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WTO Arbitrator Sides with China in CVD Dispute

Call it a win, perhaps, but a World Trade Organization (WTO) arbitrator Jan. 26 determined the appropriate level of retaliation was only a quarter of what China first requested "in response to the United States' continued non-compliance" of a WTO ruling on countervailing duties levied on certain Chinese goods.

> The arbitrator determined that the appropriate level of nullification or impairment was $645 million annually. In October 2019, the U.S. objected to a Chinese request for WTO authorization to suspend trade concessions on $2.4 billion of U.S. imports (see **WTTL**, Oct. 28, 2019, page 1).

"The deeply disappointing decision today by the WTO arbitrator reflects erroneous Appellate Body interpretations that damage the ability of WTO Members to defend our workers and businesses from China's trade-distorting subsidies. Today's decision reinforces the need to reform WTO rules and dispute settlement, which have been used to shield China's non-market economic practices and undermine fair, market-oriented competition," USTR Spokesperson Adam Hodge said in a statement.

In July 2019, the WTO Appellate Body (AB) upheld a dispute panel's ruling regarding U.S. compliance with an earlier WTO ruling in the dispute. In a mixed ruling on a mixed ruling, the report contained a separate dissenting opinion from one of the three AB members on the appeal.

Administration, Congress Ready Sanctions Responses

Time to brush up on the foreign-direct product (FDP) rule that officials used to sanction Huawei during the previous administration. If Russia invades Ukraine, U.S. officials are prepared to pull it out of the toolbox again. At the same time, Congress is ready to require a wide range of other sanctions. "In the case of export controls, what we're talking about

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are sophisticated technologies that we design and produce that are essential inputs to Russia's strategic ambitions," a senior administration officials said during a teleconference Jan. 25.

"You can think of these export controls as trade restrictions in the service of broader U.S. national security interests. We use them to prohibit the export of products from the U.S. to Russia and, potentially, certain foreign-made products that fall under U.S. export regulations," the official added.

> "The reason they work is: If you step back and look at the global dominance of U.S.-origin software, technology, and tooling, the export control options we're considering alongside our allies and partners would hit Putin's strategic ambitions to industrialize his economy quite hard. And it would impair areas that are of importance to him, whether it's in artificial intelligence or quantum computing, or defense, or aerospace, or other key sectors," they said.

In an October Frequently Asked Question (FAQ), the Bureau of Industry and Security (BIS) clarified a real-world example of the FDP Rule, whether a company may export a non-U.S. product to a designated entity without confirmation that a license was obtained authorizing the incorporation of the components (see **WTTL**, Nov. 1, 2021, page 1).

Four days before the background briefing, Rep. Gregory Meeks (D-N.Y.) introduced the House version of the Defending Ukraine Sovereignty Act of 2022 (H.R. 6470), which would include: sanctions on the Nord Stream 2 pipeline, Russian extractive industries and at least three Russian financial institutions; prohibiting all transactions of new Russian debt; sanctions on Vladimir Putin and other Russian leaders; expedited security assistance for Ukraine; expanded programming to counter Russian disinformation and cyber activity. and a national security waiver. Sen. Robert Menendez (D-N.J.) introduced the Senate version earlier in January (S. 3488).

"It is necessary that the United States, together with our transatlantic allies, make clear that any activities constituting an invasion by the Russian army into sovereign territory will be met with significant repercussions. This legislation would impose significant consequences on Russia, both financially and otherwise," Meeks said in a statement.

House Democrats Try One More Trade Bill

As part of a larger legislative package to address U.S. competitiveness, House Democrats Jan. 25 announced plans for a bill to again reauthorize or extend several trade programs that have expired or need reform, including Trade Adjustment Assistance (TAA), the Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB).

The bill would also stop unfairly traded goods from exploiting the de minimis import threshold; empower the U.S. Trade Representative (USTR) to take strategic steps to improve supply chain resiliency; strengthen U.S. antidumping and countervailing duty (AD/CVD) laws; reaffirm the U.S. government's commitment to the WTO; and allow U.S. Customs and Border Protection to update its staffing model to better respond to the challenges of the modern trading system.

> A week earlier, Rep. Earl Blumenauer (D-Ore.) introduced a similar bill (H.R. 6412) that would exclude products from non-market economy countries and products that are subject to certain enforcement actions, such as Section 301 and 232, from the $800 de minimis import threshold (see **WTTL**, Jan. 24, page 2).

Specifically on AD/CVD laws, the latest bill gives Commerce "the authority to apply CVD law to subsidies provided by a government to a company operating in a different country – also known as a third country subsidization," a House Ways and Means Committee fact sheet noted. "The bill also creates a new successive AD/CVD investigation to combat repeat offenders by making it easier for petitioners to bring new cases when production moves to another country," it added.

House Republicans denounced the bill. "As President Biden sits on the sidelines while our competitors are reaching trade agreements that divide up the world's customers for their farmers, workers and businesses, Democrats are pushing a highly partisan bill stuffed with more Washington control over the economy and ideological pandering to Democrats' political base," Rep. Kevin Brady (R-Texas) said in a statement.

Agencies Warn Industry of Burma Business Risks

Maybe it doesn't have to be said. A year after a February 2021 coup, the administration Jan. 26 issued a business advisory to "inform the public of the heightened risks associated with doing business in Burma." This was only the latest in a long line of U.S. actions against the country.

State, Treasury, Commerce, Labor, Homeland Security and the USTR's office issued the advisory to "inform individuals, businesses, financial institutions, and other persons, including investors, consultants, and research service providers of the heightened risks associated with doing business in the country, and in particular with the military regime, which is involved in human rights abuses."

"Additionally, businesses and individuals should be wary of the associated illicit finance risks as well as reputational and legal risks of conducting business and utilizing supply chains under military control in Burma," it noted. The specific entities and sectors of greatest concern within Burma include: state-owned enterprises; gems and precious metals; real-estate and construction projects; and arms, military equipment and related activity, the advisory explained.

In November, State, Treasury and Commerce issued a similar 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," the agencies said (see **WTTL**, Nov. 15, page 8).

BIS in July 2021 added four Burmese entities to its Entity List: Wanbao Mining and two subsidiaries, Myanmar Wanbao Mining Copper and Myanmar Yang Tse Copper; and King Royal Technologies Co. (see **WTTL**, July 5, 2021, page 4). The three copper mining firms have revenue-sharing agreements with Myanmar Economic Holdings Limited (MEHL), which BIS added to the Entity List three months earlier.

Commerce Releases Findings on Semiconductor Supply Chain

In findings Commerce released Jan. 25, the Biden administration's attempt to solve America's semiconductor supply woes are proving far more intractable than first thought. Even the best-laid plans for increased production in the next three to five years will not help the current shortage, down to five days' supply, and the long wait for washing machines, cars and other consumer goods.

> Industry had a chance to defend itself as Commerce in September requested comments on how to secure and strengthen America's semiconductor product supply chain (see **WTTL**, Sept. 27, page 5). The department's request had "the goal of accelerating information flow across the various segments of the supply chain, identifying data gaps and bottlenecks in the supply chain, and potential inconsistent demand signals."

Chief among Commerce's findings are: demand in 2021 was 17% higher than 2019; and manufacturers were operating at 90% utilization capacity. Bottlenecks are most concentrated in a legacy logic chips (used in autos, medical devices and other products), analog chips (used in power management, image sensors, and radio frequency), and optoelectronics chips (including for sensors and switches), the department noted.

"The main bottleneck that respondents identified is the need for additional fab capacity. Additional bottlenecks that respondents identified include a lack of raw material inputs for both semiconductors and the other components paired with semiconductors to assemble sub-parts for electric devices," Commerce added.

"The semiconductor supply chain remains fragile, and it is essential that Congress pass chips funding as soon as possible," Commerce Secretary Gina Raimondo **said**. "With sky-rocketing demand and full utilization of existing manufacturing facilities, it's clear the only solution to solve this crisis in the long-term is to rebuild our domestic manufacturing capabilities," she added.

On the same day Commerce released its findings, House committee chairs announced the contours of the America COMPETES Act of 2022, imploring legislators to speed-up "American manufacturing of semiconductors," address the "supply chain vulnerabilities," reassert America's leadership in science and technology, and in doing so strengthen the country's national security and economic foundation. The bill also includes reauthorization and reform of several key trade programs (see related story, page 2).

Industry Comments on Brain-Computer Interface Technology

We've heard this song before. In response to a request for comments on potential export controls on brain-computer interface (BCI) technology, industry groups and academic researchers urged BIS to exclude certain uses, including automotive applications and medical devices.

> In October, BIS started chipping away at the task of identifying potential emerging technologies and requested comments on the potential uses of BCI technology and whether export controls on this technology would be effective and appropriate (see **WTTL**, Nov. 1, 2021, page 3). The agency received 18 comments in response.

The Alliance for Automotive Innovation proposed any potential controls explicitly exclude software, hardware and systems "designed for civil automobile applications." The group commented that "any controls on BCI should not impede the development of innovative technologies that will help make motor vehicles cleaner, safer, and smarter. Emerging technologies remain crucial to transforming personal mobility, and the automotive industry is already leveraging BCI to support next-generation vehicle safety features."

Blackrock Neurotech described the two major categories of brain computer interfaces: those that have promise for "rehabilitative" applications and those that can be described as "enhancing," the company commented. "Any proposed rulemaking should consider the distinct differences between 'rehabilitative' and 'enhancing' technologies so as to narrowly craft rules that reflect their very different applications and implications," it wrote.

Synchron, a Brooklyn company that is developing an implantable BCI medical device for the treatment of paralysis, urged BIS to "limit any discussion of export controls to encompass only those BCI products that are intended for non-medical use," it wrote. "The U.S. currently holds a major technology advantage over the rest of the world in the field of invasive BCI. Any U.S. export controls placed on implanted BCI medical technology, either hardware or software, would substantially hinder this leadership position," Synchron added.

University of Pittsburgh researchers echoed Synchron's sentiment. "BCI technology and science have been an international endeavor for many years, and we expect this to continue. Since most companies trying to develop and commercialize BCI technologies are small and work with limited resources, we feel strongly that additional export control restrictions and market limitations will have a significant negative impact on their overall development, and will disproportionally affect U.S. technological leadership," they commented.

"While there may be narrow areas of U.S. national security concern with respect to BCIs, we believe the United States benefits by supporting the global development of BCI-based platforms led by U.S.-based companies. This is an opportunity for the United States to become a global leader in the technological revolution that is forming around precision measurement of the brain. For this to become reality, the scope of any new export controls relating to BCIs should be narrowly applied to security-related applications and controlled multilaterally," HI LLC, which does business as Kernel, commented.

USTR Launches Forced Labor Trade Strategy

As part of a larger administration effort, the USTR's office Jan. 26 launched the effort to develop a trade strategy to combat forced labor, including in global supply chains. The effort was launched at the inaugural meeting of the President's Interagency Task Force to Monitor and Combat Human Trafficking.

> "The development of this strategy will include a thorough interagency review of our existing trade policies and tools used to combat forced labor, including forced child labor, to determine areas that may need strengthening and gaps that need to be filled," USTR Katherine Tai told the meeting.

"We will use this analysis to establish objectives, priorities, new tools, and key action items to advance our goals. We will also create an inclusive process that maximizes input from stakeholders, including labor organizations, civil society, survivors, and the private sector," she added.

Tai also highlighted specific trade engagements, including: continued work through the WTO fisheries subsidies negotiations; using the Trade and Technology Council to develop concrete actions for the U.S. and European Union (EU); monitoring and upholding forced labor obligations under the U.S.-Mexico-Canada Agreement; and contributing USTR expertise on global supply chains in the implementation of the *Uyghur Forced Labor Prevention Act* (H.R. 6256).

President Biden signed the Uyghur bill, which bans imports from Xinjiang region of China and imposes sanctions on foreign individuals responsible for forced labor in the region, in December (see **WTTL**, Jan. 3, page 7). The Senate unanimously passed the bill a week earlier, two days after the House passed the compromise bill by voice vote.

ITC Calls Censorship Non-Tariff Trade Barrier

In the first volume of its Section 332 investigation of censorship as a non-tariff barrier, the International Trade Commission (ITC) Jan. 27 outlined the evolution of such practices and policies in six key markets (Pub. 5244). In addition, the report also described "elements that entail extraterritorial censorship and the roles of governmental and nongovernmental actors in implementation and enforcement of censorship policies and practices."

Sen. Ron Wyden (D-Ore.) requested the ITC divide the investigation into two volumes in April 2021 (see **WTTL**, April 12, 2021, page 6). The second volume, which is expected in July 2022, would provide "an analysis of the trade and economic effects of such policies and practices on affected businesses" in U.S. and their global operations.

> "It is no accident that the same laws that crush free speech in China also prevent American media and technology firms from competing fairly in the most populous country on earth," Wyden said in a statement after the first volume's release. "If the United States wants to compete in the economy of the future and ensure a free and open internet for people around the world, our government needs to get serious about fighting back against authoritarian censorship."

"Chinese censorship policies and practices also affect U.S. businesses in other services and manufacturing industries, such as sports and entertainment, apparel and footwear, hotels and accommodation, and airlines. The Chinese government leverages access to its large consumer market to push companies to follow Chinese policies and practices concerning prohibited content not only in their company websites and other marketing communications in China, but also in their global communications," the report said.

In addition to China, the ITC called out restrictive practices in five other key markets: Russia, Turkey, Vietnam, India and Indonesia. "These markets use a variety of policies and practices to operationalize censorship and suppress speech, including criminal laws that suppress speech, internet shutdowns, and internet blocking and throttling," the report said. These practices, coupled with others such as internet intermediary rules, data localization and local presence requirements, have become more restrictive since 2016.

* * * Briefs * * *

EXPORT ENFORCEMENT: UK resident Saber Fakih pleaded guilty Jan. 25 in D.C. U.S. District Court to exporting and attempting to export Industrial Microwave System (IMS) and counter-drone system to Iran without required OFAC license. Four indictments – Canadian Bader Fakih, UAE national Altaf Faquih and Iranians Alireza Taghavi and Jalal Rohollahnejad – were unsealed at same time. BIS added Rohollahnejad to Entity List in March 2020 for procuring goods on behalf of Rayan Roshd Afzar Company, which has been linked to Iranian Revolutionary Guards Corps (IRGC) (see **WTTL**, March 16, 2020, page 6).

RUSSIA: OFAC Jan. 24 issued general licenses (GLs) 13Q and 15K, extending previous GLs that expanded sanctions relief for Russian conglomerate GAZ Group. Specifically, OFAC extended GL expiration date to April 27. "These new licenses are being extended for a shorter period of 90 days," agency said.

WIRE ROD: In 5-0 "sunset" votes Jan. 28, ITC said revoking antidumping duty (AD) orders on stainless steel wire rod from Japan, Korea and Taiwan would renew injury to U.S. industry.

HYDROFLUOROCARBON: In 5-0 "sunset" vote Jan. 25, ITC said revoking AD order on imports of hydrofluorocarbon blends from China would renew injury to U.S. industry.