ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Publisher: Martin Kalin • Editor: Meredith Gilston • Associate Editor: Melissa Apter

Vol. 38, No. 23 June 4, 2018

White House Keeps Promise on Tariffs, Alienates Allies

Not satisfied with lingering trade talks with U.S. allies, the White House May 31 announced it would impose the long-promised steel and aluminum tariffs under Section 232 on Mexico, Canada and the European Union (EU), countries that had all received an extension of exemptions from the tariffs. However, the trading partners did not take it well (see below).

> On a call with reporters the same day, Commerce Secretary Wilbur Ross explained why Canada and Mexico lost their exemption when the three countries were in talks to update and modernize NAFTA. “Those talks are taking longer than we had hoped. There is no longer a very precise date when they may be concluded and therefore they were added into the list of those who will bear tariffs,” he said.

Since first announcing the 25% tariffs on steel imports and 10% tariffs on aluminum, the U.S. negotiated voluntary export limits with several other trading partners, including South Korea, Argentina, Australia and Brazil. It was “unable to reach satis-factory arrangements, however, with Canada, Mexico, or the [EU], after repeatedly delaying tariffs to allow more time for discussions,” the White House said in a fact sheet.

“Current quantities and circumstances of steel and aluminum imports into the United States threaten to impair national security. These excessive imports are driven in large part by the worldwide glut from overproduction by other countries,” it added.

Trading Partners Quick to Respond to 232 Tariffs

As expected, Mexico, Canada and the EU did not take the tariff imposition lying down. All three partners had strong words and a list of products that could be the target of retaliation ready and waiting for the White House announcement.

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional users pay only $100 each with full-priced sub-scription. Site and corporate licenses are also available. Phone: 301-460-3060 Fax: 301-460-3086

"Mexico will impose measures equivalent to various products such as flat steels, lamps, legs and pork vanes, sausages and food preparations, apples, grapes, blueberries, various cheeses, among others, up to an amount comparable to the level of the Affectation, " the Mexican economy ministry tweeted May 31. "Mexico reiterates its stance against protectionist measures affecting and distorting international merchandise trade," it added.

EU Trade Commissioner Cecilia Malmstrom pulled no punches in a press conference June 1, calling the imposition of tariffs "unfortunate" and "pure protectionism." The bloc quickly started preparing a list of "rebalancing measures" in response to the tariffs. "We are not seeking to escalate any situation, but we must respond," she said.

> The EU formally requested World Trade Organization (WTO) consultations over the measures, as did Canada. "We are determined to protect the multilateral system," Malmstrom noted. She also cited her overtures of possible resolutions. "We offered a positive agenda, they rejected that," she said.

After meeting in Paris May 31, Malmstrom and Japanese Minister Hiroshige Seko took issue with both the steel and aluminum tariffs and potential tariffs on autos that the U.S. announced in May (see **WTTL**, May 28, page 1). Those measures "would have a major restrictive impact affecting a very substantial part of global trade. This would cause serious turmoil in the global market and could lead to the demise of the multilateral trading system based on WTO rules," the two said in a joint statement.

Canadian Prime Minister Justin Trudeau and Foreign Minister Chrystia Freeland expressed similar sentiments at their own press conference May 31. Trudeau called the tariffs "punitive" and "totally unacceptable." That Canada could be considered a threat to national security is "inconceivable," he added. In addition to the WTO case, Canada will also file dispute settlement proceedings under NAFTA Chapter 20.

Canada also prepared a list of products that would be the target of "dollar-for-dollar tariffs for every dollar levied against Canadians by the U.S." Freeland noted. The tariffs, which will go into effect July 1 after a 15-day consultation process with Canadian citizens, would amount to $16.6 billion, representing the value of 2017 Canadian exports affected by the U.S. measures. The list includes steel, yogurt, coffee, maple syrup, pizza, aftershave, kitchenware, toilet paper, mattresses, pens, boats and kegs, just to name a few.

Farmers, Industry Denounce Tariffs, Fear Retaliation

Like the tariffs against China, agriculture industry groups have long feared that their products could be the target of retaliation (see related story, page 4). "Today's decision to impose tariffs on steel and aluminum from Mexico and Canada, critical export markets, significantly heightens our concern as Mexico is already threatening to retaliate against U.S. pork," National Pork Producers Council (NPPC) president Jim Heimerl said.

"Based on information we have heard from our customers and past experience, we have every reason to believe U.S. agriculture, including the products we represent, will be among the first hit by counter measures from our trading partners," U.S. Grains Council President and CEO Tom Sleight. "We had strong hopes this situation would be averted permanently, but it now appears we need to prepare for retaliation and its direct impact U.S. farmers."

> As might be expected, the Beer Institute cited the tariffs as a $347 million tax on the U.S. beer industry. "In order to compete, American brewers need a fair and transparent pricing system for aluminum where there is a more diverse set of inputs and a two-factor system of pricing product premiums – tariff-included and non-tariff – so America's brewers no longer pay a tariff-inflated price for aluminum produced right here in the United States," Institute President and CEO Jim McGreevy said in a statement.

"No country that operates as a market economy should be subject to unnecessary and disruptive tariffs or quotas," Heidi Brock, president & CEO of the Aluminum Association, said in a statement. "Today's action does little to address the China challenge while potentially alienating allies and disrupting supply chains that more than 97 percent of U.S. aluminum industry jobs rely upon," she added.

Lawmakers, Steelworkers Disappointed Allies Lost Exemption

Members of Congress from both sides of the aisle took the administration to task for removing U.S. allies' exemption. "Bad news that [Trump] has decided to impose taxes on American consumers buying steel and aluminum from our closest allies--Canada, the EU, and Mexico (with whom we run a trade surplus on steel). In addition to higher prices, these tariffs invite retaliation," Sen. Pat Toomey (R-Pa.) tweeted.

"The U.S. does need to take tough, immediate action to fight back against China's predatory policies, and bring back American steel and aluminum jobs," Sen. Ron Wyden (D-Ore.) said. "But these tariffs, on the very allies we need to pressure China, make no sense. To date the Administration appears to be pursuing a trade policy that creates economic chaos and uncertainty rather than jobs for hard working Americans."

"These tariffs are hitting the wrong target. When it comes to unfairly traded steel and aluminum, Mexico, Canada, and Europe are not the problem—China is. This action puts American workers and families at risk, whose jobs depend on fairly traded products from these important trading partners," House Ways and Means Chairman Kevin Brady (R-Texas) said in a statement.

Even two groups that support the tariffs -- the United Steelworkers (USW) and the American Iron and Steel Institute (AISI) -- urged the administration to exempt Canada from the policy. The decision to include Canada "is unacceptable and calls into serious question the design and direction of the Administration's trade policy. Section 232 relief is founded on national security interests and U.S. law. Our history shows that there is no stronger ally and partner on national security than Canada," the USW wrote in a statement. "Early results showed the Section 232 steel and aluminum tariffs were having the intended impact: Thousands of jobs were created or saved as relief was put in place. Trading partners were finally beginning to take action against the root cause of all of these problems, China," it added.

AISI President Thomas J. Gibson echoed the sentiment. "We believe the NAFTA discussions should continue as they can be a basis for ensuring use of more NAFTA steel while achieving the objectives of the Section 232 remedies," he said in a statement. AISI members "fully support the administration's position that any country that is granted an exemption from the tariffs must be subject to a quota, in order to safeguard against the exempt country becoming a conduit for trade diversion, transshipment and import surges," he added.

White House Will Impose Tariffs on China, for Real This Time

Despite signs from the administration just a week before that an escalation, if not a trade war, with China was "on hold," the White House May 29 announced its intention to impose tariffs on China for its technology transfer policies and violations of intellectual property rights (IPR).

"To protect our national security, the United States will implement specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology," the White House said in a fact sheet (see **WTTL**, May 21, page 7). The proposed measures will be announced by June 30 and will be implemented "shortly thereafter," it noted.

> In addition, the White House announced it will impose a 25% tariff on $50 billion of goods imported from China containing industrially significant technology, including those related to the "Made in China 2025" program under Section 301 of the Trade Act of 1974. The final list of covered imports will be announced by June 15 and tariffs will be imposed on those imports "shortly thereafter," it noted.

China's Ministry of Commerce's (MOFCOM) reaction was similar to many trade observers in the U.S. "We are both surprised and unsurprised at the statement, which is obviously contrary to the consensus reached between China and the U.S. in Washington not long ago. The Chinese side has confidence, capability and experience to defend the interests of our country and her people. We urge the U.S. to act in the spirits of the joint statement," MOFCOM said in a statement.

The U.S. was joined by the EU and Japan two days later. "No country should require or pressure technology transfer from foreign companies to domestic companies, including, for example, through the use of joint venture requirements, foreign equity limitations, administrative review and licensing processes, or other means," the three partners said in a joint statement after meeting in Paris May 31.

In addition, EU Trade Commissioner Malmstrom, U.S. Trade Representative (USTR) Robert Lighthizer and Japanese Economy Minister Seko "discussed the harmful effects of regulatory measures that force foreign companies seeking to license technologies to domestic entities to do so on non-market-based terms that favor domestic entities."

To that end, the EU June 1 requested WTO consultations on these Chinese policies. "We cannot let any country force our companies to surrender this hard-earned knowledge at its border. This is against international rules that we have all agreed upon in the WTO. If the main players don't stick to the rulebook, the whole system might collapse," Malmstrom said in a statement. The U.S. filed similar proceedings in March when the administration first announced the tariffs (see **WTTL**, March 26, page 1).

> At the WTO Dispute Settlement Body (DSB) meeting May 28, the U.S. again criticized the policies. If left unchecked, the commercial effect of these policies will be to erode the economies and long-term competitiveness of all WTO members, it said. As expected, China rejected the U.S. accusations, some of which were without any basis; it also said the matter was not appropriate for discussion at the DSB.

Republicans in Congress and industry expressed concern over the tariffs. "While China must address its failure to protect U.S. intellectual property, these tariffs are not an effective response because it will harm American jobs and consumers," Joint Economic Committee Chairman Erik Paulsen (R-Minn.) said in a statement. Paulsen specifically called out tariffs on medical devices and consumer electronics as threatening any economic gains from the recent tax cuts.

Agriculture industry groups repeated concerns that their products could be the target of retaliation. "The looming threat of tariffs creates uncertainty in the marketplace and for soy growers, whose livelihoods rely on the ability to export their crops and products to China," American Soybean Association (ASA) said in a statement May 30. ASA asked the administration to "work with soybean farmers to find ways to reduce our trade deficit by increasing competitiveness rather than erecting barriers to foreign markets."

WTO Body Agrees to Establish Dispute Panels

As if the Trump administration's trade plate wasn't full enough, the DSB agreed to establish two more panels at its latest meeting May 28: one on a Korean complaint on the U.S. use of "facts available" in antidumping (AD) and countervailing (CV) investigations on certain products, the other on certain Indian programs that the U.S. claims are prohibited export-contingent subsidies.

During the DSB meeting, the U.S. expressed disappointment with Korea's decision to move forward with a request for a panel and reiterated that the determinations identified by Korea were fully consistent with WTO rules. The U.S. blocked Korea's first request to establish a panel at the last DSB meeting (see **WTTL**, April 30, page 7). The U.S. also reiterated that certain challenged items were not "measures" and therefore would not fall within the scope of dispute settlement proceedings. In the second case, the U.S. cited India's Export Oriented Unites Scheme and related sector-specific schemes, the Merchandise Exports from India Scheme, the Exports Promotion Capital Goods Scheme, Special Economic Zones, and duty-free imports for exporters program. The U.S. launched the complaint in March (see **WTTL**, March 19, page 6).

> India said it was disappointed with the U.S. panel request as it thought the consultations were constructive. At the same time, India provided the U.S. with a detailed explanation regarding its programs and how they were in line with WTO requirements.

As has been the case for the last several months, WTO members once again failed to agree on the initiation of the selection process to fill three vacancies on the Appellate Body after the U.S. said it was not in a position to accept a proposal backed by 67 WTO members calling for the start of the selection process as soon as possible. The next regular DSB meeting is scheduled for June 22.

* * * Briefs * * *

STEEL SHEET: In 5-0 "sunset" vote May 31, ITC said revoking antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan would renew injury to U.S. industry.

QUARTZ: In 5-0 preliminary vote May 31, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of quartz surface products from China.

ANTIBOYCOTT: Lockheed Martin received warning letter from BIS May 23 for furnishing information about business relationships with boycotted countries or blacklisted persons and failing to report receipt of request to engage in restrictive trade practice or foreign boycott in July 2014. Document regarding sales to Korea included certification that "goods did not contain Israeli parts or components," BIS said.

EXPORT ENFORCEMENT: Merit Aerospace, Inc. of Pasadena, Calif., and CEO Yanhong Zhou aka Joe Zhou agreed May 25 to pay $221,000 civil penalty to settle BIS charge of misrepresentation and concealment of facts in November 2012. Specifically, Merit and Zhou "misrepresented and concealed that it was exporting … aircraft parts to one customer (Customer A), after it had prepared false shipping documents that indicated the export was for a different customer (Customer B) and declared the value of the aircraft parts, which are items subject to the EAR and designated EAR99, to be significantly below the true value of the shipment." Of penalty, $181,000 will be suspended for four years and then waived if Merit and Zhou commit no further violations. Merit and Zhou pleaded guilty to related charges in Los Angeles U.S. District Court in 2014 and were sentenced to three years' probation and $2500 fine. In email to WTTL, Zhou called case "isolated incident. Since then we took considerable measures to strengthen Merit's export compliance program," he said.

RUSSIA: OFAC May 31 issued general licenses (GL) 13b, extending previous GL that expanded sanctions relief for certain designated firms (see **WTTL**, May 7, page 6). Specifically, OFAC extended GL expiration date to Aug. 5 from June 6.

CITRIC ACID: Commerce May 30 announced affirmative final determinations in antidumping duty (AD) investigations of imports of citric acid and certain citrate salts from Belgium, Colombia and Thailand, and negative final determination in countervailing duty (CVD) investigation of imports from Thailand. In Belgium AD investigation, Commerce calculated 19.30% dumping rate for all producers/ exporters; in Colombia, 28.48% for all producers/ exporters; in Thailand, 15.71% dumping rate for mandatory respondent COFCO Biochemical; 13% for mandatory respondent Niran; 6.47% for mandatory respondent Sunshine Biotech International; and 11.25% for all other producers and exporters. Commerce also determined that Thailand is providing countervailable subsidies ranging from 0-0.21%, "which are de minimis, therefore this investigation will be terminated," department said in fact sheet.

VEUs: In Federal Register June 4, BIS corrects previous rule implementing recommendations from February 2017 Australia Group (AG) intersessional and June 2017 AG plenary implementation meetings (see **WTTL**, April 2, page 7). Specifically, final rule amends VEU provisions to provide correct references to eligible items in ECCN 1C350 for three validated end-users: CSMC Technologies Corporation, Samsung China Semiconductor Co. Ltd, "Shanghai Huahong Grace Semiconductor Manufacturing Corporation. Amendments do not change scope of eligible items, BIS noted.

IRAN: OFAC May 30 designated nine more Iranian entities for committing serious human rights abuses, facilitating monitoring or tracking that could assist or enable such abuses, or engaging in censorship against Iranian citizens. "These designations come in the wake of recent protests by the Iranian people and the regime's subsequent brutal crackdown," OFAC noted.

NAFTA: Amid escalating talk of trade war over steel and aluminum tariffs, Canadian Prime Minister Justin Trudeau May 31 addressed why NAFTA talks may have stalled. He had offered to travel to Washington for "final deal-making moment," Trudeau said in press conference on tariffs. In call, VP Pence "impressed upon me that there was a precondition to us being able to get together that Canada would accept a sunset clause for NAFTA," he said. "I had to highlight that there was no possibility of any Canadian prime minister signing a NAFTA deal that included a five-year sunset clause, and obviously the visit didn't happen," Trudeau added.

TRADE PEOPLE: Bradford Ward, former director of Interagency Trade Enforcement Center (ITEC), joined King & Spalding law firm as partner in Washington office, firm announced May 30. Ward will focus on international trade policy, market access, and trade remedy litigation before federal agencies, U.S. courts and WTO dispute settlement panels, it added. Prior to ITEC, Ward was deputy USTR general counsel and assistant USTR for monitoring and enforcement.