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## Korea Claims Partial Victory over U.S. at WTO

Korea won a partial victory Nov. 14 when a World Trade Organization (WTO) dispute panel upheld several claims challenging U.S. antidumping (AD) duties on imports of oil country tubular goods (OCTG) from Korea. Specifically, the panel found the “profit determination” Commerce used to calculate dumping margins and duty rates on targeted imports was inconsistent with Article 2.2.2 of the Anti-Dumping Agreement and recommended the U.S. bring its measures into conformity.

The panel found Commerce did not determine constructed value (CV) profit of the Korean respondents based on actual data pertaining to their sales of the like product in the home market; in addition, Commerce failed to calculate and apply a profit cap, and as a consequence failed to use a reasonable amount for profits in the construction of normal value for the Korean respondents.

The panel rejected more than a dozen Korean claims; it did not rule on six other claims because they fell outside the terms of reference and exercised judicial economy on three other Korean claims. This ruling refers to the original Commerce determination issued September 2014 and not Commerce’s April review that utilized Section 504 of the Trade Preferences Extension Act of 2015 to increase AD margins (see **WTTL**, April 17, page 1). The U.S. and Korea have 60 days to decide if they want to appeal.

## NAFTA Negotiations Kick Off in Mexico City

Though some negotiating groups began meeting earlier in the week, round five of NAFTA negotiations formally began Nov. 17 in Mexico City and will run through Nov. 21. While U.S. Trade Representative (USTR) Robert Lighthizer and his counterparts were not present during this round, the USTR’s office issued a second version updated NAFTA negotiating objectives just as the sun was setting in Washington. “The objectives include increased market access for agriculture, new transparency and administrative measures, expanded investment and intellectual property objectives, and completed negotiations on

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the chapters of Competition and Small- and Medium-Sized Enterprises. The objectives retain the first-ever USTR objective for trade deficit reduction, in addition to trade distortion prevention measures,” the agency noted.

Potentially controversial are objectives on rules of origin. One passage of the updated text reads: “Ensure that the rules of origin incentivize production in North America as well as specifically in the United States.” Previous objectives from July note: “Ensure the rules of origin incentivize the sourcing of goods and materials from the United States and North America.” Time will tell if that makes a difference.

USTR also added these two new objectives for trade in goods: “Increase transparency in import and export licensing procedures” and “Discipline import and export monopolies to prevent trade distortions.” In addition, the office called out remaining Canadian tariffs on imports of U.S. dairy, poultry, and egg products.

At the same time, the usual flurry of letters from industry descended on Capitol Hill warning the administration to “do no harm.” The U.S. Chamber of Commerce added its voice to the chorus Nov. 17 in analysis of which states would be hardest hit by a NAFTA withdrawal. By the Chamber’s count, Michigan, Wisconsin, North Dakota, Texas, Missouri, Ohio, Iowa, Indiana, Arizona, Nebraska, Pennsylvania and North Carolina would suffer the most in expected job loss and billions of dollars of exports destined for Canada and Mexico. Nearly all of these states favored President Trump in the election.

Just as the partners were gearing up for this latest round, Canada decided to utilize Chapter 19 of the existing agreement to stop U.S. duties on Canadian softwood lumber. The dispute-settlement chapter is a sticking point; the U.S. wants it gone and Mexico and Canada want it to stay. Commerce made its affirmative final determinations in the antidumping and countervailing duty investigations earlier this month (see **WTTL**, Nov. 6, page 1).

A letter requesting a panel review was hand-delivered Nov. 14 to the NAFTA secretariat in Washington. “Commerce’s decision on punitive countervailing and antidumping duties against Canada’s softwood lumber producers is unfair, unwarranted, and deeply troubling,” said Canadian Foreign Minister Chrystia Freeland in a statement.

## **Asia Moves on Without U.S.**

When President Trump withdrew from the Trans-Pacific Partnership (TPP) in the first days of his presidency, the future of the multilateral deal looked bleak and the Regional Comprehensive Economic Partnership (RCEP) looked ascendant. But now, it looks as though both multilateral deals will move forward, leaving the U.S. to presumably focus on the “Indo-Pacific” region.

Early Nov. 11, the remaining TPP countries announced that they reached an agreement on “core principles” of the newly dubbed Comprehensive and Progressive Agreement for

Trans-Pacific Partnership (CPTPP) – or as Japanese Prime Minister Shinzo Abe joked, “Ocean’s 11.” The final texts are expected to be signed in early 2018 and enter into force before the end of 2018.

Wendy Cutler, former acting deputy USTR and now a vice president of the Asia Society Policy Institute, was heavily involved in the negotiations. Speaking in Washington Nov. 16, she congratulated Japan for stepping into the leadership role vacated by the U.S. and said U.S. withdrawal was a “serious mistake” that will be regretted.

CPTPP is not a done deal, Cutler noted. Four outstanding issues still need to be worked out and Canada could be the deal’s undoing or lead to the possibility of a TPP-10. Canadian Prime Minister Justin Trudeau skipped a planned leaders’ meeting Nov. 10, which threw CPTPP talks into a bit of a panic (see **WTTL**, Nov. 13, page 4). Cutler further noted that progress on CPTPP is proof that TPP was never a conspiracy to contain China or thwart RCEP. If anything, the success of CPTPP provides momentum to RCEP, she posited.

Separately, RCEP parties released a statement during the ASEAN Summit in the Philippines noting their resolve to see RCEP come to fruition. “We reiterated our commitment to conclude an agreement that realizes the spirit and objectives in the Guiding Principles and Objectives for Negotiating the RCEP by delivering outcomes in three pillars of market access, rules, and cooperation, and includes agreed provisions which maintain the right of Participating Countries to address legitimate public policy purposes,” it noted. That RCEP countries did not rush to announce a deal in time for the 50<sup>th</sup> anniversary of ASEAN proves how seriously they are taking negotiations, Andrew Durant, of Samuels International Associates, noted.

While the rest of the Asia-Pacific region is focusing on multilateral deals with each other, the administration is doubling down on bilateral deals, as the president noted in a speech at the White House Nov. 15. At APEC, “I offered our vision for robust trading relationships in which Indo-Pacific nations can all prosper and grow together. I announced that the United States is ready to make bilateral trade deals with any nation in the region that wants to be our partner in fair and reciprocal trade,” said Trump.

Despite friendly meetings between Trump and his counterparts, no country seemed interested in taking the president up on his offer. Marc Mealy, vice president of the U.S. ASEAN Business Council, said he did not see “any commercially significant economy” interested in negotiating a bilateral deal.

“I know folks up on the Hill, on the Dem side, so it’s probably partisan, [saying] ‘We’re still waiting for that list of countries that are just chomping at the bit for these 90-day sweet bilateral deals.’ No one has sort of seen that list,” said Mealy. Cutler added that she has not detected any interest from Japan in pursuing a bilateral FTA.

## **Bills to Update CFIUS Answer China Commission Request**

Ask and ye shall receive. In its annual report to Congress Nov. 15, the U.S.-China Economic and Security Commission (USCC) recommended that Congress consider legislation updating the Committee on Foreign Investment in the U.S. (CFIUS) statute to “address current and evolving security risks.”

A week prior, Rep. Robert Pittenger (R-N.C.) introduced the Foreign Investment Risk Review Modernization Act of 2017 (H.R.4311) to do just that. “China is buying American companies at a breathtaking pace. While some are legitimate business investments, many others are part of a backdoor effort to compromise U.S. national security,” said Pittenger in a statement Nov. 8. “For example, China recently attempted to purchase a U.S. missile defense supplier using a shell company to evade detection,” he added. Sen. John Cornyn introduced the parallel Senate bill (S. 2098).

The bills would: expand CFIUS jurisdiction to include joint ventures, minority position investments, and real estate transactions near military bases and other sensitive national security facilities; update CFIUS definition of “critical technologies” to include emerging technologies that could be essential for maintaining the U.S. technological advantage over countries that pose threats; add new national security factors to the review process; and strengthen the government’s ability to protect American “critical infrastructure” from foreign government disruption.

The USCC report highlighted this very issue. “Some Chinese firms seek to obscure their dealings in the United States through U.S.-based shell companies or attempt to drive down the value of U.S. assets through sophisticated cyber espionage campaigns. These firms are becoming more sophisticated in their attempts to circumvent [CFIUS] reviews and other U.S. investment regulations,” it noted.

“Greenfield investments in the United States are not subject to the CFIUS review process, which may raise national security risks. Although the number of Chinese greenfield investments in the United States remains limited compared to acquisitions of U.S. assets, federal laws and screening mechanisms do not sufficiently require federal authorities to evaluate whether a greenfield investment may pose a national security threat,” it added.

In its report, the USCC specifically recommended that Congress require “reviews of investments in U.S.-based greenfield assets by Chinese-controlled entities to assess any potential harm to U.S. national and economic security.” In addition, it urged lawmakers to expand the definition of “control” to include joint ventures, venture capital funds, licensing agreements, and other arrangements or agreements that enable Chinese entities to access and/or determine the disposition of any asset.

## **Commerce Finds High Margins in Hardwood Plywood Investigations**

In its affirmative final determinations in the antidumping (AD) and countervailing duty (CVD) investigations of imports of hardwood plywood products from China announced

Nov. 13, Commerce found 183.36% dumping margins for all producers/exporters and subsidy rates ranging from 22.98 to 194.9%.

Specifically, Commerce calculated a 22.98% final subsidy rate for Linyi Sanfortune Wood Co., Ltd. and 194.9% for Shandong Dongfang Bayley Wood Co., Ltd., the latter using adverse facts available. The department found a 194.9% final subsidy rate for 61 companies that did not respond to its questionnaire and 22.98% for all other Chinese producers/exporters. Petitioners are the Coalition for Fair Trade in Hardwood Plywood and its members from Oregon, North Carolina and New York.

As expected, the Coalition was “extremely pleased” with the announcement, which was delayed a week from Nov. 7 to presumably after President Trump left China. The department’s findings “show U.S. importers and purchasers of Chinese hardwood plywood that the government will no longer tolerate illegal Chinese trade practices,” said Tim Brightbill of Wiley Rein, Coalition trade counsel (see **WTTL**, Oct. 30, page 7).

Not everyone was thrilled with Commerce’s findings. “These rates are based purely on politics, not on any type of marketplace reality. Unfortunately, hundreds of thousands of American workers will pay the price in lost jobs. Industries including the kitchen cabinet, recreational vehicle, window and door, furniture, homebuilding and flooring industries all utilize the Chinese hardwood plywood because it is distinctly different from American hardwood plywood,” said American Alliance for Hardwood Plywood Chairman Greg Simon in a statement. He is confident the International Trade Commission “will keep its eye on the facts and laws” when its commissioners vote Dec. 1.

## **Deputy Director General Wolff Defends WTO, Outlines Future**

Pay attention to the World Trade Organization (WTO) because the U.S. president certainly is, warned WTO Deputy Director General Alan Wolff. Voicing his own views before a Washington audience Nov. 13, Wolff said the U.S. Trade Representative (USTR) and Commerce Secretary have already delivered an assessment to the president on WTO and their recommendations for “lawful and appropriate actions to remedy or correct deficiencies identified.”

The recommendations were made per an executive order signed in April that could impact the U.S. future with the WTO (see **WTTL**, May 8, page 2). The strongest argument in favor of the WTO is the stability it provides, Wolff said. Quoting a frequent critic, he said, “If the WTO did not exist, it would have to be created.”

Dispute settlement is “often referred to as a jewel of the WTO system, but if it is, one major member has identified several flaws in this diamond, and there is a serious question at this point about its future,” said Wolff. The U.S. refuses to consider filling vacancies on the WTO’s Appellate Body until systemic reform takes place (see **WTTL**, Oct. 30, page 7). By the end of the year, there will be three vacancies, which could paralyze the dispute

settlement process, Wolff added. This is not to say that the WTO is without fault, he noted. Rules are implemented inconsistently or are lacking in prominent areas, like domestic subsidies. New technologies will require new classifications. “WTO members will collectively have to be very nimble to keep up with changes in the physical world, but that is not the nature of the evolution of the world trading system, which is incremental,” said Wolff.

All of this occurs against the backdrop of changing leadership. Under the current administration, the U.S. has “simply stopped playing its leadership role,” leaving WTO members scrambling to adapt. Wolff did give a nod to President Trump: “Either from instinct or experience he was right about the importance of bilateral negotiations. In the [TPP], there was a core bilateral negotiation, that of the United States with Japan, and it was very heavily a bilateral process.”

“It is the next step which requires focus—what is done with the results of these bilateral efforts. To have a really large impact in terms of trade coverage, the negotiation must become more like a multiparty real estate development covering many projects and developers. It is more like planning a new city, not a new building,” said Wolff.

\* \* \* **Briefs** \* \* \*

FORMS, FORMS, FORMS: As of Dec. 1, DDTC will no longer accept form DSP-119 to amend DSP-85, agency posted on website Nov. 14. All pending DSP-119’s will be processed, but any DSP-119 form submitted on or after Dec. 1 will be returned without action, DDTC said. “When amending the DSP-85, the applicant must submit a completely new DSP-85 along with a transmittal letter, signed by the Empowered Official explaining the amended change,” it added.

GSP: More than 350 U.S. companies and associations urged Senate Finance and House Ways & Means committee leaders to renew Generalized System of Preferences (GSP) program in Nov. 14 letter. Allowing GSP to expire Dec. 31 “would have an immediate and negative impact on American employers, who would be forced to pay over \$2 million a day in new taxes,” they wrote. Firms allege during last expiration from August 2013 to July 2015, U.S. companies paid \$1.3 billion in extra taxes.

OFAC: American Express (AMEX) agreed Nov. 17 to pay \$204,277 to settle OFAC charges of violating Cuba sanctions. Between April 2009 and February 2014, BCC Corporate SA (BCCC), Belgium-based credit card issuer and wholly owned subsidiary of Alpha Card Group (Alpha Card), which in turn was owned 50% by AMEX, processed 1,818 transactions totaling \$583,649.43 “for more than 100 distinct corporate customers of BCCC whose cards were used in Cuba or that otherwise involved Cuba,” OFAC said. AMEX and BCCC voluntarily self-disclosed violations.

IRAN: House Financial Services Committee Nov. 15 passed Strengthening Oversight of Iran’s Access to Finance Act (H.R. 4324) in 38-21 vote. Bill would require Treasury Secretary to report to Congress on “transactions authorized by the Secretary in connection with the export or re-export of commercial passenger aircraft to Iran.” Rep. Roger Williams (R-Texas) introduced bill Nov. 9. House in September passed by voice vote appropriations legislation (H.R.3354) containing two amendments authored by Rep. Peter Roskam (R-Ill.) to block the sale of Boeing and Airbus aircraft to Iran (see **WTTL**, Sept. 18, page 3).