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## Three Travel Companies Settle OFAC Cuba Charges

Just a week after the administration further restricted travel to Cuba, Treasury's Office of Foreign Assets Control (OFAC) June 13 announced a total of \$588,431 in civil settlements with three online travel firms – Expedia, Hotelbeds USA and Cubasphere -- for violating U.S. Cuba sanctions. The administration's move to block certain group travel and cruise ships' passage to Cuba came as a surprise and sent travel agents scrambling (see **WTTL**, June 10, page 1).

Expedia, headquartered in Bellevue, Wash., agreed to pay \$325,406 for assisting 2,221 persons — some of whom were Cuban nationals — with travel or travel-related services for travel within Cuba or between Cuba and locations outside the U.S. between April 2011 and October 2014. Expedia voluntarily self-disclosed the apparent violations to OFAC. Florida-based Hotelbeds USA, a subsidiary of Spanish Hotelbeds Group, agreed to pay \$222,705 for providing Cuba-related travel services to 703 non-U.S. persons between December 2011 and June 2014. Hotelbeds USA did not voluntarily self-disclose the violations.

Cubasphere, Inc. and an unnamed individual agreed to pay \$40,320 for assisting 104 persons on four separate trips to and within Cuba from December 2013 to February 2014. Cubasphere did not voluntarily self-disclose the violations. They “procured Cuban visas and cover letters for travelers from U.S. religious organizations that cited the general license” in the regulations, the agency added. “However, the itineraries from the U.S. religious organizations did not match the itineraries that the Individual and Cubasphere offered their customers,” it said.

## Business Groups Get Serious About USMCA Implementation

Now that all that nastiness at the border and the steel and aluminum tariffs on Mexico and Canada are good and done, U.S. business groups are hoping officials will move to the

important work of ratifying and implementing the U.S.-Mexico-Canada Agreement (USMCA). Business leaders from the three countries met in Washington June 11 hosted by Business Roundtable. “USMCA will improve the trade relationship by modernizing long-outdated elements” of NAFTA, all three groups said a joint statement. “It includes important new chapters aimed at improving North American competitiveness and good regulatory practices,” they added.

“Above all, USMCA provides certainty for our region’s economic success. Each of our organizations is fully committed to working with our respective governments and business communities to ensure North America remains tariff free and there is a swift and successful implementation of the USMCA,” the groups wrote.

That day, White House economic advisor Larry Kudlow said that the USMCA was even more important than the relationship with China “vis-a-vis the economy,” he told CNBC. “Canada and Mexico are gigantic trading partners and I think in economic terms, that’s probably more important than the China story, however that China story is going to turn out. So my sense is we could add a half a point [of additional GDP] if we get USMCA,” Kudlow said.

More than 950 U.S. food and agriculture organizations, including the American Soybean Association (ASA), echoed Kudlow’s sentiment, urging congressional leadership to strongly support swift ratification of the deal. USMCA “will ultimately lead to freer markets and fairer trade. This modernized trade agreement makes improvements to further enhance U.S. food and agricultural exports to our neighbors and would deliver an additional \$2.2 billion in U.S. economic activity,” they wrote.

Two days later, House Speaker Nancy Pelosi (D-Calif.) June 13 named nine members to the House Democrats’ Trade Working Group, to be led by Rep. Richard Neal (D-Ma.) and tasked with negotiating with the administration to collaborate on USMCA implementation. The eight other members will work in four subgroups: drug pricing, labor, environment and enforcement. Enforcement in particular is a sticking point for House Democrats (see **WTTL**, May 27, page 4).

“I will continue to scrutinize the details of this deal to determine whether it will deliver on creating the American jobs that this Administration has promised, particularly in communities across my district and our country that have borne the heaviest losses. We must ensure that economic conditions and incentives are created to establish good jobs and support middle class families,” Neal said in a statement.

## **G20 Trade Ministers Push for Reform, Open Markets**

As one would expect, the G20 trade and digital economy ministers who met in Japan June 8-9 urged their respective leaders to deescalate trade tensions and collectively improve the trade and investment environment. The leaders themselves will meet June 28-29. In a joint statement after the meeting, the ministers noted that “trade and investment growth

slowed in 2018 and that this is contributing to a weaker global growth outlook for 2019-20 than previously projected. While growth is expected to increase in 2020, downside risks arising from the current trade environment could undermine this growth.”

To avoid that outcome, the ministers “agreed to continue “dialogue to mitigate risks and enhance confidence among exporters and investors,” they wrote. They also “affirmed the need to handle trade tensions and to foster mutually beneficial trade relations.” In general, the ministers “strive to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, to keep our markets open.

On ongoing efforts to reform the World Trade Organization (WTO), the ministers in a joint statement said they “will work constructively with other WTO Members to undertake necessary WTO reform with a sense of urgency. In addition, the group said it recognizes “the complementary roles of bilateral and regional free trade agreements that are WTO-consistent” and agreed that “action is necessary regarding the functioning of the dispute settlement system consistent with the rules as negotiated by the WTO Members.”

While the group came to consensus on dozens of issues, the ministers disagreed on the future of the Global Forum on Steel Excess Capacity (GFSEC), according to the three Japanese officials who chaired the meeting. “The wide majority of members expressed their willingness to join an emerging consensus to recognize that further efforts are necessary to reduce excess steelmaking capacity and to call for the extension of the GFSEC's duration beyond its current term and continuation of its work,” they noted.

“A few members emphasized the importance of arriving at a full consensus as per G20 practice and stated that GFSEC has achieved its objective and should expire at the end of its current term,” they added.

Chinese Vice Minister of Commerce Wang Shouwen took a perhaps veiled swipe at the U.S. in his speech, saying that “the current spread of unilateralism and protectionism has seriously affected the multilateral trading system and aggravated global trade tensions, leading to a slowdown in trade and investment growth,” according to the Chinese ministry website.

WTO Director-General Roberto Azevedo also addressed the meeting, arguing for continued discussions on reform of the organization. “Whether it be efforts to strengthen committee structures and notifications, to advance new negotiating approaches, or to find ways to deliver on issues like fisheries subsidies and agriculture, all relate in one way or another to the broad issue of WTO reform,” he said.

## **CAFC Remands Commerce Application of Adverse Facts Available**

In a case that split the majority of the appeals court, the Court of Appeals for the Federal Circuit (CAFC) June 14 remanded a Court of International Trade (CIT) decision on

application of adverse facts available (AFA) during an administrative review of anti-dumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom (UK).

The case started in 2013 when counsel for BMW did not fill out the quantity-and-value questionnaire, withdraw from the administrative review, or otherwise respond to Commerce's communications on the antidumping orders. On remand, Commerce applied an AFA rate of 126.44%. BMW appealed and the CIT sustained Commerce's decision.

“Commerce did not consider or address BMW's argument regarding its mitigating circumstances or explain why it determined that the 126.44% rate was appropriate given the unique factual circumstances surrounding BMW's failure to return the quantity-and-value questionnaire,” Chief Judge Sharon Prost wrote for a three-judge panel in *BMW of North America LLC v. U.S.*

“We conclude that Commerce lawfully resumed BMW's administrative review after reinstatement of the related antidumping duty order, but must explain its consideration of the particular factual circumstances surrounding BMW's failure to cooperate with Commerce's request for information when considering whether its selected AFA rate of 126.44% was unduly punitive,” she added.

Circuit Judge Kara Farnandez Stoll dissented to part of the majority opinion. “Commerce easily satisfied its obligations under the statute and our case law,” she argued. “To be sure, the factual circumstances of a case may be relevant to deciding whether to apply an AFA rate at all—a decision not contested here on appeal. But Commerce need not *re-consider* those facts when setting the rate,” Stoll added.

“In my view, the Majority has erred by imposing new, extra-statutory limits on the discretion that Congress granted to Commerce. Worse yet, those limits are ill-defined and amorphous, making Commerce's job harder and our review function difficult, if not impossible,” she wrote.

## Is Rare Earth Metals the Next Trade Weapon?

When the Trump administration made the decision to tighten the screws on China in the trade dispute by both putting Huawei on the Entity List and rolling out an Executive Order to starve it of all U.S. hardware and software, Washington expected retaliation. In anticipation of Chinese actions, Commerce issued a “Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals.” At the top of its list were rare earth metals.

“These critical minerals are necessary components for countless items relied on by millions of Americans, including smartphones, aircraft, computers, and GPS navigation systems, as well as green technologies such as wind turbines, energy efficient lighting, and hybrid vehicle batteries,” Commerce contended in the report released June 3. To further raise the alarm, Commerce cautioned that the U.S. is “heavily dependent” on imports of critical

minerals, for more than 50% of domestic demand for 29 of the 35 minerals named and “lacks any domestic production for 14 of the 35 minerals.”

Days following the administration’s actions, Chinese President Xi visited one of the rare-earth production companies in China. China’s Ministry of Commerce spokesman Gao Feng told reporters May 30: “On the basis of serving domestic needs, we are willing to meet the legitimate needs of countries around the world for rare earth resources. However, if any country wants to use the products made by China's exported rare earths to curb the development of China, it is unacceptable.”

In addition, China’s national Development and Reform Commission, akin to our Committee on Foreign Investment in the U.S. (CFIUS), said that it would set new limits on sales of rare earth metals outside China. Not surprising, given all this focus on rare earths, there has been a recent spike in prices for these metals on the world markets.

This is not the first time rare earths have been used in trade disputes. In 2010 as a result of a territorial dispute with Japan, China discontinued shipping rare earth metals to Japan. The Obama administration complained to the WTO about China’s policies on exports of rare earths, tungsten and molybdenum, including export duties, quotas and quota administration requirements, and in 2014 the WTO ruled against the Chinese (see **WTTL**, March 31, 2014, page 3)

So, although the Trump administration has raised this issue as critical to the U.S. national security and the world, it has done very little to increase manufacturing in the U.S. or increase incentives to attract U.S. businesses. To date there is only one U.S. company mining rare earth metals: MP Materials in California. The other two places in the world with comparable production are in Australia and Myanmar. Together with the U.S., they have affected Beijing’s production of rare earth from 97% of world production in 2010, to 71% today.

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

**WTO:** China agreed to comply with WTO dispute ruling on its domestic support for agricultural producers by March 31, 2020, two countries announced June 12 in communication to WTO members. Panel in February found China provided farm subsidies for wheat and rice producers in excess of its WTO domestic support limits, upholding 2016 U.S. complaint (see **WTTL**, March 4, page 1).

**ITC:** Senate Finance Committee June 11 approved nominations of Amy Karpel and Randolph Stayin to be members of International Trade Commission (ITC) in almost unanimous votes. Karpel vote was 27-0 with 1 present (Sen. James Lankford (R-Okla.); vote for Stayin was 26-0 with 2 present (Lankford and Sen. Pat Toomey (R-Pa.). President first nominated Stayin in October 2017; Karpel in February 2018.

**EXPORT ENFORCEMENT:** Indictment against Haoyang Yu, Chinese born naturalized U.S. citizen living in Lexington, Ma., and his company Tricon MMIC LLC, was unsealed June 14 in Boston U.S. District Court on charges of smuggling and theft of trade secrets. While working for

semiconductor firm Analog Devices, Inc. (ADI), Yu allegedly downloaded hundreds of highly confidential and proprietary ADI files. Yu also allegedly used Tricon to illegally export several identical to or substantially similar parts to Spain by concealing both his name and ECCN on shipping documents. Yu was arrested that day and remains in custody.

**MORE EXPORT ENFORCEMENT**: Joyce Eliabachus, aka “Joyce Marie Gundran Manangan,” of Morristown, N.J., pleaded guilty June 11 in Newark U.S. District Court to conspiracy to violate International Emergency Economic Powers Act (IEEPA) for role in scheme to smuggle over \$2 million worth of aircraft components to Iran from May 2015 through October 2017. At same time, new complaint was unsealed against Peyman Amiri Larijani, Iranian citizen and former Turkish resident. Larijani was indicted June 4 in D.C. U.S. District Court on related charges (see **WTTL**, June 10 page 10). Eliabachus was principal officer and operator of Edsun Equipments LLC, purported N.J.-based aviation parts trading company run out of her residence, Justice noted.

**ONE LESS DISPUTE**: U.S. and China agreed to suspend WTO dispute panel proceedings to address Beijing’s “discriminatory technology licensing requirements,” WTO announced June 14. U.S. accused China of breaking WTO rules by denying foreign patent holders basic rights and imposing mandatory adverse contract terms that are discriminatory toward imported foreign technology. Panel was established in November after China blocked U.S.’ first request (see **WTTL**, Nov. 5, 2018, page 4). USTR first requested consultations in March 2018. “No reason was given for the suspension of the proceedings,” WTO spokesman wrote in email.

**CIVIL PENALTIES**: In Federal Register June 14, OFAC adjusted for inflation maximum civil monetary penalties (CMPs) under relevant regulations. These include: Iran, Zimbabwe, Syrian, Darfur, Congo, Belarus, Lebanon, Magnitsky Act and Hizballah sanctions programs.

**TOO LITTLE, TOO LATE**: White House June 12 withdrew nomination of Jeffrey Nadaner to be Commerce assistant secretary for export enforcement. Senate Banking Committee approved nomination in March in unanimous voice vote. Nadaner requested withdrawal; sources say he couldn’t wait any longer and “other opportunities arose.” White House first floated nomination in February 2018.

**PIPE FITTINGS**: In 5-0 “sunset” vote June 13, ITC said revoking antidumping duty order on imports of non-malleable cast iron pipe fittings from China would renew injury to U.S. industry.

**FILE CABINETS**: In 5-0 preliminary vote June 13, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of vertical metal file cabinets from China.

**QUARTZ**: In 5-0 final vote June 11, ITC found U.S. industry is materially injured by dumped and subsidized imports of quartz surface products from China. ITC also made negative critical circumstances finding with respect to subject imports.

**IRAN**: OFAC June 12 designated Iraq-based South Wealth Resources Company (SWRC) and two individuals who helped facilitate shipments and financial operations for “trafficking hundreds of millions of dollars’ worth of weapons” to Iraqi militias backed by Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). Agency designated IRGC-QF in October 2007.