

Vol. 38, No. 13

March 26, 2018

## White House Takes on Chinese Technology Policies

As expected, President Trump signed a memorandum March 22 targeting China's economic aggression as outlined in the Section 301 investigation of China's technology, intellectual property and innovation policies. The announcement caused the Dow Jones to drop more than 700 points over a fear of trade war with China.

Per the memorandum, the U.S. Trade Representative (USTR) will propose a list of products and tariff increases within 15 days. In total, the U.S. is expected to place tariffs on \$50 billion of Chinese goods. Ad valorem duties of 25% are expected on aerospace, information and communication technology, and machinery. USTR held an interagency hearing in October 2017, which few industry representatives attended (see **WTTL**, Oct. 16, 2017, page 4).

The next day, USTR requested World Trade Organization (WTO) consultations with China to address its "discriminatory technology licensing requirements." The U.S. accused China of breaking WTO rules by denying foreign patent holders basic rights and imposing mandatory adverse contract terms that are discriminatory toward imported foreign technology. Treasury also has been instructed to address investment concerns in the U.S. by China "in industries or technologies deemed important to the United States."

"The word that I want to use is 'reciprocal.' When they charge 25% for a car to go in, and we charge 2% for their car to come into the [U.S.], that's not good. That's how China rebuilt itself," Trump said in remarks before the signing. The WTO has "been a disaster for us. It's been very unfair to us. The arbitrations are very unfair. The judging has been very unfair. And knowingly, we always have a minority and it's not fair," he added.

## Trading Partners, U.S. Companies Seek Tariff Exclusion

As the newly announced tariffs on steel and aluminum imports went into effect, a few trading partners could breathe easier and some U.S. companies began the process of

applying for individual product exclusions. Steel and aluminum tariffs resulting from the Section 232 investigations went into effect March 23 (see **WTTL**, March 12, page 1).

In two proclamations, the president late March 22 exempted Australia, Argentina, Korea, Brazil and the European Union (EU) from steel and aluminum tariffs, citing security relationships with those countries. Notably absent from that list was Japan. Canada and Mexico were already exempt pending the outcome of NAFTA negotiations. However, if ongoing discussions with those allies break down, then the administration reserves the right to put the tariffs back in place.

Earlier in the week, Ross and EU Trade Commissioner Cecilia Malmstrom issued a joint statement after meeting in Washington. “We have agreed to launch immediately a process of discussion with President Trump and the Trump Administration on trade issues of common concern, including steel and aluminum, with a view to identifying mutually acceptable outcomes as rapidly as possible.”

The day tariffs went into effect, China announced its retaliation. “In order to effectively protect China’s interests, China intends to suspend substantive equal concessions and other obligations to the United States in accordance with the relevant provisions of the WTO Agreement on Safeguard Measures and the Foreign Trade Law of the People’s Republic of China, that is, to add certain products imported from the United States,” noted a translated statement from China’s Ministry of Commerce.

The ministry released a tentative list of 120 items eligible for a 15% tariff, including fresh fruit, wine, and seamless steel pipes expected. Another eight items covered pork and processed products and recycled aluminum that will be subject to a 25% tariff.

On the U.S. industry side, Commerce March 18 announced its procedures for excluding individual products from the tariffs. The total processing time for exclusion requests is expected to take 90 days. Companies must submit a separate exclusion request for each distinct type and dimension of steel or aluminum product to be imported.

Requests will be open for public review after being posted to the regulations.gov website. In the first 30 days, U.S. parties can file objections; another 60 days will be needed for review of exclusion requests and related objection filings. A single response will be posted on [regulations.gov](https://www.regulations.gov) indicating whether or not an exclusion request has been granted. “These procedures will allow the Administration to further hone these tariffs to ensure they protect our national security while also minimizing undue impact on downstream American industries,” Commerce Secretary Wilbur Ross said in a statement.

## **Lighthizer Gives Trade Update to Congress**

U.S. Trade Representative (USTR) Robert Lighthizer faced annoyance from his own party members in a hearing before the House Ways & Means Committee March 21. Republicans pounded him on NAFTA provisions, particularly investor-state dispute settlement (ISDS)

and the proposed five-year sunset clause. Lighthizer also provided a limited update on the ongoing Korea-U.S. Free Trade Agreement (KORUS) negotiations, as did Commerce Secretary Wilbur Ross when he appeared before the same committee the following day.

Just prior to the hearing, 103 House and Senate Republicans published a letter defending ISDS. Ways and Means Committee Chairman Kevin Brady (R-Texas) in his opening remarks and line of questioning to Lighthizer emphasized the importance of retaining ISDS in order to win Republican approval. Lighthizer responded that the administration is skeptical of ISDS because “there are questions of sovereignty.”

Brady quickly countered that ISDS presents “no threat to sovereignty.” Foreign investors do not have more rights than Americans, he said. “Secondly, your client is Congress. Speaking out for our agriculture community that wants you to have America’s back when they have to invest in other countries, to win customers, energy, manufacturing, technology, services – every key industry in America has to compete against China and the rest of the world, and other countries, is saying ‘We need to have their back’ when they make their investments, and so you’re right there is a disagreement there,” he said.

“We’re going to continue to work together with you Mr. Ambassador to get to a good place and make sure we’re keeping this in a trade agreement and we have the backs of our American investors,” Brady concluded.

The proposed sunset clause was a particular point of contention for lawmakers from agricultural states. A five-year sunset clause puts too much uncertainty in the market, creating opportunities for competitors in Brazil and other markets to swoop in, said Rep. Kristi Noem (R-S.D.).

“These farmers are very worried that the administration, who they supported is going to lose them a trade deal over provisions that are widely unpopular,” she said. Lighthizer refused to budge on the issue and stated he wasn’t going to negotiate in public.

USTR also isn’t negotiating KORUS in public. When pressed as to why the administration opted not to use Trade Promotion Authority and instead use a mechanism in the agreement to trigger talks, Lighthizer said that it made the negotiations move faster. And as for transparency, he said that USTR will not be publishing any negotiating documents, but he’s willing to meet with Congress members individually. KORUS, he said, will be concluded soon, a position echoed by Ross two days later.

“We believe we are relatively close to a pretty comprehensive resolution with the South Korean government. It will encompass, if it goes through, both the 232s and broader trade issues. And we hope by sometime next week to be able to have a real announcement,” Ross said March 23 at the signing of the omnibus spending bill (see Briefs, page 7).

## Mixed Results in China WTO Compliance Dispute with U.S.

The U.S. and China received mixed results March 21 from a World Trade Organization (WTO) dispute panel regarding U.S. compliance with an earlier WTO ruling on countervailing duties levied on certain imported Chinese goods. Both countries have 20 days to decide if they want to appeal the panel's findings. China originally requested consultations with the U.S. in May 2016 (see **WTTL**, June 13, 2016, page 6).

Commerce was vindicated at several turns. The panel found that China did not demonstrate that Commerce's public body analysis was inconsistent with the Dispute Settlement Body's (DSB) rulings and recommendations, nor did China demonstrate that Commerce erred in treating Chinese providers of steel and other inputs as public bodies in its countervailing duty investigations.

In contrast, China was able to demonstrate that Commerce's use of third-country prices was inconsistent with Article 14(d) of the WTO's agreement on Subsidies and Countervailing Measures (SCM) and that Commerce had disregarded evidence related to certain input prices. The panel agreed with China that Commerce's revised specificity determinations were inconsistent with Article 2.1(c) of the SCM. The panel recognized other inconsistencies regarding public body, price benchmarks and de facto specificity, but China failed to demonstrate inconsistencies with other SCM provisions.

## UK, EU Reach Agreement on Brexit Transition

The European Union (EU) and the United Kingdom (UK) came to an agreement March 19 on an orderly separation. During the transition, which will begin March 29, 2019, and last until December 2020, the UK will be able to negotiate, sign and ratify its own trade agreements while still being party to existing EU agreements.

In guidelines released March 23, the European Council (EC) restated its determination to have a close partnership with the UK in the future. "At the same time, the European Council has to take into account the repeatedly stated positions of the UK, which limit the depth of such a future partnership," the guidelines noted.

"Being outside the Customs Union and the Single Market will inevitably lead to frictions in trade. Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market. This unfortunately will have negative economic consequences, in particular in the United Kingdom," the EC added.

The Council confirmed its readiness to work on a free trade agreement (FTA) with the UK after it is no longer a member state, though "such an agreement cannot however offer the same benefits as Membership and cannot amount to participation in the Single Market or parts thereof."

A future FTA will cover trade in goods, customs cooperation, technical barriers to trade, sanitary and phytosanitary measures, regulatory cooperation, trade in services, and public procurement markets among other issues. Details regarding trade between Ireland and Northern Ireland still need to be finalized.

\* \* \* **Briefs** \* \* \*

ENTITY LIST: BIS in Federal Register March 22 added 23 persons in Pakistan, Singapore and South Sudan to Entity List. Rule also removed Corporacion Nacional de Telecomunicaciones (CNT), Ecuador's state-owned telecommunications utility, and Talaat Mehmood, owner of Euromoto Middle East FZE in United Arab Emirates (UAE), on "basis of removal requests." Fifteen oil-related entities in South Sudan are "government, parastatal and private entities" that are involved in activities that are contrary to foreign policy interests of U.S. South Sudanese entities "are a source of substantial revenue for the Government of South Sudan," according to State Spokesperson Heather Nauert in statement March 21.

SCREWS: Court of Appeals for the Federal Circuit (CAFC) Judge Jimmie Reyna March 20 put final screw in long-standing case over product classification, affirming Court of International Trade (CIT) decision in *GRK Canada v U.S.* Reyna wrote 2014 dissent in court's previous rejection of CBP classification (see **WTTL**, Dec. 22, 2014, page 7). In latest appeal, U.S. contended that CIT error in construction of tariff terms caused court to misclassify GRK's screws as "self-tapping screws" instead of "other wood screws." "Because we agree with [CIT's] constructions of the common and commercial meanings for 'other wood screws' and 'self-tapping screws,' we affirm," Reyna wrote for three-judge panel.

EXPORT ENFORCEMENT: Evgeny Spiridonov, contract developer at blocked gun manufacturer Kalashnikov Concern, was charged March 16 in D.C. U.S. District Court with attempting to export Nightforce ATACR 4-16X42 riflescope to Russia without required BIS license. Spiridonov allegedly failed to file export information through Automated Export System, according to criminal information filed in court. Riflescope was controlled under ECCN 0A987.a. Spiridonov was arrested in January and remains in custody.

MORE EXPORT ENFORCEMENT: Vladimir Nevidomy, Ukraine-born naturalized U.S. citizen of Hallandale Beach, Fla., pleaded guilty March 19 in Miami U.S. District Court, to conspiring to illegally export military-grade night vision rifle scopes, thermal monoculars and ammunition primers to Russia. "After the U.S. vendors sent the defense articles to Nevidomy in South Florida, Nevidomy then shipped them to [co-defendant Dmitri] Makarenko in Russia by one of two methods: either by concealing the articles in household goods shipments in containers sent through a freight forwarding company or by using a private Russian postal service that operates in South Florida," plea agreement noted. Nevidomy was arrested in June 2017 and released on \$250,000 bond; Makarenko is at large.

EVEN MORE EXPORT ENFORCEMENT: Iranian citizen Alireza Jalali, employee of Malaysian firm Green Wave Telecommunication, was sentenced March 20 in Minnesota U.S. District Court to 15 months in prison. He pleaded guilty in November 2017. Green Wave operated as front company for Iranian company Fanavar Moj Khavar (Fana Moj). When Green Wave received export-controlled technology, including converters, analog devices and synthesizers, Jalali "repackaged and unlawfully exported the items from Malaysia to Fana Moj in Tehran, Iran," sentencing memo noted. OFAC designated Fana Moj in October 2017 under EO 13382, which targets weapons of mass destruction proliferators and their supporters (see **WTTL**, Oct. 16, 2017, page 1).

**STILL MORE EXPORT ENFORCEMENT:** Anni Beurklian, naturalized U.S. citizen from Lebanon who resided in Waltham, Mass.; her husband, Antoine Ajaka, lawful permanent resident from Lebanon; Amir Katranji, Syrian national; and their company Top Tech US Inc. were indicted March 21 in Boston U.S. District Court. They are charged in scheme to smuggle goods, including electronics, computer equipment, and electrical switches, out of U.S. and to supply services to Syria. Katranji operates and manages Syrian firm EKT Electronics (EKT), which BIS added to Entity List in June 2007. Beurklian and Ajaka fled U.S. in January during plea negotiations and have not returned, indictment noted.

**NO SIR, NO MORE EXPORT ENFORCEMENT:** Russian citizen Konstantin Chekhovskoi was sentenced March 22 in Chicago U.S. District Court to 18 months in prison for attempting to illegally export more than \$100,000 in firearm parts, ammunition and accessories, including bullets, rifle magazines, triggers, stocks, muzzle brakes and scopes designed for assault rifles. He pleaded guilty in December 2017. Chekhovskoi was arrested in April 2017 at O'Hare International Airport after checking 11 suitcases containing firearm parts and accessories on flight to Finland, according to plea agreement.

**SANCTIONS:** Indictment against Ali Sadr Hashemi Nejad (Sadr) was unsealed March 20 in Manhattan U.S. District Court for his role in scheme in which more than \$115 million in payments for Venezuelan housing complex were illegally funneled through U.S. financial system for benefit of Iranian individuals and entities between April 2011 and November 2013. Sadr is charged with evading Iran sanctions, defrauding U.S., money laundering and bank fraud. Project was led by Stratus Group, Iranian conglomerate controlled by Sadr and his family, indictment noted. Sadr allegedly managed project finances, it added.

**TPA:** President Trump March 20 formally submitted request to Congress for three-year extension of Trade Promotion Authority (TPA), which expires July 1. If Congress fails to pass disapproval resolution before expiration date, then TPA extends to July 1, 2021. "I hope my administration can continue to work with the Congress to pursue new and better trade deals for America's workers, farmers, ranchers, and businesses. Extension of trade authorities procedures is essential to fulfill that task and to demonstrate to our trading partners that my administration and the Congress share a common goal when it comes to trade," request noted. Congress may be reluctant to renew 2015 legislation. Senate Finance Chairman Orrin Hatch (R-Utah) said "I don't think so" when asked by reporters about renewal, citing recent rise in tariffs.

**WAYS AND MEANS:** House Ways and Means Committee Chairman Kevin Brady (R-Texas) March 19 announced three personnel changes to committee's senior staff: Machalagh Carr as general counsel and parliamentarian, Rachel Kaldah as oversight staff director and Julia Slingsby as communications director. Carr and Kaldah promoted from within committee staff and Slingsby joins from Speaker Paul Ryan's (R-Wis.) office.

**CBP:** Kevin McAleenan sworn in as Customs and Border Protection (CBP) commissioner March 20 after 77-19 confirmation vote day before (see **WTTL**, March 19, page 9). McAleenan has been acting commissioner since January 2017 and previously served as deputy commissioner.

**STAPLES:** Commerce March 22 announced affirmative final determination in antidumping duty (AD) investigation of imports of carton-closing staples from China. Commerce granted Hangzhou Huayu Machinery Co., Ltd. and The Stanley Works (Langfang) Fastening Systems Co., Ltd. final dumping rate of 115.65% and all other Chinese producers 263.40% based on adverse facts available. Petition was filed by North American Steel & Wire, Inc./ISM Enterprises (ISM) (PA). ITC final determination expected May 7.

**STEEL WIRE ROD:** Commerce March 20 announced affirmative final determinations in AD and countervailing duty (CVD) investigations of carbon and alloy steel wire rod from Italy and Turkey, and AD investigations of product from Korea, Spain and United Kingdom. Commerce calculated final dumping margins of 12.41%-18.89% for Italian respondents; 41.1% for Korea; 11.08%-32.64% for Spain; 4.74%-7.94% for Turkey; and 147.63% for UK. Final subsidy rates ranged from 4.16%-44.18% for Italian respondents and 3.81%-3.86% for Turkish respondents. Petitioners are Gerdau Ameristeel U.S. Inc., Nucor Corporation, Keystone Consolidated Industries and Charter Steel. ITC final determinations expected May 3.

**GSP:** Omnibus spending bill passed in early hours of March 23 includes language to extend Generalized System of Preferences (GSP), but not Miscellaneous Tariff Bill (MTB). “The decision by Congress to reauthorize GSP ensures that an important piece of our international trade agenda remains consistent both for companies here in the U.S. that are creating jobs and our trade partners overseas,” National Association of Chemical Distributors (NACD) President Eric Byer said in statement. “Unfortunately, the MTB was not included in the language, meaning domestic companies will pay an additional \$1.1 billion in tariff payments over the next three years if it’s not approved in that timeframe,” he added.

**AIRCRAFT:** Canadian Foreign Minister Chrystia Freeland March 23 welcomed Boeing’s reported decision not to appeal January ITC ruling on Bombardier C Series aircraft (see **WTTL**, Jan. 29, page 1). “This is good news for Canada’s innovative aerospace industry and the thousands of people who depend on well-paying aerospace jobs on both sides of the border. It also represents a positive development in the long-standing relationship between Canada and Boeing,” she said.

**CATFISH:** Repeal USDA Catfish Inspection Program or risk negatively impacting U.S. agricultural exports to Vietnam, Sens. John McCain (R-Ariz.) and Jeanne Shaheen (D-N.H.) wrote USTR Robert Lighthizer March 19. Vietnam’s request for WTO consultations with U.S. regarding inspection, marketing and labeling of Pangasius fish from Vietnam was circulated to members Feb. 27 (see **WTTL**, March 5, page 7). “We urge you to support repealing this wasteful program before the 60-day WTO consultation stage concludes,” lawmakers wrote.

**VENEZUELA:** President Trump March 19 issued Executive Order (EO) 13827, which prohibits U.S. persons or entities from using digital currency issued by Venezuela’s government. Sale of world’s first state-backed cryptocurrency, called petro, began March 20. EO called sale “attempt to circumvent U.S. sanctions by issuing a digital currency in a process that Venezuela’s democratically elected National Assembly has denounced as unlawful.”... At same time, OFAC designated four current or former Venezuelan government officials, including vice minister of internal commerce, acting head of Office of National Treasury, former vice minister of agricultural economics and former president of board of directors of Venezuelan Institute of Social Security. OFAC designated four other current or former government officials in January (see **WTTL**, Jan. 8, page 5).

**EX-IM:** With departure of Scott Schloegel March 23, Export-Import (Ex-Im) Bank board is entirely vacant. In letter to Senate day before, National Association of Manufacturers President and CEO Jay Timmons urged approval of four board nominees who passed through Senate Finance Committee, but have yet to receive full Senate confirmation vote (see **WTTL**, Feb. 26, page 2). “The lack of a functioning Ex-Im Bank is not only one of those serious economic problems, but also one that can be easily solved given the strong bipartisan support for confirmation of the four Ex-Im Bank nominees,” wrote Timmons.