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India Joins Australia Group

Moving one step closer to full participation in international export control regimes, India Jan. 19 became the 43rd member of the Australia Group (AG) on chemical and biological weapons. “India’s entry into the Group would be mutually beneficial and further contribute to international security and non-proliferation objectives,” India’s External Affairs Ministry said in a statement.

“With its admission into the AG, India has demonstrated the will to implement rigorous controls of high standards in international trade, and its capacity to adapt its national regulatory system to meet the necessities of its expanding economy,” the group said in a formal statement. “India is also aware of the need to constantly adapt its export controls in the face of rapidly evolving scientific and technological challenges, and in this regard, affirmed its readiness to act in close cooperation with all members towards the furtherance of Australia Group objectives,” it added.

“Congratulations India on joining the #AustraliaGroup! This is another great milestone. We look forward to further successes in area of export controls,” U.S. Ambassador to India Kenneth Juster tweeted. In his first official speech a week prior, Juster repeated support for the country’s participation in all four multilateral control regimes including the remaining Nuclear Suppliers Group (see **WTTL**, Jan. 15, page 9). India joined the Wassenaar Arrangement in December and the Missile Technology Control Regime in June 2016.

U.S. Slams Russian, Chinese WTO Compliance

While previous administrations may have criticized China’s behavior in specific trade sectors, and filed numerous cases against particular policies, officials praised Beijing’s general move toward economic opening. In contrast, the current U.S. Trade Representative (USTR) is questioning China’s very accession into the World Trade Organization (WTO). “China has used the imprimatur of WTO membership to become a dominant

player in international trade. Given these facts, it seems clear that the United States erred in supporting China's entry into the WTO on terms that have proven to be ineffective in securing China's embrace of an open, market-oriented trade regime," noted the USTR in its annual report to Congress released Jan. 19.

Released at the same time, the annual reports on China's and Russia's WTO compliance found both countries lacking and that neither country has embraced "market-oriented economic policies." China particularly "is determined to maintain the state's leading role in the economy and to continue to pursue industrial policies that promote, guide and support domestic industries while simultaneously and actively seeking to impede, disadvantage and harm their foreign counterparts, even though this approach is incompatible with the market-based approach expressly envisioned by WTO members and contrary to the fundamental principles running throughout the many WTO agreements," it noted.

Russia continues to ban nearly all agricultural goods from the U.S., and "notwithstanding a few tariff reductions, Russia increasingly appeared to turn away from the principles of the WTO, instead turning inward through the adoption of local content policies and practices," USTR said.

"[As] these two reports show, the global trading system is threatened by major economies who do not intend to open their markets to trade and participate fairly. This practice is incompatible with the market-based approach expressly envisioned by WTO members and contrary to the fundamental principles of the WTO," USTR Robert Lighthizer said in a statement.

In specific disputes at the trade body, the U.S. found you win some, you lose some. The U.S. took a hit from China at the WTO following a poultry victory Jan. 18. The next day, a WTO arbitrator gave the U.S. seven more months to come into compliance with recommendations in a dispute with China over its antidumping methodologies.

The Appellate Body found in May 2017 that Commerce acted inconsistently with several articles of the WTO's Anti-Dumping Agreement (see **WTTL**, June 26, 2017, page 7). Arbitrator Simon Farbenbloom determined 15 months as the reasonable period of time for the U.S. to implement the ruling, setting a deadline of August 22. The arbitrator's ruling falls short of the 24 months the U.S. requested, but is longer than the six months China wanted.

It was the U.S. turn for a victory Jan. 18 when a WTO panel mostly upheld U.S. claims that China failed to comply with a previous ruling that found an investigation completed by China's Ministry of Commerce (MOFCOM) was not carried out in accordance with WTO rules. As a result, imports of broiler products from the U.S. were hit with unfair antidumping and countervailing duties.

Additional MOFCOM determinations led to even more duties that violate the WTO's Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures Agreement. Those determinations impacted American companies including Tyson,

Pilgrim's Pride and Keystone. Per their prior agreement, the U.S. and China have 20 days to decide whether to appeal the compliance panel's findings.

S.C. Senator Places Hold on Trade Nominees

In a stunning turn of events, just as a confirmation hearing on two deputy USTR nominees was wrapping up Jan. 17, Sen. Tim Scott (R-S.C.) dropped a bombshell that he intended to hold all trade nominees until USTR Robert Lighthizer proves more responsive to Scott's questions. USTR soon tried to smooth things over, but the hold remains.

C.J. Mahoney and Dennis Shea were sailing through the Finance Committee hearing when Scott made his announcement. He said Lighthizer had promised during his own hearing to be "open, transparent and available" but when Scott placed a call to Lighthizer, he was "met with crickets." "So while you both, I think, are very qualified, I will be putting a hold on your nominations until I find more responsiveness from Mr. Lighthizer," the senator said.

USTR quickly got the message. "The Senator was looking for more engagement on trade issues involving South Carolina. Ambassador Lighthizer came by the office in person about 20 minutes after the hearing ended Wednesday morning. The Senator's stance on USTR nominees remains the same for the time being," said Scott's spokesperson in an email to WTTL. Should Scott change his mind, Mahoney and Shea should easily be voted through the committee.

In another mini-bombshell, Ranking Member Ron Wyden (D-Ore.) pledged his support and informed Mahoney that, in addition to overseeing investment, services, labor, environment, Africa, China and the Western Hemisphere, he will also take the reins as chief USTR transparency officer. The controversial position is responsible for keeping the public aware of the status of trade negotiations. "You are going to be the transparency point person," said Wyden, who said Lighthizer had conferred with him minutes before the hearing began. The previous transparency officer was also the general counsel, which observers thought was the least transparent position in the USTR's office.

Both nominees talked tough on China. Shea, a member of the U.S.-China Economic and Security Review Commission, said the non-market economy case before the WTO is important to all sectors of the U.S. economy. "WTO members did not agree that after a certain period of time market conditions would automatically be deemed to exist in China, regardless of what the facts on the ground might reveal. And as you well know, the facts on the ground in China reveal a non-market economy," said Shea (see related story, page 1). He anticipates that his role as U.S. ambassador to the WTO will be focused on reform.

Mahoney committed to brief the committee within 30 days of confirmation on plans to improve transparency and to address China's trade transgressions. "Ultimately, we need to bring China to the table to negotiate a political solution to some of these issues. But it's going to take a change in the negotiating dynamic in order for us to achieve the kind of

progress we need,” he told Wyden. Both nominees agreed that currency manipulation should be addressed in trade agreements. “I hope we get a currency provision in NAFTA that hopefully will serve as a template for other trade agreements,” said Mahoney, though he demurred on some specific questions about the ongoing negotiations as he’s not yet part of the team.

NAFTA Negotiations Will Stretch to Extra Day

The next round of NAFTA renegotiations, which are expected to be contentious, have been extended by one day, Canada confirmed Jan. 18. Originally the talks were scheduled to take place in Montreal Jan. 23-28, but will extend to the 29th, when Canadian Foreign Minister Chrystia Freeland, USTR Robert Lighthizer and Mexican Economy Secretary Ildefonso Guajardo will meet.

Rep. Dave Reichert (R-Wash.), chair of the House Ways and Means Committee trade subcommittee, will lead a congressional delegation to the meeting, a committee spokesperson confirmed in an email to WTTL. Details of the delegation’s composition and goals will be released closer to the trip.

President Trump threw a bit of fuel on the fire in an interview with Reuters Jan. 17. “We’re renegotiating NAFTA now. We’ll see what happens. I may terminate NAFTA. A lot of people are going to be unhappy if I terminate NAFTA. A lot of people don’t realize how good it would be to terminate NAFTA because the way you’re going to make the best deal is to terminate NAFTA. But people would like to see me not do that,” he said.

One of those groups that would not like to see the deal’s termination is the agricultural sector. Americans for Farmers & Families (AFF), a new coalition of more than 30 organizations representing growers, refiners, producers, transporters and retailers, will launch a “robust educational campaign” highlighting NAFTA achievements for Americans, the group said in a press release announcing its formation Jan. 17. During a speech at the American Farm Bureau Federation (AFBF) Annual Convention in January, Trump barely mentioned NAFTA (see **WTTL**, Jan. 15, page 5).

“NAFTA has opened markets for America’s farmers and ranchers, and U.S. agricultural exports to Canada and Mexico have quadrupled under the agreement,” AFBF President Zippy Duvall, an AFF leader, said in a statement. “The current negotiations should build on that success. Farm Bureau is pleased to work with AFF as well as Farmers for Free Trade and other collaborative efforts to engage farmers and leaders at the local, state and national levels and deliver that message to Congress and the President,” he added.

Industry Applauds MTB Passage

After years of lobbying Congress, manufacturers hailed the bipartisan House passage Jan. 16 of the Miscellaneous Tariff Bill (MTB) Act of 2018 (H.R. 4318) in a 402-0 voice vote. The

bill has since moved to the Senate Finance Committee for consideration. “Over seven years have gone by since the last time Congress passed MTB legislation. Today’s decisive and overwhelmingly bipartisan vote brings us one crucial step closer to providing much-needed tariff relief for American job creators. I strongly encourage the Senate to pass this legislation as soon as possible and join the House in taking action to help our manufacturers and workers compete and win,” House Ways and Means Committee Chair Kevin Brady (R-Texas) said in a statement.

Industry, which had urged Congress last year to move quickly on the legislation, applauded the passage (see **WTTL**, Dec. 11, page 8). “While it may not make headlines, this is a top story and a big deal for manufacturers. Manufacturers and other businesses face what amounts to a nearly \$1-million-a-day tax every additional day this issue goes unresolved,” National Association of Manufacturers (NAM) President and CEO Jay Timmons said in a statement.

“That’s thanks to billions of dollars in burdensome tariffs that companies have had to pay since the last MTB expired at the end of 2012, just for buying the supplies they need to build products in America,” Timmons added. The same day NAM told Congress in a letter that “votes on H.R. 4318, including procedural motions, may be considered for designation as Key Manufacturing Votes in the 115th Congress.”

The American Apparel & Footwear Association (AAFA) also welcomed the news. The MTB bill is “bipartisan and provides much-needed duty relief on products and inputs that are not available domestically. Our business community is firmly behind this bill, because it has a defined purpose and will be helpful on all counts,” said AAFA President and CEO Rick Helfenbein in a statement.

CFIUS Bills Could Overstep Security Concerns

New legislation to update the jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS) to address national security risks from China is causing concern among industry, especially in technology and venture capital sectors, according to witnesses at a Senate Banking Committee hearing Jan. 18.

Rep. Robert Pittenger (R-N.C.) and Sen. John Cornyn (R-Texas) in November introduced the Foreign Investment Risk Review Modernization Act of 2017 (H.R.4311/S. 2098), which would expand the definition of covered transactions to include joint ventures, minority position investments, and real estate transactions near military bases and other sensitive national security facilities, among other provisions.

At the hearing, Chris Padilla, former Bureau of Industry and Security (BIS) Assistant Secretary and currently vice president, government and regulatory affairs at IBM, said industry’s main concern is the provision on joint ventures: “(v) The contribution (other than through an ordinary customer relationship) by a United States critical technology company of both intellectual property and associated support to a foreign person through

any type of arrangement, such as a joint venture, subject to regulations prescribed under subparagraph (C).” Padilla called the provision “a serious flaw in the bill that would duplicate and seriously undermine the existing U.S. export control regime, result in a flood of cases that would quickly overwhelm the Committee, and could constitute the most economically harmful imposition of unilateral trade restrictions by the United States in many decades.”

The committee is scheduled to hold another hearing Jan. 23 with current BIS Assistant Secretary Richard Ashooh, along with Treasury and Defense officials. Ashooh previously noted that his agency already devotes much of its time to CFIUS cases, and the legislation “would dramatically change that caseload even beyond its historical high,” he said (see **WTTL**, Dec. 18, page 3).

In contrast, Padilla said, the bill does fill gaps left in the CFIUS umbrella, most notably, application to real estate transactions near sensitive military sites; considering non-passive, but non-controlling investment; and requiring senior-level review from every agency. Instead of legislation, Padilla urged Congress to demand updates to the export controls, specifically Defense’s Militarily Critical Technologies List that has not been updated in several years. He cited quantum computing and blockchain as technologies that do not appear on the outdated list.

Cornyn appeared first in front of the hearing to rebut some criticisms of the bill. “Our export control system does not address the problem because the diversion of U.S. dual-use technologies is no longer just a risk, but a foregone conclusion. It is safe to assume that China will divert the fruits of any U.S. company’s cooperation with China to a military end-use. It would be foolhardy to think these capabilities are not making their way into the hands of the Chinese military,” he said in his prepared testimony.

Colorado Companies Seek Investigation of Uranium Imports

Two uranium companies Jan. 16 jointly submitted a Section 232 petition to Commerce for relief from imports of uranium products that threaten national security. Commerce is required to launch an investigation, and Commerce Secretary Wilbur Ross has 270 days from the start of an investigation to prepare a report for the president.

In their petition, Colorado firms Energy Fuels Inc. and Ur-Energy Inc. claim that “imports of uranium from state-owned and state-subsidized enterprises in Russia, Kazakhstan and Uzbekistan now fulfill nearly 40% of U.S. demand, while domestic production fulfills less than 5%.” They also warn of increasing nuclear fuel exports from Russia and China.

The petitioners seek import quotas, effectively reserving 25% of the U.S. nuclear market for U.S. uranium production. They further suggest a requirement for federal utilities and agencies to buy U.S. uranium in accordance with the administration’s Buy American policy. The two remedies would result in U.S. utilities purchasing 12 million pounds of uranium per year, the companies predict.

In a 1989 Section 232 investigation, what seems several lifetimes ago, Commerce determined that uranium imports were not threatening national security (see **WTTL**, Oct. 30, 1989, page 4). At that time, most imports came from Canada and Australia and defense needs could be met from stockpiles, the department found.

“Without a viable nuclear fuel cycle, the commercial and nuclear capabilities of the U.S. will be diminished, and the nation is likely to become 100% dependent on foreign parties that compete with the U.S. for geopolitical influence and commercial advantage to fuel a majority of our clean, baseload electricity,” the petitioners wrote.

“Further, international treaties require that the uranium necessary for defense programs be sourced from the U.S. Unless steps are taken now to foster a healthy domestic uranium mining industry, the defense stockpiles currently held by the DOE [Department of Energy] will be depleted, and it is unlikely that domestic producers will have sufficient capabilities to meet our defense needs in the future,” they added.

Korea Seeks Retaliation Against U.S. at WTO

Korea is seeking \$711 million in annual sanctions over U.S. non-compliance in the ongoing WTO Dispute Settlement Body (DSB) case on antidumping and countervailing measures on large residential washers from Korea.

The DSB adopted the Appellate Body report in September 2016 and found that U.S. measures are inconsistent with some WTO obligations. An arbitrator determined a reasonable amount of time for the U.S. to implement the DSB recommendations was 15 months, expiring Dec. 26, 2017 (see **WTTL**, Oct. 30, 2017, page 7). Korea says the U.S. has failed to comply in the reasonable period of time agreed by both parties.

On this basis, Korea requests “authorization to suspend concessions and related obligations” at an annual amount of \$711 million with respect to the U.S.’ “non-compliance with ‘as applied’ recommendations and rulings” in the case. “This amount will be adjusted by applying the annual growth rate of the washing machines market of the United States,” Seoul wrote in its communication Jan. 11.

“In addition, Korea requests authorization to suspend concessions and related obligations at an annual level based on a formula commensurate with the trade effects to be caused to exports from Korea other than washing machines by the United States’ non-compliance with ‘as such’ recommendations and rulings. This request is to reflect the possible nullification or impairment Korea will suffer if the ‘as such’ violation continues to exist and apply to other exports from Korea in the future,” it added.

A U.S. communication to the DSB chairperson the same day noted that the USTR requested Commerce initiate a proceeding to address the DSB’s recommendations. Commerce initiated the proceeding Dec. 18, 2017, and on Dec. 21, 2017, Commerce issued

questionnaires to “interested parties” for additional information. “The United States continues to consult with interested parties on options to address the recommendations of the DSB relating to anti-dumping measures challenged in this dispute,” the U.S. noted.

* * * **Briefs** * * *

WELDED PIPE: American Line Pipe Producers Association filed countervailing and antidumping duty petitions Jan. 17 with ITA and ITC against imports of certain large diameter welded pipe from Canada, Greece, India, China, Korea and Turkey.

CBP: Senate Finance Committee Jan. 17 advanced nomination (again) of Kevin McAleenan to be Customs and Border Protection (CBP) commissioner via voice vote. McAleenan has been acting commissioner since January 2017 and previously served as deputy commissioner. President Jan. 8 sent Senate renomination (see **WTTL**, Jan. 15, page 7).

EXPORT ENFORCEMENT: Phoenix electronics distributor MHz Electronics, Inc agreed Jan. 11 to \$10,000 civil penalty to settle two BIS charges of exporting two pressure transducers to China and Taiwan via eBay without BIS licenses in 2013. Items were classified under ECCN 2B230, controlled for nuclear nonproliferation and “can be of significance for nuclear explosive purposes.” Penalty will be suspended for two years then waived if MHz commits no further violations.

EX-IM FRAUD: Luyi Victor Ogebor, aka Victor Luyi Ogebor and Luyi Victor Ogbebor, owner of Aegis Trading and Shipping Company of Country Club Hills, Ill., pleaded guilty Jan. 17 in Chicago U.S. District Court to false claims in scheme to defraud Ex-Im Bank of \$150,000. He was indicted in August 2016 (see **WTTL**, Aug. 15, 2016, page 6). In August 2011, Ogebor filed claim indicating that international customers had defaulted on payment guaranteed by Ex-Im bank, knowing that claims were “false, fictitious and fraudulent,” plea agreement noted. Sentencing is set for May 23.

FALSE CLAIMS: Bassett Mirror Company of Bassett, Va., agreed Jan. 16 to pay \$10.5 million to settle government complaint in Savannah U.S. District Court under False Claims Act. Suit claimed company engaged in scheme to evade antidumping duties on wooden bedroom furniture imported from China from 2009 to 2014. “Changing consumer tastes in recent years increased demands for multi-function items suitable for use in many areas of a home, including hallways, living rooms and bedrooms,” company said in statement. “This transformative environment created a significant disagreement between our company and the Justice Department on what qualified as ‘bedroom furniture’ under the anti-dumping order,” Bassett Mirror President Lewis Canter noted. Whistleblower Kelly Wells, online furniture retailer, will receive \$1.9 million as her share of settlement. In related case, Los Angeles-based Z Gallerie LLC agreed in April 2016 to pay \$15 million to settle government complaint (see **WTTL**, May 2, 2016, page 8).

AGOA: House Jan. 17 passed AGOA and MCA Modernization Act (H.R. 3445) by voice vote. Bill introduced by Rep. Ed Royce (R-Calif.) strengthens African Growth and Opportunity Act and Millennium Challenge Act by making AGOA information available on “an easily accessible public website,” urging U.S. embassies in eligible countries to promote AGOA and seeking greater transparency to commitments made at AGOA forums. Senate Foreign Relations Committee approved companion bill (S. 832) in October.

SCHOOL SUPPLIES: In 4-0 “sunset” vote Jan. 19, ITC said revoking countervailing and antidumping duty orders on imports of lined paper school supplies from India and antidumping duty order on imports of these products from China would renew injury to U.S. industry.