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Murkowski Wants to Open Door to Crude Oil Exports

While the U.S. is negotiating a deal to remove sanctions on Iran and with energy production high and gas prices low, Sen. Lisa Murkowski (R-Alaska) April 20 said she plans to introduce legislation this year to end the export ban on domestic crude oil. “If last year was the Year of the Report, this should be the Year of Legislation,” she said.

“I am announcing today – right here, right now – that I plan to introduce a bill that fully repeals our nation’s outdated export ban, while still preserving the emergency authority of the President,” she told an oil industry event in Houston. “We should not lift sanctions on Iranian oil while keeping sanctions on American oil. It makes no sense,” Murkowski added.

In the meantime, if trading partners need American oil, exceptions to the ban could be made, she suggested. “While we work on legislation to repeal the oil export ban, I want to note that current law allows the president to make ‘exemptions’ from the ban for a whole range of reasons – the country of destination, the purpose of the export, and more,” she noted. “Full repeal of the oil export ban is a priority, but exemptions for allies can happen today,” the senator added.

A House hearing April 14 showed the stark differences of opinion on lifting the existing restrictions (see **WTTL**, April 20, page 4). While some support lifting the ban to help the oil industry and jobs, others warned about potential environmental risks and higher energy costs in the U.S. Rep. Michael McCaul (R-Texas) introduced a bill in January (H.R. 156) that would lift the ban without phase-in or phase-outs, but the chances for that legislation remain doubtful.

Congress Set to Act in May on Fast-Track Legislation

Congress could move quickly to pass fast-track trade promotion authority (TPA) following markup of the legislation by the Senate Finance Committee April 22 and the House Ways and Means Committee April 23. The two panels also cleared bills to extend the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), Trade Adjustment Assistance (TAA) and a new Customs Enforcement measure (see related stories below). Only one difference exists between the final House and

Senate TPA bills, the addition of an anti-human trafficking amendment sponsored by Sen. Robert Menendez (D-N.J.) in the Finance bill. Two other Finance amendments were added to the Ways and Means bill. One would make it a negotiating objective in Transatlantic Trade and Investment Partnership (TTIP) talks to seek to discourage European countries from adopting anti-Israel boycott, divest and sanction (BDS) rules. The other would raise human rights protection to a principal negotiating objective.

The human trafficking amendment may require a House-Senate Conference Committee to resolve along with differences in the Customs and AGOA bills. Since Ways and Means Chairman Paul Ryan (R-Wis.) and Finance Committee Chairman Orrin Hatch (R-Utah) would co-chair any conference, it is likely they would strip out any amendments they don't like.

Both panels held marathon markup sessions. Finance was forced to delay its meeting due to an objection that Sen. Bernie Sanders (I-Vt.) raised under Senate rules to the committee meeting while the Senate was in session. Once it started the markup at 4:00 P.M., Finance needed six hours to finish its work. Ways and Means took over 10 hours to do its markup, with the session prolonged by more than 20 Democratic amendment proposals and Democratic demands for roll-call votes on almost every one of them.

Although there was only one difference in the TPA bill, Finance added seven amendments to its version of the Customs enforcement measure. Added to the bill was an amendment co-sponsored by Sens. Charles Schumer (D-N.Y.), Sherrod Brown (D-Ohio), Rob Portman (R-Ohio) and Richard Burr (R-N.C.) for currency manipulation to be considered a countervailable subsidy in countervailing duty (CVD) cases. With Hatch opposed to the currency provision, its chances of remaining in a final bill are small.

The Obama administration and Treasury Secretary Jacob Lew also have strenuously objected to the inclusion of any stronger currency provisions in TPA or other legislation. In a letter to Hatch April 21, Lew warned that "seeking enforceable currency provisions would likely derail the conclusion of the TPP."

In testimony at Ways and Means April 22, he said his TPP counterparts are aware of congressional interest in adding currency to TPA. "We have consulted with our TPP partners in the last week and they have indicated willingness to discuss those concerns. Nonetheless, our partners firmly stated that the introduction of enforceable currency provisions in the context of trade agreements will undermine ongoing efforts to address currency issues and force them to reconsider TPP negotiations," Lew said.

Hatch Protects TPA Bill from Unwanted Amendments

Finance Chairman Orrin Hatch (R-Utah) successfully garnered bipartisan support to beat back a handful of troubling amendments to his and Ranking Member Ron Wyden's (D-Ore.) TPA bill (S. 995) April 22. In the end, only three amendments, including two he supported, were added before the committee adopted the measure by a bipartisan 20-6 vote. Hatch was also successful in steering Schumer's currency amendment to the Customs enforcement bill, which was to be introduced as a clean bill, rather than being attached to TPA. A separate amendment that Sen. Rob Portman (R-Ohio) proposed to strengthen the currency negotiating provisions in the Hatch-Wyden TPA bill was defeated on 11-15 vote, with several Democrats and Republicans crossing party lines to vote for

or against the change. Hatch supported Sen. Ben Cardin's (D-Md.) amendment to include language seeking to oppose anti-Israel BDS actions in Europe. The proposal passed on a 26-0 vote. He also backed another Cardin amendment to raise human rights protection to a principal negotiating objective, and the committee approved that change by voice vote.

Hatch succeeded in defeating 11 other changes, including ones to strengthen its currency provision, protect Buy America requirements, delete investor-state-dispute-settlement as a goal, protect the trade preferences of Central America, and specific negotiating objectives for autos and industrial goods.

Unlike Ways and Means where almost every vote was along party lines, at Finance, several members crossed party lines to vote on amendments. The coming 2016 elections appeared to loom large for some members reportedly facing tough reelection campaigns, with Burr, Portman and Sen. Charles Grassley (R-Iowa) voting in favor of the CVD currency proposal, but Sen. Maria Cantwell (D-Wash.) voting against it. On final passage of TAA, which passed on a 17-9 vote, Republicans Portman, Burr, Sens. Pat Toomey (Pa.), Tim Scott (S.C.) and Dean Heller (Nev.) joined in support of the measure.

More amendments were added to the Customs enforcement bill, which passed by voice vote in the end. Many of the changes, however, are likely to be stripped out during a House-Senate Conference Committee. In addition to the CVD currency amendment, other changes tightened import rules against child labor, forced or indentured labor and added Section 301 provisions to cover environmental law violations.

Also added by voice vote was Portman's legislation (S. 998) to create a new process for annual miscellaneous tariffs bills to go through the International Trade Commission to avoid objections as earmarks (see **WTTL**, April 20, page 8) and one by Cantwell to have collected antidumping and countervailing duty funds placed in a trust fund to use to enforce U.S. trade laws and trade agreements. Cantwell also said she intends to offer an amendment on the Senate floor to reauthorize the Export-Import Bank.

Both panels approved the GSP/AGOA/Haiti measure by voice votes. While Ways and Means okayed the bill without amendments, Finance added two: one sense of Congress call for reviewing South Africa's AGOA eligibility and another to help women in Africa.

TAA passed Finance on 17-9 bipartisan vote. The committee defeated a proposed amendment by Sen. Sherrod Brown (D-Ohio) that would have restored funding for the program to pre-sequestration levels by a 13-13 vote. While 203 amendments had been filed for consideration before Finance started its markup, including 88 by Brown, only 26 were offered and voted on. The initial list had members worried that the session would go to 2:00 A.M. the next day, but it lasted instead until 10:00 P.M.

Ryan Blocks Levin TPA Substitute, Democrat Amendments

Ways and Means Chairman Paul Ryan (R-Wis.) cited a parliamentary objection to rule out of order a TPA substitute amendment offered by Ranking Member Sander Levin (D-Mich.) and maintained party discipline to defeat more than 20 other Democratic amendments to the measure and to TAA. Only two Democrats, Reps. Earl Blumenauer (Ore.) and Ron Kind (Wis.) crossed party lines on several amendments, including final passage of TPA, which was approved by a 25-13 vote. The committee cleared TAA, AGOA, GSP

and Customs measures by voice votes. Levin's substitute would have limited TPA to just TPP and would have changed its negotiating objectives to specific instructions. Among those instructions were stronger goals on labor, environment, human rights, investment and medicines. It specifically targets Japanese restrictions on auto imports and calls for the elimination of agriculture tariffs, not just reductions. Levin has repeatedly called for addressing TPP issues before tackling TPA.

Ryan ruled the amendment out of order, citing "Rule 10" which restricts Ways and Means to act on issues within its jurisdiction. He did not explain specifically what in the Levin proposal was outside the panel's purview.

Levin complained that the Ryan-Hatch-Wyden TPA "is toothless," and other Democrats called it a "wish list." The bill doesn't put Congress in the driver's seat, "it puts Congress in the backseat," Levin said. Before the markup, House Minority Leader Nancy Pelosi (D-Calif.) said she supported the Levin proposal, which will give her and other Democrats a chance to say there is a TPA version they are ready to back.

Customs Bill Would Tighten Scrutiny of New Importers

The Customs enforcement bills reported out of the House Ways and Means Committee and Senate Finance Committee could allow Customs and Border Protection (CBP) to impose higher bond requirements on goods brought into the U.S. by new importers. Among the numerous provisions in the measures is one that would create a "new importer" program that would assess the risk of new importers not paying duties, and establishing criteria to assess that risk.

The legislation also would enhance protection against imports of counterfeit goods and products that violate intellectual property rights (IPR). One change would require Homeland Security (DHS) to establish a process to enforce pending copyrights to the same extent as registered copyrights.

DHS also would be directed to establish a Commercial Targeting Division within CBP's Office of Trade and National Targeting and Analysis Groups (N-TAGs). N-TAGs would be required to target imports that violate customs and trade laws, particularly (1) agriculture programs; (2) antidumping and countervailing duties; (3) import safety; (4) IPR; (5) revenue; (6) textiles and apparel; and (7) trade agreements and preference programs.

Also included are provisions for CBP to establish an importer of record program that includes criteria and a process for assigning importer of record numbers, to ensure that duplicate importer of record numbers are not assigned and to maintain and evaluate the accuracy of a database of importers. "The Commissioner shall provide to the relevant committees a report on the importer of record program. This report is due within one year of the date of enactment of this proposal," a summary of the bill said.

Several new reports on Customs duty collection also would be required under the legislation. Treasury's inspector general would need to submit a report every two years to the relevant committees on its assessment of CBP's effectiveness with respect to (1) revenue protection; (2) measuring accountability and performance related to revenue protection; (3) the number of entries resulting in the underpayment of duties owed and a summary of the outcome of investigations; and (4) the effectiveness of CBP's training efforts with

respect to duty collection. Treasury and DHS also would be required to submit a joint report from 2016 to 2018 on in-bond transfers, which have raised complaints. The report will cover: (1) the total entries shipped in bond; (2) the ports of entry (POE) merchandise arrives in for transportation in bond; (3) the average time taken to reconcile records of merchandise transported in bond; (4) the average time merchandise is transported in bond; (5) the total revenue owed and collected for merchandise transported in bond; (6) the total number of instances the POE of destination changes for merchandise transported in bond; and (7) the number of entries that have not been reconciled for merchandise transported in bond.

The measure would change the duty-free *de minimis* value for merchandise imports to match the level for personal entries. The *de minimis* level would rise to \$800 from \$200. This change has been sought by express carriers.

A proposal that was suggested but not offered was one to include the Leveling the Playing Field Act, which would have extensively changed antidumping and countervailing duty laws and, in several parts, reverse court rulings on how Commerce handles non-market economies, adverse facts available and consideration of submitted data, as well as limiting the number of voluntary respondents in cases. The changes would have made trade remedy rules much more favorable to petitioners.

An amendment offered by Rep. Charles Boustany (R-La.) in Ways and Means and Sen. John Thune (R-S.D.) in Finance and adopted by both panels would require Customs to distribute principal collected from antidumping and countervailing duties and interest to eligible domestic petitioners under the Byrd Amendment. “This amendment prohibits Customs from transferring to the General Treasury any payment received under a bond so that it is available to be distributed to domestic producers, where applicable,” Boustany told the committee when he introduced the amendment.

“This is an issue hitting home in Louisiana because just last year CBP made a decision that because it took an extremely long time to investigate and resolve an ongoing surety case involving Louisiana crawfish processors, that most of the \$6.1 million would be applied to this general late-pay interest, per CBP’s regulation. Only then did CBP pay the remaining amount to the local processors,” he said.

Bill to Allow Cuban Export Financing Introduced in Senate

A total lifting of the trade embargo against Cuba “may be a bridge too far” for the current Congress, Sen. Heidi Heitkamp (D-N.D.) told a Senate Agriculture Committee hearing April 21. The next day, she tried to chip away at the sanctions, introducing the Agricultural Export Expansion Act (S. 1049), which would lift the ban on private banks and companies offering credit for agricultural exports to Cuba.

The biggest obstacle to expanding farm exports to Cuba, she says, is the inability of private companies and banks to provide credit for commodities that are in high demand in Cuba. “Especially in light of our country’s new policy toward Cuba, there isn’t any reason why Cuba should buy its black beans, peas, and lentils from Canada instead of North Dakota,” she said in a statement. At the hearing, administration officials noted the obstacles to increased trade with Cuba, even after President Obama moved to normalize relations. “U.S. exporters continue to be prevented by statute from offering financing

inducements, such as loans, for authorized agricultural exports, a limitation that may prevent them from being as attractive to Cuban importers as third-country competitors,” said Office of Foreign Assets Control (OFAC) Acting Director John Smith.

Current law also prohibits federal funding for market promotion in Cuba. “Despite this opening, U.S. government agencies – including USDA – remain prohibited from providing U.S. export assistance and any U.S. credit or guarantees for exports to Cuba,” Agriculture Under Secretary Michael Scuse told the committee. “These restrictions apply to USDA’s successful cooperative market development programs like the Market Access Program and the Foreign Market Development Program,” he added.

The potential value of exports to Cuba even without the embargo is debatable. “By fiscal year 2008, U.S. agricultural exports to Cuba had reached a peak of \$658 million. However, by the end of last fiscal year, they had fallen by more than half, to \$300 million. Yet, at the same time, global agricultural exports to Cuba have doubled over the past decade to \$1.7 billion,” Scuse said.

Global competitors, such as Brazil, Argentina, Canada and the European Union stepped into the vacuum with credit financing and supply. Officials also noted obstacles on the Cuban side, including state bureaucracy and infrastructure unable to handle increased imports. For example, all imports from the U.S. currently must be processed through a single state-owned agency, Alimport, Scuse noted.

In February, a bipartisan group of senators led by Sen. Amy Klobuchar (D-Minn.) introduced the Freedom to Export to Cuba Act (S. 491). The bill would lift the embargo on Cuba and restrictions on transactions between U.S.-owned or controlled firms and Cuba, limitations on direct shipping between Cuban and U.S. ports, restrictions on remittances, and the prohibition on indirect financing of Cuba (see **WTTL**, Feb. 16, page 1).

USTR Criticizes EU Proposal on GMO Restrictions

A new proposal by the European Commission April 22 to allow member states to restrict the use of genetically modified (GM) food in their territories even after the products have been authorized could throw cold water on ongoing talks on a Transatlantic Trade and Investment Partnership (TTIP). “We are very disappointed by today’s announcement of a regulatory proposal that appears hard to reconcile with the EU’s international obligations,” U.S. Trade Representative (USTR) Michael Froman said in a statement.

According to an EU factsheet on the proposal, the restrictions could be in line with international commitments. “The measures adopted by Member States need to be compatible with the internal market, in particular Article 34 TFEU, which prohibits measures of equivalent effects to quantitative restrictions to the free movement of goods,” it said.

“That is why the Member States making use of this proposal will need to justify the measures taken based on grounds in accordance with ... the notion of overriding reasons of public interest,” the factsheet added. “In addition, the measures envisaged will need to be compatible with the principles of proportionality and non-discrimination between national and non-national products,” it noted. At a press conference at the end of week-

long TTIP negotiations in New York City April 24, EU Chief Negotiator Ignacio Garcia Bercero said the proposal “is consistent with our international obligations.” Pending the approval of the new legislation, current procedures for the approval of GMOs for food and feed will continue to apply. “Indeed, earlier today the commission approved 19 pending GMO applications,” reported. Of those 19, 17 were approved from the U.S. soybean industry, which has 40 applications pending.

“This announcement means little if the EU persists in its current unscientific and delayed approval process for new varieties developed through biotechnology,” American Soybean Association Vice President Wilkins said in a separate statement April 24. Earlier in the week, he criticized the rules for being “based on something as trivial as political or popular whims.”

TTIP Talks See Long Road Ahead

As Congress moved closer to passing fast track negotiating authority, U.S. and European Union (EU) negotiators wrapped up their ninth round of talks toward a Transatlantic Trade and Investment Partnership (TTIP) in New York April 24. While observers don’t expect a TTIP deal before the very end of the Obama administration, at best, negotiators say they are moving talks along one small step at a time.

During the latest session, the U.S. tabled a new proposal to “provide opportunities for U.S. exporters of products to the EU to have their products tested and certified in the United States and vice versa,” U.S. Chief Negotiator Dan Mullaney told a press briefing at the end of the round. In addition, “negotiators and a range of regulators are at the table accomplishing the necessary technical work to achieve regulatory compatibility in a number of important sectors, including automobiles, pharmaceuticals and medical devices,” he said.

Chief EU Negotiator Ignacio Garcia Bercero confirmed the next formal negotiating round will take place in Brussels before the summer break in August. “After the summer period technical discussions will continue on a regular basis and we expect a political stock-taking in the early autumn, which will steer the next phase in the negotiations,” he said.

Trade sources say they expect the passage of TPA to help clear the way for completion of TPP, which would then allow TTIP negotiators to start getting into substantive talks early in 2016. Then the question would be whether they could complete talks while the Obama administration is still in office.

A “very best case scenario,” according to one source, would see talks finished next year, congressional hearings to be held in the fall and Congress to vote during a lame-duck session after the November 2016 elections. That is unlikely, and USTR negotiators are reportedly saying privately they need two more years to reach a deal. That would put off a final accord until the last quarter of 2017 or early 2018. On the U.S. side, agreement also could be held up by new rules included in the pending TPA bill that would require the president to give Congress 90 days advance notice before signing an agreement and to publish the text 60 days before signing. On the EU side, the schedule could be even longer. While members of the EU Parliament have been following the negotiations very closely and could vote on a deal quickly, the process could be extenuated by the

expected investor-state dispute-settlement (ISDS) provisions in an accord. ISDS provisions could require approval of the pact by each of the 28 EU states that have foreign investment laws. That could take two years, one source estimated. In addition, the deal would have to be translated into all of the official languages of EU members. Under EU rules, the EU Commission could implement other parts of the deal on a provisional basis after the Parliament acted, if the EU wanted.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Wentong Cai, Chinese national in U.S. on student visa, and his cousin Bo Cai, Chinese national, were sentenced to prison April 23 in Albuquerque U.S. District Court for violating Arms Export Control Act in scheme to export ARS-14 MHD angular rate sensors to China without State licenses. Bo Cai was given 24 months and Wentong Cai 18 months. Wentong pleaded guilty in December 2014 and Bo Cai pleaded guilty in July (see **WTTL**, Jan 5, page 7). Both will be deported after completing their prison sentences.

MORE EXPORT ENFORCEMENT: Philippine national Kirby Santos was charged April 22 in Camden, N.J., U.S. District Court with conspiracy to violate Arms Export Control Act by directing export of \$200,000 worth of firearms parts, including rifle barrels, to Philippines without State licenses. Santos was arrested in Guam on March 31 and remains in custody.

WELCOME TO 1995: In modernization effort, DDTC wants exporters to include valid email addresses on all paper applications. "Before DDTC's modernization effort goes into effect, DDTC recommends Industry begin including valid email addresses on all paper applications so DDTC can send you an email with your application number. DDTC will use this transition period to work out any problems with the interim process," agency wrote in notice posted on website April 23. ELLIE Net, system industry uses to find and track paper applications, will be decommissioned, DDTC added.

ITC: Catherine B. DeFilippo has been named ITC director of operations, which oversees agencies' offices of investigations, unfair import investigations, industries, economics, tariff affairs and trade agreements, and analysis and research services, commission announced April 21. Previously, she was director of ITC office of investigations.

EX-IM BANK: Former loan officer Johnny Gutierrez pleaded guilty April 22 in D.C. U.S. District Court for accepting more than \$78,000 in bribes in return for recommending approval of unqualified loan applications. Sentencing is scheduled for July 20. Charges against Gutierrez were part of tough Ex-Im renewal hearing April 15 (see **WTTL**, April 20, page 5).

PET RESIN: In 5-0 preliminary vote April 23, ITC found U.S. industry may be injured by allegedly dumped imports of polyethylene terephthalate (PET) resin from Canada, China, India and Oman and subsidized imports from China, India and Oman. Commissioner F. Scott Kieff did not participate in investigations. Imports from four target countries surged from 500 million pounds in 2012 to 750 million pounds in 2014, said statement from Kelley Drye & Warren, which represents petitioners. "This import surge was driven by low import pricing that caused U.S. producers to lose significant sales and profits," it said.

BURMA: OFAC April 23 removed Burmese national Win Aung and two of his businesses -- Dagon International Limited and Dagon Timber Limited -- from list of Specially Designated Nationals (SDN). "Our sanctions architecture for Burma remains in place. We have made clear to the Burmese Government that additional changes in U.S. sanctions policy are dependent on the government's continuing its democratic and economic reforms and resolving disputes with members of ethnic groups," Acting State Spokesperson Marie Harf said in statement.