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## Business Groups Endorse Trilateral Efforts to Reform WTO

As the U.S. continues to block efforts to fill World Trade Organization (WTO) appellate Body vacancies, and fights over Venezuelan representatives led to the postponing of a Dispute Settlement Body meeting, three major business groups from the U.S., European Union (EU) and Japan April 3 commended their countries' efforts to tackle the thorny issues of reforming the organization.

In their fifth meeting since launching the trilateral effort in 2017, the three partners' trade and economy ministers in January focused on writing new rules and sharing anxiety over "non-market policies and practices, market-oriented conditions, industrial subsidies and state-owned enterprises, forced technology transfer policies and practices, WTO reform and digital trade and e-commerce," according to a joint statement (see **WTTL**, Jan. 14, page 5).

The industry groups -- Business Roundtable, the European Round Table of Industrialists and Keidanren (Japan Business Federation) -- specifically cited six action items, including efforts to address the problem of unfair industrial subsidies and "cooperate on the development of new rules to tackle forced technology transfers, on investment reviews for national security purposes and on export controls," they wrote in a joint statement.

"We call on the three governments to advance and implement this action agenda as a matter of urgency to revitalize the WTO and bring it into the 21st century," the groups added. "We also support the three trade ministers intensifying cooperative efforts to unlock the stalemate preventing progress on comprehensive reform of the WTO dispute settlement system, including with respect to the WTO Appellate Body," they wrote.

## USMCA Debate Heats up Amid Border Crisis

As Congress begins to talk about a potential vote on the U.S.-Mexico-Canada (USMCA) Agreement, passion is growing both in support and opposition of the deal. All this is

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occurring amid a tense border dispute and the beginning of a presidential campaign where differences of opinion become heightened.

In remarks at the White House April 4, the president said, “It’s a great deal. If they don’t pass it, it’s purely political, that’s all. The USMCA, everybody wants to see it passed. But we’ll see. Whatever they want to do is okay with me.” During those remarks, the president also threatened to impose auto tariffs on Mexico or close the border, which would complicate trade matters quite a bit (see related story below).

Sen. Pat Toomey (R-Pa.) told an event in Washington March 28 that the “path forward is very difficult” for the updated deal. The senator said he could not imagine the lawmakers could pass it while keeping steel and aluminum tariffs on Canada and Mexico. It would be “almost impossible,” he said. In addition, the “clock is not their friend,” referring to the short window between congressional recesses and the next election cycle.

Both opponents and supporters of the deal doubled down on their positions. AFL-CIO President Richard Trumka told the United Steelworkers April 2, “Bring us a deal that works, and we’ll fight for it. Bring us a deal that works, and we’ll march for it. But until that deal is secured, get back to the negotiating table and finish the job!” The union’s Executive Council announced in March that it would oppose the new deal “if the administration insists on a premature vote on the new NAFTA in its current form” (see **WTTL**, March 18, page 4).

At the same time, eight industry groups joined the Pass USMCA Coalition, which advocates for swift passage of the deal. New members include Software & Information Industry Association (SIIA), the U.S. Dairy Export Council and WineAmerica. “The size and diversity of our membership demonstrate that the new trade pact with Mexico and Canada is widely supported,” Pass USMCA honorary co-chairman and former Rep. Joe Crowley said in a statement.

“SIIA in particular believes that the USMCA is a major step forward in creating an open trading system in data,” SIIA Senior VP for Global Public Policy Carl Schonander said in a separate statement. “We are pleased with the agreement’s cross-border data flow obligations, protections for source code/algorithms, and recognition that the APEC Cross-Border Privacy Rules system is a valid facilitator of cross-border data flows, including financial data, while protecting personal information,” he added.

## **Industry Denounces Threats to Close Border**

Imposing tariffs or simply the threat of them as leverage in negotiating potential trade deals is not a new tactic of the Trump administration. But threatening to close the southern border with Mexico is new and could lead to great economic hardship to U.S. industry, as diverse trade groups were quick to highlight, as Congress looks to implement updates to the North American trade deal that these groups have championed (see related story, page 1).

Some 18 trade groups in a pointed letter raised major concerns with the administration. “Closing or limiting the free flow of goods on the U.S.-Mexican border will inflict significant harm to our nation’s economy and the millions of American jobs that depend on cross-border trade. For instance, the auto sector – and the 10 million jobs it supports – relies upon the North American supply chain and cross-border commerce to remain globally competitive and a forced shutdown of auto assembly plants due to a border closure would cost ... billions of dollars per day,” the groups wrote April 4 in a letter to National Economic Council Director Larry Kudlow and acting Chief of Staff Mick Mulvaney.

The American Soybean Association (ASA) also cited potential disruption to “trade and the flow of agriculture products” in an email newsletter April 4. “While explicit details of how the president would envision enacting this policy have not been forthcoming, significant concern for the negative economic consequences has been raised by members of Congress from both sides of the aisle. At this point, it is unclear if the president’s threat was a one-off comment or if the administration has been tasked to look into executing this policy,” the ASA wrote.

The U.S. aerospace industry also registered its apprehension of the administration’s threat. “Four of Mexico’s five major aerospace hubs are on the U.S. border because of their importance to American industry. Cutting off key supply lines endangers our industry’s ability to support American prosperity and produce the nation’s largest manufacturing trade surplus,” Aerospace Industries Association (AIA) President and CEO Eric Fanning said in a statement.

In remarks at the White House that same day, the president stepped back from closing the border, but threatened to impose auto tariffs on Mexico if the country does not “help” with immigration or the drug trade in the next year. “We’re going to give them a one-year warning. And if the drugs don’t stop, or largely stop, we’re going to put tariffs on Mexico and products, in particular cars. The whole ballgame is cars. It’s the big ballgame. With many countries, it’s cars. And if that doesn’t stop the drugs, we close the border,” he said.

In response to a question the next day about November 2018 side letters that exempt Canada and Mexico from future auto tariffs, the president said, “This will supersede USMCA. USMCA is a great deal and it’s very good for Mexico, but this will supersede USMCA.” Commerce submitted a report on the national security implications of auto imports in February, but has not released those results to the public (see **WTTL**, Feb. 25, page 1).

“Imposing tariffs on cars for this reason would be a huge violation of existing trade rules. What’s more it would be immensely costly for U.S. auto producers and consumers. It’s difficult to see this as a credible threat. The Mexican government will surely view this threat with some skepticism as well as frustration,” Duncan Wood, director of the Wilson Center’s Mexico Institute, said in a statement.

## CAFC Affirms Commerce Decision on Large Power Transformers

The Court of Appeals for the Federal Circuit (CAFC) April 5 affirmed the Court of International Trade (CIT) decision to sustain Commerce's remand determination in the first administrative review of the antidumping duty order on large power transformers from Korea. In a 5-0 "sunset" vote in September 2018, the International Trade Commission (ITC) said revoking the antidumping duty order on imports of large power transformers from Korea would renew injury to U.S. industry (see **WTTL**, Sept. 17, page 5). ABB Inc. and two other firms filed antidumping petitions in July 2011.

The issue before the CAFC was a "narrow one," Circuit Judge Alvin Schall wrote for the three-judge panel in *ABB, Inc., vs. U.S.* It is whether the CIT "erred in affirming Commerce's determination to not make a circumstances of sale adjustment to normal value ... in the form of a commission offset," he wrote. In this case, Hyundai, the party seeking the adjustment, "incurred no commission expenses on home market sales and no commission expenses outside the United States on U.S. sales, but did incur commission expenses" inside the U.S. on constructed export price sales in the U.S., Schall added.

The judges agreed with the CIT that "Commerce's approach represents a reasonable construction," he noted. "Commerce's approach in the *Remand Results* draws a distinction between U.S. commissions that result in an adjustment in the determination of constructed export price and U.S. commissions that may, instead, result in a circumstance of sale adjustment or commission offset in the determination of normal value," Schall wrote, citing the CIT decision.

"Moreover, once Commerce deducted the commission expenses incurred in the United States in calculating constructed export price, there was no difference in the circumstances of sales in the home market and the U.S. market for which an adjustment had to be made," he added.

### \* \* \* Briefs \* \* \*

**STEEL ROD:** In 5-0 preliminary votes April 5, ITC found U.S. industry may be injured by allegedly dumped imports of carbon and alloy steel threaded rod from China, India, Taiwan and Thailand and subsidized imports from China and India.

**ACETONE:** In 5-0 preliminary vote April 4, ITC found U.S. industry may be injured by allegedly dumped imports of acetone from Belgium, Korea, Singapore, South Africa and Spain. Commission terminated antidumping duty investigation of acetone from Saudi Arabia.

**WASHERS:** In 5-0 "sunset" votes March 29, ITC said revoking antidumping duty order on imports of large residential washers from Mexico would renew injury to U.S. industry. At same time, commission said revoking antidumping and countervailing duty orders on imports from Korea would **not** renew injury to U.S. industry.

NOMINATIONS: Senate April 3 confirmed Jeffrey Kessler to be assistant Commerce secretary (ITA) for enforcement and compliance.... Same day, Senate Foreign Relations Committee approved nomination of R. Clarke Cooper to be assistant secretary of State for political-military affairs.

FCPA: Micronesian government official Master Halbert pleaded guilty April 2 in Hawaii U.S. District Court to conspiracy to commit money laundering. Sentencing is set for July 29. Frank Lyon of Honolulu pleaded guilty in January in Hawaii federal court to conspiracy to violate FCPA for his role in scheme to bribe Halbert to corruptly secure \$8 million in engineering and project management contracts (see **WTTL**, Feb. 18, page 4). Lyon's sentencing is scheduled for May 13.

VENEZUELA: OFAC April 5 designated two shipping companies operating in Venezuelan oil sector: Liberia-based Ballito Bay Shipping Incorporated and Greek firm ProPer In Management Incorporated. At same time, OFAC identified tanker that transported oil from Venezuela to Cuba: Despina Andrianna, owned by Ballito and operated by ProPer. Agency also identified 34 vessels as blocked property of Petroleos de Venezuela, S.A. (PdVSA), state-owned oil company that OFAC designated in January (see **WTTL**, Feb. 4, page 4).

WELDED PIPE: In final votes April 2, ITC found U.S. industry is materially injured by certain dumped imports of large diameter welded (LDW) pipe from Canada, Greece, Korea, and Turkey and subsidized imports from Korea and Turkey. Commissioners found three like products: LDW carbon and alloy steel line pipe, LDW carbon and alloy steel structural pipe and LDW stainless steel pipe. On dumped line pipe from Canada, Greece, Korea and Turkey, vote was 3-1; Commissioner Meredith Broadbent voted no. Votes were 4-0 on dumped and subsidized structural pipe from Canada, Korea, and Turkey. On stainless steel pipe, negative votes were 5-0 on dumped imports from Canada and Korea, as well as subsidized imports from Korea. All commissioners voted to terminate investigations of dumped stainless steel pipe from Greece and Turkey and subsidized imports from Turkey.

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