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Export Control Agencies Still Try to See Bright Line in Night Vision

As promised, Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) published parallel notices of inquiry (NOI) Jan. 13 proposing even more technical parameters for U.S. Munitions List (USML) Category XII (night vision). Final rules on the USML category published in October depend on items being specially designed for a military end-user (see **WTTL**, Oct. 17, page 3).

Specifically, DDTC asked for potential control parameters for seven entries: Light detection and ranging, laser detection and ranging, or range-gated systems; binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems; electro-optical reconnaissance, surveillance, target detection or target acquisition systems; infrared search and track systems; distributed aperture systems; infrared imaging systems; and terahertz imaging systems.

DDTC also asked for comments on whether any civil or commercial items could be described by 23 suggested technical parameters or anticipated in the next five years. The technical parameters include: number of detector elements, wavelength range, input light level, noise equivalent irradiance, detector pitch, dynamic range and pixel read-out rate, just as examples. Comments are due March 14.

SPIE, the international society for optics and photonics, urged members to provide robust public response. "Our community worked hard to include particular wording in new rules now in place to ensure undue restrictions were not placed on commercial items," said SPIE CEO Eugene Arthurs. "Those who hope to see this guidance retained in the rules will need to step forward and comment once again in order to ensure that their voices are heard and their needs reflected in any revisions resulting from the NOI process."

Biomet Settles Charges of Repeat FCPA Violations

Indiana medical device manufacturer Biomet Jan. 12 agreed to pay over \$30 million to settle parallel charges of Securities and Exchange Commission (SEC) and Justice of

violating the Foreign Corrupt Practices Act (FCPA) involving unlawful payments to Customs officials in Mexico and sales to a prohibited distributor in Brazil.

The company in March 2012 agreed to pay over \$22 million to settle separate FCPA charges of its subsidiaries and agents bribing public doctors in Argentina, Brazil and China for nearly a decade to win business (see **WTTL**, April 2, 2012, page 3). As part of that settlement with the SEC, Biomet agreed to terminate its relationship with a particular Brazilian distributor that carried out the bribes in that country.

As part of the new settlement, the company agreed to pay a criminal fine of \$17.4 million under a three-year deferred prosecution agreement (DPA) with Justice and \$13 million in disgorgement and fine to the SEC. In addition, Biomet subsidiary, JERDS Luxembourg Holding S.à.r.l., the direct parent company of Biomet 3i Mexico, has agreed to plead guilty to FCPA charges in D.C. U.S. District Court.

“From approximately 2008 through 2013, Biomet, through its subsidiary and third party customs brokers, made unlawful payments to Mexican customs officials to facilitate the importation of Biomet’s unregistered and mislabeled dental products into Mexico,” the new SEC order noted.

“In addition, from 2009 to 2013, Biomet improperly recorded transactions with a known prohibited distributor in Brazil as transactions with another distributor. Biomet had prohibited the use of the distributor after determining the distributor made improper payments to public doctors in Brazil from 2000 to August 2008 to obtain sales of Biomet products,” it added. “Biomet could not account for the prohibited distributor’s use of certain funds nor determine if the prohibited distributor had continued the same improper conduct,” the SEC noted.

“Despite telling the government that it had terminated its relationship with Prohibited Brazilian Distributor in 2008, Biomet continued to sell goods into Brazil through Prohibited Brazilian Distributor through 2013. Biomet International recorded the transactions with Prohibited Brazilian Distributor on its books and records as if they were transactions with their authorized distributor. Biomet did not take any action to stop the conduct until it received a whistleblower complaint at the end of 2013, and initiated an internal investigation,” the agency said.

In June 2015, Zimmer Holdings acquired Biomet. “We are pleased to have reached this resolution involving legacy Biomet FCPA compliance matters,” said Chad Phipps, senior VP, general counsel and secretary of Zimmer Biomet Holdings in a statement. “Zimmer Biomet is committed to upholding the highest ethical and legal standards in our business practices across the globe, and we look forward to continuing to integrate the legacy Biomet business operations into our robust corporate compliance program,” he added.

USTR Files WTO Complaint Against Chinese Aluminum Subsidies

Just days before the end of the Obama administration, U.S. Trade Representative (USTR) Michael Froman Jan. 12 initiated dispute proceedings against China at the World Trade

Organization (WTO), its 16th trade enforcement case against Beijing. China stands accused of subsidizing its aluminum industry leading to excess capacity in the aluminum sector. If the dispute is not resolved in 60 days, then the U.S. can request adjudication.

“Artificially cheap loans from banks and low-priced inputs for Chinese aluminum are contributing to excess capacity and undercutting American workers and businesses,” Froman said at a press conference. These subsidies are inconsistent under Article 5(c) of the Subsidies and Countervailing Measures Agreement in which WTO members agreed subsidies should not cause “serious prejudice” to other members, he said.

The U.S. alleges that China’s activities have led to the “displacement or impendance of U.S. imports into China and third country markets, significant price undercutting, price suppression, price depression or lost sales in a given market, or through an increase in Chinese world market share,” a USTR factsheet noted. Chinese aluminum overproduction is contributing to lower global prices for aluminum, it added.

Chinese primary aluminum production increased 154% between 2007 and 2015 while global prices fell 46%. Meanwhile, U.S. production decreased 37% and the number of aluminum smelters fell from 14 in 2011 to five in 2016, only one of which is operating at full capacity. USTR said this is further proof that China has not transitioned to a market economy. In response to another WTO dispute, the Obama administration has cited China’s overcapacity in the aluminum and steel industries as one of the reasons it refuses to change how it calculates antidumping duties (see **WTTL**, Dec. 19, page 3).

“Every day nearly 3,000 people in Washington state head to their jobs in the aluminum industry, and that work is directly responsible for \$1.3 billion of our state’s economic output. Aluminum is critical to Washington State’s manufacturing sector and our middle class,” said Rep. Suzan DelBene (D-Wash.), cochair of the Congressional Aluminum Caucus. DelBene, who recently joined the House Ways and Means trade subcommittee, said she hoped the action would bring China to the negotiating table to avoid a protracted legal battle.

President Obama released a statement touting his administration’s winning record at the WTO. “From enhancing fair trade laws and expanding enforcement resources to preventing unfair currency practices and safeguarding intellectual property, our record of forceful and effective trade enforcement on behalf of American businesses and workers has protected American jobs. It's simple: when the playing field is level, American workers win,” Obama said.

Industry and labor groups were generally positive. “USTR’s decision to challenge these unreasonable, illegal, and harmful subsidies is an important step towards a long-term solution for the global aluminum industry, and we are thankful for the administration’s efforts on the industry’s behalf,” Michael Bless, president and CEO of Century Aluminum, said in a statement. Century operates three of the only five remaining smelters in the U.S, he added.

The Aluminum Association took a neutral stance on the action saying it will “review in detail” the consultation request. “We will assess the impacts of this action across the full value chain and continue to believe that a negotiated agreement between the U.S. and Chinese governments is needed to address the fundamental issue of aluminum overcapacity in China,” said Aluminum Association President and CEO Heidi Brock in a statement.

United Steelworkers (USW), on the other hand, praised USTR. “Success in this case would give hope to the thousands of aluminum sector workers across the country that have either lost their jobs or are in fear of losing them in this distorted market,” said USW President Leo Gerard.

Tillerson Faces Tough Questions on Russia, Cuba

Exxon CEO Rex Tillerson faced a tough Senate Foreign Relations Committee hearing Jan. 11 on his nomination to be secretary of State, and could see opposition from within the incoming administration’s own party. During the hearing, committee members from both sides of the dais tried to get answers on the nominees’ views on Cuba policy and Russian sanctions, as well as climate change and trade deals.

At the hearing, Sen. Marco Rubio (R-Fla.) grilled him on Russia’s involvement in Syria, as well as current relations with Cuba, and at press time had not yet confirmed whether he will vote for the nominee. In contrast, Rubio has issued glowing press releases in support of many other nominees. Some committee Democrats including Sen. Jeff Merkley (D-Ore.) have said they will not support Tillerson’s nomination, while Chairman Bob Corker (R-Tenn.) immediately announced his support. All it takes is one committee Republican to block his nomination if all the Democrats vote no.

Committee Ranking Member Ben Cardin (D-Md.) was also noncommittal. “Ahead of the Committee’s vote on his nomination, which has not yet been set, I will be conducting additional research, asking further questions of Mr. Tillerson for the record – including reiterating my questions about his tax return information, and consulting with my colleagues on both sides of the aisle,” he said in a statement.

Due to his history of friendship with Russia, and extensive business dealings there, senators asked many questions about his views on sanctions policy. “Sanctions are an important and powerful tool. But designing poor sanctions and having poor and ineffective sanctions can have a worse effect than having no sanctions at all if they convey a weak response,” he said.

In a confusing set of answers, Tillerson denied lobbying against sanctions on Russia, despite several years of company disclosures that prove otherwise. “I have never lobbied against sanctions personally. To my knowledge, Exxon never directly lobbied against sanctions. Not to my knowledge,” he said. Many of his other answers were some variation of “I would need more information” or “I don’t know.”

In its own defense, ExxonMobil tweeted during the hearing: “Let’s be clear: we engage with lawmakers to discuss sanction impacts, not whether or not sanctions should be imposed.”

In an answer on the current status of travel to on Cuba, Tillerson noted that the president-elect will do a complete review of the policy. “I think he has been clear on his intent that he will ask all agencies on day one to do a complete review of recent executive orders in the change of status of travel to Cuba as well as business activities in Cuba. That would be my expectation that the president would not immediately approve that bill until that review had occurred. Because that would be part of a broader view of our posture towards Cuba,” he said.

In other subjects, Tillerson reiterated his stance on the Trans-Pacific Partnership (TPP), which may go against those of his new boss. “I do not oppose TPP. I share some of [Trump’s] views regarding whether the agreement that was negotiated serves all of America’s interests at best.” On the Paris climate agreement, Tillerson hinted he would prefer that the U.S. be at the table, while his potential new boss has said he would walk away from the deal.

Chilean Mining Company Pays \$30.5 Million to Settle FCPA Charges

Chilean chemical and mining company Sociedad Quimica y Minera de Chile (SQM) agreed Jan .13 to pay more than \$30 million to the Securities and Exchange Commission (SEC) and Justice to resolve charges it violated the Foreign Corrupt Practices Act (FCPA) from 2008 to 2015 by making \$14.75 million in improper payments to Chilean political figures.

“Most of the payments were made based on fictitious documentation submitted to SQM by persons and entities associated with PEPs [political figures] who posed as legitimate vendors to SQM (“third party vendors”). Those payments were not supported by documentation that those third-party vendors provided services to SQM. Virtually all of the improper payments to PEPs were directed and authorized by a senior SQM executive,” the SEC order noted.

Under the settlement, SQM agreed to pay a \$15 million penalty to SEC and \$15.5 million penalty as part of a three-year deferred prosecution agreement (DPA) with Justice. The company reported the investigation in an SEC filing in December 2015. “After acknowledging receipt of the Report, the directors expressed that the Company will continue to cooperate with authorities and adopt the appropriate measures to improve its corporate governance and internal controls,” the filing said.

Senators Introduce Bipartisan Russia Sanctions Bill

In a not-so- subtle hint to the incoming administration, a bipartisan group of senators Jan. 10 introduced Countering Russian Hostilities Act of 2017 (S.94), a bill to impose sanctions in response to Russian cyber intrusions and other aggressive activities including in

Ukraine and Syria. The measures in the bill build upon sanctions President Obama imposed in December in response to the Russian hacking of the presidential election (see *WTTL*, Jan. 2, page 1).

Among its provisions, the bill would: impose mandatory visa bans and asset freezes on those who undermine the cybersecurity of public or private infrastructure and democratic institutions; impose mandatory sanctions on those who materially assist, sponsor, or provide financial, material, or technological support for such activities; impose mandatory sanctions on transactions with the Russian defense or intelligence sectors, including the FSB and GRU; and codify the administration's Executive Order (EO) 13694 and its related annex regarding cyber security and Russian interference in the 2016 election.

In addition, the bill would: codify the four Obama administration EOs with respect to sanctions on Russia for its actions in Ukraine; mandate sanctions on investments of \$20 million or more in Russia's ability to develop its petroleum and natural gas resources; mandate sanctions on the development of Russian energy pipelines; impose mandatory sanctions on investments in Russian civil nuclear projects; impose mandatory sanctions on U.S. and third-party investment in Russian privatization of state-owned assets and sales of sovereign debt; and impose visa ban and asset freezes on those responsible for serious human rights abuses in any territory occupied or controlled by Russia.

"The facts are clear, and it's time to act. America must stand united in sending a strong message to the Kremlin that this attack on the foundation our democracy will not go unpunished. I'm very proud to say that this legislation is bipartisan and pulls no punches. President-elect Trump should face the facts and lend his support to our effort," Sen. Jeanne Shaheen (D-N.H.) said in a statement.

Other cosponsors are: Sens. Ben Cardin (D-Md.), ranking member of the Senate Foreign Relations Committee; John McCain (R-Ariz.), Armed Services Committee Chairman; Robert Menendez (D-N.J.); Lindsey Graham (R-S.C.); Marco Rubio (R-Fla.); Amy Klobuchar (D-Minn.); Ben Sasse (R-Neb.); Dick Durbin (D-Ill.); and Rob Portman (R-Ohio).

Labor Finds Weaknesses in Colombia's Efforts to Support Unions

The Labor Department identified significant concerns regarding Colombian labor law enforcement and the prosecution of cases involving anti-union violence in a report released Jan. 11. The report was in response to a petition filed under the labor chapter of the U.S.-Colombia Trade Promotion Agreement (CTPA) by AFL-CIO and five Colombian workers' organizations in May (see *WTTL*, July 18, page 10).

Labor's Office of Trade and Labor Affairs (OTLA) found that though Colombia's Ministry of Labor had taken steps to strengthen its labor law inspection system, shortcomings remain. The OTLA report highlighted a lack of capacity of the Labor Inspectorate, delays in the inspection process, and delays and lack of systemic collection of fines related to collective bargaining and freedom of association.

OTLA recommended that the Labor Secretary initiate consultations through the CTPA labor chapter. In coordination with USTR and State, Labor can consult with the Colombian government to improve its labor law inspection system and means of fine application and collection, set up measures to combat abusive subcontracting and collective pacts, and improve investigation and prosecution of violence against unionists.

“The Department of Labor report recognizes significant progress made by the Colombian government and includes recommendations to ensure additional progress. The government of Colombia will continue to engage with the Department of Labor in consultations to implement the recommendations and enhance our efforts to guarantee the rights of our workers,” the Colombian Embassy said in response.

“Colombia has achieved significant progress in the last five years, generating better opportunities for workers, placing new labor inspectors in positions around the country to review the fulfillment of labor standards, issuing new regulations that strengthen control over labor subcontracting methods, promoting the creation of unions and making meaningful progress in preventing and addressing violence and threats against unionists,” the embassy continued.

AFL-CIO President Richard Trumka said that while he was pleased with Labor’s report, more should be done. “While we are pleased to see the report recommend a relatively brief nine-month dialogue period, the U.S. government failed to pursue consultations under Article 17.7, which would enable the U.S. to move most quickly to dispute settlement. We are hopeful that if Colombia is not in full compliance with its trade obligations at the end of this period, the U.S. government will immediately enter into the 17.7 consultations rather than duplicating the unacceptable delays that have plagued other cases, most notably the Guatemala process which is now approaching its 9th year without a resolution,” he said in a statement.

“Today’s report highlights that Colombia is not living up to its labor obligations in the U.S.-Colombia Trade Promotion Agreement and calls for initial consultations between our governments. This is an important step in addressing Colombia’s failure to satisfy its obligations, but the onus is now on President-elect Trump to ensure that these consultations lead to meaningful results for American workers,” said House Ways and Means Ranking Member Richard Neal (D-Mass.) in a statement.

USTR Sees Little Progress in China’s WTO Compliance

Though China’s current leadership, in power since 2013, has often spoken of economic reform, there is little evidence of meaningful progress in curbing practices that generate “significant trade distortions,” USTR said Jan. 9 in its 2016 Report to Congress on China’s WTO Compliance.

“If China is going to deal successfully with its increasing economic challenges at home, it must allow greater scope for market forces to operate, which requires altering the role of the state in planning the economy. China likewise must reform state-owned enterprises

(SOEs), eliminate preferences for domestic national champions and remove market access barriers currently confronting foreign goods and services. Otherwise, China's economic challenges will only increase and become more difficult to solve," read the report.

Major areas of concern include issues with intellectual property rights enforcement, China's "prolific use" of supporting SOEs, agricultural policies that blocked U.S. market access, restrictions on services, and inadequate transparency. The report also noted China's "slow movement" toward joining the WTO's Government Procurement Agreement.

Despite these challenges, U.S. exports of goods to China totaled \$116 billion in 2015, an increase of 505% since 2001, making China the U.S.' largest goods export market outside North America. U.S. service exports were \$48 billion, an 802% increase since 2001, when Beijing joined the WTO.

In 2016, China took steps to reduce excess capacity in the steel industry, engaged in bilateral dialogue with the U.S., and affirmed it is strengthening its trade secrets protections and enforcement, the USTR report noted. On the negative side, the U.S. has filed 21 WTO enforcement cases against China since 2001 with the most recent coming Jan. 12 (see page 7).

BIS, DDTC Launch Final Satellite Rules

Sometimes "soon" really means soon. BIS and DDTC published final rules on transfers from U.S. Munitions List (USML) Category XV (satellites) that will go into effect Jan. 15. As each agency previously posted on its respective website, the two rules address changes in aperture size for spacecraft that warrant control on the USML; the movement of the James Webb Space Telescope (JWST) from the USML to Export Control Classification Number (ECCN) 9A004; and other clarifications and corrections (see **WTTL**, Jan. 9, page 1).

According to a factsheet posted by NOAA's Office of Space Commerce, the revised rules include "several notable changes requested by the commercial space industry and advocated by the Commerce Department." Other changes include: eliminating controls based on whether a spacecraft supports human habitation (Such spacecraft may still be controlled by other criteria.); redefining several controls based on technical capabilities rather than end use of the spacecraft ; removing and replacing confusing criteria concerning integrated propulsion and attitude control; and adding thresholds for the controls on electric propulsion systems.

The DDTC rule, for example, amends several paragraphs to "better reflect the intended scope of control with regard to autonomous tracking systems, logistics, propulsion systems, cryocoolers and vibration suppression systems."

The JWST, which is the "scientific successor" to the famous Hubble telescope, will be launched on an Ariane 5 rocket from French Guiana in October 2018, according to the NASA JWST website. It will have a much larger primary mirror than Hubble (2.7 times

larger in diameter, or about 6 times larger in area), giving it more light-gathering power and will reside 1 million miles (1.5 million km) away from Earth, NASA notes.

“Miscalculation of Enormous Proportions” to Cut TPP, Froman Says

Withdrawing from the TPP doesn't jibe with getting tough on China in USTR Michael Froman's worldview. "There simply is no way to reconcile a get-tough-on-China policy with withdrawing from TPP. That would be the biggest gift any U.S. president could give China, one with broad and deep consequences, economic and strategic," Froman said at his final keynote Jan. 10.

China has mounted an aggressive campaign to position itself in the Asia-Pacific region with the One Belt/One Road Initiative, Silk Road Fund, Asian Infrastructure Investment Bank, expansion into the South China Sea, and, of course, the Regional Comprehensive Economic Partnership (RCEP), which involves some of the TPP countries.

“Now, I can't imagine any president would want to abdicate our leadership in the Asia-Pacific, to be responsible for handing the keys of the castle to China, for driving our historic allies and China's historic rivals into China's arms. It would be a strategic miscalculation of enormous proportions,” Froman warned.

Froman declined to predict how the incoming administration will approach TPP, but he did comment that other TPP countries moving ahead with TPP is “not to spurn us, but to encourage us to also join.” The deep unpopularity of TPP was due to a failure to accurately describe the deal and allay workers concerns, though organized labor was invited and did participate by giving their views on the deal, he added.

He briefly addressed the future of the Transatlantic Trade and Investment Partnership (TTIP). “Long before the election,” European negotiators could not talk about sensitive issues that delayed progress, Froman said. Because several European nations are headed into elections, regardless of where the president-elect stands, Europe may not be ready for a while yet to pick TTIP back up.

Voter Discontent Needs to Spur Domestic Policy Fixes, Not Risk Trade

Popular discontent in the U.S., UK and other countries can drive fixes for broken domestic policies, but should not be used to undermine benefits delivered by liberalized trade, automation, technology and communications, and the rise of more efficient, innovative and dynamic ways of living and doing business, officials and executives said Jan. 12 in Geneva at an event focused on the U.S. election's effect on trade policies.

Some speakers mentioned the desire to avoid attracting the attention and ire of the Trump administration. For example, Canada has not popped up on Trump's radar, said John Manley, chief of Business Council of Canada, a group of leaders from many large

companies in that country. “We’re not trying to bring ourselves to his attention,” Manley said. Nothing like this has been seen before in a country as large on the global stage as the U.S., he noted.

The U.S. elections are a “game changer” for Switzerland, said Tibere Adler, a director at think tank Avenir Suisse. Speakers were almost exclusively preparing to avoid or limit damage during the next two years, which they saw as the riskiest period. The election has inspired scant optimism, a discouraging wait-and-see approach and a look away from the U.S. for allies.

Switzerland is heavily dependent on international trade, Adler said. Switzerland may look to build on bilateral deals in Asia after testing the water with China, and reconsideration of talks with the U.S. after negotiations were blocked 10 years ago, he said.

The Republicans will make Trump a hero during the first 100 days of the administration, said Richard Baldwin, professor of international economics at the Graduate Institute in Geneva. A fiscal stimulus that boosts the budget deficit with the current relatively high level of employment will result in a “booming economy,” Baldwin said. That will increase the value of the U.S. dollar, exacerbating the trade deficit and increasing protectionist pressure, possibly as early as the end of 2017, he said.

The U.S. can reverse trade liberalization, but that will not resolve domestic problems underlying discontent, Arancha Gonzalez, executive director of the International Trade Centre and former WTO official, said. “Don’t mess up trade; fix your domestic policies,” Gonzalez said. Other speakers described popular and economic pressures from liberalization, automation, off-shoring factories and knowledge, and the rise of information technology.

Twenty-first century trade is about factories and know-how crossing borders, Baldwin said. Companies’ managerial, technical, and marketing know-how went with the jobs, he said. Competition in this paradigm is not based on comparative advantage, Baldwin said. However, Trump’s main trade nominees -- Robert Lighthizer for USTR and Wilbur Ross for Commerce -- are linked heavily to 19th- and 20th-century industries, Baldwin said, referring to steel and textiles (see **WTTL**, Jan. 9, page 2).

Mexican foreign service officials have been “almost exclusively” talking about the Trump election, said Baldwin, who had just returned from that country the week before. Mexican officials feel like they are on the “front line” of “Trump trade tribulations,” he said. They believe the U.S. is “warming up an aggressive trade stance” with Mexico as a “test case” for China, he said.

The “big trade fight” will be “border taxes,” said Gary Horlick, a D.C.-based attorney who represents certain tech and other companies.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Berty Tyloo of Switzerland agreed Jan. 10 to three-year BIS export denial order for misrepresentation and concealment of facts in course of investigation related to unlicensed exports and reexports from Lebanon to Syria of U.S.-origin Agilent items. During interview with two BIS agents in June 2013, “Tyloo stated that he had ‘no idea’ how Agilent products had ended up in Syria and that, as far as he knew, all such products had stayed in Lebanon,” BIS order said. Tyloo was area sales manager for Middle East and Africa for Agilent products for European subsidiaries or affiliates of Agilent, including through Lebanese distributor or reseller, Technoline SAL. Technoline agreed in September to pay BIS \$450,000 to settle seven charges of reexporting controlled items to Syria without BIS licenses between August 2009 and October 2010 (see **WTTL**, Oct. 3, page 9).

CANADA: Canadian Trade Minister Chrystia Freeland Jan. 10 became Foreign Affairs Minister, replacing Stéphane Dion; Freeland “retains the Canada-U.S. relations file, including trade relations,” Prime Minister Trudeau said in statement. François-Philippe Champagne, formerly Parliamentary Secretary to Finance Minister, replaced her as trade minister.

WASHING MACHINES: In 6-0 final vote Jan. 10, ITC found U.S. industry is materially injured by dumped imports of large residential washers from China.

BEDROOM FURNITURE: In 5-0 “sunset” vote Jan. 10, ITC said revoking antidumping duty order on wooden bedroom furniture from China would renew injury to U.S. industry. Commissioner Dean A. Pinkert did not participate in this review.

ENTITY LIST: BIS in Jan. 10 Federal Register added five persons in Turkey to Entity List. AR Kompozit Kimya and Murat Taskiran exported high grade U.S.-origin carbon fiber to Iran in violation of U.S. law. Fulya Kalfatoglu Oguzturk, Ramor Group and Resit Tavan are being added to the Entity List for “their involvement in the procurement and/or retransfer of U.S.-origin items to Iran for use by the Iranian military,” BIS noted. At same time, agency removed Veteran Avia LLC in India and revised four entries in Armenia, Greece, Pakistan and UK to reflect entity removal. BIS also revised entry for FAU Glavgosekspertiza Rossii to conform with December general license (see **WTTL**, Jan. 2, page 1).

CIVIL PENALTIES: State in Federal Register Jan. 11 adjusted maximum amounts of civil monetary penalties (CMPs) it assesses under Arms Export Control Act (AECA) to apply 2017 cost-of-living adjustment multiplier. Under new rule, for each violation of AECA section 38(e), new maximum adjusted penalty level will be \$1,111,908 (previously \$1,094,010); section 39A(c), \$808,458 (previously \$795,445); and section 40(k), \$962,295 (previously \$946,805). Department implemented “catch-up” adjustments to in June (see **WTTL**, June 13, page 10).

IRAN SANCTIONS: Aban Offshore Limited of Chennai, India, agreed Jan. 12 to pay Treasury’s Office of Foreign Assets Control (OFAC) \$17,500 to settle charge of violating Iran sanctions in June 2008. “Aban’s Singapore subsidiary placed an order for oil rig supplies from a vendor in the United States with the intended purpose of re-exporting these supplies from the United Arab Emirates to a jack-up oil drilling rig located in the South Pars Gas Fields in Iranian territorial waters,” agency said. Aban did not voluntarily self-disclose violation.

FCPA: Juan Jose Hernandez Comerma of Weston, Fla, pleaded guilty Jan. 10 in Houston U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and violating FCPA

for role in scheme to bribe purchasing officials from Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Charles Quintard Beech III of Katy, Texas, also pleaded guilty to conspiracy to violate FCPA. Sentencing for both defendants is scheduled for July 14. Hernandez admitted to conspiring with U.S. businessmen Abraham Jose Shiera Bastidas and Roberto Enrique Rincon Fernandez. Rincon and Shiera previously pleaded guilty to related charges and will be sentenced at same time (see **WTTL**, June 20, page 6).

MORE FCPA: Indictment was unsealed Jan. 10 in Manhattan U.S. District Court against father-son defendants, Ban Ki Sang of South Korea and Joo Hyun Bahn, aka Dennis Bahn, of Tenafly, N.J., for violating Foreign Corrupt Practices Act (FCPA), money laundering and wire fraud. Two allegedly conspired to pay \$2.5 million in bribes to close \$800 million skyscraper deal in Vietnam. Also charged was Malcolm Harris, of New York. San Woo, aka John Woo, of Edgewater, N.J. was charged separately with conspiracy to violate FCPA. Bahn was arrested in Tenafly that day and released on \$250,000 bond, and Woo was arrested at JFK Airport. Ban and Harris are at large.

SANCTIONS: OFAC Jan. 12 issued guidance on provision of certain services to blocked persons relating to requirements of U.S. sanctions laws. Guidance "does not reflect a change in OFAC's policy with respect to the provision of these types of legal and compliance services," agency said. U.S. persons "have been able to provide, and may continue to provide," these services: providing information or guidance regarding requirements of U.S. sanctions law; and opining on legality of specific transactions under U.S. sanctions laws regardless of whether it would be prohibited for U.S. person to engage in those transactions, OFAC said.

MORE SANCTIONS: Toronto-Dominion Bank (TD Bank), Canadian financial institution Jan. 13 agreed to pay OFAC \$516,105 to settle apparent violations of Cuba and Iran sanctions. Between 2007 and 2012, TD Bank processed 167 transactions totaling \$2.13 million through U.S. on behalf of customers, including sales agent of blocked Iranian entity and Cuban nationals residing in Canada..... OFAC also issued separate Finding of Violation to TD Bank, parent company of wholly owned subsidiaries Internaxx Bank SA and TD Waterhouse Investment Services (Europe) Limited (TDWIS), for violating Cuba and Iran sanctions. Between 2007 and 2013, Internaxx and TDWIS processed 3,491 securities-related transactions totaling approximately \$93 million through U.S. on behalf of persons in Iran or Cuba.

CUBA: Alliance for Responsible Cuba Policy Foundation agreed Jan. 12 to pay OFAC \$10,000 to settle civil charges of violating Cuba sanctions. Unnamed "individual" on behalf of Alliance engaged in "unauthorized travel-related transactions during business travel to Cuba" in 2010 and 2011, and provided "unauthorized travel services" to 20 people during those trips, OFAC said. Statement from National Lawyers Guild Cuba Subcommittee identified Albert Fox as Alliance founder and involved individual.

NEW ADVISORY COUNCIL: Commerce Secretary Pritzker announced Jan. 9 intent to establish Advisory Council on Trade Enforcement and Compliance (ACTEC). ACTEC members to advise secretary on trade enforcement, partners' trade compliance, and programs and policies to "support a strong trade and manufacturing agenda and enhance the commercial competitiveness" of U.S. Members will be selected by incoming administration in consultation with Commerce staff.

INSURANCE: Treasury and USTR announced Jan. 13 completion of negotiations for covered agreement with European Union (EU) that covers reinsurance, group supervision and exchange of insurance information between supervisors. "U.S. and EU insurers operating in the other market will only be subject to worldwide prudential insurance group oversight by the supervisors in their

home jurisdiction,” joint U.S.-EU statement said. Negotiations began in February 2016 (see **WTTL**, Nov. 14, page 7).

MTB: ITC began accepting comments Jan. 11 on petitions seeking temporary duty suspensions and reductions. Commission previously accepted petitions in 2016 (see **WTTL**, Oct. 17, page 7). ITC will evaluate petitions and submit reports to Congress for use in creating Miscellaneous Tariff Bill (MTB).

CHINA: Ministry of Commerce People’s Republic of China (MOFCOM) Jan. 11 levied antidumping (AD) and countervailing duties (CVD) on U.S. distiller grain, finding it damaging to China’s industry. MOFCOM announced AD and CVD rates of 42.2-53.7% and 11.2-12%, effective Jan. 12 for five years. U.S. Grains Council President and CEO Tom Sleight said his organization is “deeply disappointed” in decision.

NORTH KOREA: OFAC Jan. 11 designated seven North Korean officials and two government entities in response to that country’s human rights abuses and censorship activities. Pursuant to Executive Order (EO) 13687, OFAC designated Kim Won Hong, Kim Il-Nam, Kim Yo Jong, Choe Hwi, Min Byong Chol, Jo Yong-Won, and Kang P’il Hun. OFAC also identified State Planning Commission and Ministry of Labor pursuant to EO 13722. OFAC in December issued General License 1-A regarding funds transfers to diplomatic mission (see **WTTL**, Jan. 2, page 11).

SUDAN: Per President Obama’s Jan. 13 executive order lifting some Sudan sanctions, OFAC amended Sudanese Sanctions Regulations (SSR) to immediately authorize certain transactions previously prohibited. Changes are outcome of sustained progress by Sudan’s government during past six months. Sudan will remain state sponsor of terrorism... BIS in Federal Register Jan. 17 will revise review policy for license applications to export or reexport to Sudan certain items to ensure civil aviation safety or safe operation of fixed-wing, commercial passenger aircraft. Rule also revises review policy to general policy of approval for export license applications for certain items “to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan,” BIS notice said.

PARAGUAY: U.S. and Paraguay signed bilateral Trade and Investment Framework Agreement (TIFA) Jan. 13, USTR announced. Two-way trade in goods between two countries was about \$1.7 billion in 2015, increase of nearly 70% from 2005.

DIGITAL TRADE: USTR Jan. 13 requested ITC conduct three investigations into digital trade. First will describe recent market developments for business-to-business (B2B) and business-to-consumer (B2C) digital technologies and services, as well as “regulatory and policy measures currently in force,” USTR said. Second and third reports will analyze measures that affect U.S. firms’ ability to develop and/or supply B2B and B2C services and products, respectively.

MAGNITSKY ACT: Treasury, acting on State report, added five more individuals to its list of Specially Designated Nationals Jan. 9 under Sergei Magnitsky Rule of Law Accountability Act or Magnitsky Act (see **WTTL**, Jan. 5, 2015, page 8). “I expect the incoming Trump administration to fully implement this law by adding additional names as information becomes available,” Sen. Ben Cardin (D-Md.) said in statement.

SYRIA: Responding to UN finding that Syria used industrial chlorine against its own people, OFAC Jan. 12 added 18 senior officials to its list of Specially Designated Nationals and identified five Syrian military branches as part of government. Action is first time OFAC is sanctioning Syrian military officials in connection with regime’s use of chemical weapons, agency said.