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USTR Formally Opposes Canada Move on Digital Tax

The U.S. Trade Representative's (USTR) office formally registered its opposition to Canada's proposed digital services tax (DST) in public comments filed Feb. 22. The comments cited Canada's joining the U.S. and 135 other jurisdictions in negotiations toward a two-pillar 15% global minimum tax under the auspices of the Organization for Economic Cooperation and Development (OECD) and G20.

> Administration officials and industry groups in December denounced Canada's formal tabling of motions in advance of legislative proposals regarding the [DST], on which stakeholder input is invited (see **WTTL**, Dec. 20, 2021, page 1). In October, Canadian Deputy Prime Minister Chrystia Freeland confirmed her government would continue with its planned DST in case a deal on a minimum tax falls through.

In its comments, the U.S. urged Canada to abandon any plans for a unilateral measure and instead "redouble its commitment to the rapid implementation of Pillar One" of the OECD/G20 agreement and the completion of a multilateral convention in 2022, USTR wrote. "Canada has repeatedly stated its hope that implementation of the Two-Pillar Solution would make Canada's DST proposal unnecessary," it added.

"Instead of pursuing a counterproductive unilateral measure that risks encouraging other countries to follow suit thus undermining the ongoing negotiations, Canada can focus efforts on engaging constructively in the multilateral OECD negotiations – ensuring that its unilateral measure proposal is unnecessary and that Canadian interests are protected," USTR wrote.

New Russian Export Controls Just What Doctor Ordered

True to its word, the Biden administration Feb. 24 announced specific export controls in response to the Russian invasion of Ukraine, employing the foreign-direct product (FDP)

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rule that the previous administration used to sanction China's Huawei, along with other restrictions. These restrictions were just part of the package of sanctions the administration announced (see related story below).

A week earlier, Biden administration officials clarified the package of sanctions and export control measures that the U.S. and its allies were prepared to impose on the Kremlin (see **WTTL**, Feb. 21, page 2). For several weeks before the invasion, officials telegraphed they could employ the FDP rule.

These export controls have been coordinated with the European Union (EU) and other trading partners. Canada for example, restricted exports to Russia by "halting new export permit applications and cancelling valid export permits, with a limited number of exceptions for critical medical supply chains," its Foreign Ministry announced.

> In regulations that will be published in the Federal Register March 3, the Bureau of Industry and Security (BIS) added new Commerce Control List (CCL)-based license requirements for Russia in the Export Administration Regulations (EAR); two new FDP rules; and a license review policy of denial applicable to all of the new license requirements, with certain limited exceptions.

In addition, the agency significantly restricted the use of license exceptions; expanded the existing Russia 'military end use' and 'military end user' control scope to all items "subject to the EAR" other than food and medicine designated EAR99, or Export Control Classification Number (ECCN) 5A992.c and 5D992.c unless for Russian "government end users" and Russian state-owned enterprises (SOEs).

At the same time, BIS transferred 45 Russian entities from the Military End-User (MEU) List to the Entity List with an expanded license requirement of all items subject to the EAR (including foreign-produced items subject to the Russia-MEU FDP rules); and added two new Russia entities and revised two Russia entities to the Entity List.

Leading industry groups joined in the administration's push. The Semiconductor Industry Association (SIA) said its industry was "fully committed to complying with the new export control rules," SIA President and CEO John Neuffer said in a statement. "We are still reviewing the new rules to determine their impact on our industry. While the impact of the new rules to Russia could be significant, Russia is not a significant direct consumer of semiconductors, accounting for less than 0.1% of global chip purchases," he added.

OFAC Sanctions Nord Stream CEO, Russian Banks

In addition to strict new export controls on Russia, the Biden administration Feb. 24 imposed other sanctions on the country, including designating the company behind the now-canceled Nord Stream 2 pipeline and its corporate officers. Citing the need to rebuild European relationships, the U.S. in May backed off imposing sanctions on the company, its CEO Matthias Warnig and its corporate officers (see **WTTL**, May 24, page 4). U.S.

lawmakers on both sides of the aisle have been urging the sanctions since the administration first announced the sanctions waiver. "I'm glad the Biden administration is finally following the law and imposing sanctions on the Nord Stream 2 pipeline, but this decision is too little too late. With Russian troops already invading Ukraine and preparing for a much larger assault, these sanctions are unlikely to have a deterrent effect," Sen. Pat Toomey (R-Pa.) said in a statement. Toomey and other GOP lawmakers went as far as putting holds on the administration's State and Treasury nominees, in retaliation for the sanctions waiver.

At the same time as the designation, Treasury's Office of Foreign Assets Control (OFAC) issued General License (GL) 4 authorizing the wind-down of transactions involving Nord Stream 2 AG or any entity in which Nord Stream 2 AG owns, directly or indirectly, a 50% or greater interest, through March 2.

The latest tranche of sanctions also includes designations of Russia's two largest financial institutions, Sberbank and VTB Bank, along with 25 Sberbank foreign subsidiaries, 20 VTB Bank subsidiaries, three additional major Russian financial institutions, and dozens of their subsidiaries. OFAC also designated members of families close to President Putin and financial sector elites. At press time, the agency announced it would designate Putin and Foreign Minister Sergei Lavrov, as well as other members of the Security Council.

> OFAC issued eight GLs authorizing certain transactions related to: international organizations and entities; agricultural and medical commodities and the COVID-19 pandemic; overflight and emergency landings; energy; dealings in certain debt or equity; derivative contracts; the wind-down of transactions involving certain blocked persons; and the rejection of transactions involving certain blocked persons.

In addition, OFAC designated 24 Belarusian individuals and entities "due to Belarus's support for, and facilitation of, the invasion. The action focused on Belarus's defense sector and financial institutions, "two areas in which Belarus has especially close ties to Russia," the agency said. Specifically, OFAC designated two significant state-owned banks, 14 individuals and entities in the Belarus defense and related materiel sector and senior government security apparatus officials.

Concurrently, OFAC is issuing Belarus GLs 6 and 7 to authorize certain transactions related to the official business of the U.S. government and international organizations and entities, respectively. In December, OFAC designated 20 Belarusian 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 (see **WTTL**, Dec. 6, page 4).

More sanctions could come from the U.S. Congress. "I stand with the people of Ukraine as they endure Russia's attacks, and I support President Biden's new sanctions in response to this invasion. Together with our allies and partners, we must make clear that war is unacceptable. No tool in the Ways and Means Committee's jurisdiction is off the table as we explore our options to further confront Russia's aggression," Rep. Richard Neal (D-Mass.) said in a statement.

Administration Promises Resilience, Security in ICT Supply Chain

In its much-hyped one-year assessment of the information and communications technology (ICT) supply chain, the Biden administration Feb. 24 released statements with lots of words, but observers were hard-pressed to find concrete actions. Companies and industry trade groups previously warned the administration against overly restrictive requirements and unilateral trade measures, while encouraging partnerships with allies and increased transparency into the whole full ICT ecosystem (see **WTTL**, Nov. 15, 2021, page 4).

> The administration listened, as one of its eight recommendations echoed industry's demands. "Improve international engagements through existing fora to advance shared interests in the ICT industry. These interests include bolstering supply chain security and diversity for critical products, strengthening trade enforcement, and enhancing partici-pation in international standards development," the official assessment noted.

In a joint statement, Commerce Secretary Gina Raimondo and Homeland Security Secretary Alejandro Mayorkas outlined three major challenges to the supply chain: the COVID-19 pandemic, manufacturing shift overseas and cyber incidents. To address these challenges, the two departments "continue to take immediate actions to bolster the U.S. industrial base as part of a whole-of-government approach to protect and strengthen the supply chains that keep our economy running and our communities safe, but the U.S. government alone cannot address these ICT supply chain vulnerabilities," they said.

As part of the one-year review the Export-Import Bank (Ex-Im) Board of Directors will vote "later this spring on a domestic financing initiative that will support this effort by offering new financing opportunities for the establishment or expansion of U.S.-based manufacturing and infrastructure facilities with an export nexus," Exim Chair Reta Jo Lewis announced in a separate statement. "The initiative will also offer financing priority to environmentally beneficial, small business, and transformational export area transactions, including semiconductors, biotech and biomedical products, renewable energy, and energy storage," she added.

Industry groups welcomed the efforts. "We share the Biden administration's goal of ensuring the health and long-term resiliency of the global supply chain. As we review the White House's plan, we hope for a focus on strengthening our supply chain to ensure the United States remains globally competitive in the 21st century," Aerospace Industries Association (AIA) President and CEO Eric Fanning said.

The Information Technology Industry Council (ITI) also joined the party. "We are encouraged by the administration's ongoing engagement with industry, including through public-private partnerships such as the ICT Supply Chain Risk Management Task Force, and efforts to boost the domestic ICT workforce and semiconductor production, including its call to Congress to fund the CHIPS for America Act." said ITI President and CEO Jason Oxman.

* * * Briefs * * *

EXPORT ENFORCEMENT: Jorge Orencel of Silver Spring, Md., was sentenced Feb. 22 in Baltimore U.S. District Court to six months in prison, followed by one year of supervised release for attempting to export goods, including five ionization chambers and one fission chamber, to Hong Kong without required licenses. He pleaded guilty in December (see **WTTL**, Jan. 3, page 5). Orencel owned and operated export and logistics business Sumtech. "The defendant not only lied repeatedly to the seller of the device about the ultimate destination of the device, but he also made false statements on the shipping documents about the value and destination of the device in order to avoid detection," Justice sentencing memo noted.

SODIUM NITRITE: In 5-0 preliminary vote Feb. 25, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of sodium nitrite from India and Russia.

BARIUM CHLORIDE: In 5-0 preliminary vote Feb. 25, ITC determined U.S. industry may be injured by allegedly dumped and subsidized imports of barium chloride from India.

RIBBON: In 5-0 "sunset" vote Feb. 23, ITC said antidumping and countervailing duty orders on narrow woven ribbons with woven selvedge from China and Taiwan would renew injury to U.S. industry.

HAITI: Rep. Richard Neal (D-Mass.) Feb. 22 requested ITC investigate Haiti preference programs, including Caribbean Basin Economic Recovery Act (CBERA), Generalized System of Preferences (GSP) and Caribbean Basin Trade Partnership Act (CBTPA), "to help better understand Haiti's recent past trade practices to inform how U.S. trade can facilitate positive results and improved benefits for Haiti's economy and people," he wrote. Previous president signed 10-year CBERA extension in October 2020 (see **WTTL**, Oct. 19, 2020, page 7).

NOMINATION: President Biden Feb. 25 announced intent to nominate George Washington University economics professor Jay Shambaugh to be Treasury under secretary for international affairs. He previously served as member of White House Council of Economic Advisors (CEA) from 2015-2017. Policy advisor Andrew Baukol has been acting under secretary since June 2021.