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Administration Will Reimpose Iran Sanctions on Schedule

In case there had been any doubt, the administration Nov. 2 formally announced the reimposition of secondary sanctions on Iranian energy, shipping and financial sectors as it had promised in May when it withdrew from the Joint Comprehensive Plan of Action (JCPOA). At press time, the sanctions are scheduled to return Nov. 5.

Treasury also will reinstate entities removed from the List of Specially Designated Nationals (SDN List) in January 2016. “Over 700 individuals, entities, vessels, and aircraft are going back onto our sanctions list, including major Iranian banks, oil exporters, and shipping companies,” a White House fact sheet noted (see **WTTL**, Oct. 15, page 3).

On that day, State also is scheduled to announce temporary waivers to its ban on purchasing Iranian oil to eight “jurisdictions,” Secretary of State Mike Pompeo said in a briefing Nov. 2, but would not be specific. These partners “have demonstrated significant reductions in their crude oil and cooperation on many other fronts and have made important moves towards getting to zero crude oil importation,” he said. “These negotiations are still ongoing. Two of the jurisdictions will completely end imports as part of their agreements. The other six will import at greatly reduced levels,” he added.

In a joint statement Nov. 2, the EU’s High Representative Federica Mogherini and the French, German and UK foreign and finance ministers said they “deeply regret the further re-imposition of sanctions.” The ministers “remain committed to implementing the JCPOA as a matter of respecting international agreements and of our shared international security, and expect Iran to play a constructive role in this regard, they wrote.

U.S. Taking All-Hands Approach to Blocking Chinese Exports

The administration is leaving no stone unturned in blocking imports from and exports to Fujian Jinhua Integrated Circuit Company (Jinhua), a state-owned Chinese enterprise

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created only to manufacture technology allegedly stolen from U.S. companies. First, the Bureau of Industry and Security (BIS) in the Federal Register Oct. 30 added Jinhua to its Entity List. The firm “poses a significant risk of becoming involved in activities that could have a negative impact on the national security interests” of the U.S., the notice said.

“Jinhua is nearing completion of substantial production capacity for dynamic random access memory (DRAM) integrated circuits. The additional production, in light of the likely U.S.-origin technology, threatens the long term economic viability of U.S. suppliers of these essential components of U.S. military systems,” Commerce said in a press release the same day.

The next day, a federal indictment against Jinhua, along with United Micro-electronics Corporation (UMC), a Taiwanese semiconductor foundry, and three individuals, was unsealed in San Jose U.S. District Court, charging them with crimes related to conspiracy to steal, convey and possess stolen trade secrets of Micron, an Idaho-based semiconductor company. The indictment originally was filed in September. Jinhua was established in February 2016 for the sole purpose of designing, developing, and manufacturing DRAM, Justice said.

The day after that, a civil lawsuit was filed Nov. 1 in San Jose federal court against UMC, Jinhua and Chen Zhengkun aka Stephen Chen to “obtain permanent injunctive relief” to prevent the defendants from “exporting, reexporting, causing the export of, attempting to export to the United States; selling or supplying, directly or indirectly to the United States; or causing the import into the United States of, any products containing DRAM manufactured by Jinhua or UMC.”

“Aware of the PRC’s national priority and the barriers placed by non-PRC manufacturers, including Micron, on access to the technology, Defendants UMC and Chen obtained DRAM trade secrets belonging to Micron and conveyed information containing those trade secrets to Defendant Jinhua, a company controlled by the PRC government, without authorization from Micron,” the civil complaint noted.

“The allegations in the indictment and complaint are virtually the same as allegations in a civil complaint previously filed against UMC by Micron. UMC regrets that the U.S. Attorney’s Office brought these charges without first notifying UMC and giving it an opportunity to discuss the matter,” UMC said in a statement. The company “takes seriously any allegation that it may have violated any laws and fully intends to respond to these allegations accordingly,” it added.

TPP Tariff Reductions to Go into Effect, Without U.S.

All the cool kids were having a party, and you ripped up your invitation out of spite, or some perceived grievance. Now the gathering is the party of the year, and you’re not on the guest list. Six of the 11 partners in the former Trans-Pacific Partnership (TPP), now called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

(CPTPP) have formally ratified the deal, so the first tariff reductions effects will go into effect Dec. 30 and Jan. 1. Australia Oct. 31 was the latest partner to ratify the agreement, joining Canada, Japan, Mexico, New Zealand and Singapore. The remaining countries are Brunei Darussalam, Chile, Malaysia, Peru and Vietnam.

The U.S withdrew from the deal in January 2017, soon after the president took office. While there has been some interest from lawmakers in rejoining the deal, the 11 signers seem to be just fine with the existing arrangement, thank you very much (see **WTTL**, April 16, page 1).

In a joint statement, Australian Prime Minister Scott Morrison and Trade Minister Simon Birmingham highlighted the country's relationship with NAFTA partners Canada and Mexico as its "first ever with these two of the world's top 20 economies." Specifically, the agreement "will provide new access to the Canadian market for our grains, sugar and beef exporters. It will open up the growing Mexican market for our pork, wheat, sugar, barley and horticulture producers," the ministers said.

"The CPTPP is an excellent illustration of how 11 nations can come together against protectionism by liberalizing trade and strengthening the rules under which it is conducted. Global trade matters: it's about improving peoples' lives by offering more opportunities to turn their hard work into prosperity for their families and themselves," Canadian Trade Minister Jim Carr said in a separate statement.

NGOs Disagree over Iran Sanctions

Ahead of the Nov. 5 announcement, some progressive foreign policy groups criticized the use of sanctions, rather than diplomacy. "Donald Trump is about to take a bad decision and make it worse," Win Without War Director Stephen Miles said in a statement Nov. 1. "Reimposing these sanctions could very well lead to the collapse of the nuclear deal. Iran would then be free to restart elements of its nuclear program that had been frozen under the agreement — a move that would make war with Iran more, not less, likely," he said.

"On top of these strategic blunders, reimposing the sanctions will result in higher oil prices, which means Americans will pay more at the gas pump, particularly as we approach the holiday travel season," Miles said. "The best course of action is for the United States to re-enter the Iran nuclear deal and re-internationalize a response to some of the challenges Iran presents. Any other course, particularly the one Trump is pursuing, is a recipe for division, economic uncertainty, or even war," he added.

At the same time, other non-governmental organizations such as United Against Nuclear Iran (UANI) urged the Trump administration to stay strong. UANI Oct. 31 launched an advertising group in favor of the sanctions and against waivers for businesses interested in engaging with Iran. "While the Trump Administration made the right decision to withdraw from the existing [JCPOA], the Maximum Pressure campaign is intended to ensure that they do not grant sanctions waivers for U.S. businesses reluctant to withdraw from Iran," said UANI President David Ibsen in a statement.

WTO Members Play Dispute Panel Roulette

The U.S. and other World Trade Organization (WTO) members continued their game of one-upmanship Oct. 29 at a WTO Dispute Settlement Body (DSB) meeting, blocking panels over disputed tariff measures, then claiming hypocrisy when the other members follow suit.

The U.S. blocked the first requests from seven WTO members - China, the European Union (EU), Canada, Mexico, Norway, Russia and Turkey – to establish panels to rule whether additional Section 232 duties the U.S. imposed on steel and aluminum imports comply with WTO rules. In turn, Canada, China, the EU and Mexico blocked U.S. requests for the establishment of panels to rule on increased retaliatory duties the four partners imposed on certain U.S. imports.

Consultations between the seven complainants and the U.S. were held over the course of July through early October but the talks failed to resolve the dispute, Geneva trade officials noted. China and the six other members requesting panels believe the U.S. actions are inconsistent with the WTO's core principles and that invoking the national security exception should only be done on a bona-fide basis.

Separately, China blocked the U.S.' first request to establish a panel to rule on certain Chinese measures pertaining to the protection of intellectual property rights. The U.S. claims China denies foreign patent holders the ability to enforce their patent rights against a Chinese joint venture party after a technology transfer contract ends and imposes mandatory adverse contract terms that discriminate against, and are less favorable for, imported foreign technology.

As if it needs to be said, WTO members once again failed to agree on the initiation of the selection process to fill the four Appellate Body vacancies after the U.S. repeated it was not in a position to accept a proposal backed by 68 WTO members calling for the start of the selection process as soon as possible. More than a dozen WTO members met in Ottawa in October urging a fix to the current dysfunction (see **WTTL**, Oct. 29, page 1).

CAFC Remands Chuck Taylor Trademark Case

Four years after Converse Inc. filed a complaint against almost every known shoe brand for violating its trademark, the Court of Appeals for the Federal Circuit (CAFC) Oct. 30 vacated and remanded an International Trade Commission (ITC) decision that held invalid the company's trademark in the midsole design of its Chuck Taylor All Star shoes.

Converse first filed its Section 337 complaint with the ITC in October 2014 against dozens of companies, including Skechers U.S.A., Wal-Mart, Aldo Group, Ed Hardy, Kmart, Ralph Lauren Corporation and Tory Burch LLC, claiming imports by those companies violate its "common law and federally registered trademark rights in the appearance of the midsole and outsole designs" used in connection with its classic Chuck Taylor sneakers (see **WTTL**, Oct. 20, 2014, page 7).

Circuit Judge Timothy Dyk cited “a series of errors that require a remand” in his majority opinion for the three-judge panel in *Converse, Inc. v. ITC*. “We hold that the ITC erred in applying the wrong standard in aspects of both its invalidity and infringement determinations,” he wrote. Since the original case was filed, several shoe brands have either settled or fallen out of the complaint.

“Because it found the registered mark invalid and that Converse could not establish the existence of common-law trademark rights, the ITC determined there was no violation of section 337 of the Tariff Act of 1930...by the importation of the accused products,” he wrote. “The ITC nonetheless addressed infringement, finding that various accused products would have infringed Converse’s mark if valid,” Dyk wrote.

“The ITC’s determination relied heavily on evidence—both as to Converse’s use and the use by competitors—far predating the relevant timeframe. Evidence older than this five-year period should be reevaluated on remand to determine whether it is relevant,” Dyk wrote. “Uses older than five years should only be considered relevant if there is evidence that such uses were likely to have impacted consumers’ perceptions of the mark as of the relevant date. For example, this might be the case where a particular advertising campaign has been in use for longer than five years,” he added.

Circuit Judge Kathleen O’Malley dissented to the opinion in part, but agreed the case should be remanded. “Specifically, I believe that the majority: (1) misperceives the scope of the ITC’s authority to invalidate duly issued intellectual property rights when it addresses the issue of the validity of a registered mark; (2) blurs the line between the concepts of priority of use under common law and the validity of a registered mark; (3) espouses advisory—and unnecessary—opinions on the weight to be given certain survey evidence and the question of infringement; and (4) ignores the ITC’s statutory obligation to enter remedies against defaulting parties,” she wrote.

“The majority’s remand instruction simultaneously does too much and too little. It does too much by directing the ITC to further address the validity and infringement of the registered mark, even though the statute requires that the ITC presume that Converse’s infringement allegations against the defaulting parties are true and that its registered mark is valid. And it does too little by not directing the ITC to grant a remedy against the defaulting parties unless it explains why public interest factors would justify not doing so,” O’Malley added.

Lawmakers, Industry Denounce UK Digital Services Tax

Don’t mess with our corporate giants. Members of Congress and industry groups reacted quickly to the United Kingdom’s (UK) proposal of a 2% digital services tax on large, profitable digital firms starting in April 2020.

UK Chancellor of the Exchequer Philip Hammond Oct. 29 announced the idea in a speech to Parliament as part of the annual budget release. “From April 2020, large social media

platforms, search engines and online marketplaces will pay a 2% tax on the revenues they earn which are linked to UK users,” according to a summary posted on the UK government website.

“This will be a narrowly-targeted tax on the UK-generated revenues of specific digital platform business models. It will be carefully designed to ensure it is established tech giants – rather than our tech start-ups - that shoulder the burden of this new tax,” Hammond told Parliament. Between now and April 2020, the government “will continue to work at the OECD and G20 to seek a globally agreed solution. And if one emerges, we will consider adopting it in place,” he added.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) called the proposal “troubling” in a statement Oct. 31. “Singling out a key global industry dominated by American companies for taxation that is inconsistent with international norms is a blatant revenue grab,” Brady said. “If the United Kingdom or other countries proceed, that will prompt a review of our U.S. tax and regulatory approach to determine what actions are appropriate to ensure a level playing field in global markets,” he added.

National Foreign Trade Council (NFTC) President Rufus Yerxa said his organization is “concerned” that the proposal “threatens to undermine the long-held principle of permanent establishment that underpins worldwide taxation policies and is reflected in U.S. bilateral tax treaties, and is a cornerstone of the U.S.-UK tax treaty.”

“This proposal could disproportionately affect American companies and may ultimately wind up interfering with the UK’s trade commitments. If enacted, this measure could also complicate the United Kingdom’s push for deeper U.S.-UK trade relations,” Yerxa added.

*** * * Briefs * * ***

TRADE FIGURES: Merchandise exports in September jumped 8.5% from year ago to \$141.9 billion, Commerce reported Nov. 2. Services exports gained 4.5% to \$70.7 billion from September 2017. Goods imports increased 11.4% from September 2017 to \$219.1 billion, as services imports gained 2.9% to \$47.5 billion.

MATTRESSES: In 3-0 preliminary vote Nov. 1, ITC found U.S. industry may be injured by allegedly dumped imports of mattresses from China. Commissioners Meredith Broadbent and Jason Kearns did not participate in investigation.

PTFE RESIN: In 4-0 final vote Oct. 31, ITC found U.S. industry is not materially injured by dumped imports of polytetrafluoroethylene (PTFE) resin from China and India. Commissioner Jason E. Kearns did not participate in these investigations.

TRADE PEOPLE: Former DDTC Chief Brian Nilsson is hanging up shingle on private export control consulting firm, called Brewton Kobbe Consulting LLC. Contact Brian at on LinkedIn or at bhnilsson@aol.com. Nilsson retired in December 2017 (see **WTTL**, Dec. 18, 2017, page 1).

STAFFING: Jae Shin was named director of DDTC’s compliance office Oct 28. He will maintain his leadership over compliance and civil enforcement team “until he decides who should be Acting

in that capacity,” agency posted on website. Compliance post has been vacant for two years since Sue Gainor left in August 2016. Acting DDTTC Chief Mike Miller had previewed news at Defense Trade Advisory Group (DTAG) meeting Oct. 25 (see **WTTL**, Oct. 29, page 4).

EXPORT ENFORCEMENT: Irina Morgovsky was sentenced Oct. 31 in San Francisco U.S. District Court to 18 months in prison and three years’ supervised release for role in scheme to export components for production of USML night-vision rifle scopes, including image intensifier tubes and lenses, to Russia without State licenses. Irina and Naum Morgovsky pleaded guilty in June to conspiracy to violate Arms Export Control Act (see **WTTL**, June 18, page 7). Naum’s sentencing is set for Nov. 13. Both were charged in superseding indictment in April 2017.

FCPA: Roger Richard Boncy, dual U.S. and Haitian citizen who resides in Spain, was charged Oct. 30 in Boston U.S. District Court in superseding indictment with conspiracy to violate Foreign Corrupt Practices Act (FCPA) and other charges in connection with planned \$84 million port development project in Haiti. Retired U.S. Army colonel Joseph Baptiste of Fulton, Md., who was arrested and charged in August 2017 in same court, is also included in superseding indictment (see **WTTL**, Sept. 4, 2017, page 9). Boncy and Baptiste allegedly solicited bribes from undercover agents, with Baptiste saying he would funnel payments to Haitian officials through his nonprofit.

JAPAN: USTR Oct. 26 requested ITC report on “probable economic effect of providing duty-free treatment for imports of currently dutiable products from Japan.” In Federal Register same day, agency asked for public comments on proposed U.S.-Japan Trade Agreement “in order to develop U.S. negotiating positions.” Comments are due Nov. 26. USTR will hold hearing Dec. 10. Administration announced trade talks with Japan in October (see **WTTL**, Oct. 22, page 1).

SECTION 232: Commerce Inspector General (IG) will audit BIS and International Trade Administration’s (ITA) “processes and procedures for reviewing and adjudicating product exclusion requests for aluminum and steel tariffs,” office announced Oct. 29. Audit objectives are to determine whether: (1) BIS and ITA adhere to processes and procedures in place to review Section 232 product exclusion requests, and (2) exclusion request decisions are reached in consistent and transparent manner, IG said.

VENEZUELA: President Nov. 1 issued Executive Order (EO), imposing sanctions on persons operating in Venezuela’s gold sector. OFAC “expects to use its discretion to target in particular those who operate corruptly in the gold or other identified sectors of the Venezuela economy, and not those who are operating legitimately in such sectors,” agency said in new FAQs on website.

GSP: White House Oct. 30 published results of 2017-2018 product review of Generalized System of Preferences (GSP). USTR removed cherry juice from Turkey from GSP eligibility and granted petition to redesignate ammonium perchlorate from Kazakhstan to GSP eligibility. Three products are subject to exclusion by competitive need limitation (CNL): ethers of acyclic monohydric alcohol and refined copper from Brazil, and washing machines from Thailand. Three product-country combinations were granted CNL waivers: edible animal products from Indonesia, lithium carbonates from Argentina and ferrosilicon chromium from Kazakhstan. Review denied more than 90 product-country combinations for de minimis waivers and denied nine petitions to add to list of GSP-eligible products, including pears, cotton seeds, sunflower-seed or safflower oil, peel of citrus fruit, apples, and transmission V-belts of vulcanized rubber.