarify that U.S. sanctions under Countering America's Adversaries Through Sanctions Act (CAATSA) include supply, sale or transfer to or from Iran of unmanned combat aerial vehicles (UAVs). Bipartisan bill was introduced in November (see **WTTL**, Dec. 6, page 6). "This legislation will allow us to better respond to the threat posed by Iran and its proxies' aggressive UAV tactics to the U.S. and our partners. This clarification makes clear to the international community that it is in everyone's interest to work to stop Iranian UAV procurement and production," committee chair Gregory Meeks (D-N.Y.) said in statement.

NOMINATIONS: Senate Finance Committee Dec. 8 approved nominations of Marisa Lago to be Commerce under secretary for international trade and Lisa Wang to be assistant secretary for enforcement and compliance in 27-1 votes (see **WTTL**, Nov. 22, page 5). Sen. James Lankford (R-Okla.) voted no on Lago; Sen. Bob Menendez (D-N.J.) voted against Wang.

FORCED LABOR: House Dec. 8 passed Uyghur Forced Labor Prevention Act (H.R. 1155) in 428-1 vote. Bill calls for sanctions on those responsible for forced labor in Xinjiang or engaged in importing goods produced with forced labor. Rep. Thomas Massie (R-Ky.) voted no. Senate Foreign Relations Committee approved parallel bill in June (see **WTTL**, June 28, page 1). "We must take a clear moral position to stand with those who are suffering because of forced labor. No more business as usual," bill author Rep. Jim McGovern (D-Mass.) said in statement.

IRAN SANCTIONS: Unnamed U.S. citizen agreed Dec. 8 to pay OFAC $133,860 civil penalty to settle four charges of violating Iran sanctions. Between February and March 2016, individual "arranged for, and received, four payments on behalf of an Iranian company using a personal bank account" in U.S., agency said. Person did not voluntarily disclose apparent violations, OFAC added. Specifically, individual "accepted payment in the United States on behalf of an Iran-based company selling Iranian-origin cement clinker to another company for a project in a third country," agency noted.