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U.S., Japan Start Formal Consultations on Section 232 Tariffs

Less than two weeks after sealing a deal with the European Union (EU) on steel and aluminum tariffs, the administration Nov. 12 turned its attention to Japan, announcing the start of consultations with Tokyo. The talks will include an in-person visit by Commerce Secretary Gina Raimondo.

> The two partners "will seek to resolve bilateral concerns…, including the application of Section 232 measures, trade flows, and the sufficiency of actions that address steel and aluminum excess capacity with the aim of taking mutually beneficial and effective actions to restore market-oriented conditions and preserve our critical industries," U.S. Trade Representative (USTR) Katherine Tai and Raimondo said in a joint statement.

A week earlier, Tai and Japanese Trade Minister Hagiuda Koichi "discussed the importance of working together to address issues in the steel and aluminum sectors," according to a USTR readout of the meeting (see **WTTL**, Nov. 8, page 1). The U.S. and EU announced a deal to suspend steel and aluminum tariffs during the G20 meeting Oct. 30.

Raimondo is scheduled to visit Japan Nov. 15, the start of a four-day swing through Asia for meetings with government officials and business leaders, including subsequent stops in Singapore and Malaysia, the department announced in parallel with the steel announcement.

OFAC Imposes Sanctions on Eritrean Entities, Officials

Following up on the administration's previous executive order, Treasury's Office of Foreign Assets Control (OFAC) Nov. 12 designated four entities and two individuals "in response to the growing humanitarian and human rights crisis and expanding military conflict in Ethiopia," the agency said. This is just the latest administration action against the African country. Most recently, Ethiopia, Guinea and Mali will no longer be eligible for the African Growth and Opportunity Act (AGOA) trade preference program in the new year, "due to actions taken by their governments," the administration announced Nov. 2 (see **WTTL**, Nov. 8, page 1). Specifically, the White House cited Ethiopia for "gross violations of internationally recognized human rights."

The individuals and entities designated are: Eritrean Defense Force, the People's Front for Democracy and Justice (PFDJ), Abraha Kassa Nemariam, Hidri Trust, Red Sea Trading Corporation and Red Sea CEO Hagos Ghebrehiwet W Kidan. Kassa is the head of the Eritrean National Security Office; Hidri Trust is the holding company of all PFDJ business enterprises.

At the same time, OFAC issued General License (GL) 4 which authorizes transactions and activities "that are ordinarily incident and necessary to the wind down of transactions involving Hidri Trust or Red Sea Trading Corporation" through Dec. 14. The U.S. "stands ready to pursue additional actions, including against the Government of Ethiopia and the Tigray People's Liberation Front, if there is not tangible progress toward a cessation of hostilities," OFAC Director Andrea Gacki said.

State Official Previews New CAT Policy

The Biden administration is developing a new Conventional Arms Transfer (CAT) Policy that will reflect "the president's goals of putting diplomacy first, respecting human rights and international humanitarian law, revitalizing and reimaging alliances, and delivering for the American people," Tim Betts, the principal deputy assistant secretary of State for the Bureau of Political-Military Affairs, told the Defense Trade Advisory Group (DTAG) Nov. 4.

> In a January blog post, a group of arms control experts urged the administration to "ensure that U.S. arms do not continue to fuel human rights violations, civilian harm, corruption, and criminal violence" (see **WTTL**, Jan. 25, page 4). One of their recommendations was to develop and release a new CAT Policy. The previous White House in April 2018 proposed new CAT and Unmanned Aerial Systems (UAS) export policies to streamline direct sales.

In developing the new policy, "we seek to elevate human rights, stress the principles of restraint and responsible use, and consider our partners' security sector governance within our holistic approach to evaluating proposed arms transfers," Betts told the DTAG. Specifically, "this administration will not approve arms transfers where we believe such transfers are not in our national interest because of the risk of diversion, civilian harm, misuse, or contrary to any of the other criteria," he added.

Toward this end, Betts called out "the administration's decision to recalibrate our relationship with Saudi Arabia, indefinitely suspending two large precision guided munitions cases previously approved to Saudi Arabia." The same day, State notified Congress of its approval of a possible Foreign Military Sale to Saudi Arabia of 280 AIM-

120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and related equipment for an estimated cost of $650 million. "The new CAT Policy will strengthen the U.S. manufacturing and defense industrial base and helps ensure resiliency in global supply chains. It will also help promote research and innovation into emerging defense technologies, ensuring that the United States and its allies and partners can maintain technological advantages over current and potential adversaries," Betts noted.

Lawmakers, Business Groups Urge More Engagement in Asia Trade

Perhaps they have not read the administration's policy announcements, but Republican lawmakers think President Biden is not doing enough to engage with Asian trading partners and compete with China. On the eve of Biden's virtual meeting with Chinese President Xi Jinping, Republican members of the Senate Finance Committee urged the administration to move forward on a digital trade agreement in the Indo-Pacific.

"So far, during your administration, the United States continues to sit on the sideline. Our refusal to get into the game to set the rules for trade in the Indo-Pacific encourages potential partners to move forward without us and ensures China will hold the reins of the global economy," the 14 GOP senators wrote in a letter to Biden Nov. 8.

> At press time, Biden is scheduled to meet virtually with President Xi Nov. 15. "Following their September 9 phone call, the two leaders will discuss ways to responsibly manage the competition between the United States and the PRC, as well as ways to work together where our interests align. Throughout, President Biden will make clear U.S. intentions and priorities and be clear and candid about our concerns with the PRC," Press Secretary Jen Psaki said in a statement Nov. 12.

The senators cited China's joining or interest in joining the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Transpacific Partnership (CP-TPP). "That China could someday become an outsized member of both major trade blocs in Asia while the United States is party to neither, is a strategically unfavorable position to be in for the United States. If this challenge is left unanswered, China will continue to make headway in its strategy to build a China-centric economic order and displace the United States from its pre-eminent position in international affairs," they wrote.

The Business Roundtable echoed the senators' sentiments. "Across the Indo-Pacific, the United States has free trade agreement partners and allies who want to work together to strengthen our economies and preserve a rules-based global trading system. Now is the time to demonstrate U.S. leadership by pursuing a significant economic and trade agenda with this large and growing region," Business Roundtable President & CEO Joshua Bolten said in a statement.

Commerce Rejects Circumvention Petition on Solar Panels

Citing the group's refusal to name its members, Commerce Nov. 10 rejected a petition from American Solar Manufacturers Against Chinese Circumvention (A-SMACC) claiming that producers in Malaysia, Thailand, and Vietnam are unlawfully circumventing antidumping (AD) and countervailing duty (CVD) orders on imports of crystalline silicon photovoltaic cells (CSPV) and/or modules from China.

> Under the auspices of the Solar Energy Industries Association (SEIA), more than 200 U.S. solar companies in September urged Commerce Secretary Gina Raimondo to ignore the petition, citing the anonymous nature of group and the devastating impact on U.S. solar production (see **WTTL**, Sept. 27, page 6).

In its letter to A-SMACC, Commerce said it "determined… that A-SMACC's designation of its members' names as business proprietary information is unwarranted and that those names should be publicly disclosed in A-SMACC's requests for circumvention inquiries."

"The proprietary designation prevents parties with industry knowledge from commenting on the A-SMACC members' operations and their status as interested parties. Hence, the proprietary designation of members' names may prevent Commerce from obtaining and considering information relevant to the decision of whether to initiate the requested circumvention inquiries," Commerce noted.

The department also cited potential, but unknown conflicts of interest that could impact an ongoing investigation. "If Commerce conducts a circumvention proceeding, it may consider conducting the proceeding on a country-wide basis. A-SMACC has not requested that Commerce conduct country-wide circumvention proceedings, but rather, it has indicated a preference for initiating the requested circumvention inquiries on a company-specific basis," it said.

SEIA President Abigail Ross Hopper called the decision "a major victory for America's 231,000 solar workers." She added that "the petitions have already had a chilling effect on the industry's supply chain, and if imposed, we would have seen massive project cancellations and job losses within days."

Industry Urges Transparency, Resilience in ICT Supply Chain

To protect the information and communications technology (ICT) supply chain, companies and industry trade groups 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.

In a much-anticipated Federal Register notice in September, the Bureau of Industry and Security (BIS) requested public comments on the administration's report on "supply chains for critical sectors and subsectors of the [ICT] industrial base, including the industrial base for the development of ICT software, data, and associated services" (see **WTTL**, Sept. 20, page 4). CTIA, which represents the U.S. wireless communications industry, requested that Commerce Secretary Raimondo "recognize that any federal supply chain policies should be focused on supporting continued innovation in global technology as well as maximizing transparency with the private sector."

Information Technology Industry Council (ITI) made 10 specific recommendations, including: build and leverage robust public-private partnerships; strengthen the technology workforce; enhance cooperation with global partners; invest in critical technologies; avoid the wholesale repatriation of ICT supply chains; fund existing legislation such as CHIPS for America; develop investment tax credits for critical ICT products; address negative impacts of tariffs; streamline policymaking; and avoid overly restrictive federal procurement requirements.

> Similarly, HP suggested four key policy actions: prioritize ICT ecosystem projects in the Manufacturing Supply Chain Resilience Fund; foster key trade relationships and collaborate with allies; reassess China 301 tariffs on ICT components; and alleviate port bottlenecks and shipping challenges.

In addition, HP encouraged Commerce "to recognize several other specialized electronic components – namely, liquid crystal displays, printed circuit boards, and graphics cards – and other essential items – lithium ion batteries, power supplies/ adaptors, and plastic/ metal mechanical parts – as important contributors to the electronics supply chain, as well as for other industries, including the automotive industry, and to focus policies and incentives on reshoring those component suppliers as well."

The Coalition of Services Industries (CSI) urged coordination on investment screening and export controls with the European Union (EU) and other trading partners. "The government should avoid taking unilateral actions that would disadvantage exports from U.S. companies while competitors in allied nations are allowed to continue selling the same products and services into the global market. Such an outcome would needlessly handicap U.S. industry without yielding improvements in security," CSI noted.

CSI also urged the administration to ensure that the World Trade Organization (WTO) moratorium on duties on electronic transmissions is made permanent. "If the ban were allowed to lapse, governments around the world would be in a position to impose tariffs on the data used to design and manufacture semiconductors, R&D-related data flows, and a host of other commonly used services that are essential to world trade. Such a development would be nearly impossible to implement in practice, would add immense uncertainty to existing trade and digital flows, and be highly disruptive to global supply chains," the group commented.

Huawei, the subject of substantial export controls, said it is "fully prepared to engage in a direct dialogue" with the U.S. "to fully understand and seek to address concerns about Huawei's ongoing participation in the U.S. ICT supply chain." Commerce "must employ a collaborative and holistic risk-management framework in assessing and mitigating ICT do supply chain risks. Country-based and categorical exclusions of particular suppliers little to address the actual risks from a global supply chain perspective. Such exclusions reduce the diversity of the supply chain and potentially amplify the vulnerabilities of the global ICT supply chain," Huawei argued.

MITRE suggested "the U.S. build cooperative agreements with allied governments regarding the security of IT products, and how we will exchange information and employ common practices. Further, the U.S. should work with these nations to balance domestic production in allied countries with the current trade dependencies on foreign manufacturing and any potential impact of a trade war," the company noted.

Flex urged "strengthening our supply chains and revitalizing the manufacturing base requires better tools, better supply chains, better manufacturing processes, and government policies that support productivity innovation, provide practical education, welcome global talent, and reduce barriers to trade. Policies intended to incentivize ICT supply chain diversification must address these issues or face likely failure."

> Palantir recommended solutions that would allow for the breaking down silos between data, people, and processes across the supply chain, as well as enhancing real-time visibility into the ICT ecosystem. "Full visibility into the ICT manufacturing ecosystem and network operations will enable the U.S. Government to predict future disruptions and implement/ coordinate necessary regulatory controls to mitigate risks to national security while minimizing the negative impacts to U.S. businesses," it wrote.

Microsoft warned against overly restrictive policies. "The U.S. cannot expect to retain its technological leadership, much less strengthen it by enhancing U.S companies' ability to create and sell sensitive or critical ICT technologies, if U.S. industry is subject to overly restrictive measures that could stall or halt important aspects of its business. The very same companies that are developing cutting-edge products and services for the ICT supply chain are also the companies most likely to be affected by restrictive sourcing requirements," the company commented.

House Democrats Wade into Northern Ireland Protocol Fight

A group of House Democrats Nov. 9 urged the United Kingdom (UK) to abandon plans to invoke Article 16 of that Northern Ireland Protocol that would involve suspending parts of the Brexit deal. UK and European Union (EU) officials have been negotiating the protocol for the last month.

"The Northern Ireland Protocol was a significant achievement during the volatile Brexit process, and its full implementation is critical for ensuring Brexit doesn't undermine decades of progress toward peace on the island of Ireland," Reps. Gregory Meeks (D-N.Y.), William Keating (D-Mass.), Earl Blumenauer (D-Ore.) and Brendan Boyle (D-Pa.) said in a joint statement.

During a White House press conference with President Biden and UK Prime Minister Boris Johnson in September, a British journalist asked Biden if his reluctance to grant the UK a trade deal was tied up with Northern Ireland protocols. "They're two separate issues. On the deal with the UK, that's continuing to be discussed. But on the protocols, I feel very strongly about those," Biden said (see WTTL, Sept. 27, page 5).

> Lord David Frost addressed the subject in a speech to Parliament Nov. 10: "The aim [of negotiations] has been to assess whether it is possible to close the substantial gap between our positions and secure a consensual, negotiated resolution. So far that has not been possible. This is, at least in part, because the Commission's proposals would not do enough to make the protocol sustainable for the future or even deliver what they have claimed."

"Although we have been talking for nearly four weeks, there remain possibilities that the talks have not yet seriously examined, including many approaches suggested by the UK. So there is more to do and I certainly will not give up on this process unless and until it is abundantly clear that nothing more can be done. We are certainly not at that point yet. If, however, we do in due course reach that point, the Article 16 safeguards will be our only option," he added.

* * * Briefs * * *

<u>POLYMERS</u>: Ad Hoc Coalition of American SAP Producers, which includes BASF Corporation and Evonik Superabsorber LLC, filed antidumping duty (AD) petition Nov. 2 with ITA and ITC against imports of superabsorbent polymers from Korea.

<u>FREIGHT COUPLERS</u>: In 5-0 preliminary vote Nov. 12, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of freight rail coupler systems and components from China.

<u>MOBILE EQUIPMENT</u>: In 5-0 final vote Nov. 10, ITC determined U.S. industry is threatened with material injury by subsidized imports of certain mobile access equipment and subassemblies thereof from China. Countervailing duties will range from 11.97 to 448.80%.

<u>SANCTIONS</u>: OFAC Nov. 9 issued Finding of Violation to Mashreqbank psc (Mashreq), UAE financial institution, for now-repealed Sudan sanctions. Between January 2005 and February 2009, Mashreq's London branch processed 1,760 outgoing payments totaling $4,085,427,520 through U.S. financial institutions "that related to U.S. dollar transfers from accounts of Sudanese banks held outside the United States," agency said. In July 2010, U.S. office of Mashreq Bank agreed to pay $12,800 civil penalty to settle four BIS antiboycott charges (see **WTTL**, Aug. 16, 2010, page 2).

<u>EXPORT ENFORCEMENT</u>: SP Industries, Inc. (dba SP Scientific), of Warminster, Pa., agreed Nov. 8 to pay $80,000 civil penalty to settle four BIS charges of exporting ThermoJet-ES precision temperature cycling systems to Huawei and related entities without required BIS licenses between May and August 2019. Company voluntarily self-disclosed two of alleged violations were "pursuant to errors in its export screening process," agency said. Items were classified EAR99. Huawei and related entities were added to Entity List in May 2019.

HUAWEI: President Biden Nov. 11 signed Secure Equipment Act of 2021 (S. 1790/H.R. 3919), which directs Federal Communications Commission (FCC) to clarify that it will no longer review or issue new equipment licenses to companies that pose national security threat. Senate passed bill by unanimous consent in October (see **WTTL**, Nov. 1, page 6).

NORD STREAM: Sen. Jim Risch (R-Idaho) and five GOP cosponsors Nov. 4 introduced amendment to FY2022 National Defense Authorization Act (NDAA) that would impose mandatory sanctions on Nord Stream 2 AG, company in charge of Russian pipeline project. At October hearing on Treasury's sanctions review, Sen. Pat Toomey (R-Pa.) repeated his opposition to Biden administration's sanctions waiver: "The administration has also chosen to ignore a law requiring sanctions for Russia's Nord Stream 2 pipeline" (see **WTTL**, Oct. 25, page 5).

SECTION 232: Trade attorneys from Morris, Manning & Martin LLP and two other plaintiffs Nov. 12 filed petition for certiorari to Supreme Court on behalf of Turkish pipe producer to appeal ruling on Section 232 duties on Turkish steel. Court of Appeals for Federal Circuit (CAFC) in July reversed July 2020 Court of International Trade (CIT) ruling that duties are unlawful (see **WTTL**, July 19, page 2). CIT found that proclamation was made beyond 90-day timeframe set in statute and without "procedurally proper finding" of national security concerns.

CAMBODIA: USTR will conduct assessment of Cambodia's Generalized System of Preferences (GSP) eligibility as part of broader GSP evaluation, administration announced Nov. 10. At same time, State, Treasury and Commerce issued Business Advisory to "caution U.S. businesses currently operating in, or considering operating in, Cambodia to be mindful of interactions with entities involved in corrupt business practices, criminal activities and human rights abuses," agencies said. Advisory addresses two primary areas of risk exposure for U.S. companies: illicit finance activities and related risks for financial, real estate, casino and infrastructure sectors; and entities involved in trafficking in persons, wildlife and narcotics trafficking in Cambodia and related risks for manufacturing and timber sectors.