

Vol. 38, No. 32

August 6, 2018

Commerce Upgrades India's STA Access

Citing the country's recent membership in multilateral export control regimes, Commerce will now treat India on par with NATO allies when it comes to the scope of export license exceptions. In a speech at the Indo-Pacific Business Forum July 30, Commerce Secretary Wilbur Ross announced the department would grant India Strategic Trade Authorization (STA) license exception Tier 1 access.

“This reflects India's membership in three of the four multilateral export control regimes, as well the development of its national export control system. U.S. companies will be able to more efficiently export a much wider range of products to Indian high technology and military customers,” Ross said. In the Federal Register Aug. 3, Bureau of Industry and Security (BIS) formally moved India to Country Group A:5.

India became the 43rd member of the Australia Group (AG) on chemical and biological weapons in January (see **WTTL**, Jan. 22, page 1). Prior to that, the country joined the Wassenaar Arrangement in December and the Missile Technology Control Regime in June 2016. That leaves the Nuclear Suppliers Group (NSG).

India welcomed the move. “It is a logical culmination to India's designation as a Major Defense Partner of the U.S. and a reaffirmation of India's impeccable record as a responsible member of the concerned multilateral export control regimes,” the country's external affairs ministry said in a statement. “This step will further facilitate India-U.S. trade and technology collaboration in defense and high technology areas. We look forward to the U.S. side operationalizing the decision at an early date,” the ministry added.

White House Threatens Increased Section 301 Tariffs

In response to the response, or in retaliation against the retaliation, or perhaps just in a fit of pique, the president directed U.S. Trade Representative (USTR) to consider

© Copyright 2018 Gilston-Kalin Communications LLC.
P.O. Box 5325, Rockville, MD 20848-5325.
All rights reserved. Reproduction, photocopying or
redistribution in any form, including electronic, without
written approval of publisher is prohibited by law.

WTTL is published weekly 50 times a year except last week
in August and December. Subscriptions are \$697 a year.
Additional users pay only \$100 each with full-priced sub-
scription. Site and corporate licenses are also available.
Phone: 301-460-3060 Fax: 301-460-3086

increasing the proposed level of additional Section 301 duties on \$200 billion worth of Chinese goods from 10% to 25%, USTR Robert Lighthizer announced Aug. 1. Two days later, China unveiled its retaliation to the retaliation against the retaliation.

“The increase in the possible rate of the additional duty is intended to provide the Administration with additional options to encourage China to change its harmful policies and behavior and adopt policies that will lead to fairer markets and prosperity for all of our citizens,” Lighthizer said in a carefully worded statement to avoid committing to the increase. The 25% duty would apply to a list of products proposed July 10 (see **WTTL**, July 30, page 4).

China answered the latest escalation with an announcement Aug. 3 that it will impose additional tariffs of 25%, 20%, 10% and 5% on 5,207 U.S. imports worth \$60 billion. “The United States violated consensuses reached by multiple bilateral negotiations and once again unilaterally escalated trade frictions,” China’s Customs Tariff Commission said in a statement.

“China promises that it will continue to unswervingly push forward reform and opening-up based on established arrangements and pace, firmly support economic globalization, firmly safeguard free trade rules and multilateral trade mechanisms to realize joint development and share prosperity with all countries that pursue progress,” the commission added.

Secretary of State Mike Pompeo, who traveled to Singapore for an ASEAN forum, answered an Asian news outlet’s questions about trade frictions. “What we’re looking for is to remove barriers. This is what has [been] put in place over decades. There was tremendous unfairness in the system, and our administration is simply trying to put that balance there. The president has said clearly: zero tariffs, zero subsidies, zero non-tariff barriers. Sign us up, we’ll take it. America is trying to reduce friction in the trading system,” replied Pompeo.

Court Blocks Gun Blueprints Settlement

When all else fails, call on the states’ attorneys general (AG). In a suit that eight states and the District of Columbia filed, a Seattle U.S. District Court judge July 31 granted a temporary restraining order against the Trump administration’s settlement with Defense Distributed over posting of 3-D gun blueprints online with just hours to spare.

At a confirmation hearing for R. Clarke Cooper to be assistant secretary of State for political-military affairs Aug. 1, Sen. Ed Markey (D-Mass.) announced he will put a hold on the nomination until the settlement is formally withdrawn and policy changed.

“We just secured an order blocking Trump admin from allowing the distribution of plans to print 3-D guns. As we argued in our suit, it is crazy to give criminals the tools to build untraceable, undetectable 3-D printed guns at the touch of a button,” N.Y. AG Barbara

Underwood tweeted July 31. Massachusetts, Connecticut, New Jersey, Pennsylvania, Oregon, Maryland, New York and the District of Columbia joined Washington's lawsuit.

"A side effect of the USML [U.S. Munitions List] been to make it more difficult to locate and download instructions for the manufacture of plastic firearms. If an injunction is not issued and the status quo alters at midnight tonight, the proliferation of these firearms will have many of the negative impacts on a state level that the federal government once feared on the international stage," Judge Robert S. Lasnik wrote in his opinion granting the restraining order. Another hearing will be held Aug. 10 to turn the temporary order into a preliminary injunction.

The "temporary modification" of USML Category I and approval for public release of the information "are especially troubling because it involves making CAD files available on the internet, which largely overrides the later need to formally modify the relevant rules," the AGs' complaint noted. "Moreover, the 'temporary modification' on its face applies to recently developed files that the Government has presumably not even seen or evaluated, as well as files that may be developed in the future," the complaint noted.

Rep. Eliot Engel (D-N.Y.) was the first member of Congress to respond to the settlement, urging Pompeo to "suspend the Department's implementation of the settlement immediately and prevent the inappropriate and dangerous release of this technical information" (see **WTTL**, July 23, page 11).

NAFTA Delegations Will Keep Trucking

With the goal of concluding a deal by the end of August, the U.S. and Mexico will keep talking, after bilateral NAFTA talks Aug. 2-3 in Washington did not resolve such sticky issues as the sunset clause and auto sector (see **WTTL**, July 30, page 1). Canadian Foreign Affairs Minister Chrystia Freeland was not present, but was kept apprised of talks, according to Mexican Economy Minister Ildefonso Guajardo.

Guajardo was joined by Foreign Affairs Secretary Luis Videgaray, as well as Jesús Seade, who will assume chief negotiating duties under incoming Mexican president Andrés Manuel López Obrador. Guajardo told reporters before meetings on Thursday that "everything will fall into place or nothing will fall into place." Talks will continue next week with Freeland expected to join in, according to a Mexican government notice.

Ahead of the meetings, Reps. Suzan DelBene (D-Wash.), Sander Levin (D-Mich.), Ron Kind (D-Wis.) and Brian Higgins (D-N.Y.) warned USTR Robert Lighthizer against violating Trade Promotion Authority. "Given the volatility already caused by President Trump's reckless trade policies, it is critical for Ambassador Lighthizer to consult with Congress if the Administration intends to backtrack from its original commitment to negotiate a modernized NAFTA agreement with Canada and Mexico," they said in a joint statement.

“Pursuing bilateral agreements with one or both nations would present challenges and opportunities. Consistent with his legal obligations under Trade Promotion Authority, Ambassador Lighthizer and his team must give Congress a blueprint of what they hope to achieve through bilateral talks, and how it will benefit U.S. farmers, workers, and families,” the lawmakers added.

Public Pressure Rising in Response to Pernicious Trade Moves

A multilateral approach to addressing systemic concerns about international trade is hamstrung by the absence of belief the U.S. is acting in good faith and by the World Trade Organization (WTO) itself, which has doubled down on those very principles.

Publicly, trade officials in Geneva refer obliquely to U.S. actions perceived by many as undermining regulatory certainty needed for global economic gains. However, officials and other friends of trade have been called on to ramp up public pressure. Brazil, Russia, India, China and South Africa (BRICS) July 26 promised to strengthen the multilateral trading system, a declaration on the sidelines of the BRICS summit said.

The credibility of the WTO “hinges” on how members behave, “follow the rules or do not follow the rules,” and their relations with each other, WTO Director-General Roberto Azevedo told reporters July 25. Azevedo said he always treats WTO members with the “absolute” conviction they are acting in good faith.

Expected consequences of various trade actions were described to French President Emmanuel Macron, United Kingdom (UK) Prime Minister Theresa May, German Chancellor Angela Merkel and others during recent meetings, Azevedo said. “They already know what I am talking about,” he said. “They’re curious, they ask questions, they ask what we think, what we believe to be the way forward,” he said. High-level leaders are much more engaged than before, he said.

The lack of perceived good faith from U.S. leaders undermines any impulse for serious consideration in the WTO. Resources are instead directed at manmade emergencies, a former trade negotiator told WTTL. Meanwhile fundamental questions about the WTO’s negotiating function remain unanswered, he said. Nobody believes appointments in the WTO Appellate Body are blocked out of good faith, the former trade negotiator told WTTL (see [WTTL](#), July 23, page 8).

The U.S. instead asserts unilateral action based on questionable claims of national security, a high-ranking trade diplomat said. Unilateral acts call for unilateral responses, which break down the system, he said. The U.S. is compounding its attacks by claiming the actions are legal and the responses are illegal, the diplomat added. The reduction in willingness to obey agreed rules is coupled with a deliberate attempt to impede enforcement through blockage of appointments to the WTO Appellate Body, he said.

The WTO dispute-settlement mechanism cannot be substituted for negotiations, the high-ranking trade diplomat said. It does not have the same level of legitimacy for creating and

updating rules as judiciaries in common law countries, he said. “Reform” is code for negotiations, the high-ranking trade diplomat told WTTL. The U.S. would make “plausible demands, even if unreasonable,” if negotiations were wanted, he said.

“Some talk about reforms” has emerged to improve the WTO, Azevedo said. Discussion may boost approaches to blunt differences and make systemic responses more agile, he said. The WTO has been working on reforms for many years, especially during the last five years, he added, citing the WTO Trade Facilitation Agreement, the elimination of export subsidies for agricultural products, some temporary solutions for food security, and expansion of the WTO Information Technology Agreement. The overall picture is “very challenging” for the WTO, Azevedo said.

Many expect the WTO to act as a referee, Azevedo said. The referee is always critiqued during important games, he said. If the WTO is not called to do anything, the trade game just flows, he said. Criticizing rules agreed by all players creates a problem, Azevedo said. Ignoring rules is the “worst case scenario,” that undermines predictability needed to spur economic growth, he said.

If a soccer team starts a game by completely breaking the flow of play, “it’s going to be an awful match to watch,” Azevedo said. “I wouldn’t waste a lot of time watching that match,” he said. If play follows the rules, the game can be “beautiful,” he said. If play doesn’t follow the rules, the game will be “really messy” without benefitting anyone, he said. The international trading system is “working quite well” despite complaints and calls for change, he said.

*** * * Briefs * * ***

TRADE FIGURES: Merchandise exports in June jumped 11.4% from year ago to \$143.2 billion, Commerce reported Aug. 3. Services exports gained 6.6% to \$70.6 billion from June 2017. Goods imports increased 9.0% from June 2017 to \$212.0 billion, as services imports gained 6.7% to \$48.1 billion. Merchandise exports from January to June grew 10.1% from a year ago to \$840.7 billion. Goods imports jumped 8.8% from 2017 to \$1.26 trillion. U.S. services exports gained 6.7% to \$418.9 billion from 2017, as services imports rose 7.9% to \$286.7 billion.

SINKS: In 5-0 “sunset” vote July 31, ITC said revoking antidumping and countervailing duty orders on imports of drawn stainless steel sinks from China would renew injury to U.S. industry.

RUSSIA: Treasury’s Office of Foreign Assets Control (OFAC) July 31 issued general license (GL) 13C, extending previous GL that expanded sanctions relief for certain designated firms. Specifically, OFAC extended GL expiration date to Oct. 23 from Aug. 5. OFAC in June issued GL 16 extending authorization for U.S. persons to engage in “specified transactions related to winding down or maintaining business involving EN+ Group PLC” and other companies until same date (see **WTTL**, June 11, page 8).

ENTITY LIST: In Aug. 1 Federal Register, BIS added 44 Chinese entities (eight entities and 36 subordinate institutions) to Entity List. Of those, 17 entities, including China Electronic Technology Group Corporation (CETC) 13, CETC-55 and Hebei Far East Communication System Engineering, and its subsidiaries, were added for “illicit procurement of commodities and technologies for unauthorized military end-use in China.” For other 27, including China Aerospace

Science and Industry Corporation Second Academy and 13 subordinate institutions, “there is an unacceptable risk of use in (or diversion of U.S.-origin items to) military end-use activities in China,” BIS said.

EXPORT ENFORCEMENT: BIS activated suspended penalty and imposed five-year denial order against Indian resident Narender Sharma and his company Hydel Engineering Products. Hydel and Sharma agreed in August to pay BIS \$100,000 to settle charge of exporting waterway barrier debris system designated as EAR99 valued at \$420,256 via UAE to Iran without OFAC authorization in 2011 (see **WTTL**, Sept. 11, 2017, page 5). Neither paid \$30,000 installment that was due by Dec.15, 2017, and did not respond to BIS letter in February.

EX-IM FRAUD: Luyi Victor Ogebor, aka Victor Luyi Ogebor and Luyi Victor Ogebor, owner of Aegis Trading and Shipping Company of Country Club Hills, Ill., was sentenced July 31 in Chicago U.S. District Court to two years’ probation and \$92,817.66 in restitution. Ogebor pleaded guilty in January to false claims in scheme to defraud Ex-Im Bank of \$150,000 (see **WTTL**, Jan. 22, page 8). He was indicted in August 2016. In 2011, Ogebor filed two claims indicating that international customers had defaulted on payment guaranteed by Ex-Im bank.

SOUTH SUDAN: In Federal Register Aug. 3, 2018 BIS added South Sudan to list of embargoed countries, adopting “restrictive license application review policy” for export and reexport of certain items on Commerce Control List to country. DDTC in February announced new policy of denial for exports destined for South Sudan (see **WTTL**, Feb. 5, page 5).

TRADE PEOPLE: Everett Eissenstat, former deputy director for international policy of National Economic Council, joined General Motors as senior vice president, global public policy, company announced Aug. 1. Eissenstat will report to GM Chairman and CEO Mary Barra. Eissenstat announced departure from White House in June (see **WTTL**, July 9, page 7).

SECTION 232: Sens. Rob Portman (R-Ohio), Doug Jones (D-Ala.) and Joni Ernst (R-Iowa) Aug. 1 introduced Trade Security Act (S.3329), which would bifurcate existing Section 232 process into investigation phase led by Defense and remedy phase led by Commerce. Defense, not Commerce, would need to justify national security reasoning for new tariffs. Bill also would provide role for Congress to disapprove 232 action via joint resolution. “As a former USTR, I know that misusing our trade tools not only hurts our exports and our manufacturers, but also our consumers, so I urge my colleagues to support this bipartisan legislation,” said Portman in statement.

URANIUM: Public comments regarding Commerce Section 232 uranium investigation are due Sept. 10, according to Federal Register notice July 25. As of press time, no public hearings have been announced. Commerce announced investigation into “whether the present quantity and circumstances of uranium ore and product imports” threaten national security in July (see **WTTL**, July 23, page 1).

AGOA: President Trump July 30 suspended duty-free treatment for all AGOA-eligible goods in the apparel sector from Rwanda. “Suspending the application of duty-free treatment to certain goods would be more effective in promoting compliance by Rwanda with such requirements than terminating the designation of Rwanda as a beneficiary sub-Saharan African country,” White House said. “We regret this outcome and hope it is temporary,” Deputy USTR C.J. Mahoney said in statement. Rwanda warned of potential action in March (see **WTTL**, April 2, page 7).

PAPER: Commerce announced Aug. 2 final determinations in antidumping (AD) and countervailing duty (CVD) investigations of imports of uncoated groundwood paper from Canada.

Commerce calculated dumping rate of 16.88% for Catalyst and 0% for Resolute, White Birch Paper and all others. Subsidy rate of 3.38% calculated for Catalyst, Kruger 9.53%, Resolute 9.81%, Birch .82% (de minimis), and all others 8.54%. Petitioner is North Pacific Paper Company. ITC expected to make final determinations Sept. 17.

NORTH KOREA: OFAC Aug. 3 designated Russian bank Agrosoyuz Commercial Bank for “knowingly facilitating a significant transaction on behalf of an individual designated for weapons of mass destruction-related activities in connection with North Korea.” OFAC also designated Ri Jong Won, Dandong Zhongsheng Industry & Trade Co., Ltd. and Korea Ungum Corporation for facilitating illicit financial activity. “The United States will continue to enforce UN and U.S. sanctions and shut down illicit revenue streams to North Korea. Our sanctions will remain in place until we have achieved the final, fully-verified denuclearization of North Korea,” said Treasury Secretary Steven Mnuchin in statement.

NDAA: After much ado, Senate Aug. 1 approved conference report to accompany National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (H.R. 5515) in 87-10 vote. House passed report July 26; bill now goes to president’s desk (see **WTTL**, July 30, page 2).

FCPA: Jose Manuel Gonzalez Testino (Gonzalez), dual U.S.-Venezuelan citizen, was arrested and charged July 31 in Miami U.S. District Court with violating Foreign Corrupt Practices Act (FCPA) for paying \$629,000 in bribes to former official of Venezuela’s state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), in exchange for favorable business treatment. Gonzalez is 17th defendant in larger investigation. Luis Carlos De Leon Perez, dual U.S. citizen, pleaded guilty July 16 in Houston U.S. District Court to conspiracy to violate FCPA and conspiracy to commit money laundering for role in similar scheme (see **WTTL**, July 23, page 9).

PORK: USDA Secretary Sonny Perdue July 30 hailed reintroduction of U.S. pork products to Argentine market for first time since 1992. U.S. and Argentina in April finalized technical requirements (see **WTTL**, April 16, page 5). U.S. is world’s top pork exporter with global sales of \$6.5 billion in 2017. Countries first announced agreement in August 2017 after Vice President Pence met with Argentine President Mauricio Macri in Buenos Aires.

SANCTIONS: In letter July 31, Sen. Ron Wyden (D-Ore.) asked OFAC Acting Director Andrea Gacki whether agency is looking into possible relationships between “sanctioned Russian state-owned arms manufacturing industry and what appear to be Russian-linked United States arms manufacturers.” He also asked for “more information about OFAC’s analysis of these relationships under [agency’s] ownership and control analysis, as well as the ‘50 Percent Rule.’” Specifically, Wyden cited arms manufacturers Kalashnikov USA and Tulammo USA and their ties to state-owned Russian arms manufacturers Kalashnikov Concern and Tula Cartridge Plant. U.S. sanctioned Kalashnikov Concern in 2014.

TURKEY: USTR will review Turkey’s eligibility for Generalized System of Preferences (GSP) program “based on concerns related to its compliance with the GSP market access criterion,” USTR announced Aug. 3. Turkey has imposed additional tariffs on \$1.78 billion of U.S. imports only and not to other trading partners, agency said. U.S. launched WTO dispute against Turkey’s retaliatory tariffs in July (see **WTTL**, July 23, page 2).