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U.S. Stand on "Facilitation" Expected to Limit Iran Trade

The already narrow opening of trade opportunities for U.S. business under the nuclear pact with Iran will be even more restricted because of Treasury's continued tough stand on interpreting its rules against facilitation of trade, business and legal experts warn. The enforcement of anti-facilitation regulations will particularly limit the ability of U.S.-owned foreign subsidiaries to take advantage of provisions in the deal that supposedly would allow them to trade with Iran, they say.

> Facilitation enforcement is in keeping with the statements of Obama administration officials that remaining trade sanctions will continue to bar U.S. companies, with a few specific exceptions for food, carpets, planes and aircraft equipment, from taking advantage of the Joint Comprehensive Plan of Action (JCPOA) with Iran. As part of the plan, the U.S. will issue waivers of nuclear-related "secondary sanctions" on foreign entities after Iran's compliance with the deal is verified(see **WTTL**, Sept. 21, page 4).

Although the JCPOA would allow U.S.-owned foreign subsidiaries to do business to a limited extent in Iran, their U.S. parents would still be barred from assisting in that trade. Trade sources doubt Treasury will ease those restrictions as part of the implementation of the agreement. They note that there are very few corporate structures, such as holding companies, where those subsidiaries are entirely disconnected from parents.

The facilitation rules also may inhibit foreign banks, insurance companies and transportation firms with U.S. ties from participating in Iran trade even when the sanctions are lifted, sources say. They also say there is uncertainty about how the European Union (EU) and European countries will enforce their remaining sanctions on Iran. U.S. officials have said they are coordinating the implementation of the JCPOA with European allies and expect similar policies to be adopted.

Court Sends Tomato Suspension Agreement Back to Commerce

Commerce has gotten itself into a stew for its failure to provide all the information behind its 2013 agreement with Mexican tomato exporters to suspend the antidumping investigation of tomato imports from Mexico. Court of International Trade (CIT) Senior

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Judge Richard Eaton sent the deal back to the department Sept. 24 because of its failure to make public three memoranda that it had used to reach the agreement (see **WTTL**, March 11, 2013, page 9). The long-running dispute over tomatoes from Mexico dates back to the 1990s. Commerce first settled the case with a 1996 suspension agreement and another in 1998 and followed that with deals in 2002 and 2008.

> "It is apparent that Commerce did not comply with the notice provision necessary for it to consider any of plaintiff's and the other petitioners' objections before suspending the investigation, because the explanations of how the agreement would be carried out, enforced, and satisfy the statutory requirements were not made available by the department until after the investigation was suspended," Eaton ruled in a suit brought by the Florida Tomato Exchange, which represents tomato growers in the state.

"It was then clearly the intent of Congress that the Department alert the petitioner and the domestic industry of any proposed suspension agreement so that Commerce might verify whether its determination that suspension of the investigation is in the best interests of the public and domestic industry was correct," he wrote. "Doing so would require Commerce to comply with the notice, comment, and consultation requirements provided for by 19 U.S.C. Section 1673c(e) before signing the suspension agreement," he noted.

"Here, although on February 2, 2013, in accordance with 19 U.S.C. Section 1673c(e)(1), Commerce provided petitioners a copy of the proposed 2013 Suspension Agreement thirty days before suspending the investigation, and provided them with an opportunity to comment on the proposed agreement, the Department did not comply with the requirements of § 1673c(e)(2) and (3)," he added (slip op. 15-108).

"Commerce's failure to comply with the statute compels two related holdings. First, because of Commerce's failure to provide petitioners and thus plaintiff copies of its explanatory memoranda prior to suspending the investigation, the Tomato Exchange had no occasion to challenge any aspect before Commerce. Therefore, it may raise any arguments it might have before the court. Second, it is clear that Commerce's failure to comply with the notice, comment, and consultation requirements of the statute has also deprived plaintiff and other interested parties of essential procedural rights, thereby warranting a remand of this case to Commerce to meaningfully consider the views of the domestic industry," Eaton ruled.

On remand, Commerce will need to give the plaintiff an opportunity to comment on its determinations and explanations in its Extraordinary Circumstances Memorandum, Public Interest Memorandum, and Price Suppression & Undercutting Memorandum. In addition, it will have to reopen the record to permit the plaintiff to submit information for the record with any comments on the three memoranda, Eaton ordered.

Ahead of Xi Visit, Froman Takes Tough Stand on Trade Issues

U.S. Trade Representative (USTR) Michael Froman was less diplomatic and more forceful in his complaints about China's trade and investment policies in a Sept. 22 speech, signaling a tougher Obama administration stand against Beijing days before Chinese President Xi Jinping arrived in Washington for a Sept. 25 state visit. The hit-em-when-they're-down approach came as Xi was on the defensive before his talks with Obama due to the Chinese economy slowing, economic reforms lagging, its stock market dropping and the U.S. threatening sanctions against China for its culpability in Chinese hacking of U.S. agencies and industry (see related story page 4).

> "Increasingly, and especially in light of China's slowing economy and recent market instability, observers are starting to question whether China has both the capacity and the commitment to follow through on these reforms," Froman told a program sponsored by the Center for Strategic and International Studies (CSIS). "In some important areas, there is a troubling gap between China's official objectives and its actions," he said.

Froman echoed U.S. business complaints about China's requirements for technology transfer, intellectual property and user data as a de jure or de facto condition of doing business in China under the banner of economic security. "Applying anti-monopoly laws against foreign investors in a manner that at times appears discriminatory and overly broad, is not consistent, either," he said.

Froman wasn't very encouraging on talks with China on a bilateral investment treaty (BIT). "Over the past 20 months, we've made important progress in these negotiations. China's revised negative list is better than its original, and certainly represents serious effort by senior Chinese leaders. Still, we are a substantial distance from the kind of high standard agreement necessary to achieve our mutual objectives," he said. "We look to President Xi's visit and our other upcoming engagements with China to send a clear signal about its commitment to reform through the BIT negotiations," he added.

After the administration leaked plans for imposing sanctions on certain Chinese entities for their hacking activities, Chinese officials rushed to Washington in an attempt to avert action before Xi's visit. Those talks succeeded, at least for now, in precluding those sanc`tions, administration officials said.

"In his meetings with President Xi, President Obama has repeatedly made plain that state-sponsored, cyber-enabled economic espionage must stop," National Security Advisor Susan Rice said in a speech Sept. 21. "This isn't a mild irritation. It is an economic and national security concern to the United States," she said.

White House Spokesman Josh Earnest the same day acknowledged the possibility of sanctions but said recent talks with the Chinese may have delayed any action. "I think that is at least one indication that China at least takes seriously our concerns. But, ultimately, we'll have to see where the discussions lead when the president meets with his counterpart," he said.

"We certainly have appreciated their willingness to engage in those conversations. There has been some discussion about the possibility that the United States could use a new tool that is now available to the Secretary of Treasury to impose economic sanctions against those individuals who are suspected of engaging in this kind of behavior in cyberspace or have benefitted from it," he said at the daily press briefing.

Those talks produced an agreement during Xi's meeting with Obama Sept. 25 for both countries to forswear government-sponsored cyber attacks. "The United States and China agree that neither country's government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors," a White House fact sheet stated. They also agreed to cooperate in the investigation of malicious cyber activities.

> Ahead of Xi's arrival, the leaders of the Senate Finance Committee and House Ways and Means Committee also weighed in with what Obama should address with Xi. In a Sept. 21 letter to Obama, Finance Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) and Finance Chairman Paul Ryan (R-Wis.) and Ranking Member Sander Levin (D-Mich.) identified a long list of trade issues the two leaders should address in their talks (see **WTTL**, Sept. 14, page 3).

Some were the same as Froman raised. Among them were the role of state-owned enterprises in China, forced localization of data or production or disclosure of source code, retaliation and threats of retaliation against U.S. companies, initiation of baseless trade remedy cases, delayed approval of innovative U.S. biotech products and continued currency manipulation and the recent devaluation of the renminbi.

Xi Tries to Calm U.S. Business Concerns About China

Chinese President Xi Jinping tried to tell skeptical American business leaders Sept. 23 that China still welcomes foreign investment and is pursing market-opening reforms. In a speech in Seattle, on his way to meet with President Obama Sept. 25, Xi addressed the numerous concerns that have arisen about China becoming a less hospitable place for U.S. and foreign companies and worries about the depreciation of the renminbi (RMB) and swings in the Chinese stock market (see related story page 2). The Chinese leader repeated those statements at a press conference with Obama after they met.

> "Some will be reassured by his style and promises and see in his performance signs of the new style of reformist leader many had hoped for when he assumed power in November 2012. But others will find his speech, which admitted no fault in any of his own policy positions or actions and placed all of the burden on improving the chilly relationship on the United States, wanting to say the least," wrote Scott Kennedy, deputy director of the Freeman Chair in China Studies at the Center for Strategic and International Studies (CSIS) in Washington, after Xi spoke in Seattle.

Xi conceded that China's economy "is also under downward pressure" along with other emerging countries. He said Beijing will take steps to stabilize growth, deepen reform to prevent risks and keep growth at a medium-high speed. He also acknowledged the "abnormal ups and downs" in China's stock market but claimed it was following "inherent laws." He said it is the duty of the government to prevent massive panic from happening. "This time, the Chinese government took steps to stabilize the market and contain panic in the stock market and thus avoided a systemic risk," he told the dinner with business leaders, according to his prepared speech.

Xi suggested that Beijing was finished with the devaluation of the RMB. "Our efforts have achieved initial success in correcting the exchange rate deviation," he said. "Given the economic and financial situation at home and abroad, there is no basis for continuous depreciation of the RMB. We will stick to the purpose of our reform to have the exchange rate decided by market supply and demand and allow the RMB to float both ways," Xi stated. "We are against competitive depreciation or a currency war. We will not lower the RMB exchange rate to stimulate exports," he claimed.

> Xi also tried to dispel business concerns that China was backtracking on its economic reforms. "When it comes to the toughest reforms, only those with courage will carry the day. We have the resolve and the guts to press ahead and take reform forward. We will stick to the direction of market economy reform and continue to introduce bold and result-oriented reform measures concerning the market, taxation, finance, investment and financing, pricing, opening-up and people's livelihood," he asserted.

China still wants to attract foreign investment, he contended. "We will address legitimate concerns of foreign investors in a timely fashion, protect their lawful rights and interests and work hard to provide an open and transparent legal policy environment, an efficient administrative environment and a level playing field in the market, with effective IPR protection in particular, so as to broaden the space of cooperation between China and the United States and other countries," Xi declared.

Not everything Xi said was palliative. He defended what some see as harsh treatment on foreign nonprofit organizations (NPO). "So long as their activities are beneficial to the Chinese people, we will not restrict or prohibit their operations but will protect their operations through legislation and protect their legitimate rights and interests. On their part, foreign NPOs in China need to obey Chinese law and carry out activities in accordance with law," he said. Xi also stressed the paramount role of the Chinese Communist Party. "As I once said, one has to be very strong if he wants to strike the iron. The blacksmith referred to here is the Chinese Communist Party," he said, noting the effort to clean up corruption in the party.

WTO Chief Sets Low Expectations for Nairobi Ministerial

Continuing his bad-news tour, World Trade Organization (WTO) Director-General Roberto Azevêdo downplayed hopes for any big breakthroughs on controversial issues at the WTO's December ministerial in Nairobi, Kenya. Gaps among countries on domestic farm support and market access for industrial goods are still "very big," but there is potential for "meaningful agreement" on export competition in agriculture, transparency provisions, a package for least developed countries (LDCs), and special and differential treatment provisions, he told the Peterson Institute in Washington Sept. 24.

> "We must continue our efforts in domestic support and market access -- it is still difficult, but we cannot give up -- but we also need to start some serious work in the areas that are promising," Azevedo said. "If there are no prospects for a major advance on these issues, members will need to face reality. They will need to think about what they want the WTO to be and how it should work in the future," he added. Azevedo told WTO heads of delegation the same thing Sept. 17 (see **WTTL**, Sept. 21, page 8).

"So far we have been putting that to a later stage, saying, 'Let's tackle the difficult things, and then we do work on things that maybe more promising.' But I don't think we can postpone that conversation any more. Even those promising areas are going to be difficult, so we have to start working on that," he noted. Azevedo was quite candid about the source of the disagreements. "For Nairobi, it's not about economics; it's not about the economic effort or the economic impact that what we have on the table is going to have on the different players, especially the key players. It's about the politics of it; it's about the visibility of what is happening, whether the efforts are proportional, whether, let's say, the subsidizers are contributing in a proportional manner," he said.

> "In this kind of environment, we're all missing the big picture. We're all missing the picture that even if the perfect proportionality is not there, if we treasure the system, if we want to do more with it, if we want to contribute more, if we want to have more things being delivered, you have to sometimes make an effort also on the political sphere," Azevedo pleaded.

U.S., India Talks Produce Mostly More Talk

The first meeting of the U.S.- India Strategic and Commercial Dialogue (SCD) in Washington Sept. 22 produced little of substance and mostly agreements to keep talking in the future. A joint statement issued after the talks didn't appear to satisfy concerns the U.S. business community and members of Congress have raised about India's trade and investment policies, leaving it up to a planned meeting between President Obama and Indian Prime Minister Narendra Modi in New York Sept. 28 to address.

> Among the issues on the SCD agenda was India's participation in multilateral export control regimes. "The U.S. side affirms its support for India's membership in the Missile Technology Control Regime at its upcoming plenary, the Nuclear Suppliers Group, and in the other global nonproliferation export control regimes," the joint statement said.

In addition, the U.S. said it supports India becoming a permanent member of the United Nations Security Council. "Both sides are committed to continued engagement on Security Council reform in the UN Intergovernmental Negotiations (IGN) on Security Council Reform," the two countries said.

The SCD tried to address concerns about the continued difficulty of doing business in India, despite Modi's promised economic reforms. "The sides launched a joint work stream on Ease of Doing Business. They agreed to continue exchanges of information and best practices on cross- border trade, and to continue commercial law-related initiatives on issues like insolvency and contract enforcement, and transparency," the statement said.

Ahead of the meeting, Senate Finance Committee Chairman Orrin Hatch (R-Utah), Ranking Member Ron Wyden (D-Ore.), House Ways and Means Chairman Paul Ryan (R-Wis.) and Ranking Member Sandy Levin (D-Mich.) wrote to Secretary of State John Kerry and Commerce Secretary Penny Pritzker outlining issues that needed to discussed. The lawmakers said Indian the requirement for in-country security testing of telecommunications equipment is "a significant barrier and falls outside international standards."

They also noted India's inadequate protection of intellectual property rights, especially for copyrights and patents for biopharmaceuticals. "In addition, India not only maintains a 50 percent average rate on its bound tariffs but, as part of its 2015 budget, actually raised applied tariffs on information technology products contravening its commitments under the World Trade Organization's Information Technology Agreement," the four wrote. They also complained about non-transparent and discriminatory regulatory and licensing procedures. "The most blatant include a variety of forced localization measures covering products ranging from solar to information technology," they noted.

Separately, in a Sept. 22 letter to Obama, 15 trade associations echoed those complaints about Indian policies. "In order to attract investment, India must begin to put in place policies that provide legal and regulatory certainty for U.S. companies seeking to invest in the market," the groups wrote.

"Moving towards international standards and having workable regulatory systems, including with respect to the development of a new food product approval system, are particularly critical to attracting investment. Improving India's broadband penetration underpins Prime Minster Modi's Digital India project, so it is in India's interest to revise policies that discourage broadband investment like tariffs and onerous testing requirements on imported information and communication technology products," the letter said.

USTR Pushed Toward Transparency on TPP

Congressional approval of trade negotiating authority could be a double-edged sword for the USTR's office. While letting the Obama administration count on getting an up-or-down vote on implementation of the Trans-Pacific Partnership (TPP), the new fast-track law requires normally secretive U.S. negotiators to be more transparent and publish updates and summaries of negotiating objectives.

In that light, the USTR's office released a flashy brochure Sept. 22 containing a "detailed summary" of TPP negotiating objectives as required under the Trade Promotion Authority (TPA) bill that was enacted in June. While some sections include more details than previously released, others just repeat an old summary released in June 2014. For example, the textiles chapter is almost verbatim the previous summary, while other chapters, including services, include some more words, if not more specifics.

Two days later, the office announced that it will host the next TPP ministerial meeting in Atlanta Sept. 30. "Trade ministers and negotiators last met in July and have been making good progress toward resolving the limited number of outstanding issues," it said. TPP chief negotiators will meet just ahead of that from Sept. 26 to 29.

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.), who was one of the TPA sponsors, welcomed the new details the USTR's office released. "These summaries, coupled with the creation of USTR's first-ever Chief Transparency Officer, will begin to reduce secrecy and bring sunlight to trade negotiations," he said in a statement. Tim Reif was named to the new position earlier this month (see **WTTL**, Sept. 7, page 4).

In contrast, some TPP critics, such as the Electronic Frontier Foundation (EFF), are still skeptical about the level of actual substance being provided. "New 'detailed' summary from USTR on its TPP objectives doesn't actually say anything detailed," Maira Sutton, an EFF global policy analyst, tweeted Sept. 22. Separately, 156 members of Congress wrote to President Obama Sept. 25 again urging the U.S. to include strong currency manipulation provisions in the TPP. "The issue with addressing currency manipulation has been a lack of effective enforcement. The WTO commitment is considered too vague for a country to pursue a dispute, and the IMF, while it has clear provisions, lacks an enforcement mechanism. Thus, our ultimate aim is to establish a clear and enforceable currency manipulation discipline. The TPP is the best opportunity to achieve such a discipline," they wrote.

* * * Briefs * * *

STEEL: In 5-0 preliminary votes Sept. 24, ITC found U.S. industry may be injured by allegedly dumped imports of cold certain hot-rolled steel flat products from Australia, Brazil, Japan, Korea, Netherlands, Turkey and UK and subsidized imports from Brazil, Korea and Turkey. Commissioner F. Scott Kieff did not participate in these investigations.

EXPORT ENFORCEMENT: Aiman Ammar and Rashid Albuni of UAE, their companies Engineering Construction & Contracting Co. and Advanced Tech Solutions in Damascus, Syria, and UAE company iT Wave FZCO agreed to pay BIS mostly suspended $7 million civil penalty and received multi-year export denial orders Sept. 21. All were involved in scheme to illegally export and reexport web monitoring and controlling equipment and software to Syria, including to state-run Syrian Telecommunications Establishment (STE), from October 2010 through March 2013. Items were classified under ECCN 5A002 and worth about $1.8 million. Of penalty, all but $250,000 will be suspended for two years then waived if companies and owners commit no further violations. Aramex Emirates, LLC, freight forwarder in Dubai, UAE, agreed to pay BIS $125,000 penalty in May 2014 on related charges (see **WTTL**, June 2, 2014, page 7).

CHEMICAL WEAPONS CONVENTION: Angola became 192nd party to Chemical Weapons Convention (CWC) Sept. 22. "We support Angola's efforts to strengthen the global prohibition against chemical weapons and we offer our technical experts to assist Angola with its national implementation of the treaty as needed," State Spokesperson John Kirby said in statement. U.S "urges the remaining countries not party to the CWC to join the Convention without further delay," he added. Burma became 191st party in July 2015. Somalia and Syria joined in 2013.

TTIP: EU Trade Commissioner Cecilia Malmström met Sept. 22 in Washington with USTR Michael Froman and several administration officials to discuss status of transatlantic trade talks and coming WTO ministerial in Nairobi in December. "We need to intensify the pace of our negotiations. That means stepping up efforts on both sides. Today's meeting took place in a constructive spirit, and we have a good momentum going forward to the next negotiating round. In the technical talks preceding the next round, we will instruct our negotiators to exercise creativity and flexibility in order to achieve progress in all areas," she said in statement after meetings. Next round of TTIP talks is scheduled for Oct. 19.

EX-IM FRAUD: Ricardo J. Beato, co-owner of Miami telecommunications company, was sentenced in Miami U.S. District Court Sept. 25 to one year and day in prison for defrauding Export-Import Bank from 2007 through 2012. Co-owner Jorge Amad was sentenced in August to 24 months in prison (see **WTTL**, Aug. 31, page 7). Freddy Moreno-Beltran, Colombian national, is awaiting sentencing on related charges.

OIL COUNTRY TUBULAR GOODS: CIT Senior Judge Jane Restani sustained in part and remanded in part Sept. 24 Commerce antidumping ruling on oil country tubular goods (OCTG) from Turkey. "Commerce's reliance on the Tenaris 2012 profit margin without a profit cap as the best available information for calculating CV profit is unsupported by substantial evidence and not in accordance with law," she ruled (slip op. 15-107). "Further, Commerce's treatment of the testing and certification requirements for OCTG is problematic," Restani said. "If so-called 'non-OCTG' pipe products meet those testing and certification requirements, it seems that they would be in the same general category as OCTG," she said.