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## Export Control Rules Held in Review Purgatory

Two months after the Office of Management and Budget (OMB) received parallel proposed rules on the transfers of items from U.S. Munitions List (USML) categories I, II and III (firearms and ammunition) from BIS and State's Directorate of Defense Trade Controls (DDTC) Sept. 26, industry is growing increasingly frustrated that the rules are still sitting in the budget office, still pending review.

Also sitting with the budget office are notices of inquiry (NOIs) on USML categories V (explosives), X (protective personnel equipment) and XI (electronics). "It's ironic that the Administration's focus on streamlining and eliminating unnecessary regulations has choked off our ability to do just that," one official told WTTL. Add to that the 30% vacancy rate at DDTC, which officials expect to only get worse, and low morale amid reports of personnel changes at the top of the department.

Gun industry groups remain optimistic the rules will move forward. "We are unaware of any specific concerns with the draft proposed rules for Categories I, II and III. The delay appears to be process-based and not due to the substance of the policy which advances national security and U.S. economic growth," Lawrence Keane, National Shooting Sports Foundation (NSSF) senior VP, wrote in an email to WTTL (see **WTTL**, Oct. 2, page 8).

Sources say the proposals, especially the notices of inquiry, are not controversial; in fact, they're the opposite of controversial. A "whole gaggle of companies are creating products that didn't exist when the original regulations were written," especially in telecommunications and microelectronics, one observer told WTTL.

## SBM Offshore Pays \$238 Million to Settle FCPA Charges

SBM Offshore, a Dutch oil and gas services company, and its wholly owned U.S. subsidiary, SBM Offshore USA Inc. (SBM USA), agreed Nov. 29 to pay a \$238 million

criminal penalty to settle charges of violating the Foreign Corrupt Practices Act (FCPA) in connection with schemes involving the bribery of foreign officials in Brazil, Angola, Equatorial Guinea, Kazakhstan and Iraq.

From at least 1996 until at least 2012, SBM conspired to violate the FCPA by paying more than \$180 million in commissions to intermediaries, knowing that a portion of those commissions would be used to bribe foreign officials in those five countries. SBM also acknowledged that it gained at least \$2.8 billion from projects it obtained from these state-owned oil companies.

SBM entered into a three-year deferred prosecution agreement (DPA) and SBM USA pleaded guilty to conspiracy to violate the FCPA in Houston U.S. District Court in connection with the resolution. SBM agreed to pay a total criminal penalty of \$238 million to the U.S., including a \$500,000 criminal fine and \$13.2 million in criminal forfeiture that SBM agreed to pay on behalf of SBM USA.

Earlier this month, former SBM executives Anthony “Tony” Mace and Robert Zubiato also pleaded guilty in Houston federal court to conspiracy to violate the FCPA for their roles in the scheme (see **WTTL**, Nov. 13, page 6). Both await sentencing.

Justice noted the company was entitled to a 25% mitigation, citing its cooperation and significant remedial measures, including “terminating and demoting employees who were involved in the criminal conduct, terminating long-standing agency agreements and implementing a new and enhanced system of internal controls to address and mitigate corruption and compliance risks,” the department said in a press release.

“The terms of the resolution reflect the Company’s cooperation and confidence in the quality of the Company’s compliance program and efforts by current management,” SBM said in a statement. “Based on the Company’s remediation and the state of its compliance program, the DoJ determined that an independent compliance monitor was unnecessary,” it added.

Charges in Brazil are still outstanding. The company announced the potential settlement and the provision of the \$238 million in fines in a statement Nov. 6. “Although it appears that the Company can likely reach a resolution with the DoJ and thus make an important step towards closure of the past, it is unfortunate that despite all efforts made, no global solution to bring finality is currently available. We will continue to actively seek to bring the legacy issue in Brazil to an acceptable closure,” Chief Governance and Compliance Officer and management board member Erik Lagendijk said at that time.

## **Commerce Self-Initiates Investigations of Chinese Aluminum Imports**

In a rare move, Commerce Nov. 28 announced it would self-initiate antidumping (AD) and countervailing duty (CVD) investigations of imports of common alloy aluminum sheet from China. While final AD determinations are scheduled for July 2018 and April 2018 for the

CVD investigation, Commerce estimated dumping margins of 56.54% to 59.72%. “We are self-initiating the first trade case in over a quarter century, showing once again that we stand in constant vigilance in support of free, fair, and reciprocal trade,” Commerce Secretary Wilbur Ross said in a statement. Commerce last self-initiated a CVD investigation in 1991 on softwood lumber from Canada and the last self-initiated AD investigation in 1985 concerned semiconductors from Japan.

“In this instance, we have information warranting an investigation into whether 1) the United States price of common alloy sheet from China may be less than the normal value of such or similar merchandise, 2) imports of common alloy sheet from China may be benefitting from countervailable subsidies, and 3) imports of common alloy sheet from China may be materially injuring, or threatening material injury to, the domestic industry producing common alloy sheet in the United States,” a Commerce fact sheet noted.

Investigations are typically initiated under 702(b) and 732(b) of the Tariff Act of 1930, but self-initiation can occur under sections 702(a) and 732(a) “whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under [section 701 (CVD) or 731 (AD)] exist,” the fact sheet noted. Imports of common alloy sheet from China were valued at approximately \$603.6 million in 2016.

Aluminum and steel industry groups enthusiastically supported the decision. “We are extremely grateful for the efforts and leadership of Secretary Ross in vigorously enforcing the U.S. trade laws. The Aluminum Association and its members seek to help ensure that common alloy sheet from China entering the United States is fairly traded,” stated Heidi Brock, Association President & CEO, in a statement.

According to Chinese press reports, Wang Hejun, head of the trade remedy and investigation bureau at the country’s Ministry of Commerce, said the case “has sparked strong dissatisfaction in China.” The aluminum industries in the two countries are “complementary to each other and the trade of such products are two-ways,” he added. “Disturbing normal trade activities of aluminum will harm interests of both sides.” Wang noted.

## **NGOs Urge Moving WTO Ministerial over Blocked Credentials**

Just 10 days before World Trade Organization (WTO) ministerial in Buenos Aires, 63 civil society experts from 40 non-governmental organizations (NGOs), including groups such as Global Justice Now and Friends of the Earth International, were notified that their accreditation to attend the ministerial, which begins Dec. 10, has been revoked.

In a letter to WTO Director-General Roberto Azevedo Nov. 30, a representative of the groups urged the organization to reverse the decision or move the ministerial back to Geneva. “The WTO should not accept such a blatant violation of well-established

international norms. Thus, we call on the Argentine government to reverse the bans, and on the Director General and the WTO membership not to hold the Ministerial in Argentina unless the participation of the civil society groups is re-instated,” wrote Deborah James for the Our World Is Not for Sale network.

“It is ironic that this occurred on the same day that Argentina is celebrating the transfer of the presidency of the G20 from Germany to Argentina. The banning of registered WTO delegates is an outrageous and worrying precedent, not just for the WTO meeting itself, and also for the G20 presidency of Argentina, but also for all future international meetings,” James wrote.

WTO officials passed any questions to the Argentine government. “The WTO and the Argentines have different perspectives on this matter. You will have ask the Argentines how made the decision and why,” External Relations Director Keith Rockwell wrote in email to WTTL. “The Argentines informed us some weeks ago that they did not want some of the NGOs on the list of approved attendees to come to MC11. We worked with them in an effort to ensure that the full list of those accredited could attend but we were unsuccessful,” Rockwell added.

In letters to the affected NGOs, the WTO external relations head wrote: “We are informed by the host government that for unspecified reasons, the Argentine security authorities have decided to deny your accreditation. We have made repeated enquiries about this unexpected development, but we have little to no hope that a solution will be found. We therefore discourage you from travelling to Argentina so as to avoid being turned away upon entry into the country.”

## **Justice Formalizes FCPA Enforcement Policy After Pilot Program**

After an 18-month pilot program to encourage cooperation in potential Foreign Corrupt Practices Act (FCPA) violations, Justice is enshrining those tenets in a revised FCPA Corporate Enforcement Policy, Deputy Attorney General Rod Rosenstein said in a speech Nov. 29.

Justice launched the program in April 2016, increasing mitigation credit for companies that disclose conduct and cooperate with the department. To date, seven firms have received declinations; most recently Boston engineering firm CDM Smith agreed to pay \$4 million in disgorgement in July (see **WTTL**, July 3, page 8).

The company and a wholly owned Indian subsidiary paid approximately \$1.18 million in bribes to Indian government officials in exchange for highway construction supervision and design contracts and a water project contract, the Justice declination letter noted.

Rosenstein outlined the three main points of the new policy. “When a company satisfies the standards of voluntary self-disclosure, full cooperation, and timely and appropriate remediation, there will be a presumption that the Department will resolve the company’s

case through a declination. That presumption may be overcome only if there are aggravating circumstances related to the nature and seriousness of the offense, or if the offender is a criminal recidivist,” he said.

In addition, “if a company voluntarily discloses wrongdoing and satisfies all other requirements, but aggravating circumstances compel an enforcement action, the Department will recommend a 50% reduction off the low end of the Sentencing Guidelines fine range,” he said. Lastly, the policy “specifies some of the hallmarks of an effective compliance and ethics program. Examples include fostering a culture of compliance; dedicating sufficient resources to compliance activities; and ensuring that experienced compliance personnel have appropriate access to management and to the board,” Rosenstein explained.

The new policy will be incorporated into the United States Attorneys’ Manual, rather than depend on memos from high-level officials, as had been the previous tradition. “After spending nearly three decades trying to keep track of prolix memos, I want the Department to issue concise policy statements,” he noted.

Observers note the policy is not news, but simply an outgrowth of the success of the pilot program. The pilot “gave us a better idea of what companies needed to do, what the agency expected, and exactly what was meant by ‘credit.’ Ultimately, that sea change in 2016 required some socialization. Now that we’ve lived with those concepts for over a year, we don’t really need the explication. The result is a document that minces no words and gets right to the point,” Bill Steinman of Steinman & Rodgers LLP wrote in a blog post.

## **Tillerson Defends Department Redesign, European Relations**

Much beleaguered Secretary of State Rex Tillerson opined on the U.S. relationship with the European Union (EU), Russia, and sanctions against Iran and North Korea, as well as the State Department “redesign.” Tillerson’s remarks Nov. 28 in Washington stand in contrast to the criticism that State has been hollowed out with career civil servants stepping down and a proposed 30% budget reduction.

“The issue of the hollowing out – I think all of you appreciate that every time you have a change of government you have a lot of senior Foreign Service officers and others who decide they want to move on and do other things. Our numbers of retirements are almost exactly what they were in 2016 at this point. We have the exact same number of Foreign Service officers today – we’re off by 10 – that we had at this time in 2016,” said Tillerson.

“There is a hiring freeze that I’ve kept in place, because as we redesign the organization we’re probably going to have people that need to be redeployed to other assignments. I don’t want to have a layoff; I don’t want to have to fire a bunch of people. So, I said, ‘Let’s manage some of our staffing targets with just normal attrition,’” he added (see related story, page 1).

Tillerson heads to Europe Dec. 4. He's expected to participate in a NATO foreign ministerial in Brussels. He'll then travel to Vienna for the annual meeting of the Organization for Security and Cooperation in Europe (OSCE) where he's expected to meet with Russian Foreign Minister Sergei Lavrov. Tillerson will end his trip in Paris. While in Europe, he'll undoubtedly have to address Brexit, as well as unity against aggression from Russia, Iran and North Korea.

"The United States will maintain our longstanding special relationship with the United Kingdom [UK], and at the same time maintain a strong relationship with the EU, regardless of the outcome of Brexit. We will not attempt to influence the negotiations, but we urge the EU and UK to move this process forward swiftly and without unnecessary acrimony. We offer an impartial hand of friendship to both parties," said Tillerson.

The secretary has taken the firmest stance of any administration official when it comes to Russia's interference in elections. "Our transatlantic unity is meant to convey to the Russian Government that we will not stand for this flagrant violation of international norms. We hope Russia will take steps to restore Ukraine's full sovereignty and territorial integrity and fully implement its Minsk commitments, allowing us to begin then the process of restoring normal relations. But let me be clear, Minsk-related sanctions will remain in place until Russia reverses the actions that triggered them," he said.

On Iran and North Korea, the U.S. and Europe must be united. Tillerson commended Portugal, Spain and Italy for freezing relations or expelling North Korea's ambassadors and he noted Latvia has fined banks who have violated sanctions. "Our European allies know North Korea is a threat to all responsible nations and requires a coordinated response. We commend our allies for increasing pressure on the regime in Pyongyang in order to achieve the complete, permanent, and verifiable denuclearization of the Korean Peninsula," said Tillerson.

## **U.S. Not Impressed at Global Steel Forum**

The U.S. was less than impressed with the outcome of the Organization for Economic Cooperation and Development's (OECD) ministerial meeting of the Global Forum on Steel Excess Capacity in Germany Nov. 30. Though the 33 members of the forum agreed on a report with six principles, they fall far short of U.S. expectations.

"The Forum has not made meaningful progress yet on the root causes of steel excess capacity, and pointing to short-term developments and worn out promises will not cure the fundamental causes of the problem," the U.S. Trade Representative's (USTR) office said in a statement. "Addressing the ongoing steel excess capacity situation will require immediate and sustained concrete action by all steelmakers, including allowing markets to function, removing market-distorting subsidies and other forms of state support, and treating state-owned enterprises and private steelmakers equally. This view is shared by nearly all Forum members, and we welcome this recognition," it added.

USTR Chief of Staff Jamieson Greer represented the U.S. at the ministerial. The members agreed to focus on six principles: Global challenge, collective policy solutions; refraining from market-distorting subsidies and government support measures; fostering a level playing field in the steel industry; ensuring market-based outcomes in the steel industry; encouraging adjustment and thereby reducing excess capacity; and ensuring greater transparency as well as review, discussion and assessment of the implementation of the Global Forum policy solutions.

EU Trade Commissioner Cecilia Malmstrom commended the policy solutions. “In the run-up to the World Trade Organization’s 11th Ministerial Conference in Buenos Aires, this success underlines the importance of effective multilateral cooperation to solve global problems. Of course, our work is not yet done. Now we need to walk the talk. Our industry, our workforce, our consumers and citizens depend on these commitments being carried out effectively. As co-chair of this Forum during next year, the EU will follow the implementation of these measures closely,” said Malmstrom in a statement.

Ahead of the forum, Sens. Rob Portman (R-Ohio) and Sherrod Brown (D-Ohio) urged President Trump to “develop a comprehensive enforcement plan to address the global steel crisis. Most immediately, we urge you to reach a swift conclusion in the Section 232 investigation into steel imports.” Commerce Secretary Wilbur Ross has until mid-January to conclude the Section 232 investigations into steel and aluminum imports, well past the original June deadline he had self-imposed.

The United Steelworkers called the report “just another sign that political leaders are fiddling while Rome burns,” in a statement following the meeting. While the union appreciated the “hard work that U.S. negotiators put into this process and the strong stances they took on key principles,” it argued that “as attacks on the U.S. steel sector continue, only further dialogue is scheduled. The new report fails to identify specific disciplines, timelines or targets for resolving the problem. A real plan for action is the only thing that will work.”

**\* \* \* Briefs \* \* \***

TUNA: As expected, Mexico Dec. 1 appealed WTO compliance panel ruling on revised U.S. “dolphin-safe” tuna labelling measure. Panel circulated report Oct. 26 (see **WTTL**, Oct. 30, page 1).

ANTIBOYCOTT: Bank of America agreed Nov. 21 to pay \$44,625 civil penalty to settle 13 violations of BIS antiboycott regulations. Bank allegedly refused to do business, furnished information about business relationships with boycotted countries or blacklisted persons during transactions and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. from November 2010 through July 2011 during transactions with UAE and Kuwait. Bank voluntarily disclosed “information concerning certain of its transactions” to BIS, agency said. Letter of credit included this language: “All vessels must be authorized to pass by Arab ports.” “We regret these errors, which occurred in 2010 and 2011, and reported them to the appropriate officials when we discovered them. We have taken steps to strengthen our procedures,” said Bank of America spokesman Bill Halldin in email to **WTTL**.

IRAN: OFAC Nov. 28 issued Finding of Violation to Dominica Maritime Registry, Inc. (DMRI) in Fairhaven, Mass., for violating Iran sanctions. In July 2015, DMRI executed binding Memorandum of Understanding with National Iranian Tanker Company (NITC), blocked Iranian entity, “which OFAC determined was a contingent contract and therefore property in which NITC, a blocked person, had an interest,” agency said. DMRI did not voluntarily disclose violation.

EXPORT ENFORCEMENT: Pilot Air Freight, freight forwarder in Lima, Pa., agreed Nov. 21 to pay \$175,000 civil penalty to settle BIS charge of aiding or abetting attempted unlicensed export of ultrasonic mill cutting machine to IKAN Engineering Services, blocked Pakistani entity, in February 2015. Machine was classified under Export Control Classification Number (ECCN) 2B991, controlled for antiterrorism reasons and related electrical equipment designated EAR 99 valued in total at approximately \$250,287. “In providing forwarding services to facilitate this attempted unlicensed export, Pilot’s screening program failed to flag or detect a close match for IKAN’s name and address as set forth on the Entity List,” BIS noted. Of penalty, \$75,000 will be suspended through March 2020 and then waived. IKAN was added to BIS Entity List in September 2014 (see **WTTL**, Sept. 22, 2014, page 8).

CHEMICALS: In Nov. 29 Federal Register BIS requested public comments on impact that implementation of Chemical Weapons Convention (CWC) has had on commercial activities involving “Schedule 1” chemicals during calendar year 2017. “The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to Congress on whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms are being harmed by such implementation,” notice said. Comments are due Dec. 29.

WOOD FLOORING: In 4-0 “sunset” vote Nov. 29, ITC said revoking antidumping and countervailing duty orders on imports of multilayered wood flooring from China would renew injury to U.S. industry.

SODIUM GLUCONATE: PMP Fermentation Products, Inc. filed countervailing and antidumping duty petitions Nov. 30 with ITA and ITC against imports of sodium gluconate, gluconic acid and derivative products from China and France.

SANCTIONS: According to documents unsealed in Manhattan U.S. District Court Nov. 28, Iranian-Turkish gold trader Reza Zarrab pleaded guilty month before to seven counts, including conspiracy to defraud U.S., conspiracy to violate International Emergency Economic Powers Act and bank fraud, for his role in scheme to violate U.S. Iran sanctions by conducting international financial transactions on behalf of Iranian government and other blocked entities, including Bank Mellat, between 2010 and 2015. In plea deal, Zarrab testified in trial of codefendant Mehmet Hakan Atilla starting same day (see **WTTL**, Sept. 11, page 6). Judge Richard Berman wrote in order denying Atilla’s motion to adjourn trial: “The Government should also make clear that the mystery witness is Mr. Reza Zarrab. (This is something that experienced counsel knew or should have known for several months.)”

LUMBER: Canada Nov. 28 formally requested WTO consultations with U.S. concerning Commerce’s antidumping and CVD determinations on imports of certain softwood lumber products. “Commerce’s decision to impose punitive antidumping and countervailing duties on Canadian softwood lumber producers is unfair, unwarranted and deeply troubling,” reads statement from Canadian government, echoing letter Canadian Foreign Minister Chrystia Freeland wrote Nov. 14 requesting panel review under NAFTA Chapter 19 (see **WTTL**, Nov. 20, page 1).

**SAY CHEESE:** China unilaterally lowered tariffs on cheese imports from 12% to 8% effective Dec. 1 as part of import tariff cuts on 187 food and consumer goods China announced just before Black Friday. “We are very pleased with China’s decision because it will help U.S. cheese exporters and manufacturers chip away the tariff disadvantage with other competitors,” Tom Vilsack, president and CEO of U.S. Dairy Export Council, said in statement.

**TOOL CHESTS:** Commerce announced Nov. 28 its affirmative final determination in CVD investigation of imports of tool chests and cabinets from China. Commerce calculated final subsidy rate of 15.09% for mandatory respondent Jiangsu Tongrun Equipment Technology Co., Ltd. and 14.03% for Zhongshan Geelong Manufacturing Co., Ltd. Companies that did not respond to Commerce’s questionnaire were assigned subsidy rate of 95.96% based on adverse facts available. Imports of tool chests and cabinets from China were approximately \$230 million in 2016. Petitioner is Waterloo Industries, Inc.

**SOLAR:** USTR Robert Lighthizer requested Nov. 27 additional information regarding ITC’s report and recommendations on crystalline silicon photovoltaic cells (see **WTTL**, Nov. 6, page 8). “After examining the Commission’s report, I have determined that it would be appropriate, under the authority delegated to me by the President, to request additional information from the Commission, pursuant to section 203(a)(5) of the Trade Act, in the form of a supplemental report to assist the President in determining the appropriate and feasible action to take that will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs,” wrote Lighthizer. ITC has 30 days to furnish supplemental response.

**WTO:** U.S. submitted third-party brief in support of European Union in its WTO dispute with China over Asian country’s market economy status (DS516). In brief made public Nov. 30, U.S. wrote: “Reading the text of Article VI:1 of GATT 1994, Section 15 of China’s Accession Protocol, the Second Note Ad Article VI:1, GATT accession documents, and other texts leads to the conclusion that GATT Contracting Parties and WTO Members have always recognized that non-market prices or costs are not suitable for antidumping comparisons because they are not appropriate to use ‘in determining price comparability.’” Commerce affirmed China’s NME status in November (see **WTTL**, Nov. 13, page 3).

**MORE WTO:** WTO Appellate Body (AB) judges will continue to work on appeals filed before end of judges’ terms, according to Reuters, which viewed a confidential note sent to WTO members Nov. 27. U.S. opposes this practice and has prevented AB vacancies from being filled (see **WTTL**, Nov. 20, page 5).