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BIS Requests Comments on U.S.-EU Export Control Policies

As the U.S. and the European Union (EU) continue their work on a Trade and Technology Council (TTC), the Biden administration called on industry for its input, specifically on export control policies and controls on emerging technologies. Toward this end, the Bureau of Industry and Security (BIS) Nov. 30 requested comments "regarding areas and priorities for U.S. and EU export control cooperation to help inform the work" of the Export Control Working Group.

> The TTC ended its inaugural collaboration in Pittsburgh in September with the participants pivoting to future negotiations. As far as outcomes, the participants specifically addressed investment screening regimes, export controls, global semiconductor supply chains and trade barriers (see **WTTL**, Oct.4, page 4).

"Comments should address ways in which existing U.S. and/or European Union dual-use export control policies and practices may be more transparent, more efficient and effective, more convergent, and fit for today's challenges, in particular with regards to the control of emerging technologies," BIS wrote in the Federal Register notice. Comments are due Jan. 14, 2022.

Public comments "will assist BIS in developing ideas and proposals, as well as facilitate a productive dialogue with the European Union," the notice said. "Comments providing specific and concrete examples where further convergence in U.S. and EU export control practices and policies could enhance international security and the protection of human rights, and support a global level-playing field and joint technology development and innovation, would be particularly helpful," it added.

WTO Members Agree to Services Deal

Who needs a ministerial? After four years of negotiations, more than 60 World Trade Organization (WTO) members Dec. 2 announced an agreement on services, which they

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had hoped to unveil during the now-postponed 12th Ministerial Conference (MC12) in Geneva. In addition to transparency and clarity in authorization processes, the deal includes a provision that domestic regulation should not discriminate on gender, a first in WTO agreements.

The 67 signatories to the WTO Joint Statement Initiative on Services Domestic Regulation (DR JSI) represent more than 90% of global services trade; the deal could reduce services trade costs in the range of $75 billion for APEC economies and $140 billion for the G20, according to an Organization for Economic and Cooperation and Development (OECD) estimate.

> The services negotiations began in earnest at the margins of the 11th WTO Ministerial Conference in 2017, which concluded without any “substantive” agreements. The WTO Nov. 26 postponed MC12 due to concerns over the new covid variant (see **WTTL**, Nov. 29, page 1). The organization subsequently proposed that the ministerial be convened during the first week of March 2022, “if conditions allow.”

The agreed-to disciplines relate to “licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services. The focus of the disciplines lies on measures that are closely linked to the process of authorization to supply a service. They seek to ensure that existing market access and national treatment commitments are not nullified by opaque and complex authorization procedures. They aim to facilitate trade in services,” a WTO fact sheet noted.

The U.S. “has long championed transparency and fairness of regulatory rules as a fundamental feature of good governance, and the DR JSI is an opportunity to strengthen such standards around the globe,” said U.S. Trade Representative (USTR) Katherine Tai. “This initiative is the first successful WTO services negotiation in years, and shows how WTO members can take practical, common-sense steps to address clearly defined trade problems,” she added.

Business groups enthusiastically welcomed the deal. The deal’s successful conclusion “is an important accomplishment that improves transparency, legal certainty and fairness in rulemaking and licensing processes while slashing costs for businesses. It's also a welcome sign that the WTO can serve as a flexible forum to address shared priorities among innovative economies,” National Foreign Trade Council (NFTC) President Jake Colvin said in a statement.

Treasury Upgrades Vietnam, Switzerland in Currency Report

What a difference six months makes. Treasury in its semiannual report Dec. 3 moved Vietnam and Switzerland off its naughty list, finding the two partners no longer meet the agency’s criteria for currency manipulation. At the same time, the department said it would continue to engage with both countries.

"No major U.S. trading partner manipulated the rate of exchange between its currency and the U.S. dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade," the department said.

The USTR's office formally closed its Section 301 investigation into Vietnam's currency practices in July, citing a deal four days earlier between Treasury and the State Bank of Vietnam (SBV) (see **WTTL**, July 26, page 1). "The Treasury-SBV agreement provides a satisfactory resolution of the matter subject to investigation and accordingly that no trade action is warranted at this time," the agency said.

> "Although Switzerland no longer meets all three criteria for enhanced analysis, Treasury will continue to conduct an in-depth analysis of Switzerland until it does not meet all three criteria under the 2015 Act for at least two consecutive Reports," the department said.

In April, the department also moved Taiwan from its "Monitoring List" of countries that merit close attention to their currency practices. "Treasury will continue its enhanced engagement with Taiwan, which was launched in May. This engagement includes urging the development of a plan with specific actions to address the underlying causes of currency undervaluation and external imbalances," the department said with the most recent report.

While Treasury did not name China as a currency manipulator, the department had stern words for Beijing: "China's failure to publish foreign exchange intervention and broader lack of transparency around key features of its exchange rate mechanism make it an outlier among major economies, and the activities of state-owned banks in particular warrant Treasury's close monitoring," the report said.

In sum, the department placed 11 trading partners on its "Monitoring List": China, Japan, Korea, Germany, Ireland, Italy, India, Malaysia, Singapore, Thailand, Mexico and Switzerland. All except Switzerland were included in the April 2021 report.

U.S., EU, Japan Take on Chinese Trade Practices

The names may be different, but the intent is the same. During a virtual meeting Nov. 30, the U.S., the EU and Japan agreed Nov. 30 to renew their joint effort to tackle "non-market policies and practices of third countries that undermine and negatively affect our workers and businesses."

"Third countries" usually translates to China. The three trading partners, with different ministers at the table, joined forces after a trilateral meeting at the UN General Assembly in September 2018 (see **WTTL**, Oct. 1, 2018, page 5). The policies "lead to severe over-capacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade," the joint statement said at the time.

After the most recent meeting, USTR Katherine Tai, Japanese Trade Minister Hagiuda Koichi and EU Trade Commissioner Valdis Dombrovskis agreed to identify three areas in parallel: problems due to non-market practices; gaps in existing enforcement tools, and where further work is needed to develop new tools to address such practices, as well as discussing cooperation in utilizing existing tools; and areas where further work is needed to develop rules to address such practices.

Allies Target Belarus SOEs, Sovereign Debt

Along with its major allies, the Biden administration Dec. 2 imposed further sanctions on Belarus "in response to the Lukashenka regime's blatant disregard for international norms and the wellbeing of its own citizens." Treasury's Office of Foreign Assets Control (OFAC) designated 20 individuals and 12 entities and identified three aircraft as blocked property, as well as imposed restrictions on dealings in new issuances of Belarusian sovereign debt in the primary and secondary markets.

> "We remain committed to supporting the democratic aspirations of the people of Belarus and stand together to impose costs on the regime—and those who support it—for its efforts to silence the voices of independent civil society, media and all Belarusians seeking to speak the truth about what is happening in their country," Canada, the EU, the United Kingdom (UK) and the U.S. said in a joint statement.

This action comprises the fifth tranche of Belarus-related sanctions since the fraudulent 2020 presidential election. In August, OFAC designated 23 individuals and 21 entities, and the White House issued an executive order (EO) authorizing further sanctions (see **WTTL**, Aug. 16, page 2). Designations included Belaruskali OAO, one of the world's largest producers of key fertilizer ingredient potassium chloride (potash).

In the latest action, designated entities included Belarus' state-owned tourism company, a government-controlled cargo carrier, an authorized state special exporter, key firms in the Belarusian defense industry, state-owned enterprises (SOEs) that produce special purpose equipment for Belarusian military and law enforcement agencies.

In addition, OFAC blocked the Open Joint Stock Company Belarusian Potash Company (BPC), which handles the trading of potash for Belaruskali OAO, and BPC subsidiary Agrorozkvit LLC. At the same time, the agency issued General License (GL) 5, authorizing the wind-down of transactions involving BPC or Agrorozkvit through April 1, 2022.

On sovereign debt, OFAC issued Directive 1, which prohibits "all transactions in, provision of financing for, and other dealings in new debt with a maturity of greater than 90 days" issued on or after Dec. 2 by the Belarus Finance Ministry or the country's Development Bank. "The addition of U.S. restrictions on dealings in new issuances of Belarusian sovereign debt in the primary and secondary markets demonstrates close coordination with partners and allies to restrict the Lukashenka regime's access to international capital markets," Treasury said.

GOP Bill Urges Biden to Renew Fast Track, Join Asia Trade Pact

Two Republican members of the House Ways and Means Committee Dec. 1 introduced a bill (H.R. 6114) "to promote [U.S.] trade leadership in the Indo-Pacific region," calling on the president and Congress to renew Trade Promotion Authority (TPA), which expired July 1, and join the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP).

> In August, Reps. Carol Miller (R-W.Va.), Darin LaHood (R-Ill.) and 16 other Ways and Means Republicans urged President Biden to begin consultations with Congress to renew TPA (see **WTTL**, Aug. 9, page 1). The most recent bill "calls to swiftly reauthorize [TPA] and directs the president to compel all key federal agencies to meet upon request with any member of Congress regarding the executive branch's anticipated or ongoing negotiations," according to a joint statement by Miller and LaHood.

In addition, it would call on the administration to "share documents relating to those negotiations, including classified materials, on its evolving Indo-Pacific trade strategy," they said. The bill also calls on the administration to "play a sustained role in establishing an open, rules-based trading system in the Indo-Pacific by improving and joining an existing plurilateral trade agreement, such as [CPTPP], updating existing regional trade agreements, or negotiating new, high-standard trade agreements," the lawmakers said.

Under the legislation, the USTR's office would be required to submit a report to Congress that includes: a long-term trade and economic plan with China that details progress in combating China's coercive economic practices; a comprehensive assessment of Section 301 tariffs against China and their efficacy in combating Chinese forced technology transfers and intellectual property theft; a complete scorecard of China's compliance with its Phase One commitments; new enforcement tools that will require China to make further structural reforms; new market access objectives with respect to China; and key sectors in which increased U.S. exports would be mutually beneficial for the U.S. and China.

* * * Briefs * * *

NOMINATIONS: Senate Dec. 2 confirmed by 50-49 vote Brian Eddie Nelson to be Treasury under secretary for terrorism and financial crimes. Sen. John Thune (R-S.D.) did not vote. In October, GOP senators doubled down on hold on State and Treasury nominees, citing Biden's Nord Stream sanctions waiver (see **WTTL**, Oct. 11, page 8)….Senate Banking Committee Dec. 2 approved by voice vote nomination of Arun Venkataraman to be Commerce assistant secretary and director general of U.S. and Foreign Commercial Service. President Biden sent Senate nomination in May (see **WTTL**, May 31, page 5). Biden previously named Venkataraman, former Commerce and USTR official, to Commerce "agency review team" after election. Most recently, Venkataraman was senior director, global government engagement, at Visa.

FCPA: Luis Enrique Martinelli Linares, dual citizen of Panama and Italy, pleaded guilty Dec. 2 in Brooklyn U.S. District Court to conspiracy to commit money laundering for his role in bribery scheme involving Brazilian construction conglomerate Odebrecht S.A. and high-ranking government official in Panama. Luis and brother Ricardo Alberto Martinelli Linares were indicted in November (see **WTTL**, Nov. 22, page 8). Luis Martinelli Linares was extradited from Guatemala same day to face charges. Both brothers were charged in criminal complaint in July 2020. Between August 2009 and January 2014, defendants allegedly "established shell companies in foreign jurisdictions; served as the signatories on certain of the shell company bank accounts; and personally sent and caused to be sent wire transfers through the structure of shell company bank accounts to conceal and spend bribery proceeds," complaint noted. Odebrecht pleaded guilty in Brooklyn court in December 2016 to conspiracy to violate Foreign Corrupt Practices Act (FCPA) for its involvement in scheme.

IRAN: In surprise bipartisan move, Reps. Gregory Meeks (D-N.Y.), Michael McCaul (R-Texas), Ted Deutch (D-Fla.) and Joe Wilson (R-S.C.) Nov. 30 introduced Stop Iranian Drones Act (SIDA) (H.R. 6089) to clarify that U.S. sanctions under Countering America's Adversaries Through Sanctions Act (CAATSA) include supply, sale or transfer to or from Iran of unmanned combat aerial vehicles (UAVs). OFAC in October designated two companies and four individuals that provide critical support to UAV programs of Iran's Islamic Revolutionary Guard Corps (IRGC) and its expeditionary unit, the IRGC Qods Force (IRGC-QF) (see **WTTL**, Nov. 8, page 4).