

Vol. 38, No. 3**January 15, 2018**

Supreme Court Decision Aims Spotlight on Firearms Rules

The Supreme Court's decision Jan. 8 to deny a petition for a writ of certiorari to Defense Distributed in a case over publishing gun blueprints online came just a day before an interagency group met to hammer out details of moving commercial firearms from State to Commerce jurisdiction.

A majority of U.S. Fifth Circuit Court judges ruled in September 2016 in favor of State's authority to enforce export control laws on unclassified technical data relating to prohibited munitions (see **WTTL**, Sept. 26, 2016, page 1). The most recent court decision settles that constitutional question. As one industry observer told **WTTL**, if groups such as Defense Distributed "would just shut up and wait," the question would be moot, as commercial firearms eventually would move to the Commerce Control List, which has different rules on work in the public domain.

The day after the decision, interagency group met to discuss transfers of items from U.S. Munitions List (USML) categories I-III (firearms and ammunition), of which proposed rules have been pending review at Office of Management and Budget since September. One of nine open issues is whether to include congressional notification of commercial firearms exports, as is currently required under State rules.

Those transfers were written in 2012 but held back after the Sandy Hook shootings. In the new administration, the holdup is not the optics, but rather a general antipathy toward regulation and the lack of political leadership to push the bills through the legislative process. While the bills could now be just weeks away from publication, the gun industry is growing impatient and talking to members of Congress about a legislative solution.

President Extends Iran Sanctions Relief for Final Time

President Trump Jan. 12 waived nuclear sanctions against Iran for the final time, he said, in a move that's meant to pressure European allies into making the Joint Comprehensive

Plan of Action (JCPOA) permanent. Trump has long been a critic of the Iran nuclear deal and declined to certify to Congress Iran's compliance in October (see **WTTL**, Dec. 18, page 7). Treasury separately designated 14 individuals and entities connected to serious human rights abuses and censorship in Iran and support to designated Iranian weapons proliferators.

"Today, I am waiving the application of certain nuclear sanctions, but only in order to secure our European allies' agreement to fix the terrible flaws of the Iran nuclear deal. This is a last chance," Trump said in a statement. "In the absence of such an agreement, the United States will not again waive sanctions in order to stay in the Iran nuclear deal. And if at any time I judge that such an agreement is not within reach, I will withdraw from the deal immediately," he continued.

The president said he's open to working with Congress on a bipartisan legislative solution, so long as the bill includes immediate inspections of Iranian nuclear sites upon request by international inspectors, cuts of all possibility of Iran ever getting a nuclear weapon, such provisions have no end date and any potential legislation must make long-range missile and nuclear weapons programs inseparable.

At the same time, Treasury's Office of Foreign Assets Control (OFAC), pursuant to several previous executive orders, designated 14 individuals and entities, including Islamic Revolutionary Guard Corps Electronic Warfare and Cyber Defense Organization, the Supreme Council of Cyberspace and the National Cyberspace Center, and Pardazan System Namad Arman.

U.S. Requests Retaliation in India WTO Solar Dispute

The years-long dispute between the U.S. and India over renewable energy measures heat up Jan. 12 at a meeting of the World Trade Organization's (WTO) Dispute Settlement Body (DSB), when the U.S. sought retaliation against India and the two were referred to arbitration. The next regular DSB meeting is scheduled for Jan. 22.

The DSB in March 2017 established a panel to review India's complaint over certain U.S. state measures to promote renewable energy, which the U.S. maintains that India filed 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**, March 27, page 5).

In December, the U.S. requested authorization from the DSB to suspend concessions with India over that country's failure to comply with the panel ruling by the deadline five days earlier. India followed up Jan. 3 with a communication objecting to the U.S. request. According to U.S. officials, India failed to state that it "objects to the level of suspension proposed," which would trigger arbitration on the amount of retaliation under DSB rules. India responded that it was surprised by the U.S. request for authorization to retaliate. The U.S. should have sought discussions with India; instead, India says it was met with

“absolute silence” from the U.S. India said it’s prejudiced by the “vagueness and opacity” of the U.S. request. The European Union, Canada, Brazil and China came to India’s defense. Japan sided with the Americans saying that the U.S. is not obligated to negotiate compensation with India before requesting authorization to retaliate.

After much back and forth, the DSB referred the matter to arbitration in line with Article 22.6, under which arbitration shall be carried out by the original panel if the panelists are available, or by an arbitrator appointed by the Director-General, and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions are not suspended during arbitration.

Canada, U.S. Smile in Washington While Trading Blows in Geneva

Canadian Foreign Minister Chrystia Freeland’s Twitter feed is full of photos from her latest trip to Washington to shore up U.S. support for NAFTA, but belying those smiles is new Canadian action against the U.S. at the WTO Jan. 10, and Commerce action against Canada’s paper industry Jan. 9.

Canada requested wide-ranging WTO consultations with the U.S. “concerning certain laws, regulations and other measures maintained by the U.S. with respect to antidumping and countervailing duty proceedings.” Canada believes that U.S. actions are inconsistent with multiple WTO agreements. Ottawa is pursuing a separate challenge under NAFTA on softwood lumber duties (see **WTTL**, Jan. 8, page 1). The countries have 60 days to resolve the dispute and failing that, Canada can request adjudication.

“Canada’s new request for consultations at the WTO is a broad and ill-advised attack on the U.S. trade remedies system. U.S. trade remedies ensure that trade is fair by counteracting dumping or subsidies that are injuring U.S. workers, farmers and manufacturers. Canada’s claims are unfounded and could only lower U.S. confidence that Canada is committed to mutually beneficial trade,” USTR Robert Lighthizer said in a statement.

Commerce Secretary Wilbur Ross Jan. 9 announced the affirmative preliminary determination in the countervailing duty (CVD) investigation of imports of uncoated groundwood paper from Canada. Commerce preliminarily determined that Canadian exporters received countervailable subsidies ranging from 4.42% to 9.93%. The petitioner is North Pacific Paper Company. Final determinations are expected May 22.

Freeland and Natural Resources Minister Jim Carr expressed deep disappointment in a joint statement. “Any duties will have a direct and negative impact on U.S. newspapers, especially those in small cities and towns, and result in job losses in the American printing sector. Our government is committed to helping our forest industry enhance existing trade relationships and diversify trade with new international markets,” they said. “We will continue to work with our forest industry, provinces and territories, and communities across Canada to defend this vital sector against unfair and unwarranted U.S. trade measures and practices.”

Freeland met Ross the same day as the preliminary announcement as part of an already scheduled trip to garner support for NAFTA negotiations. In addition to Ross, Freeland met with Sens. Pat Roberts (R-Kan.), Lindsey Graham (R-S.C.), Jeff Flake (R-Ariz.), Lamar Alexander (R-Tenn.), Deb Fischer (R-Neb.), Elizabeth Warren (D-Mass.) and Joni Ernst (R-Iowa). She also met with House Ways and Means Trade Subcommittee Chairman Dave Reichert (R-Wash.).

USTR Issues Annual Shame List of Notorious Markets

In the current environment of naming names, the U.S. Trade Representative's (USTR) office Jan. 12 issued its annual Special 301 Out-of-Cycle Review of Notorious Markets. The list highlights 25 online markets and 18 physical markets that are "reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting."

Online site Taobao.com has been on and off the report for the last several years, but USTR included it in its last two reports. "We commend Alibaba for its efforts to date. However, while Alibaba presented its considerable efforts to address many concerns identified in the 2016 List, important unresolved concerns remain," the 2017 report noted (see **WTTL**, Jan. 2, 2017, page 3).

"For example, Alibaba has not identified metrics to assess objectively the scale of infringing products sold on Taobao.com nor objectively demonstrated that the volume or prevalence of counterfeit goods has decreased over the last year," it said. "Despite USTR's call in the 2016 List for Taobao.com to expand its Good Faith takedown program, the enforcement program reportedly continues to be burdensome and insufficient to end the sale of counterfeit products on the platform."

No country has a monopoly on the existence of these markets. While six of the 18 identified physical markets are in China, others exist in Argentina, Canada, India, Indonesia, Italy, Mexico, Paraguay, Spain, Turkey, United Arab Emirates (UAE) and Vietnam. The 25 identified online sites are spread around the world, including in China, France, India, Sweden, Russia and Ukraine.

"The 2017 List of notorious online markets includes examples of various technologies, obfuscation methods, revenue models, and consumer harm. USTR based its selections not on specific types of technologies but on whether a nominated site or affiliated network of sites reportedly engages in or facilitates substantial piracy and counterfeiting to the detriment of U.S. creators and brand owners, as well as legitimate sellers and distributors."

Even Canada hosts a notorious physical market as USTR named Pacific Mall in Markham, Ontario. "Sales of counterfeit goods in the Pacific Mall reportedly continue despite extensive efforts by brand owners to enforce their trademarks. Vendors in Pacific Mall appear to operate largely with impunity, and requests for assistance from local law enforcement have reportedly gone unanswered," it said.

KORUS Talks Focus on Industrial Goods

The first round of U.S.-Korea Free Trade Agreement (KORUS) renegotiation talks in Washington Jan. 5 touched mainly on moving towards “fair and reciprocal trade in key industrial goods sectors,” according to a USTR statement. The U.S. particularly focused on autos and auto parts, which is an area of contention in the ongoing NAFTA talks, as well.

While both countries’ auto exports to each other have grown tremendously under KORUS, Korea has seen a greater benefit due to the size of the American market. Commerce Secretary Wilbur Ross previously highlighted the imbalance in auto exports at an event in December (see **WTTL**, Dec. 18, page 5). According to Korean government numbers, as reported by Korean media, auto exports to the U.S. grew 80% from 2011 to \$18.49 billion in 2015. At the same time, U.S. auto exports to Korea grew 380% to \$1.68 billion in 2015.

“We have much work to do to reach an agreement that serves the economic interests of the American people. Our goals are clear: we must achieve fair and reciprocal trade between our two nations. We will move forward expeditiously as possible to achieve this goal,” USTR Robert Lighthizer said in a statement.

Assistant USTR Michael Beeman led the U.S. delegation and Myung-hee Yoo, director general of Korea’s Ministry of Trade, Industry and Energy, represented the Korean side. Both parties agreed to follow-up to discuss when next to meet.

Separately, the U.S. and Korea agreed not to appeal a World Trade Organization Dispute Settlement Body (DSB) panel ruling regarding antidumping measures on certain oil country tubular goods (DS488) (see **WTTL**, Nov. 20, page 1). The DSB adopted the panel report Jan. 12.

Trump Stand on Agricultural Trade Unclear

While President Trump received a warm welcome for rolling back environmental regulations during a speech at the American Farm Bureau Federation (AFBF) Annual Convention Jan. 8, he barely mentioned NAFTA, which could hit farmers and ranchers particularly hard depending on how negotiations turn out. An Agriculture Department (USDA) task force on agriculture and rural prosperity report published the same day as Trump’s speech cited “expanding markets through trade” as a strategy for economic growth.

Despite this call to action, the president barely mentioned international trade deals. “On NAFTA, I am working very hard to get a better deal for our country and for our farmers and for our manufacturers. It’s under negotiation as we speak. But think of it: When Mexico is making all of that money, when Canada is making all of that money, it’s not the easiest negotiation. But we’re going to make it fair for you people again,” said Trump.

The president was less bombastic on NAFTA negotiations, perhaps tempered by the presence of Sen. Pat Roberts (R-Kan.), a NAFTA proponent (see **WTTL**, Dec. 18, page 4). (“Do you love the farmers, Pat?” “Yes.” “He’ll come in - we’re talking about a different subject, he’ll say, ‘What about the farmers?’ That’s good. That’s why they love you,” the president said.)

In its report to the president, the USDA task force recommended that the U.S. increase access to global market. “Based on fair trade principles, international market access must be aggressively pursued and supported. Physical infrastructure and e-connectivity must be improved and maintained to connect farms and rural communities to the world. American agriculture needs and deserves policies that support and build on this success - by opening markets abroad; by ensuring fair and science-based regulatory treatment for American products of all kinds; and by implementing strong enforcement policies that hold trading partners to their commitments.”

Despite the lack of specificity on NAFTA, Trump received glowing praise from AFBF President Zippy Duvall. “Farmers and ranchers have too long faced burdensome regulations. This president understands the toll government overreach has taken on ordinary business and is moving swiftly to clear the way for prosperity. We are moving into yet another year of economic difficulty. Relief could not have come at a better time,” he said.

Chamber Warns Administration Against Leaving Trade Deals

U.S. Chamber of Commerce President Tom Donohue issued a warning on international trade to the administration during his 2018 State of American Business address Jan. 10: “The bottom line is that growth will be weakened, not strengthened or sustained, if we pull back from trade.”

“The Chamber has said from the beginning that we support the effort to modernize the 24-year-old agreement [NAFTA]. A modernized deal should account for the gains of North America’s energy revolution and add rules for digital trade. It should not close markets, undermine investment protections, or limit trade with regulatory red tape,” he added.

“Above all, withdrawing from NAFTA would be a grave mistake,” said Donohue. He added that a wrong move on the trilateral agreement “would send us five steps back.” The next round of NAFTA negotiations will take place in Montreal Jan. 23-28. The same goes with KORUS, which Donohue characterized as a “vital trade pact with a key ally.” Yes, Korea needs to do more to “faithfully implement” the agreement, but overturning it will hurt U.S. farmers and manufacturers, he said.

The Chamber is also focused on China. “The status quo is not sustainable, but we need a smart approach. We need to work with allies in Europe, Japan and elsewhere to forge a common response to China’s state capitalism,” said Donohue.

Concerns about the future of NAFTA and KORUS aside, Donohue and the Chamber still support a renewal of trade promotion authority (TPA) that allows the president to negotiate new trade deals. As passed in 2015, TPA will expire July 1 unless the administration requests a three-year renewal by April 1. “We will vigorously support a return” of TPA, said Donohue; to do otherwise would leave 535 members of the House and Senate rewriting any deal put forward and then nothing would happen trade-wise, he explained.

* * * **Briefs** * * *

ANTIBOYCOTT: Great Lakes Dredge & Dock Company LLC of Oak Brook, Ill., agreed Dec. 21 to pay \$37,000 civil penalty to settle 10 violations of BIS antiboycott regulations. Company allegedly refused to do business and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. from April 2010 through April 2012 during transactions with Bangladesh, Bahrain, Kuwait and Lebanon. Great Lakes voluntarily disclosed “information concerning certain of its transactions” to BIS, agency said. “The company does not have any comment on this matter,” spokesperson said in email to WTTL.

NOMINATIONS: President Jan. 8 sent Senate renomination of Kevin McAleenan to be CBP commissioner. Senate Finance Committee in December advanced nomination via voice vote (see **WTTL**, Dec. 11, page 8). At same time, he renominated Susan Thornton to be assistant secretary of State (East Asian and Pacific affairs) and Brian Benczkowski to be assistant attorney general for criminal division. As attorney in private practice after leaving Trump transition team, Benczkowski represented Russian bank Alfabank until nomination in June 2017.

MORE NOMINATIONS: Senate Finance Committee hearing for deputy USTR nominees C.J. Mahoney and Dennis Shea scheduled for Jan. 17. Both were nominated in July (see **WTTL**, Jan. 1, page 6).

FCPA: Joo Hyun Bahn, aka Dennis Bahn, of Tenafly, N.J., pleaded guilty Jan. 5 in Manhattan U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and violating FCPA for his role in scheme to bribe foreign official in Middle East to land real estate deal. Indictment was unsealed in January 2017 against Bahn, his father Ban Ki Sang of South Korea and middleman Malcolm Harris. Father and son allegedly conspired to pay \$2.5 million in bribes to close \$800 million skyscraper deal in Vietnam. Sentencing is scheduled for June 29. Bahn was arrested in Tenafly in January and released on \$250,000 bond. Harris was sentenced in October to 42 months in prison (see **WTTL**, Oct. 9, page 7). He pleaded guilty in June to wire fraud and money laundering. Ban is awaiting trial.

FROZEN FISH FILLETS: Vietnam Jan. 12 requested WTO consultations with U.S. on “imposition of anti-dumping duties and cash deposit requirements” on frozen fish fillets. In most recent “sunset” vote in October 2014, ITC determined revoking antidumping duty order would cause renewed injury to U.S. industry (see **WTTL**, Oct. 27, 2014, page 8). Specifically, Vietnam cited seventh administrative review, in which U.S. “did not revoke the anti-dumping duty order with respect to certain respondents eligible for and requesting such revocation.”

EXPORT ENFORCEMENT: Cory Wilson of Clarksville, Tenn., was sentenced Jan. 8 in Nashville U.S. District Court to 44 months in prison and \$500,000 in restitution for reselling sensitive U.S. Army equipment to foreign bidders on eBay without licenses. Civilian Wilson pleaded guilty in April to violating Arms Export Control Act and wire fraud. Fellow defendant John Roberts was

sentenced in December to 15 years in prison and \$4.2 million in restitution (see **WTTL**, Dec. 11, page 8). Civilian Roberts was found guilty by federal jury in August. Six Army soldiers also pleaded guilty and were sentenced to prison or probation with stealing more than \$1 million worth of equipment and reselling to Roberts and Wilson. Items included night vision helmet mounts and advanced communications headset helmets sold to buyers in Russia, China and Kazakhstan, among others.

MILESTONE: House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) said Jan. 8 that he will not seek reelection in November. Rep. Eliot Engel (D-N.Y.), committee ranking member and frequent Royce collaborator, complimented his colleague. “I view the Foreign Affairs Committee as the most bipartisan committee in Congress. In the last five years, we’ve produced legislation that has made the United States safer and stronger, helping advance our interests and values around the world. We’ve left politics at the water’s edge to do what’s right for our country. For all those accomplishments, we have Ed Royce to thank,” Engel said in statement.

WIRE ROD: Commerce announced Jan. 9 affirmative final determinations in antidumping duty investigations of imports of carbon and alloy steel wire rod from South Africa and Ukraine. ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. (also known as Scaw Metals Group), and Consolidated Wire Industries final dumping margin of 142.26%. All others from South Africa calculated dumping margin of 135.46%. ArcelorMittal Steel Kryvyi Rih OJSC and Public Joint Stock Company (PJSC) Yenakiieve Steel both assessed at 44.03% and all other from Ukraine at 34.98%. Petitioners are Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, and Charter Steel. ITC expected to make its final determinations Feb. 22.

STEEL: Commerce Secretary Wilbur Ross Jan. 11 formally submitted results of Section 232 steel investigation to president, who has 90 days to act on findings. Commerce will publish summary of report in Federal Register following announcement of president’s decision. Delay in finalizing the report, which Ross had initially said would be ready in June 2017, irked industry and politicians from manufacturing states (see **WTTL**, Jan. 1, page 6). Ten Senate Finance Committee Democrats, including Chairman Ron Wyden (D-Ore.) urged president to make report and other trade documents public. “Detailed analysis prepared at taxpayer expense should not be kept from the public without good cause,” senators wrote. “We’re dismayed that the report took so long to produce and that we still have to wait for a decision. It is obvious that our nation’s steel sector has been under attack by unfair foreign trade and that the sector is vital to our national security,” United Steelworkers President Leo Gerard said in statement.

WAYS AND MEANS: House Ways and Means Committee Chairman Kevin Brady (R-Texas) Jan. 9 recommended Rep. Darin LaHood (R-Ill.) to serve on committee, replacing Rep. Pat Tiberi (R-Ohio), who resigned to lead Ohio Business Roundtable. “Since coming to Congress, Darin has been a champion for pro-growth policies that create more jobs and increase paychecks for hardworking families in Illinois and across the country. As a former federal and state prosecutor, Darin will bring an important new perspective to our Committee’s work,” Brady said in statement.

ALUMINUM SHEET: In 4-0 preliminary vote Jan. 12, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of common alloy aluminum sheet from China. Commerce self-initiated investigations in November (see **WTTL**, Dec. 4, page 2).

SODIUM GLUCONATE: In preliminary votes Jan. 12, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of sodium gluconate, gluconic acid and derivative products from China. At same time, ITC found U.S. industry is not injured by allegedly dumped imports from France. China vote was 4-0, France 3-1; Chairman Rhonda Schmidlein was sole yes.

EX-IM: Former Export-Import Bank (Ex-Im) presidents William Draper and John Macomber urged administration and Congress to find “strong leader” for Ex-Im, in editorial Jan. 6. “If we allow Ex-Im to atrophy, we will be closing our eyes to the new realities of global competition,” Draper and Macomber wrote. Their point is largely moot; Sen. Pat Toomey (R-Pa.) confirmed that he intends to hold all nominees indefinitely. Toomey vowed in November that should former Rep. Scott Garrett (R-N.J.) not be confirmed he would do “everything I can to prevent Ex-Im from getting a quorum.” Garrett was only nominee voted down by Senate Banking Committee Dec. 19 (see **WTTL**, Jan. 1, page 3).

TRADE PEOPLE: Peter Sutherland, first WTO director-general, died Jan. 7 in Dublin at 71. After leaving WTO in 1995, Sutherland worked for three decades in senior positions in the banking and energy sectors. He took helm of General Agreement on Tariffs and Trade (GATT) in 1993. Later that year, 123 signatories signed Marrakesh Agreement creating WTO. “After Uruguay Round talks collapsed in December 1990, negotiations languished for three years with impasse mainly between U.S. and European Union over agriculture and audio-visual services. As talks were about to collapse again ahead of a December 1993 ministerial meeting, Sutherland chaired a series of meetings with participants to narrow the areas of dispute to just a few and did masterful job of bridging differences among major trade partners and pulling off an eleventh hour deal,” recalled former **WTTL** Editor Sam Gilston, who covered Uruguay Round and was in Geneva when final deal was reached.

INDIA: In first official speech Jan. 11, U.S. Ambassador to India Kenneth Juster repeated support for country’s participation in all multilateral control regimes. “We also expect in the very near future India to join the Australia Group on chemical and biological weapons. And we are working closely with India and our international partners to secure India’s membership in the Nuclear Suppliers Group,” he said. India joined Wassenaar Arrangement in December (see **WTTL**, Dec. 11, page 1).

Is a Site or Corporate License for You?

- When many individuals in your organization need to read *Washington Tariff & Trade Letter*, there’s an easy way to make sure they get the news they need as quickly and conveniently as possible.
- That’s through a site or corporate license giving an unlimited number of your colleagues access to each weekly issue of *WTTL*.
- With a low-cost site or corporate license, you can avoid potential copyright violations and get the vital information in *WTTL* to everyone who should be reading it.

For more information and pricing details, call: 301-460-3060