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## Tech Groups Ask BIS for More Time to Comment

More than a dozen technology and business groups Nov. 28 asked the Bureau of Industry and Security (BIS) for more time to submit comments on emerging technologies, including potential export controls. The groups asked BIS Assistant Secretary Richard Ashooh to extend the comment period to 90 days from 30 days, so the groups can “provide comprehensive feedback to address the policy concerns and technological complexities at issue.”

BIS published an Advance Notice of Proposed Rulemaking (ANPRM) in November requesting public comments, following the authorization under the Export Control Reform Act (ECRA), which was signed as part of the 2018 National Defense Authorization Act (NDAA) (see **WTTL**, Nov. 19, page 1).

“From the text of the ECRA, it is clear Congress sought to ensure that those businesses and industries impacted by this new authority be able to provide detailed information to inform the implementation process,” the groups, including Information Technology Industry Council (ITI), U.S. Chamber of Commerce, BSA – The Software Alliance and Business Roundtable (BRT), argued.

“Nonetheless, 30 days does not provide enough time for those potentially affected by the issue to properly research and prepare responses given the range of technology areas initially outlined,” they added.

## Huawei Arrest Riles Administration, Markets

While administration officials tried to downplay the potential effect of the arrest of Huawei CFO Meng Wanzhou on trade talks with China, the news raised larger, long-held concerns about Chinese business practice and corporate policy. The potential charges also recalled the recent controversial settlement with Huawei competitor ZTE. While Meng

reportedly faces charges of violating Iran sanctions, National Security Adviser John Bolton in an NPR interview Dec. 6 would not confirm specifics, but raised the larger question of intellectual property violations. “We’ve had enormous concern for years about ... in this country about the practice of Chinese firms to use stolen American intellectual property to engage in forced technology transfers and to be used really as arms of the Chinese government’s objectives,” Bolton said.

“I was referring to the broader subject of our concern with Chinese companies. As I said, I don’t think it’s appropriate to get into the specifics of a particular law enforcement matter,” he added. “But with respect to a number of Chinese companies, we saw what happened with ZTE some months ago and many other issues of concern like that.” Most recently, a Dallas judge in October extended the court-appointed monitor because ZTE violated the terms of its probation (see **WTTL**, Oct. 8, page 8).

In a separate interview, National Economic Council Director Larry Kudlow did make the connection. “In the Huawei story, we have warned them for quite some time, violating the Iranian sanctions,” he told CNBC Dec. 7. “And, look, we have the sanctions on Iran, it runs against our policy. Why shouldn’t we enforce that?” he added. Kudlow said he doubted the arrest would “spill over” to the trade talks. As it happened, Meng was arrested in Canada the same night the U.S. and Chinese presidents had dinner in Argentina (see related story, page 3).

Chinese officials objected to the arrest without concrete charges. “The Chinese side has lodged stern representations with and made clear its solemn position to the Canadian side and the U.S. side respectively on this matter, demanding them to immediately clarify the reason for the detention and release the detainee, and earnestly protect the legal and legitimate rights and interests of the person involved,” said Chinese Foreign Ministry Spokesperson Geng Shuang in a press briefing Dec. 6.

## **U.S. Tariffs Will Face Two More WTO Dispute Panels**

Add two more to the list of the dispute panels over U.S. steel and aluminum tariffs. At a special meeting Dec. 4, the World Trade Organization’s (WTO) Dispute Settlement Body (DSB) agreed to the second requests from India and Switzerland to establish panels to examine U.S. tariffs. The DSB also considered a U.S. request for a panel to review increased Russian duties on certain U.S. imports.

Nine dispute panels have now been established by the DSB to rule on U.S. tariffs. India and Switzerland’s first requests were blocked at the last DSB meeting Nov. 21 (see **WTTL**, Nov. 26, page 5). The two countries requested a single panel, in combination with the other seven panels already established, to review the claims against the U.S., to which the U.S. objected. “The text of Article XXI is clear; each WTO member has the right to determine for itself what it considers to be in its own essential security interests,” the U.S. said.

At the same meeting, Russia blocked the U.S.'s first request to establish a dispute panel on additional Russian duties on certain U.S. imports in response to the U.S. steel and aluminum duties. The DSB has already established four panels in regard to additional retaliatory duties imposed by Canada, China, the European Union (EU) and Mexico on U.S. imports. The next DSB meeting is scheduled for Dec. 18.

Russia and other WTO members who have imposed similar measures on U.S. imports are pretending that the U.S. actions are so-called safeguards and further pretend that their unilateral, retaliatory duties constitute "suspension of equivalent concessions" under the WTO Safeguards Agreement, the U.S. said.

### **Mixed Signals After China-U.S. Dinner at G-20**

We've all been there. After a lovely evening of dinner and drinks, two friends make plans for the next weekend but remember the details very differently. When President Trump and Chinese President Xi Jinping met for dinner during the G-20 summit in Argentina Dec. 1, reports of a trade truce were greatly exaggerated.

In a statement, the White House called the dinner "an amazing and productive meeting with unlimited possibilities." In the end, China said it "will agree to purchase a not yet agreed upon, but very substantial, amount of agricultural, energy, industrial, and other product from the United States to reduce the trade imbalance between our two countries. China has agreed to start purchasing agricultural product from our farmers immediately," the White House noted.

In exchange, Trump agreed to postpone a planned Jan. 1 tariff increase to 25% from 10% on \$200 billion worth of products. The two countries "agreed to immediately begin negotiations on structural changes with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture. Both parties agree that they will endeavor to have this transaction completed within the next 90 days," the statement noted.

Aboard Air Force One later that day, Trump called the results of the meeting "an incredible deal. ... If it happens, it goes down as one of the largest deals ever made," he told reporters. "China will be opening up. China will be getting rid of tariffs.... And China will be buying massive amounts of product from us, including agricultural from our farmers — tremendous amount of agricultural and other products," he added.

Four days later, a spokesperson for the Chinese Ministry of Commerce (MOC) had a slightly different take from the agreed-upon timeline and scale of the deal. "In 90 days, economic and trade teams of both sides will actively push forward the consultation following clear schedule and roadmap," the spokesperson said in a statement on the MOC website. "China will start with implementing the specific aspects of the newly-reached consensus as soon as possible," the spokesperson added.

## G-20 Leaders Affirm Support for WTO Reform

While the joint declaration that world leaders signed at the end of the G-20 Summit in Argentina Nov. 30- Dec. 1 might seem straightforward and ordinary, the words took on deeper meaning as the World Trade Organization (WTO) Appellate Body dwindles to its bare minimum and the U.S. continues to reject reform proposals.

“International trade and investment are important engines of growth, productivity, innovation, job creation and development. We recognize the contribution that the multilateral trading system has made to that end. The system is currently falling short of its objectives and there is room for improvement,” the leaders declared.

“We therefore support the necessary reform of the WTO to improve its functioning,” they added. A dozen WTO members led by the European Union (EU) and China will try one more time to break the deadlock in the body at the WTO General Council meeting Dec. 12 (see **WTTL**, Dec. 3, page 6).

“What is being proposed is trade that is fair. And Argentina is the first country to believe that after so many years of isolation, our entire future is about trading, about connecting as many countries as possible,” Argentine President Mauricio Macri said in a press conference Dec. 1.

The leaders also took note of “current trade issues.” In the declaration, they reaffirmed the “pledge to use all policy tools to achieve strong, sustainable, balanced and inclusive growth, and safeguard against downside risks, by stepping up our dialogue and actions to enhance confidence.” The leaders recognized “the importance of the interface between trade and the digital economy. We will continue our work on artificial intelligence [AI], emerging technologies and new business platforms,” the leaders said. Recent U.S. export law could put emerging technologies, including AI, under more restrictions (see **WTTL**, Nov. 19, page 1).

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

**TRADE FIGURES:** Merchandise exports in October jumped 8.1% from year ago to \$141.5 billion, Commerce reported Dec. 6. Services exports gained 2.75% to \$69.6 billion from October 2017. Goods imports increased 10.1% from October 2017 to record-high \$219.6 billion, as services imports gained 1.6% to \$46.95 billion. Imports at major retail ports also reached record-high 2 million containers in October, according to National Retail Federation numbers.

**ALUMINUM SHEET:** In 5-0 final vote Dec. 7, ITC found U.S. industry is materially injured by dumped and subsidized imports of common alloy aluminum sheet from China. Commission also made negative finding of critical circumstances on these imports. Commerce self-initiated investigations in November 2017 (see **WTTL**, Dec. 4, page 2).

**MAGNESIUM:** In 4-1 preliminary vote Dec. 7, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of magnesium from Israel. Commissioner Meredith Broadbent voted no.

**WELDED PIPE:** In final votes Dec. 6, ITC found U.S. industry is materially injured by certain dumped and subsidized imports of large diameter welded (LDW) pipe from China and India. Commissioners voted 4-1 on dumped imports of LDW carbon and alloy steel line pipe from China and dumped and subsidized imports from India; on LDW carbon and alloy steel structural pipe from China, commissioners voted 4-0. ITC found no injury from LDW stainless steel pipe from India or China.

**FCPA:** Federal jury Dec. 5 in Manhattan U.S. District Court convicted Chi Ping Patrick Ho aka Patrick C.P. Ho, head of Hong Kong non-governmental organization China Energy Fund, of conspiring to violate Foreign Corrupt Practices Act (FCPA), violating FCPA, conspiring to commit international money laundering, and committing international money laundering after one-week trial. Ho and Cheikh Gadio, former foreign minister of Senegal and U.S. resident, were charged in November 2017 with participating in multi-year, multimillion-dollar scheme to bribe high-level officials in Chad and Uganda in exchange for business advantages for Chinese oil and gas company (see **WTTL**, Nov. 27, 2017, page 4). Ho's sentencing is set for March 14, 2019. Charges against Gadio were dropped in September 2018.

**BEEF:** Morocco agreed to allow imports of U.S. beef and beef products into Morocco, USTR and USDA announced Dec. 6. Exports must meet U.S. and Morocco labeling requirements, such as halal slaughter certification. Morocco opened its market to U.S. poultry in August (see **WTTL**, Aug. 13, page 5).

**SANCTIONS:** Sen. Bob Menendez (D-N.J.) Dec. 5 urged Treasury not to remove sanctions on two companies -- Rusal and EN+ -- controlled by Russian oligarch Oleg Deripaska "unless and until Deripaska divests from and relinquishes control of both companies," he wrote in letter to Treasury Secretary Steven Mnuchin. "Any effort to delist Deripaska in a manner that is not consistent with the above criteria would likely meet strong opposition in Congress," Menendez added.... OFAC Dec. 7 issued general license (GL) 13H, extending previous GL that expanded sanctions relief for certain designated firms. Specifically, OFAC extended GL expiration date for certain firms to Jan. 21, 2019, from Jan. 7. OFAC also issued GLs 14D, 15C and 16D extending authorization for transactions related to GAZ Group, EN+ Group PLC, RUSAL and other companies to same date.

**MEDICAL DEVICES:** CAFC Dec. 7 reversed in part, vacated in part, and remanded ITC final determination denying relief based on claims of trade dress infringement against defaulting respondents in *Laerdal Medical Corp. v. ITC*. "The Commission erred in reassessing the sufficiency of Laerdal's complaint against defaulting respondents post-institution and in failing to assess the appropriate remedy to impose under the circumstances. We, therefore, reverse the Commission's determination as to Laerdal's trade dress claims and vacate and remand for the Commission to determine the proper remedy," Circuit Judge Kathleen O'Malley wrote for three-judge panel.

**KORUS:** Korea's National Assembly Dec. 7 approved updated U.S.-Korea Free Trade Agreement (KORUS). "This improved deal is a great achievement for our nations and workers," USTR tweeted. President Trump and Korean President Moon signed updated agreement on sidelines of UN General Assembly in September (see **WTTL**, Oct. 1, page 6).

**NAFTA:** Aboard Air Force One Dec. 1, president told reporters he "will be formally terminating NAFTA shortly" (see **WTTL**, Dec. 3, page 1). Fresh from signing ceremony on updated U.S.-Mexico-Canada (USMCA) agreement, he added, "So Congress will have a choice of the USMCA or pre-NAFTA, which worked very well. You got out, you negotiate your deals." "If Trump tries to move to roll this treatment back without Congress' buy-in, he'll at best produce a Zombie NAFTA that lives on past death," Todd Tucker, fellow at Roosevelt Institute, wrote in blog post.