

Vol. 38, No. 26

June 25, 2018

ZTE Pays Fine, Senate Blocks Deal

As if on parallel paths, the ZTE deal moved forward a step on one, but is standing still on the other. The full Senate passed the National Defense Authorization Act (NDAA) (H.R. 5515) in an 85-10 vote June 18 (see **WTTL**, June 18, page 1). The bill included a provision that would prohibit any change in the denial order against ZTE, as well as language to update the jurisdiction of Committee on Foreign Investment in the U.S. (CFIUS).

ZTE has paid the \$1 billion fine, but efforts to pay the remaining escrow have been delayed, as BIS seems to be “dragging their feet until they get comfortable that lifting of Denial Order will not be undone by Congress,” one industry source told **WTTL**. Both of those payments are required for BIS to lift the denial order.

Meanwhile, Senate cosponsors of the ZTE amendment applauded the passage. “Protecting American jobs and national security must come first when making deals with countries like China, which has a history of having little regard for either. It is vital that our colleagues in the House keep this bipartisan provision in the bill as it heads towards a conference,” Sens. Tom Cotton (R-Ark.), Chuck Schumer (D-N.Y.), Chris Van Hollen (D-Md.), and Marco Rubio (R-Fla.) said in a joint statement.

The NDAA language, which includes a one-year time limit on any violations, could give the administration a loophole, leaving it up to Commerce to define the date of violation. In a statement, ZTE noted that the Senate version “is not currently U.S. law, as it has only passed one chamber of the U.S. Congress.” The version of the NDAA passed by the House did not contain two of the three provisions that affect ZTE, and so the two versions will go to Conference Committee, the company noted.

White House Escalates Trade Spat with China

The trade spat with China ratcheted up another notch June 18 when President Trump directed U.S. Trade Representative (USTR) Robert Lighthizer to identify \$200 billion worth of Chinese goods for additional 10% tariffs. This is the latest in tit-for-tat trade

© Copyright 2018 Gilston-Kalin Communications LLC.
P.O. Box 5325, Rockville, MD 20848-5325.
All rights reserved. Reproduction, photocopying or
redistribution in any form, including electronic, without
written approval of publisher is prohibited by law.

WTTL is published weekly 50 times a year except last week
in August and December. Subscriptions are \$697 a year.
Additional users pay only \$100 each with full-priced sub-
scription. Site and corporate licenses are also available.
Phone: 301-460-3060 Fax: 301-460-3086

tariffs that saw the U.S. impose duties per the outcome of a Section 301 investigation followed by China promising to impose those of “the same scale and the same strength” (see **WTTL**, June 18, page 1).

“This latest action by China clearly indicates its determination to keep the United States at a permanent and unfair disadvantage, which is reflected in our massive \$376 billion trade imbalance in goods. This is unacceptable. Further action must be taken to encourage China to change its unfair practices, open its market to United States goods, and accept a more balanced trade relationship” with the U.S., Trump said in a statement. Should China retaliate with increased tariffs, the U.S. “will meet that action by pursuing tariffs on another \$200 billion of goods,” he vowed.

For his part, Lighthizer supported the president’s action. “The initial tariffs that the President asked us to put in place were proportionate and responsive to forced technology transfer and intellectual property theft by the Chinese,” he said in a statement. “It is very unfortunate that instead of eliminating these unfair trading practices China said that it intends to impose unjustified tariffs targeting U.S. workers, farmers, ranchers, and businesses. At the President’s direction, USTR is preparing the proposed tariffs to offset China’s action,” Lighthizer added.

In response, China’s Ministry of Commerce called the U.S. announcement an “act of extreme pressure and blackmail” and accused the White House of starting a trade war.

More Allies Retaliate Against Steel, Aluminum Tariffs

Just when you thought it was safe to read a newspaper, allies continue to retaliate against U.S. steel and aluminum tariffs. Turkey joined the fray June 21 when it announced plans to impose tariffs worth \$267 million on \$1.8 billion worth of U.S. goods.

“Turkey is committed to active, robust and reciprocal trade relations with the U.S. - but with the understanding that fairness cannot be one-sided,” Turkish Economy Minister Nihat Zeybekci said in a statement. “We cannot and will not allow Turkey to be wrongly blamed for America’s economic challenges.”

As expected, the European Union (EU) June 20 adopted the regulation cementing its rebalancing measures in response to Section 232 tariffs. Those measures targeting products worth €2.8 billion went into effect June 22. “We did not want to be in this position. However, the unilateral and unjustified decision of the U.S. to impose steel and aluminium tariffs on the EU means that we are left with no other choice,” EU Trade Commissioner Cecilia Malmstrom said in a statement.

“The rules of international trade, which we have developed over the years hand in hand with our American partners, cannot be violated without a reaction from our side. Our response is measured, proportionate and fully in line with WTO rules. Needless to say, if the U.S. removes its tariffs, our measures will also be removed,” she added.

In response, President Trump kicked the dispute up a few notches: “Based on the Tariffs and Trade Barriers long placed on the U.S. and its great companies and workers by the European Union, if these Tariffs and Barriers are not soon broken down and removed, we will be placing a 20% Tariff on all of their cars coming into the U.S. Build them here!”

Norway’s request for WTO dispute consultations with the U.S. was circulated to members June 19 (see **WTTL**, June 18, page 4). In addition, India June 13 submitted to the WTO its revised products and tariff rates list it intends to target. India originally submitted its notification to the Trade in Goods Council of its decision to suspend concessions and other obligations in May (see **WTTL**, May 28, page 7).

“India wishes to clarify that suspension of concessions shall be equivalent to the amount of trade affected by the United States’ measures. To this end, India reserves the right to adjust the specific products for which suspension of concessions is effectuated, and its right to adjust the additional rate of duty imposed on such products,” notes the revised document.

Ross Hammered From Both Sides Over 232 Tariffs

Commerce Secretary Wilbur Ross was not swimming in friendly waters June 20 when he testified before the Senate Finance Committee regarding trade actions administered by Commerce. Both sides of the aisle appeared united in their criticism of Section 232 tariffs imposed on steel and aluminum imports.

Ross first was hammered on the chaos surrounding the exclusions process. In his opening remarks, Chairman Orrin Hatch (R-Utah) said he and Sen. Ron Wyden (D-Ore.) raised issues about exclusions in April and the process “still needs significant improvement.”

Ross pushed back, saying Congress had underfunded and understaffed the department tasked with reviewing the exclusions; later he admitted Commerce thought it would get around 6,000 requests, a far cry from the 20,000-plus steel exclusion requests received. He said Bureau of Industry and Security is making headway.

Commerce announced the same day that it issued 42 exclusion requests from seven different companies importing steel from Japan, Sweden, Belgium, Germany and China. At the same time, 56 steel exclusion requests from 11 different companies would be denied, the statement noted.

Sen. Michael Bennet (D-Colo.) refuted the notion that Canadian steel is a national security threat. “What is the national security basis for the tariff that you have placed on Canada? I understand what we’re supposed to be doing with China - I don’t understand why the president’s not focused on it, I don’t understand why he’s excluding ZTE, I don’t understand it. What is the national security rationale we’re putting a tariff on the Canadian steel industry with whom we have a trade surplus?” he said, getting more heated as the exchange went on.

Ross replied that China is masking its exports by shipping its steel through third countries. He argued that because of 232, Canada and the EU are finally taking action against other countries' bad steel habits.

Sen. Pat Toomey (R-Pa.) said "I wish we would stop invoking national security because that's not what this is about. This is about economic nationalism."

The following day, Bennet introduced legislation to reverse the administration's tariffs on all steel and aluminum imports from Canada, Mexico and the EU. The bill was originally filed as an amendment to the National Defense Authorization Act (NDAA). "These tariffs target our allies, do nothing to stop China from undercutting American steel workers, and subject Colorado's farmers, businesses, and families to potential retaliation," Bennet said in a statement.

Senators on both sides of the aisle focused on the impact on their states' agricultural sectors. "Corn, wheat, beef and pork are all suffering market price declines, as well due to current trade policies – and I'd like to drive home the point that with every passing day, the United States loses market share to other countries competing with our ag product markets – some of it unlikely to be recaptured," said Sen. John Thune (R-S.D.). Sen. Maria Cantwell (D-Wash.) noted her state's apple and cherry producers are feeling the pinch.

Toomey also worried about the impact on steel-consuming industries. "For every person who works in the steel-production industry, there is probably something on the order of 40 or more people who work in steel-consuming industries. So we're picking winners and losers, and probably resulting in my view, in the risk of far more jobs lost than jobs that are going to be gained."

Other senators questioned the rising cost passed on to consumers. Ross said Commerce is looking into steel price hikes to see whether there are participants "illegitimately profiteering" from the steel and aluminum tariffs. Steel prices have risen higher than the 25% tariff. "There's no reason for tariffs to increase the price of steel by far more than the percentage of the tariff, and yet, that's what's been happening," testified Ross. He blamed it on "antisocial behavior" of certain industry participants, though he declined to name suspects. Idled domestic mills restarting will alleviate supplies, he predicted.

Pompeo "Very Hopeful" NAFTA Agreement Will Conclude Soon

Secretary of State Mike Pompeo is "very hopeful" that a NAFTA agreement will be announced in the coming weeks, he said June 18. NAFTA negotiations will continue through the summer, though no specific dates have been announced (see **WTTL**, June 18, page 5).

"This obviously matters a lot to you all here in Michigan; [NAFTA] accounts for 23% of all automotive production," Pompeo told the Detroit Economic Club. "Our NAFTA negotiating teams are working closely with our Canadian and Mexican counterparts, and I am very

hopeful that in the coming weeks, we will be able to announce that we have agreements that I think the world will view as significantly better for the global economy.”

When pressed on how tariff impositions might color the U.S. relationship with Canada, Pompeo said he spoke with his Canadian counterpart, Foreign Affairs Minister Chrystia Freeland, two days before and believes the relationship will thrive. “I am convinced when – when the trade negotiations are complete, that there will be more – more volume, more dollars and greater freedom of trade between the United States and Canada,” said Pompeo.

U.S. Once Again Center of WTO Dispute Settlement Body Meeting

The U.S. is regularly the belle of the ball at World Trade Organization (WTO) Dispute Settlement Body (DSB) meetings, and the June 22 meeting proved to be no exception. Fights with Canada, Vietnam, Antigua and Barbuda and the whole Appellate Body stood still with the U.S. on the receiving end of criticism.

In positive news, Indonesia said it had reached an agreement with the U.S. and New Zealand regarding its restrictions on imports of animal and horticultural products (see **WTTL**, Nov. 13, page 6). Indonesia will implement the WTO’s ruling by July 22 for most products.

Canada blocked the U.S.’ first request to establish a dispute settlement panel to rule on restrictions of wine sold in British Columbia grocery stores (see **WTTL**, May 28, page 5). The U.S. in turn blocked Vietnam’s first request for the establishment of a panel on U.S. antidumping measures of fish fillets. Vietnam requested consultations in January (see **WTTL**, Jan. 15, page 7).

Antigua and Barbuda again criticized the U.S. for failing to negotiate compensation in the long-running case over gambling restrictions (see **WTTL**, Oct. 2, page 5). The island nation said that the U.S. offer was less than 1% of the losses it suffered and it is prepared to go to the WTO director-general to mediate. The U.S. replied that it made substantial efforts to resolve the issue.

Yet again, the U.S. criticized the Appellate Body (AB) for not respecting the 90-day deadline to issue rulings and failing to consult with parties when delays are encountered. While other members agreed with the U.S. on the need for timely resolutions, they also blamed the U.S. for holding up appointments to fill AB vacancies. Without consensus from members, the three vacant seats cannot be filled. The U.S. again said it could not accept a proposal backed by 66 members to start the selection process (see **WTTL**, May 14, page 6).

DSB Chair Sunanta Kangvalkulkij said she would seek the views of other members on whether AB Member Shree Baboo Chekitan Servansing should be granted a second term. Servansing’s first term expires Sept. 30.

Global Trade Leadership Looks Back to the Future

Gains from further globalizing rules-based international trade must be poured to reinforce political stability and to act as a bulwark against unpredictable, sometimes negative technology- or innovation-driven events that occur in front of policy and legislative processes, high-ranking officials said at an academic conference on global trade and leadership in Geneva June 21.

The United Kingdom (UK) is poised, after 43 years of silence in the WTO, for a more vocal role spreading the value that can be gained from the multilateral trading system, Liam Fox, the UK secretary of state for international trade, told the event. Recent U.S. trade posture was generally perceived as increasing costs and reducing gains, he added.

The UK “doesn't disagree” with much of the U.S. analysis of China’s overcapacity, lack of transparency about private and government ownership and forced technological transfer, Fox said. However, the UK doesn’t believe use of Section 232 on the effect of imports on national security is the appropriate mechanism (see related story, page 2). He referred to the “absurdity” of the UK being penalized for supplying steel on national security grounds to the U.S. Nobody ever wins a trade war, Fox said: “There are only casualties.”

The UK is and will remain one of the “foremost champions” of the multilateral trading system and of free trade, said Fox, who is also president of the board of trade and a member of parliament. The UK will use all its “economic and diplomatic influence to remove barriers, open up new markets and spread prosperity to every part of the globe,” he added.

Conflicts over trade are starting to produce “huge” negative consequences, said Arancha Gonzalez, executive director at the International Trade Center, which supports the regulatory, research and policy strategies of the WTO and the UN Conference on Trade and Development (UNCTAD). Consumers, workers and companies are beginning to feel the “bite,” she said.

Returning to a power-based system, as opposed to a rules-based one, will add to incoherence and chaos, World Intellectual Property Organization (WIPO) Director-General Francis Gurry said. Events driven by technology and innovation occur increasingly “way out in front” of policy and legislative processes, he added. The number of those kinds of “serious institutional crisis” can be expected to rise, Gurry said.

Leadership means three things in the global trading system, Gonzalez said. Short-term leadership must staunch the risk the global trading system falls back to a power-based system, she said. Medium-term leadership must adapt the trading system to the increasingly diverse economic and technological world, and long-term domestic and international leadership must navigate distribution of costs and benefits from trade opening, Gonzalez added.

*** * * Briefs * * ***

STEEL RACKS: Coalition for Fair Rack Imports filed countervailing and antidumping duty petitions June 20 with ITA and ITC against steel racks from China. Petitioners allege 131.1 to 145.7% dumping margins.

GIFT BOXES: In 4-0 “sunset” vote June 20, ITC said revoking antidumping duty order on imports of folding gift boxes from China would renew injury to U.S. industry. Commissioner Jason Kearns did not participate in this review.

CITRIC ACID: In 4-0 final vote June 20, ITC found U.S. industry is materially injured by dumped imports of citric acid and certain citrate salts from Belgium, Colombia and Thailand. Commissioner Jason Kearns did not participate in these investigations. ITC also made negative finding of critical circumstances on imports from Thailand.

PTFE RESIN: In 4-0 final vote June 22, ITC found U.S. industry is not materially injured by subsidized imports of polytetrafluoroethylene (PTFE) resin from India. Commissioner Jason Kearns did not participate in investigation.

CIT: President June 18 nominated Miller Baker and Timothy Reif to be Court of International Trade (CIT) judges, replacing Donald Pogue and Richard Eaton who retired. Baker is litigation partner and co-chair of appellate practice group in Washington office of McDermott Will & Emery, LLP. Reif serves as USTR senior advisor and visiting professor at Columbia Law School.

EXPORT ENFORCEMENT: Indictment against Iranian businessman Saeed Valadbaigi was unsealed July 21 in Chicago U.S. District Court for plotting to illegally export U.S.-origin items including 7075 T6 aluminum tubing to Iran via Belgium and Malaysia in 2011. Valadbaigi is at large. Nicholas Kaiga, who managed and later owned Belgian company that did business with Valadbaigi, was deported to Brussels in July 2015 after serving prison sentence for related charges (see **WTTL**, July 13, 2015, page 8). He pleaded guilty in December 2014 and was sentenced in March 2015.

MORE EXPORT ENFORCEMENT: Shuren Qin, Chinese national residing in Wellesley, Mass., was arrested June 21 and charged in Boston U.S. District court with conspiring to illegally export U.S.-origin goods, including 78 hydrophones (devices used to detect and monitor sound underwater), to blocked Chinese military research institute and visa fraud. Qin allegedly lied to U.S. supplier and caused false shipping information to be filed with U.S. government and had been violating U.S. export laws since 2012, according to affidavit filed in court.

FIBER: Commerce June 19 announced affirmative final determinations in antidumping investigations of imports of low melt polyester staple fiber from Korea and Taiwan. Commerce calculated dumping rate of 0% for Huvis Corporation, and 16.27% for all other Korean producers/exporters. In Taiwan investigation, Commerce calculated 49.93% dumping rate for all producers/exporters. Petitioner is Nan Ya Plastics Corporation, America. ITC expected to make final determinations Aug. 1.

EX-IM: White House June 20 nominated Kimberly Reed to be Export-Import Bank (Ex-Im) president. Senate Banking Committee approved Reed to serve as vice-president in December, along with three other nominees, but full Senate has yet to vote due to hold by Sen. Pat Toomey (R-Pa.). Deputy USTR Jeffrey Gerrish currently acting Ex-Im president (see **WTTL**, April 30, page 1). Sen. Sherrod Brown (D-Ohio) in statement urged colleagues to move quickly on Reed’s nomi-

nation as well as confirming other board members. “The Bank hasn’t been fully operational for nearly three years – that’s three years of lost jobs and lost contracts for American manufacturers,” he said.

AUTOS: Commerce extended public comments deadline for Section 232 national security investigation of imports of automobiles and automotive parts, according to June 21 Federal Register notice. New deadline for comments and hearing requests is June 29 and rebuttal period extended to July 13. Commerce initiated investigation May 23 (see **WTTL**, May 28, page 1).

SPACE: During National Space Council meeting June 18, Commerce Secretary Wilbur Ross announced Kevin O’Connell, president and chief executive of consulting company Innovative Analytics and Training, will be incoming director of Office of Space Commerce. Ross previously announced office will move from National Oceanic and Atmospheric Administration (NOAA) to proposed Space Policy Advancing Commercial Enterprise (SPACE) Administration (see **WTTL**, May 28, page 10).

Is a Site or Corporate License for You?

- When many individuals in your organization need to read *Washington Tariff & Trade Letter*, there’s an easy way to make sure they get the news they need as quickly and conveniently as possible.
- That’s through a site or corporate license giving an unlimited number of your colleagues access to each weekly issue of *WTTL*.
- With a low-cost site or corporate license, you can avoid potential copyright violations and get the vital information in *WTTL* to everyone who should be reading it.

For more information and pricing details, call: 301-460-3060