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Administration Pushes TPP as Clock Ticks Down

With only a week before Election Day, the current administration sent its heavy-hitters on the road to convince the public to support the Trans-Pacific Partnership (TPP) trade agreement. In a phone call Oct. 27 with business leaders and reporters, U.S. Trade Representative (USTR) Michael Froman made his oft-repeated pitch that if the U.S. allows TPP to fall apart, China will swoop in and set the rules of modern trade.

Froman added that the administration is working with the House and Senate “to move this package forward at the appropriate time.” Though he declined to give a specific date, he said that TPP can be moved forward under fast track within the next few months.

In an interview with Obama advisor David Axelrod the same day, Secretary of State John Kerry said he’d like to see Congress take up TPP, but only when they can pass it. “I don’t think we should lose it. We need to pass it, and we need to take the time necessary to find the equation where it is that we can pass it, but I think the sooner the better because other countries are waiting on us,” Kerry said.

But criticisms remain of investor-state dispute settlement (ISDS) and biologics protection. Rumors that the administration is working behind the scenes on side letters to extend biologic protections to 12 years prompted a letter from AARP, AFL-CIO, Oxfam America, ConsumersUnion and Doctors Without Borders. “Binding the U.S. and any other TPP party to an international obligation that requires a 12-year exclusivity period would not only undermine your proposal but future proposals to provide no more than seven years of market exclusivity to enable lower cost biosimilars to come to market sooner,” the groups wrote Oct. 26.

Embraer Pays \$205 Million to Settle FCPA Charges

Brazilian aircraft manufacturer Embraer S.A. Oct. 24 agreed to pay more than \$205 million to settle charges of violating the Foreign Corrupt Practices Act (FCPA) between May 2008 and February 2011. The charges involve the bribery of government officials in

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the Dominican Republic, Saudi Arabia and Mozambique and a scheme to pay millions more in falsely recorded payments in India via a sham agency agreement. The global settlement includes \$107 million criminal penalty under a three-year deferred prosecution agreement (DPA) with Justice, as well as \$83.8 million in disgorgement and \$14.4 million in prejudgment interest under a settlement with the Securities and Exchange Commission (SEC). Embraer did not voluntarily disclose the FCPA violations, but did cooperate with the department's investigation after the SEC served it with a subpoena, Justice noted.

"These bribes were authorized by senior executives at Embraer and its subsidiaries while knowing or recklessly ignoring red flags which indicated a high probability that such payments were intended for, or would be passed to, foreign officials," the SEC order noted. "Embraer created false books and records to conceal the authorization of least three bribe payments to at least one government official in the Dominican Republic and another two bribe payments to a government official in Saudi Arabia. Embraer also created false books and records to conceal two bribe payments to a government official in the government of Mozambique," it added.

"Embraer, through its employees, went to great lengths to conceal the existence of the agreement with its agent in India and falsely recorded a payment to this agent in order to conceal the true nature of the payment, which Embraer employees believed were in violation of Indian law, under a different contract serviced in another country which did not, in reasonable detail, accurately and fairly reflect its payments to this agent," the SEC order noted.

"As part of the settlement documentation, the investigation determined that the company was responsible for misdeeds in four transactions between 2007 and 2011 in Saudi Arabia, India, Mozambique and the Dominican Republic. Those transactions involved the sale of 16 aircraft," the company said in a statement. In total, Embraer paid \$11.7 million to government officials or designated agents in the four countries, in connection with \$371 million in contracts.

"The settlement further provides that as long as the terms of the agreements are fully honored, no charges will be brought against the company," the company said in a statement. "From the beginning, Embraer took the matter seriously and fully cooperated with the investigation. As events unfolded, the company voluntarily expanded its scope and shared the results with the appropriate authorities," Embraer added.

WTO Dispute Settlement Body Settled Few Disputes

Old scores and newly simmering conflicts were raised at the World Trade Organization's (WTO) Dispute Settlement Body (DSB) meeting Oct. 26. Fights on the table included China's export restrictions on raw materials, quarrel between the U.S. and India on poultry, large residential Korean washers, gambling and betting services in Antigua and Barbuda, and the Appellate Body membership itself. At the meeting, China rejected the U.S. request that a DSB panel be established to examine China's export restrictions on

raw materials (see **WTTL**, Oct. 17, page 7). The two countries held consultations but failed to reach a resolution, according to the U.S. “China’s persistence in maintaining such export restrictions, notwithstanding our efforts to engage with China on this issue and WTO finding in the two previous disputes is troubling,” the U.S. delegation said in a statement. WTO rules permit a member to block a request for panel once, but it cannot block a second request. The European Union (EU), which filed a similar dispute against China, said it will request the establishment of a panel at the next DSB meeting Nov. 23.

India’s quarrel with the U.S. over a poultry dispute settled in favor of the U.S. continues (see **WTTL**, Oct. 3, page 7). The U.S. has requested WTO authorization to retaliate against India to the tune of \$450 million annually for failure to comply within a reasonable time period. India maintains that it modified its measures in compliance with the DSB ruling and is “disappointed” that the U.S. raised the issue again before the DSB. The U.S. claims that the modifications were made late and “may be substantially more trade restrictive than a measure based on [World Organization for Animal Health] recommendations.”

Though it needs a “reasonable period of time” to implement the DSB ruling in the large residential Korean washers dispute, the U.S. said it “intends to implement the recommendations of the DSB” (see **WTTL**, Sept. 12, page 1). Korea welcomed the statement and urged the U.S. to “take necessary steps to immediately bring its measures into conformity with its obligations under the WTO agreements.”

Antigua and Barbuda was expected to deliver a statement in the ongoing dispute with the U.S. over gambling and betting services but had DSB Chair Xavier Carim withdraw the agenda item (see **WTTL**, Aug. 8, page 6).

Brazil, India, South Korea and Mexico put forth a proposal that would limit Appellate Body appointees to a single term limit. As of now, Appellate Body members are appointed for one four-year term and can be reappointed for another four-year term. The U.S. rejected the idea of single terms. How appointments are handled has been an ongoing discussion since the U.S. blocked the reappointment of Seung Wha Chang (see **WTTL**, Oct. 3, page 7). There are currently two vacancies on the Appellate Body. Carim reminded members that the Appellate Body Selection Committee must make its recommendation by Nov. 10.

UN Embargo Vote Signals New Course on Cuba

For the first time in 24 years, the U.S. abstained in the annual vote at the United Nations (UN) General Assembly Oct. 26 on the necessity of ending the Cuba embargo. While 191 countries voted in favor, the U.S. and Israel abstained rather than vote against the text. This vote is just the latest in a long string of actions the Obama administration has taken to signal a new course on relations with the island (see **WTTL**, Oct. 17, page 1).

“The United States and Cuba must continue to find ways to engage, even as our differences persist. Today, we will take another small step to be able to do that. May there be

many, many more – including, we hope, finally ending the U.S. embargo once and for all,” U.S. Ambassador to the UN Samantha Power told the assembly.

“Abstaining on this resolution does not mean that the United States agrees with all of the policies and practices of the Cuban government. We do not. We are profoundly concerned by the serious human rights violations that the Cuban government continues to commit with impunity against its own people,” she added.

Power also defended the U.S. embargo and rejected the resolution’s text, despite abstaining from the vote. “All actions of the United States with regard to Cuba have been and are fully in conformity with the UN Charter and international law, including applicable trade law and the customary law of the sea. We categorically reject the statements in the resolution that suggest otherwise,” she said.

House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) denounced the action. “Today the Obama administration turned its back on U.S. law and the suffering Cuban people,” Royce said in a statement. “Existing law states that the economic embargo of Cuba will remain until there’s a government in Cuba that releases political prisoners and allows for free and fair elections. The White House has an obligation to uphold and defend the law – whether it likes it or not,” he added.

Senators Want Swift Resolution of U.S.-Canada Lumber Dispute

Stand firm for the U.S. lumber industry, a bipartisan group of 24 senators told President Obama in a letter dated Oct. 21. “We urge you to encourage Canada to fulfill Prime Minister [Justin] Trudeau’s commitment as contained in the Joint Statement and bring the negotiations process to successful conclusion with a new, stable, and sustainable agreement,” reads the letter spearheaded by Sens. Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho).

Per the expired Softwood Lumber Agreement, the U.S. lumber industry had to abstain from filing new antidumping and countervailing duty cases against Canada for one year as negotiators worked to reach a resolution. USTR Michael Froman and Canadian Trade Minister Chrystia Freeland failed to reach a new agreement by the time the standstill agreement expired Oct. 12 (see **WTTL**, Oct. 17, page 2). The U.S. lumber industry maintains that the Canadian government unfairly subsidizes its industry.

The Canadian government, the senators contend, has been “unwilling to put forth or seriously consider proposals” consistent with the Joint Statement issued by Obama and Trudeau. If an agreement cannot be reached “and the U.S. lumber industry exercises its rights to file new trade cases, the U.S. trade laws must be fully enforced to respond to subsidized and dumped Canadian lumber,” they wrote. The U.S. Lumber Coalition said it welcomed the letter.

Commerce Cracks Down in AD and CVD Final Determinations

Commerce unveiled a slew of steel antidumping duty (AD) and countervailing duty (CVD) final determinations Oct. 24, including on certain iron mechanical transfer drive components and circular welded carbon-quality steel pipe, with final margins reaching as high as 401%.

The next day, the International Trade Commission (ITC) in a 6-0 final vote Oct. 25 determined that U.S. industry is materially injured by dumped and subsidized imports of welded stainless steel pressure pipe from India. U.S. imports of welded stainless steel pressure pipe from India in 2015 were \$47.5 million.

Commerce announced its affirmative final determinations in the AD investigations of imports of certain iron mechanical transfer drive components from Canada and China, as well as the CVD investigation of the same products from China. Canadian sole mandatory respondent Baldor Electric Company Canada did not respond to Commerce's request for information, therefore Commerce calculated a final dumping margin of 191.34% using adverse facts available (AFA). All other Canadian producers/exporters were calculated a final dumping margin of 100.47%.

Commerce assessed China's Powermach Import & Export Co., Ltd, at a final dumping margin of 13.54%, gave some separate-rates of 13.64% to other companies and assigned a China-wide dumping margin of 401.68% using AFA. Powermach was calculated a final subsidy rate of 33.26% in the CVD investigation, and Commerce assessed NOK Vibration Control China Co. Ltd, with a final subsidy rate of 163.46%. All other Chinese producers/exporters were assigned 33.26% subsidy rate. Thirty companies that did not respond to Commerce were assessed at 163.46% using AFA. TB Wood's Incorporated of Pennsylvania was the petitioner in these investigations.

Commerce also announced its affirmative final AD determinations for imports of circular welded carbon-quality steel pipe from Oman, Pakistan, the United Arab Emirates (UAE) and Vietnam, and its CVD investigation of the same imports from Pakistan. In the AD investigation, all Pakistani producers/exporters were assessed at the petition rate of 11.8%. In the CVD investigation, all Pakistani producers/exporters were assessed at 64.81% using AFA.

All Oman producers/exporters were assessed at 7.24%. UAE mandatory respondents were assessed at margins of 6.43% and 5.58%, respectively, and Commerce calculated final margin of 5.95% for all other UAE producers/exporters. Mandatory respondent Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd., and Hoa Phat Steel Pipe Co. were assessed at 6.27%, and all other Vietnamese producers/exporters at 113.18% using AFA.

*** * * Briefs * * ***

CHLORINATED ISOCYANURATES: In 6-0 "sunset" vote Oct. 26, ITC said revoking antidumping duty orders on chlorinated isocyanurates from China and Spain would renew injury to U.S. industry.

ARGENTINA: U.S. Trade and Development Agency (USTDA) Oct. 26 announced it is resuming its program in Argentina for first time since 2005. “Following President Mauricio Macri’s commitment to attract major investments in Argentina’s infrastructure development, USTDA will prioritize the advancement of transportation, IT and clean energy projects to support the country’s goals,” agency said in press release. Ex-Im Bank also announced return to country in September (see **WTTL**, Sept. 19, page 6).

EXPORT ENFORCEMENT: UK citizen Ahmad Feras Diri was sentenced Oct. 25 in Scranton, Pa., U.S. District Court to 37 months in prison for role in conspiracy to export lab equipment, portable gas scanner, flowmeters and other items used to detect chemical warfare agents to Syria without licenses. He pleaded guilty in May. “The court does not impose a sentence of supervised release since the defendant will be deported,” court docket noted. Harold Rinko of Hallstead, Pa., was sentenced Oct. 13 to time served (see **WTTL**, Oct. 17, page 7). Indictment against Rinko, Diri and Diri’s brother, Syrian citizen Moawea Deri, along with brothers’ company, d-Deri Contracting & Trading, was unsealed in April 2014. Deri remains at large.

MORE EXPORT ENFORCEMENT: Mansour Moghtaderi Zadeh, Iranian national, pleaded guilty Oct. 27 in D.C. U.S. District Court to conspiracy to unlawfully export goods, technology and services to Iran without required licenses. Zadeh and company Lavantia were covered by October 2007 Temporary Denial Order (TDO) that was issued against Niels and Robert Kraaijpoel and their company, Aviation Services International. After TDO, Zadeh and other conspirators exported and attempted to export \$69,000 worth of numerous materials, including resin, sealant, paint, pneumatic grease, film adhesive and polyurethane coating and thinner. Sentencing is set for December 14. Netherlands firm Cargo-Partner Network B.V. reached settlement with BIS in September 2012 for doing business with Lavantia (see **WTTL**, Oct. 8, 2012, page 3).

STILL MORE EXPORT ENFORCEMENT: Philippine national Kirby Santos was sentenced Oct. 27 in Camden, N.J., U.S. District Court to 24 months in prison followed by three years’ supervised release and \$2,400 fine. He pleaded guilty in October 2015 to 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 (see **WTTL**, Oct.12, 2015, page 11). Co-defendant Jedrek Ong of Lynnwood, Wash., was sentenced Oct. 26 to 12 months in prison, followed by three years’ supervised release, for same charge. He pleaded guilty in February. Abelardo Delmundo of Toms River, N.J., pleaded guilty in April 2015 for his role in scheme and is awaiting sentencing.

PLEASE NO MORE EXPORT ENFORCEMENT: Zavik Zargarian, of Glendale, Calif., and Vache Nayirian of Lakeview Terrace, Calif., were arrested Oct. 26 and charged with International Emergency Economic Powers Act (IEEPA) and Iran sanctions for their role in scheme to purchase and ship jet fighter aircraft parts, including fluorocarbon rubber O-rings, worth more than \$3 million to Iran. Both men entered not guilty pleas and were freed on bond. Also named in indictment are Zargarian’s Glendale-based company, ZNC Engineering, and two Iranian nationals, Hanri Terminassian and Hormoz Nowrouz, both of whom are believed to be in Iran. Indictment originally filed in Los Angeles U.S. District Court in October 2014. Jury trial set for Dec. 20.

ALIBABA: Alibaba platforms should be designated as notorious markets in 2016 Special 301 Out-of-Cycle-Review, AFL-CIO, Auto Care Association and 16 other associations told USTR in letter Oct. 26. Though Alibaba announced steps to stem sales of counterfeit items, letter signatories wrote that they’ve seen “little evidence that there has been any noticeable change on the Alibaba platforms themselves.” American Apparel & Footwear Association requested same from USTR in separate comment Oct. 7 (see **WTTL**, Oct. 17, page 5).

IRAN: Rep. Ed Royce (R-Calif.) expected to introduce 10-year renewal of Iran Sanctions Act of 1996 (ISA) during lame-duck session. ISA expires Dec. 31. “I’ll say what I’ve said before, which is simply that the President and the Treasury Department retain significant sanctions authority that already has been used to impose costs on Iran for their flagrant violation of their international obligations when it comes to their missile program,” White House spokesperson Josh Earnest told reporters Oct. 25. Earnest did not say if Obama would veto ISA renewal bill.

NEPAL: ITC released Oct. 24 public version of confidential report titled “Nepal: Advice Concerning Whether Certain Textile and Apparel Articles Are Import Sensitive.” ITC examined 66 Harmonized Tariff Schedule eight-digit subheadings from Nepal, including luggage, handbags, pocket goods, backpacks, hats, gloves, carpet, shawls and scarves.

TRADE FINANCE: Commerce Secretary Penny Pritzker Oct. 27 appointed 20 inaugural members of Trade Finance Advisory Council (TFAC). Commerce established TFAC in July to advise secretary on “development of strategies and programs that would help expand access to trade finance for U.S. exporters” (see **WTTL**, Aug. 1, page 6). Chris Bozek, managing director of Bank of America Merrill Lynch, will chair council, and Lauren Wilk of National Association of Manufacturers will be vice chair. TFAC’s inaugural meeting will be Nov. 18 in Washington.

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