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Commerce Touts ZTE Deal, Denial Order Still in Place

While Commerce Secretary Wilbur Ross June 7 hailed a deal with Chinese telecom firm ZTE, the export denial order against the firm is still in place. Under the deal, ZTE agreed to severe additional penalties and compliance measures and must pay $1 billion and place an additional $400 million in suspended penalty money in escrow, in addition to the $892 million in penalties the firm has already paid.

> In a television interview announcing the deal, Ross drew a line between the ZTE deal and larger trade talks with China (see related story, page 6). "No, this is an enforcement action. It happens that I've been involved with the other negotiations with China. But that's quite separate and apart from enforcement. Every day, every week, practically, we're bringing some sort of an enforcement action against China … and that has nothing to do with big negotiations," he said.

Ross also highlighted the compliance measures. "We are literally embedding a compliance department of our choosing into the company to monitor it going forward. They will pay for those people, but the people will report to the new chairman, because we are also having them replace the entire management and the entire board," he told CNBC. "It wouldn't be that surprising if the Chinese took some sort of a further action on their own," Ross hinted.

Just the day before, White House economic advisor Larry Kudlow denied reports of the deal, despite the news reports and of course, the president's tweets. "No decision has been reached by both sides, as of now. And of course, I refer you to Wilbur Ross, Secretary of Commerce," Kudlow said at the White House press briefing June 6.

Congress Responds Quickly to ZTE Deal

Since the president began tweeting about a potential ZTE deal in the middle of May, members of Congress from both sides of the aisle had plenty of time to prepare their

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responses, both in legislation and on Twitter. Whether their actions or opinions can actually stop the deal from going into effect is another matter.

For one, Sens. Marco Rubio (R-Fla.), Tom Cotton (R-Ark.), Chris Van Hollen (D-Md.), and Chuck Schumer (D-N.Y.) June 7 introduced an amendment to the National Defense Authorization Act that would: prohibit all U.S. government agencies from purchasing or leasing telecommunications equipment and/or services from Huawei, ZTE, or any subsidiaries or affiliates; ban the government from using grants and loans to subsidize Huawei, ZTE, or any subsidiaries or affiliates; and finally, restore penalties on ZTE for violating export controls

> The Senate Banking Committee previously advanced an amendment to the CFIUS reform bill that also would block the president's efforts to reverse sanctions on ZTE (see **WTTL**, May 28, page 2). The House Appropriations Committee earlier in May approved by voice vote a budget amendment that prohibits funds from being used to reverse the ZTE denial order.

Other congressional responses were quick and forceful. "We cannot allow a Chinese company to violate U.S. laws time and again, lie about it repeatedly, and get away with it," Banking Committee Ranking Member Sherrod Brown (D-Ohio) said in a statement. "By turning a blind eye to ZTE's blatant violations, the Administration is putting Chinese jobs ahead of American jobs, and Chinese interests over America's national security."

"The President just caved on a deal with ZTE, a Chinese company that our intelligence professionals say poses a national security threat. Is the President so desperate for a deal — any deal — that he is willing to put Chinese jobs ahead of our national security?" Rep. Adam Schiff (D-Calif.), ranking member of the House Intelligence Committee, tweeted.

Rubio tweeted June 5 that China "is completely clowning the U.S. Their 'good faith' gesture to get ban lifted on [ZTE] was to replace a top executive with a guy from another company THAT IS ALSO SANCTIONED FOR BEING A NATIONAL SECURITY THREAT! How did [Commerce] fall for that?"

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) called the deal "a loser for American security and a loser for American workers," urging the president and congressional Republicans to reverse this decision "before it is too late," he said in a statement. "The Trump administration is giving ZTE and China the green light to spy on Americans and sell our technology to North Korea and Iran, as long as it pays a fine that amounts to a tiny fraction of its revenue. The president is making America less safe, creating jobs in China and securing nothing for American workers in return," he added.

Think tanks and industry groups also wondered what concessions, aside from a hefty penalty, ZTE had agreed to make. Erik Brattberg, director of the Europe Program and fellow at the Carnegie Endowment in Washington tweeted: "The mere optics of striking a deal with ZTE, which is deemed a security threat to the U.S., while slapping unilateral tariffs using a national security clause against European allies, is quite catastrophic."

Scott Paul, president of union group Alliance for American Manufacturing (AAM), tweeted: “U.S. strikes a deal with China's ZTE to end crippling sanctions, Commerce Secretary Ross says. Big mistake. ZTE could play a significant role in our telecom infrastructure, a threat to [national security]. Meanwhile, China has made zero trade concessions.”

One voice in the wilderness argued that the deal was completely appropriate. Robert Atkinson, Information Technology and Innovation Foundation president, wrote in a blog post June 8: “To be clear, despite the well-deserved animus toward the Chinese government for its unrepentant and rampant innovation mercantilism, it would have been unprecedented to use this law and procedure to kill the company.” Atkinson also expressed concern that China made no concessions to get the reprieve. “It appears that the administration has gotten little or nothing for removing this sword of Damocles from ZTE’s head,” he wrote.

Legg Mason, Societe Generale Settle Justice FCPA Charges

Maryland-based investment management firm Legg Mason and French financial services firm Societe Generale agreed June 4 to settle separate, but related charges of violating the Foreign Corrupt Practices Act (FCPA). Between 2004 and 2010, a Legg Mason subsidiary, Permal Group Ltd., partnered with Societe Generale to solicit business from state-owned financial institutions in Libya.

> Legg Mason entered into a non-prosecution agreement (NPA) and agreed to pay $64.2 million, including a $32.6 million penalty and $31.6 million in disgorgement of profits. The firm did not voluntarily disclose the conduct at issue, but fully cooperated in the investigation and fully remediated, Justice noted.

“By at least 2006, two Permal employees and several Societe Generale employees, together with their co-conspirators, knew that the Libyan Intermediary was paying bribes and providing other improper financial benefits to Libyan government officials in order to secure financial investments for Societe Generale, and willfully agreed to continue to use the Libyan Intermediary despite that knowledge,” the NPA said.

In the first coordinated resolution with French authorities in a foreign bribery case, Societe Generale reached a settlement with the Parquet National Financier (PNF) in Paris relating to the Libya corruption scheme. Justice will credit $292.8 million that Societe Generale will pay to the PNF under its agreement, equal to 50% of the total criminal penalty otherwise payable to the U.S.

Societe Generale will enter into a deferred prosecution agreement in connection with a criminal information charging the company with one count of conspiracy to violate the FCPA. Its wholly owned subsidiary, SGA Societe Generale Acceptance N.V., will plead guilty in Brooklyn U.S. District Court.

Both firms could face further charges in the cases. Legg Mason expects to resolve its case with the Securities and Exchange Commission "for this same matter shortly," it said in a statement. "Having spent close to seven years cooperating fully with the government's inquiries, we are pleased to put the U.S. Department of Justice portion of this matter behind us and move forward," Legg Mason added.

> "The misconduct by former employees of the legacy Permal business that the government found was totally unacceptable. It violated our high standards, our long-held core values and our 'no-chalk' culture," Legg Mason noted.

Societe Generale is "in discussions with the U.S. authorities in order to reach an agreement to resolve the investigation into historic compliance with U.S. economic sanctions (OFAC). It is possible, without it being certain, that the pending discussions lead to an agreement in the next weeks or months," the French firm noted in a statement.

"We regret these past misconducts, which are contrary to our values and ethical standards that led to these settlements. We are pleased to have resolved these matters in cooperation with the relevant authorities and we believe it is an important step for the Bank," CEO Frédéric Oudéa added.

Canada, Mexico, EU Request WTO Consultations Over 232 Tariffs

U.S. allies are furious about duties placed on certain steel and aluminum imports, and they're taking it up with the World Trade Organization (WTO). Even worse, the governments are responding in kind, with lists of products that will be subject to their own tariffs. The avalanche of actions led to speculation that the G7 meeting, which began June 8 in Canada, would be especially tense.

Mexico requested WTO dispute consultations with the U.S. in a notice circulated to members June 7. The day before, Canada and the European Union's (EU) requests for consultations were circulated to members as the partners had promised when the 232 tariffs were first announced (see **WTTL**, June 4, page 1). The countries all stated that 25% duties on steel and 10% on aluminum are inconsistent with provisions of the WTO's General Agreement on Tariffs and Trade and the Safeguards Agreement.

All three partners are retaliating, also as promised. The EU announced June 6 it will "exercise its rights immediately on U.S. products valued at up to €2.8 billion of trade. The remaining rebalancing on trade valued at €3.6 billion will take place at a later stage – in three years' time or after a positive finding in WTO dispute settlement if that should come sooner," it said.

EU Trade Commissioner Cecilia Malmstrom called the rebalancing "a measured and proportionate response to the unilateral and illegal decision taken by the United States to impose tariffs on European steel and aluminium exports. What's more, the EU's reaction is fully in line with international trade law. We regret that the United States left us with no other option than to safeguard EU interests."

Mexico said it intends to impose a 10% tariff on all U.S. pork products with that tariff rising to 20% by early July. Canada previously prepared a list of products that would be the target of "dollar-for-dollar tariffs for every dollar levied against Canadians," Canadian Foreign Minister Chrystia Freeland said. Those tariffs are expected to be implemented July 1.

> Speaking to reporters before he left for Canada June 8, President Trump said, "We're going to deal with the unfair trade practices. If you look at what Canada, and Mexico, the European Union - all of them - have been doing to us for many, many decades. We have to change it. And they understand it's going to happen."

Appealing to the American people directly in an op-ed, 29 EU ambassadors to the U.S. stated the facts of the U.S.-EU relationship. For example, "there is no 'buy European' policy for U.S. enterprises to compete with. We have a level playing field in public procurement, regardless of whether you are a European or American company. On top of that, we have eliminated thousands of legal and bureaucratic barriers to trade, leading to an open and thriving marketplace of more than 500 million consumers," they wrote.

Corker Attempts to Rein in Administration on 232 Tariffs

If the harsh reaction from international allies wasn't enough, lawmakers are turning to their toolbox to put a check on the president's ability to impose tariffs on steel and aluminum imports. Most recently, Sen. Bob Corker (R-Tenn.) and a bipartisan group of senators June 6 introduced legislation (S. 3013) that requires congressional approval of Section 232 tariffs.

Following submission of the proposed tariffs to Congress, the proposal calls for 60 days' consideration, guaranteeing debate and a vote. The requirement would apply to all Section 232 actions going forward and retroactively to those taken within the past two years. But while there is broad bipartisan support from the likes of Sens. Heidi Heitkamp (D-N.D.), Chris Van Hollen (D-Md.), Jeff Flake (R-Ariz.) and Johnny Isakson (R-Ga.), some Republicans, even those who disapprove of the current tariffs, balk at the proposed legislation.

Senate Majority Leader Mitch McConnell (R-Ky.) in an interview called Corker's proposal "an exercise in futility" and said he won't bring it to the floor, because the president simply won't sign it, even if it could muster enough votes. Yet, the proposal has tremendous industry support.

Rufus Yerxa, president of the National Foreign Trade Council, applauded congressional efforts such as Corker's. "This delegation of authority was given by the Congress to the President to allow him to limit imports when faced with direct national security threats. However, in recent months, it has become clear that the Administration has misused its authority under Section 232 by implementing broad tariffs on imports from our closest allies rather than designing a coherent trade policy that addresses unfair trade practices around the world," he said in a statement on behalf of the Alliance for Competitive Steel and Aluminum Trade (ASCAT).

"There needs to be a more appropriate balance on trade policy between Congress and the executive branch, and we applaud Senators Corker and [Pat] Toomey [(R-Pa.)] for working to achieve that. With the threat of a global trade war, Congress must step in before the U.S. economy suffers, American jobs are lost and families are forced to pay more for everyday products," National Retail Federation VP David French said in a statement.

Neil Bradley, U.S. Chamber executive vice president and chief policy officer, agreed. "The U.S. business and agriculture community is profoundly concerned about how newly imposed tariffs – and the inevitable foreign retaliation arriving in the next few weeks – will lead to lost American jobs. This emerging trade war endangers the remarkable economic progress we've seen in the past year. The constitutional authority of the Congress to 'regulate foreign trade' and its oversight of tariff policy is unambiguous. This modest proposal to clarify congressional prerogatives is welcome and long overdue."

United Steelworkers (USW), however, urged lawmakers to oppose Corker's proposal. In a letter to lawmakers June 7, USW President Leo Gerard called the proposal "nothing short of a free pass to foreign steel producers in countries like China and Russia and shows that some in Congress are willing to let the U.S. surrender the strategic importance of steel and aluminum to foreign countries."

EU Requests WTO Consultations over Airbus Subsidies

In addition to its ongoing dispute over steel and aluminum tariffs, the EU also requested WTO dispute consultations with the U.S. regarding compliance with the WTO ruling on subsidies to Airbus (see **WTTL**, May 21, page 4). The May 29 request was circulated to WTO members June 6.

> The EU informed the Dispute Settlement Body (DSB) May 17 that it adopted additional measures to achieve full compliance, including withdrawing remaining subsidies to Airbus and taking "appropriate steps to remove their adverse effects," it said. This was two days after a mixed Appellate Body (AB) ruling on the case.

Yet, the U.S. has expressed the view that the EU has not yet fully complied with the DSB recommendations and rulings, it said. "Thus, there is a 'disagreement as to the existence or consistency with a covered agreement of measures taken to comply'," the EU noted. Accordingly, the EU has requested consultations to be held within 15 days. Should the consultations fail, the EU will ask that a panel be established.

U.S.-China Trade War? Maybe, Maybe Not

Have the U.S. and China staved off a potential trade war? After two days of talks in Beijing June 2-3 between U.S. administration officials, led by Commerce Secretary Wilbur Ross, and their Chinese counterparts, the results remain unclear. The White House, after all, still is planning on imposing 25% tariff on $50 billion of Chinese goods containing industrially significant technology under Section 301. According to a White House readout, the meetings "focused on reducing the United States' trade deficit by facilitating the supply of agricultural and energy products to meet China's growing consumption needs, which will help support growth and employment in the United States."

> The Chinese side, led by Vice Premier Liu He, said "to implement the consensus reached in Washington, the two sides have had good communication in various areas such as agriculture and energy, and have made positive and concrete progress while relevant details are yet to be confirmed by both sides," according to a statement released on Chinese state-owned media.

However, "all economic and trade outcomes of the talks will not take effect if the U.S. side imposes any trade sanctions including raising tariffs." the statement cautioned. This could prove problematic if the U.S. goes ahead with the Section 301 tariffs. The administration will announce its list of covered imports by June 15 and tariffs will be imposed "shortly thereafter" (see **WTTL**, June 4, page 4).

White House Signals One-on-One NAFTA Negotiations

White House economic adviser Larry Kudlow threw a monkey wrench into NAFTA talks June 5 when he told a morning television show that the president is "very seriously contemplating a shift in NAFTA negotiations." Trump's "preference now, and he asked me to convey this, is to actually negotiate with Mexico and Canada separately," said Kudlow.

But is there an appetite from Canada and Mexico to negotiate one-on-one? "North American value chains were strengthened through #NAFTA precisely because it is a trilateral agreement. The industries of MX, CAN and the U.S. face the same commercial rules and this gives certainty to their operations and reduces costs," Kenneth Smith Ramos, Mexico's lead NAFTA negotiator, tweeted June 6.

Canada, too, is for trilateral talks, but has long talked to each side individually to try to reach common ground. The possible change in tactic comes as hope wanes for concluding a deal this Congress.

Sen. Chuck Grassley (R-Iowa), along with approximately 14 other senators, met for two hours with Trump June 6 to discuss trade. "He is very confident he can get a better deal for America generally but particularly agriculture. Admin needs to be careful in dealings or else agriculture is the first to be retaliated against," Grassley tweeted.

Retaliation is clearly on the mind of American farmers who launched a social media campaign under the hashtag #NeedNAFTA. The American Soybean Association, Americans for Farmers and Families, U.S. Wheat Associates and the U.S. Grains Council were among those supporting the social media blitz.

Grassley is among Republican senators who are urging the White House to conclude NAFTA negotiations by Labor Day. This despite the fact that Speaker Paul Ryan (R-Wis.)

told reporters June 6 that it was "pretty far into the deadline" he initially gave of May 17, and later revised to the end of May, for the House to consider a new agreement this year. .

> When reporters June 7 questioned Kudlow about the prospect of NAFTA negotiations concluding this year, he declined to speculate. "Well, we're still talking. Communication lines are open. I don't want to make a prediction. [USTR Robert] Lighthizer has the play on that. Everyone is still talking," he said.

Lighthizer met with the Ways and Means Committee June 7. Committee Chairman Kevin Brady (R-Texas) said they had a "good dialogue" regarding recent trade actions. "I also asked the administration to stay at the table to continue negotiating with Canada and Mexico for a strong and modern NAFTA with binding dispute settlement, including ISDS, and without the uncertainty created by an automatic sunset," Brady said in a statement.

* * * Briefs * * *

<u>TRADE FIGURES</u>: Merchandise exports in April jumped 11.4% from year ago to record-high $141.2 billion, Commerce reported June 6. Services exports gained 7.1% to $70.0 billion from April 2017. Goods imports increased 7.9% from April 2017 to $209.5 billion, as services imports gained 8.6% to $47.9 billion.

<u>NOMINATION</u>: President June 4 sent Senate nomination of Karen Dunn Kelley to be deputy Commerce secretary. Kelley was confirmed in August 2017 to be under secretary for economic affairs, performing nonexclusive duties of deputy secretary (see **WTTL**, May 29, 2017, page 10). Before joining Commerce, Kelley served as senior managing director of investments at Invesco, according to Commerce bio.

<u>CIT</u>: President June 7 announced intent to nominate M. Miller Baker of Louisiana and Timothy Reif of New York to be Court of International Trade (CIT) judges. Baker is litigation partner and co-chair of appellate practice group in Washington office of McDermott Will & Emery, LLP. Reif serves as USTR senior advisor and visiting professor at Columbia Law School. From 2009-2017, Reif served as USTR general counsel. Prior to joining USTR, Reif was chief international trade counsel on House Ways and Means Committee.

<u>TRADE PEOPLE</u>: Doug Goudie, director, international government relations at Pfizer, died June 3 after battle with cancer. Goudie was board member of Washington International Trade Foundation and former National Association of Manufacturers director of international trade policy.

<u>MORE TRADE PEOPLE</u>: US-China Business Council (USCBC) June 5 named Craig Allen, currently serving as U.S. Ambassador in Brunei Darussalam, as USCBC's new president, effective July 26. He succeeds John Frisbie, who has been president since September 2004. Allen previously served as deputy Commerce assistant secretary for Asia and deputy assistant secretary for China.

<u>RUSSIA:</u> OFAC June 4 issued Ukraine-/Russia-related General License (GL) 16 extending authorization for U.S. persons to engage in "specified transactions related to winding down or maintaining business involving EN+ Group PLC, JSC EuroSibEnergo, or any entity in which EN+ Group PLC or JSC EuroSibEnergo owns, directly or indirectly, a 50 percent or greater interest,"

until Oct. 23. OFAC in May issued GL 15 extending authorization for transactions related to GAZ Group (see **WTTL**, May 28, page 3).

EXPORT ENFORCEMENT: Vladimir Nevidomy, Ukraine-born naturalized U.S. citizen of Hallandale Beach, Fla., was sentenced June 4 in Miami U.S. District Court to 26 months in prison, followed by three years' supervised release, to conspiring to illegally export military-grade night vision rifle scopes, thermal monoculars and ammunition primers to Russia without State licenses. He pleaded guilty in March (see **WTTL**, March 26, page 5). After being informed that night vision rifle scopes are restricted and cannot be sent to Russia, Nevidomy "not only willfully disregarded such clear signals that he was breaking the law but actively lied to U.S. suppliers who asked for written assurances through an end-user agreement that he would not be exporting the items," Justice said in sentencing document. Nevidomy was arrested in June 2017 and released on $250,000 bond; co-defendant Dmitri Makarenko is at large.

SUDAN SANCTIONS: Ericsson, Inc. (EUS) of Plano, Texas and Ericsson, AB (EAB) of Stockholm, Sweden, agreed June 6 to pay OFAC $145,893 civil penalty to settle charge of violating Sudan sanctions. EUS and EAB employees allegedly conspired with Lebanese company BCom Offshore SAL to export and reexport satellite hub and satellite-related services to Sudan from late 2011 to mid-2012. EUS and EAB voluntarily self-disclosed apparent violation. Ericsson has since terminated its relationship with BCom, OFAC noted.

FLANGES: Commerce June 6 announced affirmative final determinations in antidumping duty investigation of imports of stainless steel flanges from China. All producers/exporters assigned dumping rate of 257.11%. Petitioners are Coalition of American Flange Producers and its individual members: Core Pipe Products and Maass Flange Corporation. ITC final determination expected by July 19.