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Senators Introduce Bill to Lift Cuba Embargo

Lawmakers took another step toward chipping away at the Cuba embargo Feb. 7 when three senators reintroduced the *Freedom to Export to Cuba Act* (S. 428), a bill that would lift the trade embargo on the island. Sens. Amy Klobuchar (D-Minn.), Mike Enzi (R-Wyo.) and Patrick Leahy (D-Vt.) sponsored the bill, which would eliminate legal barriers to Americans doing business in Cuba.

> The bill repeals existing restrictions, including the original 1961 authorization for establishing the trade embargo; subsequent laws that required enforcement of the embargo; and other restrictive statutes that prohibit transactions between U.S.-owned or controlled firms and Cuba, and limitations on direct shipping between U.S. and Cuban ports.

"U.S.-Cuba policy has been defined for far too long by conflicts of the past. The Freedom to Export to Cuba Act would pave the way for new economic opportunities for American businesses & farmers, boost U.S. exports & allow Cubans greater access to American goods," Klobuchar tweeted Feb. 7.

Lawmakers in December passed the 2018 Farm Bill (H.R. 2), including an amendment that would allow farmers to use trade promotion funds to finance certain agricultural exports to Cuba (see **WTTL**, Jan. 7, page 9). Klobuchar and 13 bipartisan cosponsors previously introduced the embargo bill in June 2017.

USTR Continues "Aggressive" Approach to China

Facing a self-imposed March 1 deadline before raising tariffs on Chinese imports, a high-level U.S. delegation will travel to Beijing Feb. 14-15 in hopes of averting the increased duties. At the same time it is negotiating a deal, the U.S. acknowledged the obvious that its approach to China is more aggressive than in the past.

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Complicating the talks, though officials are loath to admit it, is the recent indictment against Huawei (see **WTTL**, Feb. 4, page 1).The U.S. delegation will include U.S. Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin, along with several other trade officials. Deputy USTR Jeffrey Gerrish will participate in deputy-level negotiations beginning Feb. 11.

The USTR's office explained the reasoning behind its aggressive approach in its annual report on China's implementation of its World Trade Organization (WTO) commitments. "Out of necessity, the United States is now using all available tools – including domestic trade remedies, bilateral negotiations, WTO litigation and strategic engagement with like-minded trading partners – to respond to the unique and very serious challenges," USTR wrote in the report released Feb. 4.

The report also cited just "a small sampling of bilateral and multilateral commitments unfulfilled by China," including: forcible technology transfer from U.S. companies; lack of foreign electronic payment services companies in China's domestic market; slow review of applications of agricultural biotechnology products; and illegal export restraints, such as export quotas, export licensing, minimum export prices, export duties and other restrictions.

While the U.S. and its partners have been actively engaged in reforming WTO rules aimed at China, the report highlighted the futility of WTO reform in changing China's ways. "In theory, the WTO membership could adopt new rules requiring members like China to abandon non-market economic systems and state-led, mercantilist trade regime. For several reasons, however, it is unrealistic to expect success in any negotiation of new WTO rules that would restrict China's current approach to the economy and trade in a meaningful way."

Commerce to Restart Mexican Tomato Antidumping Probe

Rotten Tomatoes is more than a film review website. As the administration hails the success of its updated trade deal, Commerce will resume its antidumping investigation of fresh tomato imports from Mexico and could impose duties on those imports. The department Feb. 6 formally announced its intent to withdraw from its 2013 suspension agreement with Mexican tomato exporters.

The long-running dispute over tomatoes from Mexico dates back to the 1990s. Most recently, the Court of International Trade (CIT) ruled in 2015 that Commerce failed to provide all the information behind the deal (see **WTTL**, Sept. 28, 2015, page 1).

"We have heard the concerns of the American tomato producing industry and are taking action today to ensure they are protected from unfair trading practices," said Commerce Secretary Wilbur Ross. Withdrawal would be effective May 7. Upon completion of the withdrawal, Commerce will continue with its investigation and notify the International Trade Commission (ITC) of its final determination, the department said.

Florida Republican lawmakers applauded the deal. "Fairly traded imports can and do enrich Americans' lives, but we must be clear with our trade partners that unfair trade practices that threaten American livelihoods will not be tolerated," Sen. Marco Rubio (R-Fla.) said in a statement.

> A week before, Rubio and 47 Senate and House colleagues urged Ross to immediately terminate the "ineffective" deal. "Such suspension agreements have always been negotiated with the best intentions in mind. Yet, three different agreements have already been negotiated over the last 22 years because each previous agreement had failed to work as intended," the lawmakers wrote in a letter to Ross.

In its fourth sunset review of the suspended antidumping investigation in December, Commerce determined that the termination of the suspended investigation "would likely lead to continuation or recurrence of dumping at weighted-average margins up to 188.14%."

WTO Arbitrator Brings Korean Concessions Down to Earth

A World Trade Organization (WTO) arbitrator ran Korea's original request for retaliation over U.S. non-compliance in the ongoing WTO Dispute Settlement Body (DSB) case on antidumping and countervailing measures on large residential washers (LRWs) through the spin cycle.

In its ruling Feb. 8, the arbitrator determined that "the level of nullification or impairment caused by the 'as applied' inconsistent antidumping and countervailing duty measures" was $74.4 million and $10.4 million, respectively. The arbitrator was not convinced by Korea's argument that the U.S. LRW market would grow on average by 5.8% annually, but said Korea may update this figure annually to account for inflation.

This is the first time a WTO arbitrator has authorized a member to suspend concessions against another member for trade losses resulting from an antidumping measure found to be inconsistent with WTO rules. Korea originally sought $711 million in annual sanctions over U.S. non-compliance (see **WTTL**, Jan. 22, page 7). The U.S. objected to that level of retaliation, and the matter was automatically referred to arbitration. The final arbitrator's decision is only 12% of Korea's original request.

For Korea's request pertaining to non-LRWs, the arbitrator "devised a formula that Korea may use to determine the level of nullification or impairment in any future instance of application of the 'as such' inconsistent anti-dumping measures," the WTO said.

President Preaches to Trade Choir

While Congress has introduced several bills restricting his trade authority, the president used State of the Union speech Feb. 5 to urge lawmakers to pass an unpopular one that gives him even more power. In the few minutes he spent on trade, the president also hailed progress on a China trade deal and asked Congress to approve the new U.S.-Mexico-Canada Agreement (USMCA).

The president asked lawmakers to pass the Reciprocal Trade Act (H.R. 764), "so that if another country places an unfair tariff on an American product, we can charge them the exact same tariff on the exact same product that they sell to us," he said. Since Republican members introduced that bill in January, other lawmakers have sponsored opposing bills restricting his authority under Section 232 to impose tariffs (see Briefs, page 5).

> On China, the president claimed the Treasury is "receiving billions and billions of dollars" from recently imposed tariffs on $250 billion of Chinese goods. With more tariffs on the horizon, "we are now working on a new trade deal with China. But it must include real, structural change to end unfair trade practices, reduce our chronic trade deficit, and protect American jobs."

The USMCA "will replace NAFTA and deliver for American workers like they haven't had delivered to for a long time," he said. The president urged congress to pass the USMCA into law "so that we can bring back our manufacturing jobs in even greater numbers, expand American agriculture, protect intellectual property, and ensure that more cars are proudly stamped with our four beautiful words: 'Made in the USA.'"

As if coordinated, members of the president's cabinet immediately put out statements expressing their enthusiastic support. The president "outlined a visionary trade agenda that resonates across party lines and will accelerate America's manufacturing resurgence, expand export opportunities for our farmers, ranchers and small businesses, and promote America's leadership in today's digital economy," USTR Robert Lighthizer said in a statement.

Industry groups echoed that sentiment. The National Retail Federation (NRF) commended the president for "his efforts to restore balanced trade relationships," NRF President and CEO Matthew Shay said in a statement. "We encourage the administration to continue to focus on the end goal, and for Congress to restore rather than further neglect its role in trade policy," he added.

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) was doubtful. "While I agree with Trump that America needs to do better on trade, so far his administration has done far more to create chaos and uncertainty than deliver results for American workers. When it comes to NAFTA, a deal isn't worth much if it's not enforceable, and as it stands NAFTA 2.0 is not enforceable," he said.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in November jumped 4.5% from year ago to $140.3 billion, Commerce reported Feb. 6. Services exports gained 2.2% to $69.5 billion from November 2017. Goods imports increased 3.5% from November 2017 to record-high $211.9 billion, as services imports gained 1.85% to $47.25 billion.

STEEL: American Institute of Steel Construction, LLC filed countervailing and antidumping duty petitions Feb. 4 with ITA and ITC against fabricated structural steel from Canada, China and Mexico.

NOMINATIONS: Senate Finance Committee Feb. 5 approved nomination of Jeffrey Kessler to be assistant Commerce secretary for enforcement and compliance. "This is an important role when it comes to what I call getting trade done right," Sen. Ron Wyden (D-Ore.) said at committee meeting.

TRADE PEOPLE: National Council of Textile Organizations (NCTO) president and CEO Auggie Tantillo will retire later this year, group announced Feb. 4. Organization intends to make public announcement on Tantillo's replacement "in the coming weeks," it said. Prior to association work, Tantillo was deputy assistant secretary of Commerce for textiles & apparel under President George H.W. Bush.

DRINK UP: USTR Chief Agricultural Negotiator Gregg Doud and United Kingdom (UK) Ambassador to U.S. Kim Darroch Jan. 31 signed two continuity agreements covering wine and distilled spirits "to ensure there is no disruption in trade of these products" when UK leaves EU. UK was top export market for U.S. distilled spirits in 2017, USTR noted. U.S. currently has agreements on wine and distilled spirits with EU.

CONGRESS: If one bill restricting executive tariff authority is good, two would be even better. Rep. Ron Kind (D-Wis.) and Sen. Rob Portman (R-Ohio) Feb. 6 introduced parallel bills (H.R. 1008/S. 365) amending Section 232 "to require the Secretary of Defense to initiate investigations and to provide for congressional disapproval of certain actions." Business Roundtable thanked sponsors for "leadership on reasserting Congress' constitutional authority over tariffs and regulating foreign commerce." Rep. Mike Gallagher (R-Wis.), Sen. Pat Toomey (R-Pa.) and two dozen cosponsors introduced similar bills (H.R.940/S. 287) in January (see **WTTL**, Feb. 4, page 8).

SANCTIONS: Kollmorgen Corporation of Radford, Va. agreed Feb. 7 to pay $13,381 to settle six OFAC charges of violating Iran sanctions between July 2013 and July 2015. Turkish affiliate Elsim Elektroteknik Sistemler Sanayi ve Ticaret Anonim Sirketi allegedly dispatched employees to Iran to service machines and provided products, parts or services with knowledge they were destined for Iranian end-users. Kollmorgen voluntarily self-disclosed apparent violations; company acquired control of Elsim in early 2013….At same time, OFAC designated Evren Kayakiran, Elsim manager primarily responsible for conduct, as foreign sanctions evader.

FIREARMS: In response to 30-day formal 38(f) notice from State on long-awaited firearms rules, House progressives Feb. 8 introduced Prevent Crime and Terrorism Act to block transfer from USML categories I (firearms), II (guns and armament) and III (ammunition) to Commerce jurisdiction. "We need proper congressional oversight, so we can step in and make sure these weapons aren't sent to bad actors, including terrorists, drug cartels, human rights abusers or violent criminals," bill co-sponsor Rep. Eliot Engel (D-N.Y.) said in statement. Senate Foreign Relations and House Foreign Affairs committees received notification Feb. 4; if Congress passes no legislation or "hold" on transfer, agencies could publish final rules March 5. After six years on hold, OMB completed review in December (see **WTTL**, Dec. 17, page 6).