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BIS Adds Huawei to Entity List, Ignites Trade Fire

While one branch of the administration is proposing tariffs on almost all Chinese imports, another agency added Chinese firm Huawei Technologies and its affiliates to its Entity List, effectively blocking all exports to the company. The Bureau of Industry and Security (BIS) move came just after the president May 15 signed an Executive Order (EO) banning U.S. companies from using foreign telecom equipment deemed a national security risk.

The EO “declares a national emergency with respect to the threats against information and communications technology and services” in the U.S. and delegates authority to the Commerce Secretary to “prohibit transactions posing an unacceptable risk to the national security” of the U.S. or the security and safety of U.S. persons, the White House stated.

On cue, BIS then added Huawei and 68 non-U.S. affiliates to the Entity List because the firm “is engaged in activities that are contrary to U.S. national security or foreign policy interest,” the agency said. BIS also cited the January indictment of Huawei in Brooklyn U.S. District Court. Among the 23 charges were violating Iran sanctions, as well as bank fraud and stealing trade secrets (see **WTTL**, Feb. 4, page 1). The move will go into effect May 21 upon publication in the Federal Register.

China was quick to respond to the actions. China opposes “the act of any country to impose unilateral sanctions on Chinese entities based on its domestic laws, and to abuse export control measures while making ‘national security’ a catch-all phrase,” Foreign Ministry Spokesperson Lu Kang said in a press briefing. “The Chinese side will take necessary measures to safeguard the legitimate rights and interests of our companies,” he added.

NAFTA Partners Sing Kumbaya, Agree to Lift Tariffs

Perhaps opening the final door to passage of the updated U.S. Mexico-Canada trade agreement (USMCA), the three trading partners agreed May 17 to lift Section 232 steel

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and aluminum tariffs without quotas and any retaliatory duties, as well as terminate all pending disputes at the World Trade Organization (WTO). The tariff removal is scheduled to go into effect May 19. In addition, the U.S. and Canada specifically “will establish an agreed-upon process for monitoring aluminum and steel trade between them. In monitoring for surges, either country may treat products made with steel that is melted and poured in North America separately from products that are not,” said a joint statement published by the Canadian government.

Ironically, the U.S. Trade Representative’s (USTR) office said, “This agreement is great news for American farmers that have been subject to retaliatory tariffs from Canada and Mexico. At the same time, the agreement will continue to protect America’s steel and aluminum industries.”

“This decision reflects what is known to be true by friends on both sides of the border: Canada has been America’s most steadfast ally for more than a hundred years, and our long-standing partnership and closely linked economies make us more competitive around the world and improve our combined security,” Canadian Prime Minister Justin Trudeau said in a statement.

The Mexican Ministry of Economy said it “reaffirms its position with regard to the need to guarantee competitive productive integration in North America, for which it welcomes the agreement reached today, since this decision paves the way for the ratification of the [USMCA] in the near future.”

“The biggest hurdle to ratifying USMCA has been lifted,” Senate Finance Committee Chairman Chuck Grassley (R-Iowa) said in a statement (see **WTTL**, May 6, page 1). “I made no secret that these tariffs had to be lifted for USMCA to pass Congress. The Trump administration has done its part. Now it’s Congress’s turn,” he added.

On a lighter side, Brookings Institution fellow Geoffrey Gertz, tweeted: “Important national security update: the looming menace of Canadian steel imports ravaging America has, apparently, been solved (don’t ask me how or why). We can once again sleep soundly, secure in our knowledge that this long national nightmare has passed. Thank god.”

Huawei Move Sparks Déjà Vu

The administration’s actions on telecommunications and specifically Huawei come days after discussions with China on the trade front ended with no agreement and proposed tariffs on almost all Chinese imported goods (see related story, page 4). So, if before IT, security and trade were all in separate lanes, it is now clear that the U.S. is fighting China on all fronts.

The moves also might present a sense of déjà vu. In July 2018, after two years of negotiations, Commerce removed the denial order against another Chinese telecom giant ZTE. BIS added ZTE to its Entity List in July 2016, a move that was immediately

suspended pending talks with the company. Observers don't see the same thing happening with Huawei, but the firm could see a different scope of control, one legal expert told WTTL.

This is also not the first national emergency signed by this administration; in fact, the current president has signed five. By declaring a national emergency, the president can access numerous special powers without the consent of other branches of government.

While the president may have tried to circumvent congress, lawmakers applauded the latest moves. "The administration deserves enormous credit for their efforts to comprehensively tackle the threat that Huawei and other foreign state-directed telecommunications companies pose through their efforts to undermine and endanger critical U.S. systems and infrastructure," Sen. Marco Rubio (R-Fla.) said in a statement.

"As the administration continues to seek a fair and enforceable trade deal with China, I urge them to stand strong on Huawei and hold the Chinese government and its state-owned and state-directed enterprises accountable for their hostile actions threatening U.S. economic and national security," he added.

In fact, some lawmakers have been pushing for this sort of action for months, if not years. Rep. Mike Gallagher (R-Wis.) and Sen. Tom Cotton (R-Ark.) in January re-introduced the Telecommunications Denial Order Enforcement Act (H.R.602/S. 152), which would direct the president to impose denial orders with respect to certain Chinese telecommunications companies that are in violation of U.S. export control or sanctions laws. The bills specifically call out Huawei and ZTE or "any other telecommunications company domiciled" in China, excluding any subsidiary of a foreign company.

Auto Tariffs Shift into Neutral While USTR Pursues Talks

Consider this one battle in the trade wars that the administration has chosen to postpone. Within hours of the statutory deadline, the president May 17 gave the USTR six months to reach an agreement on auto imports with the European Union (EU), Japan and "any other country the Trade Representative deems appropriate."

Commerce Secretary Wilbur Ross in February formally submitted the results of the department's Section 232 investigation into the effect of imports of automobiles and automobile parts on U.S. national security, but never made it public (see **WTTL**, Feb. 25, page 1). At the time, lawmakers and auto industry groups immediately warned against imposing tariffs and urged the public release of the report.

"American-owned automotive R&D and manufacturing are vital to national security. Yet, increases in imports of automobiles and automobile parts, combined with other circumstances, have over the past three decades given foreign-owned producers a competitive advantage over American-owned producers," the White House proclamation noted.

The White House also cited barriers to U.S. exports. “One circumstance exacerbating the effects of such imports is that protected foreign markets, like those in the European Union and Japan, impose significant barriers to automotive imports from the United States, severely disadvantaging American-owned producers and preventing them from developing alternative sources of revenue for R&D in the face of declining domestic sales,” it said.

The potential auto tariffs have already complicated trade talks with the partners, who have said any tariffs would be a deal breaker. EU Trade Commissioner Cecilia Malmstrom tweeted: “We note that U.S. postpones decision on car tariffs for 180 days. But we completely reject the notion that our car exports are a national security threat. The EU is prepared to negotiate a limited trade agreement [including] cars, but not WTO-illegal managed trade.” Malmstrom said she will discuss the issue with USTR Lighthizer in Paris and with the European trade ministers later in May.

Lawmakers and industry groups responded quickly. “I’m glad President Trump decided to delay these tariffs. As the president knows, I’m not a fan of tariffs. And I have serious questions about the legitimacy of using national security as a basis to impose tariffs on cars and car parts,” Senate Finance Committee Chairman Chuck Grassley (R-Iowa) said in a statement. Grassley also said he’d continue work on bipartisan legislation to give Congress “a meaningful role” in the Section 232 process.

Imported car dealers denounced the “spurious” claim that auto imports threaten U.S. national security. “If President Trump follows through on his threat to place 25% tariffs on imported autos and auto parts, he will be directly responsible for a drastic tax increase on American consumers, which could result in a loss of 2 million vehicle sales and jeopardize up to 700,000 American jobs,” said American International Automobile Dealers Association (AIADA) President and CEO Cody Lusk in a statement.

USTR Proposes Tariffs on All Chinese Imports

Maybe trade is a zero-sum game. In the same week that the U.S. agreed to remove tariffs on its closest trading partners, the administration proposed imposing 25% tariffs on the remaining approximately \$300 billion of Chinese imports.

After close of business May 10, despite last-minute trade talks, USTR Robert Lighthizer said the president ordered his office to “begin the process of raising tariffs on essentially all remaining imports from China” (see **WTTL**, May 13, page 1).

“In light of China’s failure to meaningfully address the acts, policies, and practices that are subject to this investigation and its response to the current action being taken in this investigation, and at the direction of the President, the Trade Representative proposes to modify the action being taken in this investigation,” the USTR said in the Federal Register May 17.

As expected, China was not pleased with the proposal. In a press briefing May 16, a Chinese Ministry of Commerce (MOFCOM) spokesperson laid out China's three requirements in trade talks: removal of all tariffs, realistic trade procurement data and text balance. To the last point, he said, "Any country has its own dignity and the text of the agreement must be balanced and acceptable. China will never give in on major issues of principle."

"U.S. bullying and extreme pressures violate the multilateral trade rules, and China firmly opposes this. If the U.S. is willing to go its own way, China will have to make the necessary response," the spokesperson added. Beijing "always believes that the continuous increase in tariffs is not conducive to the resolution of economic and trade issues. China has never feared any pressure, but also has the confidence, determination and ability to deal with any risks and challenges," he said.

Officials expect Chinese President Xi Jinping and Trump to hold further discussions at the G-20 scheduled for Japan in June. It is unclear if the leaders' discussions would lead to further talks and an end to hostilities, or whether it could lead to further escalation.

The proposed product list covers 3,805 full and partial tariff subheadings or "essentially all products not currently covered by action in this investigation. The proposed product list excludes pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials, and critical minerals," the notice said. The USTR requested public comments and will hold a hearing on the proposal June 17.

Administration Reduces Duties, GSP Benefits on Turkey

In a case of give a little, take a little, the administration May 16 reduced tariffs on Turkish steel imports, instead imposing a 25% ad valorem tariff commensurate with other countries' imports. At the same time, the president terminated Turkey's designation as a beneficiary developing country under the Generalized System of Preferences (GSP), a decision he announced in March citing the country's sufficient economic development (see *WTTL*, March 11, page 3).

Imports of steel articles have declined by 12% in 2018 compared to 2017 and Turkish steel imports have declined by 48% in 2018, such that "the domestic industry's capacity utilization has improved at this point to approximately the target level recommended in the Secretary's report," the White House noted.

"Maintaining the existing 25% ad valorem tariff on most countries is necessary and appropriate at this time to address the threatened impairment of the national security," it added. The announcement came the day before an agreement with Canada and Mexico to remove the steel aluminum tariffs from those countries (see related story, page 1).

With the GSP designation, the administration also removed Turkey from the list of developing country WTO members exempt from application of the safeguard measures on

certain crystalline silicon photovoltaic (CSPV) cells and large residential washers that the U.S. approved in January 2018 (see **WTTL**, Jan. 29, 2018, page 1).

Ex-Im Bank Could Improve Policies, GAO Says

Now that the Export-Import (Ex-Im) Bank is back to full functionality, guidance and recommendations on best practices are welcomed. In a report released May 14 (GAO-19-43), the Government Accountability Office (GAO) found that two areas of the bank's policies and procedures related to lender and servicer eligibility and risk-sharing practices were partially consistent with federal guidance.

The full Senate May 8 confirmed three Ex-Im Bank board members, including a new president, restoring the quorum and allowing the bank to authorize financing for transactions of more than \$10 million (see **WTTL**, May 13, page 4).

“Without enhancements to its policies and procedures, EXIM may allow lenders that are not qualified to underwrite transactions and runs the risk that it will not effectively review its programs,” the report said. Three other areas – applicant screening, loan documentation and collateral requirements – were fully consistent, the report found.

Ex-Im “established eligibility and decertification procedures for short-term delegated authority lenders that were consistent with guidance. However, it did not establish similar procedures for medium-term delegated authority lenders,” the report said. Federal guidance “calls for an agency to periodically review programs in which the government bears more than 80% of any loss. While Ex-Im prepares various program reviews, it has not developed procedures to help ensure that its risk sharing practices are routinely reviewed,” it added.

GAO recommended Ex-Im Bank enhance its policies and procedures related to both the use of medium-term delegated authority lenders and periodic program reviews. The bank concurred with the recommendations and plans to address them.

*** * * Briefs * * ***

JAPAN: Japan will allow all U.S. beef exports into country for first time in more than 15 years, Agriculture Secretary Sonny Perdue announced May 17. Japan banned U.S. meat in December 2003, following detection of BSE-positive (also known as mad cow disease) animal in U.S. Tokyo allowed U.S. exports of sheep and goat meat in July 2018 (see **WTTL**, July 16, 2018, page 9). Two countries agreed on “new terms and conditions” for some beef and beef products to enter Japanese market in January 2013.

ENTITY LIST: BIS in Federal Register May 14 added 12 entities to Entity List in China, Hong Kong, Pakistan and United Arab Emirates (UAE). At same time, agency added alias to Modest Marking LLC in UAE and removed DGL Clearing and Forwarding LLC in UAE “on the basis of a removal request.” DGL was added to list in January 2018 (see **WTTL**, Jan. 29, 2018, page 7).

SECTION 232: National Foreign Trade Council (NFTC) May 16 filed amicus brief supporting American Institute for International Steel (AIIS) and two members’ petition at Supreme Court for

writ of certiorari. “The Court should not allow any President to exercise unfettered power over entire sectors of trade simply by invoking the words ‘national security,’” NFTC President Rufus Yerxa said in statement. AIIS filed writ in April in advance of CAFC judgment on appeal (see **WTTL**, April 22, page 7). Two CIT judges in March upheld constitutionality of Section 232 steel and aluminum tariffs.

EXPORT ENFORCEMENT: Patrick Germain of Evanston, Ill., was sentenced May 16 in Chicago U.S. District Court to time served for attempting to illegally export 16 handguns, five shotguns, rifle and ammunition to Haiti via Miami. He pleaded guilty in October (see **WTTL**, Oct. 22, 2018, page 5). Germain placed ammunition and firearms inside plywood container and loaded container in cargo van for shipping, Justice sentencing memo noted.

MORE EXPORT ENFORCEMENT: Three Iranian nationals who live in Northern California pleaded guilty May 17 in San Francisco U.S. District Court to illegally exporting manufacturing components and devices, including micro drill press, to Iran without OFAC licenses. Sadr Emad-Vaez, Pouran Aazad and Hassan Ali Moshir-Fatemi were indicted in April 2018 (see **WTTL**, May 7, 2018, page 6). All participated in operation of Ghare Sabz Company, aka GHS Technology, large manufacturing corporation in Tehran, indictment noted. Sentencing is set for Sept. 25. All three were released on secured bonds.

CUBA: Sen. John Boozman (R-Ark.) and Michael Bennet (D-Colo.) and dozen cosponsors May 14 reintroduced Agricultural Export Expansion Act of 2019 (S. 1447) to allow private financing of U.S. agricultural exports to Cuba. Three senators in February introduced Freedom to Export to Cuba Act (S. 428), bill that would lift trade embargo on island (see **WTTL**, Feb. 11, page 1). Lawmakers in December passed 2018 Farm Bill (H.R. 2), including amendment that would allow farmers to use trade promotion funds to finance certain agricultural exports to Cuba.

TRADE PEOPLE: David Laufman, former chief of counterintelligence and export control section (CES) in Justice’s national security division, joined Wiggin & Dana law firm’s Washington office as partner, firm announced May 13. Laufman left Justice post in February 2018 and started own firm in September (see **WTTL**, Sept. 10, page 5).

SODIUM SULFATE: In 3-2 preliminary vote May 10, ITC found U.S. industry may be injured by allegedly dumped imports of sodium sulfate anhydrous from Canada. Chairman David Johanson and Commissioner Meredith Broadbent voted no.

FCPA: Frank Lyon of Honolulu, owner of engineering and consulting company, was sentenced May 13 in Hawaii U.S. District Court to 30 months in prison for his role in scheme to bribe Micronesian government official Master Halbert to corruptly secure \$8 million in engineering and project management contracts. Lyon pleaded guilty to conspiracy to violate FCPA. Halbert pleaded guilty April 2 in same court to conspiracy to commit money laundering (see **WTTL**, April 8, page 5). Halbert’s sentencing is set for July 29.

FIREARMS: More than 100 organizations, including religious groups and unions, urged Congress May 14 to block proposed transfer of firearms and ammunition from USML Categories I-III and maintain congressional oversight. “The proposal will ... increase the risk of exports to unauthorized end users and conflict zones as the Commerce Department, charged with promoting sales, will gather less information about those engaged in the arms trade and rely on post-shipment monitoring, rather than pre-license checks,” groups wrote. Signers include American Federation of Teachers, Amnesty International-USA, Arms Control Association, Center for American Progress

and Global Exchange. Sen. Bob Menendez (D-N.J.) in February put “hold” on transfers after receiving a 30-day formal 38(f) notice from State (see **WTTL**, April 1, page 1).

BLUE LANTERN: DDTC’s annual report on Blue Lantern end-use monitoring visits released May 14 shows drop in number of visits initiated in fiscal year 2018, which ended Sept. 30, 2018, to 466 from 673 two years earlier. Of 585 cases closed in fiscal 2018, agency determined 29% to have “unfavorable” results, which ticked up from FY2016. Three unfavorable results were referred to law enforcement. “Additionally, one of these checks uncovered potential indications of an illicit transaction or nefarious procurement practice,” report said.

SOLAR: CAFC May 16 affirmed CIT ruling that Sunprime’s solar modules are covered by scope of antidumping and countervailing duty (AD/CVD) orders on certain solar cells from China. In cross-appeal, panel affirmed ruling that “Commerce cannot continue a suspension of liquidation that Customs lacked authority to implement in the first place,” Circuit Judge Raymond Clevenger wrote for three-judge panel in *Sunprime Inc. v. U.S.* Chief Judge Sharon Prost dissented in part, writing that “there appears to be no harm in Customs’ suspending liquidation and requiring importers to pay cash deposits during the period prior to the initiation of a scope inquiry, even where it is unclear whether the merchandise falls within an AD/CVD order.” In June 2018, CAFC reversed previous CIT ruling that CBP exceeded its authority because CIT lacked jurisdiction to hear Sunprime’s claims (see **WTTL**, June 15, 2018, page 8).

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