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## Trump Signs Sanctions Bill, Slaps Congress

After a few days of “will he or won’t he?” President Trump Aug. 2 signed the Countering America’s Adversaries Through Sanctions Act (H.R.3364) that Congress passed in overwhelming votes almost a week before (see **WTTL**, July 31, page 1). The bill includes stricter sanctions targeting Russia, Iran and North Korea, and specifically requires the president to notify Congress before it makes changes to Russia sanctions policy.

The president signed the bill in private then proceeded to issue two separate signing statements, both berating Congress and calling the bill “flawed” and even unconstitutional. “Since this bill was first introduced, I have expressed my concerns to Congress about the many ways it improperly encroaches on Executive power, disadvantages American companies, and hurts the interests of our European allies,” Trump wrote in one of the statements.

“Yet despite its problems, I am signing this bill for the sake of national unity. It represents the will of the American people to see Russia take steps to improve relations with the United States. We hope there will be cooperation between our two countries on major global issues so that these sanctions will no longer be necessary,” he added.

Before the president signed the bill, Secretary of State Rex Tillerson admitted neither he nor the president support the legislation. “The action by the Congress to put these sanctions in place and the way they did, neither the President nor I are very happy about that. We were clear that we didn’t think it was going to be helpful to our efforts,” Tillerson told reporters Aug. 1.

## Observers Offer Opinions on Potential China Trade Action

Amid reports that the administration is planning action against China’s forced technology transfer policies, which could include action under rarely used Section 301 of the Trade

Act, lawmakers and industry observers weighed in on its potential use. While an announcement was expected Aug. 4, more likely any action will be postponed until at least the week of Aug. 7.

For one, Sen. Ron Wyden (D-Ore.) called on U.S. Trade Representative (USTR) Robert Lighthizer to take action against China's efforts to pressure U.S. tech firms to sacrifice intellectual property as a cost of doing business. "As part of its broader national strategy to become a leader in the manufacture of high-technology products, China places significant limitations on U.S. firms' ability to compete through a host of mercantilist policies designed to impede U.S. firms attempting to operate in China and co-opt U.S. technology," Wyden wrote.

The senator also cited the recent Comprehensive Economic Dialogue that was seen as a failure to secure improved technology policies (see **WTTL**, July 24, page 6). Because of this, Wyden urged "appropriate additional steps be taken promptly to counter China's attempts to strong-arm U.S. innovators into giving up their intellectual property and drive U.S. firms further out of the Chinese market," he wrote.

The Information Technology and Innovation Foundation (ITIF) welcomed any potential action against China's policies. "We applaud the administration for taking a firm stand. Opening a Section 301 investigation can be a good start. It doesn't have to be the first shot in a trade war; it can be a first step in ensuring we maintain a fair and open global trading system," Stephen J. Ezell, ITIF vice president for global innovation policy, said in a statement.

Peterson Institute Senior Fellow Chad Bown warned against its potential use in a blog post Aug. 3. "A decision to trigger Section 301 today is problematic because it would provide additional fuel to the already simmering argument that the Trump administration is undoing the American commitment to rules-based trade and decades of work to establish international cooperation," Bown noted.

"Employing Section 301 today would thus entail serious risks, especially if the investigation were to result in tariff retaliation against China. And now that there is a functioning rules-based trading system—unlike in the 1980s—there is much more to lose. A Trump decision to operate outside of the rules will spur China to follow suit," he added.

## **Administration Hears from Industry on Trade Abuses**

While the administration received more than 100 comments for its review of trade agreement violations and abuses it requested in April, as of press time it had not publicly posted any on the regulations.gov website. Fear not, those industry groups that released their comments to the internet and reporters' emails generally praised free trade, but criticized perceived trade barriers. The comment period the administration launched as part of its 100-day hoopla ended July 31 (see **WTTL**, May 8, page 2).

In its comments, trade stalwart National Foreign Trade Council (NFTC) pointed out that the International Trade Commission (ITC) compiled such a report in 2016, “which essentially conducted a similar exercise while also cataloguing other previous studies done to assess the value of U.S. trade agreements,” it noted. The ITC report found that “U.S. bilateral and regional trade agreements have expanded bilateral trade flows with partner countries by 26.3% on average across the trade goods and services sectors,” providing positive effects on U.S. aggregate trade, U.S. real gross domestic product and employment, NFTC wrote.

The U.S. Chamber of Commerce submitted a 16-page defense of free trade agreements and the World Trade Organization, stating that while they are “no panacea,” on the whole they have brought “substantial benefits” to the U.S. The organization also took exception to the focus on trade balance as a metric of success, describing the linkage of trade deficit to trade agreement success as “broadly problematic.”

“From the Chamber’s perspective, a trade agreement is successful if it affords U.S. companies greater freedom to sell their goods and services in foreign markets; ensures access to needed inputs, materials, and other products for American companies and consumers; and encourages the expansion of trade flows reflecting the simple principle that manufacturers, farmers, and service providers should do more of what each does well,” it noted.

In contrast, organized labor has proven an administration ally when it comes to criticism of trade deficits and loss of U.S. jobs. The AFL-CIO in its comments stated that the U.S. “trade deficit is as large as it is due to failures of domestic economic policy, trade rules, and trade enforcement. U.S. policy needs to improve in all areas—not just enforcement. Violations of trade rules—whether by trade deal partners or by other trade partners—have harmed America’s working people, firms and farms.” Although, just last week, a number of agriculture organizations pleaded with Congress to do no harm when renegotiating trade deals (see **WTTL**, July 31, page 4).

Terence Stewart, managing partner of Stewart and Stewart in Washington, submitted a lengthy treatise critiquing the WTO. He noted four systemic problems that have resulted in biased outcomes for U.S. companies: discrimination between treatment of direct and indirect tax systems; a dispute settlement system where errors cannot be fixed by member governments; members’ ability to self-select classification as developing; and inadequacy of the WTO to deal with large state-directed economies, like China.

In its comments, the Information Technology Industry Council (ITI) stated its support for trade and investment agreements while noting such trade barriers as data localization and restrictions on cross-border data flows in China, Colombia and the European Union. It cited restrictions on cloud computing companies in Asia and discriminatory regulation practices in Indonesia and Vietnam, as well as “burdensome” customs regulations in Canada and Mexico.

“Removing these barriers and enabling digital information to move rapidly and freely, including across borders, offers the United States the greatest potential to use trade to

enhance U.S. innovation, job creation, and economic growth,” ITI Senior VP for Global Policy Josh Kallmer said in a statement.

## Kaplan Charms at Confirmation Hearing

Gilbert Kaplan, nominee for the job of Commerce under secretary for international trade, sailed through his confirmation hearing Aug. 3, answering questions to the satisfaction of both parties and even eliciting laughter from Ranking Member Ron Wyden (D-Ore.) who made known his annoyance with Commerce Secretary Wilbur Ross and U.S. Trade Representative Robert Lighthizer.

Wyden expressed frustration at being kept in the dark by Commerce, particularly on the softwood lumber dispute with Canada (see **WTTL**, July 31, page 8). “Real consultation is not telling us five minutes before something’s going to happen, before a proposal is offered or agreement is reached, or something of that nature. It is done in a way where members of this committee, both Democrats and Republicans, can actually reflect on what is being considered and give comments. That’s what we think real consultation is all about. Will you commit fully to have that kind of real briefing?” queried Wyden.

“Senator, I hear you loud and clear on that and I absolutely agree to do that with all the members of this committee. I actually very much enjoy speaking with members of the Finance committee because I learn so much and it’s so important, so yes, I do agree to do that,” replied Kaplan. He added, “I should mention that the date of the lumber final is Sept. 6, so if I’m privileged to be confirmed and confirmed before then, I’ll be more effective in that regard, but –”

The comment dissipated Wyden’s frustration. He replied, laughing, “That is a really clever argument for the United States Finance Committee to move quickly. We’ve had ingenious arguments made over the years, I think yours is about as good as I’ve heard.”

In addition to his commitment to “meaningful consultation,” Kaplan seemed to impress the committee with his stance on enforcement and opening up foreign markets to digital trade. “We need to have language in every trade agreement guaranteeing open access for digital trade and services,” said Kaplan. He noted that he was the first to challenge China’s so-called “Great Fire Wall” and acknowledged that China’s trade barriers on cloud computing “is a really big problem that is getting bigger all the time.” He said that the U.S. should first raise the issue in the Comprehensive Economic Dialogue with China.

In response to Sen. Bob Menendez’ (D-N.J.) query about intellectual property rights violations, Kaplan said he it’s “time to dust off” Section 301 (see related story, page 1). The same tool, as well as Section 232 and going through the World Trade Organization, can also be used in regards to steel overcapacity. Kaplan said that Commerce may even need to take some “creative cases” and turn up the pressure on China and other culprits. It’s not just China Kaplan has his eye on; he said that Canada and Mexico have a duty evasion problem.

Kaplan voiced his support for a fully functioning Export-Import Bank as a “very important tool” for exports and promised to be a champion of the U.S. Foreign Commercial Service. He pledged to work closely with his legal team at the International Trade Administration’s (ITA) to keep strong the Privacy Shield agreement reached with the European Union.

In his opening remarks, Kaplan said he felt as though he had been “preparing to hold this position my entire career.” He first testified before the committee in 1986 as deputy assistant secretary of Commerce for import administration, now called enforcement and compliance, which would fall under his purview at ITA.

## Democrats Tout “A Better Deal” on Trade and Jobs

Standing outside the Capitol Aug. 2, Senate Democrats unveiled their seven-point proposal for “a better deal on trade and jobs.” This is part of Democrats’ “A Better Deal” initiative launched in late July that seeks to bring blue-collar workers back into the fold ahead of the 2018 midterm elections.

The Democratic plan calls for an independent trade prosecutor to combat trade cheating, someone who “would begin rapidly challenging unfair trade practices by foreign countries, like China, that have been ignored for far too long, without relying on the years-long World Trade Organization process,” reads the proposal. The U.S. Trade Representative’s (USTR) General Counsel has not done enough to stop trade cheating, the Democrats contend. The proposed new position would be housed at the International Trade Commission.

Democrats also want the formation of an American Jobs Security Council to review and potentially block any problematic purchases of American companies by foreign companies. The proposal calls on the administration to make NAFTA “work for working people” and for increased transparency and public input provisions. It calls for a crackdown on countries that manipulate their currency. As of the last review, no country was currently labeled a currency manipulator (see **WTTL**, April 17, page 2).

On outsourcing, the proposal calls for penalties on federal contractors that outsource jobs, Buy America requirements for all taxpayer-funded projects, and an outsourcing tax on companies leaving the U.S.

“The problem is President Trump has talked a good game and done virtually nothing on trade but study it,” said Senate Minority Leader Chuck Schumer (D-N.Y.) in a statement announcing the plan. “We need action. If President Trump wants to work with us to get things done, good,” he added.

AFL-CIO President Richard Trumka welcomed the plan. “We applaud ... Schumer’s leadership and the Senate Democrats for committing to better trade deals and creating the good jobs that working people deserve. Particularly notable in this agenda are the demands for increased public input and transparency in trade negotiations—including the

call for town hall meetings across the country—as well as the continued commitment to long-needed action on currency and trade enforcement,” said Trumka in a statement.

## China Is Primary Enforcement Priority, USTR Says

Combating trade distortions caused by China is the U.S. Trade Representative’s (USTR) primary objective, according to a report on enforcement priorities the office quietly published in late July. The USTR report for the Senate Finance and House Ways and Means committees is required under the Trade Facilitation and Enforcement Act of 2015.

“Our primary objective now is defending the ability of [Commerce] to apply appropriate antidumping and countervailing duties to combat distortions caused by China’s non-market economy system and government subsidies that are injuring U.S. workers and industries,” the report noted. It also highlighted the international steel and aluminum markets as experiencing “significant oversupply” due to China’s actions.

USTR is committed to “rigorous” enforcement of intellectual property (IP) rights. China is again fingered as a culprit, but so are India and Indonesia. All three countries are on USTR’s 2017 Special 301 Report Priority Watch List due to lack of IP protection or enforcement (see **WTTL**, May 1, page 6).

The 10-page report also called out foreign product standards that create unnecessary barriers to trade. China again is a culprit for its laws that discriminate against foreign technologies under the guise of information security. USTR cited the European Union for forcing U.S. producers to conform to “costly redesigning or reconfiguring of products to the European standard” or giving up on that market.

Finally, USTR cited its “robust pursuit of ongoing WTO [World Trade Organization] dispute settlement actions and continued enforcement against traditional trade barriers.” It noted the successful challenge to India’s ban on U.S. poultry products and two challenges to China’s grains policy.

### \* \* \* Briefs \* \* \*

**TRADE FIGURES:** Merchandise exports in June jumped 6.8% from year ago to \$129.0 billion, Commerce reported Aug. 4. Services exports gained 3.85% to record-high \$65.4 billion from June 2016. Goods imports increased 4.4% from June 2016 to \$194.25 billion, as services imports gained 5.3% to \$43.8 billion. Merchandise exports from January to June grew 7.4% from a year ago to \$766.9 billion. Goods imports jumped 7.35% from 2016 to \$1.17 trillion. U.S. services exports gained 3.3% to \$385.3 billion from 2016, as services imports rose 4.7% to \$260.6 billion.

**RUBBER:** In 2-2 final vote Aug. 3, ITC found U.S. industry is materially injured by dumped imports of emulsion styrene-butadiene rubber from Brazil, Korea, Mexico and Poland. Chairman Rhonda Schmidlein and Commissioner Irving Williamson voted yes, while Vice Chairman David Johanson and Commissioner Meredith Broadbent voted no. Commission also made negative finding of critical circumstances for imports from Korea.

USDA: Administration Aug. 2 sent Senate nomination Ted McKinney to be Agriculture under secretary for trade and foreign agricultural affairs. White House announced intent to nominate McKinney in July (see **WTTL**, July 24, page 10). McKinney has been director of Indiana State Agriculture Department since 2014. He spent 19 years with Dow AgroSciences and 14 years with Eli Lilly subsidiary Elanco as director of global corporate affairs.

EXPORT ENFORCEMENT: Harold Rinko of Hallstead, Pa., owner-operator of Global Parts Supply, agreed to pay BIS \$100,000 civil penalty for role in conspiracy to export lab equipment, portable gas scanner, flowmeters and other items used to detect chemical warfare agents to Syria without licenses. Of penalty, all will be suspended for five years and then waived if Rinko commits no further violations. In October 2016, Rinko was sentenced in Scranton, Pa., U.S. District Court to time served for related charges (see **WTTL**, Oct. 31, page 6). He pleaded guilty in September 2014.

MORE EXPORT ENFORCEMENT: Rasheed Al Jijakli, CEO of Orange County, Calif., check cashing business, was arrested Aug. 1 on charges of illegally exporting day-and night-vision rifle scopes, laser boresighters, flashlights, radios, bulletproof vest and other tactical equipment to Syria without licenses. He was released on \$250,000 bond. Indictment was unsealed in Santa Ana U.S. District Court same day.

EVEN MORE EXPORT ENFORCEMENT: Peter Zuccarelli, of Plano, Texas, owner of American Coating Technologies, pleaded guilty Aug. 3 in Sherman, Texas, U.S. District Court to conspiring to illegally export radiation hardened integrated circuits (RHICs) to China and Russia for use in space programs between June 2015 and March 2016. Zuccarelli received RHICs he ordered from U.S. suppliers, removed original packaging, repackaged them, falsely declared them as “touch screen parts,” and shipped them without required licenses, information filed in court noted. Sentencing has not been set.

MONTENEGRO: DDTC will publish Federal Register rule updating definition of NATO to include Montenegro since country joined alliance in June, agency posted on website July 31.

VENEZUELA: OFAC July 31 designated Venezuela President Nicolas Maduro under Executive Order (EO) 13692 for “undermining democracy or human rights” by holding “illegitimate” election creating alternate national assembly. “In addition to committing widespread human rights abuses, Maduro’s regime has mismanaged the economy and engaged in systemic corruption,” Treasury noted in statement. OFAC July 26 designated 13 current or former senior Venezuelan government officials under same EO (see **WTTL**, July 31, page 7).

UN-DEBARMENT: DDTC in Federal Register Aug. 2 rescinded statutory debarment of Pratt & Whitney Canada Corporation (P&W Canada) that agency imposed after firm pleaded guilty to exporting military software to China in June 2012 (see **WTTL**, July 2, 2012, page 1). P&W Canada “may participate directly or indirectly in any activities that are subject to the ITAR,” notice said. To come to decision, State “consulted with other appropriate U.S. agencies and has determined that Pratt & Whitney Canada Corporation has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns,” it noted.

CUBA: Senate Finance Committee Ranking Member Ron Wyden (D-Ore.), Aug. 1 introduced U.S.-Cuba Trade Act of 2017 (S. 1699) to establish normal trade relations with island nation. Sens. Patrick Leahy (D-Vt.), Dianne Feinstein (D-Calif.), Richard Durbin (D-Ill.), Tom Udall (D-N.M.), Patty Murray (D-Wash.), and Jeff Merkley (D-Ore.), co-sponsored bill. White House restored some restrictions to Cuba travel policy in June (see **WTTL**, June 19, page 1).

NOMINATIONS: On last day before August recess, Senate confirmed dozens nominees en bloc by voice vote Aug. 3, including Richard Ashooh to be Bureau of Industry and Security (BIS) assistant secretary and Mira Ricardel to be BIS under secretary. Also on the list were Elizabeth Erin Walsh to be assistant secretary of Commerce and director general of U.S. and Foreign Commercial Service, Ray Washburne to be president of Overseas Private Investment Corporation and Treasury, Commerce, State and other nominees. Senate Majority Leader Mitch McConnell then tweeted, “The #Senate has confirmed more Executive Branch nominees this week than all of the Executive Branch nominees confirmed this year—combined.”

NAFTA: Ahead of upcoming NAFTA talks, Mexico’s Economy Secretary Economy Ildefonso Guajardo Villarreal July 31 named Kenneth Smith Ramos chief technical negotiator and Salvador Behar Lavalle as deputy chief negotiator ... Canadian Foreign Affairs Minister Chrystia Freeland announced Aug. 2 new diplomatic appointments: Kirsten Hillman, deputy head of mission at Canadian Embassy; Brandon Lee, consul general in Seattle; Nadia Theodore, consul general in Atlanta; and Rana Sarkar, consul general in San Francisco. Freeland also announced creation of new NAFTA Council, whose members will “offer their expertise and strategic advice in support of Canada’s negotiations,” according to Canadian government release.

MORE NAFTA: Also citing imminent NAFTA renegotiation, two former officials involved in various stages of U.S.-Mexico relations Aug. 1 announced launch Monarch Global Strategies LLC, formerly ManattJones Global Strategies LLC. Consulting firm led by former Assistant Commerce Secretary for Market Access Michael C. Camuñez and former Ambassador to Mexico Jim Jones will focus on “helping companies and investors achieve their business goals in North America,” release said.

KORUS: Kim Hyun-Chong resigned from WTO Appellate Body Aug. 1 to become Korea’s new trade minister. Kim was chief negotiator of U.S.-Korea free trade agreement (KORUS). He will wade back into fray as trade ministry will handle new negotiations that USTR called for (see **WTTL**, July 31, page 3).

TRADE PEOPLE: Katherine Tai named Ways and Means democratic chief trade counsel, replacing Jason Kearns who left post earlier in July, Ranking Member Richard Neal (D-Mass.) said July 31 (see **WTTL**, July 31, page 8). Tai served committee as trade counsel from 2014-2017 and worked in USTR general counsel’s office from 2007-2014, where she was chief counsel for China trade enforcement from 2011-2014. “Throughout her service in two administrations at USTR and years with our committee, Katherine has proven she has the knowledge and experience to tackle and understand our nation’s most pressing trade issues,” Neal said in statement.

EX-IM: Anthony Scaramucci is no longer with Export-Import Bank (Ex-Im), bank confirmed Aug. 4. From June 19-July 25 he held position of senior VP and chief strategy officer before brief stint at White House (see **WTTL**, July 3, page 8).