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## Obama Opens Relations with Cuba

### Incremental Changes Expected in U.S.-Cuba Trade Ties

While the timing for implementation of the new rules is still to be determined, the Obama administration took a huge step forward Dec. 17 in normalizing relations with Cuba after 50 years of trade sanctions and acrimony. The effective date for the changes will depend on the publication of regulations, Treasury's Office of Foreign Assets Control (OFAC) said in a Frequently Asked Question (FAQ).

"OFAC will implement the Treasury-specific changes via amendments to its Cuban Assets Control Regulations. The Department of Commerce will implement the remainder of the changes via amendments to its Export Administration Regulations. OFAC expects to issue its regulatory amendments in the coming weeks. None of the announced changes takes effect until the new regulations are issued," the FAQ said.

In addition to waiting for implementing regulations, U.S. exporters may not be able to enjoy a full opening of the Cuban market until Congress revises 50 years of statutory embargoes. A fight in Congress is expected over any potential changes in the law, as well as Obama's proposal for opening an embassy in Havana (see related stories pages 2-3). U.S. farmers are expected to be the first beneficiaries of the new policies. Despite current embargoes, agriculture exports to Cuba have continued albeit at lower levels than for competitors in Canada, Europe and Brazil.

For many non-farm exports, export licensing requirements are expected to remain in place. Moreover, Cuba is a poor country that may not be able to afford many American products. "Cuba is not Iran or Russia in terms of business opportunities," Ronald Meltzer, a partner with Wilmer Hale, cautions. Any surge in exports may have to wait until U.S. investors are able to establish operations in the country.

### New Rules for Cuba Will Open Travel and Trade

The numerous changes the White House announced Dec. 17 in trade, travel and finance rules for Cuba will face a period of testing to see how U.S. citizens and businesses are

able to take advantage of the new policies. While opening travel for many specific reasons, overall travel restrictions remain in place. A key change, however, will allow travel to arrange export transactions. Another change will allow foreign subsidiaries of U.S. companies to deal for the first time with Cubans outside Cuba. Among the changes listed in a White House fact sheet are:

- General licenses will be made available for all authorized travelers in 12 existing categories: including family visits; official government business; journalistic activity; professional research; educational activities; religious activities; public performances and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations or research or educational institutes; transmission of information; and certain export transactions that may be considered for authorization under existing regulations and guidelines.
- Licensed U.S. travelers to Cuba can bring back \$400 worth of goods from Cuba, of which no more than \$100 can consist of tobacco products and alcohol combined.
- U.S. institutions will be permitted to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions.
- Travelers will be permitted to use U.S. credit and debit cards in Cuba.
- Commercial sale of certain consumer communications devices, related software, applications, hardware, and services, and items for the establishment and update of communications-related systems will be allowed.
- Certain building materials for private residential construction, goods for use by private sector Cuban entrepreneurs, and agricultural equipment for small farmers will be authorized for export.

“The regulatory changes being announced today will be implemented through new regulations, but they will facilitate the ability to do exports by making the opportunity to do that more general and have more general authority to do that, rather than having to apply for specific licenses each time,” a senior administration official told reporters.

## **Cuba Rules Draw Mixed Reaction on Both Sides of Aisle**

Legislative changes to the current embargo on Cuba and other restrictions, as well as the opening of diplomatic relations, will depend on what congressional leaders want to do, particularly with Republicans in charge in both the House and Senate. Congressional sources say it is too early to tell whether Congress will agree to any changes in current statutory restrictions on Cuba.

“This is an issue that can divide both caucuses. You have Ros-Lehtinen and Menendez on one side and those who support the Chamber of Commerce on the other,” one aide told WTTL, referring to Rep. Ileana Ros-Lehtinen (R-Fla.) and Senate Foreign Relations Committee Chairman Robert Menendez (D-N.J.). “At a minimum, oversight hearings will be expedited,” he added.

The division among Republicans is seen in the reactions of Sen. Marco Rubio (R-Fla.), who staunchly opposes any changes, and Sen. Rand Paul (R-Ky.), who had favorable things to say about Obama’s announcement. House Speaker John Boehner (R-Ohio) also criticized the president’s decision. “Relations with the Castro regime should not be revisited, let alone normalized, until the Cuban people enjoy freedom – and not one second sooner. There is no ‘new course’ here, only another in a long line of mindless

concessions to a dictatorship that brutalizes its people and schemes with our enemies,” Boehner said in a statement. Despite harsh words from some lawmakers, agriculture groups expect support for legislative changes to come from many farm-state lawmakers.

In the House, Foreign Affairs Committee Chairman Ed Royce (R-Calif.) blasted Obama for the deal with Cuba but didn't address the specific changes in export, finance and travel rules. “The president compared our economic relationship with Cuba to that of China and Vietnam. But in China and Vietnam, while Communist, at least foreign firms can hire and recruit staff directly, without their pay going to and bolstering the government, as it does in Cuba,” Royce said in a statement.

On the plus side, Senate Finance Committee Chairman Ron Wyden (D-Ore.) applauded Obama's announcement. “I have long believed that trade and engagement are liberalizing forces and I look forward to working with my colleagues and with our diplomats to bring about the progress in Cuba that we all want to see,” he said in a statement.

“In light of today's developments, I am requesting that the International Trade Commission initiate a study of the economic impact on the United States of current U.S. restrictions on exports of goods and services as well as travel to Cuba by U.S. citizens. This study will provide a foundation for reevaluating the current U.S. economic relationship with Cuba,” Wyden said. “U.S. trade restrictions must be appropriately calibrated to ensure that we do not unnecessarily leave American jobs on the table. I look forward to working with the President to open up trade with the Cuban people,” he added.

## **Business Will Push for Quick Implementation of Cuba Rules**

U.S. manufacturers, farmers, tourism service providers, banks and financial institutions are chomping at the bit to have President Obama's promised trade liberalization measures with Cuba put into place as quickly as possible. The U.S. exported only \$359.4 million to Cuba in 2013, most of which was farm products, but some estimates say trade could rise to \$1 billion with the new rules.

The potential changes come with some caveats. The changes could be very significant but “people often overstate the amount of easing based on past changes,” Ronald Meltzer, senior counsel with Wilmer Hale, cautions. There are many “questions and ambiguities” that need to be resolved, he told WTTL. “Cuba is not Iran or Russia,” he said, indicating that the market with a population of 11.3 million is not as large as some think.

The changes also could raise export compliance challenges, he suggested. Exporters “will need to study what has been changed and what has to be done to take advantage of the changes,” he said. Firms will need to make sure their compliance programs distinguish between what will be permitted and what remains prohibited, Meltzer advised.

Despite the restrictions that have existed on trade with Cuba, some exports have been permitted under previous policies, including for humanitarian, communications and agriculture products. In fiscal 2013, the Bureau of Industry and Security (BIS) issued 419 licenses for exports to Cuba with a total value of almost \$4.7 billion. Obviously,

not all licenses were shipped against. The largest categories of exports have been agriculture goods and information security products. OFAC has issued separate licenses for travel and other areas under its jurisdiction.

Of total U.S. exports to Cuba in 2013, the largest product category was for meat and poultry (\$155 million), followed by animal feed (\$80.3 million), corn (\$56.8 million), soybeans (\$39.4 million) and unmanufactured agriculture products (\$14.8 million), according to Census figures.

Smaller amounts were exported for medical equipment (\$1.7 million), pharmaceuticals (\$1.56 million) and industrial machinery (\$3 million). Up until tougher financing rules were imposed by President George W. Bush, the U.S. also was exporting logs, lumber, rice and newsprint to Cuba.

U.S. agriculture exporters will have to win back market share in Cuba from competitors in Europe, Canada and South America but will have a “competitive advantage by being the closest supplier to Cuba,” said former Chief USTR Agriculture Negotiator Islam Siddiqui, who is now a senior advisor with the Center for Strategic and International Studies. Siddiqui also sees the U.S. policy change helping U.S.-Cuban relations at the WTO. He recalled how Cuba almost derailed the WTO Bali Ministerial last December with a last-minute challenge to the U.S. trade embargo.

Farm groups were most excited about the new policy. “The American Farm Bureau Federation strongly supports President Obama’s move toward normalized relations with Cuba,” its president Bob Stallman said in a statement. “Right now, U.S. farmers can export to Cuba, but third-party banking requirements and limited credit financing make it harder to compete in the market than it should be,” he noted.

Wheat growers, who could see sales jump to \$115 million a year, also applauded the changes. “If Cuba resumes purchases of U.S. wheat, we believe our market share there could grow from its current level of zero to around 80-90 percent, as it is in other Caribbean nations,” said a statement from Alan Tracy, president of U.S. Wheat Associates. Producers expect an increase in sales of hard red winter wheat used for bread. While wheat is sold at global market prices, shipping costs will be lower from U.S. ports.

Soybean growers, who have continued to export to Cuba despite current restrictions, see the change for even more exports. “Whether it’s the burgeoning Cuban demand for pork, poultry and dairy or that nation’s expanded demand for cooking oils, American soybeans have a significant market opening just off our own shores,” said a statement by American Soybean Association President Wade Cowan.

The response from the business community was immediate and generally positive. The National Foreign Trade Council (NFTC) applauded the new policy, but was quick to say the changes won’t have an immediate impact on exports. “While these changes are essential to promoting democracy in Cuba, they will not promote an immediate bonanza for American exporters. There is much work to be done in rebuilding what has historically been an important market for our manufacturers, farmers and service providers,” NFTC President Bill Reinsch said in a statement.

The U.S. Chamber of Commerce echoed that sentiment. “There is still work to do, on both sides of this relationship, but the changes outlined today are a substantive and

positive step forward. It is imperative that the Cuban government build on today's positive steps with a more ambitious economic reform agenda at home, while we continue to push for the end of the embargo here in Washington," Chamber President Tom Donohue said in a statement.

## **U.S., EU Imposes New Sanctions on Trade in Crimea**

In coordinated move, the European Union (EU) Council and President Obama expanded sanctions against doing business in Crimea and Sevastopol, blocking companies from buying real estate or entities in the two areas, financing Crimean companies or supplying related services. The council announced its decision Dec. 18 and President Obama issued his executive order (E.O.) Dec. 19.

"The E.O. prohibits the export of goods, technology, or services to Crimea and prohibits the import of goods, technology, or services from Crimea, as well as new investments in Crimea," the president said in a statement. The White House had not yet posted the order at press time.

The order authorizes the secretary of the Treasury to impose sanctions on individuals and entities operating in Crimea and "is intended to provide clarity to U.S. corporations doing business in the region and reaffirm that the United States will not accept Russia's occupation and attempted annexation of Crimea," the president said.

"I again call on Russia to end its occupation and attempted annexation of Crimea, cease its support to separatists in eastern Ukraine, and fulfill its commitments under the Minsk agreements. My Administration will continue to work closely with allies and partners in Europe and internationally to respond to events in Ukraine and to support Ukraine's sovereignty and territorial integrity, as well its democratic development and reform efforts. We will continue to review and calibrate our sanctions, in close coordination with our international partners, to respond to Russia's actions," Obama said.

The EU will bar tourism services in Crimea or Sevastopol and would prohibit EU-flagged cruise ships from making port calls there. Existing contracts may be honored until March 20. "These measures add to an import ban on goods from Crimea and Sevastopol, imposed in June, as well as restrictions introduced in July on trade and investment related to certain economic sectors and infrastructure projects," a council statement said.

The council said previous sanctions prohibited exports of certain goods and technology to Crimean companies or for use in Crimea in the transport, telecommunications and energy sectors or the prospection, exploration and production of oil, gas and mineral resources. "Technical assistance, brokering, construction or engineering services related to infrastructure in the same sectors must not be provided," it said.

U.S. firms have complained about pressure from the U.S. government not to do business in Crimea, claiming European competitors were being allowed to operate in Crimea (see **WTTL**, Nov. 24, page 1). "Even if sanctions do not prohibit participation, the U.S. government does not support U.S. companies' participation in such projects," Bureau of Industry and Security (BIS) Assistant Secretary Kevin Wolf said in an email to **WTTL**. The new measures bring U.S. and EU policies closer.

## WTO Appellate Body Rules Against U.S. CVD Determinations

The few bright spots the U.S. claimed to see in a World Trade Organization (WTO) dispute-settlement panel report in July on the application of countervailing duty (CVD) rules to Chinese imports were erased Dec. 18 in an Appellate Body ruling that reversed many of the panel's findings against China's complaints. The panel had upheld many of the challenged Commerce practices and disagreed with China's objections, but the AB reversed several of these findings. The new ruling could force Commerce to revise its decision on a dozen CVD cases on Chinese goods (see **WTTL**, July 21, page 4).

Among the panel decisions that were reversed was its approval of Commerce's findings on a specific subsidy program in China for targeted exports. The AB reversed the ruling that "China had not established that the USDOC acted inconsistently with the obligations of the United States under Article 2.1 of the SCM [Subsidies and Countervailing Measures] Agreement by failing to identify a 'subsidy programme'; and finds that it is unable to complete the legal analysis in this regard," the AB ruled.

It also reversed a panel finding that China failed to show the U.S. violated SCM rules when Commerce rejected in-country prices as benefit benchmarks for CVD cases involving oil-country tubular goods, solar panels, pressure pipe and line pipe. The Appellate Body said price selection benchmarking under the SCM is not a function of its source, but rather, whether it is market-determined and reflects prevailing market conditions in the country. Moreover, a benchmark cannot at the outset exclude consideration of in-country prices from any particular source, including government-related prices.

It agreed with China that Commerce failed to identify a "granting authority" but said it was unable to complete the legal analysis. In addition, it reversed the finding that China had not proved that Commerce acted "inconsistently with the obligations of the United States under Article 12.7 of the SCM Agreement by not relying on facts available on the record; and finds that it is unable to complete the legal analysis in this regard." This ruling applied to the use of adverse facts available in CVD cases on pressure pipe, line pipe, citric acid, lawn groomers, OCTG, wire strand, magnesia bricks, seamless pipe, print graphics, drill pipe, aluminum extrusions, steel cylinders and solar panels.

## Removing Routed Export Transactions? Not So Fast

When BIS suggested removing the phrase "Routed Export Transaction" from its Export Administration Regulations (EAR), the agency thought that would more closely sync with Census regulations and would address concerns of freight forwarders and others about the term. In comments submitted in the spring, but just posted on the BIS website Dec. 11, they didn't get it quite right (see **WTTL**, Feb. 10, page 5).

In the February 2014 proposal, BIS said it would "create a new term to better define certain transactions of particular interest to BIS, specifically a 'Foreign Principal Party Controlled Export Transaction' which is a transaction where an FPPI [Foreign Principal Party in Interest] which is responsible for the export of items subject to the EAR, also assumes the authority and responsibility for licensing requirements." The most vocal organization affected by these requirements, the National Customs Brokers and Freight

Forwarders Association of America (NCBFAA), repeated its case that the foreign party rarely understands the responsibilities in an export transaction. “In the experience of our members, when the FPPI receives a request to assume the role of exporter under the EAR, they believe that this is a routine U.S. requirement as opposed to an additional responsibility and therefore agree without question. They do not understand that they must separately authorize a U.S. agent to act on their behalf in this capacity or that there are significant technical facts and policy issues that their agent must satisfy to obtain an export license,” NCBFAA wrote.

Liz Gant of freight forwarder Samuel Shapiro argued for keeping the term “Routed Export Transaction” in both the EAR and Census regulations. “We do feel that this term can and should be used to describe an export transaction where the foreign principal party in interest is responsible for the movement of items out of the United States. We would like to see the same definition in the Foreign Trade Regulations (FTR) to be consistent and clear so exporters and forwarders alike will know exactly the type of transaction both agencies are referencing,” she said.

Other comments highlighted confusion with who files what in the Automated Export System (AES). “There is cause for concern if the FPPI is allowed to make license determinations with their agent and still file the export through AES using the USPPI’s EIN number and were to make a mistake. What would the incentive be to empower the FPPI’s agent to make license determination if all the culpability were still to reside with the USPPI?” Mark Nolan of Future Electronics commented. “Furthermore it seems like in a post shipment audit environment it could be difficult to look at export records and then determine in which cases the FPPI’s agent made license determination unless they filed the AES themselves,” he added.

## CAFC Ruling on Wood Screws Draws Dissent Again

Court of Appeals for the Federal Circuit (CAFC) Judge Jimmie Reyna is still protesting the appellate court’s rejection of Customs and Border Protection’s (CBP) classification of imported “wood screws.” Reyna wrote a dissent when the CAFC in August first reversed a Court of International Trade (CIT) decision upholding the CBP ruling in *GRK Canada v U.S.* (see **WTTL**, Aug. 11, page 10).

When the circuit court Dec. 8 denied GRK’s requests for the original panel to rehear its case or for the court to conduct an en banc review, Reyna dissented again but this time with support from two colleagues, Judges Pauline Newman and Evan Wallach, who wrote his own 12-page dissent. Reyna joined Wallach’s dissent. Newman did not put her views in writing.

Wallach’s dissent echoes many of the arguments that Reyna made previously. He claims the court has consistently analyzed the headings of the Harmonized Tariff Schedule of the United States (HTSUS) by first determining whether the heading is defined by name or by use, and then applying the corresponding classification analysis. Classification is governed by the General Rules of Interpretation (GRI) and the Additional United States Rules of Interpretation (ARI), he contends. The majority opinion “impermissibly departs from this required framework by incorporating elements of a use analysis into its analysis of an eo nomine heading without providing a justification why an exception should be

made in this case,” Wallach writes. “In doing so, the majority opinion creates a conflict within our classification cases and confuses what should be a pronounced distinction between *eo nomine* and use headings. For these reasons, this case should be reconsidered *en banc*. I respectfully dissent from this court’s contrary ruling,” he adds.

“Not only is this more permissive rule contrary to our case law, it also blurs the distinction between the legal question of what the subheadings cover—a pure question of law analyzed in a vacuum without regard to the particular merchandise involved in the case—and the factual second step of determining whether the goods fall within that properly-construed heading,” Wallach argues. “More troubling is the majority opinion’s explicit endorsement of a use analysis and adoption of the ARIs in the context of an *eo nomine* heading,” he complains.

## **USTR Gets Pushback for Lack of Action on Indian IPR**

Within a few days after the U.S. Trade Representative’s (USTR) office slip out its announcement on Friday night Dec. 12 that it took no additional action against India on intellectual property rights (IPR) issues after an Out-of-Cycle Review (OCR), the agency heard from industry groups and members of Congress on the error of its ways. The decision raised suspicions that it was part of a deal between U.S. and India to ease trade relations in recent months (see **WTTL**, May 5, page 3).

“India has made useful commitments in recent months, including to institutionalize high-level engagement on IP issues, to pursue a specific work program and to deepen cooperation and information exchange” with the U.S., the agency said in a statement. It launched the OCR in its 2014 Special 301 Report published in April.

In a Dec. 16 blog post, National Association of Manufacturers (NAM) blasted the USTR’s decision. “The ‘specific work program’ USTR mentions doesn’t appear to be publicly available. Whatever it is, we hope it results in concrete progress and real results. But so far, India appears to have done precious little, if anything, to warrant USTR’s soft on crime approach,” NAM said.

Senate Finance Committee Ranking Member Orrin Hatch (R-Utah) agreed. “The Obama Administration’s lack of concrete action against India’s blatant disregard for the protection of U.S. intellectual property rights continues to disappoint. Despite this review, the Obama Administration has failed to put forward an effective plan to address the serious problems with India’s intellectual property policies,” Hatch said in a statement.

## **U.S. Officials Claim Progress in JCCT Talks with China**

U.S. officials boasted that they made significant progress during the Dec. 17-18 meeting of the Joint Commission on Commerce and Trade (JCCT) with China in Chicago, but the results of the meeting will depend on the Chinese keeping a long list of promises they made on opening their market to U.S. exports and investment. In addition to the usual bilateral talks that have marked 24 previous JCCT gatherings, the latest session also included a session with U.S. and Chinese business leaders and talks about excess

production capacity in sectors such as steel and solar panels. As at previous sessions, the Chinese pressed the U.S. to ease export controls on high-technology goods, including for oil and gas equipment. “Obviously, these are certain items that are potentially dual-use and require export licenses,” Commerce Secretary Penny Pritzker told a press conference at the end of the meeting.

“The Chinese have been very specific about certain products that they are interested in and have been clear about – not just the specifications – but with who might be the end-user or what is the end-use,” she said. “As a result, there are certain products that our BIS, which is part of the Department of Commerce, they’re working closely with the Chinese to hopefully be able to agree to an export license for at least one product, perhaps two. That’s a work in progress right now,” she said.

An agreement on intellectual property protection for geographic indications (GIs) appears aimed more at undercutting European Union (EU) efforts to protect the unique names of several European cheeses than strengthening name protection. Under the agreement, “when a term is considered to be generic in a territory or where an existing trademark exists, there will be mechanisms to ensure that those terms are respected and a process for challenging GIs,” USTR Michael Froman told reporters.

“As a key part of maintaining market access, so when a country like China opens its markets, our dairy farmers who produce high-quality cheese will be able to get it in there without being excluded by geographical indications,” he said. A USTR statement said the agreement would cover products such as parmesan and feta cheeses.

In response to complaints from the business community about China’s application of its antimonopoly law, the Chinese also promised to add new procedures to improve fairness to enforcement of the law. “The Chinese side agreed that, under normal circumstances, a foreign company in an Anti-Monopoly Law investigation would be permitted to have counsel present and to consult with them during proceedings. China also made several additional commitments, including to treat domestic and foreign companies equally and to provide increased transparency for investigated companies,” a USTR statement said.

In other areas, the Chinese promised to improve protection of foreign intellectual property rights (IPR) and trade secrets, treat foreign IPR the same as domestic IPR, speed approvals for medical devices and pharmaceuticals, promote significant increases in U.S. exports of soybeans, corn and dairy products to China, including bio-technology varieties of U.S. soybeans and corn, and work together against illegal and unregulated fishing. Before the JCCT meeting, China announced the approval of three U.S. seed products.

## **Obama Signs New Sanctions Legislation on Russia**

President Obama signed legislation (H.R. 5859) Dec. 18 to give himself new authority to impose sanctions on Russia, but said he does not intend to use it right now. “Signing this legislation does not signal a change in the administration’s sanctions policy, which we have carefully calibrated in accordance with developments on the ground and coordinated with our allies and partners,” Obama said in a statement after signing the measure. “At this time, the administration does not intend to impose sanctions under this law, but the Act gives the Administration additional authorities that could be utilized, if circum-

stances warranted,” he added. “My Administration will continue to work closely with allies and partners in Europe and internationally to respond to developments in Ukraine and will continue to review and calibrate our sanctions to respond to Russia’s actions,” he said (see related story page 5).

“As I have said many times, our goal is to promote a diplomatic solution that provides a lasting resolution to the conflict and helps to promote growth and stability in Ukraine and regionally, including in Russia. In this context, we continue to call on Russia’s leadership to implement the Minsk agreements and to reach a lasting and comprehensive resolution to the conflict which respects Ukraine’s sovereignty and territorial integrity. We remain prepared to roll back sanctions should Russia take the necessary steps,” the president’s statement said.

**CORRECTION:** In previous WTTL report on passage of Ukraine sanctions measure, we incorrectly said both House and Senate passed S. 2828 Dec. 11 (see WTTL, Dec. 15, page 8). Senate passed S. 2828, but House passed its version of legislation (H.R. 5859). Senate came back Dec. 13 and also passed H.R. 5859.

## **Punke Defends U.S. Trade Policies at WTO**

Deputy U.S. Trade Representative (USTR) Michael Punke defended U.S. trade policies Dec. 18 against a barrage of complaints during the WTO’s Trade Policy Review (TPR) of the U.S. Some 50 WTO members spoke about U.S. practices during the review, which is part of a periodical review the WTO undertakes of trade policies of all members. “We, of course, fully expect criticism to be part of the picture of our TPR,” he said, according to his prepared statement, but he also said he appreciated members acknowledging that the U.S. is “one of the most open economies in the world.”

Among the top complaints was the 2014 Farm Bill. “While there was some suggestion that the new policy has the potential to be trade distorting, we would note that nearly all potential payments under the 2014 Farm Bill are made on historical production, without reference to current production, thus removing the incentives that lead to surplus production,” Punke said.

Other criticism was directed at U.S. antidumping (AD) and countervailing duty (CVD) practices. “These are not policy decisions on behalf of the U.S. government. Rather, the determinations made are based on the gathered evidence, and in nearly half of the anti-dumping investigations initiated in 2013, the evidence resulted in a determination not to impose a measure either because of no dumping or no material injury,” the USTR ambassador said. He noted that AD/CVD cases in all WTO countries increased nearly one-third in 2013. “The United States is particularly alert to this increase as we are now the third most-named country in antidumping duty investigations,” he added.

Punke also defended the U.S. against complaints about its record of compliance with WTO panel and Appellate Body rulings it has lost. “A review of the record – that is, based on facts and not rhetoric — demonstrates that the United States has come into compliance, fully and promptly, in the vast majority of disputes in which the DSB has issued recommendations with respect to a U.S. measure,” he said. “As for the remaining few instances where U.S. efforts have not yet been successful, including some mentioned

during the course of this review, we have been working actively towards resolving such matters,” he added. Punke also tried to assuage concerns about U.S. negotiations of bilateral and plurilateral free trade agreements such as TPP and TTIP.

“These initiatives are, it is true, very high priorities for the United States, representing as they do important commercial opportunities as well as the ability to explore with our partners ways in which we can adapt trade agreements usefully to the conditions prevailing in today’s trading world. We must note, of course, that all major players within the WTO, both developed and developing, are actively pursuing bilateral and regional agreements of their own,” he said. Pursuit of these deals “in no way detracts from the attachment of the United States to the unique role of the WTO and the multilateral trading system,” he added.

## **Abe’s Big Election Win Seen Helping to Bring TPP Deal Closer**

The major election victory of Japanese Prime Minister Shinzo Abe’s Liberal Democratic Party and its allies Dec. 14 is seen as giving the Japanese leader a stronger hand to reach a deal with the U.S. to open key sectors of the Japanese agriculture market as part of an effort to join the Trans-Pacific Partnership (TPP) agreement. The win could mean that Abe will remain in office for another four years, making his tenure one of the longest of any Japanese prime minister in the last 25 years (see **WTTL**, Nov. 24, page 5).

Japanese sources say they expect Abe to keep most of his current Cabinet in place. “The same ministers continue their duties,” one Japanese official told **WTTL**. This is likely to include the same negotiating team in talks with the U.S. on farm and auto issues as well as TPP. “The Cabinet has a strong support from the public and the administration and is expected to be stable. That will facilitate tough decisions such as on international negotiations and structural reforms,” the official added.

The election result “is a positive development,” former USTR Chief Agriculture Negotiator Islam Siddiqui told **WTTL**. “Hopefully, it will allow him to move the last yard to make bolder moves,” said Siddiqui, who is now a senior advisor at the Center for Strategic and International Studies. Siddiqui said he expects any deal with Japan to be similar to the one reached as part of the U.S.-Korea Free Trade Agreement (KORUS).

This would include a 15- to 20-year phaseout of tariffs on Japan’s most sensitive farm products, a deal U.S. agriculture accepted in KORUS. Rice would be in a “separate bucket” as it was in KORUS, he suggested. Japan may agree to a minimum import level for rice under WTO farm rules, he noted. This should be acceptable to U.S. rice producers who would gain access to the Japanese market without having to go through Japan’s rice monopolies. Siddiqui also noted that Japan is the fourth-largest export market for American farm products, so it is not entirely closed to U.S. exports.

## **EU Requests WTO Consultation on Extended Boeing Subsidies**

The ten-year ongoing battle at the World Trade Organization (WTO) between the U.S. and the European Union (EU) over dueling subsidies for Boeing and Airbus added

another wrinkle Dec. 19, as the EU complained about Washington state's benefits for Boeing. "The Commission's request for consultations regarding Washington state's decision to continue to subsidize the US aerospace industry despite a WTO ruling finding the subsidy WTO inconsistent is thus a consistent and necessary step in this dispute," the EU wrote, announcing the decision.

"In this context, the EU is also concerned about the November 2013 decision of the State of Washington to extend until the end of 2040 a subsidies scheme (originally available until 2024), despite the fact that similar subsidies have already been declared WTO inconsistent in the context of this dispute in 2012," the EU added.

The value of the subsidy extension is estimated at \$8.7 billion, the EU claimed. "The compliance panel rejected the EU's request to examine the extended measures for procedural reasons, and stated that the EU would need to start new proceedings," it said.

The EU asked the WTO in October 2012 to establish a compliance panel to address its claim that the U.S. had failed to remove WTO-inconsistent subsidies to Boeing as required by a WTO ruling that March (see **WTTL**, Oct. 15, 2012, page 3). The EU first filed its challenge against Boeing subsidies in October 2004 in response to U.S. challenge against its support of Airbus. In both cases, litigation is currently ongoing.

The state's new program came in the midst of Boeing contract disputes with its unions and threats to move aircraft production to another state. As a result, Washington lawmakers voted in November 2013 to approve a budget package that included "extension of all commercial airplane tax incentives until 2040 and expansion of the current sales and use tax exemption on construction of buildings to manufacture 'superefficient airplanes' to include all commercial airplanes and suppliers of wings and fuselages," a state press release said at the time.

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

**SYRIA:** Treasury Dec. 17 added 11 individuals and entities in four countries, Syria, Switzerland, Netherlands and UAE, to its Specially Designated Nationals and Sanctions Evaders list for providing specialty fuels and base oil to Syrian government and previously designated Pangates International for use in its military campaign against Syrian people. Some shipments went through Poland and Turkey under false shipping documents, department charged. Action freezes any assets of designees under U.S. jurisdiction and generally prohibits all financial and commercial transactions by any U.S. person with them. It also generally prohibits transactions involving sanctioned persons who are subject to U.S. jurisdiction, including transactions by U.S. persons, wherever located.

**EU:** Change to Dual-Use Control List, including adoption of some 400 Wassenaar Arrangement and other multilateral control regime revisions from 2011, 2012 and 2013, expected to go into effect Dec. 31, unless last-minute objections from European Parliament, which isn't expected (see **WTTL**, Oct. 27, page 1). New rules include addition of new controls, removal of some controls, changes to certain technical parameters and other amendments.

**FCPA:** Brucker Corporation, scientific instruments manufacturer in Billerica, Mass. agreed Dec. 15 to pay \$2.4 million to settle SEC charges of violating FCPA by providing non-business related travel and improper payments to Chinese government officials. Brucker self-reported misconduct and cooperated in investigation, SEC noted.

MORE FCPA: As expected, Avon Products Dec. 17 agreed to pay total of \$135 million to settle Justice and SEC charges that it violated FCPA as part of its business in China and other countries. Avon in 10-Q filing with SEC in May announced it has “reached an understanding with respect to terms of settlement” with two agencies (see **WTTL**, May 5, page 8).

MICROPROCESSORS: In Federal Register Dec. 17, BIS expanded “China rule” to prohibit exports of microprocessors to military end-use or military end-users in destination listed in Country Group D:1 without licenses. This includes “microprocessor microcircuits,” “micro-computer microcircuits,” and microcontroller microcircuits having processing speed of 5 GFLOPS or more and arithmetic logic unit with access width of 32 bit or more, including those incorporating “information security” functionality, BIS said. Rule also expands scope of controls to cover in-country transfers to prohibited military end-users or end-uses.

STEEL ROD: In 6-0 final vote Dec. 15, ITC determined that U.S. industry is materially injured by dumped and subsidized imports of carbon and certain alloy steel wire rod from China.

THERMAL PAPER: In mixed 5-0 “sunset” votes Dec. 17, ITC determined revoking antidumping and countervailing duty orders on lightweight thermal paper from China would cause renewed injury to U.S. industry, while revoking antidumping duty order on product from Germany would not. Commissioner F. Scott Kieff did not participate in reviews.

TRADE PEOPLE: Senate confirmed Marcus Jadotte by voice vote Dec. 16 to be Commerce assistant secretary for industry and analysis, replacing Nicole Lamb-Hale. Jadotte previously was VP of public affairs and multicultural development at NASCAR from 2011 to 2014. President Obama sent nomination to Senate May 22 (see **WTTL**, May 26, page 10).

MORE TRADE PEOPLE: Kirit M. Amin was named ITC’s Chief Information Officer (CIO) Dec. 15. He was previously Commerce Deputy CIO and CTO, as well as Chief Technology and Innovation Officer at Housing and Urban Development. Prior to government service, Amin held various positions in private sector.

SERVICES: In Dec. 17 Federal Register, USTR sought comments on Uruguay’s participation in Trade in Services Agreement talks. In particular, it invited comments on “any existing barriers to trade in services with respect to Uruguay or issues affecting the supply of services to Uruguay through various modes of supply and technologies.” Comments are due Jan. 20, 2015.

GREEN GOODS: USTR requested comments in Federal Register Dec. 16 on Israel and Turkey’s participation in WTO Environmental Goods Agreement negotiations. It especially invited comments on “environmental goods of which Israel and Turkey are significant producers and consumers, as well as current market conditions for environmental technologies in Israel and Turkey.” Comments are due Jan. 12, 2015.

AGOA: On first of very busy three days, USTR officially reinstated Madagascar and Guinea’s eligibility for African Growth and Opportunity Act (AGOA) benefits in Dec. 15 Federal Register. President Obama reinstated Madagascar’s eligibility in June after it was removed in 2010 due to military coup (see **WTTL**, June 30, page 9). Countries “have each adopted effective visa systems and related procedures to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents,” notice said.

CAN’T GET NO SATISFACTION: After three years of low staff morale, USTR had nowhere to go but up. In Partnership for Public Service’s (PPS) list of 2014 Best Places to Work in the Federal Government, USTR’s office moved up five spots from bottom. “Among small agencies, the Office of the U.S. Trade Representative saw the most improvement, with a 19.1-point increase. However, its overall score is still only 45.9, placing it 25th out of 30 small agencies,” PPS said. Other small trade agency rankings included Overseas Private Investment Corporation (OPIC) at number 7 and ITC number 8, but the Export-Import Bank was number 26

out of 30. Among 300 agency subcomponents, Commerce's International Trade Administration came in at 232 (BIS was not rated this year).

TPP: In letter to U.S. Trade Representative (USTR) Michael Froman Dec. 17, three progressive senators expressed concern over three areas of TPP that could "make it harder for Congress and regulatory agencies to prevent future financial crises." Specifically, Sens. Elizabeth Warren (D-Mass.), Tammy Baldwin (D-Wis.), and Edward J. Markey (D-Mass.) asked USTR to reply with its position on inclusion of investor-state dispute settlement (ISDS) process, market access rules for financial sector, and capital controls.

TTIP: In a separate Dec. 17 letter to President Obama, five House members argued against inclusion of ISDS provisions in Transatlantic Trade and Investment Partnership (TTIP). "Quite simply, there is no need for ISDS in a free trade agreement between developed countries with well-established court systems, like the United States and the countries of the European Union," wrote House Ways and Means Committee Democratic members Reps. Bill Pascrell, Jr. (N.J.), Lloyd Doggett (Texas), Linda Sanchez (Calif.), John Lewis (Ga.) and Jim McDermott (Wash.).

TOURISM: Number of global tourists in 2014 is expected to top 1.1 billion, UN's World Tourism Organization predicts. In first 10 months of year, there were already 978 million tourists. Total will be up 4.7% from 2013. Tourism to North America likely to be up 9%.

THERMAL PAPER: In mixed "sunset" votes Dec. 19, ITC determined revoking antidumping orders on polyethylene terephthalate (PET) film, sheet and strip from China and UAE would cause renewed injury to U.S. industry, while revoking order on product from Brazil would not. Votes were 6-0 for China and UAE and 5-1 for Brazil. Vice Chairman Dean A. Pinkert was only yes vote for Brazil.

FISHERIES: Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud recommended Dec. 16 that U.S. to seek international agreement against illegal fishing and overfishing. "Some governments continue to provide subsidies to their fisheries sectors that encourage overfishing or contribute to excess capacity of fishing fleets. Such subsidies also undermine the effectiveness of fisheries management regimes and can contribute to IUU fishing. Recommendation: Direct the U.S. Trade Representative, and the Secretaries of State and Commerce to pursue international commitments to eliminate fisheries subsidies that contribute to excess fishing capacity, overfishing and IUU fishing by 2020," report says.

BYRD AMENDMENT: Supreme Court denied without comment Dec. 15 writ of certiorari sought by Stanley Furniture Manufacturing to review CAFC decision upholding constitutionality of Byrd Amendment. This was second high court denial of request to examine whether law violates First Amendment (see WTTL, Oct. 13, page 1).

SUGAR: At 6:50 P.M. Friday night, U.S. tried to bury announcement that Commerce and Mexican sugar growers had reached final deal to suspend antidumping and countervailing duty cases against imports of sugar from Mexico despite opposition from sugar users and U.S. sugar producers. "Finalized agreements incorporate several changes from the draft suspension agreements that Commerce initialed on October 27. The changes, which include a revised definition of refined sugar and adjustments to the reference price, reflect comments that were submitted by interested parties in response to the Department's request for public comment on the draft agreements," Commerce release said (see WTTL, Nov. 24, page 6).

EDITOR'S NOTE: In keeping with our regular schedule of 50 issues a year, there will be no *Washington Tariff & Trade Letter* issue Dec. 29. Our next issue will be Jan. 5, 2015. As always, we wish all our readers a **HAPPY HOLIDAY** and a **HEALTHY AND PROSPEROUS NEW YEAR**.