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U.S. China Delegation Returns to Chart Next Steps

In an effort to ease trade tensions between the U.S. and China, Treasury Secretary Steven Mnuchin led an American delegation to Beijing May 3-4. Few details emerged from the talks other than a brief statement from the White House.

> "The delegation held frank discussions with Chinese officials on rebalancing the United States–China bilateral economic relationship, improving China's protection of intellectual property, and identifying policies that unfairly enforce technology transfers. The United States delegation affirmed that fair trade will lead to faster growth for the Chinese, United States, and world economies," the White House said.

Mnuchin, along with U.S. Trade Representative (USTR) Robert Lighthizer, Commerce Secretary Wilbur Ross, advisors Larry Kudlow and Peter Navarro departed May 4 to brief the White House on potential next steps. It remains unclear whether the administration will implement proposed tariffs on up to $150 billion of Chinese goods (see **WTTL**, April 30, page 6).

Xinhua News Agency, a Chinese state media organization, reported that both countries "had thorough exchange of views on issues including increasing U.S. exports to China, bilateral service trade, two-way investment, protection of intellectual property rights, as well as resolving tariff and non-tariff issues, reaching consensus in some areas. Both sides recognized that given that considerable differences still exist on some issues, continued hard work is required for more progress."

Panasonic Pays $280 Million to Settle FCPA Charges

Japan-based Panasonic Corp and its U.S. subsidiary, Panasonic Avionics Corp. (PAC), a provider of in-flight entertainment and communication systems, agreed April 30, 2018, to pay $280 million to settle Securities and Exchange Commission (SEC) and Justice charges

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of violating the Foreign Corrupt Practices Act (FCPA) and accounting fraud. The settlement includes $143 million in disgorgement and pre-judgment interest to the Securities and Exchange Commission (SEC) and $137.4 million criminal penalty to Justice under a three-year deferred prosecution agreement (DPA) filed in D.C. U.S. District Court. According to the SEC order, PAC provided a lucrative consulting position to a government official who assisted PAC in obtaining and retaining business from a state-owned airline.

> "While PAC was negotiating two agreements valued at over $700 million with the Government Airline, PAC offered the Government Official a $200,000 a year post-retirement consulting position in order to induce him to assist PAC. Ultimately, PAC retained the Government Official and paid approximately $875,000 for his purported consulting position, which required little to no work," it said.

"In addition, Panasonic lacked appropriate internal accounting controls with respect to the use of consultants and sales agents at PAC. PAC paid over $1.76 million to purported consultants, including the Government Official, who provided few if any legitimate consulting services. As with the payments to the Government Official, these payments were made through a third-party vendor," SEC added.

In addition to the penalty, PAC also agreed to engage an independent compliance monitor for two years, after which the firm will self-report for one year. "Panasonic takes these issues very seriously and is committed to increasing compliance awareness throughout the organization and strengthening its oversight of its subsidiaries globally," the company said in a statement. The firm cited compliance measures including "appointing a new management team and substantially reducing, and enhancing controls around, the use of third-party agents and consultants."

"PAC did not timely voluntarily self-disclose the conduct, but did cooperate with the department's investigation after receiving a request for documents from the SEC," Justice said. The company received a 20% discount off the low end of the U.S. Sentencing Guidelines fine range because of its "cooperation and remediation, which, although untimely in certain respects, did include causing several senior executives who were either involved in or aware of the misconduct to be separated from PAC or Panasonic," it added.

NAFTA Approval on "Thin Ice," USTR Warns

Congressional approval of NAFTA this year could be on "thin ice" if an agreement is not reached in the next few weeks, USTR Robert Lighthizer told a D.C. conference May 1. The notification process required for congressional approval of a renegotiated NAFTA could butt up against November midterm elections. Lighthizer will meet with Canadian Foreign Minister Chrystia Freeland and Mexican Economy Minister Ildefonso Guajardo May 7 in Washington.

"If we can get a good agreement, I'd like to get it done a week or two after that. If not, then you start having a problem," Lighthizer told the U.S. Chamber of Commerce. Ideally, he wants an agreement that receives "overwhelming support," he added. Lighthizer left a few days later on a trade mission to China (see related story, page 1). Meanwhile, Canada and Mexico were conferring with their respective automotive stakeholders (see **WTTL**, April 30, page 5).

At a news conference in Mexico City, Guajardo told reporters that his team "will bring a plan in response to the U.S. position" on autos. Guajardo has been in consultations with the Mexican Association of the Automotive Industry (AMIA). The lobbying group's president, Eduardo Solis, said a new offer will include Canadian suggestions put forward a few months ago, as well as U.S. ideas.

> Mexican automakers cannot abide by the rules of origin requirements the U.S. has put forward, namely, raising the North America content requirement from 62.5% to 75%, Solis added. The U.S. reportedly also wants 40% of light vehicles and 45% of pickup trucks to be made in areas where wages average $16 an hour, which is far above the wages offered in most of the Mexican auto industry. For her part, Freeland May 2 met with APMA, Canada's national association representing original equipment manufacturers of automotive parts.

Another thorny area is investor-state dispute settlement (ISDS). In a letter May 2, the American Petroleum Institute, Business Roundtable, National Association of Manufacturers, and U.S. Chamber of Commerce urged the president and his economic advisors to retain ISDS. "ISDS upholds the same fundamental due process and private property guarantees protected by our Constitution, and it obligates other countries to uphold these precepts as well," the groups wrote.

"When the U.S. protects and promotes our companies' investments in Canada and Mexico, we support and generate jobs at home. Moving forward with a revised NAFTA that does not include such protections for U.S. businesses would threaten our economy and endanger the prospects for NAFTA 2.0 to be approved in Congress," they added.

President Modifies, Extends Exemptions for Section 232 Tariffs

A day before temporarily exempted tariffs were to go into effect, President Trump issued two proclamations April 30 modifying the Section 232 tariffs on steel and aluminum imports. The U.S. reached a final agreement with Korea and has agreements in principle with Argentina, Australia and Brazil. Negotiations with Canada, Mexico and the European Union (EU) were extended 30 days to June 1. According to the White House, all negotiations focused on quotas.

The European Commission was less than thrilled by the announcement. "The U.S. decision prolongs market uncertainty, which is already affecting business decisions. The EU should be fully and permanently exempted from these measures, as they cannot be justified on the grounds of national security," the Commission said in a statement. "The EU has also consistently indicated its willingness to discuss current market access issues of interest to both sides, but has also made clear that, as a longstanding partner and friend of the U.S., we will not negotiate under threat," the statement noted. There was some confusion May 2 as to whether Brazil had reached an agreement in principle with the U.S. Brazil claimed that the U.S. cut off talks April 26 having given Brazil the option of tariffs or quotas; Brazil's aluminum industry wanted 10% tariffs and the steel industry wanted quotas. A White House spokesperson later said that a deal had been reached though the details were not finalized. The president could still re-impose tariffs if a final agreement is not reached quickly.

U.S. allies not exempted, including South Africa, Japan and New Zealand, expressed their disappointment. "We are concerned at the possible implications for our domestic producers. While our exports of steel and aluminum to the U.S. are not large, they are important to the businesses and workers in those industries," New Zealand Trade Minister David Parker said in a statement. "The omission of New Zealand from the list of exempted countries belies our positive bilateral relationship. New Zealand is a strong security and defense partner for the U.S., and we enjoy a healthy and balanced trade relationship," Parker added.

Turkey meanwhile notified the World Trade Organization's (WTO) Safeguards Committee that it had initiated a safeguard investigation on iron and steel products. "Taking into account import taxes imposed by the United States, safeguard investigation initiated by the European Union and increasing tendency worldwide towards protectionist measures against steel products, the investigation was initiated ex-officio in order to determine whether imports have caused serious injury and/or threat thereof to domestic producers of related products," Turkey wrote to justify its actions.

As expected, the American Institute for International Steel (AIIS) expressed its disappointment with the administration's decision not to "end the uncertainty in the metals market." "Quotas are not the solution as they will have the same impact as tariffs by restricting access to, and raising the price of, steel and aluminum for U.S. manufacturers. We call on President Trump to enter into global negotiations about overcapacity for steel and aluminum before these trade wars cost tens of thousands of U.S. jobs," said AIIS President Richard Chriss, whose organization is part of the newly formed Coalition of American Metal Manufacturers and Users (see **WTTL**, April 23, page 8).

Lawmakers Request Justification for Tariffs

The Senate Homeland Security and Governmental Affairs Committee wants statistical justification for the tariffs, Chairman Ron Johnson (R-Wis.) and Ranking Member Claire McCaskill (D-Mo.) noted as they requested additional information from Commerce Secretary Wilbur Ross. They said he had not fully responded to a previous request for information sent in March.

In a May 3 letter, the two chastised Ross for his incomplete responses and lack of statistical justification. Ross wrote in his original response that he did not believe that "the economic impact in the form of higher input costs will be as dramatic as many claim" and backed up his belief with "two anecdotal examples about the cost of a can of soup and the cost of a car."

"Clearly, these tariffs will have a much more far-reaching effect on downstream industries and consumer prices than explained in your response. We have heard from a number of Wisconsin - and Missouri-based manufacturers and other U.S. companies in downstream industries that will face collateral damage from the tariffs. These industries are already facing higher input costs that will ripple throughout the U.S. economy," wrote the senators.

> Agricultural producers are "now also caught up in the escalating trade tensions due to tariffs," they added. If Commerce does not produce the information Johnson originally requested by May 17, then "the Committee may be forced to consider use of compulsory process," the letter concluded.

Not everyone in Congress was down on the tariff announcement. "This announcement is welcome news. I thank the President, Ambassador Lighthizer, and Secretary Ross for working with us to establish flexibility in the process, which reflects our joint commitment to American workers. I am committed to working with the Administration to ensure that these tariffs are narrow and targeted to protect our workers and job creators here at home and to enact good trade policies that grow our economy," House Ways and Means Chairman Kevin Brady (R-Texas) said in a statement.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in March jumped 10.9% from year ago to record-high $140.9 billion, Commerce reported May 3. Services exports gained 4.5% to $67.6 billion from March 2017. Goods imports increased 9.0% from March 2017 to $201.4 billion, as services imports gained 8.6% to $47.1 billion. Merchandise exports in first quarter jumped 7.9% from year ago to $412.1 billion. Services exports gained 4.7% to $201.7 billion from first quarter 2017. Goods imports increased 9.1% from first quarter 2017 to $635.3 billion, as services imports gained 9.1% to $141.9 billion.

SILICON METAL: In 4-0 "sunset" vote May 1, ITC said revoking antidumping duty order on imports of silicon metal from China would renew injury to U.S. industry. Commissioner Jason E. Kearns did not participate in this review.

HANGERS: In 5-0 "sunset" votes May 3, ITC said revoking antidumping duty orders on imports of steel wire garment hangers from Taiwan and Vietnam and existing countervailing duty order on imports from Vietnam would renew injury to U.S. industry.

STEEL WIRE ROD: In 4-0 final vote May 1, ITC found U.S. industry is materially injured by dumped imports of carbon and certain alloy steel wire rod from Italy, Korea, Spain, Turkey and United Kingdom (UK) and subsidized imports from Italy and Turkey. Commissioner Jason E. Kearns did not participate in these investigations. Commission also made negative finding of critical circumstances on imports from Spain, Turkey and UK.

FCPA: Lawrence Parker, Jr., was sentenced April 30 in Miami U.S. District Court to 35 months in prison, three years' supervised release and $701,750 in restitution for scheme to pay $705,000 in bribes to Aruban government official to award lucrative mobile phone and accessory contracts. He pleaded guilty in December 2017 to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and to commit wire fraud. Egbert Yvan Ferdinand Koolman, Dutch citizen residing in Miami, pleaded guilty April 13 in Miami federal court to conspiracy to commit money laundering in scheme (see **WTTL**, April 16, page 5). Koolman was product manager of Servicio di Telecommunicacion di Aruba N.V. (Setar), instrumentality of Aruban government. Sentencing is set for June 27.

EXPORT ENFORCEMENT: Three Iranian nationals who live in Northern California were indicted April 19 in San Francisco U.S. District Court on charges of illegally exporting manufacturing components and devices, including micro drill press, to Iran without OFAC licenses. Sadr Emad-Vaez, Pouran Aazad and Hassan Ali Moshir-Fatemi all participated in operation of Ghare Sabz Company, aka GHS Technology, large manufacturing corporation in Tehran, indictment noted. Moshir-Fatemi was arrested near S.F. Airport April 11, while Emad-Vaez and Aazad were arrested at residence in Los Altos Hills April 7. All three were released on secured bonds.

RUSSIA: OFAC May 1 updated two general licenses (GLs) 12b and 13a, superseding previous GLs that extended and expanded sanctions relief for certain designated firms. Specifically, OFAC permitted originating and intermediary U.S. financial institutions to process funds transfers and clarified that U.S. financial institutions can release such funds for authorized maintenance and wind-down purposes.

SOLAR: Protecting American Solar Jobs Act (H.R.5571) referred to Ways and Means April 18. Rep. Jacky Rosen (D-Nev.) introduced bipartisan bill that would repeal administration's duties and tariffs on imported solar panels (see **WTTL**, April 23, page 7). "This administration directly threatened the stability and financial well-being of our local solar industry when the President decided to impose a 30% tariff on imported panels. An attack on solar energy is an attack on the countless hardworking Nevadans who benefit from this growing industry, and my new bill will reverse this damaging decision," Rosen said in statement.