

Vol. 39, No. 16

April 22, 2019

U.S. Allies Denounce Cuba Policy Changes

What was given can be taken away. After more than 20 years of suspending certain Helms-Burton provisions on the ability of U.S. citizens to bring lawsuits over confiscated Cuban property, the administration will allow the lawsuits. The decision brought immediate reproach from Canada and the European Union (EU).

Secretary of State Mike Pompeo tweeted the policy change April 17. “Effective May 2, under Title III of the LIBERTAD Act, U.S. citizens will be able to bring lawsuits against persons trafficking in property that was confiscated by the Cuban regime. After more than 22 years of delays, Americans will finally have a chance at justice.”

In a press briefing, Assistant Secretary of State for Western Hemisphere Affairs Kimberly Breier cited “200,000 uncertified claims” that “could very easily be in the tens of billions of dollars.” EU companies “will have nothing to worry about if they are not operating on property that was stolen from Americans post-revolution,” she said.

Canadian Foreign Affairs Minister Chrystia Freeland said her country is “deeply disappointed” with the announcement. “We will be reviewing all options,” she said, adding that “we will fully defend the interests of Canadians conducting legitimate trade and investment with Cuba.”

EU High Representative/VP Federica Mogherini and Trade Commissioner Cecilia Malmström said the EU “will consider all options at its disposal to protect its legitimate interests, including in relation to its WTO rights and through the use of the EU Blocking Statute.” The statute “allows EU companies sued in the U.S. to recover any damage through legal proceedings against U.S. claimants before EU courts,” they said.

UniCredit Banks Pay Over \$1 Billion to Settle Sanctions Charges

Three UniCredit Group banks – Italian UniCredit S.p.A. and its subsidiaries, UniCredit Bank AG in Germany and UniCredit Bank Austria AG -- agreed April 15 to pay

© Copyright 2019 Gilston-Kalin Communications LLC.
 P.O. Box 5325, Rockville, MD 20848-5325.
 All rights reserved. Reproduction, photocopying or
 redistribution in any form, including electronic, without
 written approval of publisher is prohibited by law.

WTTL is published weekly 50 times a year except last week
 in August and December. Subscriptions are \$697 a year.
 Additional users pay only \$100 each with full-priced sub-
 scription. Site and corporate licenses are also available.
 Phone: 301-460-3060 Fax: 301-460-3086

Treasury's Office of Foreign Assets Control (OFAC) a total of \$611 million in three separate settlements to resolve charges of violating several U.S. sanctions programs, including those related to Burma, Cuba, Iran, Libya, Sudan and Syria.

The penalty was part of a global settlement with OFAC, Justice, the N.Y. County District Attorney's Office, the Federal Reserve Board of Governors, and the N.Y. State Financial Services Department. In all, the three firms have agreed to pay penalties totaling approximately \$1.3 billion and to implement certain remedial policies and procedures.

UniCredit Bank AG, operating under the name HypoVereinsbank, pleaded guilty in D.C. U.S. District Court to conspiring to violate the International Emergency Economic Powers Act (IEEPA) and to defraud the U.S. UniCredit Bank Austria agreed to forfeit \$20 million and entered into a non-prosecution agreement (NPA) to resolve its IEEPA violations.

Between January 2007 and December 2011, UniCredit Bank AG processed 2,158 payments totaling more than \$527 million through U.S. financial institutions. "During this time period, UniCredit operated U.S. dollar (USD) accounts on behalf of the Islamic Republic of Iran Shipping Lines (IRISL) and several companies owned by or otherwise affiliated with IRISL, and managed the accounts of those companies in a manner that did not identify the interest or involvement of IRISL in transactions sent to or through U.S. intermediaries," OFAC said. OFAC designated IRISL in September 2008.

During the same period, Bank Austria and UniCredit S.p.A. appear to have used "non-transparent payment practices" to process sanctions-related payments to or through the U.S., including the use of Society for Worldwide Interbank Financial Telecommunication (SWIFT) MT202 cover payment messages "that did not reveal the involvement of sanctioned parties or jurisdictions and executing payments related to trade finance agreements," OFAC noted.

"The Banks have cooperated with the U.S. and New York authorities in their investigations for many years, including sharing the results of extensive internal investigations, and remain committed to continued cooperation with regulators globally," UniCredit said in a company statement. "Prior to and throughout the course of the investigations, UC has voluntarily implemented a major Group-wide and bank-specific remediation and enhancement plan to strengthen its policies, procedures, supports, and controls to ensure full compliance with applicable economic sanctions and internal control requirements," the firm added.

Trade with EU Gets Complicated

In response to the U.S. list of products that could face potential retaliation in the decade-long World Trade Organization (WTO) aircraft subsidies dispute, the European Union (EU) April 17 proposed its own list of \$20 billion of U.S. products considered for countermeasures.

The U.S. Trade Representative (USTR) April 8 proposed a list of \$21 billion worth of EU products to “which additional duties may be applied until the EU removes those subsidies” (see **WTTL**, April 15, page 5). The WTO Appellate Body (AB) confirmed March 28 that the U.S. has continued to provide subsidies to Boeing through tax concessions despite previous rulings in the long-standing dispute

“While we need to be ready with countermeasures in case there is no other way out, I still believe that dialogue is what should prevail,” EU Trade Commissioner Cecilia Malmström said in a statement. “The EU remains open for discussions with the U.S., provided these are without preconditions and aim at a fair outcome,” she added. The EU list covers a range of items, from aircrafts to chemicals and from frozen fish and citrus fruits to ketchup.

Two days earlier, the European Council adopted the negotiating directives for trade talks with the U.S., an agreement member states failed to reach just a few weeks before (see **WTTL**, March 18, page 1). As expected, those narrow negotiating objectives cover two potential areas of agreement: industrial goods and conformity assessment, but do not include talks on agriculture, which U.S. stakeholders have long pushed.

Lawmakers and industry groups were quick to respond to the directives’ approval. “Elimination of industrial tariffs and non-tariff barriers only get us part of the way there, especially when we face major barriers to agricultural trade in the E.U. Agriculture is a significant piece of the global economy and it simply doesn’t make sense to leave it out,” Sen. Chuck Grassley (R-Iowa) said in a statement.

“Any deal that eliminates tariffs will need to get congressional approval. Bipartisan members of the Senate and the House of Representatives have voiced their objections to a deal without agriculture, making it unlikely that any such deal would pass Congress,” he added.

The American Soybean Association (ASA) echoed that sentiment, saying it was “disappointed” by the EU’s decision. “We had high hopes that some of the long-standing concerns regarding the EU’s policies on agricultural biotechnology and on revising the EU’s pesticide laws would be addressed,” said ASA president Davie Stephens in a statement. “With the EU now formally excluding ag, it will be difficult if not impossible to address these non-tariff barriers that severely inhibit trade between our countries,” he added.

State Expands ITAR Government License Exemption

It’s about time. Four years after proposing changes to the licensing exemption for transfers made “by or for” an agency of the U.S. government, State April 19 amended the International Traffic in Arms Regulations (ITAR) to clarify when such exports, reexports, retransfers, temporary imports and performance of a defense service may be made. The final rule “expands the scope of this exemption to allow for permanent exports,

reexports, and retransfers, in addition to temporary exports and imports, and to allow transfers by third parties acting for the U.S. Government,” the Federal Register notice said. State first proposed the changes, along with other ITAR revisions, in May 2015. A final rule in August 2016 covered “those elements of the proposed rule not related to the exemption” (see **WTTL**, Aug. 22, 2016, page 1).

Specifically, State revised paragraph (a) to authorize those transfers made by a department or agency of the U.S. government (1) for official use by the U.S. government, (2) for carrying out certain international agreements or arrangements, (3) for carrying out foreign assistance, or sales programs authorized by statute, or (4) for carrying out certain Defense (DOD) “security cooperation programs and activities,” the rule said.

It also authorized “certain agreements or arrangements entered into with international partners,” and could include “cooperative research, development, testing, evaluation, or production; reciprocal use of test facilities; loan of equipment and material; personnel exchange; cooperative logistics support, acquisition, and cross-servicing; security of supply; or reciprocal defense procurement activities,” it noted.

Under the rule, State removed the reference to technical data because “it was redundant and confusing. Technical data is a form of defense article and is authorized by the language authorizing the export of defense articles,” the department said. The department also removed the requirement from the proposed rule that government contractors be U.S. persons in response to comments, but maintained a restriction on using contractors from embargoed countries.

Also in response to comments, State removed the provision requiring the U.S. government to perform or direct all aspects of the transaction, the requirement to include a certification on the airway bill and to provide a certification to the Port Director.

U.S. Hails Second WTO Agriculture Victory Against China

In what administration officials called the “second significant victory for U.S. agriculture this year,” a World Trade Organization (WTO) dispute-settlement panel April 18 largely sided with the U.S. complaints that China’s administration of tariff rate quotas (TRQs) on wheat, rice and corn imports is inconsistent with the country’s 2001 accession agreement.

A separate panel in February 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**, March 4, page 1). The WTO Dispute Settlement Body (DSB) agreed to establish the TRQ panel in September 2017 after China blocked the U.S. first request. U.S. first filed for consultations in December 2016.

The panel agreed with the U.S. that China failed to adhere to its WTO accession commitments to administer the TRQs on a transparent, predictable, and fair basis and

using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ. The panel also found that the U.S. had not demonstrated that the public comment process and the usage requirement for the rice TRQ were inconsistent with China's obligations.

"China's grain TRQs have annually underfilled," USTR and Agriculture (USDA) said in joint statement. USDA estimates that had China's TRQs for those grains been fully used, China would have imported \$3.5 billion of additional crops in 2015. "We will use every tool available to gain meaningful market access opportunities for U.S. grains and other agricultural products," said Agriculture Secretary Sonny Perdue.

A Ministry of Commerce official said in a statement China regretted the decision. "China has always respected the WTO rules and will carefully evaluate the report of the expert group, properly handle it according to the WTO dispute settlement procedures, actively maintain the stability of the multilateral trading system, and continue to manage import tariff quotas for agricultural products in a manner consistent with WTO rules," the official said.

Mixed Responses Greet ITC Report on USMCA Impact

While it was perhaps the second most anticipated report issued April 18, the International Trade Commission's (ITC) report on the likely economic impact of the U.S.-Mexico-Canada trade agreement (USMCA) started keyboards buzzing almost immediately.

In general, the ITC estimated that USMCA would raise U.S. real GDP by \$68.2 billion (0.35%) and U.S. employment by 176,000 jobs (0.12%). U.S. exports to Canada and Mexico would increase by \$19.1 billion (5.9%) and \$14.2 billion (6.7%), respectively, it added. U.S. imports from Canada and Mexico would increase by \$19.1 billion (4.8%) and \$12.4 billion (3.8%), respectively.

USMCA would reduce the scope of the investor-state dispute settlement (ISDS) mechanism, the ITC report noted. This change would "reduce U.S. investment in Mexico and would lead to a small increase in U.S. domestic investment and output in the manufacturing and mining sectors," it said.

On autos, however, USMCA would lead to a small price increase and small decrease in consumption of in the U.S., but the deal is estimated to increase U.S. production of automotive parts and U.S. employment in the sector, the ITC noted. USMCA would "strengthen and add complexity to the rules of origin requirements" in the sector by increasing regional value content (RVC) requirements and adding other requirements, it added.

At the same time, USTR released its own report on the deal's impact on the auto sector, largely based on information provided by North American automotive manufacturers. The

USTR report estimated that over the next five years, the USMCA should result in approximately \$34 billion in new automotive investments, \$23 billion in new annual auto parts purchases and 76,000 new automotive jobs.

As expected, the American Automotive Policy Council (AAPC), which consists of the three large U.S. automakers, took issue with the ITC report, saying the report's conclusions and overall analysis were "flawed," AAPC President Matt Blunt said in a statement. The report "underestimates the longer-term investments and increased U.S. auto parts sourcing that will be made in our sector as a result of the certainty and predictability the USMCA will deliver," he added.

Other industry groups praised the report. "The report appropriately mentions the significant positive effect the digital trade provisions would have on the U.S. economy. We look forward to working with Congress and the Administration to get this agreement passed," Software & Information Industry Association (SIIA) Senior VP for Global Public Policy Carl Schonander said in a statement.

Democratic lawmakers questioned the report, especially the claim that the deal would strengthen labor standards and rights. The new deal "represents at best a minor update to NAFTA, which will offer only limited benefits to U.S. workers," Sen. Ron Wyden (D-Ore.) said in a statement. "The administration shouldn't squander the opportunity to lock in real, enforceable labor standards in Mexico and fix the enforcement problems that have plagued NAFTA," he added.

AFL-CIO trade specialist Celeste Drake agreed. "By recognizing that the new NAFTA would only strengthen labor standards and rights 'if enforced,' the USITC's study supports the AFL-CIO's demand that the deal be fixed, including by adding swift and certain enforcement tools, before Congress votes on it," Drake said. AFL-CIO President Richard Trumka repeated the union's opposition to the current deal in a speech in April (see **WTTL**, April 8, page 2).

*** * * Briefs * * ***

TRADE FIGURES: Merchandise exports in February jumped 2.6% from year ago to \$139.5 billion, Commerce reported April 17. Services exports gained 2.0% to record-high \$70.1 billion from February 2018. Goods imports decreased 0.95% from February 2018 to \$211.6 billion, as services imports gained 1.4% to \$47.5 billion.

TUNISIA: Tunisia and U.S. have finalized export certificates to allow imports of U.S. beef, poultry, and egg products into Tunisia, USTR and Agriculture announced April 17. Initial estimates are that Tunisia would import annually \$5-10 million of beef, poultry, and egg products from U.S., "with additional growth over time," agencies said. Announcement follows meetings on "safety and wholesomeness" of U.S. beef, poultry, and egg products, they added.

VENEZUELA: OFAC April 17 designated Banco Central de Venezuela, or Central Bank of Venezuela, for operating in country's financial sector, and bank director Iliana Josefa Ruzza Terán (Ruzza). Ruzza was appointed in May 2018 to be VP of finance of state-owned oil company Petroleos de Venezuela, S.A. (PdVSA), which OFAC blocked in January (see **WTTL**, Feb. 4, page

4). At same time, OFAC added two new General Licenses (GLs) and amended five Venezuela-related GLs. New GLs 19 and 20 authorize certain activities necessary to wind-down of operations or existing contracts involving bank, as well as official activities of certain international organizations such as UN and Red Cross.

NICARAGUA: OFAC April 17 designated son of Nicaraguan president and VP, along with Nicaraguan bank Banco Corporativo SA (BanCorp) “for their roles in corruption and money laundering for the personal gain of the Ortega regime,” Sigal Mandelker, Treasury under secretary for terrorism and financial intelligence, said in statement. Laureano Ortega Murillo is currently investment promotion advisor of Nicaraguan government agency, ProNicaragua. BanCorp, as subsidiary of Alba de Nicaragua, S.A. (ALBANISA), is ultimately owned by PdVSA.

SECTION 232: American Institute for International Steel (AIIS) and two members filed petition at Supreme Court for writ of certiorari in advance of CAFC judgment on appeal. “In the ordinary course, an appeal in this case would be heard by a second panel of three judges, this time from the Court of Appeals for the Federal Circuit, who would be presented with the identical question regarding the controlling effect of this Court’s ruling in Algonquin. This petition in advance of judgment seeks to bypass that unnecessary and ultimately inconclusive step,” AIIS wrote. Two CIT judges March 25 upheld constitutionality of Section 232 tariffs on steel and aluminum citing 1976 Supreme Court Algonquin opinion (see **WTTL**, April 1, page 5).

JAPAN: USTR Robert Lighthizer and Japanese Economic Revitalization Minister Toshimitsu Motegi either “began” or “continued” negotiations April 15-16 on new bilateral trade agreement, depending on whether to believe Twitter or formal USTR statements Either way, two officials “reaffirmed their shared goal of achieving substantive results on trade,” USTR said in statement after meetings. Lighthizer and Motegi agreed two partners “will meet again in the near future to continue these talks.” USTR in October formally notified Congress it intends to negotiate three separate trade agreements with Japan, EU and UK “as soon as practicable” (see **WTTL**, Oct. 22, 2018, page 1).

CABINETS: In 4-0 preliminary vote April 19, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of wooden cabinets and vanities from China. Commissioner Meredith Broadbent did not participate in these investigations.