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Senators Introduce Section 232 Tariff Reform Bill

Continuing a years-long process to reform the Section 232 tariff process, a bipartisan group of senators March 15 introduced a bill (S. 746) that would “require the Secretary of Defense to initiate investigations and to provide for congressional disapproval of certain actions.”

The bill, introduced by Sens. Rob Portman (R-Ohio), Dianne Feinstein (D-Calif.), Joni Ernst (R-Iowa), Kyrsten Sinema (D-Ariz), Roger Wicker (R-Miss.), and Todd Young (R-Ind.), would also bifurcate the existing Section 232 process into an investigation phase, led by Defense, and a remedy phase, led by Commerce.

"Splitting these responsibilities, while guaranteeing consultation between the two departments at all stages of the process, plays to each department's strengths to ensure that the statute is used for genuine national security purposes," said a statement from Portman's office. The bill would also expand the use of the disapproval resolution process to all types of products, beyond oil imports as currently in the statute.

In February 2019, Portman and Rep. Ron Kind (D-Wis.) introduced similar bills (S. 365/H.R. 1008). At a November 2019 hearing, Senate Finance Committee leaders hinted at a truce that could allow the two parties to work together (see **WTTL**, Nov. 11, 2019, page 2). “I originally introduced this bill over concerns regarding the previous administration's intent to misuse Section 232 statute to impose tariffs on automobiles and auto parts, which would have a devastating impact on Ohio jobs and the U.S. economy as a whole,” Portman said of the latest bill.

BIS Adds More Restrictions on Russian Exports

In another clear sign of a break with the previous administration, the Bureau of Industry and Security (BIS) imposed additional export restrictions on Russia March 18 in response

to the attempted assassination of opposition leader Aleksey Navalny in August 2020 and his subsequent imprisonment in January 2021.

“Consistent with BIS’s implementation of the CBW [Chemical and Biological Weapons] Act sanctions, certain license exceptions will be suspended for use with national security-controlled [NS] items destined for Russia, and most license applications for exports or reexports of national security-controlled items destined for Russia will be reviewed under a presumption of denial,” the agency said in the Federal Register notice.

Two weeks earlier, State amended Section 126.1 of the International Traffic in Arms Regulations (ITAR) to include Russia in the list of countries “subject to a policy of denial for exports of defense articles and defense services” (see **WTTL**, March 8, page 2). At that time, BIS added 14 entities to its Entity List based on their “proliferation activities in support of Russia’s weapons of mass destruction programs and chemical weapons activities.”

Specifically, BIS suspended License Exceptions Servicing and Replacement Parts and Equipment (RPL), Technology and Software Unrestricted (TSU), and Additional Permissive Reexports (APR). Other categories of NS exports will be allowed under License Exceptions Temporary Imports, Exports, Reexports, and Transfers (TMP); Governments, International Organizations, International Inspections under the Chemical Weapons Convention and the International Space Station (GOV); Baggage (BAG); Aircraft, Vessels and Spacecraft (AVS), and Encryption Commodities, Software, and Technology (ENC).

Allowed categories include: “items necessary for the safety of flight of civil fixed-wing passenger aviation; deemed exports and reexports to Russian nationals; items destined for wholly-owned U.S. subsidiaries and other foreign subsidiaries of U.S. companies that are located in Russia; and items in support of government space cooperation,” BIS said. In addition, a partial waiver for items in support of commercial space launch activities will apply until Sept. 1.

FCC Moves Against Chinese Telecom Firms

The Federal Communications Commission (FCC) March 17 initiated revocation proceedings against three Chinese telecom companies, a move that could prohibit the carriers from operating in the U.S. Five days earlier, the agency published a final list of telecom producers, including Huawei and ZTE, that pose a risk to U.S. national security.

“This list provides meaningful guidance that will ensure that as next-generation networks are built across the country, they do not repeat the mistakes of the past or use equipment or services that will pose a threat to U.S. national security or the security and safety of Americans,” acting Chairwoman Jessica Rosenworcel said in a statement.

The FCC in November denied ZTE’s request to reconsider the company’s designation as a national security threat to the integrity of communications networks or the communi-

cations supply chain (see **WTTL**, Nov. 30, page 1). “After reviewing the record, the Bureau found no basis for reconsideration,” the agency said at the time. Specifically, the FCC began proceedings against China Unicom Americas, Pacific Networks, and ComNet; on the list of national security risks are Huawei Technologies, ZTE, Hytera Communications, Hangzhou Hikvision Digital Technology, and Dahua Technology.

Chinese officials denounced the latest moves. “We urge the U.S. side to abide by market economy principles, stop the wrong approach of abusing the national security concept and politicizing economic issues, stop resorting to state power to suppress Chinese companies, and provide a fair, just and non-discriminatory environment for Chinese businesses investing and operating in the United States. China will continue to take necessary measures to uphold the legitimated rights and interests of Chinese companies,” Chinese Foreign Ministry Spokesperson Zhao Lijian said in a press briefing.

Commerce Requests Information from Chinese IT Companies

Commerce served subpoenas on “multiple Chinese companies that provide information and communications technology and services (ICTS)” in the U.S., the department announced March 17. The action follows a May 2019 executive order (EO 13873) from the previous administration.

“In issuing subpoenas today, we are taking an important step in collecting information that will allow us to make a determination for possible action that best protects the security of American companies, American workers, and U.S. national security. We hope to work cooperatively with these companies and conclude a thorough review,” Commerce Secretary Gina Raimondo said in a statement. Commerce did not name the companies served.

“The administration is firmly committed to taking a whole-of-government approach to ensure that untrusted companies cannot misappropriate and misuse data and ensuring that U.S. technology does not support China’s or other actors’ malign activities,” she added.

In an interim final rule published the day before President Biden’s inauguration, the department created a process where it could provide referrals on certain transactions, specifically those involving six types of technology and six countries identified as “foreign adversaries” (see **WTTL**, Jan. 18, page 5).

U.S., China Trade Barbs over Internal Affairs

In what reminded many of a middle school playground fight, Chinese officials traded sharp disagreements with Secretary of State Tony Blinken and National Security Advisor Jake Sullivan in Alaska March 18. Much of the dispute centered around how China has dealt with what it considers internal affairs, such as Xinjiang, Hong Kong, Tibet, and

Blinken raised public disagreements with how China has dealt with these “internal affairs.” He accused China of disrespecting the “rules-based” system with which the West and democratic nations conduct themselves.

“We’ll also discuss our deep concerns with actions by China, including in Xinjiang, Hong Kong, Taiwan, cyber-attacks on the United States, and economic coercion toward our allies. Each of these actions threaten the rules-based order that maintains global stability,” Blinken said.

But Chinese Communist Party foreign affairs chief Yang Jiechi seemed quite perturbed with Blinken’s statement. “I think the problem is that the United States has exercised long-arm jurisdiction and suppression and overstretched the national security through the use of force or financial hegemony, and this has created obstacles for normal trade activities, and the United States has also been persuading some countries to launch attacks on China,” Yang said.

In response, Sullivan argued that the U.S. was looking out for the interest of the American people and wishes for competition not conflict with China. “We’ll make clear today that our overriding priority from the United States’ side is to ensure that our approach in the world and our approach to China benefits the American people and protects the interests of our allies and partners. We do not seek conflict, but we welcome stiff competition, and we will always stand up for our principles, for our people, and for our friends,” Sullivan said.

What seemed to have upset the Chinese delegation was the U.S. discussions with the Quad, days prior, in a run-up to the Alaska meeting. China considers Japan and South Korea close trading partners with which it has built a dynamic trading relation.

“Those two countries are China’s second- and the third-largest trading partners. ASEAN has now become China’s largest trading partner, overtaking the European Union and the United States. So, we do hope that the United States will develop sound relations with all countries in the Asia-Pacific. We should have many mutual friends. This is the right way forward in the 21st century,” Yang argued.

But Blinken, who held discussions with both the leaders of South Korea and Japan days earlier, disagreed with the Chinese take on the trade, economic and political relations with those nations. “I have to tell you, what I’m hearing is very different from what you described. I’m hearing deep satisfaction that the United States is back, that we’re re-engaged with our allies and partners. I’m also hearing deep concern about some of the actions your government has taken, and we’ll have an opportunity to discuss those when we get down to work,” Blinken retorted.

To which Yang replied, “The overwhelming majority of American businesses in China have said that China’s business environment is good and nobody has forced them to stay in China. They see a profit coming from their presence in China and they see immense opportunities in China. That’s why they are staying in China.

Blinken Heads to Europe to Mend Fences

Fresh from genial meetings with Japan and South Korea, with a frosty stop in Alaska with Chinese officials, Secretary of State Antony Blinken will travel to Europe March 23-24 to meet with NATO allies and Secretary General Stoltenberg to underscore the Biden administration's determination to strengthen the transatlantic alliance following fissures created by the last U.S. administration.

"These meetings will be an opportunity for Ministers to discuss the NATO 2030 proposals for Alliance adaptation, concerns over China and Russia, as well as climate change, cyber security, combatting terrorism, energy security, and other common challenges we face together," State said in a statement.

"In addition, the Secretary will meet with European Commission President Ursula von der Leyen and EU High Representative for Foreign Affairs and Security Policy and European Commission Vice President Josep Borrell to discuss Transatlantic goals to contain the COVID-19 pandemic, pursue a sustainable global economic recovery, tackle the climate crisis, and strengthen democracy," the department added. The EU has also put a hold on data privacy, in response to recent court rulings, and the U.S. is looking for more clarity.

Blinken has his work cut out for him as China overtook the U.S. to become the EU's top trading partner after the previous administration's tough talk. According to the EU statistical agency, Eurostat, at the end of 2020 Europe sold more than \$711 billion to China while it sold \$673 billion to the U.S.

Two tough issues on top will be European leaders' position on Chinese tech firm Huawei's inclusion in 5G networks as well as the Kremlin's controversial Nord Stream 2, the natural gas pipeline linking Russia and Germany under the Baltic Sea. Sen. Ted Cruz (R-Texas) has put a hold on senior State nominees over the pipeline (see **WTTL**, March 15, page 6).

In response to the senator's hold, Blinken expressed the administration's commitment to complying with recent sanctions legislation and the current effort to identify entities that appear to be involved. "The department reiterates its warning that any entity involved in the Nord Stream 2 pipeline risks U.S. sanctions and should immediately abandon work on the pipeline," he said in a press statement March 18.

On Huawei, both leaders of France and Germany see the system of the West and China as "competing systems," not dangerous spying equipment. The previous administration made the exclusion of Huawei a major talking point in every meeting with EU leaders. It is unclear how far Biden intends to tread in these waters.

* * * **Briefs** * * *

WTO: U.S. March 19 appealed World Trade Organization (WTO) panel ruling in dispute with Korea over Commerce's use of adverse facts available in antidumping (AD) and countervailing duty (CVD) investigations on various steel products and large power transformers. Panel issued

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mixed ruling in January (see **WTTL**, Jan. 25, page 3). “Given the ongoing lack of agreement among WTO Members regarding the filling of Appellate Body vacancies, there is no Appellate Body Division available at the current time to deal with the appeal,” WTO said.

IRAN SANCTIONS: Cleveland instrument manufacturer UniControl agreed March 15 to pay OFAC \$216,464 civil penalty to settle charges of violating Iran sanctions from July 2013 to March 2017. “As a result of its failure to act on multiple apparent warning signs, UniControl exported 19 shipments of its goods from the United States to two European companies with reason to know that the goods were intended specifically for supply, transshipment, or reexportation to Iran,” agency said. In addition, company “had actual knowledge that an additional two shipments would be reexported to Iran,” OFAC added. UniControl voluntarily self-disclosed apparent violations. Shipments of air pressure switches were worth \$687,189.

EXPORT ENFORCEMENT: Santa Clara-based manufacturer Comtech Xicom agreed March 18 to pay \$122,000 civil penalty to settle three BIS charges of exporting traveling wave tubes (TWTs) to Russia, UAE and Brazil without required licenses. TWTs are classified under Export Control Classification Number (ECCN) 3A001.b, controlled for national security reasons and worth \$153,945. “Compliance official incorrectly told the staff person that the items could be shipped without a license,” BIS order said.

MORE EXPORT ENFORCEMENT: Iraqi national Nihad Al Jaberi, legal U.S. resident, faced indictment March 15 in Savannah, Ga., U.S. District Court on charges of attempted smuggling of firearms, including three pistols and six rifles, to Iraq in August 2020. Al Jaberi caused freight forwarder North Atlantic Logistics to submit false and misleading export information by “falsely declaring the contents of the shipment to only be ‘71 Pieces of Spare Auto Parts with No License Required’ when in fact, Al Jaberi knew the shipment at issue also contained firearms,” indictment noted.

CIVIL PENALTIES: In Federal Register March 17, OFAC adjusted for inflation maximum civil monetary penalties (CMPs) under relevant regulations. These include: Iran, Zimbabwe, Syrian, Darfur, Congo, Belarus, Lebanon, Magnitsky Act and Hizballah sanctions programs.

WIRE MESH: In 5-0 final vote March 17, ITC found U.S. industry is materially injured by subsidized imports of standard steel welded wire mesh from Mexico.

DIAMOND SAWBLADES: In 5-0 “sunset” vote March 15, ITC said revoking antidumping duty order on diamond sawblades and parts from China would renew injury to U.S. industry.

BIPARTISANSHIP: Senate March 17 confirmed Katherine Tai as U.S. Trade Representative (USTR) in rare 98-0 vote. “Her keen eye for enforcement and impressive record on negotiating tough deals has earned Katherine respect and admiration on both side of the aisle across Capitol Hill,” former boss, Rep. Richard Neal (D-Mass.), said in statement.

NOMINATIONS: President Biden March 15 formally nominated Bonnie Jenkins to be under secretary of State for arms control and international security, replacing Andrea Thompson, who resigned in September 2019 (see **WTTL**, Sept. 23, 2019, page 6). Jenkins is founder and executive director of the Women of Color Advancing Peace, Security and Conflict Transformation (WCAPS) ...Two days later, Biden nominated Jose Fernandez to be under secretary of State for economics and EU-U.S. Privacy Shield ombudsperson, replacing former DocuSign CEO Keith Krach. Fernandez is partner at Gibson Dunn & Crutcher law firm.

CANADA: DDTTC March 12 refreshed website content related to Canada. Updated information includes details on Canadian exemption, key Canadian partners, Canada's Controlled Goods Program, Canadian exemption user guide and FAQs.

FCPA: Former Och-Ziff CFO Joel Frank agreed March 16 to pay SEC \$35,000 civil penalty related to company's previous FCPA settlement. From 2007 through 2011, Och-Ziff Capital Management Group LLC "entered into a series of relationships and investments in which bribes were paid through intermediaries and business partners to high-ranking government officials in several nations on the African continent in order to win or retain business," SEC order noted. Frank "failed to fulfill his responsibilities regarding Och-Ziff's internal accounting controls and its books and records," it added. Brooklyn U.S. District Court judge dismissed SEC charges against two other former executives in July 2018 (see **WTTL**, July 16, 2018, page 9). Och-Ziff agreed in September 2016 to pay over \$412 million to resolve related charges.

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