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Aluminum Industry, Labor Groups Diverge on Tariffs

With the new administration comes the opportunity for a fresh look at existing policies. After a meeting May 28, the G7 trade ministers called for multilateral negotiations on industrial subsidies, which include U.S. Section 232 aluminum tariffs. As expected, labor and industry groups had differing responses to the ministers' calls.

The U.S. and the European Union (EU) announced in May they will begin to address global steel and aluminum excess capacity, including "appropriate trade measures," (see **WTTL**, May 24, page 3). The two partners committed to finding solutions before the end of the year.

The ministers called out "harmful industrial subsidies, including those that lead to severe excess capacity, a lack of transparency regarding the state's role in the economy and the role of state enterprises in unfair subsidization" in a joint ministerial communique.

In response, the aluminum associations of the U.S., EU, Canada and Japan welcomed "the shift from bilateralism to multilateralism," in a joint statement June 1. The four groups would work to ensure that their systems "do not fall victim to the enormous subsidies from state enterprises that are distorting markets along the aluminum value chain."

A week earlier, the Economic Policy Institute (EPI) urged the administration to maintain the aluminum tariffs, which "enabled U.S. aluminum output, employment, and capital investment to rebound, while creating no adverse effects for aluminum-consuming industries such as motor vehicle parts, construction goods, and canned beverages," the group said in a report May 25.

Executive Order Blocks U.S. Investment in Chinese Defense Firms

With the stroke of a pen June 3, President Biden banned U.S. investment in 59 Chinese defense and surveillance technology firms, some of which will sound familiar to loyal

readers, that “undermine the security or democratic values of the United States and our allies.” Included on the list that takes effective Aug. 2 are: China National Offshore Oil Corporation (CNOOC), Huawei Technologies and Hangzhou Hikvision Digital Technology.

The Federal Communications Commission (FCC) in March initiated revocation proceedings against three Chinese telecom companies, including China Unicom Americas. Five days earlier, the agency published a final list of telecom producers, including Huawei and Hangzhou Hikvision, that pose a risk to U.S. national security (see **WTTL**, March 22, page 2). In an effort to clean out its backlog before the new team moved in, the Bureau of Industry and Security (BIS) added CNOOC to its Entity List in January.

The latest Executive Order (EO) “prevents U.S. investment from supporting the Chinese defense sector, while also expanding the U.S. Government’s ability to address the threat of Chinese surveillance technology firms that contribute — both inside and outside China — to the surveillance of religious or ethnic minorities or otherwise facilitate repression and serious human rights abuses,” a White House fact sheet noted.

Specifically, the EO bans “the purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities” of sanctioned firms, it said. Treasury’s Office of Foreign Assets Control (OFAC) further defined the term “publicly traded securities” as any security “denominated in any currency that trades on a securities exchange or through the method of trading that is commonly referred to as ‘over-the-counter,’ in any jurisdiction.

The Chinese government denounced the measures. “The U.S. should respect rule of law and the market, correct its mistakes, and stop actions that undermine the global financial market order and investors’ lawful rights and interests. China will take necessary measures to firmly safeguard Chinese enterprises’ legitimate and lawful rights and interests and support them in defending their rights and interests according to law,” Foreign Ministry Spokesperson Wang Wenbin told reporters.

USTR Punts New Tariffs over Digital Taxes

The U.S. Trade Representative’s (USTR) office June 2 found digital services taxes (DSTs) adopted by six countries are worthy of imposing additional tariffs, but then suspended those tariffs while multilateral negotiations continue at the Organization for Economic Cooperation and Development (OECD) and other venues.

The USTR’s office announced in March it is continuing investigations into DSTs adopted by Austria, Spain, the United Kingdom (UK), India, Italy and Turkey (see **WTTL**, March 29, page 1). At that time, the agency terminated the remaining four investigations of Brazil, the Czech Republic, the European Union (EU), and Indonesia.

“The United States remains committed to reaching a consensus on international tax issues through the OECD and G20 processes. Today’s actions provide time for those negotiations to continue to make progress while maintaining the option of imposing tariffs under Section 301 if warranted in the future,” USTR Katherine Tai said in a statement.

At press time, the G7 finance ministers were engaged in two days of meetings June 4-5, to hammer out disagreements on a global tax rate and how that international tax factors in with a EU DST proposal, ahead of the G7 heads of state meeting, which is scheduled for June 11-13 in Cornwall.

The digital tax is a central pillar of the EU as it tries to get corporations to pay a fair rate for plying IT services to hundreds of millions of its citizens. It is also meant to curb, what many see as an insidious act, where corporations fish for the lowest tax haven to set up shop, as a means of tax avoidance or to pay the lowest rate.

Industry groups and lawmakers applauded the USTR decision. “This is the right decision which avoids escalation and allows time to reach a multilateral solution to global taxation through the OECD,” BritishAmerican Business said in a statement.

“USTR’s announcement reflects that governments across the world continue to advance digital services taxes that undercut significant activity in multilateral negotiations and further fragment the international tax system,” said Jason Oxman, Information Technology Industry Council (ITI) president and CEO.

“After months of productive engagement by Secretary [Janet] Yellen and the Treasury Department, we are optimistic that a strong multilateral agreement can be reached to harmonize our international tax rules, end the race to the bottom, and put a stop to digital services taxes. We look forward to working with the administration and evaluating the outcome of these negotiations for American workers, businesses, and taxpayers,” Rep. Richard Neal (D-Mass.) and Sen. Ron Wyden (D-Ore.) said in a joint statement.

In a letter to Yellen a week earlier, Sen. Mike Crapo (R-Idaho) urged the administration to continue its work against unilateral DSTs, which “unfairly discriminate against American businesses,” he wrote May 25. “It would be unacceptable for the United States to endorse any agreement that would allow DSTs or similar unilateral measures to continue to be imposed on U.S. companies,” Crapo added.

Lack of BIS Progress Hampers Industry, Report Says

To universal applause in 2018, Congress required the Bureau of Industry and Security (BIS) to define a list of “emerging and foundational” technologies that would direct any new export controls. Since then, the agency has taken a few bites at the apple, but has generally fallen short of the mark, according to a new report by the U.S.-China Economic and Security Review Commission (USCC) published June 1.

In November 2020 comments that sounded remarkably like other recent public responses to future regulation, industry groups warned BIS to tread carefully when considering potential controls on foundational technologies, some of which have existed for years and are widely available outside the U.S. (see **WTTL**, Nov. 16, 2020, page 1).

Since the Foreign Investment Risk Review Modernization Act (FIRRMA) and the Export Control Reform Act (ECRA) became law three years ago, “there has been a significant delay in forming this list along with a lack of clarity on the process and methodology,” the USCC wrote.

“Treasury has fulfilled its implementation requirements for FIRRMA, but BIS’s ongoing failure to clarify what constitutes emerging and foundational technologies hampers [Committee on Foreign Investment in the U.S.] CFIUS’s ability to screen foreign acquisition of potentially sensitive technologies,” it added.

“Without the additional clarity of definitions or lists, significant gaps remain in the export control system as U.S. companies continue to export items that may eventually be covered by a final list. Investors and companies must work around these ambiguities as they consider new investments or contracts that may fall under the proposed categories of emerging technologies from BIS. With the current ambiguity, no one can reasonably predict how foundational technologies might ultimately be understood under the export control regime,” the USCC report noted.

U.S., Allies Develop Belarus Sanctions over Hijacking

The European Union (EU) and the U.S. plan to impose further sanctions on Belarus for forcefully commandeering a commercial flight between two EU nations. The partners are “developing a list of targeted sanctions against key members of the Lukashenko regime associated with ongoing abuses of human rights and corruption, the falsification of the 2020 election, and the events of May 23,” the White House said in a statement May 24.

Four days later, White House Press Secretary Jen Psaki said that the removal and arrest of Belarusian journalist Raman Pratasevich are “a direct affront to international norms. These events took place amid an escalating wave of repression by the Lukashenko regime against the aspirations of the people of Belarus for democracy and human rights.”

“I welcome the news that the [EU] has called for targeted economic sanctions and other measures and have asked my team to develop appropriate options to hold accountable those responsible, in close coordination with the European Union, other allies and partners, and international organizations,” Biden said in a statement May 24.

The president’s actions would be well coordinated to include several branches of the U.S. government. The U.S. June 3 reimposed full blocking sanctions against nine Belarusian state-owned enterprises previously granted relief under a Treasury general license, a move announced before the hijacking (see **WTTL**, April 26, page 5). In addition, the U.S.

will suspend its discretionary application of the 2019 U.S-Belarus Air Services Agreement. Treasury “will develop for the President’s review a new Executive Order that will provide the United States increased authorities to impose sanctions on elements of the Lukashenko regime, its support network, and those that support corruption, the abuse of human rights, and attacks on democracy,” the White House said. “Justice, including the FBI, is working closely on this matter with our European counterparts,” it said.

Putin Will Test Rules-Based Order at Summit

With just days before President Biden meets Russian President Vladimir Putin in Geneva June 16, the administration is caught between imposing harsher sanctions for Russia’s most recent transgressions and maintaining a working relationship with an uncompromising bully. Some Western diplomats have called for more stringent steps, including drastically starving Russian oligarchs residing in Western democracies and tax havens

Citing the need to rebuild European relationships, the U.S. in May backed off imposing sanctions on a Russian company, its CEO Matthias Warnig and its corporate officers for construction of the Nord Stream 2 pipeline, which was 95 percent completed at the beginning of the Biden administration (see **WTTL**, May 24, page 4).

Biden has been blindsided by a slew of recent hostile actions taken by the Kremlin. These included two cyberattacks, cosigning Belarus’ forcefully commandeering of a European commercial flight between two EU nations and threatening to deploy 20 military units on the western borders to confront NATO. This is despite both Secretary of State Tony Blinken and National Security Advisor Jake Sullivan meeting with Russian diplomats in preparation for the Biden-Putin Summit.

Why still meet? NATO Secretary General Jens Stoltenberg has an answer. “We will continue also what we call our dual-track approach to Russia, meaning that we are providing credible deterrence and defense, but at the same time, we work for meaningful dialogue with Russia,” Stoltenberg said in a press conference May 31. “Even if we’re not able to, even without any improved relationship with Russia, it is important to manage a difficult relationship with Russia, with transparency on military activities, risk reduction, and also for instance, issues like arms control,” he added.

The White House announced the meeting with Putin May 25. “The leaders will discuss the full range of pressing issues, as we seek to restore predictability and stability to the U.S.-Russia relationship,” Press Secretary Jen Psaki said in a statement. Later in a press briefing, Psaki got more specific. “We expect they will spend a fair amount of time on strategic stability, where the arms control agenda goes following the extension of New START. Obviously, we’re both members of the P5+1, as well, as those negotiations are ongoing,” she said. “The President will also raise Ukraine, underscoring America’s support for Ukraine’s sovereignty and territorial integrity. And he will also plan to raise Belarus and convey our grave concerns,” Psaki added.

* * * **Briefs** * * *

NOMINATION: President Biden June 3 nominated Connect Frontier CEO Grant Harris to be Commerce assistant secretary for industry and analysis at International Trade Administration. From 2011-2015, Harris served as special assistant to president and senior director for African affairs at White House. His predecessor, Nazak Nikakhtar, who also briefly served as acting BIS under secretary, joined Wiley law firm as partner in February (see **WTTL**, Feb 22, page 5).

EXPORT ENFORCEMENT: Photonics Industries International in Ronkonkoma, N.Y., agreed May 28 to pay BIS \$350,000 civil penalty to settle five charges of violating export regulations. Company exported RGH-1064-30 picosecond laser systems to China without required BIS licenses in December 2014. Of penalty, \$300,000 will be suspended for two years and then waived if company commits no further violations. Items were classified under Export Control Classification Number (ECCN) 6A005 and controlled for national security (NS) and anti-terrorism (AT) reasons. Two years later, in May 2016, Photonics exported DCH-355-3 laser system, which was designated EAR99, to blocked entity Sichuan University in Chengdu, China.

MORE EXPORT ENFORCEMENT: Alsima Middle East General Trading Dubai, United Arab Emirates (UAE) agreed May 28 to pay BIS \$25,000 civil penalty to settle two charges of violating its export regulations. In October 2015, Alsima “made false and misleading representations, statements, and certifications” in connection with submission of BIS license application for export to UAE of powder grade nickel, BIS said. Nickel powder is classified under ECCN 1C240, controlled for nonproliferation (NP) and AT reasons. Of penalty, \$12,500 shall be suspended for two years and then waived, provided company commits no further violations.

STILL MORE EXPORT ENFORCEMENT: Malaysian nationals Lionel Chan of Brighton, Mass., and Muhammad Mohd Radzi of Brooklyn were sentenced May 28 in Boston U.S. District Court for conspiring to violate Arms Export Control Act (AECA) for illegal exports of firearm parts, including gun barrels, firing pin and gun sight, to Hong Kong in 2018. Chan was sentenced to eight months in prison followed by 36 months’ supervised release and \$10,000 fine; Radzi will serve 60 months’ probation. Both pleaded guilty in January (see **WTTL**, Jan. 25, page 6). Defendants were indicted in February 2019. Parts were classified under USML Category I.

PLEASE SIR, MORE EXPORT ENFORCEMENT: GVA International Oil and Gas Services (GVA) pleaded guilty May 25 in Savannah, Ga., U.S. District Court to export charges in scheme to procure Vectra 40G power turbine from U.S. manufacturer and ship Vectra to blocked Russian company that intended to use turbine on Arctic deepwater drilling platform. Oleg Vladislavovich Nikitin and his Russian company KS Engineering (KSE) pleaded guilty in March to related charges (see **WTTL**, April 5, page 6). Italian national Gabriele Villone, GVA owner, was sentenced in June 2020 to 28 months in prison. Other charged parties were KSE employee Anton Cheremukhin; GVA employee Bruno Caparini; Dali Bagrou and Bagrou’s U.S.-based company World Mining and Oil Supply (WMO). Bagrou remains in custody.

VENEZUELA: OFAC June 1 issued General License (GL) 8H, extending previous GL that authorized transactions involving Petróleos de Venezuela, S.A. (PdVSA) necessary for maintenance of operations for Chevron, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International. Specifically, OFAC extended GL expiration date to Dec. 1 from June 3.

HONEY: In 5-0 preliminary vote June 4, ITC found U.S. industry may be injured by allegedly dumped imports of raw honey from Argentina, Brazil, India, Ukraine and Vietnam.

LINE PIPE: In 5-0 “sunset” vote June 2, ITC said revoking antidumping and countervailing duty orders on imports of certain welded line pipe from Korea and Turkey would renew injury to U.S. industry.

SANDWICH BAGS: CAFC June 2 affirmed CIT determination on classification of Ziploc® brand reclosable sandwich bags. CIT “believed that HTSUS heading 3923 describes the bags more specifically than HTSUS heading 3924. Neither party challenges the Trade Court’s determination that HTSUS heading 3923 ‘has requirements that are more difficult to satisfy and describe the article with a greater degree of accuracy and certainty,’” Circuit Judge Timothy Dyk wrote for three-judge panel in *SC Johnson & Son Inc. v. U.S.* If merchandise had been classified under sub-heading 3924.90.56 and was imported from Thailand, bags were eligible for duty-free treatment under Generalized System of Preferences.

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