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White House Threatens Unilateral WTO Changes

Despite statistics to the contrary, the White House July 26 declared it was serious about all these countries not playing fair at the World Trade Organization (WTO). Specifically, the administration took aim at WTO members, especially China, that take on weaker WTO commitments by designating themselves as developing countries.

“When the wealthiest economies claim developing-country status, they harm not only other developed economies but also economies that truly require special and differential treatment. Such disregard for adherence to WTO rules, including the likely disregard of any future rules, cannot continue to go unchecked,” the White House noted.

The U.S., EU and Japan addressed the matter in a trilateral meeting in January when the ministers “reiterated their call on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations,” they said (see **WTTL**, Jan. 14, page 5).

The White House gave the U.S. Trade Representative (USTR) 90 days to “use all available means to secure changes at the WTO that would prevent self-declared developing countries from availing themselves of flexibilities in WTO rules and negotiations that are not justified by appropriate economic and other indicators,” it said. If those efforts are unsuccessful, the USTR simply shall no longer treat that country as a developing country.

USTR Robert Lighthizer welcomed the directive. “For far too long, wealthy countries have abused the WTO by exempting themselves from its rules,” he said in a separate statement. “This unfairness disadvantages Americans who play by the rules, undermines negotiations at the WTO, and creates an unlevel playing field,” Lighthizer added.

Microsoft, Subsidiary Pay \$25 Million to Settle FCPA Charges

Global software provider Microsoft July 22 agreed to pay the Securities and Exchange Commission (SEC) more than \$16 million in disgorgement and prejudgment interest to

settle Foreign Corrupt Practices Act (FCPA) violations by wholly owned subsidiaries in Hungary, Turkey, Saudi Arabia and Thailand. At the same time, Microsoft Hungary also agreed to pay a criminal penalty of more than \$8.7 million under a non-prosecution agreement (NPA) with Justice to resolve related FCPA violations in connection with the sale of Microsoft software to Hungarian government agencies.

From 2013 through 2015, Microsoft Hungary “provided payments intended for foreign government officials in order to obtain business for Microsoft. The payments were made through third-party vendors, consultants, distributors and resellers, including in circumstances where there was no evidence of any services provided by the third parties. Improper payments were also funded through excessive discounts that Microsoft’s senior executives in Hungary approved based on vague justifications without ensuring they were passed on to the end government customers,” the SEC order noted.

“Specifically, a MS Hungary executive and other employees falsely represented to Microsoft that discounts from Microsoft’s estimated retail prices for government contracts were necessary to conclude deals with Hungarian government agencies,” the NPA noted. “The savings represented by the discounts, however, were not passed along in full by TPIs [third-party intermediaries] to the Hungarian government customers to reduce the end customer price,” it added. Microsoft Hungary did not voluntarily self-disclose the misconduct.

In Turkey in 2014, subsidiary executives “approved an excessive discount in a transaction involving an unauthorized third party in connection with a government tender in circumstances where there is no evidence of services provided by the third party, the SEC noted. In addition, from 2012 through 2015 in Saudi Arabia and Thailand, subsidiaries “provided improper travel and gifts and other things of value to both foreign government officials and employees of non-government customers, respectively, through slush funds maintained by their third-party vendors and resellers,” it added.

“Microsoft failed to make and keep adequate documentation related to third-party vendors, consultants, distributors and resellers and failed to devise and maintain a sufficient system of internal accounting controls throughout the relevant time,” the SEC order noted.

The settlements “involved employee misconduct that was completely unacceptable. We conducted our own investigation and provided complete information to the DOJ and SEC. In Hungary, where the most concerning conduct took place, we fired four Microsoft Hungary employees over three years ago and terminated relationships with four resellers,” Microsoft President Brad Smith said in an email to all company employees. “The agreements with both the DOJ and SEC recognize the extent of our cooperation and the DOJ agreed that we deserved the maximum credit allowable for cooperation in determining a monetary penalty,” Smith added.

House Democrats Cite Progress, Enforcement in USMCA Talks

As lawmakers leave town for the August recess, House Democrats touted a fourth meeting July 26 with USTR Robert Lighthizer, specifically focused on the enforceability and enforcement of all rules in the new U.S.-Mexico-Canada agreement (USMCA), as well as enhanced labor and environment monitoring and enforcement tools.

In previous meetings, the trade working group addressed other concerns, such as access to affordable medicines, and labor and environmental rules. “Democrats have clearly explained the needed improvements to the renegotiated NAFTA as it stands. Now, it is time for the administration to respond to our proposals,” House Ways and Means Committee Chair Richard E. Neal (D-Mass.) said in a statement.

“We remain committed to working diligently with Lighthizer on this agreement. The timeline for consideration of the revised deal depends on the administration’s willingness to negotiate with us in good faith to address House Democrats’ concerns,” he added. Industry groups and Republican lawmakers are pulling out all the stops urging Congress to pass the USMCA as quickly as possible (see **WTTL**, July 22, page 3).

The two sides met just days after Ways and Means Committee Trade Subcommittee Chair Earl Blumenauer (D-Ore.) led a bipartisan delegation of House members to Mexico. “The Democratic members of the delegation specifically assessed how to ensure the new agreement raises standards for workers and the environment, provides access to medicines, and can be enforced. They also examined Mexico’s commitment to implementing the reforms necessary for the country to comply with its labor and other obligations under the agreement,” Blumenauer said in a statement after returning from the trip.

OFAC Warns Civil Aviation Industry of Iran Risks

Citing deceptive acts by Iranian airlines and recent enforcement actions, Treasury’s Office of Foreign Assets Control (OFAC) July 23 warned the U.S. civil aviation industry to be especially careful in considering business with Iran or select third countries.

“Persons considering continued aviation business with Iran need to understand the role that many Iranian commercial airlines play in supporting the Iranian regime’s efforts to foment regional violence through terrorism, its weapons programs, and other destabilizing activity to include exploiting its own people through brutal human rights abuses against women, political opponents, and others,” OFAC said in its advisory.

“Iran has routinely relied upon Iranian commercial airlines to fly fighters and materiel to international locations in furtherance of Iranian state-sponsored terror operations. In conducting these flights, certain Iranian commercial airlines enable Iran’s military support for the Assad regime by delivering lethal materiel including weapons shipments, prolonging the brutal conflict and the suffering of millions of Syrians,” the agency added.

OFAC cited specific deceptive practices including: using front companies and other pass-through entities in third countries; misrepresenting to intermediaries that sanctions against Iran have been lifted; falsely claiming activities are authorized by OFAC; using general trading firms located in free trade zones to place orders for U.S.-origin aircraft parts or components; and placing orders for U.S.-origin aircraft parts or components from firms in one country for delivery to freight forwarding or logistics firms in a second country.

OFAC has cracked down on enforcement of aircraft exports. Most recently, a naturalized U.S. citizen born in the Philippines pleaded guilty in June to her role in a scheme to smuggle \$2 million worth of aircraft components, including brake and rotor assembly parts, to Iran via Turkey and the United Arab Emirates (UAE) without the required licenses (see **WTTL**, June 17, page 6). A review of the defendants' customer list found several Iranian-based blocked entities, including: Mahan Air, Ukrainian-Mediterranean Airlines, Caspian Airlines, Kish Air, Atrak Air, ATA Airlines and Karun Airlines, the criminal complaint noted.

U.S.-EU Trade Shows Mixed Progress on First Anniversary

What a year it's been. On the anniversary of a joint statement by U.S. and European Union (EU) leaders, the EU reported on the mixed progress the two partners have made in its trade relationships. The EU has increased imports of some key products, and negotiators received authorization to proceed on narrow trade talks, but U.S. steel and aluminum tariffs still remain, the report noted.

The work topics set out in July 2018 “range from regulatory cooperation on standards and in sectors such as energy, pharmaceuticals, medical devices and soybeans to the possibility of concluding new bilateral agreements on conformity assessment and on industrial tariffs,” the EU noted. “EU and U.S. officials have also engaged intensely to identify the main challenges affecting international trade and investment, including the urgent need to modernize international trade rules and find the right responses to unfair trading practices,” it added.

The EU “is delivering on what President Trump and I agreed on this day last year. We want a win-win situation on trade, which is beneficial for both the European Union and the United States. Having one of the most important economic relationships in the world, we want to continue strengthening trade between us based on the positive spirit of last July,” European Commission President, Jean-Claude Juncker said in a statement.

The Software & Information Industry Association (SIIA) welcomed the progress report, acknowledging there was more work to do, especially in the area of regulatory cooperation in cybersecurity. “We urge the U.S. government as well to continue to negotiate a high-quality trade agreement that operationalizes the EU confirmation in the cybersecurity context that ‘globally relevant standards, including where applicable standards and

technical specifications developed by U.S.-domiciled standards development organizations, may be taken into consideration in the future development of standards and voluntary certification schemes in the EU,” SIIA Senior VP Carl Schonander said in a statement.

CAFC Reverses Trade Court on Duty Refund

Good thing the two letters are nowhere near each other on the keyboard. The Court of Appeals for the Federal Circuit (CAFC) July 22 reversed and remanded a Court of International Trade (CIT) decision asserting jurisdiction under one subsection of trade law, saying the remedy is available under a different paragraph in a case involving the refund of duty payments on 149 motor vehicles imported from Canada.

“Congress established § 1581(a) as the jurisdictional route for the CIT to address challenges to protest denials, and this route remains open to Hymer. We conclude that Hymer has failed to meet its burden to demonstrate that relief under § 1581(a) is manifestly inadequate in light of the true nature of this action,” Circuit Judge Jimmie Reyna wrote for a three-judge panel in *Erwin Hymer Group v. U.S.*

The imports were first classified as motor vehicles requiring a 2.5% ad valorem duty, which Hymer protested, citing they should be duty-free under NAFTA provisions. Customs approved but did not issue a refund, citing other pending trade court cases. Hymer, formerly known as Roadtrek Motorhomes, Inc., was the plaintiff in one of those cases. In addition, Hymer’s counsel in this case also represented Roadtrek and Pleasure-Way in those cases, Reyna noted.

“Importers such as Hymer should not be permitted to rest on artful or creative pleadings to expand the jurisdictional scope of § 1581(i), which Congress limited as a statutory basis for the CIT’s jurisdiction over protests. To permit such expansion of jurisdiction would threaten to swallow § 1581(a) and would be contrary to this court’s precedent,” Reyna wrote.

* * * Briefs * * *

EXPORT ENFORCEMENT: Iranian citizen Mahin Mojtahedzadeh, president and managing director of ETCO-FZC, pleaded guilty July 19 in Albany, N.Y., U.S. District Court to conspiring to export gas turbine parts to Iran via Canada and Germany without OFAC license from 2013 through 2017. Sentencing is set for Nov. 12. Two codefendants, German citizens, previously pleaded guilty in same court. Olaf Tepper, founder and managing director of Energy Republic GmbH, was sentenced in August 2018 to 24 months in prison for related charges. Mojtaba Biria is scheduled to be sentenced Aug. 14.

BREXIT: New UK Prime Minister Boris Johnson July 24 appointed Elizabeth Truss as secretary of state for international trade, replacing Liam Fox. “Looking forward to sealing new trade deals and turbocharging British exports,” Truss tweeted same day.

SANCTIONS: Four Chinese nationals and Chinese company Dandong Hongxiang Industrial Development Co. Ltd. (DHID) were indicted July 23 in Newark, N.J. U.S. District Court on

charges of evading U.S. sanctions on North Korea. DHID used illicit network of front companies to facilitate prohibited U.S. dollar transactions on behalf of blocked entity Korea Kwangson Banking Corporation (KKBC). “Through the use of more than 20 front companies, the defendants are alleged to have sought to obscure illicit financial dealings on behalf of sanctioned North Korean entities that were involved in the proliferation of weapons of mass destruction,” said Assistant Attorney General John Demers in statement. OFAC designated DHID and four executives in September 2016, same day original criminal charges were unsealed (see **WTTL**, Oct. 3, 2016, page 10).

IRAN: OFAC July 22 designated Chinese firm Zhuhai Zhenrong Company Limited and chief executive Youmin Li for knowingly purchasing oil from Iran. Announcement “will help deny the regime critical income to fund terror around the world, engage in foreign conflicts, and advance its ballistic missile development. The Iranian regime must cease these destabilizing activities,” Secretary of State Mike Pompeo said in statement. Administration in April announced it would no longer grant sanctions waivers to nations that import Iranian oil, effective May 2 (see **WTTL**, April 29, page 1).

EX-IM BANK: Sens. Kevin Cramer (R-N.D.), Kyrsten Sinema (D-Ariz.) and eight cosponsors July 25 introduced legislation (S. 2293) to reauthorize Export-Import (Ex-Im) Bank for 10 years and modify quorum requirement. “Reauthorizing the bank, with these reasonable reforms, gives it a chance to implement necessary changes while also offering more American manufacturing firms and small businesses the opportunity to compete on the world stage,” Cramer said on Twitter. National Association of Manufacturers (NAM) praised bill. “We need long-term certainty that the Ex-Im Bank will be able to continue helping manufacturers of all types and sizes secure new sales overseas that support well-paying American jobs,” NAM VP Linda Dempsey said in statement. House and Senate committees held reauthorization hearings in June (see **WTTL**, July 1, page 4).

VENEZUELA: OFAC July 26 issued amended Venezuela-related General License (GL) 8B, extending previous GL that authorized maintenance and wind-down operations in connection with designation of Venezuelan state-owned oil company Petroleos de Venezuela, S.A. (PdVSA). Specifically, OFAC extended GL to Oct. 25 from July 27.

MORE VENEZUELA: OFAC July 25 designated 10 individuals, including Colombian national Alex Nain Saab Moran (Saab) and business partner Alvaro Pulido Vargas (Pulido), and 13 entities involved in “vast corruption network that has enabled [Maduro] regime to significantly profit from food imports and distribution in Venezuela,” agency noted. “Through a sophisticated network of shell companies, business partners, and family members, Saab laundered hundreds of millions of dollars in corruption proceeds around the world,” it added. Designated individuals also include Maduro’s three stepsons, “to whom Saab funneled money in exchange for access to contracts,” including food subsidy program, OFAC said.... Same day, Saab and Pulido were indicted in Miami U.S. District Court for alleged roles in laundering proceeds of FCPA violations in connection with scheme to take advantage of Venezuela’s government-controlled exchange rate.

ITAR: In Federal Register July 26, DDTC requested comments on one of its promised new rules on “consolidating and clarifying” various ITAR license exemptions. In advance notice of proposed rulemaking, agency said it “does not seek input on whether individual exemptions in the ITAR should be expanded or eliminated, but rather requests comments regarding: which exemptions, if any, are redundant or could be consolidated; and which exemptions, if any, contain language that introduces significant ambiguity or hinders the exemption’s intended use.” Comments are due Aug. 26. DDTC officials announced potential rules at BIS annual conference earlier in July (see **WTTL**, July 15, page 4).

CUBA: Reps. Jim McGovern (D-Mass.) and Tom Emmer (R-Minn.) July 25 introduced Freedom for Americans to Travel to Cuba Act of 2019 (H.R. 3960), which removes current travel restrictions to the island. Sen. Patrick Leahy (D-Vt.) will introduce identical legislation July 29. “Change is coming to Cuba, and we can help support that process. Or we can sit on the sidelines and falsely claim to be helping the Cuban people, while pursuing a failed policy of punitive sanctions,” Leahy said in statement. He previously introduced bill in May 2017 (see **WTTL**, June 29, 2017, page 1).

PERU: USTR July 26 directed Customs to block future timber imports from Peruvian exporter Inversiones WCA for three years “based on illegally harvested timber found in its supply chain.” This is second USTR enforcement action under U.S.-Peru Trade Promotion Agreement (PTPA) Annex on Forest Sector Governance. USTR in February 2018 asked Peru to verify that three 2017 timber shipments to U.S. complied with applicable Peruvian laws and regulations on illegal logging (see **WTTL**, March 5, 2018, page 7). After previous failed verification, USTR in October 2017 directed Customs to block future imports from Peruvian exporter Inversiones Oroza.

SOLAR CELLS: At WTO Dispute Settlement Body (DSB) meeting July 22, U.S. blocked China’s first request for panel to rule whether U.S. safeguard measures on imported solar cells are compatible with WTO rules. Next DSB meeting is scheduled for Aug. 15. Body established panel on South Korea’s similar request in September 2018 (see **WTTL**, Oct. 1, 2018, page 6).

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