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Commerce Restarts Mexican Tomato Antidumping Probe

As promised, Commerce May 7 terminated its 2013 suspension agreement with Mexican tomato exporters and will resume its antidumping investigation of fresh tomato imports from Mexico. The department announced its intent to withdraw from the deal in February (see **WTTL**, Feb. 11, page 2).

> The long-running dispute over tomatoes from Mexico dates back to the 1990s. Most recently, the Court of International Trade ruled in 2015 that Commerce failed to provide all the information behind its 2013 agreement with Mexican tomato exporters to suspend the antidumping investigation of tomato imports from Mexico.

Former Mexican trade negotiator Kenneth Smith Ramos tweeted May 8: “The [U.S.] government’s decision to get out of the [tomato] suspension agreement is completely political: Florida is the decisive state in all presidential elections and Trump is already in campaign. Unfortunately it's sacrificing its consumers.”

On cue, Sen. Marco Rubio (R-Fla.) applauded Commerce’s decision. “Today’s tomato suspension agreement termination is just one more example of how this administration is working on behalf of the American people in ways the rest of Washington still doesn’t get,” he said in a statement. “In the long run, both U.S. tomato growers and consumers will benefit greatly from this administration’s insistence on free, fair, and reciprocal trade,” he added.

USTR Could Impose Tariffs on All Chinese Imports

In what could be just the next step in an escalating trade war, the administration May 10 increased Section 301 tariffs on the third tranche of $200 billion of Chinese imports to 25% from 10%. Later after close of business Friday, despite last-minute trade talks, the U.S.

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Trade Representative (USTR) Robert Lighthizer said the president also ordered his office to "begin the process of raising tariffs on essentially all remaining imports from China, which are valued at approximately $300 billion."

"In the most recent negotiations, China has chosen to retreat from specific commitments agreed to in earlier rounds," the USTR's office said in the Federal Register notice May 9 announcing the tariff increase. The USTR's office in February formally delayed the deadline to increase the tariffs, but gave no new timetable (see **WTTL**, March 4, page 3).

> President Trump announced the latest tariff increase in two tweets May 5 that provided hours of fodder for fact-checkers. "These payments are partially responsible for our great economic results," he said. "The Tariffs paid to the USA have had little impact on product cost, mostly borne by China. The Trade Deal with China continues, but too slowly, as they attempt to renegotiate. No!" he added.

In response to the tariff increase, a Chinese Commerce Ministry spokesperson hinted at further retaliation. "China deeply regrets that it will have to take necessary countermeasures. The eleventh round of China-U.S. high-level economic and trade consultations is underway. It is hoped that the U.S. and the Chinese side will work together and work together to resolve existing problems through cooperation and consultation," the ministry posted on its website.

Business groups denounced the president's latest move. "As has been made clear by the administration's use of tariffs during the past year, tariffs are an additional tax burden placed on Americans. These taxes are not paid by foreign nations and they result in higher costs that are simply passed on to the American consumer," said Rick Helfenbein, president and CEO of the American Apparel & Footwear Association, in a statement.

"To resolve the dispute between the U.S. and China, it's imperative that China address long-standing unfair trade practices that have hurt American workers and businesses," Business Roundtable said in a statement, adding the group "is very supportive of the administration's efforts to negotiate an agreement that resolves structural issues in China. A final agreement should take tariffs down."

Lawmakers joined the chorus. Rep. Justin Amash (R-Mich.) tweeted May 10: "Americans can't avoid the economic losses caused by tariffs. Tariffs decrease competition and increase the competitive price of goods and services. Even firms that produce entirely domestically face higher input costs. These factors hurt all Americans while benefiting only a few."

Agriculture groups already are feeling the heat of retaliatory tariffs and reduced market access. The National Association of Wheat Growers (NAWG), the American Soybean Association (ASA) and the National Corn Growers Association said in a joint statement they were "expecting a deal by March 1 before farmers went back into the fields but today saw an escalation of the trade war instead."

"Adding to current problems, it took us more than 40 years to develop the China soy market. For most of us in farming, that is two thirds of our lives. If we don't get this trade deal sorted out and the tariffs rescinded soon, those of us who worked to build this market likely won't see it recover in our lifetime," said ASA President Davie Stephens.

Administration Targets Iranian Metal Sectors

On the first anniversary of the administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) or Iran nuclear deal, the White House May 8 authorized further sanctions on Iran's iron, steel, aluminum and copper sectors, which account for 10% of its export economy.

> It is the policy of the U.S. to "deny the Iranian government revenue, including revenue derived from the export of products from Iran's iron, steel, aluminum, and copper sectors, that may be used to provide funding and support for the proliferation of weapons of mass destruction, terrorist groups and networks, campaigns of regional aggression, and military expansion," the executive order (EO) noted.

The administration previously announced it would no longer grant sanctions waivers to nations that import Iranian oil, effective May 2 (see **WTTL**, April 29, page 1). In the first designation of a government entity, State in April designated the Islamic Revolutionary Guard Corps (IRGC) as a foreign terrorist organization.

Under the EO, those engaged in potentially sanctioned transactions will have a 90-day period to wind down those transactions without exposure, Treasury noted in a Frequently Asked Question (FAQ). In addition, sanctions do not apply to "transactions for the conduct of the official business of the United States Government or the United Nations (including its specialized agencies, programmes, funds, and related organizations) by employees, grantees, or contractors thereof," another FAQ noted.

Lawmakers and civil society groups responded quickly. Rep. Michael McCaul (R-Texas), ranking member on the House Foreign Affairs Committee, applauded the new sanctions. "This action, coupled with the sanctions on Iranian oil exports and the designation of the IRGC as a foreign terrorist organization, demonstrates that the U.S. will not back down in exerting pressure until the regime ends its destabilizing activities," he said in a statement.

Daryl Kimball, director of the Arms Control Association, disagreed. "Another step in the wrong direction ... the Trump administration is essentially inviting Iran to exceed the limits set by the JCPOA by showing Iran that there is no upside in continuing to comply with their JCPOA obligations," Kimball tweeted.

Telefonica Brasil Pays $4 Million to Settle FCPA Charges

Brazilian telecommunications company Telefônica Brasil S.A. agreed May 9 to pay the Securities and Exchange Commission (SEC) $4.125 million to settle charges of violating the Foreign Corrupt Practices Act (FCPA) for providing World Cup and other tickets to government officials. The firm "failed to devise and maintain sufficient internal accounting controls over a hospitality program that the company hosted in connection with the 2014 World Cup and 2013 Confederations Cup," the SEC order noted. Under this program, Telefônica Brasil "offered and provided tickets and hospitality to government officials who were directly involved with, or in a position to influence, legislative actions, regulatory approvals, and business dealings involving the company," it added

> All told, the firm provided World Cup tickets and related hospitality to more than 90 government officials and Confederations Cup tickets and related hospitality to 34 government officials. "Telefônica Brasil lacked internal accounting controls sufficient to implement or maintain these policies and prevent giving things of value, like World Cup tickets, to government officials where such gifts might influence or reward an official decision," the SEC noted.

The company did not admit or deny the SEC's findings. "Telefonica Brasil has a strong code of ethics, and the Company has continued to strengthen its compliance and anti-corruption program to help ensure its continued future compliance with all applicable laws and regulations," a company spokesperson wrote in an email to WTTL.

Senate Returns Ex-Im Bank to Former Glory

Good things come to those who wait. More than three years after its last board member term expired, the full Senate May 8 confirmed three Export-Import (Ex-Im) Bank board members, including a new Ex-Im president, restoring the quorum and allowing the bank to authorize financing for transactions of more than $10 million

Senate confirmed Kimberly Reed to be president in a 79-17 vote, and Judith DelZoppo Pryor and former Rep. Spencer Bachus III to be board members in similar votes. A week before, the president May 2 nominated Paul Shmotolokha to be Ex-Im Bank first vice president (see **WTTL**, May 6, page 4). Senate committee action is also pending for another board nominee Claudia Slacik, with a term expiring in January 2023.

Sen. Maria Cantwell (D-Wash.), a major proponent of the bank, applauded the confirmations, but urged the Senate to reauthorize the bank before it expires. "With its authorization set to expire in September, we need to reauthorize the Export-Import Bank so it can continue to provide new financing that supports American jobs and American exports," she said in a statement. Cantwell noted that in the three years since the bank was fully functional, nearly $40 billion worth of deals were "stuck in limbo."

Sen. Pat Toomey (R-Pa.), who had previously put holds on Ex-Im nominees, took to the Senate floor the day before the votes to oppose the confirmations. "With a quorum there's a very real risk that the Ex-Im Bank returns to business as usual -- which is a form of crony capitalism and taxpayer subsidy of companies far and wide," he said. "Ex-Im Bank necessarily picks winners and losers in our economy, and I don't think any entity of the federal government ought to be doing it," Toomey added.

The National Association of Manufacturers (NAM) also hailed the bipartisan vote, but looked forward to the reauthorization fight in the fall. "For manufacturers, this is a serious threat looming on the horizon. If Congress fails to reauthorize the Ex-Im Bank, lawmakers will be responsible for slowing manufacturing's growth and handing countries like China a competitive edge," NAM President Jay Timmons said in a statement.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in March grew 1.1% from year ago to $141.7 billion, Commerce reported May 9. Services exports gained 1.8% to record-high $70.3 billion from March 2018. Goods imports increased 1.7% from March 2018 to $214.1 billion, as services imports jumped 3.6% to $47.8 billion.

VENEZUELA: OFAC May 10 designated two companies – one Liberian and one based in Marshall Islands -- that operate in Venezuela oil sector and two of companies' vessels that transported oil from Venezuela to Cuba. At same time, administration determined that persons operating in country's defense and security sector may be subject to sanctions… OFAC May 7 removed sanctions on former director general of Venezuela's National Intelligence Service, who "broke ranks" with Maduro regime. Agency designated Manuel Ricardo Cristopher Figuera and four other "illegitimate" Venezuelan government officials in February (see **WTTL**, Feb. 18, page 5).

NORTH KOREA: In first seizure of North Korean cargo vessel for violating international sanctions, Justice May 9 filed civil forfeiture complaint against carrier ship "Wise Honest" that was used to illicitly ship coal from North Korea and to deliver heavy machinery to country. "Payments for maintenance, equipment, and improvements of the *Wise Honest* were made in U.S. dollars through unwitting U.S. banks," OFAC noted. Agency designated ship owner Korea Songi General Trading Corporation in June 2017 (see **WTTL**, June 5, 2017, page 6).

COOL TOOL: New electronic Commodity Jurisdiction application on DDTC's Defense Export Control and Compliance System (DECCS) launched May 6. System provides capability to save CJ requests as drafts and to download PDF version of submitted form. All current DTrade Super Users with valid email addresses have been automatically enrolled in DECCS and can currently access application, agency said. Access new app here: https://deccspmddtc.service-now.com/deccs.

QUARTZ: Cambria Company LLC filed countervailing and antidumping petitions May 8 with ITA and ITC against quartz surface products from India and Turkey.

FILE CABINETS: Hirsh Industries LLC filed countervailing and antidumping petitions April 30 with ITA and ITC against vertical metal file cabinets from China.

TRADE PEOPLE: Former AFL-CIO trade and globalization policy specialist Celeste Drake joined Directors Guild of America (DGA) as executive in charge of government affairs, DGA announced May 9. Drake will serve as "an advocate for the DGA and its members on key issues such as: intellectual property, copyright and anti-piracy protections; pension and health; and issues relating to the protection of DGA members' creative and economic rights," group announced.

AFRICA: USTR May 6 requested ITC investigate sub-Saharan Africa's trade performance under African Growth and Opportunity Act (AGOA). Specifically, administration "seeks to gain further understanding of how enforcement of intellectual property rights and other policy measures affect trade and investment across the region, as well as a better understanding of growing markets for biotechnology and digital products and services, particularly for key markets such as South Africa, Nigeria, Kenya, Ghana, Rwanda, Ethiopia and Cote d'Ivoire," USTR wrote.

<u>SOLAR</u>: CAFC May 8 affirmed CIT decision denying company's motion for preliminary injunction against Commerce liquidation instructions in antidumping duty order on crystalline silicon photovoltaic cells, from China. U.S. importer Sumec "has not demonstrated that it will be irreparably harmed absent immediate relief in the form of a preliminary injunction," Circuit Judge Evan Wallach wrote for three-judge panel in *Sumecht NA, Inc. v. U.S.* "The threat of liquidation is typically sufficient to demonstrate irreparable harm because liquidation may moot further judicial relief in challenges to administrative proceedings," he added.