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## House Passes CFIUS Bill, White House Approves

In an overwhelming 400-2 vote June 26, the House passed the Foreign Investment Risk Review Modernization Act (FIRRMA), updating the jurisdiction of Committee on Foreign Investment in the U.S. (CFIUS) (S. 2098/H.R. 5841) and setting up a fight with the Senate. Reps. Thomas Massie (R-Ky.) and Justin Amash (R-Mich.) were the only no's.

After threatening to take more restrictive action against Chinese investments beyond the CFIUS bill, the president the next day endorsed the House action. "Congress has made significant progress toward passing legislation that will modernize our tools for protecting the nation's critical technologies from harmful foreign acquisitions," he said in a statement June 27.

FIRRMA "will enhance our ability to protect the United States from new and evolving threats posed by foreign investment while also sustaining the strong, open investment environment to which our country is committed and which benefits our economy and our people," the president added. On the Senate side, companion legislation was included in the National Defense Authorization Act (NDAA), which the Senate passed June 18 (see **WTTL**, June 25, page 1).

The House bill also includes the Export Control Reform Act of 2018 (H.R. 5040) that the Foreign Affairs Committee passed in the spring (see **WTTL**, April 23, page 4). On the House floor before the latest vote, Committee Chairman Ed Royce said, "Modernized U.S. export control laws and regulations will continue to have broad authority, governing the transfer of dual-use items and technology to foreign persons – whether that transfer takes place abroad or here in the United States."

## Canada Retaliates Against U.S. Steel, Aluminum Tariffs

Add the U.S.' northern neighbor to the list of trading partners who have followed up on promises of retaliation against the administration's tariffs. "In direct, measured and

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proportional response to U.S. tariffs on Canadian steel and aluminum, reciprocal surtaxes on \$16.6 billion of imports of steel, aluminum and other products from the United States will come into effect July 1,” Canada announced June 29. “Other products” that will be affected by the tariffs include: ketchup, strawberry jam, coffee, orange juice, manicure or pedicure preparations, printed or illustrated postcards, toilet paper, sleeping bags, playing cards, ball point pens and lawnmowers.

In addition, the Trudeau administration is making available \$2 billion to “defend and protect” the interests of Canadian steel, aluminum and manufacturing workers and industries. Canada, along with Mexico and the European Union (EU), was initially exempted from Section 232 tariffs on steel and aluminum, but that temporary reprieve ended June 1 (see **WTTL**, June 4, page 1).

“It is with regret that we take these countermeasures, but the U.S. tariffs leave Canada no choice but to defend our industries, our workers and our communities, and we will remain firm in doing so. The real solution to this unfortunate and unprecedented dispute is for the United States to rescind its tariffs on our steel and aluminum,” Canadian Foreign Affairs Minister Chrystia Freeland said.

“Canada has always been a safe, secure and reliable source of steel and aluminum for the U.S. market. The tariffs introduced by the United States on Canadian steel and aluminum are protectionist and illegal under WTO [World Trade Organization] and NAFTA rules – the very rules that the United States helped to write,” she added.

The officials noted that the U.S. has a \$2 billion annual trade surplus on iron and steel products with Canada, with 50% of U.S. steel exports destined for its northern neighbor. Canada is also recognized as part of the U.S. National Technology and Industrial Base related to National Defense. That Canada should be considered a national security threat has baffled U.S. lawmakers (see **WTTL**, June 25, page 3).

Separately, U.S. Trade Representative (USTR) Robert Lighthizer responded to WTO actions and retaliatory measures by the EU and others challenging U.S. steel and aluminum tariffs in a statement June 26. “While the [U.S.] has acted responsibly here, the [EU] and its followers have not. Rather than work with the United States, they have retaliated with tariffs designed to punish U.S. companies and workers,” he said.

“In an effort to give cover to this blatant disregard for WTO rules, they claim to be acting in reliance on a narrow exception that applies only in response to a safeguard measure. That exception does not apply here, however, because the United States has not taken a safeguard measure. The President’s actions here were taken under a U.S. national security statute – not under the separate U.S. statute for safeguard measures. In fact, there is no credible basis for the EU’s legal theory,” Lighthizer added.

## **Steel Group Files Suit Against U.S., CBP**

While trading partners and other domestic trade groups are battling the administration’s tariffs in the WTO or in public comments, the American Institute for International Steel

(AIIS), an association of steel-consuming companies that has long been opposed to any tariffs, is taking the fight to the Court of International Trade (CIT). AIIS filed suit June 27, challenging the constitutionality of Section 232 by which President Trump has imposed a 25% tariff on imported steel.

AIIS and two of its member companies, Sim-Tex, L.P. and Kurt Orban Partners, LLC, are seeking a declaration that the law is unconstitutional. They claim that Section 232 “violates the constitutional prohibition against Congress delegating its legislative powers to the President because it lacks any ‘intelligible principle’ to limit the discretion of the president,” according to an AIIS statement.

Alan Morrison, lead counsel in the suit, told reporters at a press event in Washington that 232 does not provide for judicial review of the president’s decisions, thus violating the doctrine of separation of powers and the system of checks and balances. Pending an outcome in their favor, the plaintiffs want an injunction preventing further enforcement of the tariff collection. They are not seeking monetary damages.

“In addition to the totally open-ended choice of how to counter any threat that imports may present, Section 232 allows the President to consider virtually any effect on the U.S. economy as part of national security,” said AIIS President Richard Chriss at the event.

“Unlike most cases brought against actions of the Trump administration, it is Congress—through its delegation of unfettered discretion to the President in this statute—and not the President that is the violator of the Constitution,” Morrison added.

The suit names the U.S. and Customs and Border Protection Commissioner Kevin McAleenan as defendants. The plaintiffs also filed a motion requesting the CIT Chief Judge appoint three judges to hear the case. This would provide a direct appeal to the Supreme Court, bypassing the Federal Circuit, thus speeding up the appeals process, the group noted.

AIIS is not the first to challenge the steel tariffs at the CIT. Swiss steel producer Severstal Export GMBH and its American affiliate Severstal Export Miami Corporation filed suit in March (see **WTTL**, April 23, page 10). Morrison clarified that while Severstal made a statutory claim, AIIS is making a constitutional claim, and therefore believes it will fare better.

## **Auto Manufacturers Put Brakes on Proposed Tariffs**

As they have on most of the administration’s previous tariff proposals, automakers, farmers and free traders came out strongly opposed to a proposed 25% tariff on automobile imports. Commerce received more than 2,000 comments due June 29 on its Section 232 investigation to determine the effects on national security of imports of automobiles, including cars, SUVs, vans and light trucks, and automotive parts.

“America does not go to war in a Ford Fiesta,” wrote the Association of Global Automakers. “National defense requirements’ for such vehicles are low or non-existent, and imports cannot, therefore, threaten ‘domestic production needed for projected national defense requirements’ or ‘domestic production and productive capacity needed for automobiles and automotive parts to meet national defense requirements,’ two of the statutory factors laid out in the Federal Register notice,” it noted.

In a lengthy submission, Toyota Motor North America, Inc. highlighted praise from President Trump and Republican governors for Toyota’s manufacturing in the U.S. before delving into the reasons why tariffs would “undermine, not advance, U.S. national security” and have a “devastating impact on dealerships.”

“Free and fair trade is the best way to create a sustained growth for the auto industry, employment opportunities for American workers and provide more choice and greater value for American consumers. Erecting trade barriers, like import tariffs, will ultimately invite retaliation from other nations and undermine America’s leadership, exports and competitiveness overseas,” Toyota wrote.

The U.S. Chamber of Commerce accused the administration of misusing Section 232 to gain leverage in other trade negotiations. “Administration comments to the press have made clear that the intention of the tariff threat is to create leverage in trade negotiations such as those relating to NAFTA and ongoing discussions with Japan and the [European Union].”

“This is an inappropriate and unlawful use of this statute. It is the Chamber’s view that the executive’s Section 232 authorities should not be abused in this way, and doing so only encourages other nations to raise their own trade barriers against U.S. exports in the name of national security,” the Chamber added.

American farmers are fearful of retaliation causing further harm to their industry. “Trade action by the U.S. on steel and aluminum has already resulted in retaliation against U.S. agricultural exports to China,” wrote the American Farm Bureau Federation, in reference to China’s 25% tariffs on U.S. pork products and 15% tariffs on tree nuts, fruits, wine and other products. “Tariffs targeting the many countries that export automobiles and automotive parts will potentially result in extensive additional retaliation against U.S. agricultural exports by tariffs and other restrictions.”

As expected, United Steelworkers (USW) were in the small minority in support of the Section 232 investigation; however, they cautioned that Canada should be exempted from any 232 actions. “Countries of concern should be our principal interest, as well as ensuring that we have the capacity – in terms of development and production, for key enabling technologies and productive capacity to meet the needs of our defense sector. Section 232 is a powerful tool and, used properly, can ensure that we have the capacity to defend our country, our allies and promote freedom and democracy around the globe,” USW wrote. Due to demand, Commerce previously extended the public comment period after initiating

the investigation in May (see **WTTL**, June 25, page 8). The rebuttal period now ends July 13, and public hearings will be held July 19 and 20.

## **Administration Eyes JCPOA Wind-Down Date**

The administration is beginning work to unwind regulations relating to the Joint Comprehensive Plan of Action (JCPOA). For one, Treasury's Office of Foreign Assets Control (OFAC) June 27 revoked two General Licenses (GLs) issued in connection with the JCPOA. At the same time, State officials are urging allies to cease importing oil from Iran by the wind-down date of Nov. 4.

GL H authorized certain transactions related to the export or re-export to Iran of commercial passenger aircraft and related parts and services, while GL I authorized certain transactions relating to foreign entities owned or controlled by a U.S. person. Archival versions of those licenses remain on the OFAC website to assist in wind-down activities.

In a briefing the day before the OFAC notice, a senior State official said that U.S. allies "without question, they should be reducing – they should be – and that's what we've been telling them in our bilateral meetings. They should be preparing now to go to zero." The official noted that countries have had notice since the U.S. withdrew from JCPOA May 8 that they needed to draw down their imports from Iran or face secondary sanctions (see **WTTL**, May 14, page 1).

In the notice on its website, OFAC amended the Iranian Transactions and Sanctions Regulations (ITSR) to "narrow the scope of the general licenses authorizing the importation into the United States of, and dealings in, Iranian-origin carpets and foodstuffs, as well as related letters of credit and brokering services, to the wind down of such activities through August 6, 2018."

The agency also issued two new general licenses authorizing the wind-down of transactions previously authorized under GL I through Aug. 6, and of transactions previously authorized under GL H through Nov. 4.

## **WTO Sides with Australia in Plain Packaging Case**

They can breathe easier down under following a June 28 WTO ruling in favor of Australia in a long-running dispute over plain packaging on cigarettes. In a statement, the Australian government called the ruling "a resounding victory." In 2011, Australia mandated that cigarettes be sold in plain packaging with graphic health warnings. A WTO panel was established following complaints filed by Cuba, the Dominican Republic, Honduras and Indonesia, who argued that the plain packaging requirement was inconsistent with Australia's WTO obligations on technical barriers and intellectual property rights. Ukraine was initially involved but its panel proceedings were suspended at the

request of the parties. In April 2014, the six parties originally involved in the dispute agreed to have one panel consider their separate, but not identical, complaints and to harmonize the timetable for panel proceedings (see **WTTL**, May 12, 2014, page 8). Flash forward to 2018, and the panel ruled that the plain packaging measures “are not more trade restrictive than necessary and do not create an unnecessary obstacle to international trade.”

“After years of robustly defending the tobacco plain packaging measure against multiple claims brought within multiple forums, the Government welcomes the WTO decision. This is the conclusion to these efforts to challenge Australia's right to introduce legitimate measures to protect human health,” Trade Minister Steven Ciobo and Rural Health Minister Bridget McKenzie said in a joint statement.

The U.S. was among 40 members of the WTO that participated as a third party. The panel received 41 amicus curiae submissions, indicating a large interest in the outcome. The Dispute Settlement Body is expected to adopt the panel reports within 20-60 days of circulation, unless any of the impacted parties appeal.

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

**FCPA:** Egbert Yvan Ferdinand Koolman, Dutch citizen and Aruban government official residing in Miami, was sentenced June 27 in Miami U.S. District Court to 36 months in prison for conspiracy to commit money laundering in scheme to pay \$705,000 in bribes to award lucrative mobile phone and accessory contracts. He pleaded guilty April 13. Koolman was product manager of Servicio di Telecomunicacion di Aruba N.V. (Setar), instrumentality of Aruban government. Lawrence Parker, Jr., owner of five Miami phone companies, was sentenced April 30 in Miami federal court to 35 months in prison, three years' supervised release and \$701,750 in restitution for scheme (see **WTTL**, May 7, page 5). He pleaded guilty in December 2017 to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and to commit wire fraud.

**TRADE PEOPLE:** President June 28 announced intent to nominate R. Clarke Cooper to be assistant secretary of State for political-military affairs. He currently serves as the director of intelligence planning for Joint Special Operations Command's Joint Inter-Agency Task Force – National Capital Region. Cooper served as executive director of Log Cabin Republicans from 2010 through 2012. Tina Kaidanow has been acting assistant secretary and principal deputy assistant secretary since February 2016, replacing Puneet Talwar, who left government for private sector three months earlier (see **WTTL**, Sept. 26, 2016, page 7).

**SUDAN:** OFAC June 29 removed Sudanese Sanctions Regulations from Code of Federal Regulations per October 2017 administration action revoking most Sudan sanctions (see **WTTL**, Oct. 16 2017, page 8). OFAC also amended Terrorism List Government Sanctions Regulations to “incorporate a general license authorizing certain transactions related to exports of agricultural commodities, medicines, and medical devices, which has, until now, appeared only on OFAC's website,” agency said in Federal Register notice. BIS licenses still required to export or reexport to Sudan certain items (commodities, software and technology) that are on Commerce Control List.

**POLYESTER:** In 4-0 final vote June 28, ITC found U.S. industry is materially injured by dumped imports of fine denier polyester staple fiber from China, India, Korea and Taiwan. Commissioner Jason Kearns did not participate in this investigation.

**FINANCE:** Senate Finance Committee Chairman Orrin Hatch (R-Utah) June 28 named Dr. Jeff Wrase new majority staff director, replacing Jay Khosla. He previously served as deputy staff director and is committee's chief economist since 2011, role he'll continue in addition to new duties. Khosla joined Finance in 2011 and became staff director in 2017.

**NOMINATION:** Senate Finance Committee June 28 unanimously advanced nomination of Jeffrey Kessler to be assistant Commerce secretary for enforcement and compliance. At Finance confirmation hearing June 12, he was pressed about application of Section 232 investigations (see **WTTL**, June 18, page 6). Kessler nominated Nov. 2.

**TPA:** At press time, it appears administration will win automatic Trade Promotion Authority (TPA) renewal for three more years. Congress failed to pass resolution of disapproval of extension by July 1 deadline. Trump requested TPA extension in March. At time, Senate Finance Chairman Orrin Hatch (R-Utah) said, "I don't think so" when asked about renewal, citing rise in tariffs (see **WTTL**, March 26, page 6).

**TARIFFS:** Sen. Sherrod Brown (D-Ohio) June 27 blocked vote on Sen. Bob Corker's (R-Tenn.) amendment that would require congressional approval of Section 232 tariffs. During floor debate on Farm Bill, Brown said steel and aluminum tariffs are needed "to defend against further shrinking of two sectors critical to our national defense." Corker decried move. It is second time amendment has been blocked; it was blocked June 12 when proposed as amendment to National Defense Authorization Act (see **WTTL**, June 18, page 4).

**GLOBAL MAGNITSKY:** OFAC in June 29 Federal Register added regulations to implement Global Magnitsky Human Rights Accountability Act (S. 284) and EO 13818 that president signed in December (see **WTTL**, June 18, page 7). Agency "intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy," notice said. To date, 73 individuals and entities have been sanctioned under EO.

**CUBA:** Senate passed Farm Bill (S. 3042) in 86-11 vote June 28, including provision that would allow Market Access Program (MAP) and Foreign Market Development (FMD) program funds to be used in Cuba. James Williams, president of Engage Cuba, called vote "enormously positive step toward expanding our trade relationship with the Cuban people." Use of MAP/FMD grants in Cuba, however, "will likely need to comply with the Trump Administration's prohibition on transactions with certain restricted entities in Cuba," organization said in statement.

**ANTIBOYCOTT:** House Foreign Affairs Committee June 28 passed by voice vote Israel Anti-Boycott Act (H.R. 1697), which would prohibit boycotts fostered by international governmental organizations, such as UN, against Israel and also would direct Ex-Im Bank to oppose boycotts against Israel. Rep. Peter Roskam (R-Ill.) introduced bill in March 2017, and Sen. Ben Cardin (D-Md.) introduced Senate companion bill (S. 720) at same time (see **WTTL**, March 27, 2017, page 7).