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USTR Closes Vietnam Currency Investigation After Treasury Deal

The U.S. Trade Representative's (USTR) office July 23 formally closed its Section 301 investigation into Vietnam's currency practices, citing a deal four days earlier between Treasury and the State Bank of Vietnam (SBV). "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.

> Threatened with potential tariffs on Vietnamese imports, Treasury and the SBV agreed July 26 to address the administration's concerns about the Asian country's currency practices. Specifically, "the SBV will continue to provide necessary information for Treasury to conduct thorough analysis and reporting on the SBV's activities in the foreign exchange market," Treasury Secretary Yellen and SBV Governor Nguyen Thi Hong said in a joint statement.

"Vietnam confirms that it is bound under the Articles of Agreement of the IMF to avoid manipulating its exchange rate in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage and will refrain from any competitive devaluation of the Vietnamese dong," the statement continued.

A week earlier, more than 70 business groups urged the USTR's office not to impose the tariffs (see **WTTL**, July 26, page 7). "Imposing Section 301 tariffs at a time when Treasury recently stated Vietnam is not manipulating its currency would undermine efforts to develop a more coherent framework for financial diplomacy. Such a move would leave foreign governments understandably confused — and less likely to heed Washington's advice," the groups wrote. The agency launched the Section 301 investigation in October 2020.

Administration Defends Nord Stream Deal, Sanctions Waiver

The Biden administration July 21 defended its deal with Germany over the Nord Stream 2 pipeline, that critics say should be sanctioned under existing law. "While we remain

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opposed to this pipeline, we reached the judgment that sanctions would not stop its construction and risked undermining a critical alliance with Germany, as well as with the EU and other European allies," senior State official told reporters.

President Biden and German Chancellor Angela Merkel dispelled concerns about the energy project during a joint press conference at the White House just a few days earlier (see **WTTL**, July 26, page 3). The U.S. in May backed off imposing sanctions on a Russian company, its CEO and its corporate officers for construction of the pipeline.

> "This is a Russian geopolitical project, but that is why for us the worst-case scenario was a completed pipeline, which we think, as the Secretary [Tony Blinken] has said, that it is virtually a *fait accompli,* that the construction will be finished, but a completed pipeline and nothing to help Ukraine to reduce the risks that this pipeline poses to it," the State official added.

"Should Russia attempt to use energy as a weapon or commit further aggressive acts against Ukraine, Germany will take action at the national level and press for effective measures at the European level, including sanctions, to limit Russian export capabilities to Europe in the energy sector, including gas, and/or in other economically relevant sectors," the U.S. and Germany said in a joint statement.

Republican lawmakers repeated their opposition to the project and their insistence that the administration impose mandatory sanctions. "Not a single member of Congress supports the completion of this pipeline and the administration's willingness to look the other way and let Russia and Germany complete this pipeline undermines the bipartisanship necessary on this important security issue," Sen. Jim Risch (R-Idaho) said in a statement.

"Regardless of the foreign policy outcome the administration thinks it has achieved, there are still mandatory sanctions the administration has not imposed and it has not consulted with Congress on the waiver of these mandatory sanctions," he added.

Appeals Court Reverses CIT Ruling on Welded Pipe

In another case that warranted a dissent from one of a three-judge panel, the Court of Appeals for the Federal Circuit (CAFC) July 20 reversed a Court of International Trade (CIT) ruling involving certain price adjustments during an antidumping duty investigation involving large diameter welded pipe. The appeal centered on Commerce granting post-sale price adjustment, which produced a de minimis antidumping duty rate.

"Commerce's original Final Determination that Borusan was entitled to a post-sale price adjustment based on the one-third initial allocation agreed to by the JVA [Borusan and two other Turkish producers] members because the one-third allocation was known and established at the time of sale is supported by substantial evidence and in accordance with the law," Circuit Judge Jimmie Reyna wrote for the majority in *Borusan Mannesmann Boru Sanayi v. American Cast Iron Pipe Co.* "Borusan repeatedly changed its claimed post-sale price adjustment amount during the investigation without providing 'exhibits, supporting documentation, or calculation worksheets,' instead relying 'only [on] vague statements,'" he added.

In his dissent, Circuit Judge Timothy Dyk agreed with the original CIT decision, called Commerce's decision "on its face, arbitrary and capricious." He added, "Commerce provided no rationale as to why the consortium agreement between suppliers, as compared to the agreement between the suppliers and the customer, was more susceptible to manipulation and thus should be discounted."

"Contrary to the majority's conclusion, the record does not support Commerce's characterization that the changing terms of Borusan's requested price adjustment was somehow suspicious," Dyk wrote in dissent.

EU, UK Still Fighting over Irish Border Protocol

Just when you thought it was safe to go back into the water. Despite the fact that Brexit was approved more than five years ago, and went into effect formally six months ago, the European Union (EU) July 22 rejected the United Kingdom (UK) demands to redo the Northern Ireland Protocol, so that it reduces disagreements between the UK and the EU, and in turn the people of Ireland.

> EU Commission President Ursula von der Leyen tweeted: UK Prime Minister Boris Johnson "called to present the UK Command paper on the Irish/Northern Irish Protocol. The EU will continue to be creative and flexible within the Protocol framework. But we will not renegotiate. We must jointly ensure stability and predictability in Northern Ireland."

The discussions between Johnson and von der Leyen have borne little fruit. The EU maintains that the deal is written in law, while the UK repeats that it's "unsustainable" and needs a "significant" workover. Johnson has also threatened to invoke the protocol's Article 16 to unilaterally reject parts of the deal that are not working favorably for the UK, if new talks scheduled for this summer fails.

"Indeed, the difficulties are so profound that I have had to consider whether safeguarding action is necessary under the Article 16 framework which the Protocol provides. My conclusion is that the circumstances in which we find ourselves would justify such an approach," he wrote in the forward to a 28-page proposal from his government.

Back in 2019, the UK and EU agreed to the Northern Ireland Protocol as a separate agreement in conjunction with the Brexit agreement. This was the most difficult part of the negotiations, since another agreement – the Good Friday Protocol – makes illegal any border between the Republic of Ireland and Northern Ireland. But the conundrum: Ireland remained in the EU, while Northern Ireland, which is part of the UK, did not. Johnson's solution to stopping illegal EU trade: a border between the UK and Ireland in the Irish Sea.

In May, just as the European Parliament formally ratified Brexit, the deal cost Northern Ireland First Minister Arlene Foster, a staunch opponent of the Northern Ireland Protocol, her job. Foster was just the latest in the line of UK leaders who resigned or were fired over Brexit and the preceding years of acrimony with the EU (see **WTTL**, May 3, page 2).

On the same day he met von der Leyen, Johnson begged German Chancellor Angela Merkel to intercede. In a July 22 press release from Johnson's office, he told Merkel that "solutions could not be found through the existing mechanisms of the Protocol and that was why we had set out proposals for significant changes to it." In the end, he pleaded with the chancellor and the EU "collectively to engage in a constructive and detailed discussion on the UK's proposals."

> "The Protocol was failing to deliver on many of its intended objectives: to minimize disruption to everyday lives, to respect Northern Ireland's integral place in the UK's internal market, and to preserve the delicate balance in the (Belfast) Good Friday Agreement in all its dimensions," he wrote.

In the forward to the government's 28-page proposal, he observed that "having reached a difficult compromise on the final text of the Protocol, we expected both sides to recognize the need to apply and administer it in a way that took account of the unique context of Northern Ireland, as the Protocol itself requires." In closing, he urges cooperation. "The same sense of responsibility that brought the Protocol into being must be summoned again, in recognition of the fact that it is failing to deliver on what it set out to achieve."

U.S. lawmakers weighed in. "I welcome continued engagement between the UK and the EU on ways to protect the gains made by that historic peace accord in all of its dimensions. I strongly encourage the UK and the EU to work together in a flexible and pragmatic manner in an effort to improve implementation of the Protocol and to make it work more effectively for all affected parties," Rep. Richard Neal (D-Mass.) said in a statement.

U.S., Allies Stop Short of Sanctions over Chinese Hacking

The U.S. July 26 joined its allies in condemning the government of China for supporting, backing and shielding cyber hackers who in January 2021 broke into Microsoft email servers supporting thousands of clients worldwide and also affecting numerous state governments, small businesses, and some military contractors in the U.S. Although it is unclear why the government and allies stopped short of sanctioning China, it put Beijing on notice that it not only knew what China was up to but threatened unified concerted action.

"Today, countries around the world are making it clear that concerns regarding the PRC's malicious cyber activities is bringing them together to call out those activities, promote network defense and cybersecurity, and act to disrupt threats to our economies and national security," the White House said in a statement.

> "We've raised our concerns about both the Microsoft incident and the PRC's broader malicious cyber activity with senior PRC government officials, making clear that the PRC's actions threaten security, confidence, and stability in cyberspace. The U.S. and our allies and partners are not ruling out further actions to hold the PRC accountable," a senior administration official told reporters.

Allies that joined the U.S. include the United Kingdom (UK), NATO, Canada, Japan, the European Union (EU), Australia and New Zealand. "Working collectively enhances and increases information sharing, including cyber threat intelligence and network defense information, with public and private stakeholders and expand diplomatic engagement to strengthen our collective cyber resilience and security cooperation," the administration added.

"Today's announcement builds on the progress made from the president's first foreign trip. From the G7 and EU commitments around ransomware to NATO adopting a new cyber defense policy for the first time in seven years, the president is putting forward a common cyber approach with our allies and laying down clear expectations and markers on how responsible nations behave in cyberspace," the administration said.

However, Justice announced the next day that a federal grand jury in California July 16 unsealed an indictment charging four Chinese nationals for breaking into and stealing data from numerous companies, universities and governments around the world between 2011 and 2018.

* * * Briefs * * *

EXPORT ENFORCEMENT: Los Angeles-area resident Yi-Chi Shih was sentenced July 22 in Los Angeles U.S. District Court to 63 months in prison for role in scheme to illegally obtain technology and integrated circuits with military applications and export to China without required licenses. In June 2019 after six-week trial, he was found guilty of conspiracy to violate International Emergency Economic Powers Act (IEEPA) and 17 other charges for role in scheme. Shi and others shipped chips to Chengdu GaStone Technology Company (CGTC), Chinese company on BIS Entity List. Co-defendant Kiet Ahn Mai of Pasadena was sentenced in September 2019 in same court to 18 months' probation (see **WTTL**, Sept. 30, 2019, page 6). Mai pleaded guilty in December 2018 to smuggling.

MORE EXPORT ENFORCEMENT: Arash Yousefi Jam, Iranian national living in Canada, pleaded guilty July 22 in Detroit U.S. District Court for his role in conspiracy to export nine electrical discharge boards, CPU board, two servo motors, and two railroad crankshafts to Iran via UAE between January 2015 and February 2017 without required licenses. Indictment against Jam and brother Amin Yousefi Jam, Iranian national also living in Canada, and Abdollah Momeni Roustani, Iranian national believed to be living in Iran, was unsealed in January (see **WTTL**, Jan. 18, page 8). Arash Jam was arrested by U.S. authorities in December 2020.

STILL MORE EXPORT ENFORCEMENT: Alfa Laval U.S. of Richmond, Va., and Alfa Laval Middle East Ltd. of United Arab Emirates (UAE) agreed July 26 to pay total civil penalty of $432,570 to settle BIS and OFAC charges related to unauthorized shipment of two Alfa Laval Gamajet 10 automated tank cleaning machines to Iran between May 2015 and March 2016. Items were valued at approximately $18,585 and designated as EAR99. Civil penalty includes $215,000 to BIS and $217,570 to OFAC. Firm falsely listed on "Electronic Export Information (EEI) that Alfa Laval's distributor in the UAE was the ultimate consignee, when, in fact, the items were destined for and ultimately shipped to Alborz in Iran," BIS order noted. Neither AL Middle East nor AL U.S. voluntarily self-disclosed apparent violations.

SANCTIONS: New York-based payment platform Payoneer agreed July 23 to pay OFAC $1,400,301.40 civil penalty to settle 2,260 violations of multiple sanctions programs, including Crimea region of Ukraine, Iran, Sudan and Syria, between February 2013 and February 2018. "Payoneer processed 2,241 payments for parties located in certain jurisdictions and regions subject to sanctions… and 19 payments on behalf of sanctioned persons" on OFAC's SDN List, agency said. Company voluntarily self-disclosed 19 violations. Transactions totaled $802,117.36. Competitor PayPal paid more than $7 million to settle similar charges in March 2015 (see **WTTL**, March 30, 2015, page 4).

VENEZUELA: OFAC July 20 issued GL 5G delaying effectiveness until Oct. 21, 2021, of authorization of licenses applicable to holders of Petroleos de Venezuela, S.A. (PdVSA) 2020 8.5% bond.

BLACK GIRL MAGIC: Senate July 21 confirmed Bonnie Jenkins, first Black to hold job, to be under secretary of State for arms control and international security in 52-48 vote. Sens. Susan Collins (R-Maine) and Rand Paul (R-Ky.) crossed aisle… Two days earlier, Senate approved Tiffany Cunningham to be first Black judge on Court of Appeals for Federal Circuit (CAFC) in 63-33 vote.

WIRE MESH: In 5-0 final vote July 20, ITC determined U.S. industry is materially injured by dumped imports of standard steel welded wire mesh from Mexico.

COPPER PIPE: In 5-0 final vote July 26, ITC found U.S. industry is materially injured by dumped imports of seamless refined copper pipe and tube from Vietnam.

EX-IM BANK: President Biden July 26 announced his intent to nominate Judith Pryor to be first VP of Export-Import (Ex-Im) Bank. Senate confirmed Pryor and two others to be Ex-Im board members in 77-19 vote in May 2019 (see **WTTL**, May 13, 2019, page 4). She previously served as VP at OPIC, now U.S. International Development Finance Corp. Two days later to maintain board quorum, Biden authorized Ex-Im Senior VP James Cruse to continue serving as acting first VP and vice chair, and Senior VP James Burrows to serve as acting president and board chair.