

Vol. 35, No. 14

April 6, 2015

## No Quick Relief from Iranian Sanctions under Framework

The framework agreement the U.S., its five negotiating partners and European Union (EU) announced April 2 with Iran will lead to only a partial lifting of trade sanctions on Iran if and when a final accord is signed and then only after international inspectors verify Tehran's compliance with the deal. Under the framework, only financial and banking sanctions could be phased out, leaving U.S. exporters to still face restrictions imposed for terrorism, human rights abuse and ballistic missile reasons.

“We have other considerations with respect to the sanctions themselves and the rate and timing and so forth,” Secretary of State John Kerry told a press conference in Lausanne, Switzerland, April 2. “It’s really a matter of anywhere from probably six months to a year or so that it will take to begin to comply with all of the nuclear steps that need to be taken in order to then begin into the phasing. Those steps have to happen first,” he said. Meanwhile the Joint Plan of Action will continue in place, he added.

Under the plan outlined for the agreement, U.S. exporters would need to wend through a minefield of different rules on trade with Iran. In addition to the remaining U.S. sanctions on exports and Specially Designated Nationals, the United Nations (UN) will be asked to revise its sanctions on Iran, and U.S. laws will remain in place with the potential for a “snapback” of restrictions if Tehran violates the accord.

Any relief from sanctions would only come after the International Atomic Energy Agency (IAEA) verifies that Iran has taken the promised steps to reduce its nuclear development program. Once that occurs “all past UN Security Council resolutions on the Iran nuclear issue will be lifted simultaneous” but “core provisions in the UN Security Council resolutions – those that deal with transfers of sensitive technologies and activities – will be re-established by a new UN Security Council resolution that will endorse the JCPOA and urge its full implementation,” a White House fact sheet stated.

## Fast-Track Opponents Increase Pressure on Wyden

While members of Congress are on spring recess, progressive groups opposed to fast-track Trade Promotion Authority (TPA) and the Trans-Pacific Partnership (TPP) are

mobilizing their members and making Senate Finance Ranking Member Ron Wyden (D-Ore.) their main target. “We’ve been focusing on Ron Wyden’s unique role in this process. He has the chance to decide whether the fight over fast-track authority has the fig leaf of bipartisanship,” Neil Sroka, communications director of Democracy for America (DFA), told a call with reporters April 1.

Sroka cited polling that claims 93% of DFA members in Oregon would support a primary challenge to Wyden if he “works with Republicans to pass fast-track authority.” Progressives “can’t get 93% of a party to decide what you’re going to have on a pizza, let alone whether we’re going to be primarily a senator,” he quipped.

Arthur Stamoulis, director of the Citizens Trade Campaign and former Oregon resident, also highlighted the local pressure against Wyden on fast track. “It’s by far the top issue he’s heard about from constituents at event after event after event,” he said on the call. “I don’t think he’s ever faced more constituent pressure over an issue than he’s facing from Oregonians opposed to fast track right now,” he suggested.

Outside of Oregon, progressives are organizing “two weeks of a smorgasbord of activities, coast to coast,” said Lori Wallach, director, Public Citizen’s Global Trade Watch, who moderated the call. These activities include press events, briefings, bird-dogging events, phone banks and canvasses in congressional districts around the country. “Not only are there no progressive membership organizations supporting the fast-track/TPP agenda, but in addition scores of groups that have never been involved in a previous trade debate are engaged and mobilizing their members,” she noted.

Despite growing opinion that TPA will pass the two houses in the next couple of months, Wallach remained optimistic (see **WTTL**, March 30, page 1). “There has not been and to date is not a majority of support for fast track in the House of Representatives,” she asserted. “Had there been a majority of support, we would have seen a vote last year, when passing fast track by June was a priority,” she said. Her organization has seen “an openness to the critique by some Democratic senators who in the past have tended to supported past free trade agreements,” Wallach added.

## **Selig Takes Cautious Approach to Trade with Cuba**

The opening of U.S. trade with Cuba following President Obama’s restoration of relations with Havana in December faces the challenge of a poor Cuban economy and political path its leaders will have to choose, cautioned Commerce Under Secretary for International Trade Stefan Selig April 1. While the administration has revised Cuba trade sanctions rules, there are some things that haven’t changed, he told a Wharton-NASDAQ conference in New York.

“They are not measures that will lift the U.S. embargo on trade with Cuba, which is still in force and codified by existing law,” he said in his prepared remarks “And none of these measures represent an endorsement of the status quo when it comes to the state of human rights in Cuba,” he added.

In addition, the benefits of these new rules will be limited by the business opportunities in Cuba. “The Cuban economy possesses deep structural challenges: a population half

the size of Shanghai; an infrastructure system that cannot adequately handle trade, transportation, or digital commerce; a decimated manufacturing sector; and a very slack labor market due to state-sector rolls shedding 600,000 jobs,” he said. Selig cited the economic success of Mexico, Chile, Colombia and Peru as models Cuba should follow.

“Mexico, Chile and Peru all have the chance to join the Trans-Pacific Partnership, which will give our markets access to 40% of global GDP, while further solidifying the values that should define 21st century global commerce,” he said. “The president in December acknowledged that President Castro has made changes to gradually open up its economy. Now, let us be clear. If these are the first steps on a new path for Cuba, that path will be a long one,” he said.

Among the U.S. firms that are moving ahead now to take advantage of the new rules for Americans traveling to Cuba is Airbnb, the home rental service. “At Airbnb, our vision is to create a world where you can belong anywhere—no matter who you are or how far you’ve traveled,” it announced April 1. “Today, we’re proud to welcome Cuba to the global Airbnb community. Starting this week, hosts in Cuba will list over 1,000 of their homes on Airbnb,” it said April 2.

“Because we’re building on the rich Cuban tradition of home sharing, we’re uniquely positioned to help Cubans reap the rewards of economic growth while preserving their unique culture. When Airbnb guests stay in local neighborhoods, they bring business to surrounding entrepreneurs — whether they be hosts, artists, or even ice cream shop owners,” it stated.

## ITC Deflects Call to Delay Assessment of TPP

An effort by TPP opponents to delay an expected International Trade Commission (ITC) economic impact assessment of the deal was brushed aside by the commission’s public affairs officer, who merely explained the legal process under which the ITC conducts investigations. “In keeping with its longstanding practice, the commission does not speculate on possible investigations, discuss investigations that are ongoing, or respond to commentary on reports after publication,” said an email from ITC Public Affairs Officer Peg O’Laughlin to the Coalition for a Prosperous America (CPA).

In February, 14 CPA members wrote to the ITC asking it to refrain from undertaking a TPP study until the agreement is reached and its text is available. They noted that U.S. Trade Representative (USTR) Michael Froman has asked the ITC to conduct an analysis of the TPP before it is completed. “We fail to see how an accurate, credible report can be completed without access to the final text and without improving on the analytical techniques used in past USITC reports,” wrote the coalition members, who include nongovernment organizations, unions and companies.

“There has been a persistent pattern of large gaps between estimated and actual outcomes in similar past USITC reports,” they wrote. The letter cited the ITC’s report on U.S.-Korea Free Trade Agreement as an example. That report said imports from Korea would increase by \$6-7 billion and that the annual U.S. trade balance would improve by about \$4-5 billion. “Neither of these projections have proved to be remotely accurate,

suggesting that the guidance provided to policy makers and the public may have been inaccurate in important ways,” they argued. One problem with these ITC studies is their focus on tariffs and nontariff measures (NTM) barriers. Tariffs and NTM are not important, noting that six TPP countries already have FTAs with the U.S.

“Until and unless the commission devises a way to assess the likely economic effects of negotiated provisions unrelated to tariffs and traditional NTMs, no assessment can be meaningful,” CPA members wrote. They said a proper study should look at currency practices, changes in border adjustable consumption taxes, industrial subsidies, operation of state-owned enterprises, indigenous innovation policies, and many other mercantilist tactics.

In her email reply, O’Laughlin said the ITC conducts investigations at the request of the president, the USTR or congressional committees. “When such investigations are instituted, the Commission publishes a notice in the Federal Register and invites interested parties to provide information and their views, which are made part of the official record,” she said. The ITC has already conducted two confidential investigations into the potential impact of TPP after the president notified Congress on the addition of Mexico, Canada and Japan to the talks. Those were submitted to the USTR.

## **USTR Still Doesn’t Quantify Foreign Trade Barriers**

After 30 years of issuing its annual National Trade Estimate (NTE) of foreign trade barriers, the U.S. Trade Representative’s (USTR) office still is unwilling or unable to put a dollar price tag on what all those restrictions are costing U.S. business. In the 30th annual report issued April 1, the office said it would not release figures involving disputes that are under negotiation.

The few financial estimates it makes are often based on industry projections or complex supply and demand price elasticity calculations. “The resulting estimate of lost U.S. exports is approximate, depends on the assumed elasticities, and does not necessarily reflect changes in trade patterns with third countries,” the report states.

“The task of estimating the impact of nontariff measures on U.S. exports is far more difficult, since there is no readily available estimate of the additional cost these restrictions impose,” it says.

“Without detailed information on price differences between countries and on relevant supply and demand conditions, it is difficult to derive the estimated effects of these measures on U.S. exports. Similarly, it is difficult to quantify the impact on U.S. exports (or commerce) of other foreign practices, such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection,” it explains. Over the years, despite negotiation of numerous trade agreements and dispute settlement, the size of the NTE has not shrunk.

This year’s 444-page result covers trade barriers in 58 countries and addresses everything from tariffs, nontariff barriers, phyto-sanitary and sanitary restrictions, to government procurement, standards, import and customs procedures, quotas and intellectual property protection. The USTR’s office used the release of the report to tout its accomplishments

and highlight barriers that it has succeeded in eliminating or at least commitments it has received to drop restrictions. “The Obama Administration is working around the clock to fight unwarranted barriers to our exports around the world, and we’ve racked-up significant accomplishments in protecting the benefits that trade delivers for the American people,” said USTR Michael Froman in the release.

The report gives particular attention to the same trade partners that have been the focus of previous NTEs, including China, Japan and the European Union. The section on China covers 13 pages; Japan gets 16 pages; and the EU, 30 pages. Problems in Japan and the EU underscore the tough negotiations the U.S. has undertaken in getting Tokyo into the TPP and reaching a Transatlantic Trade and Investment Partnership (TTIP) deal with the EU.

Among the many barriers cited in the EU section is slow pace for getting approval of biotech crops or genetically modified organisms. “The EU’s approval process for biotech crops is resulting in a divergence in regulatory outcomes for biotech events approved (and grown) in the United States and those approved in the EU. Moreover, the length of time taken for the EU decisions on new biotech crops appears to be increasing. As of March 11, 2015, 66 biotech applications were pending review. “The EU approved only five products in 2013 and did not approve any products in 2014, taking an average of 45 months to reach decisions,” the report notes.

The recitation of barriers in Japan is long and old. Among the continuing U.S. concerns is the planned privatization of Japan Post, the country’s postal system, which also serves as a bank and insurance company.

“The U.S. Government remains neutral as to whether Japan Post should be privatized. However, as modifications to the postal financial institutions and network subsidiary could have serious ramifications for competition in Japan’s financial market, the United States continues to monitor carefully the Japanese government’s postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan’s banking, insurance, and express delivery markets,” the NTE states.

An example of Japan’s ingrained barriers to foreign competition are also seen in how it treats foreign rice imports, which have been the subject of past U.S.-Japan negotiations. Japan has a tariff-rate quota for rice imports, and the U.S. exported \$271 million in rice to Japan in 2014. But “imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing or feed sector and for re-export as food aid. Only a small amount of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available,” the report complains.

## **U.S. Cites China, Vietnam in Annual Telecommunications Report**

The USTR’s office highlighted new restrictions adopted by China and Vietnam in its annual Section 1377 report on foreign trade barriers in the telecommunications sector April 1. In addition to rehashing scores of telecom restrictions in other countries, the report identified a Chinese proposal to require Information Communications Technology

(ICT) suppliers to divulge the source codes of their products to the government and a change in charges Vietnam imposes for international roaming services as policies that need to be changed.

While the report cites accomplishments in reducing barriers, “troubling new issues have come to light that need to be addressed, such as demands that American telecommunications companies reveal proprietary information to foreign governments,” said USTR Michael Froman in a statement.

The report addresses other new areas affecting cross-border data flows and Voice over Internet Protocol (VoIP) services as well as repeating issues with independent regulators, limits on foreign investment, competition, international termination rates, satellites and submarine cable systems, telecommunications equipment trade and local content requirements. “Several of the issues in the 2015 Review have been discussed in past reviews, but USTR considers it appropriate to continue to raise these issues and encourage our trading partners to implement appropriate solutions,” the report states.

“China has also proposed onerous encryption approval and in-country data-storage requirements on ICT products,” the report contends. In addition, China “imposes unreasonably strict limitations on companies that wish to offer VoIP services in China,” it says. China requires suppliers to have a value-added service license to provide VoIP service and a license to interconnect VoIP services with public networks. “China’s requirements for a basic telecommunications service license make little sense for a service that requires no investment in or control of transmission facilities,” the report argues. It notes that only a few small pilot VoIP projects are allowed to offer public switched telephone network interconnection.

Vietnam has established a minimum wholesale rate for international mobile roaming services that increases the cost of U.S. operators providing data services in the market. “Vietnam has also proposed to regulate certain Over-the-Top services (i.e., Internet-based voice and text services supplied through mobile terrestrial telecommunications and fixed terrestrial telecommunications networks) by requiring their suppliers to sign commercial agreements with existing licensed telecommunications suppliers,” it adds.

The Vietnam Telecommunications Authority (VTA) issued an Order for Promulgating the Average Tariff and Regulated Rate in October 2014, for Inbound International Roaming Services (1469/CVT-GCKM) (the Order), which set a floor rate for wholesale roaming services. “While VTA officials asserted that the measure was necessary to protect consumers from the ill-effects of ‘dumping,’ the only obvious effect was to raise rates for foreign operators, and, likely, their subscribers,” the report says.

## **Court Sustains ITC Negative CVD Ruling on Shrimp**

The Court of International Trade (CIT) agreed April 3 with the International Trade Commission (ITC) that the April 2010 oil spill at British Petroleum’s Deepwater Horizon drilling rig was the cause of injury to the Gulf shrimp industry and not imports from seven countries. In his ruling, CIT Senior Judge Gregory Carman sustained the ITC’s negative injury ruling in the countervailing duty (CVD) complaint the Coalition of Gulf Shrimp Industries (COGSI) filed against frozen warmwater shrimp from China, Ecuador, India, Malaysia and Vietnam. “There is no question that the domestic industry suffered a

tragedy of enormous proportions” during the period of investigation (POI), Carman wrote (slip op. 15-29). “Upon review of the record, the Court finds reasonable the ITC’s conclusion that COGSI’s suffering during this POI was mainly caused by the BP Oil Spill and not by reason of subject imports,” he ruled.

“Subject imports supplied the void in the market demand caused by a third party, and the foreign producers were merely taking advantage of a business opportunity. This does not constitute unfair trade. The antidumping and countervailing duty framework is a remedy for harm caused by unfair trade, not for lost business caused by a disastrous accident. The remedy sought by COGSI in the case at bar has statutory limitations regarding causation, and the Court cannot say that the Commission was unreasonable in its rendering of those limitations,” he wrote.

In its suit to overturn the ITC decision, COGSI objected to the commission selection of the POI, its decisions on volume, price and impact, and its analysis of statutory factors. On each of these issues, Carman agreed with the ITC’s conclusions.

“The Court finds the Commission not only complied with statutory requirements but also took into consideration atypical events that affected production during the POI, such as the BP Oil Spill and EMS. Upon weighing these factors, the ITC determined that the increase in volume of subject imports was not significant because COGSI’s domestic shipments also increased, and both increases occurred at the cost of nonsubject imports,” Carman wrote. “The Court finds that the Commission’s conclusion is reasonable and grounded in evidence on the record. The mere fact that COGSI did not agree with this conclusion does not make it unreasonable,” he added.

**\* \* \* Briefs \* \* \***

CYBER-SECURITY: President Obama signed executive order April 1 directing Treasury to impose sanctions on persons engaged in malicious cyber-enabled activities that could harm, disrupt, compromise, misappropriate computer services, networks or critical infrastructure. Those that violate order face listing as Specially Designated National (SDN), being barred from entry to U.S. and penalties under IEEPA. Order also covers actions to evade or avoid restrictions, causing violation, attempting to violate prohibitions and conspiracy to violate them.

EXPORT ENFORCEMENT: Brothers Rex and Wilfredo Maralit, who were Manhattan police officer and L.A. Customs and Border Protection officer, respectively, were sentenced March 27 in Brooklyn U.S. District Court to three years in prison each followed by three years’ supervised release for conspiracy to violate Arms Export Control Act by exporting high-powered weapons, including assault rifles, sniper rifles, pistols and firearm accessories, to Philippines without State license and conspiring to engage in unlicensed firearms dealing. Pair pleaded guilty in June 2014 (see **WTTL**, June 23, 2014, page 9). Third brother Ariel, also charged in scheme, lives in Philippines and remains at large.

MORE EXPORT ENFORCEMENT: Yavuz Cizmeci of Istanbul, Turkey, March 23 agreed to pay \$50,000 to settle BIS charge of acting contrary to terms of Temporary Denial Order (TDO) in June 2008. Cizmeci, CEO and president of Turkish airline Ankair, facilitated export of U.S.-origin Boeing 747 to Iran Air. Aircraft was classified under ECCN 9A991, controlled for anti-terrorism reasons, and worth approximately \$5.3 million. Export privileges of Ankair and Iran Air had been denied three weeks earlier, June 6, 2008, in attempt to block this specific export.

STILL MORE EXPORT ENFORCEMENT: Turkish equipment manufacturer AAG Makina agreed March 20 to pay \$23,000 to settle BIS charge of aiding unauthorized export of valve parts and pressure transmitter to Iran via Turkey in October 2011. Items worth over \$47,334 were ordered and billed to Satco Corporation, Canadian company, shipped to AAG Makina in Istanbul then sent to two Iranian petrochemical companies without OFAC authorization, BIS charged. AAG Makina and Satco were added to BIS Entity List in December 2013.

EVEN MORE EXPORT ENFORCEMENT: Hannah Robert, owner of N.J.-based One Source USA LLC, pleaded guilty April 1 in Trenton, N.J., U.S. District Court to conspiracy to violate Arms Export Control Act. From June 2010 to December 2012, she conspired to export blueprints of torpedo parts for nuclear submarines, military attack helicopters, and F-15 fighter aircraft to India without licenses. Sentencing is set for June 26. She originally was charged in September 2014 in six-count superseding indictment (see **WTTL**, Sept. 29, 2014, page 6).

PLEASE, SIR, MORE EXPORT ENFORCEMENT: Egyptian procurement agent AMA United Group and Egyptian citizens Malak Neseem Swares Boulos and Amged Kamel Yonan Tawdraus pleaded guilty April 1 in Brooklyn U.S. District Court to attempting to ship USML munitions samples from New York City to Egypt without State licenses. AMA pleaded guilty to violating Arms Export Control Act, while Boulos and Tawdraus admitted to failing to file required export information relating to international shipment of landmine and multiple bomb bodies.

DEAR GOD NO MORE EXPORT ENFORCEMENT: Two Dallas businessmen were sentenced April 3 in Dallas U.S. District Court to two years' probation and \$75,000 forfeiture for reduced charge of false statement to federal agency. Borna Faizy, aka "Brad," and Touraj Ghavidel, aka "Brent Dell," pleaded guilty in October 2014 (see **WTTL**, Oct. 27, 2014, page 7). At that time, pair and company -- Signal Microsystems in Addison, Texas, which operated "Techonweb.com," -- agreed to 10-year export denial order settling BIS charges of conspiracy for exporting computers to Iran via UAE without authorization. Business exported over 1,000 computers classified under ECCN 5A992 valued at \$1,015,757 from December 2009 through March 2011.

STEEL WIRE: In 6-0 "sunset" votes March 31, ITC said revoking antidumping and countervailing duty orders on prestressed concrete steel wire strand from Brazil, India, Japan, Korea, Mexico and Thailand would renew injury to U.S. industry.

SILICOMANGANESE: In 6-0 preliminary vote April 3, ITC found U.S. industry may be injured by allegedly dumped imports of silicomanganese from Australia.

TRADE FIGURES: Merchandise exports in February fell 3.85% from year ago to \$125.6 billion, dropping to lowest level since June 2011, Commerce reported April 2. Services exports gained 5.6% to \$60.6 billion from February 2014. Goods imports dipped 5.15% from February 2014 to \$180.8 billion, as services imports gained 4.0% to \$40.9 billion. Exports of industrial supplies and materials (\$36.1 billion) were lowest since November 2010. Commerce again cites drop in oil and petroleum prices, along with aircraft sales, as main cause for decline in trade.

WTO: Seychelles, tiny island nation in Indian Ocean, is set to become 161st WTO member following March 25 signing of Instrument of Acceptance of Accession Protocol, confirming its membership terms at ceremony in its capital, Mahé. President Michel handed document to Chiedu Osakwe, director of WTO Accessions Division.

SYRIA: OFAC March 31 added to Specially Designated Nationals (SDN) List Batoul Rida, official of Central Bank of Syria (CBoS); Syrian front company Sigma Tech Company; and Lebanon front companies Shadi for Cars Trading and Denise Company. It also added new name used by CBoS Governor Adib Mayaleh. Rida "has been involved in the organization of cash transfers via couriers with U.S.-sanctioned Tempbank on behalf of the CBoS. In addition, she works closely with, and has carried out tasks at the instruction of, CBoS Governor Adib Mayaleh and is involved in managing fuel-related deals for the CBoS," Treasury said.