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ZTE Looks Past Massive Export Settlement

Ending a year of uncertainty, ZTE and its trading partners are looking to move beyond a \$900 million settlement with Justice, Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) on sanctions violations, the largest fine and forfeiture levied in a U.S. export control case.

ZTE Corporation and ZTE Kangxun agreed March 7 to settle charges of making more than 500 shipments of U.S.-origin telecommunications equipment, including routers, microprocessors and servers, to Iran and North Korea without State or Commerce licenses. BIS added the companies to the Entity List in 2016 but quickly suspended the sanctions, most recently until March 29 (see **WTTL**, Feb. 27, page 4).

Under the settlement, ZTE agreed to pay a \$287 million criminal fine and \$143 million in forfeiture as part of a plea agreement in Dallas U.S. District Court; \$661 million to BIS with \$300 million suspended for seven years; and \$101 million to OFAC. BIS will recommend that ZTE be removed from the Entity List, conditioned on court approval of the plea agreement, the company noted in a press release.

The U.S. began investigating ZTE in 2012. After the company learned of the investigation, it "subsequently communicated to the U.S. government that it had wound down and ceased its Iran-related activities. However, ZTE's highest-level leadership decided to surreptitiously resume its Iran-related business," OFAC said in a web notice.

"ZTE acknowledges the mistakes it made, takes responsibility for them, and remains committed to positive change in the company," said Zhao Xianming, ZTE Chairman and CEO, in a statement.

Ross, Guajardo Say NAFTA Negotiations Will Go Forward – Will They?

At a joint press conference with Mexico's Economic Minister Idefonso Guajardo Villarreal, Commerce Secretary Wilbur Ross said the U.S. is in "the very early stages" of talks to

renegotiate NAFTA. Ross said negotiations will result in either two bilateral or one new agreement among the three nations. Guajardo, whose government said it will be ready for talks by the end of May, stood firm, saying “NAFTA is a trilateral agreement and it would make a lot of sense to have trilateral discussions.” Canadian Foreign Minister Chrystia Freeland previously echoed this sentiment (see **WTTL**, Feb. 27, page 2).

What concrete goals the White House hopes to achieve through renegotiations remain a mystery, according to Edward Alden, senior fellow at the Council on Foreign Relations (CFR). “I’ve had a lot of reporters call saying, you know, what do you think the administration’s going to ask for? And my answer is I don’t honestly know, because what do they say they want?” Alden said at a March 6 panel with former U.S. Trade Representative (USTR) Charlene Barshefsky and former Rep. Barney Frank (D-Mass.).

“They want more manufacturing investment, more factory jobs in the United States. I don’t understand how you renegotiate NAFTA to produce that outcome. NAFTA is a continental agreement that privileges investment in the North American continent. It’s very hard to tweak the agreement in ways to favor investment in the United States over investment in Mexico,” he added.

Alden does expect rules of origin to tighten, particularly on automobiles. But that doesn’t mean good things are coming for car manufacturers. Barshefsky agreed. “The biggest loser to radical change in NAFTA would be the auto industry. And if we’re talking about preserving and supporting American manufacturing jobs, as the bailout of GM and Chrysler showed, we’re talking about the U.S. auto industry,” she said.

“The U.S. auto industry, along with Canada and Mexico, has formed a North American, essentially, integrated supply chain. It’s not clear to me how it is of assistance to U.S. manufacturing to try and unwind that chain, and what the result of an unwinding would be, and why we would presume the unwinding would favor the United States in any event,” Barshefsky added.

Frank, who admitted his own voting record would show him in opposition to Barshefsky in many regards, does not believe much will happen with NAFTA because it might not benefit the president politically. “I don’t see much happening. I don’t think he needs to have much happen. And in some ways, he may not want to have much happen,” he said.

“Clearly, there was exaggeration on both sides about NAFTA, exaggeration about how much good it was going to do, exaggeration about how much harm it has done. And I think Trump’s problem is, if we were able to get the changes he wants in NAFTA and three years later nothing has gotten better as a result of it that’s in any way noticeable or measurable, that’s a problem. I think he’s perfectly happy to keep denouncing NAFTA and beating it up, and beating up the people who were for it,” Frank added.

He further noted that Mexico has an election coming up, and despite the efforts of the current Mexican administration, the next Mexican president may not be so eager to engage with the White House.

Sponsors See Opportunity for Cuba Legislation

While the Trump administration promised a full review of existing Cuba policy, members of Congress see a window of opportunity for moving legislation forward to lift portions of the trade embargo. At the same time, businesses looking for deals on the island face a period of uncertainty until the administration decides on its path.

Rep. Rick Crawford (R-Ark.) introduced in January the Cuba Agricultural Exports Act (H.R. 525), which would remove the prohibition on U.S. assistance and financing for certain agricultural exports to Cuba. The bill would also exempt from prohibitions against U.S. assistance to Cuba any exports under the market access program, the export credit guarantee program, and the foreign market development cooperator program, including any federal commodity promotion program obligations or expenditures of funds.

The bill currently has 37 cosponsors and is “gaining more traction as we speak,” Crawford said on a conference call March 9. “If we can get the bill marked up and to the floor I believe we can get it passed,” Crawford said, calling the bill a “very reasonable approach.” He said he was “positive and hopeful” about its chances.

The idea that lifting the embargo “doesn’t fit with the Trump administration is probably not accurate,” Crawford said. “This is good and it fits his agenda,” he said. The existing policy is under review with the administration as promised by Secretary of State Rex Tillerson in his confirmation hearing.

The Government Accountability Office (GAO) in January reported that even before this administration took over, relatively few commercial deals had been completed. “In addition, U.S. trade with Cuba has decreased, driven by declining agricultural exports, which have been legal since 2000,” it said (see [WTTL](#), Jan. 23, page 7).

In response to a participant’s question about the embattled Export-Import (Ex-Im) Bank, Crawford explained why it’s not part of the legislation. “We’re walking a fairly delicate line, trying,” he said, garnering support from folks who were ardently opposed. “They’re at the table with us, instead of working against us,” he said, referring to the South Florida delegation. These are folks who “don’t want to see the federal government be a backstop for a private sector endeavor.” That kind of provision “would possibly imperil that legislation,” he said.

Reps. Mark Sanford (R-S.C.) and Jim McGovern (D-Mass.) in January introduced the Freedom to Travel to Cuba Act of 2017 (H.R. 351), which removes current travel restrictions to the island. The ban “is both outdated and an unjust limitation on American freedom,” Sanford said in a statement at the time.

On the same call, James Williams, president of the national advocacy group Engage Cuba, highlighted predictions that lifting the embargo could create a \$6 billion opportunity in exports, but noted the current uncertainty since industry doesn’t know what the government policy is going to be, he said.

In answer to a question about the status of current OFAC licenses, Williams noted that the Trump administration posture is they “will continue to honor any specific licenses that have already been granted.” The question more broadly is what will happen to the general licenses, which are going to be evaluated, as well as what happens when licenses are up for renewal, he said.

TPP is Not Dead, At Least for Other Countries

Though Japanese Prime Minister Shinzo Abe has repeatedly stated that the Trans-Pacific Partnership (TPP) cannot go forward without the U.S., his government is giving different signals to U.S. officials and experts (see **WTTL**, Jan. 30, page 4).

Speaking in Washington March 9, Rep. Joaquin Castro (D-Texas), a founding co-chair of the Congressional U.S.-Japan Caucus, said he got the “sense in my conversations with Diet members and leadership in Japan that they’re struggling a bit with giving up on the idea of TPP...[and] trying to figure out whether they should go forward” without the U.S. “The region is wondering, how involved is the United States going to be in the Asia-Pacific as an economic player? And is China going to see this as more of an opening and take the lead?” he added.

It’s not just Japan, Castro noted. The Association of Southeast Asian Nations (ASEAN) is wondering how the U.S. will proceed in the region. Castro emphasized that the U.S. should not retreat -- especially not as China pushes forward with its multilateral trade negotiations that exclude the U.S. -- but push forward in engaging with the Asia-Pacific and its rapidly growing economy. He pointed to the Toyota factory in his San Antonio district as an example of good Japan-U.S. economic cooperation.

Shihoko Goto, senior associate at the Woodrow Wilson Center, agreed with Castro’s assessment that, contrary to Washington views, TPP is not dead. “It is moving, it is trying to figure out ways of reinventing itself, redefining itself, and there is movement, it is not completely dead. What is interesting is that there hasn’t really been this appetite on the part of Japan, at least in the public sphere, to want to take on that mantle of leading in a new economic architecture that would initially be based on trade, but it could expand into further areas,” Goto told the panel.

If a “TPP 11” (meaning, minus the U.S.) emerges, then Japan could take on a needed leadership role. Japan already is looked to for its expertise in manufacturing, technology and workplace standards, the panelists agreed. TPP countries, plus China and South Korea, will meet in Chile March 14-15. The non-U.S. countries will discuss how to move forward with either TPP or the China-led Regional Comprehensive Economic Partnership.

Ukraine Under Fire, Canada Boycotts Special 301 Hearing

At a USTR Special 301 hearing March 8, a Ukrainian diplomat testified that his country has made significant gains in intellectual property rights (IPR) protection and enforce-

ment, specifically that a specialized court to deal with IPR issues will come into existence by September. Those efforts aren't enough to warrant taking Ukraine off the watch list, according to the Internet Association. Canada, meanwhile, skipped the entire proceedings.

The Internet Association in its written and verbal testimony said that the issues that landed Ukraine on the watch list remain, particularly the "lack of transparent and predictable provisions on intermediary liability" and the absence of "limitations on [intermediary] liability" (see **WTTL**, May 2, 2016, page 5).

"A law proposed in late 2016 contained numerous problems, including an unfeasible requirement to remove information within 24 hours of a complaint, a requirement to provide user data to third parties even if an intermediary disputes the presence of infringing content, and a requirement to implement 'technical solutions' for repeat postings that likely would require intermediaries to monitor and filter user content. These and other provisions are in direct conflict with Section 512 of the Digital Millennium Copyright Act, and would harm the ability of U.S. companies to access the Ukraine market," the association noted in written comments.

The law the Internet Association referenced in its testimony was vetoed by the Ukrainian president. Ukraine's diplomat told the hearing that his government was looking to fix the problems the president had identified. Bulgaria was the only other country to testify at the hearing.

Canada decided to boycott the meeting shortly after it was revealed in April 2016 that Canada was once again on the watch list with 22 other countries. "The government of Canada does not recognize the validity of the process as the findings tend to rely predominantly on allegations from U.S. industry stakeholders rather than on objective analysis," Graham Flack, deputy minister of Canadian heritage, wrote in a memo dated May 2016 and recently uncovered by the Canadian press.

The Canadians maintain that they have a strong IPR protection and enforcement regime, consistent with international obligations, including NAFTA. Canada also took umbrage with the fact it remains on the watch list despite the enactment of the Copyright Modernization Act and Combating Counterfeit Products Act.

*** * * Briefs * * ***

TRADE FIGURES: Merchandise exports in January jumped 9.4% from year ago to \$127.9 billion, Commerce reported March 7. Services exports gained 3.7% to record-high \$64.1 billion from January 2016. Goods imports increased 9.2% from January 2016 to \$197.6 billion, as services imports gained 4.4% to \$42.9 billion.

ALUMINUM FOIL: Aluminum Association (AA) Trade Enforcement Working Group filed antidumping and countervailing duty petitions March 9 at ITA and ITC against certain aluminum foil from China. "Today's action marks the first time the Aluminum Association has filed unfair trade cases on behalf of its members in its nearly 85-year history," said AA President & CEO Heidi Brock in statement. United Steelworkers (USW) supported petition. "In just over a decade,

Chinese penetration of our market in these products has gone from 0 to 22 percent. Over that period, China's aluminum foil producers have stolen market share and jobs," USW said in statement.

SILICON METAL: Globe Specialty Metals filed antidumping and countervailing duty petitions March 8 at ITA and ITC against silicon metal from Australia, Brazil, Kazakhstan and Norway.

SUGAR: After meeting with Mexican counterpart March 10, Commerce Secretary Wilbur Ross announced extension of final decision date for administrative review of so-called "suspension agreements" with Mexico from April 4 to May 1. "This extension will allow more time for the United States and Mexico to reach agreement on a resolution of the serious issues we have identified with the current agreements. A mutually beneficial resolution will be evident if we achieve a long-term sustainable solution," two said in joint statement.

FCPA PILOT: Justice will keep FCPA pilot program running until decision is made on effort's future. Year-long pilot increasing mitigation credit for voluntary self-disclosures is set to end April 5. "At that time, we will begin the process of evaluating the utility and efficacy ... whether to extend it, and what revisions, if any, we should make to it. The program will continue in full force until we reach a final decision on those issues," Acting Assistant Attorney General Kenneth Blanco said March 10 at American Bar Association event. Five companies have received declinations under program, including Akamai and Nortek (see **WTTL**, June 13, 2016, page 1).

TRADE PEOPLE: Former ITC Vice Chairman Dean Pinkert joined Hughes Hubbard & Reed as partner in its International Trade Group, firm announced March 8. Pinkert joined Commission in 2007. Prior to ITC, he was senior attorney in Commerce Office of Chief Counsel for Import Administration. Former President Obama had nominated Jason Kearns, senior Democratic trade counsel for House Ways and Means Committee, to replace him, but seat remains vacant (see **WTTL**, Jan. 23, page 8).

MORE TRADE PEOPLE: Former USTR and Agriculture Secretary Clayton Yeutter died March 4. He led negotiation of U.S. Canada Free Trade Agreement, which later became NAFTA, and played major role in launching Uruguay Round. He was known for broad smile and ready laugh, but also could be tough negotiator. At same time, he was one of most accessible to public, business and press of any USTR, according to trade source. Yeutter was dedicated ambassador "who worked tirelessly for American farmers, workers, and businesses of all kinds. After his highly distinguished career in government, he frequently assisted USTR by providing support and advice during critical negotiations around the globe," Acting USTR Stephen Vaughn said in statement.

STEEL: In 5-0 final vote March 3, ITC found U.S. industry is materially injured by dumped and subsidized imports of stainless steel sheet and strip from China. Commission also made negative findings on critical circumstances for these imports.

MORE STEEL: In 5-0 final vote March 3, ITC found U.S. industry is materially injured by dumped and subsidized imports of carbon and alloy steel cut-to-length plate from China.

ALUMINUM EXTRUSIONS: In 5-0 "sunset" vote March 10, ITC said antidumping and countervailing duty orders on certain aluminum extrusions from China would renew injury to U.S. industry. United Steelworkers (USW) International President Leo Gerard applauded vote. "Clearly, the orders are effective in restoring fair pricing and show that, when we compete on a level playing field, America's aluminum extruders thrive. This would not occur, however, without the orders and the relief they provide from China's cheating," he said in statement.

EXPORT ENFORCEMENT: Volodymyr Nedoviz, U.S. lawful permanent resident and Ukrainian citizen, was arrested March 7 on charges in Brooklyn U.S. District Court of illegally exporting military-grade rifle scopes and thermal imaging equipment to Ukraine between November 2014 and March 2017. Items included Armasight Zeus-Pro 640 2-16x50 (60Hz) Thermal Imaging weapons sight, FLIR Thermosight R-Series, 60 mm 640x480 (30Hz) Rifle Scope and ATN X-Sight II 5-20x Smart Rifle Scope. Nedoviz remains in custody.

TECHNICAL DATA: In March 6 Federal Register BIS requested public comments on proposal for collecting technical data letters of explanation, which agency will submit to Office of Management and Budget (OMB) for clearance. Requiring these letters will assure BIS that “U.S.-origin technical data will be exported only for authorized end-uses, users and destinations,” notice said.

CHINA: China granted President Trump at least two dozen trademarks, which Trump’s lawyer applied for in April 2016 during presidential campaign. Sen. Debbie Stabenow (D-Mich.) March 8 accused Trump of delaying naming China currency manipulator while trademarks were under consideration. “Why all of a sudden after making the promise [to name China a currency manipulator] so clearly is he suddenly backing up on this and, surprise of all surprises, he’s now getting 38 more trademarks in China for businesses and products?” she told press.

USTR: Stephen Vaughn named USTR general counsel and acting USTR March 3. ... Senate Finance Committee will hold hearing on USTR nominee Robert Lighthizer March 14. Lighthizer represented Brazilian and Chinese governments in past, which requires he receive congressional waiver to serve. White House counsel Donald McGahn sent letter March 3 to Hatch and Senate Majority leader Mitch McConnell (R-Ky.) arguing waiver requirement is unconstitutional. McGahn quoted 1996 legal opinion brought about by nomination of Charlene Barshefsky. Barshefsky was confirmed and did receive waiver.

BREXIT: Germany’s goal in Brexit negotiations is to prevent UK from breaking apart rest of European bloc, according to March 9 document. EU leaders met in Brussels March 9-10 and spent second day discussing future of EU, minus UK Prime Minister Theresa May. UK is expected to trigger Article 50 by end of March. May wants to negotiate trade deal in tandem with divorce proceedings, but EU chief Brexit negotiator Michel Branier reportedly says no way.

WTO: Turkey March 8 requested WTO dispute consultations with U.S. on countervailing duties on imports of certain pipe and tube products, first WTO request in new U.S. administration. Turkey says U.S. countervailing investigations were inconsistent with WTO’s Agreement on Subsidies and Countervailing Measures (SCM Agreement) and GATT. If dispute is not resolved in 60 days, Turkey can request formation of panel.

FCPA: Six years after federal indictment, Amadeus Richers, former director of Cinergy Telecommunications, was arrested Feb. 23 and appeared in Miami U.S. District Court next day on charges of FCPA violations, wire fraud and money laundering. Richers, Cinergy, its president, plus president of Florida-based Telecom Consulting Services Corp. and two former Haitian government officials were charged in July 2011. Indictment alleges Cinergy and its related company, Uniplex Telecommunications, paid more than \$1.4 million to shell companies to bribe officials of Telecommunications D’Haiti (Haiti Teleco). Arraignment set for March 17. In May 2014, 11th Circuit Court of Appeals upheld related FCPA convictions of Joel Esquenazi and Carlos Rodriguez, former executives of Terra, one of companies also involved in scheme. Supreme Court denied petitions for certiorari in October 2014 (see **WTTL**, Oct. 13, 2014, page 3).