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## Menendez Puts Hold on USML Firearms Rules

Three weeks after receiving a 30-day formal 38(f) notice from State on long-awaited firearms rules, Sen. Bob Menendez (D-N.J.) Feb. 26 cited congressional oversight and 3D printing of firearms when he put a “hold” on the transfer of items from U.S. Munitions List (USML) categories I (firearms), II (guns and armament) and III (ammunition) to Commerce jurisdiction.

House progressives Feb. 8 introduced the Prevent Crime and Terrorism Act (H.R. 1134) to block the transfer (see **WTTL**, Feb. 11, page 5). Senate Foreign Relations and House Foreign Affairs committees received the notification Feb. 4; absent Menendez’ “hold” on the transfers, agencies could publish final rules March 5.

“Moving such firearms from the USML to the CCL would directly contradict congressional intent and effectively eliminate congressional oversight and potential disapproval of exports of these weapons. Congressional oversight must be retained,” Menendez wrote in a letter to Secretary of State Mike Pompeo. Menendez suggested Commerce use its authority to place 3D printing technical information into its “holding” Export Control Classification Number (ECCN) 0Y521, at least temporarily. “It should go without saying that we collectively need to understand the threat and have a plan to address this issue before making the regulatory change,” he added.

In a report released March 1 (GAO-19-307), the Government Accountability Office (GAO) noted that “State and Commerce also use different watch lists to screen potential exporters.” The office recommended that “if the changes are made, State and Commerce should develop a process for sharing State’s watch list,” which contains information from past screenings of export licenses.

## WTO Panel Sides with U.S. on Chinese Grain Subsidies

Just as the U.S. is working on reforming the World Trade Organization (WTO) with allies on one hand, and holding up filling appellate vacancies on the other, the administration

Feb. 28 hailed a “significant victory” in the WTO dispute over China’s farm subsidies. The panel found China provided farm subsidies for wheat and rice producers in excess of its WTO domestic support limits, upholding a 2016 U.S. complaint (see **WTTL**, Sept. 19, 2016, page 1).

China exceeded the 8.5% *de minimis* level of domestic support for wheat, Indica rice and Japonica rice from 2012 to 2015, the panel found. The calculated levels of support ranged from 13% to 30% of the value of production for the products in question. Because China’s support level exceeded the *de minimis* limit, the panel also found that China exceeded its “nil” commitment for trade-distorting domestic support in its WTO accession agreement.

“China’s excessive support limits opportunities for U.S. farmers to export their world-class products to China. We expect China to quickly come into compliance with its WTO obligations,” said U.S. Trade Representative (USTR) Robert Lighthizer in a statement. The panel declined to rule on China’s subsidies for corn producers on the grounds that the measure at issue had already expired before the initiation of the dispute.

“China regrets that the panel did not support China’s proposition on calculating the subsidy levels in its minimum procurement price policies for wheat and rice,” an official with China’s Ministry of Commerce said in a statement. “It is a common practice for governments to support agriculture, ensure farmers’ incomes and safeguard grain security, and such practices are allowed under WTO rules,” the official added.

At the same time the U.S. is applauding this victory, the administration again rejected a proposal to fill vacancies to the Appellate Body at a Feb. 25 meeting of the WTO Dispute Settlement Body (DSB). As in previous meetings, the U.S. said its systemic concerns remain unaddressed. Two of the three remaining Appellate Body members will expire in December, essentially rendering the Appellate Body inoperative, other WTO members noted.

Observers were quick to point out the obvious question. “The WTO found that China’s grain policies are a violation of WTO rules....so why is the U.S. attacking the dispute system as unfair?” the Peterson Institute tweeted Feb. 28. “Instead of paralyzing the Appellate Body, the U.S. should work with WTO officials and member countries to reform the system so it works better for everyone,” it added.

## **Darling Industries Agrees to Settle ITAR Violations**

Darling Industries, Inc of Tucson, Ariz., agreed Feb. 26 to pay a \$400,000 civil penalty under a State consent agreement to settle six charges its subsidiary R.E. Darling violated the International Traffic in Arms Regulations (ITAR) from February 2012 to March 2014. Charges include unauthorized exports of defense articles, including technical data; the unauthorized furnishing of defense services; and failure to appoint a qualified Empowered Official. Of the penalty, \$200,000 will be suspended if the company applies this amount to

“self-initiated, pre-Consent Agreement remedial compliance measures.” Darling voluntarily disclosed the alleged violations. Items included ethylene propylene diene monomer compound (EPDM), a Kevlar- filled, raw material used as a missile case insulator and missile motor insulator, controlled under U.S. Munitions List (USML) Category IV(h), and breathing hoses, controlled under USML VIII(h).

Darling allegedly exported defense services involving EPDM to Canada for the production of Black Brant rocket motors without a license. In addition, the firm is charged with illegally exporting 1,003 breathing hoses to the United Kingdom for end use on the T-50, T-6 Texan II, Textron Scorpion, CT 156 Harvard II and A-50 aircrafts; and 14 hoses to Italy for end use on the M-346 aircraft.

According to an outside consulting firm’s review of Darling’s practices, the firm “did not have a documented export compliance program, including a mechanism to determine the export jurisdiction of its products,” the State proposed charging letter noted. In addition, Darling “delegated export compliance responsibilities to staff who had not been provided export compliance training, and the staff relied on personal knowledge or on the customer to inform them that the products R.E. Darling manufactured and/or exported were ITAR controlled,” it said.

Finally, R.E. Darling appointed an Empowered Official “who did not meet the meaning of Empowered Official,” the charging letter noted. “R.E. Darling’s Empowered Official was not in a position of having authority for policy or management within R.E. Darling’s organization. Also, the Empowered Official did not understand the provisions and requirements of the various export statutes and regulations,” it said.

### **Citing Progress, USTR Formally Delays China Tariff Increase**

Observers who follow the president’s Twitter account knew it was going to happen. After the president hinted it for weeks, the USTR’s office Feb. 28 formally delayed the deadline to increase its Section 301 tariffs against Chinese products, but gave no new timetable.

USTR is “postponing the date on which the rate of the additional duties will increase to 25% for the products of China covered by the September 2018 Action in this investigation. The rate of additional duty for the products covered by the September 2018 action will remain at 10% until further notice,” according to a notice posted on the USTR website.

The next day, the president tweeted that he has “asked China to immediately remove all tariffs on our agricultural products (including beef, pork, etc.) based on the fact that we are moving along nicely with trade discussions....and I did not increase their second traunch [sic] of tariffs to 25% on March 1st.”

The president announced his decision to delay the increase in tariffs a week before, after Chinese officials extended their trip to Washington to continue talks (see **WTTL**, Feb. 25, page 2). “The U.S. has made substantial progress in our trade talks with China on impor-

tant structural issues including intellectual property protection, technology transfer, agriculture, services, currency, and many other issues,” he tweeted Feb. 24. “Assuming both sides make additional progress, we will be planning a Summit for President Xi and myself, at Mar-a-Lago, to conclude an agreement,” he added. In press remarks with the Chinese officials, Trump noted that meeting could happen in March, but time will tell if there is an agreement to sign by then.

While another public hearing was getting more attention down the street, USTR Robert Lighthizer testified at the House Ways & Means Committee on China Feb. 27. In his opening statement, he said, “We have engaged in a very intense, extremely serious, and very specific negotiation with China on crucial structural issues for several months now. We are making real progress.”

“If we can complete this effort – and again I say ‘if’ – and can reach a satisfactory solution to the all-important outstanding issue of enforceability as well as some other concerns, we might be able to have an agreement that helps us turn the corner in our economic relationship with China,” Lighthizer added. “Let me be clear: much still needs to be done both before an agreement is reached and, more importantly, after it is reached, if one is reached,” he cautioned.

Asked about his interaction with the president over the term of art memorandum of understanding (MOU) vs. trade agreement, and whether a trade agreement would need to come to Congress for approval, Lighthizer said: “We have no intent on submitting [the agreement] to Congress.” The deal would be an “executive agreement,” he added. That is, the president is using his authority under Section 301, and not changing any tariff lines.

Lighthizer used the word “enforceable” multiple times during his testimony, but did offer some specifics about the enforcement mechanism that has been discussed. This would include semiannual meetings at the ministerial level. In addition, individual companies could come to the USTR’s office with complaints, and the office would bring those into the process. This is a “fairly unique idea,” he said.

## **Objectives for UK Trade Agreement Might Look Familiar**

While the United Kingdom (UK) is still working out the Brexit contours, the USTR’s office Feb. 28 released its negotiating objectives for a post-Brexit U.S.-UK trade agreement. Not surprising, the points are nearly identical to those for a U.S.-European Union (EU) trade agreement the office released in January (see **WTTL**, Jan. 14, page 4).

Amid 24 chapters that range from digital trade and rules of origin to labor and environment, the agency includes a section on agricultural goods. Like the EU document, these objectives include: secure comprehensive market access, provide reasonable adjustment periods, eliminate non-tariff barriers and restrictive rules, promote regulatory compatibility, and establish specific commitments on biotechnologies.

The only difference between the two documents is the much longer and much more specific chapter on intellectual property (IPR). In the UK agreement, USTR aims to “promote adequate and effective protection of intellectual property rights,” through a dozen specific measures. These include: “Provide strong protection and enforcement for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property, including in a manner that facilitates legitimate digital trade, including, but not limited to, technological protection measures.”

In addition, USTR hopes to “ensure standards of protection and enforcement that keep pace with technological developments, and in particular ensure that rights holders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works.”

An objective on geographic indications appears on both the U.S. and EU documents: “prevent the undermining of market access for U.S. products through the improper use of [a country’s] system for protecting or recognizing geographical indications, including any failure to ensure transparency and procedural fairness, or adequately protect generic terms for common use.”

**\* \* \* Briefs \* \* \***

**RIBBON:** In 5-0 final vote Feb. 26, ITC found U.S. industry is materially injured by dumped and subsidized imports of plastic decorative ribbon from China.

**EXPORT ENFORCEMENT:** Iranian citizen Arash Sepehri was sentenced Feb. 26 in D.C. U.S. District Court to 25 months in prison for his role in conspiracy to export controlled goods and technology to Iran via Hong Kong without Commerce or OFAC licenses. Sepehri pleaded guilty in November 2018 to violating International Emergency Economic Powers Act and Iran sanctions (see **WTTL**, Nov. 12, page 5). Sepehri was owner and managing director of Iranian company, Tajhiz Sanat Shayan (TSS). Indictment was unsealed in June 2018. Items included Side Scan Sonar System, manufactured by Massachusetts company, which was classified under ECCN 6A991, controlled for anti-terrorism purposes. Sepehri will be subject to deportation proceedings following completion of his sentence.

**MORE EXPORT ENFORCEMENT:** Malaysian nationals Lionel Chan of Brighton, Mass., and Muhammad Mohd Radzi of Brooklyn were indicted Feb. 26 in Boston U.S. District Court on one count of conspiring to violate Arms Export Control Act (AECA) for illegal exports of firearm parts, including gun barrels, firing pin and gun sight, to Hong Kong in 2018. Parts were classified under USML Category I. Both men were arrested Jan. 31; Lionel Chan was released on \$50,000 bond, Radzi on \$100,000 bond.

**EVEN MORE EXPORT ENFORCEMENT:** Hany Veletanlic, Bosnian citizen legally residing in Washington state, was convicted Feb. 27 in Seattle U.S. District Court of violating AECA for shipping firearms parts, including Glock lower receiver, to Sweden without State license. Veletanlic was indicted in June 2018. Sentencing is set for May 20. Receiver was classified under USML Category I.

**EX-IM BANK:** Senate Banking Committee Feb. 26 approved by voice vote Kimberly Reed to lead

Export-Import Bank (Ex-Im) and former Rep. Spencer Bachus (R-Ala.) and Judith DelZoppo Pryor to be Ex-Im board members. “Now we need the full Senate to act to confirm the full slate of Ex-Im nominees to restore a functional bank and support American manufacturing jobs,” NAM President Jay Timmons tweeted same day.

VENEZUELA: OFAC March 1 designated six Venezuelan government security officials who control groups that prevented humanitarian aid from entering Venezuela. Agency Feb. 25 designated governors of four Venezuelan states “involved in endemic corruption and in blocking the delivery of critical humanitarian aid.” Ten days earlier, OFAC imposed sanctions on five “illegitimate” Venezuelan government officials including current president of Venezuela’s state-owned oil company, Petroleos de Venezuela, S.A. (PdVSA) (see **WTTL**, Feb. 18, page 5).

USMCA: Another day, another industry coalition. More than 200 companies and associations representing farmers and ranchers, manufacturers, service providers, and technology companies Feb. 26 launched USMCA Coalition, which will advocate for congressional approval of U.S.-Mexico-Canada Agreement. Members include usual suspects: U.S. Chamber of Commerce, Coalition of Services Industries, National Retail Federation, U.S. Dairy Export Council, IBM, Mary Kay and UPS. Other trade associations, businesses and advocacy groups previously launched Pass USMCA Coalition with same goal (see **WTTL**, Feb. 18, page 4).

STEEL THREADED ROD: Vulcan Steel Products filed countervailing and antidumping petitions Feb. 21 with ITA and ITC against carbon and alloy steel threaded rod from China, India, Taiwan and Thailand. In 2014, ITC found U.S. industry is not materially injured by allegedly dumped imports of certain steel threaded rod from Thailand or dumped and subsidized from India (see **WTTL**, Aug. 11, 2014, page 10).

KORUS: USTR Robert Lighthizer Feb. 22 requested ITC investigate “probable economic effect of modifications in the proposal on U.S. Trade” under U.S.-Korea Free Trade Agreement (KORUS) on total U.S. trade and on domestic producers of affected articles.

TRADE PEOPLE: OPIC Executive VP David Bohigian March 1 became acting president and CEO, replacing Ray Washburne. “As the agency transforms into the new U.S. Development Finance Corporation (DFC), I look forward to launching a world class development finance institution and building an unprecedented global platform supporting peace and prosperity,” Bohigian said in statement. Washburne announced resignation in separate statement Feb. 12. Congress passed legislation in October 2018 that consolidates U.S. Agency for International Development (USAID) and OPIC into new entity. Prior to joining OPIC in 2017, Bohigian led Commerce landing team during presidential transition.

FCPA: Indictment against Rafael Enrique Pinto Franceschi (Pinto) of Miami and Franz Herman Muller Huber (Muller) of Weston, Fla., was unsealed Feb. 26 in Houston U.S District Court on charges of conspiracy to violate Foreign Corrupt Practices Act (FCPA) for their alleged roles in scheme to secure business advantages, including contracts and payment on past due invoices, from Venezuela’s state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Pinto and Muller were sales representative and president of Miami-based PDVSA supplier, respectively. Jose Camacho of Houston, official that Pinto and Muller are accused of bribing, pleaded guilty in connection with case (see **WTTL**, Sept.17, page 5). Camacho’s sentencing is set for July 30. Justice has charged 21 individuals in larger investigation of PDVSA bribery.

ITAR: In Federal Register March 4 State rescinded statutory debarment of Rocky Mountain Instrument Company (RMI). “In response to such a request from RMI for reinstatement, the

Department has conducted a thorough review of the circumstances surrounding the conviction, and has determined that RMI has taken appropriate steps to address the causes of the violations to warrant rescission of the notice of statutory debarment of RMI,” notice said. State in May 2016 allowed RMI “indirect participation” in ITAR transactions (see **WTTL**, May 16, 2016, page 1). Company was originally debarred after pleading guilty to knowingly and willfully exporting defense articles without license in June 2010.

**EXPRESS SHIPMENTS:** Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) urged USTR against lowering *de minimis* thresholds for express shipments under updated U.S.-Mexico-Canada Agreement (USMCA). “While we are deeply disappointed that both Canada and Mexico were unwilling to raise their ...thresholds... to match the U.S. \$800 *de minimis* level, lowering the U.S. threshold in response is contrary to well-demonstrated Congressional intent,” senators wrote to USTR Lighthizer. “Our higher threshold has helped to make the United States a leader in global e-commerce – a position that we should not cede to countries, like China, that are vying for that role,” they added. Grassley posted technical and substantive changes to U.S. law that will be needed for eventual USMCA implementation in January (see **WTTL**, Feb. 4, page 6).

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