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TPP Hopes Surge, But Path Forward Uncertain

Sen. Ben Sasse (R-Neb.) reignited the notion that the U.S. may rejoin the Trans-Pacific Partnership (TPP). Following a meeting with President Trump April 12, Sasse reported that the president had directed U.S. Trade Representative (USTR) Robert Lighthizer and economic adviser Larry Kudlow to look into rejoining the TPP, the very same trade deal Trump maligned and quickly withdrew during his first days in office.

“The best thing the [U.S.] can do to push back against Chinese cheating now is to lead the other eleven Pacific nations that believe in free trade and the rule of law. It is good news that today the President directed Larry Kudlow and Ambassador Lighthizer to negotiate U.S. entry into TPP,” Sasse posted on his website.

Trump later seemingly reversed his reversal: “Would only join TPP if the deal were substantially better than the deal offered to Pres. Obama. We already have BILATERAL deals with six of the eleven nations in TPP, and are working to make a deal with the biggest of those nations, Japan, who has hit us hard on trade for years!” he tweeted.

There’s one small problem -- there is no TPP. After the U.S. withdrew, the remaining 11 countries went forward with the Comprehensive and Progressive Agreement for TPP (CPTPP) and dropped many of the provisions the U.S. had insisted on (see **WTTL**, March 12, page 5). Each country has signed the deal and is going through the ratification process. Australian Trade Minister Steven Ciobo told reporters April 13 that he doesn’t “detect any wholesale appetite for there to be material reform or renegotiation” of the CPTPP. “We’re all working to put the deal into effect. I can’t see that all being thrown open now to appease the [U.S.] but we would welcome the [U.S.] coming back to the table.”

Lawmakers, Industry Debate How to Stand up to China

At a House Ways and Means Committee hearing April 12 on the impacts new tariffs would have on American companies, most members came to the conclusion that the Section 232

and 301 tariffs should be far more targeted. “When it comes to trade, how do you avoid punishing Americans for China’s misbehavior? Does even the prospect of potential higher tariffs damage our U.S. economy and harm our local farmers and businesses – especially now that due to President Trump, we have one of the most pro-growth tax codes in the world?” Chairman Kevin Brady (R-Texas) said in his opening remarks.

In an attempt to thread the needle between supporting the president and staying true to his pro-trade roots, Brady added: “We should work as closely as possible with our allies, and we should never create disincentives for our allies to join us in taking strong action. The world, not just the U.S., must stand up to China’s unfair trade practices.”

Ranking Member Richard Neal (D-Mass.) emphasized that the reasons for the Section 232 and Section 301 investigations were aimed at addressing China’s unfair trade practices. “In the case of the Section 232 steel and aluminum tariffs, the logic is pretty direct. The tariffs could, if implemented and designed thoughtfully, bring about a recovery of U.S. steel and aluminum production. In the case of the Section 301 proposed tariffs, the logic is less direct.” Neal acknowledged that tariffs in both cases “will bring disruption to the U.S. economy.”

Kevin Kennedy, president of Kennedy Fabricating LLC, testified that the steel tariffs are causing his business to lose out to international competitors. “One of our Canadian competitors just went from losing projects to us to now winning projects at our expense because they can import raw steel to Canada without a tariff and buy it 40% cheaper than we can buy it from our own domestic suppliers,” Kennedy said. His company used to manufacture drilling rigs and export them to India, Russia and Mexico, but that is no longer the case.

Kennedy said his company exists because of its ability to adapt and overcome challenges without the government interceding. “We shouldn’t pick winners or losers. We shouldn’t prop up companies or industries that can’t [compete] at the expense of those that can. That’s exactly what is happening now.”

AK Steel CEO Roger Newport did not share that sentiment, stating that the domestic steel industry has been repeatedly harmed by Chinese overproduction, as well as that of Korea and Japan. “While the steel industry has taken the brunt of the unfair trade practices over the last several decades, no industry is immune, as we have seen with washing machines, solar panels and other manufactured products. It is only a matter of time before others are afflicted by unfair trade. This is why this Administration is to be commended and supported for its efforts to stand up for American workers and say enough is enough!” Newport said.

Agriculture is fearful of Chinese retaliation. In his prepared testimony, John Heisdorffer, president of the American Soybean Association, stated that retaliation by China would undercut prices received by soybean producers, hurting an already depressed farm economy. “It has been argued that trade in agricultural products is fungible, and that the loss of one market to a competitor will be replaced by other markets which that competitor will no longer sell to,” he said.

“In the case of soybeans, this argument fails to recognize that our largest competitor, Brazil, is continuing to expand soybean production on new lands. Brazil is already the world’s largest soybean exporter, including to China, and would respond quickly in the event U.S. trade actions trigger retaliation against our soybean exports. We simply cannot accept the risk a trade war would create for our industry,” added Heisdorffer.

WTO Softwood Lumber Saga Continues, Canada Granted Two Panels

The softwood lumber saga continues at the World Trade Organization (WTO). At a Dispute Settlement Body (DSB) special meeting April 9, Canada asked for, and was granted, the establishment of two panels to examine U.S. countervailing and antidumping duties imposed on softwood lumber imports from Canada.

Commerce’s decision to impose countervailing duties up to 17.99% on softwood lumber from Canada was inconsistent with U.S. obligations under the Agreement on Subsidies and Countervailing Measures and the GATT, Canada again argued. Canada’s first panel request was blocked at the March 27 DSB meeting (see **WTTL**, April 2, page 5). The U.S. expressed disappointment with Canada’s second request and maintained it is meeting its obligations.

The body also granted Canada’s second panel request regarding antidumping duties and Commerce’s application of differential pricing methodology. Again, the U.S. expressed disappointment and said the request raised an item not identified during Canada’s request for consultations and added that the panel request includes an “unwarranted assertion of urgency,” according to U.S. statements. The next regular DSB meeting will be April 27.

*** * * Briefs * * ***

EXPORT ENFORCEMENT: Evgeny Spiridonov, contract developer at blocked gun manufacturer Kalashnikov Concern, was sentenced April 11 in Los Angeles U.S. District Court to time served for attempting to export Nightforce ATACR 4-16X42 riflescope to Russia without required BIS license. He pleaded guilty April 10. Spiridonov failed to file export information through Automated Export System. Riflescope was controlled under ECCN 0A987.a. He originally was charged in D.C. U.S. District Court in March (see **WTTL**, March 26, page 5). Case moved from D.C. federal court after Spiridonov was arrested in January.

MORE EXPORT ENFORCEMENT: Zhelyaz Andreev, Bulgarian national and employee of Miami export company AW-Tronics, was arrested April 11 for role in scheme to illegally export aviation parts and equipment, including micro switches, to Syrian Arab Airlines, Syrian government airline, which is blocked entity, between September 2013 and March 2014. Three other employees were sentenced in December (see **WTTL**, Jan. 1, page 8). All pleaded guilty in October to conspiracy to violate International Emergency Economic Powers Act (IEEPA). Seven others were also charged in original indictment, including Syrian Arab Airlines aka Syrian Air.

EVEN MORE EXPORT ENFORCEMENT: Bryan Singer was indicted April 3 in Key West, Fla., U.S. District Court for attempting to export items including Ubiquiti Nanostation M2 network

modems, TP Link modems, and cable box circuit boards to Cuba without BIS or OFAC licenses. Ubiquiti modems are classified under ECCN 5A002; TP Link modems under ECCN 5A992; and cable box circuit boards EAR99. Singer “represented that he was transporting to Cuba only those items observable in plain view on board the vessel ‘La Mala’ when in truth and in fact, and as the defendant then and there well knew, he was not transporting to Cuba only those items observable in plain view on board,” indictment noted.

STILL MORE EXPORT ENFORCEMENT: Iulian Petre, aka Julian Petre, of Waterville, Maine, was sentenced April 5 in Maine U.S. District Court to two years in prison and three years’ supervised release for illegally receiving and shipping firearms to Romania in 2012 and 2013 without State licenses. He was convicted in August 2017 following six-day jury trial.

GSP: USTR is reviewing GSP eligibility of India, Indonesia and Kazakhstan based on compliance concerns, agency announced April 12. For India, eligibility review is based on “concerns related to its compliance with the GSP market access criterion”; for Indonesia, compliance with GSP market access criterion and GSP services and investment criterion; Kazakhstan’s review on compliance with GSP worker rights criterion, USTR noted. Dairy and medical device industry groups targeted India’s benefits in comments posted in October 2017 (see **WTTL**, Oct. 23, page 4).

KORUS: ITC will investigate “probable economic effect” of modifications to staging of duty treatment for certain motor vehicles under U.S.-Korea Free Trade Agreement (KORUS) and “on domestic producers of the affected articles” in response to USTR request, commission announced April 12. Comments are due May 1.

CUBA: Transportation Department (DOT) March 30 proposed to award new U.S. carrier flights to Havana, after several U.S. carriers “chose to return their awards,” DOT noted. Proposed routes would depart from Miami, Fort Lauderdale, Boston and Houston. Objections are due by April 16. If newly allocated flights are at capacity on annual basis, total value (including round-trip airfares) of passenger expenditures could be approximately \$495 million; at 60% capacity, value could be approximately \$300 million, U.S.-Cuba Trade and Economic Council wrote in blog post.

DEPARTURES: OFAC Director John Smith will depart his position in early May, Treasury announced April 12. Smith has been director/acting director since February 2015 and has served with OFAC for 11 years. Deputy Director Andrea Gacki will serve acting director upon Smith’s departure. “OFAC’s work is truly vital to our national security, and the talent, expertise, and commitment of its staff is remarkable. It has been an honor to serve in this role, and I know that the dedicated career professionals at OFAC will continue to fulfill the agency’s mission and exceed expectations,” Smith said in statement.

MORE DEPARTURES: House Ways and Means Committee Staff Director David Stewart also departing, Chairman Kevin Brady (R-Texas) said April 12. Stewart joined majority staff in November 2015 following stint as policy director to former Speaker John Boehner (R-Ohio). “[David’s] fluency in policy, politics, and the institutions of government has enabled him to help successfully enact into law what many people said was impossible. David will be greatly missed by the Ways and Means Committee, members of Congress, and professional staff on both sides of the aisle. I wish him all the best,” Brady said in statement.

FLANGES: Commerce April 6 announced affirmative final determination in countervailing duty investigation of stainless steel flanges from China. Using adverse facts available, all exporters/producers assessed subsidy rate of 174.73%. Petitioner is Coalition of American Flange Producers. ITC expected to make its final injury determination May 21.

DISCLOSURES: DDTC is inviting industry to test electronic version of current DS-7787 disclosure form, agency posted on website April 12. If interested, visit <https://pmdtdtcqa.service-now.com/um/> between April 16-30 for more information on how to access and use test version.

PORK: U.S. and Argentina finalized technical requirements allowing U.S. pork to be imported to Argentina for first time since 1992, USTR said April 13. U.S. is world's top pork exporter with global sales of \$6.5 billion in 2017. "This breakthrough is the result of efforts by this administration to help America's farmers and ranchers reach new markets and ensure fair trade practices by our international partners," USDA Secretary Sonny Perdue said in statement. "Argentina has tremendous potential for U.S. pork exports," National Pork Producers Council President Jim Heimerl said, noting that current Argentine consumption of fresh pork products has increased to 26 lbs from 2 lbs. in 2005. Countries first announced agreement in August 2017 after Vice President Pence met with Argentine President Mauricio Macri in Buenos Aires (see **WTTL**, Aug. 21, 2017, page 4).

SUNFLOWER SEEDS: CAFC April 11 affirmed CIT decision in *Well Luck Company, Inc. v. U.S.* that certain in-shell sunflower seeds for snacking were correctly classified under HTSUS subheading 2008.19.90 at 17.9% *ad valorem* duty and not duty-free subheading 1206.00.00 ("Sunflower seeds, whether or not broken") as company argued. "Taken together, HTSUS Heading 2008 covers 'seeds' that are 'fit to be eaten' and either 'made ready' for consumption or 'treat[ed] or refrigerate[d] . . . to prevent. . . decomposition or fermentation.' The subject merchandise indisputably is made ready for consumption through processing, flavoring, and packaging," Circuit Judge Evan Wallach wrote for three judge panel.

FCPA: Egbert Yvan Ferdinand Koolman, Dutch citizen residing in Miami, pleaded guilty April 13 in Miami U.S. District Court to conspiracy to commit money laundering in scheme to award lucrative mobile phone and accessory contracts. Koolman was product manager of Servicio di Telecomunicacion di Aruba N.V. (Setar), instrumentality of Aruban government. Sentencing is set for June 27. In connection with scheme, Lawrence Parker, Jr., of Miami, pleaded guilty in December 2017 to conspiracy to violate Foreign Corrupt Practices Act (FCPA) and to commit wire fraud. Parker's sentencing is scheduled for April 30.

FAST TRACK: ITC will investigate economic impact of all trade agreements implemented between enactment of Bipartisan Trade Act of 2015 and president's request for three-year extension of Trade Promotion Authority (TPA), which expires July 1. President formally submitted extension request to Congress March 20 (see **WTTL**, March 26, page 6). Of course, ITC "is unaware of any trade agreements that were implemented" during this time. "While at least one trade agreement was negotiated during this period, the Trans-Pacific Partnership Agreement, it was not implemented during this period," commission noted in announcing investigation.