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Lawmakers Push for Permanent Export Control Authority

More than 16 years since its predecessor lapsed, House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) and Ranking Member Eliot Engel (D-N.Y.) Feb. 15 introduced bipartisan legislation to repeal and replace the Export Administration Act of 1979 (EAA) and provide Commerce with permanent statutory authority to regulate export of dual-use items.

Specifically, the Export Control Reform Act of 2018 (H.R. 5040) requires that export controls ensure continued U.S. leadership in science, technology, engineering, manufacturing and other sectors; provides new authority to identify and appropriately control critical emerging technologies; and supports U.S. diplomatic efforts to promote greater international coordination and cooperation on export controls, according to the committee.

> Royce lost a few points from the judges on creativity, as Sen. Steve Daines (R-Mont.) and Rep. Steve Scalise (R-La.) introduced bills of same name in September 2016, which would move jurisdiction for commercial and sporting (non-military) firearms from State to Commerce (see **WTTL**, Oct. 3, 2016, page 10).

A new section on control lists requires the president to "establish a regular interagency review of each list of controlled items. In accordance with such review, the Secretary of Commerce is required to regularly update such lists to ensure that new items are appropriately controlled, with such controls adjusted as conditions change," a committee fact sheet noted. The bill requires another "interagency process to identify emerging technologies that are not identified in any U.S. or multilateral control list, but nonetheless could be essential to U.S. national defense, intelligence, or other areas of national security," it added.

Commerce Publishes 232 Reports, Recommends Quotas or Tariffs

In a surprise move, Commerce Secretary Wilbur Ross Feb. 16 published the Section 232 reports on the department's investigations into steel and aluminum imports. The reports

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offer the president a range of recommendations for each industry involving a combination of tariffs and quotas, with the goal to raise domestic aluminum and steel industry production to 80% of capacity.

Bipartisan lawmakers brought up the reports in a meeting with the president Feb. 13. Sen. Ron Wyden (D-Ore.) said that they'd need to see the reports in order to give the president specific recommendations, perhaps prompting the early release of the reports. When the reports were submitted to the White House, Commerce stated they would be released after the president announced his decision (see **WTTL**, Jan. 29, page 6).

On steel, the report recommends three options: a global tariff of at least 24% on all steel imports from all countries; a tariff of at least 53% on all steel imports from 12 countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, South Korea, Russia, South Africa, Thailand, Turkey and Vietnam) with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the U.S.; or a quota on all steel products from all countries equal to 63% of each country's 2017 exports to the U.S. According to the report, domestic steel production is operating at 73% of capacity.

> The aluminum recommendations are similar. Commerce proposed three potential remedies: a tariff of at least 7.7% on all aluminum imports from all countries; a tariff of 23.6% on all products from China, Hong Kong, Russia, Venezuela and Vietnam, while all other countries would face quotas equal to 100% of their 2017 exports to the U.S.; or an import quota from all countries equal to a maximum of 86.7% of their 2017 exports to the U.S. Like steel, aluminum production is under capacity, operating at 48%, the report noted.

The president must make a steel decision by April 11 and aluminum by April 19. He can implement the recommendations as they are, modify them or take no action at all. The president does not have to give an end date and can revoke the remedies at any time. In a call with reporters Feb. 16, Ross wouldn't comment on his personal preference or give an inkling to which way the president is leaning.

Ross anticipates that there will be pushback from other countries, likely at the World Trade Organization (WTO), should the president move forward with any of the recommendations. Former President George W. Bush placed Section 201 tariffs up to 30% on imported steel in 2002 and rescinded the tariffs a year later in the face of a WTO challenge (see **WTTL**, Dec. 8, 2003, page 3).

Companies will have a mechanism to ask for exclusion, Ross said. At the beginning of the process, the secretary said the reports would be done by June 2017, but the deadline dragged on. "We were a little over optimistic about how quickly such a complicated topic could be brought to a head. Government tends to move slowly. It's one of many lessons I've learned coming down here," Ross told reporters.

Industry responded quickly to the reports' publication. "If adopted, these measures would increase the cost of supplying U.S. troops. They would make it more difficult for American manufacturers to compete with their rivals in China and elsewhere. They would increase costs for U.S. consumers of pickup trucks, appliances, and other products containing steel or aluminum. President Trump should reject the Commerce recommendations," Bryan Riley, director of the National Taxpayers Union, said in a statement.

The Beer Institute cited the lack of carve-outs for specific products. "It is disheartening that Secretary Ross did not recommend to President Trump excluding primary aluminum and cansheet from tariffs and other import restrictions," Jim McGreevy, Beer Institute President and CEO, said in a statement. "Additionally, we are concerned that the secretary seems to have minimized the multiple concerns that downstream aluminum users have raised. Instead, he is recommending draconian tariffs and import restrictions that will increase costs and endanger American jobs," he added.

House Sends GSP Renewal to Senate

Two months after the program lapsed, the House Feb. 13 voted 400-2 to pass a three-year renewal (H.R. 4979) of the Generalized System of Preferences (GSP) program, which expired Dec. 31. As has become the pattern, GSP benefits will apply retroactively to imports made between the program's expiration and the bill's final passage.

> Reps. Justin Amash (R-Mich.) and Duncan Hunter (R-Calif.) were the sole no votes. The bill now moves to the Senate Finance Committee. The last time, Customs and Border Protection (CBP) issued guidance on how it would make retroactive payments due to enactment of trade preference legislation in July 2015, two full years after the program lapsed in July 2013 (see **WTTL**, July 27, 2015, page 4).

"By renewing GSP and providing tariff relief, we are creating opportunities for American businesses to grow and re-invest here at home and to compete globally. At the same time, we are strengthening our partnerships with developing countries and ensuring that our trading partners meet the standards of the GSP program. This tariff relief and accountability help our workers, manufacturers, and businesses succeed at home and abroad," said Rep. Dave Reichert (R-Wash.), who introduced the bill (see **WTTL**, Feb. 12, page 7).

"The final vote confirmed what we already knew: GSP has broad, bipartisan support and would pass easily once given a vote. We look forward to working with Members of the Senate to pass legislation reinstating GSP benefits as quickly as possible. Each day of delay means millions of dollars more in tariff payments by American companies, with negative consequences for U.S. companies, workers, and consumers," said Dan Anthony, executive director of the Coalition for GSP, in a statement.

FY2019 Budget Shows Enforcement Priorities

Based on spending priorities in its proposed fiscal year (FY) 2019 budget released Feb. 12, it's clear that the White House favors strong trade enforcement, with budget bumps given to the U.S. Trade Representative (USTR), International Trade Administration (ITA) and Customs and Border Protection, among others.

Commerce would receive $9.8 billion, a $546 million (6%) increase over 2017 enacted levels. Of that sum, $3.8 billion is allotted to the 2020 decennial census. It also adds $3 million for ITA "to expand and enhance the department's efforts to level the global playing field for U.S. businesses" and provides "slightly more" than $90 million for ITA's Enforcement and Compliance unit. According to a Commerce document, part of the funds will go toward establishing a team "specifically dedicated to enforcement and administration of Section 232 cases."

> In addition, the budget supports $121 million for the Bureau of Industry and Security (BIS). "This funding will augment the Bureau's work efforts to protect national security and safeguard American technology by preventing illegal exports of sensitive products while facilitating secure trade with U.S. allies and close partners," Commerce noted. That is $7 million more than the 2018 budget request.

The budget requests $25.8 billion in base funding for State and USAID, a $9 billion (26%) increase from the 2017 enacted level. As part of that funding, $63 million would be allotted for USTR "in support of the President's ambitious trade agenda." The budget "supports a fully functioning" Export-Import Bank "to help level the playing field for America's exporters and help America compete, while ensuring that Ex-Im does not displace the private sector."

One wrench in that goal is that the bank board is without a quorum. Though most of the board nominees made it through committee, Sen. Pat Toomey (R-Pa.) has placed a hold on a full Senate confirmation vote (see **WTTL**, Jan. 15, page 8).

On the chopping block for elimination or reduction in the White House's budget are the U.S. Trade and Development Agency, the U.S. Institute for Peace, Agriculture's Animal and Plant Health Inspection Service and Labor's Bureau of International Labor Affairs. Another proposal would reform the Trade Adjustment Assistance (TAA) program by focusing on apprenticeship and on-the-job training.

* * * Briefs * * *

<u>RIBBON</u>: In 4-0 preliminary vote Feb. 9, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of plastic decorative ribbon from China.

<u>STEEL PLATE</u>: In 4-0 "sunset" vote Feb. 12, ITC said revoking antidumping and countervailing duty orders on imports of cut-to-length carbon-quality steel plate from India, Indonesia and Korea would renew injury to U.S. industry.

<u>WIRE ROD</u>: In 4-0 final vote Feb. 16, ITC found U.S. industry is materially injured by dumped imports of carbon and alloy steel wire rod from South Africa and Ukraine. Commission also made negative finding concerning critical circumstances on imports from South Africa.

POLYESTER: In 4-0 final vote Feb. 16, ITC also found U.S. industry is materially injured by subsidized imports of fine denier polyester staple fiber (PSF) from China and India. "We are very pleased with the ITC's decision, which reflects the lost production, sales, and profitability experienced by domestic fine denier PSF producers as a result of unfair import competition," said Paul Rosenthal of Kelley Drye & Warren LLP, counsel to petitioners. Commerce also is currently investigating dumping of fine denier PSF imports from China, India, Korea and Taiwan.

FCPA: Indictment against five Venezuelans was unsealed Feb. 12 in Houston U.S. District Court for their roles in scheme to bribe purchasing officials from Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Two of five -- Luis Carlos De Leon Perez, dual U.S. citizen, and Nervis Gerardo Villalobos Cardenas -- were charged with conspiracy to violate Foreign Corrupt Practices Act (FCPA); all five were charged with money laundering. Fernando Ardila Rueda (Ardila) of Miami pleaded guilty in October to conspiracy to violate FCPA and violating FCPA for role in scheme (see **WTTL**, Oct. 16, 2017, page 8). Sentencing is set for Aug. 23. Ardila was 10th defendant in scheme to plead guilty. Ardila admitted to conspiring with U.S. businessmen Abraham Jose Shiera Bastidas and Roberto Enrique Rincon Fernandez. Rincon and Shiera previously pleaded guilty to related charges and will be sentenced at same time.

FALSE CLAIMS: Knitwear retailer Pure Collection Ltd and its CEO, Samantha Harrison, both of Harrogate, England, agreed Feb. 12 to pay $908,100 to settle government complaint in Portland, Maine, U.S. District Court under False Claims Act. Suit claimed company engaged in scheme to evade import duties by splitting shipments into multiple packages, and falsifying shipping and payment records. Whistleblower Andrew Patrick, former Pure employee, will receive share of settlement.

JUSTICE: Senate Feb. 15 confirmed John C. Demers to be assistant attorney general, national security division (NSD), after Sen. Cory Gardner (R-Colo.) lifted holds on certain Justice nominees. Gardner had placed holds over Justice federal marijuana policy. Prior to confirmation, Demers was vice president and assistant general counsel at Boeing. He previously was on "leadership team at the creation" of NSD, Attorney General Sessions said in statement. Edward O'Callaghan became acting assistant attorney general for NSD Jan. 27, replacing Dana Boente. President sent Senate Demers' nomination in September (see **WTTL**, Sept. 11, 2017, page 5).

USTR: Senate Finance Committee Feb. 15 approved two deputy USTR nominees in unanimous roll call votes. Dennis Shea and C.J. Mahoney now advance to full Senate. "If confirmed, both of these nominees will help establish international trade rules and negotiate trade agreements, ensuring U.S. interests are well-represented on the global stage. I look forward to their quick and fair confirmations on the Senate floor," Committee Chair Orrin Hatch (R-Utah) said in statement. To consternation of USTR Robert Lighthizer, deputies' confirmations had been delayed by hold from Sen. Tim Scott (R-S.C.), which he eventually rescinded (see **WTTL**, Feb. 12, page 3).

ENTITY LIST: In Federal Register Feb. 16, BIS added 21 entities in Russia, Georgia and Poland to Entity List. Agency is "taking this action to ensure the efficacy of existing sanctions" on Russia for "violating international law and fueling the conflict in eastern Ukraine," notice said. OFAC in January added all 21 entities, including Russian firms Technopromexport (TPE) and PJSC Power Machines and Polish company Doncoaltrade SP, to its Specially Designated Nationals (SDN) or Sectoral Sanctions Identifications lists (see **WTTL**, Jan. 29, page 7).

RUSSIA: Sen. Ben Cardin (D-Md.) and three other Democratic lawmakers Feb. 12 introduced resolution (S. Res. 402) calling on president to "exercise relevant mandatory sanctions authorities" under Countering America's Adversaries Through Sanctions Act (CAATSA) that Congress passed overwhelmingly in 2017 (see **WTTL**, Feb. 5, page 1). "Since then, not one sanction has been imposed under CAATSA against the Russian government or its affiliates for attacking us and our values. That lack of action by the Trump Administration is a clear signal to Vladimir Putin that he can continue his destabilizing behavior," Cardin said in statement.

UNFAIR TRADE: Sens. Gary Peters (D-Mich.) and Richard Burr (R-N.C.) Feb. 14 introduced Self-Initiation Trade Enforcement Act (S.2427), which would establish ITA permanent task force to investigate dumping and subsidies on imported goods. Task force would be charged with independently researching trade data and subsequently referring identified trade abuses for further formal investigation by ITA, with emphasis on cases impacting small and medium-sized businesses. Commerce in November self-initiated antidumping and countervailing case against imports of common alloy aluminum sheet from China, first self-initiated case in 25 years (see **WTTL**, Dec. 4, page 2).