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Administration to End Flights to Cuban Cities Beyond Havana

In yet another reversal of Obama administration policy, Secretary of State Mike Pompeo Oct. 25 asked Transportation Secretary Elaine Chao to suspend scheduled, commercial air service between the U.S. and all nine Cuban airports, except Havana's Jose Martí Airport. "This action will prevent the Castro regime from profiting from U.S. air travel and using the revenues to repress the Cuban people," Pompeo tweeted. The rule will go into effect Dec. 10.

Four days prior, the Bureau of Industry and Security (BIS) took several steps to restrict exports to the island, including establishing a general 10% de minimis level and a licensing policy of denial for aircraft leases to Cuban state-owned airlines (see **WTTL**, Oct. 21, page 1).

The Obama administration authorized six U.S. airlines to provide scheduled passenger flights between various U.S. and Cuban cities other than Havana in June 2016. Reps. Jim McGovern (D-Mass.) and Tom Emmer (R-Minn.) and Sen. Patrick Leahy (D-Vt.) in July introduced the Freedom for Americans to Travel to Cuba Act of 2019 (H.R. 3960/S. 2303), which removes current travel restrictions to the island.

Advocacy group Engage Cuba immediately denounced the administration's latest move. "This backroom move at 5pm on a Friday is a weak and needlessly cruel blow to Cuban families. How are Cuban-Americans supposed to visit to see their loved ones if there are no flights to most of the country?" the group tweeted.

China Asks for \$2.4 Billion in WTO Trade Concessions

In a move that might not help ongoing trade talks, China will request World Trade Organization (WTO) authorization to suspend trade concessions on \$2.4 billion of U.S. imports "in response to the United States' continued non-compliance" of a WTO ruling on

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countervailing duties levied on certain Chinese goods. The WTO Dispute Settlement Body will take up the request at its next meeting Oct. 28. The WTO Appellate Body (AB) in July upheld a dispute panel's ruling regarding U.S. compliance with an earlier WTO ruling in the dispute (see **WTTL**, July 22, page 2). In a mixed ruling on a mixed ruling, the report contained a separate dissenting opinion from one of the three AB members on the appeal.

Before the original panel, China challenged several aspects of the Commerce and "the determinations resulting from such investigations. The panel found that the United States acted inconsistently with several of its obligations under the Agreement on Subsidies and Countervailing Measures (SCM Agreement)," China said Oct. 18 in requesting the dispute be included in the meeting agenda. Under a prior procedural agreement between the two sides, the matter will be referred to a WTO arbitrator if the U.S. objects to the amount of China's proposed retaliation.

Commerce Continues Mexican Tomato Investigation

Just when importers thought it was safe to go back into the tomato fields, Commerce Oct. 21 announced it was completing the suspended antidumping duty (AD) investigation of fresh tomatoes from Mexico at the request of domestic producers. The next day, the department announced a 21% final dumping margin, and the International Trade Commission (ITC) held a hearing in the dispute Oct. 24.

Commerce and Mexican tomato growers in September signed a deal to suspend the ongoing investigation (see **WTTL**, Sept. 23, page 3). However, under antidumping law, interested parties may request that Commerce continue the suspended investigation. If the ITC's final determination is affirmative, then the suspension agreement will remain in place.

"If the agreement is ever terminated, there will be an immediate imposition of the 21% duty since the investigation will have already been completed," the department noted. However, if the ITC's final determination is negative, then Commerce and ITC will terminate their investigations, and the suspension agreement will have no force or effect, it added.

In its request, the Florida Tomato Exchange (FTE) said it "is taking this action reluctantly," the group said in a press release Oct. 14. "Commerce did an excellent job under difficult circumstances negotiating the new suspension agreement, which the FTE continues to support. Unfortunately, the Mexican tomato industry does not agree and has signaled its intention to challenge the agreement legally and politically, even though they signed the agreement just last month," the group added.

Ongoing lawsuits against the U.S. "clearly indicate that the Mexican industry plans to force a renegotiation of the agreement by withdrawing at some point in the near future. This is a tactic the Mexican tomato industry used three times in the past to avoid sunset reviews and to negotiate new agreements that were more favorable to them," FTE noted.

Administration Plays Good Cop, Bad Cop on China

Just weeks before China and the U.S. are scheduled to celebrate a preliminary trade agreement in Chile, the Trump administration seemed to take a contradictory, two-pronged approach to its relationship with China. On one hand, Vice President Mike Pence leveled an aggressive broadside against the country on a wide range of ongoing grievances including unfair trade practices. On the other, the president and Cabinet officials hailed progress in the agreement.

At press time Oct. 25, the U.S. Trade Representative (USTR)'s office announced that after a phone call with Chinese Vice Premier Liu He the U.S. and China are "close to finalizing parts of the 'phase one' trade deal," but details were still as sketchy as two weeks earlier when the president announced a verbal truce and suspended an upcoming tariff increase (see **WTTL**, Oct. 14, page 1).

"They made headway on specific issues and the two sides are close to finalizing some sections of the agreement. Discussions will go on continuously at the deputy level, and the principals will have another call in the near future," the USTR's office said.

Speaking at the Wilson Center in Washington the day before, Pence took a much harsher tone, saying that the U.S. and its leaders will not rely on economic engagement alone to transform the Communist authoritarian state. Instead, Pence said the administration would find other ways of forcing China to respect the rule of law and international commerce, because "as the President's 2017 National Security Strategy articulated, the United States now recognizes China as a strategic and economic rival," Pence noted.

On the rights of minorities in China, including Muslim minorities in Xinjiang, the Vice-president said to change Chinese actions, the administration imposed visas restrictions on Chinese Communist Party officials, as well as sanctions on 20 Chinese public security bureaus and eight Chinese companies (see **WTTL**, Oct. 14, page 2).

Most disconcerting to the administration are two things that China continues to do. The first is exporting those surveillance tools to countries in Africa, Latin America, and the Middle East to be used by authoritarian regime, tools that are deployed often with the help of American companies. Second, is what Pence calls the 'military-civilian fusion,' "By law and presidential fiat, companies in China — whether private, state-owned, or foreign — must share their technologies with the Chinese military," Pence said.

The administration has long complained about a list of bad Chinese actions on the trade and economic front. In addition, it has argued that the elite in the U.S. are just as responsible for enabling those actions as China. "The political establishment was not only silent in the face of China's economic aggression and human rights abuses, but they often enabled them. As each year passed, as each factory closed in the heartland of America, as each new skyscraper went up in Beijing, American workers grew only more disheartened, and China grew only more emboldened," Pence argued.

Perhaps nothing has so outraged the administration than a promise made but unkept by Beijing. Despite a 2015 promise in the Rose Garden by China's leaders, China continues to aid and abet the theft of our intellectual property. "Last July, the director of the FBI told Congress that of his agency's 1,000 active investigations into intellectual property theft, the majority involve China. American enterprises continue to lose hundreds of billions of dollars each year in intellectual property theft," Pence complained.

Back to the trade deal, the one area where China and the U.S. seem to speak with unanimity is on the idea of whether the Trump administration seeks to "de-couple" from China? "The answer is a resounding 'no.' The United States seeks engagement with China and China's engagement with the wider world, but engagement in a manner consistent with fairness, mutual respect, and the international rules of commerce," Pence said.

So agreed China's Foreign Ministry Spokesperson Hua Chunying in a press conference Oct. 23. "As the Chinese side has repeatedly pointed out, given the size of our economies and the level of interdependence, the so-called 'decoupling' or 'shutting the door to each other' is neither sensible nor realistic for China and the U.S. Decoupling from the Chinese economy would be decoupling from opportunities and the future. We believe the U.S. is fully aware of that."

"Openness and integration is the right way forward. China is further opening up to all countries including the U.S. In the meantime, we hope the U.S. will keep its door wide open to China and reduce unreasonable restrictions, which will meet the interests of both sides and the aspiration of the world," Hua added.

EU Report Affirms Privacy Shield Progress

A month after the U.S. and the European Union (EU) smiled through a joint press statement hailing the third annual review of the U.S.-EU Privacy Shield, the EU's report on the review released Oct. 23 affirmed the U.S. adequate privacy protection but gave the administration a to-do list to make the pact even more effective.

The third annual review of the U.S.-E.U. Privacy Shield Sept. 12-13 ended on a much brighter note than previous reviews, as a key administration position has been filled and more companies are signing up for the program (see **WTTL**, Sept. 16, page 3).

"The report confirms that the U.S. continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield from the EU to participating companies in the U.S.," the EU said. "However, in light of some issues that emerged from the day-to-day experience or became more relevant in the context of the practical implementation of the framework, the Commission concludes that a number of concrete steps need to be taken to better ensure the effective functioning of the Privacy Shield in practice."

These steps include: shortening the time periods for completing the re-certification process; assessing companies' compliance with the Accountability for Onward Transfers

Principle; developing and using tools for detecting false claims of participation; finding ways to share meaningful information; and developing additional guidance for companies related to human resources data.

The EU also said it would “continue to follow closely the ongoing debate about federal privacy legislation in the U.S. A comprehensive approach to privacy and data protection would increase the convergence between the EU and the U.S. systems and this would strengthen the foundations on which the Privacy Shield framework has been developed,” the report said.

Tech industry groups welcomed the progress in the EU report. “The EU-U.S. Privacy Shield is a crucial instrument in strengthening trust and promoting innovation globally,” said Information Technology Industry Council’s (ITI) VP Guido Lobrano in a statement. “This landmark initiative continues to be a reliable and stable mechanism for smooth and secure transatlantic data flows, which is essential for the protection of consumers and operation of businesses in today’s data-driven economy.”

The Center for Data Innovation was pleased that the EU recognized that the U.S. is upholding its side of the agreement, but warned of an upcoming European court decision that could put the pact in jeopardy. “The European Court of Justice has yet to rule on whether European citizens’ personal data can be transferred to the United States, a decision expected in early 2020. Should the Court find that the agreement is not sufficient, businesses and users on both sides of the Atlantic will pay a heavy toll that neither can afford,” Senior Policy Analyst Eline Chivot said.

Lawmakers Give Dueling Floor Speeches on USMCA

Amid disparaging presidential tweets and reports that the USTR’s office and a Democratic working group are close to making progress on remaining disagreements on an updated NAFTA deal, the leaders of the Senate Finance Committee took to the Senate floor Oct. 23 to present widely divergent opinions on where Congress should go from here.

“I understand several of my colleagues are urging for an immediate vote on the president’s new NAFTA. Setting aside the fact that there have not yet been the hearings or markups necessary to allow that to happen, it would be a major mistake for this administration to seek a vote on a trade deal until it is a good deal,” Sen Ron Wyden (D-Ore.) said.

Much of the remaining disagreements center on enforcement, especially in Mexico (see **WTTL**, Oct. 14, page 4). “I do have real concerns about current trade enforcement because the new NAFTA carries over the weak enforcement system of the old NAFTA. It’s too easy on trade cheats, and it’s not good enough for American workers – particularly on the issue of protecting working families and labor rights,” he added.

“Passing a trade deal that would allow this president to unilaterally change trade rules and jerk around entire industries would be a substantial mistake that will produce more

uncertainty. That's not how you get to trade done right," Wyden noted. "I have some real concerns about how the administration wants NAFTA 2.0 to be implemented," he said.

In contrast, committee chair Chuck Grassley (R-Iowa) also took to the floor to bemoan the delay in voting on the deal. "For months now, House Democrats have said they are working on it. That they're making progress. That they're optimistic they can get to "yes." But conspicuously absent from their pronouncements are any mention of a date or timeline. With every passing month, these seem less like good-faith assurances, and more like stalling tactics."

Grassley also reminded his colleagues of the election calendar. "If USMCA is not brought up for a vote in the House very soon, Democrats will have a price to pay next year when the American people will have a chance to weigh in. There's little Americans dislike more in politics than zero-sum, oppose-the-other-party politics, no matter the cost," he warned.

Tariffs Hurt Economy, Survey Says

While the administration continues to use the threat of tariffs as perceived leverage in trade talks, a majority of Americans (57%) believe that the existing tariffs have hurt the economy, a double-digit increase since 2018, according to the tenth annual American Values Survey that the Public Religion Research Institute (PRRI) released Oct. 21.

Another 21% say the tariffs have benefited the economy, and 19% say there has been no impact, PRRI noted. Most Hispanics (61%), blacks (60%), and whites (55%) think that tariffs hurt the economy. Among whites, college graduates (68%) are notably more likely to believe that tariffs hurt the economy, compared to whites with some college (52%) or white with a high school degree or less (46%), the group added.

Perhaps not surprising, Democrats (76%) are more likely than independents (57%) and Republicans (31%) to say that tariffs have hurt the economy. In contrast, 40% of Republicans think tariffs have benefited the economy, compared to 20% of Independents and only 9% of Democrats.

* * * Briefs * * *

FIREARMS: BIS and DDTC Oct. 23 sent final rules transferring items from USML categories I, II and III (firearms and ammo) to OMB for interagency review. State and BIS declined to comment on rules. Sources tell WTTL that agencies are revising final rule to address publication of technology for 3D printing firearms. Two Democratic presidential candidates have gone on the record against transfers, months after Sen. Robert Menendez (D-N.J.) placed unofficial hold on rules (see WTTL, Oct. 7, page 1).

EXPORT ENFORCEMENT: Behrooz Behroozian, owner and operator of computer parts supplier Comtech International in Columbus, Ohio, was sentenced Oct. 24 in Columbus U.S. District court to 20 months in prison for violating U.S. sanctions by exporting gas and oil pipeline parts to Iran. "Comtech had no storefront and made no domestic sales. It seldom exported computer parts,"

Justice noted. Instead, Comtech primarily exported industrial equipment to intermediary in UAE for further exportation to Iran, department added.

STEEL FITTINGS: Bonney Forge Corporation and United Steelworkers filed countervailing and antidumping duty petitions Oct. 23 with ITA and ITC against imports of forged steel fittings from India and Korea. Groups filed petitions against imports from China, Italy and Taiwan in 2017 (see **WTTL**, Oct. 9, 2017, page 6).

BELARUS: Treasury Oct. 22 issued General License (GL) 2G extending authorization of transactions with nine blocked companies in Belarus and any entities owned 50% or more by them until April 26, 2021. Transactions are authorized with Belarusian Oil Trade House, Belneftekhim, Belneftekhim USA, Inc., Belshina OAO, Grodno Azot OAO, Grodno Khimvolokno OAO, Lakokraska OAO, Naftan OAO and Polotsk Steklovolokno OAO.

VENEZUELA: OFAC Oct. 24 issued GL 5A delaying effectiveness until Jan. 22, 2020, of authorization of licenses applicable to holders of Petróleos de Venezuela, S.A. (PdVSA) 2020 8.5% bond. “As a result, during such period, transactions related to the sale or transfer of CITGO shares in connection with the PdVSA 2020 8.5 percent bond are prohibited, unless specifically authorized by OFAC,” agency said in FAQ. ...OFAC Oct. 21 issued GL 8D, extending previous GL that authorized transactions involving PdVSA necessary for maintenance of operations. Specifically, OFAC extended GL expiration date to Jan. 22, 2020, from Oct. 25.

IRAN: Treasury Oct. 24 issued GL K extending authorization of maintenance or wind-down of transactions involving Cosco Shipping Tanker (Dalian) Co., Ltd. until Dec. 20. OFAC in September designated six Chinese companies, including Cosco Dalian, and five company executives for “knowingly engaging in a significant transaction for the transport of oil from Iran,” State then said in press statement (see **WTTL**, Sept. 30, page 6).

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