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BIS Regulations May Have to Follow 2-for-1 Rules

Significant Bureau of Industry and Security (BIS) regulations may have to follow the two-for-one executive order President Trump signed in January, despite a seeming exemption for national security, BIS Acting Assistant Secretary Matt Borman told the agency's Regulations and Procedures Technical Advisory Committee (RAPTAC) March 30.

> "We're still working internally exactly how we're going to implement that, because it only applies to significant rules. We're still working out internally the national security exception or the cost analysis that needs to be done, those kinds of things," Borman said. Examples of significant BIS rules include any multilateral regimes, such as implementation of Wassenaar Agreement changes.

"They're still sort of looking at [the national security exemption]. I don't know that they're going to do any big, broad exemptions. We've been back and forth with OMB [Office of Management and Budget]," Hillary Hess, director of BIS' Regulatory Policy Division, told RAPTAC. "National security is a new classification, so we don't know what the criteria are, and we believe OMB is still formalizing them and developing them," she added.

State's Directorate of Defense Trade Controls (DDTC) has been deemed exempt from the rule, DDTC Chief Brian Nilsson told the Defense Trade Advisory Group (DTAG) later that day. That might cause a problem when BIS and State propose more transfers from the U.S. Munitions List to the Commerce Control List under export control reform.

Under Executive Order 13771, the requirement to identify at least two existing regulations to be repealed for every new rule published does not include "regulations issued with respect to a military, national security, or foreign affairs function."

Trade Executive Orders Get Immediate Response

Diverse and loud, yet predictable responses to two executive orders on trade President Trump signed March 31 arrived in email inboxes even before the ink was dry. One EO

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mandates an "omnibus" report on significant trade deficits and the other requires Homeland Security to develop a strategy to crack down on trade violations, such as antidumping (AD) and countervailing (CVD) duty evasion, both in a relatively short timetable.

Specifically, the first EO requires Commerce and the U.S. Trade Representative (USTR) to issue a report within 90 days that identifies foreign trading partners with which the U.S. had a "significant" trade deficit in goods in 2016. This isn't the first time the U.S. trade deficit has been examined, as history is known to repeat itself.

In 1998, Congress established the U.S. Trade Deficit Review Commission, which took 17 months to complete its study of the causes and consequences of the deficit. Its 291-page report, released in November 2000, presented different and often conflicting findings from its congressionally appointed Republican and Democratic members. The report, however, found that trade deficits rise when the U.S. economy is strong and unemployment is low.

"In our strongly held view, trade deficits are part of the recent 'virtuous circle' of the U.S. economy," wrote the Republican members in their executive summary. "The huge trade deficits have helped to make possible a period of high employment and rapid economic growth. By enabling U.S. investment to exceed U.S. savings and U.S. consumption to exceed U.S. production, trade deficits have contributed to higher American living standards," wrote those members, who included former USTRs Carla Hills and Robert Zoellick and Don Rumsfeld before he became Defense Secretary.

> "The consequences of trade and globalization have adversely affected the economic well being of many American workers," wrote the Democratic members, who included then-president of United Steelworkers (USW) George Becker and economist Lester Thurow. "While American workers have benefitted from the lower prices of imported products, too many have been made worse off, on balance, as a result of the deterioration in wages and benefits," they added.

Today's business leaders agree with the 2000 report's premise. "It is worth remembering that some of our best years of economic growth have produced our largest trade deficits, while the Great Recession was accompanied by a sharp reduction in the trade deficit," U.S. Chamber of Commerce President and CEO Thomas Donohue said in response to the latest executive orders.

Not surprising, labor groups vehemently disagree. "Trade deficits impact economic growth and are the best single measure of the predatory and protectionist policies abused by our trading partners to keep American products out of their markets, while they take full advantage of our marketplace. Trade deficits demonstrate lost opportunity. This year's deficit has already reduced gross domestic product by almost a full percentage point," said current USW International President Leo Gerard in a statement.

The second executive order requires the Homeland Security secretary to come up with a plan within 90 days that would require covered importers, based on risk assessment conducted by Customs and Border Protection, to provide security for AD and CVD liability through bonds and other legal measures. It further calls for the development of a strategy to combat violations of U.S. trade and customs law and to specifically ensure timely enforcement of intellectual property rights law. The Attorney General is instructed to come up with practices to ensure prosecuting trade law violations is a high priority.

"As we look for ways to expand exports from this country, imports to this country, this president is determined that we're going to have free trade, but it's going to be fair trade, and arms-length negotiations with nations, holding them accountable to the promises that they make. And the review the President is initiating today and the work of members of this team on the President's behalf will ensure that we put American first when it comes to trade; we put American jobs and American workers first," said Vice President Mike Pence at the signing of the executive orders.

> As expected, the EOs provoked diverse and immediate response from Congress. "The President's action will strengthen our ability to hold accountable those cheaters who evade our trade laws and engage in unfair trade practices. His strong leadership on this issue will help level the playing field for American workers," House Ways and Means Chairman Kevin Brady (R-Texas) said in a statement.

House Ways and Means Ranking Member Richard Neal (D-Mass.) took a decidedly different view. "Today's executive orders are an attempt to divert attention from the fact that the Trump Administration currently has no plan for making America more competitive or helping American workers. The Administration seems to favor calling for reports over taking serious action," Neal said in a statement.

"It is clear the Administration has no coherent plan. We don't need another study on trade barriers; we need a meaningful legislative agenda. Democrats are finalizing a package of trade enforcement proposals to address fundamental and structural problems and will result in fairer trade and fair treatment for American workers," added Trade Subcommittee Ranking Member Bill Pascrell (D-N.J.).

Trump to Nominate Ricardel to Be BIS Under Secretary

Amid press reports of infighting between the White House and the Pentagon over staffing, President Trump March 30 said he intends to nominate Mira Radielovic Ricardel, a member of his defense transition team, to be Bureau of Industry and Security (BIS) under secretary. Ricardel currently serves as special assistant to the president and associate director for presidential personnel.

From 2006 to 2015, Ricardel held senior leadership positions at Boeing Defense Space and Security, most recently vice president of international business development, network & space systems, the White House noted. Prior to Boeing, she served in various roles at Defense in the George W. Bush administration, notably as acting assistant secretary.

UK-EU Trade Deal Won't be Negotiated in Parallel

The European Union (EU) shot down the idea that the United Kingdom (UK) can negotiate a new trade deal while simultaneously negotiating its exit from the union. "Starting parallel talks on all issues at the same time, as suggested by some in the UK, will not happen," European Council President Donald Tusk said at a news conference March 31.

UK Prime Minister Theresa May issued a letter March 29 to Tusk triggering Article 50 of the Treaty on European Union (TEU). The same letter also notified the European Council of the UK's intention to withdraw from the European Atomic Energy Community. "The United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation. To achieve this, we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU," May wrote. If an agreement cannot be reached, then the UK would default to World Trade Organization terms.

> "We will pursue a bold and ambitious free trade agreement with the European Union that allows for the freest possible trade in goods and services between Britain and the EU's member states; that gives British companies the maximum freedom to trade with and operate within European markets; and that lets European businesses do the same in Britain," May told Parliament the same day.

In draft guidelines circulated to the EU member delegations March 31, it is abundantly clear that parallel negotiations will not happen, but the future relationship between the two entities will be considered during the divorce proceedings.

"While an agreement on a future relationship between the Union and the United Kingdom as such can only be concluded once the United Kingdom has become a third country, Article 50 TEU requires to take account of the framework for its future relationship with the Union in the arrangements for withdrawal," the draft notes. "The Union and its Member States stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal."

The draft affirms that any free trade agreement struck between the two entities should be "balanced, ambitious and wide-ranging," but it "cannot amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning." An EU summit on Brexit, which will not include Prime Minister May, will take place April 29.

Labor, Industry Groups Welcome Review of China Status

Commerce will examine China's status as a nonmarket economy under antidumping (AD) and countervailing duty (CVD) laws, the department will announce in the Federal

Register April 3, as part of the less-than-fair value investigation of certain aluminum foil from China. Public comments on the inquiry are due 30 days after publication.

Under U.S. law, a nonmarket economy country is defined as "any foreign country determined by [Commerce] not to 'operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise,'" the notice said. In its last review in 2006, Commerce found that China failed all the criteria to achieve market economy status (see **WTTL**, Sept. 4, 2006, page 2).

> China maintains that per its protocol of accession to the World Trade Organization (WTO), it should now be treated as a market economy. At the March 21 WTO Dispute Settlement Body (DSB) meeting, China submitted a first request for a panel to determine whether the EU's method for determining price comparability in AD investigations is in line with WTO rules. The EU said no consultations can be held "with regard to as yet inexistent future possible measures of indeterminate and substantively different context" and refused to agree to a panel. The U.S. backed the EU.

Labor groups and industry welcomed the Commerce announcement. "A thorough assessment is necessary to ensure American workers are competing on a level playing field. Any fair analysis of the facts will reaffirm that China's extensive government involvement merits "nonmarket economy" treatment so that the U.S. can properly address dumped, underpriced goods and services that hurt U.S. workers and producers. This inquiry will be critical to the effectiveness of U.S. trade enforcement," AFL-CIO President Richard Trumka said in a statement.

The investigation "will be important in updating our factual analysis to re-iterate the obvious facts that China in no way meets the statutory criteria for a change in its market economy status. The simple expiration of one provision in China's Accession Agreement to the WTO in no way changes this determination and to conclude otherwise would fly in the face of the facts," Rep. Sander Levin (D-Mich.) agreed.

"The world has never witnessed the buildup of excess capacity through government subsidization by a state-controlled economy as we have seen with China over the past decade. U.S. industrial, agricultural, and labor interests deserve to see China treated as a non-market economy in dumping cases until the Chinese government withdraws its massive subsidization and state control of the Chinese economy," Roger B. Schagrin, chairman of the Committee to Support U.S. Trade Laws Executive Committee, noted.

Leaked Letter Outlines Administration's NAFTA Priorities

While President Trump campaigned on getting rid of NAFTA and starting from scratch, a leaked draft letter on NAFTA priorities shows he may be taking some lessons from rejected deals such as the Trans-Pacific Partnership (TPP). Like most leaks, the White House denied the letter reflects current administration policy.

In the draft letter, dated March 22, Acting USTR Stephen Vaughn repeatedly emphasizes the importance of trade with Mexico and Canada. "For reasons of scale alone, improving the NAFTA has the greatest potential to benefit the workers, farmers, and firms of the United States."

Still, Vaughn notes that the trade deal negotiated in 1994 does not adequately address issues such as digital trade and cross-border data flows. To that end, the letter calls for commitments from NAFTA countries not to impose customs duties on digital products and to ensure that the three countries refrain from impeding digital trade in goods and services, restrict cross-border data flows, or require local storage or processing of data.

The eight-page letter calls for the elimination of Chapter 19 dispute settlement of antidumping and countervailing duty determinations, "in light of U.S. experiences where panels have ignored the appropriate standard of review and applicable law, and where aberrant panel decisions have not been effectively reviewed and corrected."

> The draft letter calls for improvement of the procedures to settle state-to-state disputes, but does not explicitly call for the dismantling of the arbitral tribunal system enshrined in Chapter 11 of the agreement. Investor-state dispute settlement was much maligned during TPP and the Transatlantic Trade and Investment Partnership negotiations.

On the trade remedies front, the administration seeks a "safeguard mechanism to allow a temporary revocation of tariff preferences, if increased imports from NAFTA countries are a substantial cause of serious injury or threat of serious injury to the domestic industry."

Trump's goal of establishing rules that require government procurement to be consistent with his administration's policy on domestic procurement preferences could raise eyebrows. If that means restricting federal procurement to U.S. suppliers and Mexico and Canada enact similar laws, then that could hurt U.S. firms who currently fulfill contracts for other NAFTA governments.

The White House distanced itself from committing to any of the draft's provisions, noting that USTR nominee Robert Lighthizer has not yet been confirmed. "That is not a statement of administration policy at this point. There is nothing in those documents that we are confirming -- or in that report, rather, that we are confirming. That is not a statement of administration policy. That is not an accurate assessment of where we are at this time," White House Press Secretary Sean Spicer said in a press briefing March 30.

That did not stop critics from denouncing the letter. "The leaked document outlining the Trump administration's negotiating objectives for NAFTA shows President Trump is breaking his campaign promise to take a different approach to trade and betraying the supporters to whom he made that promise. The expansion of corporate power will still be at the heart of these agreements. The draft document makes it clear that provisions in the Trans-Pacific Partnership, from which he withdrew the United States, will be the blueprint for NAFTA re-negotiation," Juliette Majot, executive director of the Institute for Agriculture & Trade Policy, said in a statement.

USTR Takes China to Task in Trade Estimate Report

Less than a week before President Trump is scheduled to meet with his Chinese counterpart, the U.S. Trade Representative's (USTR) office once again took China to task in its 2017 National Trade Estimate Report on Foreign Trade Barriers (NTE) published March 31. Trump and President Xi Jinping will meet in Florida April 6-7.

For one, the report criticizes China for its excess capacity in steel and aluminum. While China has started to address steel excess capacity, those steps have been "inadequate to date, and even fewer efforts have been taken by China in aluminum and other sectors," as noted in a USTR fact sheet.

> The NTE is also critical of Chinese cybersecurity measures, web filtering and blocking, restrictions on cloud computing and data flows, forced technology transfer and online piracy. U.S. suppliers of electronic payment services are still blocked from China's market, despite the U.S. having won a World Trade Organization (WTO) dispute on the issue in 2012, the report notes.

European Union (EU) members are similarly worried, particularly in light of China's efforts to boost domestic manufacturing across multiple sectors, including robotics and pharmaceuticals as part of the country's "Made in China 2025" plan. The EU Chamber of Commerce has called the plan "a large-scale import substitution plan aimed at nationalizing key industries, or at least severely curtailing the position of foreign business in them."

The nearly 500-page report covers 58 countries, plus the EU, Taiwan and Hong Kong. USTR drew attention to several notable changes in countries other than China. The agency called out India for its weak protection and enforcement of intellectual property rights (the reason it remained on the 2016 Special 301 Report Priority Watch List) and redundant localized safety testing requirements for certain information and communications technology products.

Indonesia was criticized for trade-restrictive import licensing requirements on agricultural imports, an issue the U.S. and New Zealand have successfully argued at the WTO. USTR also drew attention to Canada for increasing its foreign investment review threshold two years sooner than originally planned, and for its wine sales policies in British Columbia (see **WTTL**, Jan. 23, page 1).

Commerce Issues Final Determinations on Steel Plate

As the administration commits to stronger enforcement of antidumping (AD) and countervailing duty collection, Commerce March 30 made its affirmative final determinations in the AD investigations of imports of certain carbon and alloy steel cut-to-length plate (CTL) from Austria, Belgium, France, Germany, Italy, Japan, Korea and Taiwan, and the CVD investigation of imports from Korea.

The petitioners are ArcelorMittal USA LLC, Nucor Corporation and SSAB Enterprises LLC. "A healthy steel industry is critical to our economy and manufacturing base, yet our steel industry today is under assault from foreign producers that dump and subsidize their exports," Commerce Secretary Wilbur Ross said in a statement.

> Commerce calculated a final dumping margin of 5.38% for German mandatory respondent AG der Dillinger Hüttenwerke and 22.9% for Salzgitter. The department calculated a dumping margin of 21.03% for all other producers/exporters in Germany. German Foreign Minister Sigmar Gabriel March 31 urged the EU to consider taking action at the World Trade Organization (WTO), saying that the European Union "cannot accept" the imposition of duties on steel.

Commerce calculated a dumping margin of 53.72% for all Austrian producers/exporters. Belgium mandatory respondent NLMK Belgium was given a dumping margin of 51.78% based on adverse facts available (AFA). For all other producers/exporters in Belgium, Commerce calculated a final dumping margin of 5.4%. France mandatory respondent Dillinger France S.A. was hit with a final margin of 8.62%, the same margin calculated for all other France producers/exporters, excluding Industeel France S.A. for whom Commerce established a dumping margin of 148.02% based on AFA.

The Italy investigation yielded final dumping margins of 6.08% for mandatory respondent Officine Tecnosider s.r.l., 22.19%, based on AFA, for Marcegaglia SpA and NLMK Verona SpA, and a 6.08% for all other Italian producers/exporters. In Japan, Commerce calculated a dumping margin of 14.79% for Tokyo Steel Manufacturing Co.; 48.67%, based on AFA, for JFE Steel Corporation and Shimabun Corporation; and 14.79% for all other Japanese producers/exporters.

For Taiwanese respondents Shang Chen Steel Co. and China Steel Corp., Commerce calculated dumping margins of 3.62% and 6.95%, respectively. Commerce calculated a dumping margin of 5.29% for all other producers/exporters in Taiwan. Commerce calculated final subsidy rate of 4.31% and a dumping margin of 7.39% for all Korean producers/exporters.

In 2015, CTL plate imports from these countries were valued at: Austria, $14.2 million; Belgium, $19.8 million; France, $179 million; Germany, $196.2 million; Italy, $37 million; Japan, $54.9 million; Korea, $210 million; and Taiwan, $21 million. The International Trade Commission (ITC) is scheduled to make its final determinations May 15.

* * * Briefs * * *

<u>NLR</u>: As of April 1, license type C32, No License Required (NLR) will no longer be accepted in Automated Export System (AES) and AES filers reporting C32 will receive fatal error, Census

wrote in email broadcast March 27. Census first announced removal in June to be effective Oct. 1 with six-month grace period (see **WTTL**, Nov. 7, page 3). License Code C33 shall be used for NLR shipments, except those classified with Export Control Classification Numbers (ECCNs) 600-series and 9x515 having a .y paragraph, which will continue to be designated as NLR under C60 (DY6), department added.

SANCTIONS: Turkish banker Mehmet Hakan Atilla was arrested March 27 and charged in Manhattan U.S. District Court with conspiring with others, including Reza Zarrab, 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. Superseding indictment filed in Manhattan court in November 2016 added Iranian-Turkish national Mohammad Zarrab to existing case against his brother Reza Zarrab and Iranian citizens Camelia Jamshidy and Hossein Najafzadeh (see **WTTL**, Nov. 14, page 8). Reza Zarrab in February added former N.Y. Gov. Rudy Giuliani and former Attorney General Michael Mukasey to his legal team. Potential conflicts of interest will be subject of court hearing April 4.

SULFANILIC ACID: In 5-0 "sunset" vote March 28 ITC said revoking antidumping and countervailing duty orders on sulfanilic acid from China and India would renew injury to U.S. industry.

WIRE ROD: Gerdau Ameristeel US, Keystone Consolidated Industries, Charter Steel and Nucor Corporation filed antidumping (AD) and countervailing (CV) duty petitions March 28 at ITA and ITC against carbon and alloy steel wire rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, UAE and UK. There are already AD duty orders in place against imports from Brazil, China, Indonesia, Mexico, Moldova and Trinidad & Tobago and CV duty orders against Brazil and China.

ENTITY LIST: BIS in Federal Register March 29 removed seven persons under ten entries in Germany, Hong Kong, India, Singapore, Switzerland and UAE from its Entity List. Rule removes Industrio GmbH, Martin Hess, Peter Duenker and Wilhelm "Bill" Holler in Germany; Frank Genin in Hong Kong and UAE; Beaumont Trading AG in India, Switzerland and UAE; and Amanda Sng in Singapore. All were added to Entity List in March 2016 (see **WTTL**, March 21, 2016, page 8). Removal had been on public display in January then pulled back under regulatory freeze.

PHOSPHOR COPPER: In 5-0 final vote March 30, ITC found U.S. industry is materially injured by dumped imports of phosphor copper from Korea.

NORTH KOREA: House Foreign Affairs committee March 29 passed Korea Interdiction and Modernization of Sanctions Act (H.R. 1644), which expands sanctions on North Korea's nuclear weapons programs; targets those overseas who employ North Korean slave labor; cracks down on North Korean shipping and use of international ports; and requires the administration to determine whether North Korea is a state sponsor of terrorism. Committee Chairman Ed Royce (R-Calif.) and Ranking Member Eliot Engel (D-N.Y.) introduced bill March 21 (see **WTTL**, March 27, page 2).

ZTE: BIS in Federal Register March 29 removed ZTE and ZTE Kangxun from its Entity List following plea agreement and added former CEO Shi Lirong. Shi Lirong signed and approved document that "described how ZTE planned and organized a scheme to establish, control and use a series of 'detached' (*i.e.,* shell) companies to illicitly reexport controlled items to Iran in violation of U.S. export control laws," notice said. Agency left Beijing 8 Star and ZTE Parsian (ZTE's subsidiary in Iran) on list. ZTE Corporation formally pleaded guilty March 22 in Dallas U.S. District court (see **WTTL**, March 27, page 6).

CBP: President Trump March 30 announced intent to nominate Kevin K. McAleenan to be Customs and Border Protection (CBP) commissioner. McAleenan has served as deputy commissioner since 2014 and currently is agency's chief operating officer.

BEEF: U.S. beef industry urged President Trump in letter March 27 to raise issue of Chinese ban on U.S. beef when Trump and China's President Xi Jinping meet in Florida April 6-7. U.S. beef has been banned in China since 2003. China lifted its imports ban in September, but attempts to negotiate technical terms of access have been unsuccessful (see **WTTL**, Sept. 26, page 8). "Despite our success at expanding exports, the foreign market with the greatest growth potential – China – remains closed to U.S. beef and beef products, even as China imports large and growing volumes from our competitors. We look forward to working with you to restore access for U.S. beef to China," wrote CEOs of National Cattlemen's Beef Association, U.S. Meat Export Federation and North American Meat Institute.

VIETNAM: U.S. and Vietnam officials met March 27-28 under Trade and Investment Framework Agreement (TIFA) to discuss bilateral trade issues. This was first TIFA meeting since 2011. Vietnam gave updates on its labor reform plans and both countries reviewed Vietnam's implementation of WTO trade facilitation agreement. Both countries agreed to work to resolve issues, starting with agricultural and food safety, industrial goods, intellectual property and digital trade. Vietnam was U.S. 16th largest trading partner in 2016 with $52.3 billion in two-way goods trade.

ASEAN: Senior U.S. officials and Association of Southeast Asian Nations (ASEAN) met March 30 in Thailand to prepare for U.S.-ASEAN trade ministers' and leaders' meetings later this year in Philippines. Two sides discussed ways to advance work under U.S.-ASEAN TIFA. U.S. provided update on U.S.-ASEAN Connect. ASEAN member states are fourth-largest U.S. trading partner.

STAPLES: North American Steel & Wire/ISM Enterprises filed antidumping (AD) duty petition March 31 at ITA and ITC against carton-closing staples from China.

FCPA: Douglas Ray, president of aviation firm in Magnolia, Texas, was sentenced March 30 in Houston U.S. District Court to 18 months in prison for paying $1.5 million in bribes to Mexican law enforcement officials to secure aircraft maintenance and repair contracts from 2006 through March 2016. Ray pleaded guilty in October 2016 to conspiracy to violate FCPA and wire fraud. He also will serve three years' supervised release and was ordered to pay $589,698.87 in restitution. Victor Hugo Valdez Pinon, Mexican citizen, was sentenced Feb. 23 in Houston court to 12 months and one day in prison. Kamta Ramnarine and Daniel Perez, both of Brownsville, Texas, were sentenced Feb. 2 to three years' probation in McAllen, Texas, U.S. District Court on related charges (see **WTTL**, Feb. 13, page 8).

JAPAN: Rep. Adrian Smith (R-Neb.) March 30 introduced H.Res. 236, which recognizes importance of U.S.-Japan partnership and supports "pursuit of closer trade ties" between two countries. Resolution, which has 11 cosponsors, urges president "to determine whether negotiation of a trade agreement with Japan would be likely to achieve the negotiating objectives" and if so, "to commence negotiations toward a trade agreement with Japan as soon as appropriate."