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Dems Tie Trump Business Interests to Trade Actions

In a move to force the president to disclose his business and financial deals, 45 Senate and House Democrats Feb. 16 introduced the Presidential Trade Transparency Act of 2017, which would require the President to "disclose income, assets, and liabilities associated with countries with which the United States is negotiating a trade or investment agreement, countries subject to presidential determinations in trade enforcement actions, and countries eligible for trade preference programs."

> Led by Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) and House Ways and Means Committee Ranking Member Richard Neal (D-Mass.), the bill includes actions under fast-track authority, World Trade Organization (WTO) and NAFTA, and preference programs such as Generalized System of Preferences, African Growth and Opportunity Act and Trade Facilitation and Trade Enforcement Act of 2015.

"Given the complexity and lack of transparency with respect to the President's finances, additional country specific reporting is necessary for Congress to properly exercise its oversight responsibilities and assess whether the authority it has granted to the President is the subject of undue influence due to a business relationship between the President and one or more foreign entities," according to a summary of the bill.

"Americans have a right to know if the President is looking out for the good of the country or just his own bottom line when he negotiates a trade deal, decides whether or not to enforce our trade laws, or decides whether to cut tariffs on imports from a developing country," Wyden said in a statement.

CAFC Rejects Commerce Separate Rate in Wood Flooring Case

The Court of Appeals of the Federal Circuit (CAFC) Feb. 15 remanded to Commerce its separate-rate determination in the department's antidumping-duty investigation of

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multilayered wood flooring imports from China. The appellants in the case are Chinese entities that Commerce found had demonstrated their independence from the Chinese government and so deserved a "separate" antidumping-duty rate, not the so-called China-wide rate that applies to non-independent entities.

"Because Commerce has not made the findings necessary to justify departing from the 'expected method' here, we vacate the judgment of the Court of International Trade, and we remand with instructions to remand to Commerce for it to reconsider its separate-rate determination," Circuit Judge Richard Taranto wrote for a three-judge panel in *Changzhou Hawd Flooring Co. v. U.S.* Under court precedent "Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents. But it has not done so," he wrote.

"Commerce did not individually investigate appellants to determine firm-specific dumping margins. Instead, it assigned them a rate that, though not specified numerically, was declared to be more than de minimis, even though it found zero or de minimis dumping margins for all three of the Chinese firms that it had individually investigated," Taranto added. In arguing for a de minimis separate rate, the appellants "assert that, although no rate was numerically specified, the assignment of an above-de minimis rate harms them because it subjects them to the antidumping-duty order and its continuing consequences, including subsequent periodic reviews," he noted.

During Trudeau Visit, Trump Says He'll Tweak NAFTA

On the campaign trail, President Trump railed against NAFTA and vowed to get a better deal, but in a joint press conference with Canadian Prime Minister Justin Trudeau Feb. 13, Trump toned down the rhetoric and said he'd look into "tweaking" the 23 year-old trade deal. "We have a very outstanding trade relationship with Canada. We'll be tweaking it," said Trump.

> He continued by saying that the trade relationship between the U.S. and Canada is "much less severe" that the U.S.-Mexico trade relationship, which the president couched as "not fair" to the U.S. In truth, the U.S. holds an $11.2 billion trade deficit with its northern neighbor. Congressional Democrats and labor groups already have issued a "blueprint" of what a new NAFTA should look like (see related story, page 4).

Trudeau, whose government supports NAFTA, appeared hesitant when asked about potential changes to the deal. "It is a real concern for many Canadians because we know our economy is very dependent on our relationship with the United States," he said. While there are plenty of questions about how NAFTA may be reformed, Canada has strengthened its economic ties to the European Union (EU). Toward that end, the European Parliament approved the EU-Canada Comprehensive Economic and Trade Agreement (CETA) Feb. 15.

In a joint statement, Trudeau and Trump outlined their intertwined economic fate. “We recognize our profound shared economic interests, and will work tirelessly to provide growth and jobs for both countries. Canada is the most important foreign market for 35 U.S. states, and more than $2 billion in two-way trade flows across our shared border every day,” it said. “We affirm the importance of building on this existing strong foundation for trade and investment and further deepening our relationship, with the common goal of strengthening the middle class,” the statement added.

The U.S. and Canada “also recognize the importance of cooperation to promote economic growth, provide benefits to our consumers and businesses, and advance free and fair trade. We will continue our dialogue on regulatory issues and pursue shared regulatory outcomes that are business-friendly, reduce costs, and increase economic efficiency without compromising health, safety, and environmental standards. We will work together regarding labor mobility in various economic sectors,” the statement continued.

U.S. Steel Withdraws Trade Secrets from Section 337 Claim

In what was an unusual case against Chinese carbon and alloy steel imports, U.S. Steel Feb 15 withdrew the trade secrets claim from its Section 337 complaint at the International Trade Commission (ITC). The company said it will continue to pursue the other two Section 337 claims of antitrust and false designation.

> U.S. Steel cited the lack of progress in addressing cyber crimes. “When we filed the case, we highlighted the significant cyber threat every company faces, and we began a dialogue about the need to reform our antiquated laws,” it said in a statement.

“We have made strides in that arena, but we believe more cooperation and collaboration is needed between the federal government and the private sector to address the continued threat of malicious cyber crimes and to provide reasonable legal avenues available for corporate victims to seek remedies. When there is active movement in this direction, we will be able to evaluate the best next steps for our trade secrets claim,” the company said.

The original petition to block certain steel imports from China alleged “a conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States,” “misappropriation and use of trade secrets,” or “false designation of origin or manufacturer.” ITC reinstated the investigation into in August after suspending it to give then-Commerce Secretary Penny Pritzker time to review the matter (see **WTTL**, Aug. 15, page 2).

Democrats Unveil Blueprint for NAFTA 2.0

Flanked by fellow House Democrats and representatives from the Sierra Club and AFL-CIO at an event in Washington, Rep. Peter DeFazio (D-Ore.) Feb. 16 unveiled a “Blueprint for America’s New Trade Policy,” which calls on President Trump to initiate NAFTA replacement negotiations no later than June 1 and to conclude within one year. If conditions of the resolution are not met, then the president must consider withdrawal from the trade deal. In addition to calling for stronger labor and environmental standards, the resolution calls for eliminating investor-state dispute settlement (ISDS) and tribunals that critics say undermine U.S. trade law.

DeFazio quoted Joseph Stiglitz, renowned economist and Nobel laureate, who said “the biggest mistake in NAFTA was the ISDS provisions because it basically emboldens regulatory takings. That puts at risk our labor laws, our environmental laws, our consumer protection laws,” he noted.

> “There’s another provision… unique to NAFTA, Chapter 19, a dispute-resolution process, which has been a particular problem allowing Canada to challenge when we use antidumping laws in the United States, because, again, we’ve ceded our sovereignty and it particularly impacts my part of the country because of the subsidized softwood lumber exports from Canada,” DeFazio continued.

Rep. Rosa DeLauro (D-Conn.) criticized Trump’s recent comments that he is looking into “tweaking” NAFTA (see related story, page 2). “The deal needs more than tweaking. It needs to be renegotiated,” she said. “We need to rewrite NAFTA so it addresses currency manipulation, includes enforcement measures to curb this job killing practice. Just months after Congress approved NAFTA, Mexico devalued the peso, wiped out many of the benefits the agreement may have conferred, making imports from Mexico cheaper, pricing many U.S. exports out of reach for Mexican consumers, as the economist Robert Blecker wrote,” said DeLauro.

AFL-CIO Trade Policy Specialist Celeste Drake echoed those sentiments. NAFTA “needs to be rewritten and its rules matter,” she said. “All working families in North America will benefit from a NAFTA that puts more jobs, higher wages, a clean environment and puts a stronger democracy at its center. There is certainly a risk that the administration takes NAFTA in the wrong direction and uses it to make Wall Street and big pharma and corporate CEOs even more powerful, and if that happens, we’ll fight it just as hard as we fought the now-dead TPP,” Drake added.

Despite seeking a significant change to an existing trade deal, DeFazio and his colleagues are not concerned about the delay in confirmation of U.S. Trade Representative (USTR) nominee Robert Lighthizer. Specifically, DeFazio cited the hiring of a White House special advisor on trade, Peter Navarro. “I don’t think we need a USTR. The USTR has been a big part of the problem. The revolving door at the USTR – I mean, we only get knee-jerk free-trade apologists running that office whether it’s a Democrat as president or a Republican as president, so I don’t miss having a USTR and am happy to look at a different way of moving forward,” he said.

The day before, Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) and other committee members expressed disappointment after meeting with Navarro and other administration trade officials about renegotiating NAFTA. “The administration officials today offered few details about the administration’s objectives on trade and no strategy for how it plans to achieve them. In some cases, the officials' message conflicted with recent statements made by the President regarding his trade policy," Wyden said in a statement.

"Any new NAFTA deal needs to eliminate rules that undermine U.S. trade remedy protections for American workers and must create market access for dairy farmers and other businesses that drive America's rural economy, and address the full range of challenges facing American workers and businesses trying to compete in a fast-moving 21st century global economy," he added.

White House Needs to Articulate Asia-Pacific Strategy

The U.S. needs to start thinking of itself as a Pacific power and articulate a clear trade vision, three trade experts from the Center for Strategic and International Studies (CSIS) Asia Economic Strategy Commission said Feb. 14. Former USTR Charlene Barshefsky; Chubb Limited CEO Evan Greenberg; and Jon Huntsman, Jr., chairman of the Atlantic Council and former U.S. ambassador to China, elaborated on eight recommendations found in the CSIS report, "Reinvigorating U.S. Economic Strategy in the Asia Pacific."

> "Let me say that, I think where the previous administration missed a beat, with respect to Asia, is that it treated Asia as a derivative of China. The entire focus was China. Consideration of Asia pivoted off of China and off of what U.S. policy with respect to China should be. Our report looks at Asia as a region … Asia is a region critical to U.S. economics and to U.S. security," said Barshefsky.

"I think it will also be important for the president and his team to define U.S. interests – I can tell you what China's core interests are. I can't tell you, over the last several administrations, what the core interests of the U.S. are with respect to China. That's a troubling sign," she added.

The report's writing concluded before inauguration day; clearly, some of the recommendations no longer apply. The first recommendation is for the incoming president to articulate in an inaugural address a clear vision of the U.S. as a Pacific power. The second calls for the completion and ratification of the Trans-Pacific Partnership (TPP). Trump formally withdrew from TPP in January (see **WTTL**, Feb. 13, page 1).

Despite the U.S. withdrawal, the commissioners agreed that the multilateral deal was good for the U.S. for strategic reasons. Economically, the U.S. already has free trade agreements (FTAs) with some TPP members and that benefits from countries like Malaysia would have been minimal in the short term, Huntsman pointed out. However, bilateral deals probably won't pan out to be much better, he predicted.

"It's hard to achieve what TPP achieved with a series of bilateral agreements. I think you need a plurilateral context in which to drive market openings and reform, particularly when you can hold out the gold-plated FTA agreements like we have with KORUS [Korea-U.S. FTA], Singapore and Australia," said Huntsman. He suggested that when all is said and done, the administration may come up with a strategy that's analogous to TPP. The report also calls on the administration to ensure a mutually beneficial relationship with China; maintain technological leadership; bring the U.S. into the infrastructure push across Asia; update, as well as uphold, Asia-Pacific economic architecture; work with Congress to rebuild U.S. leverage in Asia; and build an interagency Asia economic team coordinated by the White House.

* * * Briefs * * *

AS SEEN ON TV: CIT found Feb. 10 that Snuggie® imports are properly classified as "blankets" at 8.5% duty and not "knitted or crocheted" garments, as Customs classified dutiable at 14.9%. "The sleeves support, rather than detract from, the Snuggie®'s 'primary design and use' as a blanket because they ostensibly enable the Snuggie® to remain in place and keep the user warm while allowing the user to engage in certain activities requiring the use of their hands," CIT Judge Mark Barnett wrote in *Allstar Mktg. Grp., LLC v. U.S.* (slip op. 17-15). "The court further finds that the sleeves are incidental to the Snuggie®'s use as a blanket; the sleeves are not so substantial as to transform the Snuggie® into something other than a blanket," he added. No word on whether solid blue or animal print was preferred.

SILICA FABRIC: In 5-0 final vote Feb. 15, ITC found U.S. industry is materially injured by dumped and subsidized imports of certain amorphous silica fabric from China. Commissioner Dean A. Pinkert did not vote.

FCPA: Former Magyar Telekom PLC executive Tamás Morvai agreed Feb. 8 to pay Securities and Exchange Commission (SEC) $60,000 to settle charges of violating Foreign Corrupt Practices Act (FCPA). Magyar Telekom, Hungary's largest telecommunications provider, and Germany's Deutsche Telekom, majority owner of Magyar Telekom, agreed in December 2011 to pay $95 million in civil and criminal fines to SEC and Justice to settle charges of violating FCPA by bribing officials in Macedonia and Montenegro to win business (see **WTTL**, Jan. 2, 2012, page 4). Trial of former Magyar executives – Morvai, former director of business development and acquisitions; Elek Straub, former chairman and CEO; and Andras Balogh, former director of central strategic organization -- was scheduled to start May 8 in Manhattan U.S. District Court.

EXPORT ENFORCEMENT: Marlou Mendoza of Long Beach, Calif., pleaded guilty Feb. 13 in Los Angeles U.S. District Court to three counts of failing to provide required written notice to freight forwarders that she was shipping tens of thousands of rounds of .22-caliber ammunition to Philippines in June 2011. Sentencing is set for April 20. Mendoza's son, Mark Louie Mendoza, was charged in related eight-count indictment, including conspiracy, unlawful export of munitions, smuggling and money laundering, in 2016 and is at large.

WAYS & MEANS: Rep. Mike Bishop (R-Mich.) named Feb. 14 to Ways & Means Committee, filling seat vacated by newly confirmed Health and Human Services Secretary Tom Price. "Our state is home to one of the most diverse economies in the nation, and that includes our pivotal role in international trade," Bishop said in statement.

CABINET: Senate confirmed Steven Mnuchin as Treasury secretary in 53-47 vote Feb. 13. Two days later Mnuchin appointed Eli Miller to be department chief of staff. Miller previously served as chief operating officer of finance for Trump campaign. … Labor Secretary nominee Andrew Puzder withdrew his nomination Feb. 15. Trump next day nominated former U.S. Attorney Alexander Acosta.

WTO: Indonesia Feb. 17 appealed WTO panel ruling in favor of U.S. and New Zealand in their disputes with Indonesia's import measures on horticulture, animals and animal products (see **WTTL**, Jan. 2, page 5). Indonesia defended measures claiming restrictions were intended to protect halal as public moral.

RUSSIA: Sen. Ben Cardin (D-Md.) Feb. 14 called for independent, nonpartisan Commission to investigate Russian interference with U.S. election. Cardin also called for comprehensive sanctions to counter Russian hostility and said current sanctions should not be lifted before Congress has opportunity to review. He previously cosponsored bill to require congressional oversight (see **WTTL**, Feb. 13, page 8).

NO PORT IN STORM: Customs and Border Protection (CBP) Feb. 15 announced deactivation of 43 port codes associated to Electronic Export Information (EEI) export facilities that are no longer active. Port codes include Erie, Pa.; Casper, Wyo.; Amarillo, Texas; and Ocala Regional Airport, Fla.