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BIS Ready for ZTE Senate Fight

U.S. companies that do business with ZTE will have to wait a bit longer to know when they can ship their products to the Chinese telecom company. Despite a deal that Commerce Secretary Wilbur Ross hailed as “unprecedented,” Senate efforts to block that deal are gaining momentum. The question remains whether the president would be forced to sign any of those bills.

For one, a provision that would prohibit any change in the denial order against ZTE was included in the manager’s amendment to the must-pass National Defense Authorization Act (NDAA) (see **WTTL**, June 11, page 1). “We’re not even going to see a floor vote on this one, it was included in the manager’s amendment..., so that means it’s baked into the bill, and you would actually need a vote to remove it,” Bureau of Industry and Security (BIS) Assistant Secretary Richard Ashooh told his agency’s Regulations and Procedures Technical Advisory Committee (RAPTAC) June 12.

Responding to questions about what effect any legislative action would have on the BIS denial order, Ashooh projected calm. “We’re carrying out our mandate... and if something changes from a policy perspective, we’ll be attentive to that,” he said. “We’re doing a pretty good job compelling behaviors here, and having external management of that would be a challenge for us,” Ashooh added.

For its part, ZTE requested the Hong Kong stock exchange start trading its stock as of June 13, trading which had been halted since the announcement of the denial order in April. In addition it said the company will resume operating activities “as soon as practicable after BIS terminates” the denial order.

U.S. Slaps Tariffs on Chinese Goods; China Retaliates

Tensions with China further escalated June 15 with the release of a list of \$50 billion worth of Chinese imports subject to an additional 25% duty. Tariffs on 818 products worth

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\$34 billion will come into effect July 6, while tariffs on the remaining 284 products valued at \$16 billion will come into effect later after consultations. China quickly retaliated with its own list of products subject to tariffs.

“My great friendship with President Xi of China and our country’s relationship with China are both very important to me. Trade between our nations, however, has been very unfair, for a very long time. This situation is no longer sustainable. China has, for example, long been engaging in several unfair practices related to the acquisition of American intellectual property and technology,” Trump said in a statement.

The tariffs follow a Section 301 investigation that found “China’s acts, policies and practices related to technology transfer, intellectual property, and innovation are unreasonable and discriminatory, and burden U.S. commerce,” according to a U.S. Trade Representative (USTR) release. The tariffs target industrially significant technologies, including those central to China’s Made in China 2025 policy (see *WTTL*, June 11, page 6).

In a translated statement following the U.S. announcement, the spokesman of China’s Ministry of Commerce (MOFCOM) expressed regret that the two sides could not come to a win-win conclusion following consultations. “China does not want to fight a trade war. However, in the face of the short-sighted behavior that the United States has done against people, China has to respond strongly and firmly defend the interests of the country and the people, and resolutely safeguards economic globalization and the multilateral trading system,” he said.

“We will immediately introduce taxation measures of the same scale and the same strength. All the economic and trade achievements previously reached by the two parties will be invalid at the same time,” the spokesman added. In all, MOFCOM announced it would impose 25% tariffs on 659 items of US\$50 billion of imported goods originating in the U.S., of which 545 commodities, such as agricultural products, automobiles, and aquatic products, will go into effect July 6.

Like the steel and aluminum tariffs, USTR said it will provide an opportunity for the public to request exclusion of particular products. A Federal Register notice will be issued “within the next few weeks,” the agency said.

Congress, Industry Step Carefully in Tariff Reaction

As expected, congressional leadership and industry responded quickly, yet carefully to the White House announcement. Many officials had denounced other tariffs because they did not target China, but still had to protect their constituents and members, or alternately did not want to be seen as agreeing with the administration.

Free trade advocate House Ways and Means Chairman Kevin Brady (R-Texas) worried that the announced tariffs would hurt American businesses. “While it’s encouraging that

not all of the initially proposed tariffs will be implemented – as a result of the comment period that Congress called for – I am alarmed that additional products are now placed on the list for possible future action,” he said in a statement.

“These tariffs make it more difficult to sell more ‘Made in America’ products globally and expose many of our industries – particularly agriculture and chemicals – to devastating retaliation. I urge USTR to narrow these tariffs and implement an effective exclusion process that provides relief for American companies, unlike the problematic Commerce 232 exclusion process,” Brady added.

Brady’s Democratic counterpart Richard Neal (Mass.) supported the Section 301 tariffs. “They can be an important tool in re-setting the U.S.-China trade and economic dynamic, which has felt like a one-way street for too long. However, I am seriously concerned by the apparent lack of coherence in the Administration’s approach thus far with China. Even the best tools, without a plan for how to use them, are useless,” Neal noted.

Senate Finance Chairman Orrin Hatch (R-Utah) commended the president’s willingness to confront China, but cautioned that “tariffs will harm American and Chinese businesses and consumers, and will put economic growth in both countries at risk. China must take responsibility and act expeditiously to change its policies to avoid the damaging effects of tariffs and escalating retaliation.”

“America’s trade strategy must focus on combatting China’s discriminatory and market-distorting practices. Ill-conceived trade actions that weaken the American economy, alienate allies, and invite retaliation against American businesses, farmers and ranchers, undermine our nation’s ability to successfully confront China’s unfair trade policies,” Hatch added.

Information Technology and Innovation Foundation President Robert Atkinson echoed the sentiment. “While it’s well past time to confront China’s egregious mercantilism, the administration should be careful not to inadvertently put U.S. productivity growth in jeopardy. An increase in prices brought about by tariffs on capital goods would reduce investment, thereby lowering already anemic rates of productivity growth. Rather than impose tariffs on capital goods, the United States should rely on other measures while also working with like-minded allies to counter unfair Chinese trade practices,” he said.

“We applaud the decision to remove most of the equipment and machinery used in our domestic textile, apparel, and footwear manufacturing that were proposed by the administration in April,” American Apparel & Footwear Association president and CEO Rick Helfenbein said in a statement. “Levying a tariff on these items would have increased costs for domestic manufacturers across our industry, leading to higher prices and lower sales,” he added.

“At the same time, we remain deeply concerned. Any new tariffs present an immense burden for the American people. Further, China has already made clear that it will retaliate swiftly. China previously identified almost \$1 billion worth of American cotton

exports to China as a target, which will hurt American farmers and U.S. textile manufacturers, and add costs to our supply chains,” Helfenbein said.

Senate GOP Blocks Corker Amendment Aimed at 232 Tariffs

Steel and aluminum tariffs will not require congressional approval after Sen. Bob Corker’s (R-Tenn.) own party scuttled his proposed amendment to the National Defense Authorization Act (NDAA) June 12. A livid Corker took to the Senate floor to call out the GOP. “I haven’t heard a single senator on our side that hasn’t expressed concern to the president directly about what’s happening with tariffs,” he said.

“Our farm folks are worried about NAFTA. Our auto manufacturers are worried about Canada and Mexico and what’s happening in Europe. Our steel and aluminum folks are concerned. I haven’t heard a person that hasn’t had some degree of concern. And all my amendment would do is say, ‘Look, Mr. President, you go negotiate, but when you finish, come back, and as senators and as House members, let us vote up or down.’”

More than 15,000 comments regarding requests for exclusions have been submitted to regulations.gov at press time June 15, though only just over 8,000 comments have been published. Meanwhile, Norway is the latest country to request consultations at the World Trade Organization (WTO) on the 232 tariffs, the country’s Foreign Affairs Ministry announced June 12.

“In Norway’s view, the additional tariffs imposed by the U.S. on steel and aluminium imports are a violation of the WTO rules,” Norway’s Foreign Affairs Minister Ine Eriksen Søreide said in a statement. Approximately .2% of Norwegian steel and aluminum exports are destined for the U.S., while most Norwegian steel and aluminum exports are sent to the European Union (EU). Mexico, Canada and the EU have requested dispute consultations and are prepared to retaliate (see **WTTL**, June 11, page 4).

“In the long run, we all benefit from a situation where right trumps might in international trade. Such a disregard for WTO rules weakens the credibility of the United States in international trade, and risks undermining the rules based multilateral trading system,” added Eriksen Søreide.

Southwest Senators Propose Repeal of Solar Tariffs

In a bid to repeal the administration’s safeguard tariffs on imports of solar cells and panels, Sens. Martin Heinrich (D-N.M.) and Dean Heller (R-Nev.) June 7 introduced the Protecting American Solar Jobs Act (S.3022). Rep. Jacky Rosen (D-Nev.) introduced a House companion bill (H.R.5571) in April (see **WTTL**, May 7, page 6).

The Section 201 tariffs of up to 30% on imported solar cells and panels are being challenged by several countries at the WTO. Heinrich and Heller’s legislation would have

duties default to previous rates and allow impacted companies to receive retroactive reimbursement. “President Trump’s decision to impose a new import tax on solar energy equipment harms hundreds of locally-owned companies, jeopardizes tens of thousands of workers, and stifles billions of dollars in investment in communities and manufacturing in New Mexico and across the country,” Heinrich said in a statement.

“We need to look at the bigger picture of the American solar industry and its role as a major employer of American workers. The bipartisan Protecting American Solar Jobs Act would reverse the harmful tariffs imposed by the Trump Administration and put American workers first,” he added.

“We are grateful for the work Sens. Heller and Heinrich are doing to reverse the ill-conceived tariffs on solar cells and panels,” said Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, in a statement. “The legislation will correct a policy that has had harmful effects on solar development and slowed down a jobs-creating engine that can transform America’s clean energy economy to the benefit of all Americans.”

NAFTA Negotiations to Continue Through Summer

While in Washington June 13 to meet with the Senate Foreign Relations Committee and to accept Foreign Policy magazine’s Diplomat of the Year award, Canadian Foreign Affairs Minister Chrystia Freeland briefly met with USTR Robert Lighthizer. The two agreed to continue NAFTA negotiations with Mexico through the summer, but set no specific dates. Originally the trio wanted negotiations wrapped up before Mexico’s July presidential elections, but that is not likely (see **WTTL**, June 11, page 7).

Amid tensions over Canadian dairy tariffs, Agriculture Secretary Sonny Perdue crossed the border to visit Prince Edward Island June 15, hosted by his Canadian counterpart Lawrence MacAulay. In a joint press conference, Perdue said, “there’s legitimate anxiety among producers on both sides of the border that agricultural commodities are many times the tip of the spear in any kind of retaliatory actions and that’s why we’re here to prevent” escalations between Canada and the U.S. He added that he’d tell negotiators “let’s don’t drag agriculture into some of the issues we may have.”

Six of G7 Endorse “Free, Fair, Mutually Beneficial Trade”

After a spat with Canadian Prime Minister Justin Trudeau and tense exchanges with other heads of state, President Trump declined to endorse the G7 Communique at the end of the two-day summit June 8-9. In the wide-ranging joint statement, the remaining six countries addressed all the major trade talking points.

“We acknowledge that free, fair, and mutually beneficial trade and investment, while creating reciprocal benefits, are key engines for growth and job creation. We recommit to

the conclusions on trade of the Hamburg G20 Summit, in particular, we underline the crucial role of a rules-based international trading system and continue to fight protectionism.”

“We note the importance of bilateral, regional and plurilateral agreements being open, transparent, inclusive and WTO -consistent, and commit to working to ensure they complement the multilateral trade agreements. We commit to modernize the WTO to make it more fair as soon as possible. We strive to reduce tariff barriers, non-tariff barriers and subsidies.”

“We will work together to enforce existing international rules and develop new rules where needed, to foster a truly level playing field, addressing in particular non-market oriented policies and practices, and inadequate protection of intellectual property rights such as forced technology transfer or cyber enabled theft. We call for the start of negotiations – this year – to develop stronger, international rules on market-distorting industrial subsidies and trade distorting actions by state-owned enterprises.”

“We also call on all members of the Global Forum on Steel Excess Capacity to fully and promptly implement its recommendations. We stress the urgent need to avoid excess capacity in other sectors such as aluminum and high technology. We call on the International Working Group on Export Credits to develop a new set of guidelines for government supported export credits, as soon as possible in 2019,” read the communique.

Senate Finance Holds Hearing for ITC, Commerce Nominees

At a brief hearing June 12, Senate Finance committee members pressed nominees to the International Trade Commission (ITC) Amy Karpel and Randolph Stayin, and Commerce assistant secretary nominee Jeffrey Kessler on their trade enforcement.

For example, Sen. Ron Wyden (D-Ore.) queried Kessler about the application of Section 232. Companies have told him that Bureau of Industry and Security (BIS) officials have made rulings without giving one side a chance to respond to information put forth by the other side, he said.

Kessler noted that the enforcement and compliance unit “plays only a supporting role” in 232 investigations, while BIS is primarily responsible. “I fully understand the importance of due process in that context, as well as the antidumping and countervailing context. I can commit to being an advocate for due process and working with you and your staff to ensure that the requesters get due process,” Kessler replied. Wyden, who supports Kessler, said he wanted a more “fleshed out” response and would hold the record open.

Committee Chairman Orrin Hatch (R-Utah) questioned Karpel and Stayin about the importance and application of Section 337 of the Tariff Act of 1930. “I very much agree on protecting intellectual property and the role that Section 337 plays in doing so, and if confirmed I very much look forward to working in that area and making sure Section 337

law is vigorously enforced,” said Karpel. Stayin also agreed with Hatch on the provision’s importance. “Years ago, there were not very many cases brought before the [ITC], and then all of the sudden, over the last 10 to 15 years, there’s been a huge volume of unfair trade practices which are made with respect to patents and trademarks and copyrights. Vigorous enforcement there is very important, and I think that the agency has done very well in that respect and I ensure you that I will do everything in my power to continue that aggressive and vigorous enforcement,” he said.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Naum Morgovsky and Irina Morgovsky pleaded guilty June 12 in San Francisco U.S. District Court to conspiracy to violate Arms Export Control Act for their roles in scheme to export components for production of USML night-vision rifle scopes, including image intensifier tubes and lenses, to Russia without State licenses. Both were charged in superseding indictment in April 2017 (see **WTTL**, May 1, 2017, page 9). Sentencing is set for Sept. 18. Indictment supplemented September 2016 bank fraud charges against Naum Morgovsky and codefendant Mark Migdal.

SANCTIONS: Five Russian nationals and three Syrian nationals were indicted June 12 in D.C. U.S. District Court on charges they conspired to violate U.S. economic sanctions against Syria and Crimea, by sending jet fuel to Syria and making U.S. dollar wires to Syria and to sanctioned entities in Syria without Treasury license. Russians were employees of Joint Stock Company Sovfracht, blocked Russian shipping company and freight forwarder. OFAC designated Sovfracht for Crimean sanctions violations in September 2016. Following Sovfracht’s designation, defendants utilized Maritime Assistance LLC as front company, Justice said.

MAGNITSKY ACT: OFAC June 15 designated 14 companies for being affiliated with previously designated Israeli businessman and billionaire Dan Gertler under Global Magnitsky Human Rights Accountability Act (S. 284). Gertler “amassed his fortune through hundreds of millions of dollars’ worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo (DRC),” OFAC noted....OFAC June 12 designated Dominican Republic Senator Felix Ramon Bautista Rosario for corruption, including in relation to reconstruction efforts in Haiti, and Cambodian General Hing Bun Hieng for serious human rights abuse, along with five entities owned or controlled by Bautista, under same law. To date, 73 individuals and entities have been sanctioned under EO 13818 that president signed in December (see **WTTL**, Jan. 1, page 5).

RUSSIA: OFAC June 11 designated five Russian entities and three Russian individuals for providing material and technological support to Russia’s Federal Security Service (FSB) or for being owned or controlled by those entities under Countering America’s Adversaries Through Sanctions Act (CAATSA). OFAC designated FSB in March (see **WTTL**, March 19, page 1). One blocked entity, Divetechnoservices, has “procured a variety of underwater equipment and diving systems for Russian government agencies,” including FSB, OFAC noted.

CFIUS: Senate June 14 rejected cloture motion on NDAA amendment (S.Amdt. 2700) that would require congressional review of certain regulations issued by Committee on Foreign Investment in U.S. (CFIUS). Vote was 35-62. “Why wouldn’t we insist on the responsibility of overseeing this, and in fact having final say, to make sure that this is done properly, that the right balance is struck,” sponsor Sen. Pat Toomey (R-Pa.) said on Senate floor day before. Bill to update and expand CFIUS jurisdiction is still under debate (see **WTTL**, May 28, page 4).

SOLAR: CAFC June 15 affirmed CIT ruling denying preliminary injunction of tariffs on three Canadian solar companies. “President’s actions here were lawful and that accordingly, appellants have not established a probability of success on the merits as required for a preliminary injunction,” Circuit Judge Timothy Dyk wrote in *Silfab Solar, Inc. v. U.S.* for three-judge panel. “The presidential action cannot be set aside because it conflicts with the ITC’s conclusion. While the ITC made a negative finding as to substantial share with respect to solar products from Canada, these findings in no way bind the President. Indeed, the ITC has a duty only to find and report regarding determinations of substantial share, and the President is free to reach a different decision regarding those determinations.”

MORE SOLAR: CAFC June 14 reversed CIT ruling that CBP exceeded its authority in reaching determination that certain products imported by Sunpreme were covered by scope of antidumping (AD) and countervailing duty (CVD) orders on U.S. imports of solar cells from China because CIT “lacked jurisdiction to hear Sunpreme’s claims,” Circuit Judge Jimmie Reyna wrote for three-judge panel in *Sunpreme Inc. v. U.S.* “By filing a complaint with the CIT before obtaining a scope ruling, Sunpreme has circumvented the established administrative procedure for determining the scope of an antidumping or countervailing duty order. Permitting such circumventions would discourage importers from seeking scope rulings and undermine the remedial scheme established by Congress,” he wrote.

LUMBER: In letter to Commerce Secretary Wilbur Ross and USTR Lighthizer June 11, more than 170 House members requested U.S. “return to the negotiating table with Canada and redouble ...efforts to reach a new softwood lumber agreement.” Canada requested and was granted two WTO panels to examine U.S. countervailing and antidumping duties on softwood lumber imports (see **WTTL**, April 16, page 3). U.S. Lumber Coalition questioned letter’s accuracy. “As of yet, the Canadian government and industry have made no indication that it is prepared to engage in meaningful discussions towards a new softwood lumber trade agreement. Thus it is Canada that must decide whether it is prepared to negotiate seriously with the United States,” it said in statement June 14.

OLIVES: Commerce announced affirmative final determinations in AD and CVD investigations of imports of ripe olives from Spain. In AD investigation, mandatory respondents Aceitunas Guadalquivir, Agro Sevilla Aceitunas Andalusia, and Angel Camacho Alimentacion assigned dumping margins of 17.46%, 25.5% and 16.88% respectively. All other producers/exporters assessed at 20.04%. In CVD investigation, mandatory respondent Aceitunas Guadalquivir’s final subsidy rate calculated at 27.02%; 7.52% for Agro Sevilla; and 13.22% for Angel Camacho. All others assigned 14.75% final subsidy rate. Petitioner is Coalition for Fair Trade in Ripe Olives. ITC decision expected July 24.

INDIA: U.S. June 12 made presentation before WTO Committee on Agriculture (COA) regarding India’s alleged underreporting market price support (MPS) for wheat and rice in its 2010-2013 WTO notifications. U.S. accused India’s farm subsidy notifications as lacking details on sub-federal level spending, only reporting purchased production instead of all eligible production, reporting in dollars instead of rupees and not providing detailed information on value of production needed to determine de minimis limits. India countered that it has done better job with transparency than U.S. and has consistently used dollars since 1995. U.S. submitted counter notification on India’s MPS at WTO COA May 4, first ever COA notification under WTO’s Agreement on Agriculture regarding another country’s measures (see **WTTL**, May 14, page 5).

MORE INDIA: After meetings in Washington June 10-12, USTR and Indian Commerce Minister Suresh Prabhu agreed that “Indian and U.S. officials would meet at a senior level at an early date,

to discuss various issues of interest to both sides and carry forward the discussions in a positive constructive and result oriented manner,” Prabhu’s office said in statement. Prabhu called discussions “fruitful and forward looking” in tweet June 13.

CARBON: In 5-0 “sunset” vote June 15, ITC said revoking antidumping duty order on imports of activated carbon from China would renew injury to U.S. industry. “This is a very welcome result for U.S. producers of steam activated carbon, which is utilized in a wide range of applications, including removing undesirable tastes and odors from drinking water, eliminating contaminants from industrial waste water, processing of foods, pharmaceuticals, and alcoholic beverages, and as a key component in pollution abatement systems,” said John M. Herrmann, partner at Kelley Drye & Warren LLP and counsel to domestic industry.

CYBER: Proposed rule implementing changes to controversial cyber intrusion software controls based on 2017 Wassenaar plenary is being worked on separately from other plenary changes, Hillary Hess, director of BIS regulatory policy division told agency’s RAPTAC June 12. Plenary added two new notes and two technical notes including relevant definitions (see **WTTL**, Dec. 11, 2017, page 1). Rule implementing changes from MTCR plenary is currently under review at OMB.

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