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Building Up to the WTO Ministerial: The World Trade Organization released a draft text on a possible e-commerce agreement in the lead-up to the WTO's ministerial in Abu Dabhi, United Arab Emirates from February 26-29. The document, initially drafted by co-conveners including Australia, Japan, and Singapore, touches on consumer and data protection, electronic signatures and contracts, cybersecurity, open government data, and more, but does not address data flows, data localization, source flows, or nondiscrimination. The text calls for a continued moratorium on customs duties for electronic transactions, which some developing counties have opposed in hopes of raising revenues through customs duties or to protect infant industries. Because the WTO is a consensus-based body, all 164 members must agree to the final text for it to be approved.

In an article for the Singapore-based Hinrich Foundation, former WTO spokesman Kieth Rockwell set low expectations for the coming ministerial, believing that there would be no progress on fish subsidies, no resolution on dispute settlement procedures before the outcome of the U.S. election, and was also pessimistic about the possibility of continuing the moratorium on e-commerce tariffs.

Court Blocks Florida Law Preventing Chinese Citizens from Land Purchases: A federal appeals court has blocked enforcement of a Florida law that would restrict Chinese citizens from buying land. While the court did not block the law in its entirety, it granted a preliminary injunction to two plaintiffs, allowing them to go ahead with their land purchase. Governor Ron DeSantis approved the law last year during his presidential campaign, which prohibits Chinese who are "domiciled" in China and not "lawful" U.S. residents from buying or owning a single parcel of more than two acres and which may not be within five miles of a U.S. military installation.

China Committee Chair to Step Down: Congressman Mike Gallagher (R-WI), chair of the House Select Committee on the Chinese Communist Party, announced that he will not run for reelection this year, choosing to retire after four terms in Congress. Under his chairmanship, the House Select Committee on China has taken a sharply hawkish tone in its hearings and proposals, and Rep. Gallagher has told the press that he has an "aggressive" plan to enact the Committee's recommendations, including revoking permanent normalized trade relations with China.

Duties on Emissions?: Senator Chris Coons (D-DE) has proposed reconfiguring U.S. international trade policy to promote sustainable development as part of his Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency (PROVE IT) Act cosponsored with

Senator Kevin Kramer (R-N.D.). The proposed legislation would require the U.S. Department of Energy to study the emissions intensity from the production of certain goods like aluminum, fertilizer, crude oil, iron, steel, glass, plastic, and others and use this information to assess duties on these products.

Injury from Glass Wine Bottles: The U.S. International Trade Commission (ITC) determined that there is a "reasonable indication" of material injury to U.S. producers resulting from glass wine bottle imports from Chile, China, and Mexico. The ITC investigation found that these bottles were being sold at less than fair value and subsidized by the government of China. The ITC will now begin preliminary considerations on duties on glass wine bottle imports from these countries, with a preliminary decision on countervailing duties expected by March 25, 2024 and a preliminary decision on antidumping duties expected on June 6, 2024.

Analysis: Steeling Defeat from the Jaws of Victory?

The balance between governments and markets is one of the central debates of liberal On December 18, 2023, Nippon Steel announced its intention to purchase U.S. Steel for $14.1 billion. It's a significant offer for a company that needs the cash, and yet on the day of the announcement Senator Bob Casey (D-PA) sent a letter to the CEO of Nippon Steel to express his state's congressional delegation's "deep concern" about the proposed agreement. Concerns like these aren't just idle hand-wringing – a regulatory chokepoint and election year politics are combining to make the acquisition a politically contentious affair that's gathered storm clouds over Biden's reelection campaign.

The immediate hangup is the review by the Committee on Foreign Investment in the United States (CFIUS), an interagency committee chaired by the Treasury Secretary. Its mission is to consider the national security risks to the United States which may be posed by any foreign direct investment into the United States, particularly cases like this one involving the potential acquisition, merger, or takeover of a U.S. firm by a foreign one. CFIUS's powers were significantly expanded with the Foreign Investment Risk Review Modernization Act of 2018, and President Biden expanded the Committee's scope to consider risks to supply chains and personal data with an executive order in 2022.

The only criterion on which these reviews are made is whether a proposed deal threatens national security. More specifically, whether domestic production is needed for national defense requirements, the risk of potential sale of military goods or technology to a country that supports terrorism or producing weapons of mass destruction, whether it impacts U.S. technological leadership in areas affecting national security, and the agreement's impact on U.S. critical infrastructure. After the review process takes place and in addition to the Committee's ruling, CFIUS may put certain requirements on the deal to allow it to go forward, or may recommend that the president make a final decision on the deal if there are unresolved concerns. In 2022, the Congressional Research Service reported that CFIUS reviewed 440 filings, cleared 90, 87 cases were withdrawn during the process, and the majority refiled with CFIUS. The last time a case went to a presidential decision was in 2020 when President Trump ordered China's ByteDance, the company behind TikTok, to divest from Musical.Ly, a 2017 merger which formed the basis of TikTok's U.S. operations. CFIUS is now working on an agreement with the firm that would address the national security implications of TikTok's U.S. operations.

As a simple procedural matter, there seems to be little reason to block the sale on the grounds of national security or economic security. Because Japan is a treaty ally of the United States and trading partner with an expanding set of economic security rules, the deal would almost certainly pose no national security risk if considered only on the merits of the deal. In terms of steel production for the U.S. military, where the acquisition may pose a risk if the foreign owners decide to cut back production. U.S. Steel primarily produces steel for the automotive industry, construction, and other commercial applications; much of the steel used in the U.S. Navy is provided by ArcelorMittal (based in Luxembourg) and SSAB (based in Sweden), both of which have facilities in the United States as Nippon Steel would through the U.S. Steel facilities. The business merits also seem strong – the consensus in the U.S. steel industry seems to be that the deal will be a positive one, and a better prospect for U.S. Steel than a competing bid from Cleveland-Cliffs (their offer has since been withdrawn).

But nothing is simply a procedural matter in a presidential election year; especially when the matter in question involves two of the most critical states to decide the outcome. In this case, the CIFIUS review process creates a veto point that raises the political costs of approval and could even derail the acquisition.

Donald Trump has already spoken unequivocally of his opposition to the deal, saying "I would block it instantaneously. Absolutely" and putting pressure on Biden. Senators Sherrod Brown (D-OH, fighting a difficult reelection that might decide control of the Senate), J.D. Vance (R-OH), and Bob Casey, fighting his own reelection campaign, have already stated their opposition to the deal. Brown's and Casey's concerns with the trade pillar of the Indo-Pacific Economic Framework almost singlehandedly led the Biden administration to shelve the pillar in November when an agreement was supposed to be reached.

The proposed acquisition also puts Biden in an extremely difficult situation. There's simply no political incentive for him to allow the deal to advance given the razor-thin margins of the coming election and the centrality of Ohio and Pennsylvania for the outcome. Even letting the review drag into 2025 is risky if the potential sale hangs ominously over Biden's campaign as he fights for votes. Hillary Clinton and her campaign made a point to emphasize her opposition to the Trans-Pacific Partnership throughout the 2016 election and it still wasn't enough to either save U.S. participation in the agreement or see her past support of TPP blamed for costing her the election, particularly in Ohio and Pennsylvania.

Frankly, Nippon Steel has badly read the political climate. They seem to understand the business potential of the acquisition, believing that the deal should go ahead on its own terms because it makes sense (it does). But hoping that the deal can be closed before the election season begins in the fall is misplaced optimism – the election was already well underway when the deal was announced in December. Nippon Steel has begun forming a small army of lobbyists and consultants to help them navigate the political maelstrom and they've already been meeting with Congress, the United Steel Workers (USW) union, and other stakeholders to discuss the acquisition.

Whether Biden could politically survive a CFIUS review that would allow the deal to go forward depends a lot on how Nippon Steel handles what's next. As the letter from the Pennsylvania delegation described, the steel industry is an evocative force in these places, so much so that even one of the local American football teams is called the "Steelers" and uses a variation of the "Steelmark" logo that's used to promote steel products (though, of course, only on one side of the team's helmet). The question for skeptics is whether and why an American firm can better protect these jobs than a foreign firm, and Nippon Steel should provide a solid answer that they can provide those assurances where others can't.

The center of gravity for Nippon Steel is likely USW, the union representing U.S. steelworkers with 1.2 million members mostly in Ohio and Pennsylvania which has "slammed" the proposed acquisition. The president of USW has said that he had received "personal assurances" that President Biden "has our backs", without elaborating. Their concern is that similar acquisitions in the past have led to plant closures and layoffs. To that end, assurances that Nippon Steel will expand operations at the plants where workers are unionized would go a long way toward securing their support.

As with most everything with the United States, the world is watching. The United States is the world's top destination for foreign investment, but discriminating against an ally risks undermining this status and may lead other countries to make similar considerations in their reviews of foreign investment. But whatever happens next, the acquisition is a stark illustration of the finesse that's demanded when moving among the hazards of election year politics.