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House Committee Rejects Reversal of ZTE Denial Order

In a week of news about ZTE that seemed like a year, U.S. industry would not be blamed for suffering a severe case of whiplash. On Sunday, the president tweeted support for the company. On Tuesday, Commerce officials said they were working on a way to do just that. On Thursday, the House Appropriations Committee approved by voice vote a budget amendment that prohibits funds from being used to reverse the ZTE denial order.

> This amendment to the fiscal year 2019 Commerce, Justice, Science (CJS) Appropriations bill "shows that, when the United States enacts sanctions, we stand behind them," amendment sponsor Rep. C.A. Dutch Ruppersberger (D-Md.) said in a statement. "It will also prevent a foreign company that is beholden to its government – and that ignores embargoes – from infiltrating the devices and networks that are now indispensable to American life."

ZTE announced May 9 that it was ceasing major operations due to the Bureau of Industry and Security (BIS) denial order in April (see **WTTL**, May 14, page 8). Four days later, the president tweeted: "President Xi of China, and I, are working together to give massive Chinese phone company, ZTE, a way to get back into business, fast. Too many jobs in China lost. Commerce Department has been instructed to get it done!"

The next day, Trump linked the deal to the larger trade talks with China. ZTE "buys a big percentage of individual parts from U.S. companies. This is also reflective of the larger trade deal we are negotiating with China and my personal relationship with President Xi," he tweeted. Commerce Secretary Ross tried to disconnect the two negotiations during a speech in Washington May 15. At press time, resolution of trade talks with a Chinese delegation remained unclear.

Commerce Officials Scramble to Respond to Tweet

In response to the president's instruction, Commerce officials were seeking a way to suspend but not revoke the denial of export privileges for ZTE, based on a new compliance

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agreement that would include the Chinese government as a guarantor of the company's compliance with U.S. export controls. In the days following the tweet, Commerce officials scrambled to come up with a solution to the president's order without undermining export controls and national security.

> BIS staffers admit they were caught off guard by Trump's tweet, learning about it at the same time as the rest of the country. While not wanting to object to the president's instructions, some of them conceded bafflement at the announcement. There apparently were little or no advance consultations with the department.

Exporting community practitioners and legal counsel say they are as baffled as BIS staffers at the president's tweet. They question what kind of precedent the White House action will have on future enforcement cases. One trade lawyer half jokingly said his clients will want him to call the president the next time they are in trouble instead of BIS.

Prior to the appropriations vote, congressional Democrats immediately denounced the president's tweets. "American workers deserve an explanation from this President why Chinese jobs are more important to save than our own and how rewarding a foreign company for doing business with Iran and North Korea will help keep Americans and our allies safe," House Democratic Whip Steny H. Hoyer (Md.) said in a statement May 14.

The next day, 33 Democratic senators urged the president "to focus on identifying effective strategies to reshape China's policy approach in each of these areas, such as through enforceable commitments to eliminate forced technology transfer policies, market distorting subsidies, data localization policies, and foreign investment restrictions, and ensuring nondiscriminatory treatment of U.S. firms in regulatory and other proceedings. Signers included Minority Leader Chuck Schumer (N.Y.), Finance Committee Ranking Member Ron Wyden (Ore.) and Banking Committee Ranking Member Sherrod Brown (Ohio).

Six Years Later, Agencies Propose Firearms Transfers

After six years, publishing proposed rules to transfer export control of firearms and ammunition that are widely available in retail outlets to Commerce from State jurisdiction could be called "anticlimactic." State and Bureau of Industry and Security (BIS) May 15 published their parallel rules to transfer items from U.S. Munitions List (USML) Categories I (firearms, close assault weapons and combat shotguns), II (guns and armament) and III (ammunition and ordnance) to the Commerce Control List (CCL).

At press time, the rules were not scheduled to be in the Federal Register until at least May 22, but each agency posted the rules on its respective website. BIS even scheduled a session at its annual Update conference to discuss the brand new, or rather old, proposals. According to BIS officials, the actual items moving from State to Commerce jurisdiction haven't changed much since the rules were first drafted in 2012 then held back after shootings in Aurora, Colo., and Sandy Hook.

The BIS rule would create 17 new Export Control Classification Numbers (ECCNs) to control items proposed for removal from the USML. Very few items are likely to move from Category II; mostly historical items, such as vintage Howitzers from 1890-1919 and flamethrowers with very short range, would move to the CCL 600 series.

Items from the other two categories would be controlled in the 500 series, like commercial spacecraft that moved over in 2014. "These items are not appropriate for 600 series because, for the most part, they have civil, recreational, law enforcement, or other non-military applications," BIS officials noted in a presentation at Update.

> What will stay on the USML includes: fully automatic firearms to caliber .50 (12.7mm) inclusive, firearms for caseless ammunition, silencers, mufflers, sound suppressors, and specially designed parts and components; high-capacity (greater than 50 rounds) magazines and parts and components to convert a semi-automatic firearm into a fully automatic firearm. Flash suppressors will move to CCL, and riflescopes and other firearms sighting devices already moved to USML Category XII if they have night vision or infrared capabilities.

The proposed rules will include a 45-day comment period, and there will be a delayed effective date, but that date is not specified in the proposed rule. Industry is asked to comment on how long it needs to make the transition. In addition, the BIS rule includes no requirement of congressional notification for large purchases, which was a sticking point. "At this time, we're not intending to do it," one BIS official told WTTL at Update.

The Commerce proposed rule also would revise ECCNs 0A018, 0E982, 1A984, 2B004, 2B018, 2D018 and 7A611 and would remove ECCNs 0A918 (bayonets), 0A984, 0A985, 0A986, 0A987, 0B986, 0E918, 0E984 and 0E987. The proposed rule would renumber these ECCNs to place existing items "in closer proximity" to the items moved from the USML.

As expected, some members of Congress immediately denounced the proposals. "The Trump Administration is moving to make it easier for American gun manufacturers to sell weapons without Congressional oversight - weapons that could wind up in the hands of human rights abusers and dictators," said Rep. Ted Deutch (D-Fla.), who represents the district encompassing the Parkland school shooting, in a statement. "The President's action today will make it easier for gun companies to export gun violence around the world. Congress must act to block this proposed rule," he added.

"This decision is also politically tone-deaf as our nation reckons with a gun violence epidemic," Sen. Ben Cardin (D-Md.) said. "As the public comment period begins, I encourage the American people and relevant stakeholders to weigh in with the Administration and speak out against the forces really driving this policy change – the gun lobby."

NAFTA 'Nowhere Near Close to a Deal,' Says USTR

Speaker Paul Ryan's (R-Wis.) NAFTA deadline came and went May 17 and along with it hopes that a vote on a renegotiated deal will take place this calendar year (see **WTTL**, May 14, page 3). U.S. Trade Representative (USTR) Robert Lighthizer admitted that negotiators are "nowhere near close to a deal."

"As I said last week, there are gaping differences on intellectual property, agricultural market access, de minimis levels, energy, labor rules of origin, geographical indications and much more," he said in a statement on deadline day.

Lighthizer's remarks are in sharp contrast to the optimism that Canadian Prime Minister Justin Trudeau displayed while in New York to deliver a college commencement address. "We are down to a point where there is a good deal on the table," Trudeau said, though he added he doesn't know how long such an agreement will take to complete.

> Trudeau drew the ire of the Mexican government when he argued that changes to auto rules of origin would help the U.S. at the cost of Mexican jobs. "Congratulations [Trudeau] for a great interview … but it is important to clarify: a renegotiated NAFTA that involves loss of existing jobs in Mexico is unacceptable," tweeted Mexican Economy Minister Ildefonso Guajardo.

Members of Congress with vastly different outlooks on trade urged negotiators to stay at the table for as long as it takes to get a good deal. Rep. Rosa DeLauro (D-Conn.), in a call with reporters, called Ryan's deadline "arbitrary" and a "parting shot" at American workers. She urged the administration to keep negotiating and complimented Lighthizer for being "even-handed" in listening to both sides of the aisle. "We can't allow American workers to keep suffering under NAFTA" because of arbitrary deadlines, she said.

"Republicans in Congress continue to urge the Administration to bring back a modern agreement that is fully enforceable with binding dispute settlement procedures and which includes strong protections for American businesses and workers competing for customers in Canada and Mexico," Rep. Kevin Brady (R-Texas) said in a statement.

"We want an agreement that creates certainty for American workers and companies and high-standard rules that don't automatically sunset after five years. This is the best way to protect American companies and workers as we search for new customers and grow our economy. I hope all countries continue working in good faith to get this done—whether that means a vote in Congress this year or next," he added.

WTO Rules in Decade-Long Boeing-Airbus Dispute

In a case where both sides claimed victory, the World Trade Organization's (WTO) Appellate Body (AB) confirmed May 15 that the European Union (EU) and four of its member states failed to comply with an earlier ruling by maintaining illegal subsidies for

Airbus. At the same time, the AB agreed with the EU position that a member cannot be required to withdraw or remove the effects of a subsidy that expired before the post-implementation period, in this case Dec. 1, 2011.

"This report confirms once and for all that the EU has long ignored WTO rules, and even worse, EU aircraft subsidies have cost American aerospace companies tens of billions of dollars in lost revenue. It is long past time for the EU to end these subsidies. Unless the EU finally takes action to stop breaking the rules and harming U.S. interests, the United States will have to move forward with countermeasures on EU products," U.S. Trade Representative (USTR) Robert Lighthizer said in a statement. In a separate statement, Boeing said the EU had provided $22 billion of illegal subsidies to Airbus.

EU Trade Commissioner Cecilia Malmstrom had a decidedly different outlook on the ruling. "Today the WTO Appellate Body, the highest WTO court, has definitively rejected the U.S. challenge on the bulk of EU support to Airbus, and agreed that the EU has largely complied with its original findings. Significantly, it dismissed the vast majority of the U.S. claims that this support had damaged Boeing's aircraft sales," Malmstrom said in a statement.

"The EU will now take swift action to ensure it is fully in line with the WTO's final decision in this case. Also, we look forward to the upcoming ruling by the Appellate Body on U.S. compliance with the WTO findings of the massive and persistent government support to Boeing," she added.

According to the EU, the AB rejected 94% of U.S. claims and upheld only 14 instances, out of 218 claims, when Boeing was negatively impacted. The EU needs to deal with repayable loans provided to Airbus for A380 and A350 XWB models. The U.S. originally brought action against the EU in 2004 and the EU issued a parallel case in 2005, leading to prolonged cases that have taken years to litigate. A report is expected later this year addressing subsidies Airbus claims Boeing receives from Washington State (see **WTTL**, Sept. 11, page 1).

Senators Aim to Protect Domestic Printers, Publishers

These days, the print news business can use all the help it can get. Sen. Susan Collins (R-Maine), with bipartisan support, introduced the Protecting Rational Incentives in Newsprint Trade (PRINT) Act of 2018 (S.2835) May 14. The purpose of the bill is to "address the crisis facing printers and publishers" in the U.S. by suspending the import duties on uncoated groundwood paper from Canada while Commerce examines the industry.

The PRINT Act would require Commerce to study the "economic wellbeing, health, and vitality of the newsprint industry" in the U.S.; require a report from the Commerce secretary to the president and Congress within 90 days that includes study findings and recommendations; stay the effect of proceedings by Commerce and the International Trade

Commission on uncoated groundwood paper until the report is certified by the president; and halt the collection of deposits for uncoated groundwood paper until the president has made certifications.

"The U.S. printing and publishing industry is facing an unprecedented threat from crippling new import tariffs imposed on Canadian uncoated groundwood paper – better known as 'newsprint' – which is used by newspapers, book publishers, and commercial printers," said Collins.

> Commerce issued a preliminary affirmative antidumping duty (AD) determination on uncoated groundwood paper from Canada in March; a final determination is expected in early August. In January, Commerce issued a preliminary determination in the countervailing duty investigation of the same product, with a final determination expected May 22 (see **WTTL**, Jan. 15, page 3). The duties on newsprint are just the latest trade disputes with the U.S.' northern neighbor.

"Publishers already face economic headwinds due to the migration of advertising from print to digital," said David Chavern, president & CEO, News Media Alliance, in a statement. "We simply cannot absorb extra costs from import taxes. Newspapers will close or be forced to raise prices for readers and advertisers. We are already seeing some papers cut back on news distribution and cut jobs. These tariffs are killing jobs and high-quality news in local communities."

In contrast, the Committee to Support U.S. Trade Laws (CSUSTL) expressed alarm. "This is a brazen, unprecedented and unwarranted attack on U.S. trade laws at a time when our government is working hard to address unfair trade practices around the world," Skip Hartquist, a past CSUSTL president, said in a statement. "The bill attempts to inject politics into a fact-based administrative process which is designed to help U.S. companies compete with foreign producers which do not abide by the rules of trade," added Hartquist.

Treasury Adds Iran Sanctions for Hizballah Support

Treasury's Office for Foreign Assets Control (OFAC) May 15 imposed sanctions on the governor and a senior official of Iran's Central Bank, an Iraqi bank and its chairman, and a Hizballah official for their involvement with transferring money on behalf of Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to Hizballah.

OFAC designated Valiollah Seif, Iran's Central Bank governor, and Ali Tarzali, assistant director of the bank's international department, for providing financial services in support of IRGC-QF. Al-Bilad Islamic Bank and its Chairman Aras Habib were likewise sanctioned for funneling money from the IRGC-QF to Hizballah. OFAC designated Muhammad Qasir for acting as a "critical conduit for financial disbursements from the IRGC-QF to Hizballah." This follows the May 10 joint action by the U.S. and the United Arab Emirates (UAE) to disrupt the currency exchange network in Iran and the UAE used to finance the IRGC-QF (see **WTTL**, May 14, page 1).

"Iran's Central Bank Governor covertly funneled millions of dollars on behalf of the IRGC-QF through Iraq-based al-Bilad Islamic Bank to enrich and support the violent and radical agenda of Hizballah. It is appalling, but not surprising, that Iran's senior-most banking official would conspire with the IRGC-QF to facilitate funding of terror groups like Hizballah, and it undermines any credibility he could claim in protecting the integrity of the institution as a central bank governor," said Treasury Secretary Steven Mnuchin in a statement.

Chinese Delegation Meets with Trump, Lawmakers in Washington

Amid rising tensions on a number of fronts, Chinese Vice Premier Liu He talked trade with members of Congress and the administration May 17-18. On the agenda was decreasing the trade imbalance, potential import tariffs, and sanctions on Chinese phone company ZTE.

White House economic adviser Larry Kudlow told reporters May 18 that China is "meeting many of our demands. There is no deal yet to be sure, and it's probably going to take a while to process, but they're coming to play." Kudlow also said China offered to cut the trade surplus by $200 billion, which a Chinese spokesperson later denied to reporters.

> In what may have been a gesture of goodwill before the delegation arrived, President Trump tweeted that he would help ZTE (see related story, page 1). During the meeting, China's Ministry of Commerce announced May 18 that it was terminating its antidumping and anti-subsidy investigations of imported sorghum (see **WTTL**, April 23, page 5). Deposits already collected will be returned in full. Agriculture Under Secretary for Trade and Foreign Agricultural Affairs Ted McKinney will lead a trade mission to China, May 21-25, Agriculture announced May 17.

Prior to meeting with the administration May 17 and 18, Liu sat down with members of the House Ways and Means Committee. Following their conversation, Ways and Means Chairman Kevin Brady (R-Texas) called for a level playing field for American workers. "It's absolutely vital that we get our trading practices with China right—and that starts with China reversing its unfair trading practices," he said.

"Today, we had a productive meeting in which our members urged Vice Premier Liu and his delegation to work with the Administration and Congress to reduce trade barriers, increase intellectual property rights protection, and create a level playing field for American companies and workers. I thank the Vice Premier for coming to Washington and hope we can continue this dialogue," Brady added.

Industry Gets Day in Court on Section 301 Tariffs

Across town from where the Chinese delegation was meeting, an interagency commission May 15-17 heard three days of testimony from companies and associations both for and against the imposition of tariffs on Chinese imports under Section 301 (see **WTTL**, May

14, page 6). Not surprisingly, agriculture does not want tariffs. "As producers of the nation's number one agricultural export, soybean farmers want to be an essential part of helping lower our trade deficit with China. We believe that expanding market access can play a vital role in increasing our agricultural trade surplus," the American Soybean Association said in its comments.

> The National Retail Federation (NRF) warned that tariffs could drive up prices for back-to-school and holiday merchandise. "Retailers cannot quickly change suppliers to find alternate sources for goods impacted by the proposed tariffs. It can take years to develop new supply chains that satisfy retailer requirements for volume, reliability, regulatory compliance and vendor codes of conduct," said NRF Senior Vice President for Government David French.

But small-business owners testifying on the last day of the hearing made the case for tariffs. Jim Mischel of Electric Mirror LLC, which supplies mirrors to hotel chains, said without sanctions the U.S. will "forfeit the Made in America dream."

And unlike companies arguing for product exemptions, Mark Berman of Rockland Industries, a firm that makes blackout drapery, argued that coated blackout fabric should be added to the list. Berman detailed how Rockland's innovations are quickly copied and reproduced in China, making a level playing field difficult to achieve. Cognizant of consumers, Berman testified that the imposition of duties would not cause economic harm to consumers.

* * * Briefs * * *

NO MORE BIT: In Federal Register May 18, State and USTR announced termination of U.S. – Ecuador bilateral investment treaty (BIT), "except that it will continue to apply for another 10 years to investments made or acquired prior to the date of termination," notice said. Ecuador delivered notice of termination year ago. Treaty was signed in August 1993 and entered into force in May 1997. USTR staff has been concerned about deteriorating investment environment in country for last several years. Former Deputy USTR Marantis addressed concerns at hearing in March 2013 (see **WTTL**, March 25, 2013, page 2).

UNVERIFIED LIST: In May 17 Federal Register BIS added 33 entities in China, Russia, UAE, Canada, Estonia, Finland and Pakistan to its Unverified List (UVL). Rule also added additional address for current UVL in Hong Kong: Ling Ao Electronic Technology Co., Ltd.

FCPA: Ng Lap Seng, owner of Macau Real Estate Development Company, was sentenced in Manhattan U.S. District Court May 11 to 48 months in prison and three years' supervised release for his role in scheme to bribe Antiguan and Dominican ambassadors to UN. Federal jury convicted Ng in July after four-week trial on charges of violating Foreign Corrupt Practices Act (FCPA). Ng's assistant Jeff Yin was sentenced in Manhattan federal court in February to seven months in prison (see **WTTL**, March 5, page 7). Yin pleaded guilty in April 2017 to tax evasion. Ng and Yin allegedly paid hundreds of thousands of dollars to ambassadors in exchange for official action to benefit Ng and his company. Specifically, Ng sought formal UN support for Macau Conference Center that he hoped to build. In addition to prison sentence, Ng was ordered to pay $1 million fine, $302, 977 in restitution to UN and $1.5 million in forfeiture.

TUBING: In 3-0 final votes May 17, ITC found U.S. industry is materially injured by dumped imports of cold-drawn mechanical tubing from China, Germany, India, Italy, Korea and Switzerland. Chairman Rhonda Schmidtlein and Commissioner Jason Kearns did not participate in votes. ITC also made negative finding of critical circumstances on imports from China, Italy and Korea.

GSP: USTR will review Thailand's GSP eligibility, responding to petition from National Pork Producers Council (NPPC), agency announced May 17. "Thailand for years has willfully denied equitable access to our products," said NPPC President Jim Heimerl in statement. "We're pleased that USTR is going to look into the unfair treatment U.S. goods are getting from Thailand."

SNAP-R: BIS May 14 launched latest round of updates to SNAP-R electronic system. Changes include: addition of "Login Help" option; new "Contact Person" field for each work item; accommodation for international telephone numbers and extensions; and increased character limits for purchaser, intermediate consignee, ultimate consignee, original ultimate consignee and end users.

SANCTIONS: Turkish banker Mehmet Hakan Atilla was sentenced May 16 in Manhattan U.S. District Court to 32 months in prison for his role in scheme to violate U.S. Iran sanctions by conducting international financial transactions on behalf of Iranian government and other blocked entities, including Bank Mellat, between 2010 and 2015. Jury convicted Atilla in January after four-week trial on five charges, including conspiracy to defraud U.S., conspiracy to violate International Emergency Economic Powers Act and bank fraud (see **WTTL**, Jan. 8, page 5). Iranian-Turkish gold trader Reza Zarrab pleaded guilty to related charges and testified at Atilla's trial in November.

MORE SANCTIONS: In effort to lift OFAC sanctions, blocked Russian oligarch Oleg Deripaska resigned May 18 as director of EN+ and subsidiaries including RUSAL (see **WTTL**, April 30, page 1). "Plan seeks to both reduce Deripaska's shareholding below 50% and to end his influence over the Board through the appointment of a majority of independent directors," firm said in statement.

EXPORT ENFORCEMENT: Frederik Barbieri of Ft. Pierce Fla., pleaded guilty May 15 in Miami U.S. District Court to unlawfully exporting firearms, firearms accessories and ammunition to Rio de Janeiro, Brazil. Brazilian law enforcement intercepted shipment found to contain approximately 30 AR-15 and AK-47 rifles and firearm magazines, all concealed in four 38-gallon Rheem water heaters, according to court documents. Sentencing is set for July 19.

BELARUS: At 10th meeting of working party on Belarus' accession May 15, WTO members urged Minsk to make key policy choices. "We believe that our accession is getting closer to the final stage and call on WTO members to step over the format of questions and replies and to move to more concrete work on draft commitments language," Andrei Yeudachenka, Belarus' first deputy foreign affairs minister, said. Meeting was third since resumption of working party work in January 2017. WTO and Belarus reactivated consultations in fall 2015 following Kazakhstan's accession in July 2015 (see **WTTL**, March 28, 2016, page 11). WTO established working party on Belarus' accession in 1993.

VENEZUELA: OFAC May 18 designated Diosdado Cabello Rondón, first-vice president of United Socialist Party of Venezuela (PSUV), his brother José David Cabello Rondón, his wife Marleny Josefina Contreras Hernández and front man Rafael Alfredo Sarria Diaz. In addition, OFAC blocked three Florida companies that are owned or controlled by Sarria: SAI Advisors Inc., Noor Plantation Investments LLC, and 11420 Corp. OFAC further blocked 14 properties in Florida and New York, owned by Sarria directly or through his companies. OFAC designated four other current or former government officials in March (see **WTTL**, March 26, page 7).

PTFE RESIN: Commerce May 15 announced affirmative final determination in countervailing duty investigation of imports of PTFE resin from India. All respondents assessed 3.6% subsidy rate. Petitioner is Chemours Company FC LLC.

TURNABOUT IS FAIR PLAY: European Union (EU) informed World Trade Organization (WTO) May 18 that EU may apply additional duties to 182 types of U.S. goods to "compensate in an equivalent manner for the impact of the U.S. tariff measures on steel and aluminum, which the EU considers to be safeguard measures in effect, should they enter into force," EU release noted. One subset of imports would be subject to maximum of 25% ad valorem duties while at second stage additional duties of 10, 25, 35 or 50% on items could be applied from March 23, 2021, or upon ruling that U.S. safeguard measures are inconsistent with WTO rules. Agricultural products include whiskey, corn, kidney beans and cranberry juice; non-agricultural include Harley-Davidson, cosmetics, motor boats, steel, playing cards and clothes.

SAFEGUARDS: Korea requested WTO dispute consultations May 14 in ongoing saga over U.S. safeguard measures on imports of crystalline silicon photovoltaic cells and large residential washers. Korea believes U.S. safeguard measures are inconsistent with obligation under GATT 1994 and Safeguards Agreement. Previous discussions on Section 201 safeguard duties did not result in agreement, countries acknowledged April 17 (see **WTTL**, April 23, page 7).