

Vol. 38, No. 14

April 2, 2018

KORUS Negotiators Reach Agreement in Principle

Unlike NAFTA talks that have no end in sight, the U.S.-Korea Free Trade Agreement (KORUS) negotiations appeared to be on the cusp of resolution March 28 with an agreement in principle on the six-year-old trade deal. Terms are still being finalized, and the exact timeline is up in the air given recent remarks by the president.

A White House fact sheet highlighted Korean concessions. The annual number of American autos that can enter the Korean market will double from 25,000 to 50,000. Korea will improve the “sales environment” for U.S. cars by taking into account U.S. environmental and emissions standards and will extend the 25% truck tariff until 2041, 20 years beyond the current phase-out.

On the steel front, Korea steel imports will be limited to a “product-specific quota equal to 70% of that country’s average annual import volume from 2015 through 2017,” the fact sheet noted. Because of the deal, Korea will be exempted from the 25% Section 232 steel tariffs (see **WTTL**, March 26, page 1). That arrangement is expected to take effect May 1. Treasury also is finalizing an understanding with Korea on currency. The provisions, which are on a “separate track,” “include strong commitments on exchange rate practices, robust transparency and reporting, and a mechanism for accountability,” the White House noted. Korea also agreed to address issues with “onerous and costly” customs procedures.

President Trump threw an unexpected wrench into the KORUS timeline in a speech March 29. “I may hold it up until after a deal is made with North Korea,” Trump said in Ohio. “You know why? Because it’s a strong card and I want to make sure everyone is treated fairly.” A historic meeting between the U.S. and North Korea is expected to take place at the end of May after North and South Korea host their own summit in April.

Reaction to KORUS Largely Positive

In a brief moment of bipartisan agreement, mostly positive reactions to the renegotiated KORUS terms came swiftly from Republican lawmakers, unions and the steel and

© Copyright 2018 Gilston-Kalin Communications LLC.
P.O. Box 5325, Rockville, MD 20848-5325.
All rights reserved. Reproduction, photocopying or
redistribution in any form, including electronic, without
written approval of publisher is prohibited by law.

WTTL is published weekly 50 times a year except last week
in August and December. Subscriptions are \$697 a year.
Additional users pay only \$100 each with full-priced sub-
scription. Site and corporate licenses are also available.
Phone: 301-460-3060 Fax: 301-460-3086

manufacturing industries. “Since KORUS went into force more than five years ago, it became clear that Korea needed to do more to fully implement the agreement in order to remove trade and investment barriers for American exporters. The agreement in principle announced today makes steps toward improved implementation and maintains the strong economic ties between our two nations,” Senate Finance Committee Chairman Orrin Hatch (R-Utah) said in a statement.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) also voiced his support. “South Korea is one of our most important allies, and KORUS is a key part of that alliance. The improvements to KORUS as well as the agreement on steel will strengthen the economic ties between our two countries and will be beneficial to American consumers, workers, and manufacturers.”

Ways and Means Trade Subcommittee Chairman Dave Reichert (R-Wash.) chimed in. “When I led the fight in the House to pass the U.S.-Korea Free Trade Agreement, I did so because I knew it would benefit not only workers and businesses in Washington state, but in communities around the country. With today's announcement, we see an even stronger partnership with South Korea and a firm commitment from the Administration to the Asia-Pacific region.”

Lori Wallach, director of Public Citizen's Global Trade Watch, remained hopeful about parts of the new deal. “It's unclear how the proposed changes to the pact itself would reverse the doubling of our Korea trade deficit under KORUS, but the new currency agreement could make a difference if it has teeth, delaying the U.S. tariff cuts on Korean trucks could stop the big imbalance from getting even worse, and the parallel steel agreement is significant,” she said in a statement.

Many domestic industry groups also seemed optimistic about potential outcomes. “The agreement with South Korea to better level the playing field on steel and autos is an encouraging sign that the administration's trade strategy is achieving results. We believe the deal's steel provision will be as effective as a tariff in achieving the goals of strengthening our domestic industry and ensuring it can supply America's security needs,” Alliance for American Manufacturing President Scott Paul said in a statement.

United Steelworkers International President Leo Gerard said, “KORUS was a bad trade agreement right from the start. The United States has racked up billions of dollars in new trade deficits and lost tens of thousands of jobs because of that agreement. In the steel sector, Korea's predatory trade practices have been devastating. The quotas that the USTR has obtained should provide meaningful and lasting relief.”

Canadian Mining Company Settles SEC FCPA Charges

Canadian mining company Kinross Gold Corporation March 26 agreed to pay the Securities and Exchange Commission (SEC) a \$950,000 penalty to settle charges of violating the Foreign Corrupt Practices Act (FCPA) related to compliance programs and

internal accounting controls at two African subsidiaries. “From September 2010 through at least 2014, Kinross operated gold mines in Mauritania and Ghana without devising and maintaining a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management’s specific or general authorization,” the SEC order noted.

“As a result, Kinross paid vendors and consultants, often in connection with government interactions, without reasonable assurances that transactions were consistent with their stated purpose or the prohibition against making improper payments to government officials. For certain of these transactions, the company used petty cash to pay consultants which it then failed to accurately and fairly describe in its books and records,” it added.

“In 2014, Kinross also failed to maintain its internal accounting controls around contracting and awarded a lucrative logistics contract to a company preferred by government officials without following its own bidding and tendering procedures. Internal documentation provided incomplete information concerning the contract award. Additionally, Kinross contracted with a politically-well-connected third-party consultant to facilitate contacts with high-level government officials without conducting the heightened due diligence required by the company’s policies and procedures,” the SEC said.

In a statement, the company said it is “pleased to resolve this matter through an agreed-upon cease and desist order and that the SEC’s investigation has been concluded, as expected, without any material adverse effect on the Company’s financial position or business operations.” Justice notified Kinross in November 2017 that it closed its investigation, noting the company’s full cooperation during the inquiry, it added.

“The cease and desist order with the SEC makes no findings of bribery by the Company but is instead premised on allegations of various deficiencies in Kinross’ internal accounting controls and practices. Kinross cooperated fully with the SEC throughout the investigation and has taken steps to improve and strengthen its compliance program and internal accounting controls and practices.”

More Fallout from Steel, Aluminum Tariffs

The week of March 26 saw more fallout from the administration’s imposition of tariffs on U.S. steel and aluminum imports. A Swiss company filed suit against the U.S., and several countries are steeling themselves against potential dumping of steel products into their markets.

Severstal Export GMBH and its American affiliate Severstal Export Miami Corporation filed suit March 22 against the U.S. at the Court of International Trade (CIT), claiming that a 25% tariff on imported steel is unconstitutional “inasmuch as the Administration’s Steel Proclamation was issued purely for political and economic reasons, and therefore exceeded the scope of Congress’s delegation of authority to the Executive Branch to impose

tariffs to promote and protect national security.” The tariffs as applied to shipments already on the water as of the March 8 announcement are “unenforceable for failure to provide fair notice,” the plaintiffs wrote.

Prior to a hearing March 29, Acting Assistant Attorney General Chad Reader argued that the court should dismiss the complaint for lack of jurisdiction and failure to exhaust available administrative remedies. In its motion to dismiss, Justice noted that the plaintiffs are “wholly-owned subsidiaries” of PAO Severstal, a Russian producer of carbon and steel alloy products.

The claim that national security was not the motivating factor for the tariffs “must fail because the Court cannot review the President’s motivations and, even if it could, the President acted within Congress’ broad grant of authority. The President (and the Secretary) followed Section 232’s procedures, recognized the ‘close relation of the economic welfare of the Nation to our national security,’ and evaluated a range of statutory factors to assess the ‘impact of foreign competition on the economic welfare of [the] domestic [steel] industry.’”

Meanwhile, the European Commission (EC) March 26 launched a safeguard investigation on 26 steel product categories and will conclude in principle within nine months. The procedure may result in the imposition of import tariffs or quotas meant to protect the European Union (EU) from excessive imports. This is one of three measures the Commission announced in response to the U.S. tariffs on steel and aluminum. The European Commission is concerned that certain steel imports may increase as a result of limited market access to the U.S. leading to a redirect to Europe. The EU is currently exempted from U.S. tariffs until May 1, pending the outcome of ongoing discussions with the U.S. administration (see **WTTL**, March 26, page 1).

Canada also announced new acts to further prevent the transshipment and diversion of steel and aluminum into Canada. Among the proposed actions are launching new anti-circumvention investigations and giving Canada Border Services Agency greater flexibility in determining whether prices in the exporter’s domestic market are reliable. Canada’s government pledged to work closely and more frequently with the U.S. and Mexico, participate in new federal-provincial-territorial-stakeholder committees, and coordinate closely among border agencies.

“Canada is a trading nation, and we will not allow North American industries to be hurt or threatened by unfair trade practices, like the diversion of steel and aluminum. Our businesses and workers rely on our integrated industries, and we will take strong action to defend and protect our most important trade relationships. Canada will not be used as a backdoor into other North American markets. Our people have worked hard to be competitive in this global economy, and they deserve a level playing field,” Canadian Prime Minister Justin Trudeau said in a statement.

India has asked the U.S. to exempt it from tariffs, claiming that its exports of steel do not pose a security threat. Indian Foreign Secretary Vijay Gokhale met with U.S. Trade

Representative (USTR) Robert Lighthizer following the U.S. decision to launch a WTO challenge to India's export subsidy program (see **WTTL**, March 19, page 6).

As of March 28, U.S. tariffs, which went into effect March 23, apply to one third of steel and 45% of U.S. aluminum imports. Canada and Mexico are fully exempted, pending NAFTA outcomes. The EU, Korea, Brazil, Argentina and Australia are exempt through May 1. All others, including Russia, China, Japan, United Arab Emirates (UAE), Taiwan, Turkey, India and Vietnam are subject to tariffs.

U.S. Tangles with Canada, Korea, China at WTO DSB Meeting

At the World Trade Organization's (WTO) Dispute Settlement Body (DSB) meeting March 27, the U.S. once again butted heads with everyone regarding the appointment of new Appellate Body members and tangled with Canada, Korea and China on specific bilateral disputes.

The U.S. and Canada sparred over softwood lumber, resulting in the U.S. blocking two Canadian requests to establish dispute panels. Canada, in its first request, said the Commerce decision resulting in countervailing duties up to 17.99% on imports of softwood lumber from Canada were inconsistent with the U.S. obligations. Consultations were held January 17, but the issue could not be resolved (see **WTTL**, Jan. 15, page 3).

The U.S. countered that it had met its obligations and furthermore, that Canada's panel request included a measure that did not exist when Canada requested consultations. Canada further objected to Commerce's application of differential pricing methodology in its investigation into alleged dumping of imports of softwood lumber, which are now subject to antidumping duties of up to 7.28%.

Korea backed Canada, stating that the Canadians would not have had to ask for a panel were the U.S. in compliance with the WTO's ruling in the case over U.S. antidumping and countervailing measures on large residential washers from Korea (DS464) (see **WTTL**, Jan. 29, page 1). The U.S. said it continues to consult with interested parties for complying with the washer ruling. Korea wants the U.S. to move faster and questioned why it should take the U.S. more than 18 months to consult with interested parties.

On timing, China questioned why the U.S. still has not complied with WTO ruling on the U.S. Copyright Act. China said the U.S. has been out of compliance for 17 years and is the only WTO member not to comply with a ruling under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The U.S. said China's criticisms were unfounded. Separately, the U.S. requested consultations March 26 with China concerning China's obligations under TRIPS (see **WTTL**, March 26, page 1).

Mexico spoke on behalf of 64 WTO members, including the European Union, to call for the establishment of a selection committee for Appellate Body nominees, but, yet again, the U.S. said it was not in a position to agree to a proposal to fill Appellate Body vacancies.

Outgoing DSB Chair Junichi Ihara said he regretted that members were unable to launch the selection process and said the “sense of crisis shared by many members today needs to be translated into concrete actions.” Sunanta Kangvalkulkij of Thailand ascended to DSB chair. The next meeting will take place April 27.

Pascrell, Dingell Ding USTR over Lack of Transparency

Raising concerns over the U.S.-Korea Free Trade Agreement (KORUS) and the unfilled chief transparency officer position, Reps. Bill Pascrell Jr. (D-N.J.) and Debbie Dingell (D-Mich.) March 28 dinged USTR Robert Lighthizer over his agency’s lack of transparency.

Pascrell and Dingell found USTR’s response to an earlier letter sent by more than 50 of their colleagues in August both late (the reply came six months later) and that it “failed to respond to the specific issues we raised” on the importance of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). Now a new crop of questions has arisen.

“[W]hile recognizing some of USTR’s more recent efforts to increase communications with Members of Congress and their staff, we continue to encounter frustrations with lapses in transparency and new deficiencies in consultative agreement,” the two wrote. In particular they said they are frustrated by the initiation of KORUS negotiations “without articulating the specific objectives or process for the exercise” and the decision to “adopt parameters for Congressional and cleared stakeholder consultations on the KORUS renegotiation that differ from and are significantly weaker than those USTR is employing in the NAFTA negotiations.”

They also reprimanded USTR for “failure to produce or publish reports...regarding causes of significant trade deficits, Buy American policies, and violations or abuses of [World Trade Organization] rules and trade agreements.” Pascrell and Dingell also urged Lighthizer to formally designate Deputy USTR C.J. Mahoney to fulfill the role of chief transparency officer, as Lighthizer had promised in a conversation with Sen. Ron Wyden (D-Ore.) before Mahoney’s confirmation hearing (see **WTTL**, Jan. 22, page 3).

*** * * Briefs * * ***

GLYCINE: Glycine Producers of U.S. filed countervailing and antidumping duty petitions March 28 with ITA and ITC against glycine from China, India, Japan, and Thailand. In most recent “sunset” vote in January 2017, ITC said revoking antidumping duty order in imports from China would renew injury to U.S. industry (see **WTTL**, Jan. 23, 2017, page 8).

WHEELS: Accuride Corporation and Mexion Wheels Akron, LLC filed countervailing and antidumping duty petitions March 27 with ITA and ITC against steel wheels from China.

SILICON METAL: In 4-0 negative final vote March 23, ITC found U.S. industry is not materially injured by dumped imports of silicon metal from Australia, Brazil and Norway and subsidized imports from Australia, Brazil and Kazakhstan.

FINAL JUDGMENT: Former CIT Judge Nicholas Tsoucalas died March 22 at 91 after complications from pneumonia. President Reagan nominated Tsoucalas to CIT in 1984 and Senate confirmed him in June 1986. In 1997, Tsoucalas became senior judge and retired from CIT in 2016.

AGOA: President March 29 suspended, but did not terminate, AGOA benefits for Rwanda. Country “is not making sufficient progress toward the elimination of barriers to U.S. trade and investment, and therefore is out of compliance with eligibility requirements of AGOA,” USTR said. White House spared Tanzania and Uganda because “each has taken steps toward eliminating prohibitive tariff rates on imports of used clothing and footwear and committed not to phase in a ban of these products,” it said. Secondary Materials and Recycled Textiles Association (SMART) petitioned for out-of-cycle AGOA review in March 2017 (see **WTTL**, June 26, 2017, page 9).

EXPORT ENFORCEMENT: Indictment against Ross Roggio of Stroudsburg, Pa., and Roggio Consulting Company LLC was unsealed March 23 in Scranton U.S. District Court for conspiracy to illegally export M4 bolt gas rings MIL, firing pin retainers, rifling combo buttons and “defense services” to Iraq without Commerce or State licenses. Roggio and firm were charged with criminal conspiracy, illegal export of goods, wire fraud and money laundering. Defense services allegedly included assistance to foreign persons in manufacture of firearms, Justice noted. Defendant is in custody pending home inspection.

FOUNDRY COKE: In 4-0 “sunset” vote March 29, ITC said revoking antidumping duty order on imports of foundry coke from China would renew injury to U.S. industry.

COMOROS: At fourth meeting of working party on WTO accession March 28, Comoros reaffirmed its high-level political commitment to move forward. “The conclusion of accession negotiations in 2018 remains a realistic goal, as long as we do a good job - both on the multilateral and bilateral fronts,” working party chair, Ambassador Luis Enrique Chávez Basagoitia of Peru, said in statement. Working party held second meeting in June 2017 and had aimed for December ministerial as target (see **WTTL**, June 5, 2017, page 6). Comoros applied for accession in February 2007, and working party was established in October 2007.

AUSTRALIA GROUP: BIS in Federal Register April 2 implements recommendations from February 2017 Australia Group (AG) intersessional and June 2017 AG plenary implementation meetings. Specifically, BIS updates several Export Control Classification Numbers (ECCNs) by adding or clarifying entries, updates EAR advance notification requirements that apply to certain exports of saxitoxin and reflects addition of India as AG participating country (see **WTTL**, Jan 22, page 1). Rule also corrects several typographical errors in note to ECCN 1C351.

UNLIQUIDATED: Court of Appeals for Federal Circuit March 30 reversed in part, vacated in part, and remanded CIT ruling in *ThyssenKrupp Steel v. U.S.* German company filed original case over antidumping duty on imports of corrosion resistant carbon steel flat products (CORE). “Asserting jurisdiction under 28 U.S.C. § 1581(a), ThyssenKrupp contended that Customs erred in failing to interpret and apply the April 4 instructions to liquidate ThyssenKrupp’s eight entries without the antidumping duty—and therefore failing to refund the duty deposited upon entry,” Circuit Judge Richard Taranto wrote for three-judge panel. “We remand the case for consideration of the merits of ThyssenKrupp’s claim in accordance with our decision that the entries in question were ‘unliquidated’ within the meaning of the April 4, 2013 instructions implementing the results of the sunset review,” he added. All ThyssenKrupp entries at issue were made after retroactive revocation date of antidumping duty, Taranto noted.