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As Obama Leaves for India, Bilateral Relations Expected to Warm

As President Obama prepared to visit India Jan. 26, industry and members of Congress stepped up calls for India to reduce its trade barriers, while the Bureau of Industry and Security (BIS) removed controls on exports to India of certain items controlled for crime control (CC) and regional stability (RS) reasons. Obama's trip is expected to continue the warming of bilateral relations seen since Indian Prime Minister Modi came to Washington last September, including on defense and nuclear trade.

BIS in the Jan. 23 Federal Register said it made the change "because the Government of India has now taken appropriate steps to ensure that the specific U.S.-origin items controlled for CC and RS reasons are not reexported from India without a license. A license requirement remains for items controlled under Export Control Classification Numbers (ECCNs) 6A003.b.4.b (infrared cameras) and 9A515.e (satellites) for RS column 2 reasons when destined to India, BIS added.

In a call with reporters Jan. 22, National Association of Manufacturers (NAM) and Chamber of Commerce representatives urged Obama to press India to reduce its trade barriers (see **WTTL**, Jan. 5, page 3). They said they want India to lower tariffs that can exceed 100% on products from autos to textiles; restore zero duties on telecommunications products; eliminate forced local production of solar energy and telecom equipment; strengthen India's IPR protection; review the "enhanced efficacy step" to determine if it stymies innovation and access to medicine; and refute compulsory licensing.

Lawmakers also offered advice. "While the U.S. and India have made progress in recent years in bolstering bilateral trade, we haven't come close to realizing the full potential of this relationship. If we're to meet the administration's goal of \$500 billion in bilateral trade, the president needs to take significant steps in helping to open up Indian markets," said House Foreign Affairs Committee Chairman Ed Royce (R-Calif.), in a statement.

Senators Ask BIS to Reconsider Advice on Oil Exports

Two senators who previously questioned BIS' classification of certain condensates as not covered by the ban on crude oil exports have asked Commerce to reevaluate and reconsider the advice the agency issued in December on the processing needed to convert

crude oil to an exportable condensate. The Jan. 20 letter from Sens. Bob Menendez (D-N.J.) and Edward Markey (D-Mass.) to Commerce Secretary Penny Pritzker came as the Senate was expected to take up a proposed amendment to pending legislation (S. 1) to authorize construction on the Keystone XL pipeline (see **WTTL**, Jan. 19, page 3).

The new BIS interpretations, as well as two commodity classification decisions it issued earlier, were made “without a formal rulemaking process that would have allowed for public review and comment,” the senators complained. “Now, U.S. companies and foreign governments are acting on this new interpretation, and U.S. exports of crude are ramping up,” they added.

“The existing loosened export policy is not good enough for the oil companies. They now want to completely lift the ban on exports even though we still import nearly 30% of our crude oil. It is expected that an amendment to completely end the export ban could reach the Senate floor as soon as next week. We plan on vigorously opposing this amendment, but in the meantime we ask that you reverse the Commerce Department’s new interpretation of what constitutes ‘crude oil’ and the resulting relative increase in American oil prices,” they wrote.

An amendment offered by Sen. Ted Cruz (R-Texas) to the Keystone bill would repeal the president’s authority in several statutes to restrict crude oil exports. It also would amend the Export Administration Act as enforced by the International Emergency Economic Powers Act to require BIS to license crude oil exports as defined in Export Administration Regulations unless “the country is subject to sanctions or trade restrictions” or the president or Congress has excluded the country “for reasons of national security.”

Obama Speech Ignites Fast-Track Lobbying Effort

President Obama’s Jan. 20 State of the Union (SOTU) address reignited the parsing of words, the speculation and the hand-wringing over the timing and sequencing of fast-track Trade Promotion Authority (TPA) and the conclusion of Trans-Pacific Partnership (TPP) talks. Many observers doubt the 11 countries negotiating TPP with the U.S. would conclude a deal until Obama has TPA. But some also say Congress won’t agree to TPA until lawmakers have assurances on provisions in the final TPP agreement.

Unlike last year’s SOTU where he said he would “work together” with Congress on fast track, the president this year said he was “asking both parties to give me trade promotion authority to protect American workers, with strong new trade deals from Asia to Europe that aren’t just free, but fair.” For word players, the change in language was a big enough deal to launch a major push for TPA.

The day after the speech, administration officials fanned out to begin lobbying for fast-track. After appealing to U.S. mayors for their support for TPA, U.S. Trade Representative (USTR) Michael Froman went to Congress to meet with lawmakers, including Senate Finance Committee Chairman Orrin Hatch (R-Utah), before dashing off to Davos, Switzerland, for the annual World Economic Forum.

Commerce Secretary Penny Pritzker traveled to North Carolina Jan. 21 to carry the message to business groups in the state. She urged companies to show their backing for

TPA by writing to their members of Congress. Pritzker said there is now a coordinated administration effort to echo Obama's trade message (see **WTTL**, Jan. 19, page 1).

In his speech to the U.S. Conference of Mayors, Froman asked the city leaders to speak to their constituents about the trade agenda and to "put this in context that people can understand, digest, and support." He acknowledged that "the one thing about so-called 'fast track' is that there is nothing fast about it." Froman noted that past fast-track required the president to give three months' notice before signing an agreement. "Even when Congress begins its work, the process is designed to take up 90 legislative days, which is typically five calendar months or more. That is hardly 'rushing to ram something through in the dead of night,'" Froman told the mayors.

The lawmakers that Froman spoke with during his trip to Congress are staying silent about the discussions, but Froman was likely offering assurances that the president is serious about TPA and wants to begin negotiating the text and timing for the legislation.

To avoid pushing a vote on TPP into 2016 and an election year, TPA will have to get done before lawmakers start their August vacations. To get TPP done, Froman will need to be able to show his negotiating partners at least the text of a TPA bill, with some assurance that the language won't change significantly before passage. As part of all this, the White House will have to convince Republican leaders that the president can deliver enough Democratic votes to make up for any GOP defections and to demonstrate that this was a bipartisan vote.

Lawmakers Respond to Call for Fast Track

In a Jan. 20 speech in Washington laying out the agenda for the Senate Finance Committee, Chairman Orrin Hatch (R-Utah) said international trade would be a high priority. But the list of issues facing Finance is so long, including taxes, Customs reauthorization, healthcare, entitlements and pensions, that Trade Promotion Authority (TPA) could get swallowed up and delayed if it isn't acted on early in the new session of Congress.

"Absent the passage of TPA legislation, there is no other way for Congress to effectively assert itself and its priorities into ongoing trade negotiations," Hatch told the Chamber of Commerce. "My plan, therefore, is to move carefully but quickly to introduce and mark up a TPA bill. I'm currently working with Ranking Member Wyden and [House Ways and Means] Chairman Ryan to see if there are improvements that might be made to TPA so that we can introduce a bipartisan, bicameral bill in this Congress that we can move in short order," he said.

Beyond TPA, Hatch said he wants to renew the now-lapsed Generalized System of Preferences, reauthorize Customs and Border Protection and Immigration and Customs Enforcement, and reauthorize the African Growth and Opportunity Act. "My plan is to move sooner rather than later on all of these priorities as well," he said.

Among other lawmakers reacting to the president's Jan. 20 State of the Union was Rep. Sander Levin (D-Mich.), ranking member on Ways and Means. Levin has cautiously avoided tying himself to the anti-TPA clique in the House, focusing instead on what the

administration needs to deliver in a Trans-Pacific Partnership (TPP) deal (see related story below). “I agree with the President that we need to write the rules of trade and knock down the barriers to U.S. exports around the globe,” Levin said in a statement after the president’s address. “There are many vital outstanding issues in TPP whose resolution can affect the households of American families and the ability of American businesses to create jobs. Congress must maintain its role and leverage in the resolution of these issues,” he said, sidestepping any mention of TPA.

Ways and Means trade subcommittee chairman Pat Tiberi (R-Ohio) also weighed in. “The best way to ensure an open, transparent negotiating process where congressional requirements are met is by passing TPA legislation. Republicans in Congress have worked hard to make the case, but the president must take on the special interests in his own party and build support among his members. I hope he will follow through and make it a priority in the coming weeks,” Tiberi said in a statement.

Levin Lays Out What He Needs to Get to Support for TPP

President Obama’s drive to win a few Democratic votes for fast-track trade promotion authority (TPA) and a Trans-Pacific Partnership (TPP) will likely depend on getting the support of House Ways and Means Committee Ranking Member Sander Levin (D-Mich.). So far, Levin, who played a key role in getting Democratic support for the U.S.-Korea Free Trade Agreement, has kept his powder dry on TPA while stressing his concerns about TPP. In a paper released Jan. 22, Levin set out what he expects a TPP deal to include, especially on the opening of the Japanese auto market.

Levin’s paper underscores the chicken-or-egg dilemma facing the Obama administration. Is a satisfactory TPP deal needed before Congress will grant TPA or is TPA needed before a TPP accord can be reached?

“After more than four years of negotiations, TPP is at an important juncture with many important issues still outstanding. The resolution of these issues will decide the merits of TPP and whether it is an agreement that builds on progress in recent FTAs,” Levin said in a statement. “Achieving these proposed outcomes could lead to a landmark TPP agreement worthy of major bipartisan support, including mine,” he added.

Levin had demanded changes to the Korea FTA to address auto trade better. For TPP, he proposes that the U.S. retain its auto tariffs “for a period of time sufficient to ensure that the TPP country has opened its market to United States exports of the relevant product.” For Japan, “the United States should take one of two approaches: (1) tariffs should be phased out as soon as Japan has established a consistent record of openness to imports, similar to the openness of most other industrialized nations; or (2) tariffs should not be reduced before at least 25 years, and should not be eliminated before less than 30 years, after the agreement enters into force,” he proposes.

Levin also wants TPP to include “enforceable rules requiring each TPP Party to avoid manipulating exchange rates to gain an unfair competitive advantage in international trade, consistent with each TPP Party’s longstanding IMF obligations (which clearly distinguish between currency manipulation – government interventions in foreign exchange markets – and monetary policy).” On labor and environment issues, Levin calls

for adoption of provisions that match commitments the George W. Bush administration made in a deal with Democrats on May 10, 2007. Obligations to protect worker rights “must also be fully implemented,” Levin insists. “That task will be challenging with several TPP countries – particularly Vietnam, a communist country with one union, tied to the government, recognized as the sole representative of workers, not allowing independent labor unions. Brunei, Malaysia, and Mexico also will present serious implementation challenges,” he says.

He proposes that TPP include requirements to implement internationally recognized labor rights and to enforce labor laws. This also should include examination of a country’s compliance with these provisions by an independent panel. “If the panel determines that the Party is not in compliance with its obligations, that determination shall be treated as a final report of an arbitral panel under the dispute settlement chapter,” he proposes.

Similarly, he wants environmental provisions in the deal to comply with the May 10 accord’s sections on environmental protections. This would mean implementing core multilateral environmental agreements and enforcing environmental laws; prohibiting trade in illegally harvested goods, including in sub-federal entities that permit such trade and shark finning; prohibiting fishing subsidies; promoting cooperation on climate change; and ensuring these obligations are subject to dispute settlement.

Finally, he wants all lawmakers to have “full and ready access to the negotiating text, including information concerning the positions of all parties in the negotiations.” In addition, he calls for each member to be able to designate one staff member, with an appropriate security clearance, to similar full access. “The administration should provide members of the advisory committees with access to the text of U.S. and foreign country negotiating proposals,” Levin proposes.

Azevedo Sets Goals for Putting Doha Round Back on Track

Hope never seems to fade in Geneva for reviving the dormant Doha Round. In the latest effort at resuscitation, World Trade Organization (WTO) Director General Roberto Azevedo laid out a new process Jan. 21 to come up with an agreement by July on how trade negotiators will resolve the remaining issues in the talks. Not a deal on a deal, but a deal on how to negotiate a deal. Azevedo’s proposal responds to WTO General Council decision in November to address so-called post-Bali issues that trade ministers identified at the end of their ministerial in Bali in December 2013 (see **WTTL**, Dec. 1, page 1).

At a meeting with WTO members, Azevedo urged representatives to maintain a sense of urgency; identify and prioritize issues that are of the most substantive importance; target outcomes that are doable for all parties; maintain a high level of engagement; and tackle all issues at the same time rather than trying to sequence them, according to a WTO statement.

“We must maximise the time we have available to us before July — and maintain the momentum that we regained at the end of 2014. We need to have a detailed, substantive discussion that includes agriculture, non-agricultural market access, services and all of the other DDA issues, including development and issues of interest to LDCs. Today we are restarting our conversation on all of these issues. So be ready — and get involved,”

Azevedo said, the WTO reported. Azevedo asked the chairs of the various Doha Development Agenda committees to renew discussions with members on all substantive issues in their areas. "Meetings will be held in a variety of formats and configurations. Replicating the inclusive and transparent approach that proved effective in the lead up to Bali, regular meetings of all members will be the spine of this work. The next such meeting is scheduled for Thursday 29 January," the WTO said.

Florida Company, Ex-President Settle FCPA Charges

A Tampa, Fla.-based engineering and construction firm and its former president Jan. 22 settled Securities and Exchange Commission (SEC) charges that they offered bribes and employment to a foreign official to secure Qatari government contracts in 2009. Walid Hatoum, former president of PBSJ Corporation, will pay the SEC a civil penalty of \$50,000 for violating the Foreign Corrupt Practices Act (FCPA). PBSJ will pay \$3.4 million as part of a deferred prosecution agreement (DPA) with SEC for related charges.

The target of the bribes was the then-director of international projects of Qatari Diar Real Estate Investment Company, which the Qatar established to coordinate the country's real estate development, the SEC order noted. PBSJ, through Hatoum, offered nearly \$1.4 million in bribes to the official to secure Qatari government contracts by planning to funnel funds to a local company the official owned and controlled, the agency charged.

The official was a former business colleague of Hatoum's at another U.S. engineering firm. "Prior to joining PBSJ, Hatoum and Foreign Official discussed directing business in the Middle East to Local Partner," the SEC said.

Even the timing of Hatoum's hiring and quick promotion raised red flags. "In February 2009, Hatoum was rehired to join PBS&J Int'l as its Director of International Marketing, even though his prior employment file at PBSJ had been marked 'Ineligible for Rehire,'" the SEC said. "Although Hatoum did not formally join PBS&J Int'l until April 2009, he assisted PBS&J Int'l with identifying projects as early as November 2008. Hatoum was promoted to President of PBS&J Int'l in mid-June 2009, and became an officer of PBSJ at the same time," the SEC order noted.

PBSJ is now Atkins North America Holdings Corporation after its 2010 acquisition by London's WS Atkins plc. "The FCPA violations occurred in connection with two projects undertaken by PBS&J International, Inc., a subsidiary of the PBSJ Corporation, and occurred prior to WS Atkins plc's acquisition of the Company on October 1, 2010," Maureen M. Nayowith, Atkins senior vice president, wrote in email to WTTL. Justice "closed its inquiry into this matter without taking further action, citing the Company's thorough investigation, prompt disclosure and cooperation," she added.

* * * Briefs * *

PAPER: United Steelworkers (USW) and four paper manufacturers -- Domtar Corporation, Packaging Corporation of America, Finch Paper LLC, and P.H. Glatfelter Company -- filed antidumping and countervailing duty (CVD) petitions Jan. 21 with ITA and ITC against imports of uncoated paper from five countries. Antidumping petitions are aimed at paper sheets from China, Indonesia, Brazil, Portugal and Australia, while CVD cases are against imports from China and Indonesia. Petitions cover all uncoated paper in sheets (including cut-size and

folio), weighing between 40 and 150 gsm, and having GE brightness level of 85 or higher; this includes common copier paper. “Since 2011, eight U.S. mills that produce uncoated paper have been forced to close in the face of increasing unfairly traded imports, resulting in the loss of thousands of paper jobs,” USW President Leo W. Gerard said in statement. Labor Department “has certified workers at seven of these mills to receive Trade Adjustment Assistance, after concluding that imports ‘contributed significantly’ to these closures,” he added.

EXPORT ENFORCEMENT: General Logistics International, Inc. (GLI), freight forwarder in New Brunswick, N.J., agreed Jan. 21 to pay \$90,000 to settle four BIS charges of facilitating export of scrap steel, designated EAR99 and worth about \$672,000, to People’s Steel Mills, blocked entity in Pakistan, in November 2009. GLI neither admitted nor denied charges.

SOLAR PANELS: ITC made final determination Jan. 21 that imports of dumped and subsidized imports of crystalline silicon photovoltaic products from China and dumped imports from Taiwan are injuring U.S. industry. Vote was 5-0 for modules from China and Taiwan and 4-1 on cells from Taiwan (cells from China were not included in investigations). Chairman Meredith M. Broadbent was only no vote. Commissioner F. Scott Kieff did not participate.

BARIUM CARBONATE: In 6-0 sunset vote Jan. 20, ITC said revoking antidumping order on barium carbonate from China would cause renewed injury to U.S. industry.

ALUMINUM EXTRUSION: Court of Appeals for Federal Circuit Jan. 21 affirmed CIT ruling upholding Commerce decision that curtain wall units are within scope of antidumping and CVD orders on aluminum extrusions from China. “Both the plain language of the orders and the description of the merchandise in the investigations clearly demonstrate that curtain wall units and other parts of curtain walls are within the scope of the Orders,” wrote Appellate Judge Evan Wallach for three-judge panel in *Shenyang Yuanda Aluminum Industry Engineering v. U.S.* “Commerce did not err by declining to consider the additional factors of 19 C.F.R. Section 351.225(k)(2). Had Commerce considered these factors after finding the scope language dispositive, it would have been in conflict with this court’s precedent and the regulations.”

CUSTOMS BROKER: CIT Judge Claire Kelly granted government request Jan. 21 to impose \$10,000 fine on Freight Forwarder International, Inc. (FFI) for acting as customs broker without license. Although firm had employee who had license, FFI did not. Firm had not responded to government’s complaint and CIT clerk had issued default against it (slip op. 15-5).

ADP CONTROLS: Customs properly classified certain automatic data processing (ADP) machines imported by Digidesign, Inc., under HTSUS 8543.70.96 with 2.6% ad valorem duty, CIT Judge Judith Barzilay ruled Jan. 22 (slip op. 15-6). She dismissed Digidesign claim that items should have been classified under Heading 8471 with zero duty rate.

WOOD FLOORING: After two court opinions, two corresponding redeterminations by Commerce, and, most recently, voluntary remand and redetermination, CIT Senior Judge Donald Pogue Jan. 23 partially upheld latest redetermination decision on antidumping order on multi-layered wood flooring from China and partially remanded case again. “In each successive determination, Commerce has established the separate rate in a different way,” Pogue noted (slip op. 15-7). “Determination regarding the group of seven Plaintiffs is based on a reasonable reading of the law and record evidence. However, the agency’s decision to conduct, at this late date, a full investigation of Changzhou Hawd is arbitrary and capricious. Therefore, the court remands again for further consideration in accordance with this opinion,” he ruled.

TRADE FACILITATION: USTR Michael Froman delivered U.S. letter of acceptance of WTO trade facilitation agreement Jan. 23 to WTO Director General Roberto Azevedo while both were attending World Economic Forum in Davos, Switzerland (see **WTTL**, Dec. 1, page 1). U.S. is third WTO member to accept deal, following Singapore and Hong Kong. Accord needs two-thirds of WTO’s 160 members to submit instruments of acceptance before it enters into force.