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Share of U.S.-Origin Goods in NAFTA Trade Declining

On the eve of the next round of NAFTA talks, Commerce officials are using a downward trend in the share of U.S.-produced content in manufactured goods imported from Mexico and Canada as the latest talking point for renegotiating the trade deal. The U.S. share declined in 2011 compared to 1995, the first year for which the data are available and the year after the deal went into effect, according to a Commerce report published Sept. 22.

U.S. share of Mexican imports was only 16% in 2011, down from 26% in 1995, the report noted. The same holds true with Canada: the U.S. share fell to 15% in 2011 from 21% in 1995, according to Organization of Economic Cooperation and Development (OECD) data.

“The declining share of American parts and components in imports from Mexico and Canada is all the more reason for us to take a fresh look at NAFTA,” said Commerce Secretary Wilbur Ross in a statement announcing the report. “The assumption was that American manufacturers of intermediate goods were big beneficiaries from trade with NAFTA, but with their share declining, American companies are not benefiting nearly as much as once believed,” he added.

Ross predicted the decline would continue in more recent trade. “The trend of Mexico and Canada using more non-U.S.-made parts and components may mean even more bad news for American producers,” he added. The pattern is seen in motor vehicles, the U.S.’ largest NAFTA import, where the U.S. share of imports from Canada and Mexico each fell by more than eight percentage points over the same period, the report noted.

Swedish Telecom Firm Pays \$965 Million to Settle FCPA Violations

Sweden-based telecommunications provider Telia Company AB and its Uzbek subsidiary, Coscom LLC, agreed Sept. 21 to pay \$965 million in a global settlement with the

Securities and Exchange Commission (SEC), Justice, Dutch and Swedish law enforcement to resolve charges of violating the Foreign Corrupt Practices Act (FCPA) by paying \$330 million to a repeat-offender government official to win business in Uzbekistan.

“From 2007 to at least 2010, Telia paid bribes to a government official in Uzbekistan in order to obtain and retain business that generated more than \$2.5 billion in revenues for Telia. During the course of the bribery scheme, Telia made at least \$330 million in illicit payments,” the SEC order noted. “The bribe payments were funneled through payments for sham lobbying and consulting services to a front company controlled by the official,” it added.

The Uzbek government official was a family member of the country’s president and “was able to exert significant influence over other Uzbek officials to cause them to take official action that would benefit Telia’s business in Uzbekistan,” the SEC said. “Most of the transactions with Government Official A were denominated in United States dollars, and communications concerning Government Official A were conducted, in part, using electronic mail accounts on United States-based servers.” it added.

The settlement is the second case involving a major international telecom provider and the same Uzbek official. In February 2016, Amsterdam-based VimpelCom Limited and its Uzbek subsidiary, Unitel LLC, admitted to a conspiracy to make more than \$114 million in bribery payments to the same Uzbek government official between 2006 and 2012 (see **WTTL**, Feb. 22, 2016, page 7).

“Telia, whose securities traded publicly in New York, corruptly built a lucrative telecommunications business in Uzbekistan, using bribe payments wired around the world through accounts here in New York City. If your securities trade on our exchanges and you use our banks to move ill-gotten money, then you have to abide by our country’s laws,” Acting U.S. Attorney Joon H. Kim said in a statement.

Telia agreed to pay the SEC \$457 million in disgorgement and a criminal fine of more than \$508 million under a deferred prosecution agreement (DPA) with Justice. The company did not voluntarily self-disclose the violations, but received a 25% mitigation for “extensive remedial measures and cooperation,” Justice noted.

“Today’s settlement brings an end to an unfortunate chapter in Telia Company’s history. Since 2013 the new board and management have worked diligently and responsibly to understand what went wrong, to remedy what has been broken and to regain trust from all our stakeholders,” Telia’s President and CEO Johan Dennelind said in a statement. “The resolution and related financial sanction that we announce today is a painful reminder of what happens if we don’t,” he added.

President Targets North Korea Trading Partners

The day after a confrontational speech at the United Nations (UN) General Assembly, the president Sept. 21 backed up his words with action, issuing an executive order (EO) 13810

targeting North Korean shipping and trade networks, and banking activities of countries that do business with Pyongyang. “This new Executive Order will authorize Treasury to impose a range of sanctions, such as suspending U.S. correspondent account access to any foreign bank that knowingly conducts or facilitates significant transactions tied to trade with North Korea or certain designated persons,” Treasury Secretary Steven Mnuchin told a press briefing at the UN meeting. “Foreign financial institutions are now on notice that, going forward, they can choose to do business with the United States or with North Korea, but not both,” he added.

The EO also authorizes sanctions on persons involved in: the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles or transportation industries in North Korea; ownership, control, or operation of any port in North Korea, including any seaport, airport or land port of entry; or at least one significant importation from or exportation to North Korea of any goods, services or technology, according to a White House fact sheet.

Experts agreed this EO takes sanctions on North Korea in a new direction. The order “differs from most other presidential EOs. It is not hortatory or aspirational. It does not rely on Congressional cooperation or subsequent legislation that may or may not be forthcoming. It is simultaneously precise, detailed and sweeping. We are about to run the most significant experiment in the use of secondary sanctions on North Korea to date, and perhaps the most significant such experiment with respect to any country ever,” Stephan Haggard, visiting fellow Peterson Institute, wrote in a blog post.

At the same time, Treasury issued General License (GL) 10, authorizing vessels and aircraft to land in the U.S. in the case of distress or emergency. It also issued GL 3-A, which superseded a previous GL that allowed entries in certain accounts for normal service charges (see **WTTL**, March 21, 2016, page 3). The agency posted new Frequently Asked Questions (FAQs) explaining how the new EO works with previous sanctions.

House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) welcomed the EO. “I applaud the president for acting consistently with my legislation to cut off the cash that funds North Korea’s nuclear weapons program. Tough enforcement, and additional pressure, will now be critical,” he said in a statement.

U.S., EU Review Privacy Shield Framework

European Union (EU) Justice Commissioner Vera Jourova traveled to Washington Sept. 18-20 to meet with Commerce Secretary Wilbur Ross to review the EU-U.S. Privacy Shield Framework, which formally launched in August 2016. The review’s purpose was to establish whether the arrangement properly secures transfers of personal data from the EU to the U.S.

“The review examined all aspects of the administration and enforcement of the Privacy Shield, including commercial and national-security related matters, as well as broader U.S. legal developments. Participants also discussed their respective work to implement

the Privacy Shield program during its inaugural year, recognizing the value of regular communication between U.S. and EU authorities,” said Ross and Jourova in a joint statement Sept. 20.

The U.S and the EU “share an interest in the Framework’s success and remain committed to continued collaboration to ensure it functions as intended,” they said. To date, more than 2400 companies have joined the framework. A parallel Swiss-U.S. Privacy Shield Framework began accepting self-certifications in April (see *WTTL*, April 17, page 7).

John Frank, VP for EU government affairs at Microsoft, one of the framework’s participants, welcomed the review. “The tough negotiations leading to the Privacy Shield were successful precisely because they were challenging and thorough. They were built on a stronger foundation: Deeper understanding on both sides about the other’s privacy laws and legal protections. And the review process can be expected to include some tough discussions about select issues where more progress would be welcomed. It will be more productive to focus on making progress, rather than insisting on perfection,” he wrote in a blog post Sept. 18.

Two weeks before the review, three U.S. companies -- human resources software company Decusoft, LLC; printing services company Tru Communication, Inc. (doing business as TCPrinting.net); and Md7 LLC, which manages real estate leases for wireless companies -- have agreed to settle Federal Trade Commission (FTC) charges that they misled consumers about their participation in the Privacy Shield framework. The three companies falsely claimed that they were certified to participate in the EU-US Privacy Shield, but in fact failed to complete the certification process, FTC said Sept. 8.

“Today’s actions highlight the FTC’s commitment to aggressively enforce the Privacy Shield frameworks, which are important tools in enabling transatlantic commerce,” said Acting FTC Chairman Maureen K. Ohlhausen said in a statement. “Companies that want to benefit from these agreements must keep their promises or we will hold them accountable,” she said.

Administration Takes Aim at China, WTO

U.S. Trade Representative (USTR) Robert Lighthizer made clear in remarks Sept. 18 that his trade philosophy mirrors that of his boss. In a keynote speech at the Center for Strategic and International Studies, Lighthizer squarely took aim at China, global trade bodies and multilateral trade deals. The next day, his boss echoed those sentiments at the United Nations (UN).

“I believe that there is one challenge on the current scene that is substantially more difficult than those faced in the past, and that is China. The sheer scale of their coordinated efforts to develop their economy, to subsidize, to create national champions, to force technology transfer, and to distort markets in China and throughout the world is a

threat to the world trading system that is unprecedented,” Lighthizer said. He criticized the World Trade Organization (WTO) as being unable to confront China and said the global body was “deficient” in dispute settlement. “The United States sees numerous examples where the dispute-settlement process over the years has really diminished what we bargained for or imposed obligations that we do not believe we agreed to,” said Lighthizer.

He rejected the notion that if the electorate was more informed about trade deals and international bodies, they would support the WTO. “Most of you know that I am not in that group. I agree with the president,” said Lighthizer. He believes the U.S. “must be proactive” and “demand reciprocity in home and in international markets. So expect change, expect new approaches and expect action,” said Lighthizer.

In addition, the president and Lighthizer agree on trade deficits. “One can argue that too much emphasis can be put on specific bilateral deficits, but I think it is reasonable to ask, when faced with decades of large deficits globally and with most countries in the world, whether the rules of trade are causing part of the problem,” the USTR said.

In his UN address Sept. 19, Trump decried unfair trade and multilateral deals. “In America, we seek stronger ties of business and trade with all nations of goodwill, but this trade must be fair and it must be reciprocal. For too long the American people were told that mammoth, multinational trade deals, unaccountable international tribunals, and powerful global bureaucracies were the best way to promote their success,” said Trump, taking a thinly veiled swipe at the WTO.

“But as those promises flowed, millions of jobs vanished and thousands of factories disappeared. Others gamed the system and broke the rules, and our great middle class, once the bedrock of American prosperity, was forgotten and left behind, but they are forgotten no more and they will never be forgotten again,” the president said, harkening back to his campaign stump speeches.

On NAFTA, Lighthizer refused to comment on the possibility of a sunset provision raised by Commerce Secretary Wilbur Ross. Despite the “warp speed” pace of negotiations it’s not clear where exactly the negotiating teams are headed. “We’re moving at warp speed, but we don’t know whether we’re going to get to a conclusion, that’s the problem. We’re running very quickly somewhere.”

Labor Dispute May Boost Use of Confidential Information

Deliberations during a seminal trade dispute over the effect of labor law enforcement were hamstrung by the need to protect confidential information and raised concerns over the effectiveness of litigation over cooperation, trade experts said Sept. 19. The speakers participated in a panel discussion in Geneva on the dispute between the U.S. and Guatemala over labor enforcement’s effect on competition and trade under the Dominican Republic-Central America- U.S. Free Trade Agreement (CAFTA- DR).

The case was the first dispute that has litigated a labor provision, said Colette van der Ven, an attorney at Sidley Austin in Geneva. Only one labor provision in the FTA, on the “obligation not to fail to effectively enforce labor laws,” is enforceable, she said. The case prompted complaints over both the findings and the nearly ten years to conclude (see *WTTL*, July 3, page 2).

The U.S. first raised concerns over perceived violations in Guatemala’s enforcement of labor law in 2008 and requested an arbitration panel in 2011, van der Ven said. Guatemala needed time for consultations and to address concerns, she added.

In describing the case’s importance to future disputes, speakers cited the use (or lack thereof) of confidential information. The case was “stunning” in part “because it was decided based on redacted information,” noted Joost Pauwelyn, senior fellow at the Graduate Institute of International and Development Studies. Nondisclosure also hindered the U.S. case and could adversely affect future deliberations, he said. Procedures for sharing confidential information with a panel, without fear of retaliation, should be considered in the future, Pauwelyn said.

In fact, the panel’s “factual findings” were based on “anonymous statements,” said Marco Molina, an attorney for Guatemala in the case. Neither the panel nor Guatemala was able to cross examine witnesses, he said. Linking an anonymous statement to a redacted document is “very easy,” therefore the panel’s factual findings do not definitively show the presence of serious labor law violations, Molina said.

Speakers also questioned the effectiveness of litigation in resolving differences over labor issues that affect trade. The meaning of “in a manner affecting trade” between FTA parties was a substantive crux of the dispute, Pauwelyn. Future negotiators may refer to the decision when interpreting the meaning of what affects trade or investment, he said.

U.S. trade unions and European non-government organizations have and will continue use the case to argue for even tougher enforcement dispute-settlement mechanisms in trade agreements, Pauwelyn said. The collaborative approach for addressing labor issues in other FTAs may have reached a limit, he said. In contrast, the European Commission suggested the case vindicates its softer approach to finding solutions through collaboration with trade unions, civil society and other groups, Pauwelyn said.

Before the case, Guatemala implemented almost all U.S. demands “through different [signed] action plans,” said Molina, who is now deputy chief at that country’s WTO mission. Some actions that were not taken were legislative amendments that had been deemed unconstitutional, he added. Guatemala continued to make systemic improvements, but cooperation stopped the moment the U.S. turned to litigation, Molina noted.

Another concern was the cost of litigation, especially to a developing country. Guatemala could have made significant progress on labor standards if it had been able to access funds spent on nine years of litigation, Pauwelyn said.

* * * **Briefs** * * *

PIPE: In “sunset” votes Sept. 19, ITC said revoking antidumping duty orders on imports of carbon and alloy seamless standard, line and pressure pipe from Japan and Romania would renew injury to U.S. industry. Vote was 4-0 for Japan, 3-1 for Romania; Commissioner Meredith Broadbent voted no.

PAPER: In 4-0 preliminary vote Sept. 22, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of certain uncoated groundwood paper from Canada.

EX-IM BANK: White House Sept. 15 announced intent to nominate Claudia Slacik and Judith Delzoppo Pryor to be Ex-Im Bank board members. Former President Obama renominated Slacik in January (see **WTTL**, Jan. 9, page 4). Slacik was bank’s senior VP for export finance from 2013 to May 2016... At same time, President Trump announced intent to nominate Kimberly Reed to be Ex-Im Bank first VP. Reed most recently was president of nonprofit International Food Information Council Foundation. Aerospace Industries Association (AIA), which opposes Scott Garrett’s nomination as Ex-Im chairman, applauded board nods. “This group exhibits the track record of leadership and belief in the mission of the Bank to restore it to full functionality,” AIA said in statement.

CUBA: U.S. and Cuba held sixth Bilateral Commission meeting in Washington Sept. 19, first since administration reversed Cuba policy in June (see **WTTL**, June 19, page 1). Deputy Assistant Secretary of State for Western Hemisphere Affairs John Creamer led U.S. delegation. Josefina Vidal, Foreign Ministry’s director general for U.S. affairs, led Cuban delegation. “The Cuban delegation placed on record its rejection of measures designed to intensify the U.S. blockade and to interfere with the Cuban internal affairs, the use of confrontational rhetoric and the political manipulation of the human rights issue as a pretext to justify U.S. policies,” Cuban Foreign Ministry said in statement.

EXPORT ENFORCEMENT: Gregory Allen Justice, of Culver City, Calif., was sentenced Sept. 18 in Los Angeles U.S. District Court to 60 months in federal prison. He pleaded guilty in May to economic espionage and violating Arms Export Control Act (see **WTTL**, May 29, page 9). In March 2016, Justice provided sensitive satellite materials to person that he believed was Russian government agent, when in fact that person was undercover FBI employee. Justice worked for cleared defense contractor as engineer on military and commercial satellites, Justice sentencing memo noted. Defendant “handed over thumb drives containing trade secrets and technical data controlled for export from the United States related to military satellites, which files defendant had downloaded from his employer’s computer network just before each meeting,” memo noted.

MORE EXPORT ENFORCEMENT: Federal indictment was unsealed Sept. 6 in Cleveland U.S. District Court against Canadian firm IC Link Industries, LTD. and three Iranian or dual citizens on charges of exporting industrial goods to Iran without OFAC licenses. Goods included valves, air conditioner parts, and diaphragm meters. Parisa Mohamadi, dual U.S-Iran citizen, who operated Intelligent Solutions FZCO, import/export business registered in UAE, remains in custody. All others are at large. Jury trial is set for Oct. 23.

AGRICULTURE: Sens. Joni Ernst (R-Iowa), Angus King (I-Maine), Joe Donnelly (D-Ind.) and Susan Collins (R-Maine) Sept. 19 introduced Cultivating Revitalization by Expanding American Agricultural Trade and Exports (CREAATE) Act (S.1839). Bill follows House version (H.R. 2321), introduced in May (see **WTTL**, May 8, page 6). Bills would double funding for Market Access

Program (MAP) and Foreign Market Development (FMD) program over five years. Funding for MAP has remained static since 2006, and FMD funding has remained static since 2002, while inflation has increased, House bill notes. Agriculture industry applauded bill. “These are programs that yield exponential benefits for farmers and for our economy, generating almost \$30 in net return for every dollar invested,” American Soybean Association (ASA) Vice President John Heisdorffer said in statement.

MORE AGRICULTURE: Senate Agriculture Committee held hearing Sept. 19 for Ted McKinney to be first Agriculture under secretary for trade and foreign agricultural affairs. In opening statement, McKinney promised to “quickly establish” priority list of trade deals. “No doubt it will include NAFTA, China, Japan, Korea, Taiwan, EU, Latin America, and others. If confirmed, I look forward to diving into these trade agreements with sister agencies to bring these to fruition as quickly as possible,” he said (see **WTTL**, Aug. 7, page 7).

NAFTA: Committee to Support U.S. Trade Law (CSUSTL) Sept. 19 called for end of NAFTA Chapter 19. “The time for Chapter 19, if there ever was one, has passed. The United States must demonstrate confidence in its laws, and in its judicial system to insure [sic] that those laws are faithfully executed, by ending the failed experiment,” CSUSTL noted in position paper. In separate statement Sept. 20, CSUSTL called on Lighthizer to “press for an enforceable and effective discipline to deter currency manipulation in the updated NAFTA agreement.” NAFTA renegotiation talks are set to continue in Ottawa, Canada, Sept. 23-27.

MORE NAFTA: Twenty-three music organizations Sept. 19 urged USTR Robert Lighthizer to ensure NAFTA protects U.S. creators. “Unfortunately, as you work to bring NAFTA into the modern age, there are interest groups working for a backward-looking agenda in their own narrow financial interest at the expense of America’s national interests – economic, employment and cultural. This harmful agenda is contrary to our country’s historic support for true creators and their property rights, and it would prevent fair competition in the digital marketplace,” organizations wrote. Tech groups Aug. 31 sent letter to Lighthizer advocating for “safe harbor” provision of Digital Millennium Copyright Act of 1998 to be incorporated into NAFTA.

SPECIAL 301: USTR Sept. 15 initiated Special 301 out-of-cycle review of Thailand “due to positive steps the country has taken regarding intellectual property (IP).” Announcement came as USTR Lighthizer met with Thailand’s Commerce Minister Apiradi Tantraporn in Washington. Thailand was placed on Priority Watch List in 2017 Special 301 report, though U.S. noted at time Thailand continued to take positive action on IP protection (see **WTTL**, May 1, page 6). Thailand also acceded to Protocol Relating to Madrid Agreement Concerning the International Registration of Marks in August 2017. Public comments are due Oct. 20.... In Sept. 25 Federal Register, USTR also began out-of-cycle review of Colombia. Public comments are due Oct. 20.

RUSSIA: Former Utah Gov. Jon Huntsman, Jr. Sept. 19 sailed through confirmation hearing to be U.S. ambassador to Russia. “While I am confident that my previous experience does prepare me for the sensitive diplomatic mission, I am under no illusion that serving as the U.S. ambassador to the Russian Federation will be easy or simple,” he said. Huntsman’s nomination sent to Senate in July (see **WTTL**, July 24, page 10). He previously served as ambassador to China (2009-2011) and Singapore (1992-1993) and is chairman of Atlantic Council.

LABOR: End foreign labor practices that hurt U.S. workers, ranking members of Senate Finance and House Ways and Means committees and trade subcommittees told Labor Secretary Alexander Acosta, Secretary of State Rex Tillerson and USTR Robert Lighthizer in letter Sept. 19. Sens. Ron Wyden (Ore.) and Robert Casey (Pa.) and Reps. Richard Neal (Mass.) and Bill Pascrell (N.J.) called

on administration to end cuts to labor enforcement staff and resources, seek “ambitious, enforceable” labor rights from Mexico in ongoing NAFTA negotiations, and take “decisive enforcement action” against countries that don’t meet labor obligations.

SOLAR: ITC Sept. 22 voted 4-0 to continue Section 201 global safeguard petition filed by Suniva Inc. and SolarWorld Americas, Inc. (see **WTTL**, Aug. 21, page 2). In 3-1 vote, commissioners made negative finding on imports from Canada. Commission will hold remedy hearing Oct. 3. Not surprising, petitioners commended vote, while industry groups were disappointed. “On behalf of the entire solar cell and panel manufacturing industry, we welcome this important step toward securing relief from a surge of imports that has idled and shuttered dozens of factories, leaving thousands of workers without jobs,” said SolarWorld CEO and president Juergen Stein. “The facts presented made it clear that the two companies ...were injured by their own history of poor business decisions rather than global competition, and that the petition is an attempt to recover lost funds for their own financial gain at the expense of the rest of the solar industry,” said Energy Trade Action Coalition (ETAC) Spokesperson Paul Nathanson said in statement.

KORUS: Second special session of U.S.-Korea Free Trade Agreement (KORUS) will take place Oct. 4 in Washington, USTR Lighthizer announced Sept. 22. Korean Trade Minister Kim Hyun-chong met with Lighthizer in Washington Sept. 20 and requested second session in letter. “It is my hope that both sides will endeavor to engage in discussion with an open mind with a view to maximizing the mutual benefits of the KORUS FTA,” wrote Kim. First session was held Aug. 22 in Seoul (see **WTTL**, Sept. 4, page 5).

WTO: WTO Dispute Settlement Body (DSB) Sept. 22 agreed to establish dispute panel concerning China’s tariff rate quotas (TRQs) for wheat, rice and corn. China blocked first U.S. request for panel in August (see **WTTL**, Sept. 4, page 6). U.S. first filed for consultations in December 2016. At DSB meeting, China said it was disappointed by U.S. challenge to “legitimate measures with respect to vital agricultural staples.”

ENTITY LIST: BIS in Sept. 25 Federal Register removes three entities from Entity List. Removals include Vortex Electronics in Australia; China National Commercial New Tone Trading Company Ltd. in China; and FIMCO FZE in Iran and UAE. Rule also provides additional or modified addresses and/or names for five existing entries in Pakistan. FIMCO was ordered in January 2016 to pay \$100,000 criminal fine for conspiracy to smuggle lathe machine, also known as bar peeling machine, to Iran via UAE in June 2012 without license (see **WTTL**, Jan. 11, 2016, page 6).

INSURANCE: Treasury and USTR Sept. 22 signed covered agreement with European Union (EU) that covers reinsurance, group supervision and exchange of insurance information between supervisors. Agencies announced completion of negotiations in January (see **WTTL**, Jan. 16, page 12). “U.S. and EU insurers operating in the other’s markets will only be subject to worldwide prudential insurance group oversight by supervisors in their home jurisdiction,” joint U.S.-EU statement said. Negotiations began in February 2016.

AIRCRAFT: Canadian Prime Minister Justin Trudeau raised stakes in ongoing Bombardier-Boeing dispute Sept. 18, telling reporters he’s willing to scrap plan to purchase 18 Boeing fighter jets if Washington state-based company doesn’t back down. “We have obviously been looking at the Super Hornet aircraft from Boeing as a potential significant procurement of our new fighter jets, but we won’t do business with a company that’s busy trying to sue us and trying to put our aerospace workers out of business,” Trudeau said. State puts purchase cost of 18 Super Hornet jets and associated arms package at \$5.23 billion. Boeing filed petitions at Commerce and ITC in April against imports of 100- to 150-seat large civil aircraft from Canada (see **WTTL**, Sept. 18, page 5).