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USTR Removes Chinese Smart Watches, Car Seats from Tariff List

Here we go again. Undeterred by strong stakeholder opinions, the administration Sept. 17 published its final list of approximately $200 billion worth of Chinese imports that will be subject to additional tariffs, its latest such tranche of products. The additional 10% tariffs will go into effect Sept. 24; starting Jan. 1, 2019, the tariffs will increase to 25%. The U.S. Trade Representative (USTR) held hearings in August regarding the proposed tariffs after first threatening the move earlier in the month (see **WTTL**, Aug. 20, page 6).

> The list contains 5,745 tariff lines of the original 6,031 that the agency proposed in July. Removed items include "certain consumer electronics products such as smart watches and Bluetooth devices; certain chemical inputs for manufactured goods, textiles and agriculture; certain health and safety products such as bicycle helmets, and child safety furniture such as car seats and playpens," USTR noted.

"Unfortunately, China has been unwilling to change its policies involving the unfair acquisition of U.S. technology and intellectual property. Instead, China responded to the United States' tariff action by taking further steps to harm U.S. workers and businesses," USTR said in announcing the new product list. In response, China's Ministry of Commerce said it filed another suit at the WTO Sept. 18.

In a television interview, Commerce Secretary Wilbur Ross downplayed the tariffs' effect on American consumers. "You can do the numbers this way. If you have a 10% tariff on another $200 billion, that's $20 billion a year. That's a tiny, tiny, tiny fraction of 1% total inflation in the U.S. because it's spread over thousands and thousands of products, nobody's going to actually notice it at the end of the day," he told CNBC.

Business Groups, Lawmakers Quick to Respond

Industry groups and lawmakers responded immediately to the final tariff list USTR issued Sept. 17. "The Administration has correctly identified the real problem of China's discrimi-

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natory trade practices. But unilaterally imposing tariffs is the wrong way to achieve real reforms, with this latest escalation threatening further harm to U.S. businesses and workers," Business Roundtable said in a statement.

"While we continue to support the objective of pushing China towards better norms in investment, intellectual property and other areas, we believe that the administration's current approach relies on the faulty assumption that a tariff war is easy to win and that tariffs will make America stronger, National Foreign Trade Council (NFTC) President Rufus Yerxa said in a separate statement.

> "Continuing to rely on tariffs as the basis of our trade policy risks isolating the U.S. from world trade just at a time when we need to be expanding our exports and our commercial relationships with countries around the world," he added. NFTC and more than 80 of the largest U.S. trade organizations launched a new coalition, Americans for Free Trade (AFT), with a multimillion-dollar nationwide campaign against tariffs called "Tariffs Hurt the Heartland" (see **WTTL**, Sept. 17, page 3).

"Any time tariffs are imposed I worry that Americans will be forced to pay extra costs – in this case on nearly half of U.S. imports from China," House Ways and Means Committee Chairman Kevin Brady (R-Texas) said in a statement." "Until China comes to the table, one way to relieve pressure on Americans is establish an effective and timely process to allow products to be excluded from these additional tariffs if tariffs would make it harder for us to sell more 'Made in America' products globally," he added.

Administration Sanctions Chinese for Russian Transactions

While the administration says it is targeting Russian malign behavior in its sanctions programs, Treasury's Office of Foreign Assets Control and State Sept. 20 designated a Chinese firm and its director for engaging in "significant transactions" with Rosoboron-export, Russia's main arms export entity.

The agencies added sanctions on Chinese entity Equipment Development Department (EDD) and its director, Li Shangfu, for its transactions with Rosoboronexport, which is on State's List of Specified Persons (LSP). These significant transactions involved Russia's delivery to China of 10 Sukhoi fighter aircraft in 2017 and S-400 surface-to-air missile system-related equipment in 2018.

At the same time, State added 33 names to the LSP for "being a part of, or operating for or on behalf of, the defense or intelligence sectors" of the Russian government, bringing the list total to 72. The list itself "is not itself a sanctions imposition. Nothing specifically happens to someone by virtue of being on that list," a senior administration official said in a State briefing.

In concert the same day, the White House issued an executive order (EO) authorizing Treasury to take certain actions to further implement sanctions under the Countering

America's Adversaries Through Sanctions Act (CAATSA) that Congress overwhelmingly passed in 2017. Just a week prior, the president Sept. 12 signed another EO authorizing sanctions "in the event foreign election interference is determined to have occurred" (see **WTTL**, Sept. 17, page 1).

"What the executive order does today is it amplifies and makes implementable the good authority" under CAATSA, another senior administration official told the briefing. More specifically, the EO provides for "comprehensive implementing and penalties provisions" that enable Treasury to "promulgate regulations and issue administrative subpoenas, licenses, and the full range of civil enforcement actions with respect to sanctions violations," OFAC said in a Frequently Asked Question (FAQ).

Former USTRs Take Issue with Trade Policies

Six former USTRs walked into a bar Sept. 17, or at least a large conference room in Washington. They covered such topics as tariffs, the World Trade Organization (WTO), the digital economy and Congress, and none of them held back their derision for certain trade policies of the current administration. Surprisingly there were no fist fights, mostly because, as one of them remarked, they were preaching to a choir of choir directors.

> Mickey Kantor, who served in the Clinton administration, addressed the current lack of leadership in creating and maintaining world trade rules. "We're going to have a rules-based trading system because it's mandatory. The rest of the world in the main believes that as well. We are, for the first time in 70 years, the outliers. We've lost leadership. We created a vacuum. It's been terribly dysfunctional for our businesses and for our economy. And we need to turn that around."

While all the former officials disagreed with using tariffs as trade policy, Susan Schwab, President George W. Bush's USTR, held a slightly contrarian view. "It has gotten the attention of the Chinese authorities, which I was unable to do, which you all were unable to do," she said. "Let us note for the record that these are self-imposed wounds. And anyone who pretends that U.S. imposition of tariffs isn't hurting the U.S. economy is fooling themselves. However, it is part of a – let's start with a tactic, we'll find out if it's part of a strategy at some point," she added.

"Maybe – maybe – the outcome will be a change in behavior on the part of the Chinese that in the long run will result in a positive outcome for China and the United States and the rest of the world," Schwab noted. "But the point is if they are left in place, all we've done is hurt ourselves. If they ultimately are leveraged, as the president has talked about, let us see what they do with it," she said.

The officials were also asked about current bills aimed at curtailing executive authority on trade. The consensus was generally, be careful what you wish for. "Congress couldn't conceivably negotiate a trade agreement, ever, ever, ever. So I think what we've got is a pretty good system as long as we make it work. But be very careful about allowing abuse of things like the security argument," President Reagan's USTR Bill Brock noted. Ron Kirk, who served in the Obama administration, noted that unlike the current USTR, he and his predecessors had "the ear and the confidence of the president." In addition, he wondered whether trading partners knew who they are dealing with. "Is it Wilbur Ross? Is it the Treasury secretary? Is it Peter Navarro? Is it [current USTR] Lighthizer? Every time we have a different engagement with China over the last 18 months, it feels like it's been led by a different person," Kirk said.

> Charlene Barshefsky, who also served President Clinton, questioned Congress' ability to set rules on the digital economy. "I think the challenge … is that the people in authority generally don't understand the technologies; and they don't understand the means of transmission; and they don't understand the interplay of the technologies with the physical world, with the tradeable world, and with the services world," she said.

Another question dealt with the administration's blocking of WTO Appellate Body members due to potential overreach by the panel (see **WTTL**, Sept. 3, page 8). Carla Hills agreed that there has been overreach, but that it cannot be fixed unilaterally. "When the appellate body begins to move around in the factual area or to decide on rules that haven't been agreed to, that could be called and no one disagrees, I think, overreach.

"But the way to deal with the issue is to try to get those who have complained – and there are a number of members of the WTO who have complained about needing to deal with a better enforcement mechanism at the WTO, again, joining hands with those likeminded nations and making recommendations for change," she said. Those recommendations include longer terms, or alternately, "one-year terms so they're not a holdover and deciding on cases down the road that they decided before," Hills added.

* * * Briefs * * *

<u>FLANGES</u>: In 5-0 final vote Sept. 18, ITC found U.S. industry is materially injured by dumped and subsidized imports of stainless steel flanges from India. Commission also made negative finding of critical circumstances on these imports.

<u>WHEELS</u>: In 4-0 preliminary vote Sept. 21, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of steel trailer wheels from China. Commissioner Meredith Broadbent did not participate in vote.

<u>TRADE PEOPLE</u>: President Sept. 19 announced intent to nominate Rep. Darrell Issa (R-Calif.) to be director of U.S. Trade and Development Agency (USTDA). Prior to election to Congress in 2000, Issa was small business owner, White House noted. He announced in January 2018 he would not seek reelection.

<u>OFAC</u>: Andrea Gacki was named permanent OFAC director Sept. 17. She has served as acting director since May when John Smith departed (see **WTTL**, April 16, page 4). Gacki has been OFAC deputy director since March 2017.

MATTRESSES: Corsicana Mattress, Elite Comfort Solutions, Future Foam, FXI, Innocor, Kolcraft Enterprises, Leggett & Platt, Serta Simmons Bedding and Tempur Sealy International filed antidumping duty petition Sept. 18 with ITA and ITC against mattresses from China.

KEGS: American Keg Company LLC filed countervailing and antidumping duty petitions Sept. 20 with ITA and ITC against refillable stainless steel kegs from China, Germany and Mexico.

ZTE: Sen. Marco Rubio (R-Fla.) and five cosponsors Sept. 18 introduced bipartisan bill to require Commerce secretary to "to ensure that ZTE Corporation complies with all probationary conditions set forth in the settlement agreement" (S. 3455). "While it was a mistake to reach a 'deal' with ZTE in the first place, this bill will ensure ZTE is finally put out of business if it does not hold up its end of the bargain," Rubio said in statement. Commerce Secretary Wilbur Ross in August named Roscoe Howard, Jr. to be Special Compliance Coordinator (SCC) for ZTE deal (see **WTTL**, Sept. 3, page 10). Congressional efforts to block deal ended with NDAA conference committee.

PERU: Interagency Timber Committee will pursue bilateral talks with Peru in response to country's forestry agency (OSINFOR) inability to verify whether one of three 2017 timber shipments to U.S. complied with applicable Peruvian laws and regulations on illegal logging USTR announced Sept. 18. "Specifically, OSINFOR found through its post-harvest inspection of the one land title associated with the shipment that the trees were not harvested from the authorized site and that there were inaccuracies in the forest land title holder's management plan," USTR wrote. USTR in February asked Peru to verify three shipments (see **WTTL**, March 5, page 7). Timber verification provision is monitoring tool provided for in U.S.-Peru Trade Promotion Agreement.

EXPORT ENFORCEMENT: Imran Khan of North Haven, Conn., was sentenced Sept. 19 in New Haven U.S. District Court to three years' probation for exporting Alpha Duo Spectrometer to Pakistan in 2013 without Commerce license. Khan pleaded guilty in June 2017. Spectrometer was classified under Export Control Classification Number 3A999 and shipped on behalf of Pakistan Atomic Energy Commission (PAEC), which was listed on BIS Entity List. Khan's father Muhammad Ismail and brother Kamran Khan were sentenced in July in New Haven federal court to 18 months in prison, followed by three years' supervised release, for money laundering funds they received for unlawful export of goods (see **WTTL**, July 23, page 10). They pleaded guilty in March. All three were arrested in December 2016; Khans were released on $100,000 bond, Ismail on $50,000 bond.

STEEL: Once again, USTR was not impressed by outcome of Global Forum on Steel Excess Capacity ministerial meeting. "Unfortunately, what we have seen to date leaves us questioning whether the Forum is capable of delivering on these objectives. We do not see an equal commitment to the process from all Forum members. Commitments to provide timely information critical to the proper functioning of the Forum's work, for example, have gone unfulfilled. More importantly, we have yet to see any concrete progress toward true market-based reform in the economies that have contributed most to the crisis of excess capacity in the steel sector," USTR's office said in statement. Deputy USTR Jeffrey Gerrish led U.S. delegation. Agency had same response in 2017 (see **WTTL**, Dec. 4, 2017, page 6).

BAHAMAS: At third meeting of Working Party on Bahamas' WTO accession Sept. 21, members expressed full support of government's intention to secure WTO membership by end of 2019. Accession process had stalled since second meeting in June 2012. Bahamas is last nation in Americas to become member, WTO noted. Bahamian Prime Minister Hubert Minnis reactivated process at end of 2017.

CHINA: At WTO Dispute Settlement Body meeting Sept. 21, arbitrator agreed to review China's request for authorization to suspend concessions on $7 billion of U.S. imports as result of U.S.' failure to comply with WTO's ruling in dispute over methodologies used in antidumping proceedings. Arbitration was automatically triggered after U.S. informed WTO that it objected to level of retaliation proposed by China in September (see **WTTL**, Sept. 17, page 4).

SECTION 232: U.S. businesses that have not received final determination can now submit rebuttals to product exclusion requests on Section 232 steel and aluminum tariffs, Commerce announced Sept. 20. "Exclusion requesters will have seven days from the opening of the rebuttal period to submit rebuttals. Objectors to exclusion requests will then have a seven-day surrebuttal period to post responses, which will be opened once rebuttals are posted by the Department and the case file is reopened," department noted. All rebuttals will be posted to www.commerce.gov/232.

RUSSIA: OFAC Sept. 21 issued general license (GL) 13D, extending previous GL that expanded sanctions relief for certain designated firms. Specifically, OFAC extended GL expiration date for certain firms to Nov. 12 from Oct. 23. OFAC also issued GL 14A and 16A extending authorization for U.S. persons to engage in specified transactions related to winding down or maintaining business involving EN+ Group PLC, RUSAL and other companies until same date.