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Biden Replaces TikTok, WeChat Bans with "Rigorous" Analysis

The Biden administration June 9 revoked its predecessor's potential bans on TikTok and WeChat mobile applications, which are the subject of multiple legal challenges, replacing the orders with "a criteria-based decision framework and rigorous, evidence-based analysis" to identify national security risks.

> Citing an ongoing review of U.S. China policy, the Biden administration in February asked two appeals courts to put a hold on proceedings (see **WTTL**, Feb. 15, page 2). The previous administration in December appealed a D.C. U.S. District Court judge's preliminary injunction against its TikTok ban.

The most recent Executive Order (EO) looks back to a May 2019 order that identified certain criteria for identifying and evaluating transactions in the information and communications technology and services (ICTS) supply chain. These include: ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities; or use of the connected software application to conduct surveillance that enables espionage.

Biden's latest EO also directed Commerce to "make recommendations to protect against harm from the sale, transfer of, or access to sensitive personal data, including personally identifiable information and genetic information – to include large data repositories – to persons owned or controlled by, or subject to the jurisdiction or direction of, foreign adversaries," a White House fact sheet noted.

CAFC Sends Chinese Tire Antidumping Case Back to Commerce

In a case over certain new pneumatic off-the-road tires from China that dates back to 2008, the Court of Appeals for the Federal Circuit (CAFC) June 10 reversed a Court of

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International Trade (CIT) ruling on whether Commerce could apply a country-wide non-market economy (NME) entity rate to exporters in that country that have failed to rebut the presumption of government control. In a March 2015 decision on the same product, CAFC ruled for the third time on the ability of Commerce to impose countervailing duties (CVDs) on imports from NMEs (see **WTTL**, March 16, 2015, page 1).

> In its most recent ruling, CIT ruled that Commerce "could not apply an existing China-wide antidumping duty rate, applicable to all Chinese exporters that had not demonstrated independence from the Chinese government, to Double Coin Holdings Ltd, even though it is undisputed that Double Coin failed to demonstrate independence from the Chinese government," Circuit Judge Raymond Clevenger wrote for the three-judge panel in *China Manufacturers Alliance v. U.S.*

"Commerce may permissibly assign such a rate to the unitary group of exporters in an NME country that have failed to rebut the presumption of government control. This rate may be based in whole or in part on FA [facts available] or AFA [adverse facts available, and Commerce may carry forward an initial NME entity rate, including adverse inferences built into that rate, in subsequent ad-ministrative reviews," Clevenger wrote.

"Commerce's application of the 105.31% PRC-wide entity rate to Double Coin was not contrary to law and was reasonable on the facts of this case. Accordingly, we reverse the final judgment of the Trade Court and remand the case with instructions to return the case to Commerce for it to proceed in a manner consistent with this opinion," he added.

White House Pushes Export Controls in Supply Chain Review

The administration will need to walk and chew gum at the same time, according to a White House report on supply chain vulnerabilities published June 8. Future policy must rebuild the small and medium-sized business manufacturing base, and at the same time, diversify international suppliers and reduce geographic concentration risk, the report said.

The 100-day review that President Biden requested in February assessed supply chain vulnerabilities in four key products: semiconductor manufacturing and advanced packaging; large capacity batteries, like those for electric vehicles; critical minerals and materials; and pharmaceuticals and advanced pharmaceutical ingredients (APIs).

While responses to a recent Bureau of Industry and Security (BIS) request for comments on U.S. supply chains varied widely, many companies cited more "targeted" and "smarter" export controls as solutions to a semiconductor shortage and other business risks (see **WTTL**, April 12, page 3).

It appears the administration was listening. One of seven top level recommendations involves export controls. "The administration should target and implement export controls that can support policy actions to identify and address vulnerabilities in the semi-conductor manufacturing and advanced packaging supply chain," the report noted.

"The administration should target and implement export controls on critical semiconductor equipment and technologies to address certain supply chain vulnerabilities. The administration should also make efforts to collaborate and coordinate with key supplier allies and partners on effective multilateral controls," it added.

> Another recommendation will involve the Export-Import (Ex-Im) Bank. The bank should "develop a proposal for Board consideration regarding whether and how to implement a new Domestic Financing Program to support the establishment and/or expansion of U.S. manufacturing facilities and infrastructure projects in the United States that would support U.S. exports. The proposal would support and facilitate U.S. exports while rebuilding U.S. manufacturing capacity," the report said.

The report provides "a comprehensive review of the risks and vulnerabilities in the semiconductor supply chain and laying out a plan to advance long-term U.S. leadership in production and innovation in the semiconductor industry. We have also been working closely with industry to mitigate the immediate shortage through investments, transparency, and collaboration," Commerce Secretary Gina Raimondo said in a statement.

Industry welcomed the supply chain report. "We appreciate the Biden administration's focus on ensuring the strength and resilience of America's semiconductor supply chains and applaud the White House report's call for federal investments in domestic semiconductor production and innovation. We look forward to working with leaders in the administration and Congress to swiftly enact needed federal investments in chip technology," John Neuffer, Semiconductor Industry Association (SIA) president and CEO, said.

Senate Passes China Competition Bill, Including Trade Provisions

In a 68-32 vote, the Senate June 8 passed a mammoth 852-page piece of legislation called the U.S. Innovation and Competition Act (S. 1260), that rolled several outstanding bills into one, all with the goal of leveling the playing field with China. Now the bill goes to the House and a potential conference committee.

Two weeks earlier, the Senate overwhelmingly passed an amendment that pulled several trade-related provisions into one (see **WTTL**, May 31, page 1) The amendment included: a provision to reauthorize three expired trade programs: the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB); language to restore exclusions to the Section 301 tariffs; and a provision to create an inspector general (IG) at the U.S. Trade Representative's (USTR) office.

Lawmakers and domestic industry groups welcomed the legislation. "The Senate came together to deliver a massive, bipartisan win for U.S. workers and American innovation. From new incentives for tech R&D, to new tools targeting Chinese government trade cheating and stronger enforcement of laws against forced labor, this bill is chock-full of ways to help our country get ahead," Sen. Ron Wyden (D-Ore.) said in a statement.

National Council of Textile Organizations (NCTO) specifically cited provisions on domestic personal protective equipment (PPE) production. “This language will help onshore critical production of medical [PPE] by guaranteeing long-term contracts for American-made PPE and establishing a much-need domestic procurement requirement for federal purchases of these essential products,” NCTO President and CEO Kim Glas said.

Chinese officials denounced the bill. “The content on China in the bill just passed by the U.S. Senate distorts facts, denigrates China’s development path and domestic and foreign policies, hypes up ‘China threat,’ advocating strategic competition with China, and gravely interferes in China’s domestic affairs on issues relating to Taiwan, Hong Kong, Xinjiang and Tibet,” Chinese Foreign Ministry Spokesperson Wang Wenbin told reporters.

G7 Agreement Could Make Digital Tax Fight Moot

The June 5 agreement on a 15% global minimum tax that at press time will be signed by the G7 heads of state at their first post-pandemic gathering in two years, would resolve years of wrangling and disagreement. The “new” approach could put fights over digital service taxes (DSTs) in the rearview mirror.

> The USTR’s office June 2 found DSTs adopted by six countries, including the G7 host United Kingdom (UK), are worthy of imposing additional tariffs, but then suspended those tariffs with the pending tax agreement and as multilateral negotiations continue at the Organization for Economic Cooperation and Development (OECD) and other venues (see **WTTL**, June 7, page 2).

“I think we will end up with a tax system that will be much fairer and end, effectively, much tax competition in the ability of large profitable multinationals to take advantage of tax havens to lower their corporate tax liabilities. And so, 21% is the minimum that we’ve proposed domestically,” Treasury Secretary Janet Yellen said at a joint press conference.

Yellen said the G7’s new approach would replace the “old approach” of a proposed European Union (EU) DST. “This new approach will replace an approach that we found objectionable that targeted large, successful U.S. digital firms, but most of those firms are likely to be included in this new scheme, the Pillar One scheme,” she explained.

“We’ve agreed that we will award taxing rights on at least 20% of residual profit, that’s above a 10% margin, for the largest and most profitable multinational enterprises, and the agreement is that that will replace the system that we’ve had concerns with. The timing remains to be worked out exactly, but there is broad agreement that these two things go hand in hand,” Yellen added.

From the G7, the tax debate moves to a broader audience; first the G20 – nations such as Russia and China - as well as the 135 nations of the OECD. The G20 meeting takes place July in Italy; the OECD meeting is scheduled for France in October.

U.S. lawmakers urged caution, calling any agreement “speculative” and “premature.” “The continued imposition and collection of digital services taxes and other unilateral measures, including from certain G7 members, and plans to impose digital levies even with a global agreement, demonstrate that the United States cannot expect other countries to act in the interest of American businesses and workers,” Sen. Mike Crapo (R-Idaho) and Rep. Kevin Brady (R-Texas) said in a joint statement.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in April jumped 52.9% from year ago to record-high $145.3 billion, Commerce reported June 8. Services exports grew 8.5% to $59.7 billion from April 2020. Goods imports jumped 36.7% from April 2020 to $232.0 billion, as services imports grew 25.55% to $41.9 billion.

TELEWORK: As promised, State’s Directorate of Defense Trade Controls (DDTC) June 10 extended temporary and retroactive changes to its compliance procedures to allow continued telework operations. Agency extended changes “in the interest of ensuring sufficient time to adequately address comments and prepare publication of a final rule, and to ensure there is no disruption of regulated entities' ability to safely engage in continued operations,” notice said. DDTC in May proposed rule to make permanent definition of “regular employee” (see **WTTL**, May 31, page 2).

METHIONINE: In 5-0 final vote June 10, ITC determined U.S. industry is materially injured by dumped imports of methionine from France. Commission also made negative finding on critical circumstances on these imports.

STEEL PLATE: In 5-0 “sunset” votes June 7, ITC said revoking antidumping duty order on cut-to-length carbon steel plate from China would renew injury to U.S. industry. At same time, ITC found terminating suspended investigations on product from Russia and Ukraine also would renew injury to U.S. industry.

ANTIBOYCOTT: In Federal Register June 9, BIS updated Export Administration Regulations (EAR) to reflect United Arab Emirates’ (UAE) formal termination of its participation in Arab League Boycott of Israel. “Prohibitions and reporting requirements contained in the EAR’s antiboycott provisions do not apply to such requests from the UAE made after August 16, 2020,” notice said. Treasury removed UAE from list of countries that “require or may require participation in, or cooperation with, an international boycott” in April (see **WTTL**, April 19, page 8).

TRADE PEOPLE: Former EU Trade Commissioner Cecilia Malmström joined Peterson Institute for International Economics (PIIE) as nonresident senior fellow, PIIE announced June 9. “Malmström brings tremendous expertise in both the policy and politics of the international trading system,” PIIE president Adam Posen said. Malmstrom will host virtual discussion series Trade Winds, replacing Anabel Gonzalez, who was named WTO deputy director-general in May (see **WTTL**, May 10, page 7).

USTR: President Biden June 9 nominated Jayme White to be deputy USTR. He has served as chief trade advisor for Senate Finance Committee since 2014.

KEYSTONE XL: TC Energy confirmed June 9 that it has terminated controversial Keystone XL pipeline. President Biden revoked permit for pipeline on his first day in office (see **WTTL**, Jan. 25, page 6). TransCanada in February 2017 suspended $15 billion lawsuit against U.S. after former president signaled project could go forward. "We will continue to identify opportunities to apply this level of ingenuity across our business going forward, including our current evaluation of the potential to power existing U.S. assets with renewable energy," TC Energy President and CEO François Poirier said in statement.

NICARAGUA: OFAC June 9 designated four Nicaraguan government officials, including President Ortega's daughter, coordinator of Creative Economy Commission; president of Central Bank of Nicaragua; deputy of Nicaraguan National Assembly (NNA); and brigadier general of Nicaraguan Army. Agency previously designated vice president of Nicaraguan Supreme Court of Justice; deputy of National Assembly; and chief of Nicaraguan National Police (see **WTTL**, Jan. 4, page 8).

FORCED LABOR: Two dozen House Democrats June 10 urged U.S. Customs and Border Protection (CBP) to block imported products containing polysilicon made with forced labor in Xinjiang, China. In February 2021 briefing, CBP asserted that enforcement actions regarding polysilicon were forthcoming. "CBP has had sufficient time to review the disturbing facts regarding forced labor and polysilicon production in Xinjiang—we believe it is time to act," lawmakers wrote. CBP in January issued withhold release order (WRO) against cotton and tomato products produced in Xinjiang, "based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor" (see **WTTL**, Jan. 18, page 3).

USMCA: U.S. June 9 filed its second request under Rapid Response Labor Mechanism (RRM) in U.S.-Mexico-Canada Agreement (USMCA), asking Mexico to review whether workers at Tridonex automotive parts facility in Matamoros are being denied rights of free association and collective bargaining. U.S. filed its first request month earlier, concerning General Motors (GM) facility in Silao (see **WTTL**, May 17, page 1). Mexico has 10 days to agree to conduct review and, if it agrees, 45 days to remediate.