

Vol. 38, No. 29

July 16, 2018

## Commerce Lifts ZTE Denial Order

Despite the best efforts of lawmakers in both houses of Congress, the Bureau of Industry and Security (BIS) July 13 removed ZTE from its denied persons list, allowing U.S. firms to restart shipments. Two days earlier, the department tweeted that it had signed an escrow agreement with the Chinese telecom firm.

Before lifting the denial order, Commerce announced that ZTE had placed \$400 million in escrow at a U.S. bank. The \$1.4 billion paid under the new settlement agreement is in addition to the \$892 million in penalties ZTE has already paid to the U.S. government under a March 2017 settlement agreement, it said.

“While we lifted the ban on ZTE, the Department will remain vigilant as we closely monitor ZTE’s actions to ensure compliance with all U.S. laws and regulations,” said Commerce Secretary Wilbur Ross. “Three interlocking elements – a suspended denial order, the \$400 million in escrow, and a compliance team selected by and answerable to the Department – will allow the Department to protect U.S. national security.”

“The ZTE settlement represents the toughest penalty and strictest compliance regime the Department has ever imposed in such a case. It will deter future bad actors and ensure the Department is able to protect the United States from those that would do us harm,” Commerce tweeted July 11. Ten days prior, BIS issued a limited authorization order, which allowed four specific types of transactions, including support for existing networks and software patches (see **WTTL**, July 9, page 1).

## Settlement to Allow Posting Gun Blueprints Online

The day after comments were due on the administration’s proposals to move control of commercial firearm exports to Commerce from State jurisdiction, the Second Amendment Foundation (SAF) July 10 claimed victory in a long-running dispute over posting 3-D gun blueprints online (see related story, page 6).

© 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

As part of the settlement of SAF's lawsuit on behalf of Cody Wilson and Defense Distributed, "the government expressly acknowledges that non-automatic firearms up to .50-caliber – including modern semi-auto sporting rifles such as the popular AR-15 and similar firearms – are not inherently military," the foundation announced. The parallel proposals to transfer firearms would make the lawsuit moot when the rules become final, as the plaintiffs would no longer be restricted by State rules on work in the public domain.

"Under terms of the settlement, the government has agreed to waive its prior restraint against the plaintiffs, allowing them to freely publish the 3-D files and other information at issue," SAF said. "The government has also agreed to pay a significant portion of the plaintiffs' attorney's fees, and to return \$10,000 in State ...registration dues paid by Defense Distributed as a result of the prior restraint."

The Supreme Court decided in January to deny a petition for a writ of certiorari after a majority of U.S. Fifth Circuit Court judges ruled in September 2016 in favor of State's authority to enforce export control laws on unclassified technical data relating to prohibited munitions (see **WTTL**, Jan. 15, page 1).

## **U.S. Lobs Additional Tariffs at China**

Another week, another escalation in the trade spat between the U.S. and China. The administration announced July 10 it was seeking to place tariffs on \$200 billion worth of Chinese exports to the U.S. per Section 301. China swiftly condemned the announcement and lawmakers urged the president to ratchet down the trade tensions.

Among the proposed list of goods subject to the latest sanctions are seafood, wool, woven fabrics, copper alloys, tungsten waste and scrap. This additional action follows the implementation July 6 of 25% tariffs on approximately \$34 billion worth of Chinese imports. Those tariffs will eventually cover up to \$50 billion of Chinese imports. China responded by slapping equivalent tariffs on U.S. goods (see **WTTL**, July 9, page 1).

"As a result of China's retaliation and failure to change its practices, the President has ordered USTR to begin the process of imposing tariffs of 10% on an additional \$200 billion of Chinese imports. This is an appropriate response under the authority of Section 301 to obtain the elimination of China's harmful industrial policies," U.S. Trade Representative (USTR) Robert Lighthizer said in a statement.

"USTR will proceed with a transparent and comprehensive public notice and comment process prior to the imposition of final tariffs, as we have for previous tariffs," he added. The Section 301 Committee will convene a public hearing Aug. 20-23. The due date to file a request to appear is July 27, and written comments are due Aug. 17.

"For over a year, the Trump Administration has patiently urged China to stop its unfair practices, open its market, and engage in true market competition. We have been very clear and detailed regarding the specific changes China should undertake. Unfortunately,

China has not changed its behavior – behavior that puts the future of the U.S. economy at risk. Rather than address our legitimate concerns, China has begun to retaliate against U.S. products. There is no justification for such action,” added Lighthizer.

China’s Ministry of Commerce (MOFCOM) offered a lengthy rebuttal. “The slander of the United States against China about gaining extra advantage through unfair trade practice is a distortion of facts and hence is groundless,” reads the six-point statement published July 12. The U.S. is “not only launching a trade war with China, but also with the whole world, dragging the world economy into danger,” MOFCOM warned.

The U.S. “claims that it has ‘patiently urged China’ and that China ignored the U.S. request, but the truth is that trade differences have always been an important issue to China, who has been promoting the resolution of differences through dialogue and consultations with maximum sincerity and patience, with the hope to protect China-U.S. trade and economic cooperation, satisfy the growing needs for a better life of the Chinese people, and promote quality growth of the Chinese economy,” it added.

House Ways and Means Committee Chair Kevin Brady (R-Texas) called on Trump and Chinese President Xi Jinping to meet face-to-face to resolve the trade dispute, perhaps even to consider a free trade agreement. “With this announcement, it’s clear the escalating trade dispute with China will go one of two ways - a long, multi-year trade war between the two largest economies in the world that engulfs more and more of the globe, or a deliberate decision by President Trump and President Xi to meet and begin crafting an agreement that levels the playing field between China and the U.S. for local farmers, workers and businesses,” Brady said in a statement.

China July 9 updated its request for consultations with the U.S. at the World Trade Organization (WTO) concerning Section 301 tariffs. Separately, China was the subject of a three-day WTO Trade Policy Review July 11-13. Though members commended China on its engagement with the WTO, there were concerns about liberalization of foreign investment and the “preponderant role of the State in general, and of state-owned enterprises in particular,” and of China’s subsidy policies and local content requirements, particularly for the 2025 plan, per the chairperson’s concluding remarks.

## **Critics Pummel May Over Brexit Proposal**

United Kingdom (UK) Prime Minister Theresa May couldn’t catch a break. On July 6 her government emerged with a Brexit plan that was immediately decried by members of her own party, leading to several resignations. Comments from President Trump during his UK visit a week later did little to help May’s position.

In the official white paper outlining Brexit that was published July 12, the UK proposed a free trade area for goods, but would take the country out of the Customs Union. This plan would “be consistent with the UK’s ambitions as a global trading nation, with its own independent trade policy – able to represent itself at the World Trade Organization, to

make credible and balanced offers to third country trading partners, and to implement a trade remedies and sanctions regime,” it said.

May’s critics say the proposal keeps the UK too enmeshed with the European Union (EU). In an interview with a UK tabloid later published that day, Trump is quoted as saying, “If they do a deal like that, we would be dealing with the European Union instead of dealing with the UK so it will probably kill [a U.S.-UK trade] deal.”

In contrast to those reported comments, Trump told May during a press conference July 13 that he “looks forward to finalizing a great bilateral trade agreement” with her country. “Once the Brexit process is concluded, and perhaps the UK has left the EU — I don’t know what they’re going to do, but whatever you do is okay with me. That’s your decision. Whatever you’re going to do is okay with us. Just make sure we can trade together; that’s all that matters,” Trump said.

“The Chequers Agreement reached last week provides the platform for Donald and me to agree an ambitious deal that works for both countries right across our economies, a deal that builds on the UK’s independent trade policy, reducing tariffs; delivering a gold standard in financial services cooperation; and, as two of the world’s most advanced economies, seizing the opportunity of new technology,” May said during the press conference.

Despite the optimism, May’s Brexit plans caused some turmoil in her government, even before Trump arrived. Brexit Minister David Davis resigned July 8, stating that he did not “believe” in May’s Brexit plan. The next day, UK Foreign Minister Boris Johnson resigned, writing in his resignation letter that the dream of Brexit “is dying, suffocated by needless self-doubt.” Johnson said, “We appear to be heading for a semi-Brexit, with large parts of the economy still locked in the EU system, but with no UK control over that system.” Johnson was replaced by former Health Secretary Jeremy Hunt.

Dominic Raab, who campaigned heavily to leave the EU, was appointed to replace Davis July 9. Raab backs May’s proposal; “this White Paper sets out the right Brexit deal: Delivering on the result of the referendum, taking back control over our money, laws and borders,” he said in a statement to Parliament July 12.

Prior to Trump’s visit, the U.S.-UK Trade and Investment Working Group met for the fourth time July 10-11 in London and the U.S.-UK Small and Medium-Sized Enterprises Dialogue met for the second time July 9.

## **Rebuke of 232 Tariffs Provides Rare Moment of Bipartisanship**

Bipartisanship is rare in Washington these days, but a July 12 Senate Foreign Relations Committee hearing on the impact of the administration’s Section 232 tariffs found Republicans and Democrats largely in agreement that the tariffs on steel and aluminum are hurting the American economy.

“To my knowledge, not a single person is able to articulate where this is headed nor what the plans are, nor what the strategy is,” said Committee Chairman Bob Corker (R-Tenn.). The day prior to the hearing, Corker won a symbolic victory when the Senate voted 88-11 to pass a non-binding measure instructing lawmakers tasked with reconciling a funding bill (H.R. 5895) include language “providing a role for Congress” when tariffs are implemented for national security reasons.

Ranking Member Robert Menendez (D-N.J.) called the tariffs a “reckless campaign” against U.S. allies and said witness Manisha Singh, assistant secretary of State for economic and business affairs, was essentially “cannon fodder” for the administration, as the committee doubted she truly backed the White House’s views on tariffs.

Singh offered reassurances of the validity of using national security reasoning to back the tariffs, but was rebuffed several times by senators, including Sen. Todd Young (R-Ind.) who questioned how Canada could be considered a national security threat - a point that politicians have raised in previous hearings.

Other senators lamented that the true target of U.S. trade actions should be China. But as Sen. Marco Rubio (R-Fla.) said, “It’s hard to partner up with countries to take on China and isolate China when we’re in a trade war with countries we seek to partner up with.” Democratic Sens. Ben Cardin (Md.) and Tim Kaine (Va.) cited the negative impact tariffs are having on industry in their respective states.

Republicans representing large agriculture states are feeling the pain, too. In a letter to President Trump July 11, the South Dakota congressional delegation decried the impact tariffs have had on their state agriculture sector. “Although you have stated that the agriculture sector will be taken care of through some form of USDA assistance, please keep in mind that U.S. export market share is diminishing daily at an alarming rate, and history has proven that once lost, export markets can take years, even decades to recapture,” wrote Republican Sens. John Thune and Michael Rounds and Rep. Kristi Noem.

By voting for the non-binding resolution, the Senate “spoke loud and clear by overwhelmingly expressing support for our efforts to ensure Congress plays its appropriate role in the implementation of national security-designated tariffs,” Corker said in a statement after the vote. “I believe support for our legislation will only grow. We will continue to push for a binding vote and are hopeful one will be scheduled in the near future.” Sen. Sherrod Brown (D-Ohio) blocked the last attempt for a binding vote (see **WTTL**, July 2, page 7).

Despite the fact that it was a non-binding measure, the U.S. Chamber of Commerce considered it a “key vote” and could include it in a future “How They Voted” scorecard of lawmakers. “We urge the Senate to pass the Corker motion to instruct, but much more importantly to pass actual legislation requiring Congressional approval of Section 232 tariffs,” it wrote in an open letter to senators.

In the House, Rep. Mike Gallagher (R-Wis.) July 11 introduced a bill (H.R.6337) that would “amend the Trade Expansion Act of 1962 to require Congressional approval before the President adjusts imports that are determined to threaten to impair national security.”

## Agencies Hear from Dueling Gun Advocates, Activists

After six years, State and Bureau of Industry and Security (BIS) still got an earful in response to its parallel rules to transfer items from the last remaining U.S. Munitions List (USML) Categories I (firearms, close assault weapons and combat shotguns), II (guns and armament) and III (ammunition and ordnance) to the Commerce Control List (CCL).

State and BIS each received about 3000 comments to proposed rules they published in May, many of which were identical as if sent from a template (see **WTTL**, May 21, page 2). When it posted the comments to regulations.gov, BIS chose more than 200 as “representative samples,” while DDTC posted all the comments it received.

As expected, the National Shooting Sports Foundation (NSSF) applauded the changes, taking exception with some of the reporting requirements, and asking for broader use of existing license exceptions, including low-value shipments (LVS) and baggage (BAG). “Most members have told us that the final versions of the rules would eventually be beneficial because they would significantly reduce the overall burden and cost of complying with controls on the export of commercial firearms and ammunition,” the group wrote.

For example, NSSF took issue with the revised BAG exception that would “impose unduly burdensome requirements and compliance traps on hunters, competitive shooters, and other U.S. residents who wish to take firearms out of the country on a temporary basis for lawful purposes.” Instead of relying on the existing Automated export system (AES), the group recommended that Customs and Border Protection “develop a simple online interface that uses the individual’s passport number as the reference number.”

In contrast, gun control advocates took issue with the standard of firearms that are “widely available” in retail outlets. “The retail availability in the United States should not be a criterion, since this is not the market to which exports treated by the proposed rule will be directed,” Global Exchange wrote. “Moreover, the U.S. retail firearms market is qualitatively and quantitatively different from nearly every market in the world: the United States, with 4.4% of the world’s population, comprises more than 45% of the world’s firearms in civilian possession,” it added.

“While some of the weapons that are proposed for inclusion on the CCL are commercially available in the U.S., that is not the case globally and – increasingly—state governments in the U.S. seek to limit their sale. In recent months many commercial outlets have discontinued sales of semi-automatic assault weapons, and the proposed rule goes in the opposite, and wrong, direction,” Adotei Akwei, deputy director of Amnesty International USA, wrote.

Five progressive lawmakers -- Reps. Sander Levin (D-Mich.), Eliot Engel (D-N.Y.), Jim McGovern (D-Mass.), Norma Torres (D-Calif.) and Jamie Raskin (D-Md.) -- asked State and Commerce to postpone the proposed regulatory transfer due to the loss of congressional oversight and registration, calling the ramifications of the proposed transfer “very serious.”

“Arms manufacturers and brokers of semi-automatic assault weapons will no longer be required to register with the State Department; training on the use of these items will no longer require a license, allowing private security contractors to train foreign militias in sensitive combat techniques without proper vetting; prosecutors will have less documentary evidence to prosecute arms dealers; and elected officials will have less say in the export of dangerous weapons,” the lawmakers wrote.

### **Pentagon Needs to Update Investment Policies, GAO Says**

In an example of everyone being on the same page, Government Accountability Office (GAO) agrees that the Committee on Foreign Investment in the U.S. (CFIUS) needs to be updated to address Defense Department (DOD) challenges identifying and addressing evolving national security concerns posed by some foreign investments in the U.S.

“DOD identified some investments as national security concerns because they may give foreign investors access to emerging technologies or be in proximity to critical military locations. However, the CFIUS process doesn't cover all the types of investments DOD identified,” GAO noted in a report released July 10 (GAO-18-494). Legislation currently moving through Congress could help with that (see **WTTL**, July 2, page 1).

According to officials, those investments “cannot always be addressed through CFIUS because the investments would not result in foreign control of a U.S. business,” the agency noted. DOD and Treasury officials said addressing these investments may require legislative action, it added.

GAO recommendations include: that DOD assess resources needed to address workload, assess risks from foreign investment in emerging technologies and in close proximity to critical military locations, and update its policies and processes to better reflect the evolving national security concerns facing the department.

### **U.S. Engagement Needed to Resolve WTO AB Standstill**

The U.S. needs to decide to engage with WTO members on Appellate Body (AB) issues or risk undermining the entire system, former AB chairman Ricardo Ramirez-Hernandez told an event in Washington July 11.

The U.S. raised legitimate concerns with the AB before the current administration. He noted that issues like U.S. qualms about Rule 15 on term limits are “not an issue of one

administration.” Ramirez-Hernandez said there was a lack of leadership at the WTO and a lack of willingness to address U.S. concerns, and now “we are where we are.” Where we are is down to four AB members out of seven, and one of the four’s term expires in September (see **WTTL**, June 25, page 5). Just because the U.S. has legitimate concerns does not mean that dragging its feet to resolve outstanding issues, particularly on reappointment of AB members and the 90-day rule, is acceptable. “The problem here is you are just hearing problems, you are not hearing a solution,” he said.

“The U.S. has not put on the table any solution or any proposal. No matter how drastic, no matter how dramatic, no matter how maybe unacceptable for some members, but at the end that puts you at the table, that seats you at the table, that creates a dynamic where you come back and put another proposal that engages the negotiation,” said Ramirez-Hernandez.

“The problem is not going to be solved in Geneva, it’s going to be solved in D.C.,” he added. It will take a decision from the administration that it wants to engage, to put a proposal forward, in order to resolve the standstill.

Former WTO AB member Jennifer Hillman, who moderated the discussion, reassured the audience that President Trump cannot unilaterally withdraw from the WTO. Withdrawal requires joint action by Congress; however, the administration can continue to stymie efforts to get the AB fully operational, thus rendering it ineffective.

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

**FLANGES:** In 5-0 final vote July 13, ITC found U.S. industry is materially injured by dumped imports of stainless steel flanges from China.

**ROLLER BEARINGS:** In 3-1 final vote July 13, ITC found U.S. industry is NOT materially injured by dumped imports of tapered roller bearings from Korea. Commissioner Rhonda Schmidlein voted yes. Commissioner Jason Kearns did not participate in vote.

**OLIVES:** In 3-1 final vote July 10, ITC found U.S. industry is materially injured by dumped and subsidized imports of ripe olives from Spain. Commissioner Meredith Broadbent voted no. Commissioner Jason Kearns did not participate in this investigation.

**IRAN:** OFAC July 9 designated Malaysia-based Mahan Travel and Tourism Sdn Bhd for acting for or on behalf of blocked entity Mahan Air. Mahan Travel and Tourism is Mahan Air’s sole General Sales Agent (GSA) in Kuala Lumpur and provides reservation and ticketing services for Mahan Air, agency said. Mahan Air was designated in October 2011 for providing financial, material, or technological support for Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF).

**KORUS:** Korean Trade Ministry official said during July 2 press briefing that U.S. and Korea are expected to sign revised KORUS deal in September. Korea will soon finish its economic impact assessment. Same day, ITC released report on revised KORUS agreement impact on U.S. truck industry (see **WTTL**, July 9, page 6).

**NAFTA:** State, Homeland Security and Treasury secretaries traveled to Mexico City July 13 to meet with Mexican President Enrique Pena Nieto, President-elect Andres Manuel Lopez Obrador

and other government officials. “U.S. delegation will discuss every aspect of the U.S.-Mexico relationship on this trip – not just the commercial and economic matters, but also security, migration, and all the other issues of mutual interest of our country,” senior State official said. Separately, Mexican Economy Minister Ildefonso Guajardo said at July 11 event that he and USTR Robert Lighthizer are working toward next round of meetings to take place in Washington last week of July. Guajardo said if there’s opportunity to conclude deal before Pena Nieto’s term ends, then Mexico will try to take advantage of that opportunity. Obrador won July 1 election and will take office December 1 (see **WTTL**, July 9, page 5).

**TRADE PEOPLE:** Committee to Support U.S. Trade Laws (CSUSTL) announced July 11 appointment of new president Mark Benedict, replacing Tom Sneeringer, effective July 1. Benedict is managing partner of Genesis Group LLC and prior to private practice served for 16 years as legislative counsel to former Rep. Ralph Regula (R-Ohio).

**NDAA:** House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) July 11 urged NDAA conference to include export control reform bill (H.R. 5040) in final conference report. “A modern, adaptable export control system will ensure that the U.S. remains a leader in emerging fields – like robotics and artificial intelligence,” he said.

**AGOA:** Administration wants to pursue free trade agreement negotiations with AGOA-eligible countries, USTR Robert Lighthizer said July 11 in opening remarks at African trade forum. “It has long been the desire of the United States for AGOA-beneficiary countries to advance to a point where it would be possible to talk about a comprehensive and more permanent framework to deepen our relationship. ...If you are willing, we are eager to take this next logical step in our relationship,” he said.

**CUBA:** To fulfill goal of inspecting all flights from Cuba to U.S., TSA needs to more reliably track air carriers’ public charter operations, GAO said in report July 12 (GAO-18-526). “Many air carrier inspections that did not occur within the required time frames were because the flight schedule data TSA uses do not reliably identify or track public charter operations,” which account for majority of flights between U.S. and Cuba in fiscal years 2012 through 2016, it said.

**FCPA:** Judge Nicholas G. Garaufis in Brooklyn U.S. District Court July 12 dismissed Securities and Exchange Commission (SEC) charges against two former executives at Och-Ziff Capital Management Group for violating Foreign Corrupt Practices Act (FCPA) for their roles in crafting bribery scheme involving high-ranking African government officials from 2007 through 2011. “The court agrees that the SEC’s claims—all of which accrued more than five years before the SEC filed suit, and seek relief that is at least partly penal, not solely remedial—are time-barred,” he wrote. Michael L. Cohen, who headed Och-Ziff’s European office, and investment executive Vanja Baros were charged in January 2017 and filed motions to dismiss in August (see **WTTL**, Jan. 30, 2017, page 8). Och-Ziff agreed in September 2016 to pay over \$412 million to resolve related charges.

**JAPAN:** Japan will allow U.S. exports of sheep and goat meat into country for first time in more than 14 years, Agriculture Secretary Sonny Perdue announced July 12. Japan banned U.S. meat in December 2003, following detection of BSE-positive (also known as mad cow disease) animal in U.S. Two countries agreed on “new terms and conditions” for beef and beef products to enter Japanese market in January 2013 (see **WTTL**, Feb. 4, 2013, page 6).

**TARIFFS:** Add Switzerland to list of countries requesting WTO dispute consultations with U.S. regarding duties on steel and aluminum products (see **WTTL**, July 9, page 5). Switzerland’s request was circulated to WTO members July 12.