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## BIS Extends Controls on Geospatial Imagery Software

To give itself more time to consult multilateral regime partners, the Bureau of Industry and Security (BIS) Jan. 6 extended export controls on “software specially designed to automate the analysis of geospatial imagery” for another year. The agency cited the pandemic and the “limited deliberations” at the Wassenaar Arrangement’s 2021 plenary for the extension.

In January 2020, BIS added the software to its “holding” Export Control Classification Number (ECCN) 0Y521 series, specifically under ECCN 0D521. The agency extended the controls for a year in January 2021 (see **WTTL**, Jan. 11, 2021, page 1).

The U.S. submitted a proposal for multilateral control of the 0D521 software to the Wassenaar Arrangement “in a timely manner, within the first year of the item’s 0D521 classification. However, due to the pandemic, the Wassenaar Arrangement did not formally convene in 2020 and therefore was unable to consider acceptance of the proposal,” the rule said.

“The Wassenaar Arrangement’s limited deliberations in 2021 due to the pandemic did not allow for sufficient discussion of this proposal. An additional extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2022,” BIS added.

## Mexico Requests USMCA Dispute Panel on Auto Rules of Origin

Four months after the Mexican president expressed confidence that a dispute panel wouldn’t be necessary, his administration Jan. 6 formally requested consultations with the U.S. “to resolve the difference in the interpretation and application of the rules of origin in the automotive sector” under the U.S.-Mexico-Canada (USMCA) agreement, specifically the use of “roll-up” methodologies. Mexico requested consultations with the U.S. in August

(see **WTTL**, Sept. 6, page 2). Canada joined the Mexican request a week later. “I am going to reach an agreement soon,” Mexican President Andres Manuel Lopez Obrador said in a press conference two weeks after the request. “We do not want to reach an international panel. Those are the options that are available when there are these controversies in the treaty, but I do not think it will go there,” he added.

The U.S. “imposes requirements on automotive producers that are inconsistent with the [USMCA] in order to calculate the Regional Value Content [RVC] of passenger cars, light trucks and their parts,” the Mexican government said. In particular, the various provisions of the USCMA Automotive Appendix “provide automobile producers with different methodologies that allow them to consider non-originating parts and components in the calculation of the [RCV],” it added. The U.S. “does not agree with that position and does not allow automobile producers to benefit from these methodologies,” Mexico noted.

## **CFIUS Extends Deadline for Excepted Foreign States**

Hearing no complaints, Treasury Jan. 6 extended the deadline for countries to fit the criteria to be considered “excepted foreign state” and “excepted real estate foreign state” by one year to Feb. 13, 2023, from 2022. The department proposed the extension in November and received only two public comments on the change.

“These terms operate together with other relevant terms to provide an exception from the jurisdiction of the Committee on Foreign Investment in the United States [CFIUS] over covered investments by certain foreign persons who meet specific criteria establishing sufficiently close ties to certain foreign states,” the Federal Register notice said.

In parallel with the rule, CFIUS identified New Zealand as an eligible foreign state “based, among other factors, on its intelligence-sharing relationship with the United States and its collective defense arrangement and cooperation with the United States,” a Treasury fact sheet noted. In January 2020, the Committee identified Australia, Canada and the United Kingdom (UK) as eligible excepted foreign states.

The criteria for “excepted foreign state” is “whether such foreign state ‘has established and is effectively utilizing a robust process’ to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security,” the proposed rule noted. To be considered an “excepted real estate foreign state,” the foreign state must have “made significant progress’ in establishing and effectively utilizing the robust process and coordination,” it added.

One of the comments asked about the impact of the pandemic and the excepted foreign state determinations. “Extending the effective date of the second criterion in each definition provides foreign states with additional time to meet the determination factors,” it noted. The Committee “had determined that extending the time period before which such requirements become applicable is desirable given certain ongoing changes to foreign investment review regimes,” the department added.

## U.S., Canada Claim Victory in USMCA Dairy Dispute

What happens when both sides claim victory? Both the U.S. and Canada took credit for a U.S.-Mexico-Canada Agreement (USMCA) panel ruling in the dispute over Canada's allocation of dairy tariff-rate quotas (TRQs). A week after the three North American trading partners smiled and said all the right things, the U.S. Trade Representative's (USTR) office requested the panel in May (see **WTTL**, May 31, 2021, page 4).

"The Panel finds that Canada's practice of reserving TRQ pools exclusively for the use of processors is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the Treaty not to 'limit access to an allocation to processors.' The Panel makes no findings on the remainder of the Parties' arguments," the panel reported.

"The Panel finds that Canada's acknowledged practice of reserving access to 85 to 100% of 14 separate dairy TRQs exclusively to processors (including further processors), is inconsistent ... for it fails to 'ensure that,' 'unless otherwise agreed by the Parties,' Canada 'does not . . . limit access to an allocation to processors.' No one other than processors has access to, or can apply for, these allocations. Hence access is limited to processors, which is not permitted by the Treaty," it explained.

U.S. officials hailed the win. "This historic win will help eliminate unjustified trade restrictions on American dairy products and will ensure that the U.S. dairy industry and its workers get the full benefit of the USMCA to market and sell U.S. products to Canadian consumers," USTR Katherine Tai said in a statement.

"This ruling is a big step for the U.S. dairy sector towards realizing the full benefits of the USMCA and securing real access to the Canadian market for additional high-quality American dairy products such as milk, cheese and skim milk powder," Agriculture Secretary Tom Vilsack noted.

Canadian government officials also agreed with the outcome. "We are pleased with the dispute settlement panel's report, which ruled overwhelmingly in favor of Canada and its dairy industry. In particular, it is important to note that the panel expressly recognizes the legitimacy of Canada's supply management system. The panel also confirms that Canada has the discretion to manage its TRQ allocation policies under [USMCA] in a manner that supports Canada's supply management system," Canadian Trade Minister Mary Ng and Agriculture Minister Marie-Claude Bibeau said in a joint statement.

The U.S. dairy industry welcomed the ruling but acknowledged the work left to do. "While this is an essential victory, it is one step in a much longer journey. Our work to uphold the full benefits of USMCA continues, as we strive to reduce supply chain disruptions for our exports and ensure Mexico's adherence to the dairy provisions of the USMCA, among other key matters," said Krysta Harden, president and CEO of the U.S. Dairy Export Council (USDEC).

## White House Promises New “Product of USA” Labeling Rules

The White House stirred up a hornet’s nest Jan. 3 when it announced potential new “Product of USA” labeling rules. Country of origin labeling (COOL) has been at the center of multiple trade disputes over the last 15 years. As part of its “Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain, the Biden administration said it would issue the new rules “so that consumers can better understand where their meat comes from,” a White House fact sheet noted.

“Under current labeling rules, meat can be labeled ‘Product of USA’ if it is only processed here—including when meat is raised overseas and then merely processed into cuts of meat here. We believe this could make it hard for American consumers to know what they are getting,” it added.

In July, Agriculture (USDA) announced it was initiating its own top-to-bottom review of the “Product of USA” label “that will, among other things, help us to determine what that label means to consumers,” USDA noted. The department closed the barn door in March 2016 on the debate over COOL requirements on beef and pork imports, removing those products from its regulations (see **WTTL**, March 7, 2016, page 8).

In August 2013, the U.S. blocked Canada’s and Mexico’s request to establish a World Trade Organization (WTO) panel to determine whether new USDA regulations complied with a previous WTO ruling against an earlier version of the rules. Canada first requested consultations with the U.S. concerning certain mandatory COOL provisions in December 2008.

### \* \* \* Briefs \* \* \*

**TRADE FIGURES:** Merchandise exports in November jumped 23.0% from year ago to \$155.9 billion, Commerce reported Jan. 6. Services exports grew 16.9% to \$68.3 billion from November 2020. Goods imports increased 19.7% from November 2020 to record-high \$254.9 billion, as services imports grew 25.3% to \$49.5 billion.

**EXPORT ENFORCEMENT:** Robert Alcantara of Providence, R.I., was charged Jan. 6 in Manhattan U.S. District Court with conspiring to export firearms, including untraceable “ghost guns,” and with making false statements. “Alcantara sold most of the firearms in the Dominican Republic. When interviewed by law enforcement about his sales and shipments of firearms, Alcantara then falsely stated that he had never sold firearms or transported them to the Dominican Republic,” criminal complaint noted. In April 2021, for example, Alcantara sent picture of firearms to co-conspirator, and shortly thereafter co-conspirator “messed Alcantara a picture of a large payment he made in the currency of the Dominican Republic,” it added.

**CUBA SANCTIONS:** Airbnb Payments, wholly owned subsidiary of Airbnb, agreed Jan. 3 to pay \$91,172.29 civil penalty to settle OFAC charges of violating Cuba sanctions. Activity included “payments related to guests traveling for reasons outside of OFAC’s authorized categories as well as a failure to keep certain required records associated with Cuba-related transactions,” agency said. Firm voluntarily self-disclosed apparent violations. As Airbnb launched its services in Cuba

following U.S. regulatory changes in January 2015, “the scaling up of its services in Cuba appears to have outpaced the company’s ability to manage the associated sanctions risks via its technology platforms,” OFAC added. “Airbnb operates in more than 220 countries and regions around the world, and we take sanctions compliance very seriously. We are pleased to have reached this agreement with OFAC,” Airbnb spokesperson Christopher Nulty said in emailed statement.

**NOMINATIONS:** President Biden sent slew of nominations back to Senate Jan. 4, including Grant Harris to be Commerce assistant secretary for industry and analysis; Owen Herrstadt to be Export-Import (Ex-Im) Bank board member; Reta Jo Lewis to be Ex-Im Bank president; Judith DelZoppo Pryor to be Ex-Im first VP; Arun Venkataraman to be Commerce assistant secretary and director general of U.S. and Foreign Commercial Service; and Leonard Stark to be Court of Appeals for Federal Circuit (CAFC) judge, replacing Kathleen O’Malley, who is retiring. Missing from list was BIS Under Secretary nominee Alan Estevez.

**CIVIL PENALTIES:** In Federal Register Jan. 10, State adjusted for inflation civil monetary penalties (CMP) for Chemical Weapons Convention Implementation Act and certain penalty provisions of Arms Export Control Act (AECA). Under new rule, for each violation of AECA section 38(e), new maximum adjusted penalty level will be \$1,272,251 (previously \$1,183,736); section 39A(c), \$925,041 (previously \$860,683); and section 40(k), \$1,101,061 (previously \$1,024,457) ... In Federal Register Jan. 4, Commerce adjusted for inflation CMP for Export Controls Act of 2018. Under new rule, for each violation new maximum adjusted penalty level will be \$328,121 (previously \$308,901).

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