Trump and Trade Updates – June 2017

Commerce Revises Comment Deadline for Section 232 Investigation of Aluminum Imports

6/1/17 – In an effort to expedite its investigation of the impact of aluminum imports on national security (see our previous update on this topic) and submit a report to President Trump by the end of June, the Department of Commerce has announced that the deadline for written comments is now June 23, 2017, one day after the scheduled public hearing. Comments were previously due by June 29. Written comments should be submitted to Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 1093, Washington, D.C. 20230 or by email to Aluminum232@bis.doc.gov.

Industry Comments on Section 232 Steel Import Investigation

6/2/17 – As comments in the ongoing Section 232 investigation into steel imports are being filed, we highlight two recent submissions that reflect the dichotomy of views on this trade issue. Both the American Iron and Steel Institute (AISI) and the National Foreign Trade Council (NFTC) filed comments with the Department of Commerce on May 31, 2017. AISI represents members of the steel industry that account for nearly 70 percent of U.S. steelmaking capacity. NFTC represents more than 200 U.S. companies with over $3 trillion in worldwide sales, including companies that rely on the steel industry.

AISI Comments: "[T]he U.S. steel industry has relied on our trade laws to seek to address the impact of unfairly traded steel imports in our market. While the antidumping and countervailing duty laws have provided some relief … they leave openings for steel products not subject to orders to continue to surge into our market. … The U.S. steel industry has been severely impacted by repeated surges in dumped and subsidized imports that have flooded the U.S. market in recent years. These surges are the result of foreign government interventionist policies in the steel sector that have fueled massive and growing global overcapacity in steel, particularly in China. If left unaddressed, this global steel crisis will threaten the very viability of the U.S. steel industry, and therefore will threaten the national security of the United States." AISI urges the Department of Commerce to use the Section 232 investigation to implement a "more comprehensive and broad-based" solution to safeguard national security. See AISI's full comments.

NFTC Comments: "We are … extremely concerned about the notion of seeking to remedy unfair trade or global overcapacity through an overly broad definition of 'national security' and the use of sweeping trade restrictions under Section 232. We do not believe that this is the proper role of a 'national security' related remedy, which should be more narrowly focused on two considerations: (a) what specific national security needs are not being met; and (b) whether a targeted remedy that is not unduly disruptive to the rest of our national economy can ensure essential supply to our defense sector. If the focus is something different, such as to remedy unfair trade practices, we believe the proper course of action is for the industry to seek relief under the laws established for those purposes, such as the antidumping and countervailing duty laws. These laws have well-established procedural requirements for determining injury and assessing the appropriate scope and level of remedies." NFTC urges the Department of Commerce to balance the interests of steel consuming industries "against the advisability of restrictions for national security reasons," the uncertainty that could be introduced if any "broad-based" or "sweeping" restrictions or trade barriers are created, and the potential for retaliation. See NFTC's full comments.

U.S.-Mexico Sugar Trade Agreement – NAFTA Renegotiation Precursor?

6/8/17 – On June 6, 2017, the United States and Mexico agreed to revise previously signed suspension agreements that will continue to suspend antidumping and countervailing duty investigations and prevent the imposition of additional duties on imports of sugar into the United States. The revised agreement is

intended to prevent dumping of Mexican sugar and correct for subsidies the Mexican sugar industry receives. The agreement addresses many of the concerns the U.S. sugar industry had with the previous agreement, including the pricing of raw sugar sold to Mexico mills, the percentage of refined sugar that may be imported into the United States, the determining factors between refined and raw sugar, and increased enforcement measures. U.S. refiners argue that Mexican sugar producers have been circumventing the 2014 suspension agreements' requirement that forced them to send nearly half of their exports to U.S. refineries by exporting sugar that was technically raw but could be sold at higher prices and used directly in beverage and food production with minimal processing. The fact sheet released with the announcement, "Draft Amendments to Mexican Sugar Suspension Agreements," is available on Commerce's website.

While the terms of the revised agreements were not supported by the Coalition for Sugar Reform or the American Sugar Alliance, Secretary of Commerce Wilbur Ross agreed to the terms of the deal in principle and stated that he was confident that it "defends American workers across many industries and is the best way to ensure stability and growth." The U.S. Chamber of Commerce stated that the deal "demonstrates the willingness of both governments to work through difficult issues in a constructive manner." Indeed, a number of trade analysts believe this agreement on sugar is a hopeful sign for North American Free Trade Agreement (NAFTA) renegotiation efforts; there had been concern that if these sugar trade talks failed, it would be unlikely that a renegotiated NAFTA would be plausible. These negotiations and the terms of the agreements may be an early indication that U.S. trade negotiators may be willing to negotiate deals where significant and broad progress is achieved but certain key industries remain unsatisfied.

Congressional Republicans Urge President Trump Not to Reverse Course on Cuba

6/12/17 – Groups of Senate and House Republicans have sent letters to President Trump urging him not to reverse Obama administration policies that began to relax longstanding economic sanctions and open up the country for limited trade. Seven House Republicans wrote President Trump stating, "Reversing course would incentivize Cuba to once again become dependent on countries like Russia and China. Allowing this to happen could have disastrous results for the security of the United States." The letter also argued that reversing course would "threaten" efforts to combat human trafficking, illicit drug trade, cybercrime and fraud identification. Reps. Tom Emmer (MN), Rick Crawford (AR), Ted Poe (TX), Darin LaHood (IL), Roger Marshall (KS), James Comer (KY) and Jack Bergman (MI) signed that letter.

Similarly, Republican Senators John Boozman (AR), Mike Enzi (WY) and Jeff Flake (AZ) wrote to Secretary of State Rex Tillerson and National Security Adviser H.R. McMaster to "strongly urge you to weigh carefully any rollback of policies that would endanger" benefits such as the growth in Cuban entrepreneurs, expanded opportunity for U.S. businesses and the national security benefit of preventing the island nation from becoming "a client state of nations that view US interests as counter to their own."

It is expected that during a trip to Miami, Florida later this week, President Trump will announce the results of his administration's inter-agency review of existing Cuba policy. Many reports are indicating that he may tighten some restrictions on travel and business activities.

USTR Lighthizer Announces Senior Staff

6/16/17 – U.S. Trade Representative Robert Lighthizer has announced the appointment of key senior staff in his office to help craft U.S. trade policy and oversee enforcement actions:

Jamieson Greer, Chief of Staff: Prior to joining USTR, Greer was of counsel in the International Trade and National Security practice group at Kirkland & Ellis, LLP. He earned his law degree from the University of Virginia School of Law, a joint master's degree in international business law from l'Institut

d'Etudes Politiques de Paris (Sciences Po) and l'Université Paris 1 Panthéon-Sorbonne, and a Bachelor of Arts in international studies from Brigham Young University.

Payne Griffin, Deputy Chief of Staff: Before coming to USTR, Griffin was an advisor to then-Senator Jeff Sessions on trade policy and other financial issues. During this time, he also served as the deputy lead on trade policy implementation for President Trump's transition team, where he helped develop policy goals and priorities. Griffin received his bachelor's degree from American University and studied the general course at the London School of Economics.

Pamela Marcus, Deputy Chief of Staff, Operations: Before joining USTR, Marcus was manager of the International Trade group at Skadden, Arps, Slate, Meagher & Flom LLP. Marcus also previously worked at McDonnell Douglas in various management positions and at Bell & Co. as a management consultant. She earned her Master of Business Administration from Pepperdine University and her bachelor's degree from University of Maryland.

Stephen Vaughn, General Counsel: Prior to coming to USTR, Vaughn was a partner in the International Trade group at King & Spalding LLP. He has extensive experience litigating cases involving antidumping, countervailing duties and safeguards before numerous agencies and tribunals, including the U.S. International Trade Commission, the U.S. Court of International Trade and the World Trade Organization. He earned his law degree from Yale University and undergraduate degree from Vanderbilt University.

Timothy Reif, Senior Advisor: Prior to his appointment as USTR general counsel in 2009, Reif served as chief international trade counsel for the House Committee on Ways and Means, special trade counsel in private law practice and associate general counsel at USTR. Reif received his J.D. from Columbia Law School and his Master of Public Affairs and bachelor's degree from Princeton University.

Christopher Jackson, Assistant USTR for Congressional Affairs: Prior to coming to USTR, Jackson served as counsel to then-Senator Jeff Sessions, advising the senator on trade, budget and banking policy. Before that, he served as an assistant in the Office of Management and Budget under the leadership of Director Jim Nussle, where he worked on both the budget and management sides of OMB and served as a legislative assistant in the Office of Legislative Affairs. Jackson earned his law degree from The William and Mary School of Law and Bachelor of Arts from The George Washington University.

Cameron Bishop, Deputy Assistant USTR for Congressional Affairs: Prior to joining USTR, Bishop worked in the House of Representatives, most recently serving as legislative director for Rep. Austin Scott (GA-08) and before that as legislative director for Rep. Rick Allen (GA-12). He is a graduate of the University of Georgia.

Emily Davis, Deputy Assistant USTR for Public & Media Affairs: Davis previously worked as the communications director of the American Action Network/Congressional Leadership Fund. Her prior work also includes senior communications roles with the George Allen for U.S. Senate campaign, the National Republican Congressional Committee and Rep. Pete Sessions. Davis received her Bachelor of Arts in English from Dallas Baptist University.

Senate Passes Bill for Additional Sanctions Against Iran and Russia

6/19/17 – After several months of negotiations in the Committee on Foreign Relations, the full Senate on June 15, 2017 considered and passed a bipartisan bill by a vote of 98-2 seeking to hold both Iran and Russia accountable for their recent destabilizing activities in world affairs. S. 722 at Title I contains the Iran component of the legislation and was authored by Senators Corker (R-Tenn.), Menendez (D-N.J.), Rubio (R-Fla.), Cardin (D-Md.), Cotton (R-Ark.) and Casey (D-Pa.). It expands sanctions on Iran for ballistic missile development, support for terrorism, transfers of conventional weapons and human rights violations. The Countering Iran's Destabilizing Activities Act of 2017 contains the following key provisions:

- New mandatory ballistic missile sanctions: imposes mandatory sanctions on persons involved with Iran's ballistic missile program and those that transact with them.

- New terrorism sanctions: applies terrorism sanctions to the Islamic Revolutionary Guard Corps and codifies individuals who are currently sanctioned due to Iranian support for terrorism.

- Enforcement of arms embargo: requires the president to block the property of any person or entity involved in specific activities related to the supply, sale, or transfer of prohibited arms and related material to or from Iran.

The text of Title II of S. 722 maintains and substantially expands sanctions against the government of Russia in response to the violation of the territorial integrity of the Ukraine and Crimea, its cyber-attacks and interference in elections, and its continuing aggression in Syria. This portion of the bill will:

- Provide for a mandated congressional review if sanctions are relaxed, suspended or terminated.

- Codify and strengthen existing sanctions contained in executive orders on Russia, including the sanctions' impact on certain Russian energy projects and on debt financing in key economic sectors.

- Impose new sanctions on: corrupt Russian actors; those seeking to evade sanctions; those involved in serious human rights abuses; those supplying weapons to the Assad regime; those conducting malicious cyber activity on behalf of the Russian government; those involved in corrupt privatization of state-owned assets; and those doing business with the Russian intelligence and defense sectors.

- Allow broad new sanctions on key sectors of Russia's economy, including mining, metals, shipping and railways.

- Require a study on the flow of illicit finance involving Russia and a formal assessment of U.S. economic exposure to Russian state-owned entities.

S. 722 will shortly cross over to the House of Representatives, where it will be assigned to the appropriate committee(s) for consideration. As such, this legislation, while significant, is not yet a law.

President Trump Announces New Cuba Policy

6/20/17 – After several months of internal review, the Trump administration on June 16 announced revisions to U.S. policy toward Cuba. The internal review, led by the president's National Security Council, engaged in an interagency review that included input from the Treasury Department, State Department, Commerce Department, Department of Agriculture, Department of Homeland Security and the Department of Transportation. Additionally, President Trump met with members of Congress. In making the announcement, a senior administration official stated that the president's "basic policy driver was his concern that the previous policy was enriching the Cuban military and the intelligence services that contribute so much to oppression on the island. And that's the opposite of what he wanted to achieve, which is to have the benefits of any economic commerce with the United States go to the Cuban people."

One White House senior official acknowledged that all the regulatory and policy changes initiated by President Obama from December 2014 through 2016 would be difficult to undo; however, the revised policy under the Trump administration will once again restrict certain travel and seek to limit providing any advantages to the Cuban military (particularly the Cuban military monopoly, Grupo de Administración Empresarial) while seeking to continue to allow "American individuals and entities to develop economic ties to the private, small business sector in Cuba." The Office of Foreign Assets Control (OFAC), the

Bureau of Industry and Security (BIS) and the State Department are expected to update their lists of denied parties within the next 30 days. OFAC and BIS will also issue new regulations within that time to implement these policy changes. The president's new policy will not become effective until those regulations are issued. The U.S. embassy in Havana will remain open, and Cuba will be allowed to maintain its embassy in Washington.

The policy clarifies that any further improvements in the United States-Cuba relationship will "depend entirely on the Cuban government's willingness to improve the lives of the Cuban people, including through promoting the rule of law, respecting human rights, and taking concrete steps to foster political and economic freedoms."

As further details on the regulatory changes that will be implemented to address these policies become available, Thompson Hine's International Trade practice group will follow up with a detailed client bulletin. View the "National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba."

USTR Lighthizer Testifies Before Senate Finance Committee on the President's Trade Policy Agenda

6/22/17 – U.S. Trade Representative Robert Lighthizer testified yesterday before the Senate Finance Committee, stating that "the President has instructed me to negotiate trade deals that put American workers, farmers and ranchers, families, and businesses first, and to complement those negotiations with a vigorous enforcement agenda."

In his testimony, Lighthizer confirmed that the United States intends to begin NAFTA negotiations on August 17, 2017. In the meantime, he stated that USTR staff is talking to congressional offices and stakeholders to develop policy outcomes for the negotiations. USTR is reviewing the more than 12,400 comments received to date and will hold several days of public hearings beginning on June 27. He indicated that USTR staff will continue to work closely with Congress to develop and refine U.S. negotiating objectives, consistent with the Trade Promotion Authority, and publish a detailed summary of those objectives at least 30 days before the negotiations begin.

On trade enforcement, Lighthizer stated that he has instructed USTR's Office of General Counsel, in accordance with the president's directives in Executive Order 13796, to examine U.S. trade relationships and identify issues that can be addressed through enforcement of U.S. trade laws. The Trump administration believes that "too little has been done in this area in recent years, and we are actively assessing ways to get tough on countries who do not respect our economic system. We have also been active in identifying countries that have serious problems with protection of intellectual property, and we are reviewing and amending our action plans to ensure that we can identify violations and take appropriate enforcement actions."

USTR has requested a 6 percent increase for its FY 2018 budget. Lighthizer indicated this additional funding would be used to implement the Interagency Center on Trade Implementation, Monitoring, and Enforcement, and would allow USTR to hire eight additional staff members to support the mission of that office.

View the full written testimony of USTR Lighthizer.

OFAC and BIS Designate Additional Individuals and Entities Under the Ukraine/Russian-Related Sanctions

6/23/17 – On June 20, 2017, pursuant to four executive orders (EOs), the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) subjected to U.S. economic sanctions more individuals and entities involved in the ongoing Crimean conflict between Russia and Ukraine. These actions were deemed necessary to counter attempts to circumvent current U.S. sanctions. Treasury Secretary Steven Mnuchin stated, "This administration is committed to a diplomatic process that guarantees Ukrainian sovereignty, and there should be no sanctions relief until Russia meets its obligations under the Minsk agreements."

OFAC designated 38 individuals and entities under the Ukraine-related EOs, including:

- Alexander Babakov, the Russian Federation's Special Presidential Representative for Cooperation with Organizations Representing Russians Living Abroad;
- Oboronlogistika, OOO, the Russian Defense Ministry's sole executor for the procurement of goods, works, and services for maritime transport of military troops and freight on the territory of the so-called Republic of Crimea; and
- The following seven banks for operating or assisting in financial transactions in Crimea: Tsmrbank, OOO; Taatta, AO; Joint Stock Company Black Sea Bank of Development and Reconstruction; Joint Stock Commercial Bank Rublev; Joint Stock Company Commercial Bank North Credit; IS Bank, AO; and VVB, PAO.

OFAC also identified a number of subsidiaries owned 50 percent or more by Transneft, which was made subject to the Sectoral Sanctions Identification (SSI) List on September 12, 2014 pursuant to EO 13662. Transneft and its 50 percent or more subsidiaries are subject to Directive 2, which prohibits U.S. persons from dealing in new debt of greater than 90 days' maturity of sanctioned entities. The complete listing of individuals and entities is available on Treasury's website.

BIS has added 10 entities to the Entity List on the basis of 15 C.F.R. § 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The 10 entities added to the Entity List consist of two entities in the Crimea region of Ukraine and eight entities in Russia. For a complete list of these entities, please see the Federal Register notice.

USTR and Commerce Request Comments Regarding Administration's Reviews of Trade Agreement Violations and Abuses

6/29/17 – As we previously reported, Executive Order 13796 of April 29, 2017 requires the United States Trade Representative (USTR) and the secretary of Commerce, in consultation with the secretary of State, secretary of the Treasury, attorney general and the director of the Office of Trade and Manufacturing Policy, to conduct comprehensive performance reviews of all bilateral, plurilateral and multilateral trade agreements and investment agreements to which the United States is a party and all trade relations with countries governed by the rules of the World Trade Organization (WTO) with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods.

USTR and Commerce are seeking comments that they will consider as part of these performance reviews and in preparation of the subsequent report to the president. Specifically, commenters should submit information related to one or more of the following assessments:

- The performance of individual free trade agreements (FTAs) and bilateral investment treaties (BITs) to which the United States is a party.
- The performance of the WTO agreements with regard to our trade relations with those trading partners with which the United States does not have an FTA but with which the United States runs significant trade deficits in goods. The trading partners subject to these performance reviews are China, the European Union, India, Indonesia, Japan, Malaysia, Switzerland, Taiwan, Thailand and Vietnam.
- The performance of U.S. trade preference programs.

Written comments are due by 11:59 p.m. EDT on July 31, 2017. USTR and Commerce prefer electronic submissions made through the Federal eRulemaking Portal. The docket number is USTR-2017-0010. For additional information, please see the Federal Register notice on this matter.