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State Adds 30 to Nonproliferation Sanctions

While members of Congress were introducing bills mandating new sanctions, State imposed sanctions on 30 foreign entities and individuals in 10 countries under the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), the department announced March 24 (see related story, page 2). The sanctions went into effect March 21.

Of the group, 11 entities and individuals were sanctioned for “transfers of sensitive items to Iran’s ballistic missile program,” State noted. On that list was Mabrooka Trading, a United Arab Emirates (UAE)-based firm that Treasury’s Office of Foreign Assets Control (OFAC) designated in January 2016. OFAC designated Mabrooka associates in February (see **WTTL**, Feb. 6, page 1).

Also on the list was Karl Lee aka Li Fangwei, who was indicted in April 2014 in Manhattan U.S. District Court on charges of conspiracy to violate the International Emergency Economic Powers Act (IEEPA), conspiracy to commit money laundering, bank fraud and wire fraud (see **WTTL**, May 5, 2014, page 4). Sinotech (Dalian) Carbon and Graphite Corporation (SCGC) and Dalian Zenghua Maoyi Youxian Gongsi were two of Lee’s front companies, which OFAC designated at the same time as his indictment.

State sanctioned 19 additional foreign entities and individuals under INKSNA for other violations, it said. The department found credible information that the entities had “transferred to, or acquired from, Iran, North Korea, or Syria goods, services, or technology listed on multilateral export control lists; or on U.S. national control lists, or other items that could make a material contribution to the development of weapons of mass destruction or missile proliferation,” State noted.

U.S. Drugmaker Loses NAFTA Claim Against Canada

U.S. pharmaceutical firm Eli Lilly lost its long-running arbitration case against Canada March 16 as the International Centre for the Settlement of Investment Disputes (ICSID)

tribunal rejected the drugmaker's CDN\$500 million claim filed under NAFTA's dispute settlement provisions (Chapter 11). Eli Lilly was ordered to pay arbitration costs and three-quarters of Canada's legal costs, approximately \$5 million.

Eli Lilly first filed the case in 2013, accusing Canada of hurting its profits by canceling the company's patents for Strattera and Zyprexa. The company said the promise utility doctrine in Canada's patent law was a "radical change" that showed favoritism to domestic generic pharmaceutical companies. Canada argued that Eli Lilly's claims were beyond the jurisdiction of the tribunal and are "wholly without merit as a matter of both fact and law," according to a fact sheet on the Canadian government website.

While the tribunal dismissed Ottawa's arguments on jurisdictional grounds, it ruled that Eli Lilly "failed to establish the factual premise of its claims," the three-member panel wrote. Specifically, the panel found that the challenged measures "cannot form the basis of an expropriation claim under NAFTA Article 1110 or a claim for a violation of the minimum standard of treatment under NAFTA Article 1105. The Tribunal also finds that there was not an arbitrary or discriminatory measure in violation of NAFTA Article 1110 or NAFTA Article 1105."

The U.S. and Mexico weighed in several times during the case through NAFTA Article 1128 submissions. Pharmaceutical Research and Manufacturers of America (PhRMA), Mexican Association of the Research Based Pharmaceutical Industry (AMIIF) and Biotechnology Innovation Organization (BIO) all filed amici curiae in support of Eli Lilly.

"We are disappointed that the tribunal's decision was made on narrow investment dispute grounds and did not even address whether Canada's 'promise' doctrine is consistent with NAFTA intellectual property rules," PhRMA said in a statement March 21. "Canada has used this discriminatory policy in 28 court decisions that invalidated 25 patents on 21 medicines over the last decade, targeting only pharmaceutical companies. Canada's actions have undermined patent protection and removed a critical incentive that drives and sustains biopharmaceutical innovation," it added.

Industry groups also denounced the ruling. "The NAFTA tribunal ruling is both faulty and contrary to actual evidence. It failed to recognize that the evolution of Canada's intellectual property policy known as the 'promise utility doctrine' represented a dramatic shift in policy, nor did it recognize the harm it causes to pharmaceutical innovators investing in Canada," Stephen J. Ezell, Information Technology and Innovation Foundation (ITIF) vice president for global innovation policy, said in a statement.

"While Canada won this case, uncertainty regarding the country's IP policies will ultimately hurt the Canadian economy as well as the cause of global innovation," he added.

Iran Sanctions Bills Target Missile Development

Members of Congress who opposed the Iran nuclear deal are not backing down on their efforts to impose further sanctions on Tehran. Adding to the list of sanctions legislations

already sitting on committee dockets, House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) and Ranking Member Eliot Engel (D-N.Y.) March 23 introduced the Iran Ballistic Missiles and International Sanctions Enforcement Act (H.R. 1698).

At the same time, their counterparts on the Senate Foreign Relations Committee, Chairman Bob Corker (R-Tenn.) and Ranking Member Ben Cardin (D-Md.), introduced a parallel bill Countering Iran's Destabilizing Activities Act of 2017 (S. 722) (see **WTTL**, Feb. 6, page 6).

The bills mandate sanctions on: Iranian government agencies involved in ballistic missile development; any foreign entity, inside or outside Iran, that supplies material for those efforts; any foreign entity, inside or outside Iran, that finances or otherwise facilitates Iran's ballistic development; or anyone providing to or receiving from Iran conventional weapons or related materials in violation of United Nations (UN) Security Council Resolution 2231.

"This legislation demonstrates the strong bipartisan support in Congress for a comprehensive approach to holding Iran accountable by targeting all aspects of the regime's destabilizing actions," Corker said in a statement. "These steps will allow us to regain the initiative on Iran and pushback forcefully against this threat to our security and that of our allies," he added.

"This bill takes a proactive approach. It shuts Iranian and foreign companies involved in Iran's missile program – and the banks that back them – out of the financial system. And it will penalize those who trade conventional weapons with Iran in violation of international restrictions," Royce noted in a statement.

Iran was not the only country in Congress' sights. Two days before, Royce and Engel introduced the Korea Interdiction and Modernization of Sanctions Act (H.R. 1644), which expands sanctions on North Korea's nuclear weapons programs; targets those overseas who employ North Korean slave labor; cracks down on North Korean shipping and use of international ports; and requires the administration to determine whether North Korea is a state sponsor of terrorism.

A day later, Royce and Engel reintroduced the Caesar Syrian Civilian Protection Act (H.R. 1677), which passed the House unanimously in November. The bill would impose sanctions on supporters of Syria's Assad regime, encourage negotiations to end ongoing atrocities, and support prosecution of war criminals.

Chile Optimistic on Future of Asia-Pacific Trade

Despite withdrawing from the Trans-Pacific Partnership (TPP), the U.S. signaled that it still wants to be an active player in the Asia-Pacific region, according to Chile's Ambassador to the U.S. Juan Gabriel Valdes. His country convened a meeting with the other TPP countries March 14-15 (see **WTTL**, March 13, page 4).

The U.S. did have staffers present at the meetings, and there were signs, Valdes said, that the U.S. wants to keep the “high standards” and “disciplines” from the TPP, but put them into bilateral deals.

Though President Trump’s rejection of multilateral trade deals and penchant for protectionist language has caused some uncertainty in Latin America, Valdes’ government has seen signs of hope from the administration, he told reporters at lunch in Washington March 23. The uncertainty “has, however, begun to change in terms of trade because we believe that we have received signs that the U.S. is interested in developing relationships and treaties that will maintain the same standards and the same basic disciplines that were included in previous treaties,” said Valdes.

Chilean President Michelle Bachelet spoke with Trump March 19, Valdes said. “There were specific and satisfactory comments on the way in which the treaty between Chile and the United States has developed during the last 12 or 13 years, which is for us very reassuring and good to know,” said Valdes. He noted that the U.S. has a trade surplus of \$10 billion and that the two countries’ free trade agreement is reviewed annually and has been updated several times since it entered into force in 2004.

While eager to maintain its good relationship with the U.S., Chile is pressing ahead on multilateral deals. The remaining TPP countries are slated to speak in Vietnam in April and again on the sidelines of the APEC trade ministers meeting in May. Singapore’s Prime Minister Lee Hsien Loong said March 24, during a visit to Vietnam, that his country will move to ratify TPP. “Singapore is proceeding with the ratification, I think Vietnam has deferred their ratification but they are watching to see how the other partners play going forward, and what the Americans definitely will do,” Lee told the media.

From Chile’s point of view, they would welcome incorporating other countries into TPP, particularly Colombia. Valdes noted that the Pacific-Alliance countries will meet with Mercosur April 7.

Commerce Issues Final AD, CVD Margins on Chinese Acid

Commerce tried to use its March 21 determination of high antidumping (AD) margins and relatively low countervailing duty (CVD) rates on imports of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from China to stand tough on trade enforcement.

Commerce found dumping by mandatory respondents Shandong Taihe Chemical Co., Ltd. at 167.58% and WW Group at 184.01%. A final margin of 179.76% was assigned to non-selected respondents eligible for a separate rate. Using adverse facts available, all other producers/exporters in China were determined at a final dumping margin of 184.01%. In contrast, Commerce calculated a final subsidy rate of 2.4% for mandatory respondents collectively known as the Taihe Companies and a 0.75% (de minimis) for Nanjing

University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory (Wujin Water). Seven companies were assigned 54.11% based on adverse facts available. All other producers/exporters in China were assigned a final subsidy rate of 2.4%.

“As laid out in the President’s Budget Blueprint, this administration will make fair and secure trade a priority by strengthening the International Trade Administration’s trade enforcement and compliance functions. This is not the last that bad actors in global trade will hear from us – the games are over,” said Commerce Secretary Wilbur Ross in a statement.

Imports of HEDP from China were valued at \$290.1 million in 2015. The petitioner is Compass Chemical International LLC (Georgia). International Trade Commission (ITC) will make its final determinations around May 4.

WTO Establishes Panel on Renewable Energy Measures

The World Trade Organization’s (WTO) Dispute Settlement Body (DSB) March 21 established a panel to review India’s complaint over certain U.S. state measures to promote renewable energy. India claims that several U.S. states offer subsidies to renewable energy companies contingent on domestic content requirements, which India says is inconsistent with the General Agreement on Tariffs and Trade (GATT) and the Trade-Related Investment Measures (TRIMs) Agreement.

The U.S. maintains that India launched the dispute as retaliation for the U.S. successful challenge to India’s own domestic solar program content requirements. The U.S. blocked India’s first request for a panel (see **WTTL**, Feb. 27, page 5).

Continuing a long-running dispute, the DSB could not reach consensus on procedures for selecting two new Appellate Body (AB) members. Ricardo Ramirez Hernandez’s term expires June 30 and Peter Van den Bossche’s term expires December 11. Both are in their second and final terms. The delay could increase the AB’s already heavy workload, several countries complained. Chile and Brazil said they intend to put forward candidates, but the lack of procedural clarity has created uncertainty.

At the same time, the DSB elected by acclamation Japanese Ambassador Junichi Ihara as the new DSB chair. Ihara will serve for one year. The next DSB meeting will be April 19.

* * * Briefs * * *

R-134A: In 5-0 final vote March 23, ITC found U.S. industry is materially injured by dumped imports of 1,1,1,2-tetrafluoroethane (R-134a) from China. Commission also made negative findings on critical circumstances for these imports. American HFC Coalition called decision “fully supported by the facts” in statement. “Imports from China, sold at prices far below fair value, increased by an astonishing 100% from 2015 to 2016, and continued to increase even after the antidumping petition was filed,” group said.

EXPORT ENFORCEMENT: Alexey Barysheff of Brooklyn, N.Y., naturalized U.S. citizen, and two Russian nationals, Dmitrii Aleksandrovich Karpenko and Alexey Krutilin, pleaded guilty in Brooklyn U.S. District Court to charges of illegally exporting controlled microelectronics, including digital-to-analog converters and integrated circuits, to Russian end-users without Commerce licenses. Scheme allegedly involved two U.S.-based front companies shipping items first to Finland and then to Russia. Three were arrested in October (see **WTTL**, Oct. 10, page 9). Barysheff pleaded guilty March 21 to submission of false export information and is out on bond. Sentencing is set for June 16. Karpenko and Krutilin admitted to conspiracy to violate International Emergency Economic Powers Act March 8 and are in custody. Sentencing set for April 11.

BIODIESEL: National Biodiesel Board (NBB) Fair Trade Coalition filed antidumping and countervailing duty petitions March 23 at ITA and ITC against biodiesel from Argentina and Indonesia. “This is a simple case where companies in Argentina and Indonesia are getting advantages that cheat U.S. trade laws and are counter to fair competition. NBB is involved because U.S. biodiesel production, which currently supports more than 50,000 American jobs, is being put at risk by unfair market practices,” NBB CEO Donnell Rehagen said in statement. Biodiesel imports from Argentina and Indonesia increased 464% from 2014 to 2016, NBB noted.

ZTE: ZTE Corporation formally pleaded guilty March 22 in Dallas U.S. District court to conspiring to violate International Emergency Economic Powers Act (IEEPA) by illegally shipping U.S.-origin items to Iran, obstructing justice and making material false statement. Company previously agreed to pay \$900 million to settle Justice, BIS and OFAC export charges (see **WTTL**, March 13, page 1). BIS March 23 issued final settlement order; agency had agreed to remove company from Entity List after plea agreement approval.

PLYWOOD: Coalition for Fair Trade of Hardwood Plywood March 23 added “critical circumstances” to antidumping and countervailing duty petitions against hardwood plywood products from China filed in November. Group alleges that Chinese producers are attempting to “flood the market” before duty orders are issued. In 6-0 preliminary vote Dec. 30, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports (see **WTTL**, Jan. 2, page 12). American Alliance for Hardwood Plywood (AAHP) in statement called new petitions “yet more unfounded allegations” and said “claims are critically flawed.”

GSP: Retail groups again pressed President Trump in letter March 20 to designate all travel goods products duty-free when imported from all GSP countries, not just least developed countries (see **WTTL**, Oct. 24, page 2). “Unfortunately, every day the Administration postpones duty-free sourcing from GSP countries costs the travel goods industry more than \$200,000 in duties paid. ... We urge you to immediately issue a proclamation designating all statutorily eligible travel goods products for all GSP-eligible countries in the GSP program,” reads letter. Signatories include American Apparel & Footwear Association, Fashion Accessories Shippers Association, and Travel Goods Association.

USDA: “If confirmed, my first stop’s going to be [USTR nominee Robert] Lighthizer’s office door,” Agriculture Secretary nominee Sonny Perdue said at confirmation hearing March 23. Former Republican governor of Georgia was questioned on agricultural trade. “I intend to be on site as USDA’s chief salesman around the world, to sell these products, to negotiate these deals side by side with USTR, side by side with [Commerce] Secretary Ross and our whole team,” said Perdue. Democrats did not raise significant objections, and he is expected to be confirmed.

JAPAN: William Francis Hagerty IV named March 23 as Trump’s choice for U.S. ambassador to Japan. Hagerty served as Tennessee secretary for trade and commerce from 2011-2015. Nearly

60% of foreign direct investment in state came from Japan during Hagerty's time in governor's cabinet, according to White House.

CHINA: U.S. and China are "the world's two largest economies, and we must both promote stability and growth. Our two countries should have a positive trading relationship that is fair and pays dividends both ways, and we will be working on that going forth," Secretary of State Rex Tillerson said March 18 in Beijing. Chinese President Xi Jinping is set to meet with President Trump in Florida in April.

TRADE: At G20 meeting March 18 in Germany, Treasury Secretary Steve Mnuchin scuttled historical trade language from joint communique. "We will resist all forms of protectionism," 2016 statement said. Mnuchin reiterated his support for free trade, but said certain agreements need to be reexamined. "I understand what the president's desire is and his policies, and I negotiated from here. I couldn't be happier with the outcome," Mnuchin said at news conference.

ANTIBOYCOTT: Sen. Ben Cardin (D-Md.) March 23 introduced Israel Anti-Boycott Act (S. 720), which would amend Export Administration Act to include in prohibitions on boycotts against U.S. allies boycotts fostered by international governmental organizations against Israel and would direct Export-Import Bank to oppose boycotts against Israel. Rep. Peter Roskam (R-Ill.) introduced companion bill in House (H.R. 1697). Bill does not "alter the established policy of the United States or establish new United States policy concerning final status issues associated with the Arab-Israel conflict, including border delineation that can only be resolved through direct negotiations between the parties."

MTB: Public comments on previously submitted petitions for duty suspensions and reductions under Miscellaneous Tariff Bill (MTB) are now available for public viewing on ITC website, commission noted in Federal Register March 24. View comments here: <https://mtbps.usitc.gov>.

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