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Bombardier Scores Huge Win in ITC Vote

In a stunning upset to domestic manufacturer Boeing, the International Trade Commission (ITC) determined in a unanimous 4-0 vote Jan. 26 that U.S. industry is not materially injured by imports of 100- to 150-seat large civil aircraft from Canada. The vote means that the affirmative antidumping and countervailing duty determinations Commerce made in December will not go into effect (see **WTTL**, Jan. 1, page 3).

“Today’s decision is a victory for innovation, competition, and the rule of law. It is also a victory for U.S. airlines and the U.S. traveling public. The C Series is the most innovative and efficient new aircraft in a generation. Its development and production represent thousands of jobs in the United States, Canada, and the United Kingdom [UK],” Bombardier said in a statement. Bombardier would have faced dumping margin of 79.82% and a final subsidy rate of 212.39%

Canadian Foreign Affairs Minister Chrystia Freeland said she is “very pleased” with the vote, “which confirms Canada’s position that Boeing is not commercially threatened by Bombardier’s C Series aircraft.” UK Prime Minister Theresa May also said the determination was “good news.” UK companies supply many of the parts for the aircraft.

Boeing said it was “disappointed” that the ITC “did not recognize the harm that Boeing has suffered from the billions of dollars in illegal government subsidies that ... Commerce found Bombardier received and used to dump aircraft in the U.S. small single-aisle airplane market. Those violations have harmed the U.S. aerospace industry, and we are feeling the effects of those unfair business practices in the market every day,” the company said in a statement.

Korea Reacts Swiftly to U.S. Tariffs on Washers, Solar Cells

Korea reacted swiftly to the news that President Trump Jan. 22 approved safeguard tariffs on large residential washing machines and imported solar cells and modules. Seoul

requested World Trade Organization (WTO) consultations Jan. 24, saying that it “considers these measures to be inconsistent” with the U.S.’ obligations under the Agreement on Safeguards and other commitments.

The same day as the White House announcement, Korea’s separate request for retaliation against the U.S. in its ongoing WTO dispute over antidumping and countervailing duties on washers was referred to arbitration (see **WTTL**, Jan. 22, page 7).

According to the U.S. Trade Representative (USTR), the first 1.2 million units of imported finished washers will be slapped with a 20% safeguard tariff-rate quota in year one that will taper off to 16% in year three. All subsequent imports of finished washers will see 50% tariff in year one, declining to 40% in year three. Tariffs on covered parts are set at 50% in year one and 40% by year three.

On crystalline silicon photovoltaic cells (CSPV), the president approved safeguard tariffs of 30% in year one, which will decrease to 15% by year four. Exceptions are carved out for 2.5 gigawatts cells. In its request for consultations, Korea argued that the safeguard agreement requires partners to “to ensure adequate opportunity for prior consultations before application of a measure. This request does not prejudge Korea’s position on whether the period between the announcement and application of the proposed measure provides sufficient amount of time for a meaningful exchange,” it said.

Industry Groups Predictable in Response to Safeguard Tariffs

Not surprising, U.S. industry welcomed the president’s decision Jan. 22 to impose Section 201 safeguard tariffs on large washers and solar cells. Whirlpool Chairman Jeff Fettig for one called it a “victory for American workers and consumers alike.” At a Senate Banking Committee hearing three days later, Sen. Sherrod Brown (D-Ohio) noted that Whirlpool will be adding 200 more jobs in Clyde, Ohio, due to the new tariffs.

“By enforcing our existing trade laws, President Trump has ensured American workers will compete on a level playing field with their foreign counterparts, enabled new manufacturing jobs here in America and will usher in a new era of innovation for consumers everywhere,” Fettig said in a statement.

SolarWorld Americas Inc., a co-petitioner with Suniva Inc. in the Section 201 case, similarly applauded the CSPV tariffs. “SolarWorld Americas appreciates the hard work of President Trump, the [USTR], and this administration in reaching today’s decision, and the President’s recognition of the importance of solar manufacturing to America’s economic and national security. We are still reviewing these remedies, and are hopeful they will be enough to address the import surge and to rebuild solar manufacturing in the United States,” the company said in a statement.

Solar Energy Industries Association (SEIA), which protested the imposition of tariffs, expressed disappointment in the president’s announcement, estimating that the decision

will cost 23,000 American jobs this year (see **WTTL**, Dec. 11, page 7). “While tariffs in this case will not create adequate cell or module manufacturing to meet U.S. demand, or keep foreign-owned Suniva and SolarWorld afloat, they will create a crisis in a part of our economy that has been thriving, which will ultimately cost tens of thousands of hard-working, blue-collar Americans their jobs,” said SEIA President and CEO Abigail Ross Hopper in a statement.

At an interagency hearing Jan. 3, elected officials from South Carolina and Tennessee, representatives from the Korean government and from Samsung and LG pushed back against the ITC’s remedy recommendations on washers, to little avail (see **WTTL**, Jan. 8, page 2). After the announcement, LG reportedly told retailers that it would raise washer prices by \$50.

During the signing ceremony, President Trump denied that the actions will start a trade war, promising stock increases for domestic companies. “It will provide a strong incentive for LG and Samsung to follow through on their recent promises to build major manufacturing plants for washing machines right here in the United States,” he said.

Administration Defends CFIUS Expansion with Reservations

At a Senate Banking Committee hearing Jan. 25, the administration got its chance to defend new legislation to update the jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS) to address national security risks from China. The only caveat came from the Bureau of Industry and Security (BIS) Assistant Secretary Richard Ashooh, who expressed concerns about the potential overlap with his agency’s export control regulations.

Rep. Robert Pittenger (R-N.C.) and Sen. John Cornyn (R-Texas) in November introduced the Foreign Investment Risk Review Modernization Act of 2017 (FIRRMA) (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.

“The export control system is flexible and able to address concerns about emerging technologies, and the agencies involved in that process have experience with these issues. CFIUS deals with individual transactions that come before the committee for review,” Ashooh noted in his opening testimony.

“It is important that they remain complementary and not overlap unnecessarily, as that has the potential to overburden the CFIUS process and partially duplicate the more comprehensive coverage of technology transfer under the export control system,” he added. In closing, he said, “Commerce looks forward to working with the Committee and bill sponsors on advancing and improving FIRRMA.”

One of Ashooh’s predecessors, Christopher Padilla expressed similar concerns in Banking hearing a week prior (see **WTTL**, Jan. 22, page 5). Committee Chairman Mike Crapo (R-

Idaho) opened the hearing by asking Ashooh and his counterparts from Treasury and Defense two questions about this overlap in jurisdiction.

“One, would the expansion of CFIUS authority to unwind or alter outbound joint venture-related international commercial activity duplicate or in any way undermine the current U.S. export control regime and end up chilling this type of commercial activity?” he asked. “Two, if there are gaps in the export control process, why should this Committee, which has jurisdiction over both the relevant parts of the U.S. export control regime and CFIUS, opt to create new export control authority for CFIUS, a traditionally unilateral, inward bound review process?” Crapo added.

The day before the hearing, the White House formally expressed its support for the bill. “FIRRMA, by modernizing CFIUS, would strengthen our ability to protect national security and enhance confidence in our longstanding open investment policy,” the press secretary said in a statement.

Pacific Countries Forge Ahead with TPP, U.S. Leaves Door Open

Nearly a year after the U.S. withdrew from the Trans-Pacific Partnership (TPP), the remaining 11 countries finalized an agreement on the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) Jan. 23 in Tokyo. It is expected to go into effect later this year. President Trump and Commerce Secretary Wilbur Ross later hinted they'd be open to revisiting TPP and the Transatlantic Trade and Investment Partnership (TTIP) trade deals.

“We are happy to confirm the achievement of a significant outcome on culture as well as an improved arrangement on autos with Japan, along with the suspension of many intellectual property provisions of concern to Canadian stakeholders,” said François-Philippe Champagne, Canada's international trade minister, in a statement.

New Zealand's Trade Minister David Parker praised the CPTPP for giving preferential access to Japan and creating the country's first free trade agreements with Canada, Mexico and Peru. “The CPTPP is even more important to signatory countries given current threats to the effectiveness of the [World Trade Organization] and rising protectionism in many parts of the world. United States President Donald Trump has just announced a new 30% tariff on imports of solar cells. This is but one example,” he said.

Speaking at the World Economic Forum in Davos, Switzerland Jan. 26, Trump discussed the potential of agreements with CPTPP countries. “As I have said, the United States is prepared to negotiate mutually beneficial, bilateral trade agreements with all countries. This will include the countries in TPP, which are very important. We have agreements with several of them already. We would consider negotiating with the rest, either individually, or perhaps as a group, if it is in the interests of all,” he said.

Also at Davos, Ross said, “When we dropped out from TPP, we did not walk away from TTIP, and that was meant to be a message.” He added that “it wasn’t an accident that we didn’t walk away from TTIP.” Ross has expressed those sentiments before, but that doesn’t mean Europe is as amenable to restarting negotiations (see **WTTL**, Dec. 18, page 5).

European Union Trade Commissioner Cecilia Malmstrom told reporters at Davos that she doesn’t believe the two partners can start TTIP from where it was left a year ago. She also cited trade irritants, including the U.S. withdrawal from the Paris climate agreement, increased protectionism, and potential action on steel and aluminum imports. No formal moves to restart talks have been made as of press time.

Unions, Democrats Challenge Mexico’s Labor Laws

Mexico is not complying with its labor obligations, according to a complaint the AFL-CIO and Mexico’s National Workers Union (UNT) filed Jan. 25 under the North American Agreement on Labor Cooperation (NAALC), the NAFTA labor side agreement. The complaint came as NAFTA negotiators were in Montreal as part of the sixth round of talks Jan. 23-29.

In their complaint, the labor unions argued that proposed reforms to Mexican federal labor law would weaken the right to freely associate, organize and bargain collectively. The AFL-CIO is seeking immediate ministerial consultations with Mexico “to dissuade it from enacting laws that violate the NAALC.” Should the proposed amendments pass while their request is pending, the union wants the assistance of the U.S. National Administrative Office (NAO) to seek the repeal of the legislation or to bring it in line with the NAALC.

“Mexico’s persistent non-compliance with its labor obligations after nearly a quarter-century in force proves just how big a failure NAFTA is,” said AFL-CIO President Richard Trumka in a statement. “Those who call it a ‘success’ must not have any contact with ordinary working families anywhere on this continent. Mexico’s low-wage, low-rights economy keeps wages down in all three countries and has failed to develop Mexico as a larger market for U.S. exports,” he added.

Just prior to the unions’ complaint, Reps. Rosa DeLauro (D-Conn.), Sander Levin (D-Mich.), Bill Pascrell, Jr. (D-N.J.) and 180 other House Democrats called on the administration to end outsourcing in a letter to USTR Robert Lighthizer Jan. 23. “While many of us have ongoing concerns over additional provisions of NAFTA affecting labor, we felt it was important to highlight with a unified voice the primary source of significant outsourcing: Mexico’s low wages and lack of labor rights,” they wrote.

“We urge you to keep your promises to America’s workers and remedy the faults of the original NAFTA by holding Mexico accountable for its labor practices and negotiate strong protections in any agreement,” the lawmakers concluded.

Sen. Elizabeth Warren (D-Mass.), a NAFTA critic, penned an op-ed in USA Today Jan. 25 arguing the current administration isn’t negotiating on behalf of workers. Corporations

have done well under NAFTA, while “more than 930,000 American workers have lost their jobs,” she wrote, citing Labor Department statistics.

Like the AFL-CIO, Warren is critical of the investor-state dispute settlement (ISDS) mechanism and the relegation of labor provisions to a side agreement. “Two decades after NAFTA was signed, Mexican wages remain stubbornly low, with the minimum wage still hovering below \$5 per day,” she wrote. “If the Trump negotiators are serious about bringing jobs back to this country, they need to show it. A new NAFTA should eliminate ISDS, adopt strict labor requirements in the main text of the agreement, add strong enforcement measures to police labor violations, and raise wages for all workers. So far, Team Trump has struck out,” she added.

Commerce Sends Section 232 Aluminum Report to White House

Without revealing any details, Commerce Secretary Wilbur Ross Jan. 19 formally submitted the results of its long-awaited Section 232 investigation into the effect of aluminum imports on U.S. national security. The president now has 90 days to decide on what actions to take. Ross formally submitted the results of Commerce’s Section 232 steel investigation a week prior (see **WTTL**, Jan. 15, page 8).

Without knowing the exact contents of the report, industry offered a muted response. “We expect that the report will recognize the significant role the aluminum industry plays in ensuring our nation’s security and welcome the opportunity to engage the administration on an appropriate remedy that will benefit the entire aluminum value chain,” said Aluminum Association President and CEO Heidi Brock in a statement.

“The association supports actions that specifically address Chinese overcapacity, and protect trading relationships between the U.S. and critical partner countries which are crucial to a thriving domestic aluminum industry,” she added. In addition, the group wants a remedy that addresses the needs of the domestic aluminum value chain and wants the administration to adopt a monitoring system for aluminum imports similar to the Steel Import Monitoring and Analysis System, particularly for countries that “pose a circumvention threat,” like Vietnam, Indonesia, Malaysia and Thailand, Brock noted.

* * * Briefs * * *

EXPORT ENFORCEMENT: Peter Zuccarelli of Plano, Texas, owner of American Coating Technologies, was sentenced Jan. 24 in Sherman, Texas, U.S. District Court to 46 months in prison for conspiring to illegally export radiation hardened integrated circuits (RHICs) to China and Russia for use in space programs between June 2015 and March 2016. He pleaded guilty in August 2017 (see **WTTL**, Aug. 7, 2017, page 7). Zuccarelli received RHICs he ordered from U.S. suppliers, removed original packaging, repackaged them, falsely declared them as “touch screen parts,” and shipped them without required licenses, information filed in court noted. He also was sentenced to three years’ supervised release and \$50,000 fine.

MORE EXPORT ENFORCEMENT: Los Angeles-area residents Yi-Chi Shih and Kiet Ahn Mai were arrested Jan. 19 and charged in Los Angeles U.S. District Court for roles in scheme to illegally obtain technology and integrated circuits with military applications and export to China without required license. Scheme involved defrauding U.S. company of “proprietary, export-controlled technology associated with its monolithic microwave integrated circuit (MMIC) design services, its commercial advantage in the area of MMIC design and design services, and its future financial gain associated with the sale of its design services and products,” criminal complaint noted. Chips allegedly were shipped to Chengdu GaStone Technology Company (CGTC), Chinese company on BIS Entity List.

ENTITY LIST: BIS in Jan. 26 Federal Register added 21 entities under 23 entries to Entity List, including four in Bulgaria, one in China, two in Kazakhstan, two in Russia, two in Syria and 12 in UAE. For one, Chengdu Spaceon Technology Co. Ltd., in China “has been involved in transshipping items to a person on the Entity List in China for an unauthorized military end-use,” BIS noted. Agency also removed three entities “on the basis of removal requests received by BIS”: Hosoda Taiwan Limited in Taiwan; and Euro Vision Technology LLC and Noun Nasreddine, both in UAE. Hosoda was added to Entity List in April 2015 after indictment on export charges (see **WTTL**, April 20, 2015, page 8). At same time, BIS updated entry in China for Beijing Aeronautical Manufacturing Technology Research Institute by removing one address and adding one additional address, and agency added alias and two addresses to Advanced Engineering Research Organization in Pakistan.

NORTH KOREA: Treasury’s Office of Foreign Assets Control (OFAC) Jan. 24 sanctioned nine entities, 16 individuals and six vessels “in response to North Korea’s ongoing development of weapons of mass destruction (WMD) and continued violations” of UN Security Council Resolutions, according to Treasury. Pursuant to Executive Orders 13687 and 13810, OFAC sanctioned North Korean overseas representatives, shipping companies and Chinese entities that support the current North Korean regime.

RUSSIA: OFAC Jan. 26 added 30 entities to its Specially Designated Nationals (SDN) and 12 entities to Sectoral Sanctions Identifications lists. Entities include deputy energy minister, Russian firm Technopromexport (TPE) and its director general. House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) tweeted: “Glad the administration is holding Russia accountable for its ongoing aggression in Ukraine.” Siemens AG filed suit against TPE in Moscow court in July 2017 in case involving breach of contract for delivery of gas turbine sets to Crimea (see **WTTL**, July 17, page 1).

KORUS: Next round of modification and amendment negotiations of U.S.-Korea Free Trade Agreement (KORUS) will take place in Seoul Jan. 31 and Feb. 1, partners announced Jan. 25. Last round of negotiations held Jan. 5 in Washington focused on industrial goods sector (see **WTTL**, Jan. 15, page 5).

TRADE: American Farm Bureau Federation, Business Roundtable, National Association of Manufacturers and U.S. Chamber of Commerce Jan. 24 launched Trade For America (TFA), “a new campaign that will highlight the economic and strategic benefits of trade in the daily lives of Americans,” according to website. Chamber announced intention to promote trade across America at 2018 State of American Business address Jan. 10 (see **WTTL**, Jan. 15, page 6).

GLYCINE: CAFC Jan. 23 affirmed CIT ruling on Commerce’s time limits regarding administrative review of antidumping duty order on glycine from China. “The question presented is—can an agency regulation, previously adopted by formal notice-and-comment rulemaking procedure

pursuant to the APA [Administrative Procedures Act], be amended by a guidance document that is not so enacted?” Circuit Judge S. Jay Plager wrote for three-judge panel in *Glycine & More, Inc. v. U.S.* “Since the 2011 Notice was intended to effectively re-write the substantive meaning of the regulation without going through the necessary notice-and-comment rule-making, it has no legal standing, and thus provides no basis upon which the Secretary could make his decision. That was the ruling made by the CIT, and it is correct,” he wrote. Neither Commerce nor U.S. government participated in appeal, Plager noted. In most recent “sunset” vote in January 2017, ITC said revoking antidumping duty order would renew injury to U.S. industry (see **WTTL**, Jan. 23, 2017, page 8).

SOLAR CELLS: CAFC Jan. 22 affirmed CIT ruling involving dumped and subsidized imports of crystalline silicon photovoltaic (CSPV) cells and modules from China. Chinese respondents argued that ITC “had not properly found the required causal connection between the unfairly priced or subsidized imports and the weakened state of the domestic industry,” Circuit Judge Richard Taranto wrote for three judge panel in *Changzhou Trina Solar Energy v. ITC*. ITC “in substance made the required determination of but-for causation. And its explanation, relying on concrete evidence that we see no basis for deeming insufficient under the substantial-evidence test, was adequate to support the finding,” he wrote.

TRADE SECRETS: Following 11-day trial, jury in Madison, Wis., U.S. District Court Jan. 25 convicted Chinese wind turbine manufacturer Sinovel Wind Group Co. Ltd. of conspiracy to commit trade secret theft, theft of trade secrets and wire fraud. Sentencing is set for June 4. Sinovel was charged with stealing proprietary technology from American Superconductor Corp. (AMSC). AMSC CEO Daniel Patrick McGahn testified at USTR Section 301 hearing in October that company lost over \$1.6 billion in company value and 70% of its workforce since March 2011 (see **WTTL**, Oct. 16, 2017, page 4).

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