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Banking Committee Set to Consider Updated CFIUS Bill

Responding to industry and administration officials' concerns about expanding the jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS), Senate Banking Committee Chair Michael Crapo (R-Idaho) and Ranking Member Sherrod Brown (D-Ohio) May 11 circulated a draft amendment in the nature of a substitute to the Foreign Investment Risk Review Modernization Act (FIRRMA) (S. 2098).

At first glance, the bill addresses the concerns of industry and BIS officials that the updated CFIUS jurisdiction would cause the two systems to overlap. Unlike the first bill, which added joint ventures to CFIUS review, the updated bill "authorizes the Commerce Secretary to establish controls on the newly identified emerging and foundational technologies to address concerns posed by transfers through such investment vehicles as joint ventures," according to a committee fact sheet (see **WTTL**, April 23, page 4).

In addition, it "authorizes the President to establish a regular, ongoing, interagency process that is informed by multiple sources, including the intelligence community, to identify emerging and foundational technologies essential to the national security of the United States and not otherwise already subject to export controls," the fact sheet noted.

Observers are optimistic about the new bill's prospects among both industry and lawmakers. "It is a keeper. Addresses national security issues directly and in a way that creates certainty for industry," one told **WTTL**. The committee plans to have a bill markup May 22, with amendments due by May 18.

President Trump Orders U.S. Withdrawal from JCPOA

The U.S. will cease to participate in the Joint Comprehensive Plan of Action (JCPOA) and will re-impose sanctions on Iran and perhaps impose new sanctions, President Trump

announced May 8. The long-touted threat came true despite European efforts to keep the U.S. in the pact. “Iran’s behavior threatens the national interest of the United States. On October 13, 2017, consistent with certification procedures stipulated in the Iran Nuclear Agreement Review Act, I determined that I was unable to certify that the suspension of sanctions related to Iran pursuant to the JCPOA was appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program,” Trump wrote in a presidential memoranda.

“On January 12, 2018, I outlined two possible paths forward — the JCPOA’s disastrous flaws would be fixed by May 12, 2018, or, failing that, the United States would cease participation in the agreement. I made clear that this was a last chance, and that absent an understanding to fix the JCPOA, the United States would not continue to implement it,” he added.

Following 90- and 180-day wind-down periods, all applicable sanctions will go back into full effect, Treasury said in a statement. In preparation for the re-imposition of sanctions, Treasury’s Office of Foreign Assets Control (OFAC) posted frequently asked questions (FAQs) on its website.

The six-month wind-down period will be for energy-related sanctions, and the 90-day period will be used by Treasury to “terminate the specific licenses that were issued pursuant to the statement of licensing policy on civil aviation,” a senior State official clarified to reporters in a background briefing. Treasury has to reach out to specific companies to terminate licenses in an “orderly way,” the official said.

This means a loss of billions of dollars in sales for Boeing, who secured a memorandum of agreement with Iran Aseman Airlines in April 2017 (see **WTTL**, Sept. 18, 2017, page 2). Boeing went on to secure nearly \$20 billion in airline contracts with Iran. Airbus also has about \$20 billion in Iran deals and has delivered three planes of a 100-plane order for Iran Air. Despite being a European-based company, Airbus will still be impacted by sanctions.

Separately, the U.S., in conjunction with the United Arab Emirates (UAE), announced May 10 that it had disrupted “an extensive currency exchange network in Iran and the UAE that has procured and transferred millions in U.S. dollar-denominated bulk cash to Iran’s Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to fund its malign activities and regional proxy groups.” In all, OFAC designated nine Iranian individuals and entities as part of this network.

Partners, Lawmakers React to Iran Decision

Former President Obama called the announcement “misguided” in a Facebook post. “Walking away from the JCPOA turns our back on America’s closest allies,” he wrote. “In a democracy, there will always be changes in policies and priorities from one administration to the next. But the consistent flouting of agreements that our country is a party to risks eroding America’s credibility, and puts us at odds with the world’s major powers,”

Obama added. The deal's other partners echoed the president's sentiment. Iranian Foreign Minister Javad Zarif called the U.S. withdrawal "unlawful." Zarif has been instructed to take "necessary measures to obtain required guarantees from the remaining parties to the JCPOA as well as Iran's other economic partners, and to immediately report the results of this mission," read a two-and-a-half page statement.

European Union (EU) High Representative Federica Mogherini reiterated that the EU plans to stay in the agreement as long as Iran continues to carry out its commitments. "The nuclear deal with Iran is the culmination of 12 years of diplomacy. It belongs to the entire international community. It has been working and it is delivering on its goal, which is guaranteeing that Iran doesn't develop nuclear weapons," she said. The EU "is determined to preserve it. We expect the rest of the international community to continue to do its part to guarantee that it continues to be fully implemented, for the sake of our own collective security," Mogherini added.

Congressional reaction was mixed with some cheering withdrawal from a flawed deal and others worried about the international implications of backing out of a deal negotiated with allies. "President Trump's decision today makes much more likely a scenario we have long dreaded: an Iranian nuclear weapon. The nuclear agreement has its weaknesses—particularly that certain inspection provisions sunset a few years down the road rather than binding Iran in perpetuity," Rep. Eliot Engel (D-N.Y.), who opposed the JCPOA, said in a statement.

"My hope was that in that time, we could have worked with partners to build upon the deal, extend its life, and address all of Iran's other aggressive and harmful activities. The only way to improve the deal was for all parties to live up to their obligations," he added.

Sen. Tom Cotton (R-Ark.) applauded the renewed sanctions. "The Iran nuclear deal, terribly flawed from the beginning, at best only delayed Iran from getting the bomb while handing over hundreds of billions in sanctions relief, money that Iran uses to support terrorism and build long-range missiles. Tough sanctions are a first step toward rolling back Iran's campaign of terror, but it won't be the last," said Cotton.

Speaker Issues NAFTA Deadline, Much Work Remains

If NAFTA is to be passed this Congress, then negotiators are running out of time. In order for a deal to get a vote in 2018, text must be submitted to lawmakers by May 17. Heading into yet another trilateral meeting May 11 with U.S. Trade Representative (USTR) Robert Lighthizer, Canadian Foreign Minister Chrystia Freeland and Mexican Economy Minister Ildefonso Guajardo both said there was much left to be done.

"As the author of TPA I can tell you we have to have the paper, not just an agreement, we have to have the paper from USTR by May 17 for us to vote on it this year in December," House Speaker Paul Ryan (R-Wis.) told members of The Ripon Society. Per Trade Promotion Authority, a notice of intent to sign must be submitted to Congress 90 days in

advance of signing, though the final text does not have to be delivered until 60 days ahead of signing. Once the deal is signed, the International Trade Commission (ITC) has up to 105 days to complete its analysis. Ryan's May 17 deadline is a calendar deadline not a statutory deadline, his spokesperson noted.

Auto rules of origin have yet to be resolved and have taken up the bulk of negotiating time, though other issues, like investor-state dispute settlement and the U.S. push for a five-year sunset clause, still are outstanding. Freeland told reporters that "meaningful" progress has been made but there is still a "very long to-do list."

Despite pressure to wrap things up before Mexico's July 1 presidential election, Guajardo said, "I have to make very clear the quality of the agreement and the balance of the agreement has to be maintained. So we are not going to sacrifice balance and quality for time."

Like Canadian and Mexico, U.S. lawmakers do not want to see a NAFTA deal with diminished quality. In an editorial May 10, Sen. Pat Toomey (R-Pa.) pushed back against rumored NAFTA scenarios. "To pressure us into voting for an agreement that diminishes free trade, some in the administration suggest offering a grim choice: either approve a diminished NAFTA, or the president will unilaterally withdraw the U.S. from the existing NAFTA, leaving no NAFTA at all."

"If presented with this ultimatum, I will vote 'no,' urge my colleagues to do likewise, and oppose any effort by the administration to withdraw unilaterally. Pulling out of NAFTA by executive fiat would be economically harmful and unconstitutional," Toomey wrote.

Toomey's editorial echoed the letter Reps. Sander Levin (D-Mich.) and Ron Kind (D-Wis.) sent to the president May 8. "A new NAFTA should pass Congress based on its merits and not on the threat of withdrawing from the existing agreement," they wrote. Levin and Kind further reminded the president that "authority over foreign commerce lies with Congress and any decision to change U.S. law - no matter the subject - must pass both the House and Senate."

In what is likely a preemptive move, Kind May 10 introduced a bill "to provide for congressional review of the imposition of duties and other trade measures by the executive branch, and for other purposes" (H.R.5760).

U.S. Formally Protests Indian Agriculture Price Support

The U.S. submitted a counter notification on India's wheat and rice market price support (MPS) at the World Trade Organization (WTO) Committee on Agriculture (COA), USTR Robert Lighthizer and Agriculture (USDA) Secretary Sonny Perdue announced May 9. The May 4 filing is the first ever COA notification under WTO's Agreement on Agriculture regarding another country's measures.

"India's apparent MPS for wheat appears to have been over 60% of the value of production in each of the last four years for which India has notified data. Its apparent MPS for rice

appears to have been over 70% of the value of production in each of the years,” the U.S. noted. The administration expects the topic to be broached at the next COA meeting in June. Specific issues include: quantity of production used in MPS calculations, the exclusion of state-level bonuses from calculations of applied administered prices, exclusion from India’s notifications of information on the total value of production (VoP) of wheat and rice (information necessary to assess compliance with WTO commitments), and issues with currency conversions, the agencies noted.

“Accurate reporting and improved transparency of these programs is an important step in ensuring that our trading partners are living up to their WTO commitments and helps achieve more market-based outcomes through the multilateral trading system,” Lighthizer said in a statement.

American wheat growers applauded the move. “India’s large price support program has a negative effect on international markets,” said National Association of Wheat Growers President Jimmie Musick in a joint statement with U.S. Wheat Associates. “We welcome this signal from our government that it is not going to accept obvious attempts to cheat the system by India and other countries. We thank the USTR and USDA for its creativity in challenging this policy by being the first country to use the WTO’s counternotifications [sic] rule on agricultural domestic support,” Musick added.

Lawmakers Unhappy with Pace of Section 232 Exemption Process

In both a letter and face-to-face meeting, bipartisan lawmakers urged Commerce Secretary Wilbur Ross to quicken the pace of the product exclusion process for Section 232 steel and aluminum tariffs. Since the exclusion process was announced March 18, thousands of applications have been filed, yet as of May 4, Commerce has posted only 1,572 steel and 129 aluminum applications.

“This is far too slow of a pace given the volume and the fact that this process is over a month and a half old,” wrote 39 lawmakers May 7 in a letter spearheaded by Reps. Jackie Walorski (R-Ind.) and Ron Kind (D-Wis.).

At a hearing of the Senate Appropriations Committee commerce subcommittee May 10, Ross stated Commerce has a backlog of 2,200 outstanding requests for exemptions that came within the previous 12 days. The total number of requests is around 8,700, and the department has about 30 days left of the 90-day window to process requests. Assuming the House and Senate quickly approve a budget request for 15 more employees, they’ll be able to make the deadline, Ross said.

In the letter, lawmakers thanked Ross for responding to congressional suggestions; they wrote that it’s “abundantly clear” more changes are needed. To that end, they outlined 10 requests, including: providing relief to companies experiencing “undue delays” in the review process; allow exclusions covering ranges of dimensions with the same harmonized

tariff schedule code; allow trade associations to apply for exclusions for an industry; protect sensitive information; and publish a frequently asked questions page.

The Coalition of American Metal Manufacturers and Users thanked the representatives “for standing up for U.S. manufacturing,” said Coalition Spokesperson Paul Nathanson in a statement. “Improvements to the product exclusion process would provide at least a bare minimum of relief amidst to the chaos that these tariffs have already created to downstream companies who use steel and aluminum.”

“Tariffs are taxes. We call on President Trump to put an end to these tariffs now. There are ways to deal with global steel and aluminum overcapacity issues without punishing our own companies and communities,” added Nathanson.

Ross met with Congressional Aluminum Caucus May 9 where caucus co-chairs Reps. Suzan DelBene (D-Wash.), Larry Bucshon (R-Ind.), Bill Johnson (R-Ohio) and Dave Loebsack (D-Iowa) cautioned against a “one-size-fits-all” approach on aluminum tariffs. “Chinese aluminum overcapacity has had a negative impact on the global aluminum market – forcing U.S. companies to scale back their operations or even close their doors,” said Bucshon in a statement following the meeting.

“I applaud the Trump Administration for working to address China’s unfair trade practices, but I urge the Administration to take a comprehensive look at a targeted approach when it comes to aluminum tariffs. It is imperative to address this issue without harming our integrated aluminum supply chain, which is why I support permanent exemptions, without quotas for our responsible trading partners,” he added.

China, U.S. Trade Accusations at WTO General Council Meeting

China and the U.S. traded barbs at the WTO General Council meeting May 8. China criticized the U.S. administration of undermining the global body, and Deputy USTR Dennis Shea shot back with accusations that China’s state-owned economy undermines the global system of open and fair trade.

Zhang Xiangchen, China’s Ambassador to the WTO, told the membership that the U.S. threatens the WTO with “three hard blows,” namely, blocking the process to appoint new judges, imposition of global steel and aluminum tariffs and threatening China with an additional \$50 billion in tariffs per the Section 301 investigation.

The U.S. has said it cannot agree to proposals to start the Appellate Body (AB) selection process until the Dispute Settlement Body addresses U.S. concerns about AB members whose terms have expired continuing to work on cases (see **WTTL**, April 30, page 6).

China is not alone in its criticism; more than 30 other delegations spoke out about the AB issue. “We see no link between the issue of Rule 15 and the issue of appointments. The discussion on Rule 15 could very well take place without delaying the decision on

appointments any further. A fortiori, we see no rationale in blocking the launch of the mere selection process,” European Union (EU) Ambassador Marc Vanheukelen said in a statement. The EU also backed the Chinese assertion that Section 232 tariffs are not justified by national security.

Shea placed the blame for global steel overcapacity on China. He also proffered a list of ways China undermines the global trading system: market access barriers, forced technology transfers, intellectual property theft, Made in China 2025 program, discriminatory technical standards, government subsidies and restrictive foreign investment policies.

This spat came a week before Chinese Vice Premier Liu He is supposed to visit Washington for trade talks. The White House announced a visit during the week of May 14, but did not give a specific date. A U.S. delegation visited Beijing May 3-4 in an effort to ease trade tensions (see **WTTL**, May 7, page 1).

Industry, worried about a trade war, sent comments to USTR Lighthizer outlining their concerns. “The proposed tariff list and escalating tariff threats made by the administration will not effectively advance our shared goal of changing these harmful Chinese practices in a durable, verifiable and enforceable manner,” the coalition of more than 100 retail, agriculture, technology, and manufacturing associations wrote May 11. “Only through extensive collaboration and alignment can the administration develop and execute a strategic policy to effectively address our shared issues of critical concern in China.”

Commerce Secretary Wilbur Ross appeared to downplay fears in a television interview May 10. “I think [China] agreed to the concept of a trade deficit reduction - the questions are how much and how do you get there?”

*** * * Briefs * * ***

FLANGES: In 5-0 final vote May 11, ITC found U.S. industry is materially injured by subsidized imports of stainless steel flanges from China.

TOOL CHESTS: In 4-0 final vote May 11, ITC also found U.S. industry is materially injured by dumped imports of tool chests from China and Vietnam. Commissioner Jason E. Kearns did not participate in these investigations.

GLYCINE: In 5-0 preliminary votes May 11, ITC found U.S. industry may be injured by allegedly dumped imports of glycine from India, Japan and Thailand and subsidized imports from China, India and Thailand.

STEEL WHEELS: In 4-1 preliminary vote May 10, ITC also found U.S. industry may be injured by allegedly dumped and subsidized imports of steel wheels from China. Commissioner Meredith Broadbent voted no.

FIREARMS: Proposed rules on transfers of items from U.S. Munitions List (USML) categories I-III (firearms and ammunition) to Commerce Control List expected to be published in Federal Register May 15, in time for BIS Update conference (see **WTTL**, April 23, page 9). Rules were written in 2012 but held back after the Sandy Hook shooting.

TRADE PEOPLE: Former Justice attorney Ryan Fayhee has joined Hughes Hubbard & Reed's international trade practice as partner in Washington office, firm announced May 8. He previously was partner at Baker & McKenzie (see **WTTL**, Aug. 17, 2015, page 7). Prior to that, Fayhee served as National Export Control Coordinator, principal Justice attorney overseeing export control and embargo investigations and prosecutions.

ZTE: In latest of string of announcements, ZTE said May 9 that "major operating activities of the Company have ceased" due to BIS denial order (see **WTTL**, April 23, page 1). "As of now, the Company maintains sufficient cash and strictly adheres to its commercial obligations subject to compliance with laws and regulations. The Company and related parties are actively communicating with the relevant U.S. government departments in order to facilitate the modification or reversal of the Denial Order by the U.S. government and forge a positive outcome in the development of the matters," company announced. Three days prior, ZTE said it had "formally submitted a request to BIS for a stay" of denial order and then postponed its annual general meeting until possibly June.

TREASURY: White House May 10 withdrew Adam Lerrick's nomination to be deputy Treasury under secretary. Senate received nomination in April 2017 but held no hearing (see **WTTL**, Jan. 1, page 6). No reason given for withdrawal. Lerrick is visiting scholar at American Enterprise Institute (AEI) and is "known for his work on international financial crises, particularly in Greece, Cyprus, Iceland, and Argentina, where he led the negotiation team of the largest foreign creditor in the restructuring of the country's \$100 billion debt," according to AEI bio.

CUBA: Carnival Cruise Line May 10 announced first-ever cruises to Cuba from port of Charleston, S.C., to launch in November 2019. "Cuba has proven to be extremely popular with our guests and we're delighted to provide even more opportunities to experience and explore this fascinating destination with these new voyages," Carnival president Christine Duffy said in statement.

EX-IM FRAUD: Justice filed denaturalization lawsuits in Miami U.S. District Court May 8 against two individuals convicted of conspiring to defraud Export-Import (Ex-Im) Bank of more than \$24 million, conduct they allegedly concealed during their naturalization proceedings. Guillermo Mondino, owner of Miami exporting company Texon Inc., was sentenced in November 2011 in D.C. U.S. District Court to 46 months in prison for his role in scheme (see **WTTL**, Nov. 7, 2011, page 4). Norma Borgono of Miami, former Texon officer manager, was sentenced in May 2012, in D.C. federal court to 60 months' probation, with conditions, for her role. Both pleaded guilty.

RUSSIA: In Federal Register May 9, State imposed additional sanctions on Russian weapons trading company Rosoboronexport (ROE) and any successor, sub-unit or subsidiary under Iran, North Korea, and Syria Nonproliferation Act (INKSNA). These include bans on government procurement, foreign assistance, USML sales and export licenses. OFAC designated ROE in April under Russian sanctions bill (see **WTTL**, April 9, page 1). Ban on government procurement excludes "procurement of goods, technology, and services for the purchase, maintenance, or sustainment of the Digital Electro Optical Sensor OSDCAM4060," State noted.

ARRIVEDERCI: Giovanni Zannoni, Italian national and member of Italian armed services, was deported to Italy May 8. He was sentenced in February in Brooklyn U.S. District Court to 11 months in prison for illegally exporting night vision goggles and assault rifle components to Italy between June 2013 and May 2017 without State licenses (see **WTTL**, Feb. 26, page 8). Zannoni pleaded guilty in December. He was arrested in May 2017 at Miami International Airport.