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U.S., UK Sign “Novel” Authorization for ITAR Retransfers

In what could signal a template for other trade relationships, Acting Deputy Assistant Secretary of State Mike Miller and Edward Ferguson, minister counsellor (defense) at the British Embassy in Washington, Nov. 20 signed a “novel” authorization for International Trade in Arms Regulations (ITAR) items exported to the United Kingdom (UK).

The agreement “will permit Her Majesty’s Government to retransfer certain qualifying U.S. Munitions List defense articles within the UK for the purposes of repair or maintenance,” a State spokesperson told WTTL via email. Such retransfers ordinarily require individual authorization. This agreement represents ongoing efforts by the Directorate of Defense Trade Controls (DDTC) to “develop innovative approaches to using the ITAR requirements as they relate to our closest allies,” the spokesperson added.

In case one was wondering, this is separate from the U.S.-UK Defense Trade Cooperation Treaty (DTCT), the spokesperson said. “While we’re certainly looking at ways to utilize our authorities in ways that can streamline processes for close allies, no word at this point yet on plans to any similar mechanism being introduced for others at this time, but stay tuned,” he noted.

The DTCT, which the Senate ratified in September 2010, and a similar treaty with Australia allow the export of certain defense items to members of the defense “community” in the two countries for specific programs. In January 2016, then Acting Assistant Secretary of State and DDTC Chief Brian Nilsson traveled to the UK for a routine management board meeting. Despite critiques from industry, sources said at the time no changes to the treaty were coming and implementation was “moving along” (see WTTL, Feb. 8, 2016, page 9).

Societe Generale Pays \$1.34 Billion to Settle Sanctions Violations

In the second-largest penalty imposed on a financial institution for violating U.S. sanctions, French financial services firm Societe Generale (SG) agreed Nov. 19 to pay

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\$1.34 billion to federal and state prosecutors and regulators for violating sanctions against Iran, Sudan, Cuba and Libya by processing billions of dollars of transactions using the U.S. financial system.

Under a three-deferred prosecution agreement on a felony charge of conspiracy to violate the Trading with the Enemy Act (TWEA) and its Cuban regulations, SG agreed to pay \$717 million in civil forfeiture. At the same time, the bank reached separate agreements with the Manhattan District Attorney (DANY), Treasury's Office of Foreign Assets Control (OFAC), the Federal Reserve, and the N.Y. Department of Financial Services (DFS).

SG will pay \$162.8 million in penalties to DANY; \$53.9 million to OFAC; \$81.3 million to the Federal Reserve; and \$325 million to DFS. Société Générale S.A. voluntarily self-disclosed the apparent violations and cooperated with officials. The largest penalty BNP agreed in June 2014 to pay \$8.9 billion in forfeiture and fines for similar, wide-ranging charges (see **WTTL**, July 7, 2014, page 4).

The firm "exercised a reckless disregard for U.S. sanctions requirements when it demonstrated a pattern or practice across multiple bank units and business lines of processing transactions to or through U.S. financial institutions after removing, omitting, obscuring, or otherwise failing to include the involvement of OFAC-sanctioned parties in associated payment instructions, which apparently continued practices set out in stripping instructions that the bank drafted, disseminated, and revoked prior to 2007," OFAC noted.

"Many of the payments to Iran were so-called 'U-Turn payments,' which were allowable under laws governing economic sanctions until November 2008," DFS said. "The bank also corresponded with customers to assure them that U.S. sanctions would have a minimal impact on customer service despite existing sanctions laws," the department added.

In its Cuban payments, "SG avoided detection, in part, by making inaccurate or incomplete notations on payment messages that accompanied these sanctions-violating transactions. Indeed, the SG department that managed many of the Cuban Credit Facilities engaged in a deliberate practice of concealing the Cuban nexus of U.S. dollar payments that were made in connection with those facilities," Justice wrote in a press release.

"We acknowledge and regret the shortcomings that were identified in these settlements, and have cooperated with the U.S. Authorities to resolve these matters. Société Générale has already taken a number of significant steps in recent years and dedicated substantial resources to enhance its sanctions ... compliance programs," CEO Frédéric Oudéa said in a statement.

Between 2004 and 2010, a Legg Mason subsidiary, Permal Group Ltd., partnered with Societe Generale to solicit business from state-owned financial institutions in Libya. The firm and Societe Generale agreed in June to settle separate, but related Justice charges (see **WTTL**, June 11, page 3).

In Game of Trade Chicken, China's Not Flinching

Parents and relationship counselors saw this coming. Despite the administration's best efforts, China is just not changing its behavior in response to billions of dollars of U.S. tariffs on Chinese imports, the U.S. Trade Representative (USTR) announced Nov. 20 in an update to its Section 301 investigation on Beijing's technology transfer, intellectual property and innovation policies.

"China fundamentally has not altered its acts, policies, and practices related to technology transfer, intellectual property, and innovation, and indeed appears to have taken further unreasonable actions in recent months. USTR intends to continue its efforts to monitor any new developments and actions in this area," the report noted.

USTR did not say whether it would continue its policy of imposing increasing tariffs to change the behavior. The president signed a memorandum in March requesting USTR to propose a list of products and tariff increases. Since then, the two countries have imposed rounds of tariffs and volleys of WTO complaints (see related story, page 5).

The USTR report outlined the Chinese government's use of "a variety of tools to regulate or intervene in U.S. companies' operations in China in order to require or pressure the transfer of technologies and intellectual property to Chinese companies. Two key aspects of China's technology transfer regime act to pressure technology transfer: foreign ownership restrictions and administrative licensing and approvals."

At the conclusion of trilateral meetings in September 2018, the trade ministers of the U.S., the European Union (EU) and Japan "further recalled their shared view that no country should require or pressure technology transfer from foreign companies to domestic companies, including, for example, through the use of JV [joint venture] requirements, foreign equity limitations, administrative review and licensing processes, or other means," the USTR said (see **WTTL**, Oct. 1, page 5)

The report also cites a November enforcement action that highlights China's efforts to steal U.S. computer technology. According to the indictment, the Chinese government established Fujian Jinhua Integrated Circuits, Co. Ltd. (Jinhua) to help meet its dynamic random-access memory (DRAM) production goals (see **WTTL**, Nov. 5, page 1).

Houston Drilling Firm Settles SEC Bribery Charges

Vantage Drilling International (Vantage), a Houston-based offshore drilling company, agreed Nov. 19 to pay \$5 million in disgorgement to settle Securities and Exchange Commission (SEC) charges that its former parent company, Vantage Drilling Company (VDC), violated the internal accounting control provisions of the Foreign Corrupt Practices Act (FCPA). "Specifically, VDC failed to devise a system of internal accounting controls with regard to VDC's transactions with VDC's former outside director, largest share-

holder, and only supplier of drilling assets (“Director A”), and failed to properly implement internal accounting controls related to its use of third-party marketing agents. These violations occurred against a backdrop where VDC had an ineffective anticorruption compliance program,” the SEC order noted.

As a result, VDC “made substantial payments to Director A that, among other things, created a risk that VDC was providing or reimbursing funds that Director A intended to use to make improper payments to officials at Petroleo Brasileiro SA (Petrobras), a Brazilian state-owned oil and gas company, in connection with obtaining an 8-year drilling services contract valued at over \$1.8 billion that benefited both Director A, as the supplier of the drilling asset, and VDC.”

“We are very pleased with the closure” of the government’s investigation, Vantage CEO Ihab Toma said in a statement. “Vantage has been, and remains, firmly committed to conducting its operations in compliance with all applicable laws and regulations, including the FCPA,” he added. Justice closed its investigation without taking any action, the company said.

In September, Petrobras agreed to pay \$853.2 million in penalties to settle separate FCPA violations in connection with the company’s role in facilitating payments to politicians and political parties in Brazil, as well as a related Brazilian investigation (see **WTTL**, Oct. 1, page 1).

Commerce Needs to Balance Trade Enforcement Resources, IG Says

Three of Commerce’s top management and performance challenges in fiscal year (FY) 2019 are related to trade and enforcement promotion and involve Bureau of Industry and Security and the International Trade Administration (ITA) resources, according to the department Inspector General’s report (OIG-19-004) published Nov. 14.

These challenges include: building staff expertise for the self-initiation of antidumping (AD) and countervailing duty (CVD) cases; institutionalizing processes for Section 232 product exclusion request reviews and managing the increased foreign investment review workload; and managing the downsizing of trade promotion capacity

In November 2017, the department announced it would self-initiate antidumping (AD) and countervailing duty (CVD) investigations of imports of common alloy aluminum sheet from China, the first self-initiated AD and CVD cases since 1985 and 1991, respectively (see **WTTL**, Dec. 4, 2017, page 2). With its latest budget, the administration has signaled its intent to continue self-initiating cases when warranted by calling for continued development of a specialized unit to handle such cases.

On Section 232 exclusions, OIG “understands from BIS that the unanticipated high volume of exclusion requests, and resulting staffing constraints, contributed to the slow pace of exclusion request resolution,” the report noted. With the administration committed

to using this authority, “both BIS and ITA need to ensure resources are available and processes are in place to facilitate these comprehensive, time-sensitive evaluations.”

With the signing of the 2019 National Defense Authorization Act (NDAA), the review of business transactions involving foreign entities by the Committee on Foreign Investment in the U.S. (CFIUS) will only increase (see **WTTL**, Aug. 20, page 2). “Both BIS and ITA face uncertainty projecting how many transactions will be reviewed—and are faced with ensuring that their workforces possess the technical capacity and that adequate resources and processes are in place to complete these reviews in a timely manner,” the OIG report said.

In contrast, the administration has proposed reducing resources for the ITA Global Markets (GM) business unit. “If the Administration’s proposal to reduce GM’s domestic and overseas presence receives Congressional approval, ITA faces the challenge of restructuring its international and domestic presence by downsizing its workforce—which might include closing offices ranked lower on GM’s resource allocation model—while ensuring the effective delivery of specialized client services,” it added.

Two More Partners Request WTO Panels on Section 232 Tariffs

At a special meeting of the World Trade Organization (WTO) Dispute Settlement Body (DSB) Dec. 4, the members will consider India and Switzerland’s first requests for panels to rule on U.S. steel and aluminium tariffs. The two partners submitted their first requests at a regular DSB meeting Nov. 21.

Like the seven other trading partners that have brought complaints, the two countries argued that the U.S. actions were, in effect and content, safeguard measures and that they were both concerned the U.S. was using national security as a justification for the tariffs (see **WTTL**, Nov. 5, page 4).

At its regular meeting, the DSB agreed to the second requests of China, the EU, Canada, Mexico, Norway, Russia and Turkey to establish panels to rule whether additional duties imposed by the US on imports of certain steel and aluminum products comply with WTO rules. The U.S. said it could not agree to requests from the seven for the establishment of a single three-member panel to review the seven complaints, which are virtually identical.

The U.S. in turn secured the establishment of four panels to rule on increased retaliatory duties imposed by Canada, China, the EU and Mexico on certain U.S. imports in response to the U.S. steel and aluminum tariffs. The DSB also agreed to a second U.S. request to establish a panel to rule on certain Chinese intellectual property rights (IPR) measures. China called the U.S. accusations “meritless.”

It could go without saying that WTO members once again failed to agree on the initiation of the selection process to fill four Appellate Body vacancies after the U.S. repeated it could not accept a proposal backed by 71 WTO members calling for the start of the

selection process as soon as possible. The U.S. repeated that its systemic concerns remain unaddressed, including the Appellate Body's "persistent overreach" in its rulings that have added obligations the U.S. never agreed to.

* * * **Briefs** * * *

EXPORT ENFORCEMENT: Federal jury Nov. 16 in Los Angeles U.S. District Court convicted Rami Ghanem, naturalized U.S. citizen living in Egypt, of conspiring to acquire, transfer and use missiles and missile systems. Two weeks earlier, Ghanem pleaded guilty to six other charges including unlicensed export of weapons and ammunition, smuggling, money laundering and unlicensed arms brokering. In August 2015 Ghanem placed order for \$220,000 worth of sniper rifles, pistols, silencers, laser sights, ammunition, night-vision goggles and other items that were to be shipped to Libya, Justice said in press release. He was extradited in April 2016 after arrest in Greece and remains in custody. Sentencing is set for March 4, 2019.

NORTH KOREA: OFAC Nov. 19 designated Russian-born, South African national Vladlen Amtchentsev for "having acted or purported to act for or on behalf of, directly or indirectly," Singapore-based Velmur Management, company OFAC blocked in August 2017. Velmur, Transatlantic Partners and associated individuals worked to purchase fuel oil and gasoil for North Korea, OFAC said (see **WTTL**, Sept. 4, 2017, page 9). At same time as OFAC designation, two firms were charged with allegedly laundering millions of dollars in connection with North Korea.

SYRIA: OFAC, State and Coast Guard issued advisory Nov. 20 to alert persons to "significant U.S. sanctions risks for parties involved in petroleum shipments to Syria," especially those shipments involving Iran and Russia. "Those who facilitate the financial transfers, logistics, or insurance associated with these or other petroleum shipments are at risk of being targeted" for U.S. sanctions, advisory said. Agencies also warned that "persons in the petroleum shipping industry continue to deploy deceptive practices by obfuscating the destination and recipient of oil shipments in the Mediterranean Sea ultimately destined for Syria."

SECTION 232: In Nov. 26 Federal Register, Commerce invites public user testing of online portal to replace regulations.gov for exclusion requests, objections to exclusion requests, rebuttals and surrebuttals in connection with Section 232 tariffs. Department plans to transition to new portal "sometime in late 2018 to early 2019," notice said. Public testing will be held Dec. 6-7 at Commerce office in Washington. To request approval to participate, contact Commerce232portal@bis.doc.gov. Participants must be U.S. citizens or lawful permanent residents. Email subject line should be "Request to attend public testing of Commerce 232 portal."

TARIFFS: With announcement of U.S.-Mexico-Canada Agreement (USMCA), more than 35 industry and trade groups urged USTR to remove Section 232 tariffs on steel and aluminum imports from Canada and Mexico. In letter Nov. 19, groups said tariffs are "inconsistent with the overall goals of the USMCA." Groups also oppose replacing tariffs with "absolute quota regimes," they wrote. Letter cites retaliatory tariffs and congressional disapproval as other reasons for removal. Signers include U.S. manufacturers, National Retail Federation, U.S. Chamber of Commerce, National Automobile Dealers Association, National Foreign Trade Council and National Pork Producers Council.