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Trade Laws and Export Controls

# Washington Tariff & Trade Letter®

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## U.S. to Investigate Claims Belarus Is Circumventing Sanctions

The Obama administration will investigate claims that Belarus is attempting to circumvent U.S. trade sanctions that have blocked Belarusian exports of potash to the U.S. since 2008. At an April 2 meeting with representatives of the U.S. fertilizer industry and their attorney, State and Treasury officials promised to investigate charges that Belarus has undertaken a sham reorganization of its potash industry to avoid sanctions that were imposed on its primary potash producer, Belneftekhim Concern, which Treasury placed on the Specially Designated Nationals (SDN) list in 2007.

U.S. industry contends Minsk shifted ownership of potash production and exports in February 2014 from Belneftekhim to a subsidiary, Belaruskali, claiming the subsidiary was spun off into an independent company not controlled by Belneftekhim. U.S. producers say Belneftekhim still controls Belaruskali. They claim Belaruskali resumed exports to U.S. in 2015.

The administration's decision to launch the investigation may have been prompted by bipartisan letters from Senate and House members raising concerns about Belarus' attempt to avoid sanctions and asking for an investigation of industry's allegations. Among those writing to State and Treasury were Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Sen. John Cornyn (R-Texas).

Before they began receiving the letters from lawmakers, officials at State and Treasury's Office of Foreign Assets Control (OFAC) declined to say whether they considered Belaruskali to be owned or controlled by a blocked SDN party. In letters to industry lawyers, the two departments merely suggested that importers use caution in dealing with entities that might be owned or controlled by sanctioned parties. "The United States imports the bulk of its domestic needs. The world's largest potash reserves are just north of the border in Canada, the source of most of the potash used in the United States," The Fertilizer Institute, the industry's trade association, says on its website.

## DDTC Trims Licensing Divisions to Reflect Reduced Volume

For all those waiting for State's export licensing arm to downsize because of all the export licenses moving from its jurisdiction to Commerce, the wait is over. Effective

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April 20, the Office of Defense Trade Controls Licensing (DTCL) will reorganize from five subject-area licensing divisions to four to accommodate the reduced licensing load from export control reform (ECR), the Directorate of Defense Trade Controls (DDTC) announced April 10. The reform effort has caused a 36% drop in licensing volume and “has created a disparity in the volume of cases among the current divisions,” the agency said in an industry notice posted on its website (see **WTTL**, March 23, page 3).

“Since 2013, DTCL has also experienced some downsizing through attrition. The new organizational structure will be leaner and will appropriately balance personnel and commodity volume to reflect the post-ECR environment while enabling DTCL to work toward meeting the directorate’s strategic goals,” it added.

The new divisions will be: Space, Missile, and Sensor Systems (U.S. Munitions List categories IV, V, XII, XV); Electronic and Training Systems (IX, XI, XIII, XVI, XVII, XVIII, XXI); Sea, Land, and Air Systems (II, VI, VII, VIII, XIX, XX); and Light Weapons and Personal Protective Equipment Systems (I, III, X, XIV). The previous Division 7 (E-Technologies and Training) will be rolled into a separate division called Plans, Personnel, Programs and Procedures, the agency said.

Lest industry worry, the change should be seamless, DDTC contends. “D-Trade will be configured to automatically route cases to the proper division based on the USML commodities on the application; no action is required by industry to adjust applications as a result of this reorganization,” the notice said.

## **Administration Launches National Security Pitch for TPP**

Just as previous administrations have used national security to promote past free trade agreements (FTAs), the Obama White House is stepping up this argument to support a Trans-Pacific Partnership (TPP) deal. In an April 6 speech mostly addressing military issues in the Asia-Pacific region and the administration’s “rebalance” toward Asia, Defense Secretary Ash Carter claimed TPP “makes strong strategic sense” and is one of the most important parts of the rebalance.

“In fact, you may not expect to hear this from a secretary of Defense, but in terms of our rebalance in the broadest sense, passing TPP is as important to me as another aircraft carrier,” he told the McCain Institute at Arizona State University. Carter said other nations, implying China, will dictate rules in Asia if the U.S. doesn’t.

“We must all decide if we are going to let that happen. The U.S. can either increase exports and cement its influence in the region or instead, we’re going to take ourselves out of the game,” he said. “As secretary of Defense, I see our military personnel demonstrate every day that American men and women, American innovation, and American hard work do not just compete, they outpace every other country in the world. By passing Trade Promotion Authority and finalizing a strong TPP, we’ll allow American workers to do the same,” he declared.

The trade community still expects Senate Finance Committee Chairman Orrin Hatch (R-Utah) to introduce his fast-track trade promotion authority (TPA) bill the week of April

13 when members return from their spring recess. “I’m pleased the Senate is expected to introduce a trade promotion authority bill next week,” Commerce Secretary Penny Pritzker said on a call with reporters April 9, although she later explained her statement was based only on press reports she has read (see **WTTL**, March 30, page 1).

## **U.S. to Ask WTO to Hear Complaints Against Chinese Subsidies**

The U.S. isn’t taking its usual slow pace in seeking World Trade Organization (WTO) dispute-settlement in its complaint against alleged Chinese subsidies tied to an export performance program for several emerging industries. After seeking consultations with Beijing Feb. 11 and holding three rounds of apparently unsuccessful consultations March 13 and April 1 and 2, Washington has asked the Dispute-Settlement Body (DSB) at its next meeting, April 22, to establish a panel to hear the U.S. complaint. China is expected to block that first request but won’t be able to block the next one.

In February, the U.S. started consultations with China over certain measures that allegedly provide subsidies contingent on export performance to enterprises in several industries. One program is the Foreign Trade Transformation and Upgrading Demonstration Bases (Demonstration Bases) and the other is the Common Service Platforms (see **WTTL**, Feb. 16, page 5).

Demonstration Bases are industrial clusters for several Chinese industries, including textiles, agriculture, medical products, light industry, special chemical engineering, new materials, and hardware and building materials industries. Common Service Platforms are service suppliers to firms in Demonstration Bases. “These subsidies include the provision of discounted or free services through Common Service Platforms or the provision of cash grants. In addition, it appears that China provides certain other export-contingent subsidies to Chinese manufacturers, producers, and farmers,” the original U.S. request for consultations stated.

In comparison to the quick action on the China complaint, the U.S. and New Zealand also will seek establishment of a panel April 22 to hear their complaints against import restrictions that Indonesia has imposed on horticulture products. The two countries initiated consultations in May 2014 after two earlier rounds of consultations in 2013.

## **FLIR Systems Settles SEC Charges of Bribing Saudi Officials**

Oregon-based defense contractor and sensor maker [FLIR Systems](#) April 8 settled Securities and Exchange Commission (SEC) charges of treating Saudi officials to travel and gifts to retain business in 2009. FLIR will pay a \$1 million penalty and \$7.5 million in disgorgement to settle charges of violating the Foreign Corrupt Practices Act (FCPA). Two employees in FLIR’s Dubai office settled related charges in November 2014.

“The travel and gifts included personal travel and expensive watches provided by employees in FLIR’s Dubai office to government officials with the Saudi Arabia Ministry of Interior (MOI). The extent and nature of the travel and the value of the gifts were concealed by certain FLIR employees and, as a result, were falsely recorded in FLIR’s books and records,” the SEC order noted. “FLIR had few internal controls over travel in its foreign sales offices at the time. Although FLIR had policies and procedures over travel

for its domestic operations, there were no controls or policies in place governing the use of foreign travel agencies. Instead, FLIR foreign sales employees worked directly with FLIR's foreign travel agencies to arrange travel for themselves and others," the SEC added. The company neither admitted nor denied the charges.

Two ex-employees in FLIR's Dubai office agreed in November 2014 to pay SEC penalties to settle related charges. Stephen Timms, a U.S. citizen who resides in Thailand, and Yasser Ramahi, a U.S. citizen who lives in the United Arab Emirates, agreed to pay penalties of \$50,000 and \$20,000, respectively (see **WTTL**, Nov. 24, 2014, page 9).

"FLIR takes compliance very seriously and has policies and procedures in place to prevent such conduct," said FLIR President and CEO Andy Teich in a statement. "We self-reported the employees' activities to the relevant authorities upon discovering them and cooperated with the government's investigation. We have taken action to bolster our training, controls, and policies. The actions of the two former employees involved do not reflect the values of FLIR or the high standards to which we hold ourselves accountable. I am very pleased that we have fully resolved this matter and put it behind us," Teich said. Justice declined to pursue any case against FLIR, the company noted.

## **WTO Appellate Body Upholds U.S. Implementation of Rulings**

The WTO Appellate Body (AB) has rejected Vietnam's appeal of a dispute-settlement panel's findings that Section 129 of the Uruguay Round Agreements Act (URAA) doesn't prevent the U.S. from implementing a WTO ruling properly. In particular, the AB agreed with the panel's decision that Section 129(c)(1) is not inconsistent "as such" with the WTO Antidumping Agreement and the U.S. is permitted to apply Section 129 decisions only prospectively and not to unliquidated entries (see **WTTL**, Nov. 24, page 8).

The panel had issued a mixed determination, finding some U.S. practices inconsistent with WTO rules and others consistent. Only Vietnam appealed the decision on the issue of how Commerce treats unliquidated entries after it and the International Trade Commission (ITC) have completed the Section 129 process, which provides the mechanism for implementing WTO rulings.

The dispute involved the department's antidumping orders and administrative reviews of shrimp from Vietnam. The U.S. is scheduled to report on its compliance with the panel ruling at the April 22 meeting of the WTO Dispute-Settlement Body.

"We disagree with Viet Nam to the extent that it argues that the Panel rejected Viet Nam's claims on the basis that Viet Nam had not demonstrated that Section 129(c)(1) precludes implementation of DSB recommendations and rulings with respect to all prior unliquidated entries," the AB stated in a report issued to parties March 25 and released publicly April 7. "Rather, we read the Panel's analysis in paragraph 7.266 of the Panel Report to focus on the evidence produced by the United States regarding alternative means of implementing DSB recommendations and rulings in respect of some prior unliquidated entries," it continued.

"As we understand it, the Panel found this evidence to undermine Viet Nam's assertion that Section 129(c)(1) 'in some general way' serves as a legal bar precluding implemen-

tation of DSB recommendations and rulings in respect of prior unliquidated entries,” it said. “In any event, evidence that the United States can implement DSB recommendations and rulings by using different means of implementation, and has done so, would appear to have been sufficient for the Panel to conclude that, contrary to what Viet Nam had argued, Section 129(c)(1) does not, itself, preclude implementation of DSB recommendations and rulings with respect to prior unliquidated entries,” the AB determined.

## Trade-Related Goods Jobs Show No Growth

All of the export-related job growth in 2014 was due the increase in services-export jobs, with no change in goods-export jobs, Commerce reported April 9. The total number of export-related jobs edged up to 11.7 million in 2014 from 11.3 million in 2013. Goods exports, which include manufacturing, agriculture and mining, supported 7.1 million jobs in both years, while services exports added 400,000 jobs from the year before for a total of 4.6 million jobs in 2014, an almost 10% jump, the department estimates. The flat goods-related job number came as total goods exports increased 2.8% in 2014.

The number of export-related jobs last year compares to 7.2 million jobs that Commerce reported for 1990, including 4.2 million goods-export related jobs and 3.3 million services-export jobs. While trade jobs have grown 63% from 1990 to 2014, total U.S. goods exports have jumped 312%. At the same time, total private-sector employment has grown by almost 25 million jobs, underscoring the growing divergence between jobs and trade growth.

The new numbers come as supporters and opponents of fast-track trade promotion authority (TPA) and the Trans-Pacific Partnership (TPP) are in a cat fight over whether trade deals have created or lost jobs. The apples-and-oranges debate seems to hinge on different ways of calculating trade-related jobs. Trade supporters use export growth in their figures, while opponents use the trade deficit.

One of the difficulties in calculating the relationship between trade in dollars and jobs is the shrinking number of jobs tied to each billion dollars in exports. In 2013, the last year it posted these numbers, Commerce said each \$1 billion in goods exports supported 5,408 jobs. In 1990, that figure was 19,200 jobs and that number had declined steadily from 1983 when 25,369 jobs were supported per billion in exports. In its report on 1990 trade, Commerce attributed the decline to rises in productivity, changing product composition and more foreign content in domestically made end products, explanations that still apply today with foreign content being even greater.

Much of the debate has focused on trade changes under the U.S.-Korea Free Trade Agreement, under which bilateral trade has grown but also the U.S. trade deficit. Most of the growing deficit is due to the increase in imports of Korean cars and auto parts. Unmentioned in the debate are claims by Korea’s Kia Motors that it has hired 3,000 workers at its West Point, Ga., plant and supports a total of 10,000 jobs regionally, including suppliers, or Hyundai Motors’ hiring of 3,000 workers at its Montgomery, Ala., factory and supporting 5,500 more jobs from area suppliers, according to its website.

“It’s not just the numbers that matter,” U.S. Trade Representative (USTR) Michael Froman said on a press call April 9. “What matters are not just the number of jobs, but the kind of jobs that Americans want; jobs with solid paychecks and a sense of purpose, jobs

with a future. Those are exactly the type of jobs that trade supports,” he asserted. “We know that businesses that export are better able to weather economic downturns, so that jobs related to exports are more secure than jobs not related to exports,” he added.

In addition to the jobs report, the Census Bureau released its annual profile of exporting and importing companies April 7, showing a decline in the number of exporters in 2013, the latest year reported, compared to 2012. There were 304,233 identified exporters in 2013, including manufacturers, wholesalers and others, compared to 305,669 in 2012, Census reported.

“The number of small- and medium-sized exporting companies decreased by 0.5 percent, from 298.8 thousand in 2012 to 297.3 thousand in 2013, while the number of large companies decreased by 0.1 percent, from 6,887 to 6,880,” the report stated. “Large companies dominated manufacturers’ exports, with 3.5 percent of manufacturing exporters (2,584 of 74,398) accounting for 80.9 percent of manufacturing export value (\$679 billion of \$839 billion),” Census noted.

## Still Lots to Decide in Green Goods Talks

In talks on an Environmental Goods Agreement (EGA), negotiators will have their work cut out for them, trying to cull a list of 600 possibly covered products down to a “comprehensive, commercially meaningful agreement that is also environmentally credible,” a USTR official told reporters at an event in Washington April 7. At the next round of talks scheduled for the week of May 4 in Geneva, negotiators will “really start to have some discussions about which products there seems to be convergence on and should be part of [EGA] and which products perhaps people still have questions about,” she said.

The basis for the list are the 54 products ministers from the Asia-Pacific Economic Cooperation Forum (APEC) agreed to include in September 2012. Beyond that list, there have also been calls to include such things from bicycles and electric cars to agricultural products such as ethanol.

The APEC list, which will be automatically in any agreement, includes renewable and clean energy technologies, such as solar panels, and gas and wind turbines; wastewater treatment technologies, such filters and ultraviolet (UV) disinfection equipment; air pollution control technologies, such as soot removers and catalytic converters; solid and hazardous waste treatment technologies, such as waste incinerators; and environmental monitoring and assessment equipment, such as air and water quality monitors, and manometers to measure pressure.

The additional product proposals reflect domestic champions and sensitivities. The official said the U.S. doesn’t have a public position on a “magic number” of products. “It’s important that these products really do make a contribution to environmental protection, but we don’t have a magic number,” she said. APEC’s mandate was to reduce tariffs on environmental goods to 5% or less by the end of 2015. When the EGA is concluded, tariffs will be reduced on a most-favored-nation (MFN) basis, but will not touch existing antidumping or countervailing duties, including in ongoing disputes on solar panels, or subsidies, the official noted. To avoid any criticism of “free rider” countries that will benefit from the agreement without signing on to the tariff reductions, negotiators are trying to reach participation by a “critical mass” of 90% of global production. Talk are

“almost there, depending on the final product list,” the official said. Once negotiators decide on the final or almost final list of products, then they will have to agree on potential tariff phase-out periods for products and countries. “We’ll focus first on product coverage, then those discussions will materialize,” the USTR official noted.

As far as timing, the official would not commit to a specific timetable. “We hope to move these negotiations forward, and hopefully have a very successful conclusion to these negotiations on a relatively rapid time scale. But substance will always dictate timing, so we’ll see,” she said.

The EGA talks started with 14 trading partners, including the U.S. and European Union. Since then, Iceland, Israel and Turkey have joined (see **WTTL**, Feb. 2, page 9). U.S. industry, including the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM), supports the deal and commented on the new members.

“The original participant nations negotiating the EGA comprise 85 percent of the global market in environmental goods, which amounts to nearly \$1 trillion each year. While these nations represent a substantial portion of the global market, we also support a broadening of negotiating partners that are similarly interested in moving forward an ambitious EGA that will include the full range of environmental goods for tariff elimination.” NAM wrote in its comment.

## **Treasury Praises China, Warns Korea on Currency Manipulation**

Treasury’s semiannual report to Congress April 9 on foreign exchange rate policies gives China another pass but warns Korea about its intervention. China has “reduced [its] level of intervention in the foreign exchange market, consistent with the commitment of China’s government at the Sixth Round of the U.S.-China Strategic and Economic Dialogue,” the department said. It also said the Chinese renminbi (RMB) “is one of the few currencies to remain relatively range-bound against the U.S. dollar over the past year.”

Aside from these observations, Treasury said it “has concluded that no major trading partner of the United States met the standard of manipulating the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade.”

“China continues to work its way out of a significant undervaluation that led to large internal and external imbalances, and the Report concludes that fundamental factors for RMB appreciation remain intact, highlighting the need for further strengthening over the medium-term,” Treasury said. “While China has made real progress, with its real effective exchange rate appreciating meaningfully over the past six months, these factors indicate an RMB exchange rate that remains significantly undervalued,” it noted.

“Korean authorities have intervened to resist won appreciation in the context of a large and growing current account surplus, now at 6.3 percent of GDP,” it said. “Treasury has intensified its engagement with Korea on these issues. We have made clear that the Korean authorities should reduce foreign exchange intervention, limiting it to the exceptional circumstance of disorderly market conditions, and allow the won to appreciate further. The authorities should also increase transparency of foreign exchange operation,” it said.

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

CUBA: At press time, President Obama was expected to announce removal of Cuba from list of terrorist-supporting countries at Summit of Americas in Panama (see **WTTL**, April 6, page 2).

NOT SO FAST: DDTC migration of its technology infrastructure to new platform has been delayed, agency said in notice posted on website April 3. “Our deployment date has been postponed and a new deployment schedule will be provided at a later time. We appreciate the support we received from industry during our testing phase. Users should continue using current forms and URLs to access DTrade, Electronic Forms Submission, and MARY,” it said.

AVIATION: State, Commerce and Transportation said April 10 that they are reviewing claims by U.S. airlines and pilots that Emirates Airline, Etihad Airways, and Qatar Airways have received and are benefitting from trade-distorting subsidies from their governments, United Arab Emirates (UAE) and Qatar. “The U.S. government takes seriously the concerns raised in the report and is interested in receiving insights and feedback from stakeholders before any decisions are made regarding what action, if any, should be taken,” three departments said in statement seeking public comments.

MISSILE TECHNOLOGY: BIS in Federal Register April 7 updated its Export Administration Regulations (EAR) to reflect changes to Missile Technology Control Regime (MTCR) agreed to at 2014 plenary meeting. Final rule revises six Export Control Classification Numbers (ECCNs) -- 1C111, 3A101, 9A106, 9A110, 9A604 and 9A610 -- “to better align the MT controls on the CCL with the MTCR Annex,” BIS said.

SANCTIONS: OFAC April 6 announced new format for Consolidated Sanctions List Data Files, which “incorporates a variety of features that ensure maximum flexibility for sanctions list creators, while also limiting the need for future changes to the underlying data specification due to the standard’s adaptability,” OFAC said (see **WTTL**, Jan. 12, page 7). New XML files won’t replace existing SDN.xml or consolidated.xml files, which will remain in production.

PAPER: In 5-0 preliminary vote April 10, ITC found U.S. industry may be injured by allegedly subsidized imports of supercalendered paper from Canada. Commissioner F. Scott Kieff did not participate in this investigation.

TTIP: Ninth round of Transatlantic Trade and Investment Partnership (TTIP) negotiations will take place in New York, N.Y., April 20-24.

HOW NOT TO SMUGGLE: CBP April 8 said it arrested man arriving at Dallas Fort Worth International Airport from Vietnam with six checked bags filled with 220 counterfeit items with labels of Adidas, Abercrombie, Chanel, Nike and Ralph Lauren.

POLYESTER STAPLE FIBER: CIT Judge Delissa Ridgway overturned Commerce’s fourth administrative review of polyester staple fiber from China April 9, granting Chinese exporter’s motion for judgment on agency record and remanding case and allowing reopening record (slip op. 15-31). In opinion that had as many footnotes as text, she agreed with plaintiff, Zhaoqing Tifo New Fibre Co., Ltd., that Commerce had “double counted” energy costs in use of surrogate data. Ridgway also rejected Commerce contention that Zhaoqing had failed to exhaust administrative remedies and domestic industry argument of judicial estoppel. “The Government and the Domestic Producer cannot have it both ways. They cannot logically claim both that Commerce was deprived of the opportunity to consider the asserted need to exclude coal from the factors of production database and the potential for double counting, and also simultaneously argue that Commerce reached a deliberate determination on those points,” she wrote.