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European Union Engages with TPP Countries

Nature abhors a vacuum. While the new U.S. administration has withdrawn from the Trans-Pacific Partnership (TPP), the European Union (EU) has stepped up trade relationships with the impacted countries. “We have seen that many of the TPP countries are now approaching us and saying, ‘We still want to do deals,’” EU Trade Commissioner Cecilia Malmstrom said in an interview published Feb. 21 by Handelsblatt Global.

“We are engaged with basically all of them, either negotiating or have a deal or preparing negotiations.” Malmstrom confirmed that the EU has sped up talks with Mexico and is accelerating its talks with Mercosur, the South American bloc comprised of Argentina, Brazil, Paraguay and Uruguay. (Venezuela is under suspension as of December 2016.)

The EU is also in trade talks with Japan. Malmstrom met with Japanese Foreign Affairs Minister Fumio Kishida Feb. 17 in Bonn. “Negotiations are very advanced. While it was not possible to conclude by the end of 2016, as we had hoped, tremendous progress has been registered over the last few months. As often in a negotiation, the few remaining issues are the most difficult to be solved, but I am confident that the distance between our respective positions can be bridged soon,” Malmstrom said in a statement at the time of the meeting.

WTO Trade Facilitation Agreement Hits Milestone

It might have been slow and steady, but the World Trade Organization’s (WTO) first multilateral deal formally entered into force Feb. 22. With the ratifications of Rwanda, Oman, Chad and Jordan, WTO’s Trade Facilitation Agreement (TFA) now has the required two-thirds acceptance of WTO members. TFA entry into force is expected to “expedite the movement, release and clearance of goods across borders,” boost commerce and trade facilitation reforms globally, the WTO said in a statement. Developed countries

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will immediately implement the agreement. Developing and least developed countries must implement “Category A” commitments immediately, but otherwise will implement the agreement according to their own timetables.

TFA negotiations concluded in December 2013 at WTO’s Ninth Ministerial Conference in Bali, Indonesia, though negotiations began in 2004. The deal opened for ratifications in November 2014, and by the December 2015 ministerial in Nairobi, it was halfway there (see **WTTL**, Dec. 21, 2015, page 4).

WTO and other trade officials immediately applauded the news. “This is fantastic news for at least two reasons. First, it shows members’ commitment to the multilateral trading system and that they are following through on the promises made in Bali. Second, it means we can now start implementing the Agreement, helping to cut trade costs around the world. It also means we can kick start technical assistance work to help poorer countries with implementation,” said WTO Director-General Roberto Azevedo.

“Better border procedures and faster, smoother trade flows will revitalize global trade to the benefit of citizens and businesses in all parts of the world. Small companies, that have a hard time navigating daily bureaucracy and complicated rules, will be major winners,” European Union Trade Commissioner Cecilia Malmstrom said in a statement.

Industry leaders highlighted the benefits on small business. U.S. Chamber of Commerce President and CEO Thomas Donohue called the TFA a “welcome shot in the arm” for the U.S. and world economies. “Some of the biggest beneficiaries will be American small and medium-sized businesses. They are the backbone of our economy, but their exports too often get tied up in the maze of bureaucratic and international border procedures. The TFA breaks down these barriers to spur economic growth by streamlining and simplifying trade requirements,” he added.

“This agreement will go a long way in modernizing global trade rules and is particularly important in increasing participation of small businesses in the global trading system. The benefits of the TFA cannot be overstated,” said National Foreign Trade Council President Rufus Yerxa.

A 2015 study carried out by WTO economists found full TFA implementation will slash members’ trade costs by an average 14.3%. Least developed countries are likely to see new product exports increase of up to 35%. The study also found that the TFA will likely reduce time needed to import goods by over a day and a half, and to export goods by two days.

Canada, Mexico Stand Together on Potential NAFTA Negotiations

Whatever priority the new president and his administration give to renegotiating NAFTA, he first will have to get agreement from two trading partners. To that end, Canadian

Foreign Minister Chrystia Freeland reassured her Mexican counterpart that any updates to NAFTA must take place in a three-way conversation. “We recognize that NAFTA is a three-country agreement and we need a three-country negotiation,” Freeland told a conference Feb. 21. “We have had no specific NAFTA conversation with the U.S. There is no negotiating process in place yet. The U.S. has no team in place,” she added.

While the U.S.-Mexico relationship is strained, Canada and Mexico seem to be cozying up to one another. Canada’s Prime Minister Justin Trudeau recently removed a visa requirement for Mexican visitors to Canada. Mexico’s Foreign Minister Luis Videgaray, speaking at the same event as Freeland, praised the Mexican-Canadian relationship, calling it “simply great.”

Videgaray then met with Secretary of State Rex Tillerson and Secretary of Homeland Security John Kelly in Mexico Feb. 22-23. In a joint press conference, Videgaray said his department and State will continue a dialogue that “will include all topics, including migration, security, and, of course, trade. This last topic ... hasn’t been touched yet, but we are planning to start it in the future months, as we have explained.”

Kelly mentioned trade more frequently in his remarks to the press. “This dynamic trade and relationship has also helped create millions of jobs on both sides of the border. We are committed to our nations’ continued success – that is, America’s and Mexico’s. Safe and efficient trade and travel work hand in hand. The more secure cargo and passengers are as they move, the faster they can move across the borders to the mutual benefit of both countries,” said Kelly.

Tillerson and Kelly released a joint statement Feb. 23 that touched on trade only once. “Our conversations covered the full range of bilateral issues. We reaffirmed our close cooperation on economic and commercial issues such as energy, legal migration, security, education exchanges, and people-to-people ties. We agreed that our two countries should seize the opportunity to modernize and strengthen our trade and energy relationship,” the statement read.

Changing the Way U.S. Calculates Trade Deficits?

Is President Trump planning to change the way U.S. trade deficits are calculated? Amidst conflicting press reports, it remains unclear what the Trump administration plans to do, but if it changes the current methodology, excluding re-exports would be an easy way to produce a metric that shows a huge trade deficit.

The change would count U.S. imports, but if those same products were then exported out of the country, it would not be counted as an export. Anti-trade groups jumped on the rumors. Lori Wallach, director of Public Citizen’s Global Trade Watch, stands opposed to the current methodology. Writing in an analysis published Feb. 21, Wallach wrote that the “current method for reporting bilateral trade flows significantly distorts trade balances to dramatically and deceptively reduce U.S. trade deficits.”

“To put this in perspective, if one counts as U.S. exports only goods actually produced here, the 2015 U.S. goods trade deficit with Mexico was \$109 billion and with Canada \$63 billion – a \$172 billion North American Free Trade Agreement (NAFTA) goods deficit. However, if one includes the foreign-made re-exported goods as U.S. exports, the NAFTA goods deficit shrinks by more than half – to \$76 billion,” Wallach wrote.

In response to previous congressional questions about the trade data in 2014, USTR and Commerce published a joint primer that explained including “foreign exports,” aka re-exports, in U.S. export data as a more comprehensive measure of trade.

“‘Foreign’ exports can include U.S.-based production such as, packaging, assembly, testing, and other economic activities. ‘Foreign’ exports also include previously imported goods that are used in the U.S. and then re-sold abroad.”

The U.S. treatment of re-exports conforms to United Nations guidelines namely, as USTR/Commerce document noted: International trade statistics record all goods which add to or subtract from the stock of material resources of a country by entering (imports) or leaving (exports) its economic territory.

In addition, countries use the general trade system (measuring goods as they arrive or leave, regardless of whether entered for consumption or moved to a bonded warehouse or FTZ). Re-exports be included in total exports and be separately identified (coded) for analytical purposes, the agencies said.

*** * * Briefs * * ***

ZTE: BIS Feb. 24 again extended temporary general license for exports, reexports and transfers (in-country) to two entities (ZTE Corporation and ZTE Kangxun) until March 29, much shorter than previous 90-day extension. Companies were added to Entity List in March 2016 but sanctions were quickly suspended (see **WTTL**, Nov. 21, page 8).

EXPORT ENFORCEMENT: Pheerayuth Burden, Thai national living in Torrance, Calif., was sentenced Feb. 16 in D.C. U.S. District Court to 55 months in prison for his role in conspiracy involving purchase and shipment of hundreds of gun parts and accessories to Thailand without license between 2010 and 2013. His company, Wing-On LLC, also was sentenced to three years’ probation and ordered to pay \$250,000 fine. Jury found Burden guilty in September after two-week trial. Codefendant Kitibordee Yindeear-Rom, Thai citizen, was sentenced in March 2015 to three-year prison term after pleading guilty to conspiracy charge in November 2014. Gun parts included extended magazines, gun barrels, tubes, bearings, triggers, night vision scopes, gun grips and replacement parts for variety of handguns, rifles, hotguns and AR-15 rifles.

MORE EXPORT ENFORCEMENT: Two Miami area residents and one foreign national were arrested and charged Feb. 24 in Miami U.S. District Court with exporting prohibited articles to Syria. Ali Caby, Arash Caby and Marjan Caby, all employees of Miami export company AW-Tronics, were charged with conspiracy to violate International Emergency Economic Powers Act (IEEPA) by exporting aircraft parts and equipment to Syrian Arab Airlines, Syrian government airline, which is blocked entity. Eight others were also charged in indictment, including Syrian Arab Airlines aka Syrian Air.

ARTISTS CANVAS: In 5-0 “sunset” vote Feb. 22, ITC said revoking antidumping duty order on artists’ canvas from China would renew injury to U.S. industry. Commissioner Dean A. Pinkert did not participate.

TIRES: In 3-2 final vote Feb. 22, ITC found U.S. industry is not materially injured by dumped and subsidized imports of truck and bus tires from China. United Steelworkers (USW) International President Leo W. Gerard called decision “huge mistake” in statement. While Commerce identified subsidies of up to more than 60% and dumping of up to almost 23%, ITC “failed to support relief for the injured workers. That simply ignores the facts and the harm that Chinese unfairly-traded exports have caused the workers,” Gerard noted. Chairman Rhonda Schmittlein and Commissioner Irving Williamson voted yes, while Vice Chairman David Johanson and Commissioners Meredith Broadbent and F. Scott Kieff voted no. Commissioner Dean Pinkert did not participate.

TEXTILES: Proposed changes to rules of origin for textiles and apparel, specifically certain women’s or girls’ apparel, under U.S.-Morocco FTA would likely have “negligible effect” on U.S. imports under FTA, total U.S. imports, total U.S. exports and U.S. production, ITC found in report published Feb. 23 (pub. 4662). Then-USTR Michael Froman asked for investigation in August after negotiators reached agreement in principle (see **WTTL**, Sept. 5, 2016, page 10).

INDIA: U.S. blocked India’s first dispute panel request Feb. 20 at World Trade Organization (WTO) Dispute Settlement Body (DSB) meeting. India claims measures adopted to promote use of solar energy, biofuels and other renewable energy sources by several U.S. states violate WTO and GATT provisions by favoring domestic products over imports. U.S. said India’s request is retaliation for U.S. case against India’s domestic requirements for its solar renewable projects (see **WTTL**, Oct. 17, 2016, page 4). India can make second request at next DSB meeting scheduled for March 21.

COMMERCE: Senate to vote Feb. 27 on Commerce Secretary nominee Wilbur Ross. Date set following 66-31 vote on cloture Feb. 17. Ross passed Senate Commerce Committee by voice vote Jan. 24 (see **WTTL**, Jan. 30, page 8). Alliance for American Manufacturing (AAM), pro-union group, formally endorsed Ross in letter to Senate leadership Feb. 22. “We urge the Senate for a quick confirmation of Mr. Ross and all trade leadership, so we can advance our shared goals of stopping predatory trade practices and getting more of our manufacturers back to work,” AAM President Scott Paul said in statement.

STEEL: Global Forum on Steel Excess Capacity held first meeting Feb. 21 in Berlin. Working group’s 33 members discussed possible mechanisms for information sharing. Group expects to meet again in March or April, according to spokesperson. Forum, facilitated by Organisation for Economic Cooperation and Development (OECD), will report annually to G20 ministers (see **WTTL**, Dec. 19, 2016, page 9).

FCPA: Without much fanfare, Justice’s Fraud Section Feb. 8 published compilation of sample topics and questions it “found relevant” when evaluating corporate compliance programs, including FCPA. Topics include senior and middle management; vendor management; outsourced compliance functions; policies and procedures; training and communications; incentives and disciplinary measures; and mergers and acquisitions (M&A). “The topics and questions below form neither a checklist nor a formula. In any particular case, the topics and questions set forth below may not all be relevant, and others may be more salient given the particular facts at issue,” department noted.

TRADE SECRETS: CAFC Feb. 15 affirmed ITC decision to impose sanctions for spoliation of evidence and to issue 25-year limited exclusion order to Turkish polymer manufacturer Organik Kimya. “The record in this case supports the Commission’s limited exclusion order of 25 years with the opportunity for Organik Kimya to bypass the exclusion order period at any time if it can show that it has developed its opaque polymers without using Dow’s misappropriated trade secrets,” Circuit Judge Kathleen O’Malley wrote for three-judge panel.

AES: Census Feb. 23 announced addition of “600 series” ECCNs to Automated Export System (AES) as result of BIS final rules from July and October 2016. Specifically, ECCNs 1A607, 1B607, 1C607, 1D607, 1E607, 6B619, 6D619, 6E619, 7A611, 7B611, 7D611 and 7E611 were added to AES ECCN reference table, it said. Under EAR, AES filing is required for exports of items classified under “600 series” ECCNs, regardless of value of item or destination.

SOFTWOOD LUMBER: Canadian government Feb. 22 announced creation of Federal-Provincial Task Force on Softwood Lumber to address potential impacts of no new deal of softwood lumber. Previous 2006 Softwood Lumber Agreement (SLA) expired Oct. 12, 2015, and topic has been subject of conversation in multiple settings, including meeting between Canadian Foreign Affairs Minister Chrystia Freeland and Secretary of State Rex Tillerson earlier this month (see **WTTL**, Feb. 13, page 5).

TRADE PEOPLE: Former ambassador to WTO (and author of “The Revenant”) Michael Punke has taken new position as vice president of global public policy for Amazon Web Services, company confirmed to **WTTL** Feb. 24.

MORE TRADE PEOPLE: Stephen Claeys, former trade counsel for House Ways and Means trade subcommittee, joined law firm Wiley Rein as partner in international trade practice, firm announced Feb. 21. Prior to that, he served as Commerce deputy assistant secretary for antidumping/countervailing duty operations and White House national security affairs special advisor to vice president.

GSP: USTR, State, Commerce, Labor, USDA and Treasury officials heard testimony Feb. 22 at Generalized System of Preferences (GSP) Annual Review of Products. Panel heard testimony from Bolivia to add “rolled or flaked grains of cereal other than barley or oats” (HTS 1104.19.90) and “prepared or preserved pineapples” (HTS 2008.20.00). Alejandro Bilbao from Bolivian Embassy explained in detail economic impact of quinoa production in his country. Companhia Nitro Quimica Brasileira petitioned to add cellulose nitrates (including collodions) in primary forms (HTS 3912.20.00). Brazilian Association for Mechanically Processed Timber made case for competitive need limitation waiver for certain coniferous-shaped wood (HTS 4409.10.05). Pennsylvania firm GEO Specialty Chemicals petitioned for removal of glycine (HTS 2922.49.40.20); which was opposed by St. Louis-based Novus International.