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ITC Acknowledges Chinese Industrial Policies on Solar

In response to a request from the U.S. Trade Representative's (USTR) office for more information in the global safeguard petition on imports of crystalline silicon photovoltaic (CSPV) cells, the International Trade Commission (ITC) found China "took advantage" of U.S. renewable energy policies, the commission noted in its supplemental report.

> ITC members earlier recommended that the administration place tariffs and import restrictions on CSPV cells, but USTR requested additional information, thus delaying a decision in the Section 201 trade case (see **WTTL**, Dec. 11, page 7).

In direct contradiction of its World Trade Organization (WTO) accession commitments, China "implemented a series of industrial policies, five-year plans, and other government support programs favoring renewable energy product manufacturing, including CSPV products," the ITC report posted Dec. 28 said. "China's industrial policies, plans, and support programs took advantage of the existence of programs implemented by the U.S. government to encourage renewable energy consumption that, consistent with U.S. WTO obligations, did not favor U.S. manufacturers but instead were directed at owners of renewable energy systems," it added.

These policies "took a variety of forms and led to vast overcapacity in China and subsequently in other countries as Chinese producers built facilities elsewhere, which in turn ultimately resulted in the increased imports of CSPV products causing serious injury to the domestic industry in the United States," the report noted. The White House will make its decision on remedies by Jan. 26.

Commerce Corrects "Ministerial Errors" in Lumber Orders

If this publication had a dollar for every step and misstep in the ongoing softwood lumber dispute between the U.S. and Canada, you wouldn't be reading this week's issue. Most

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recently, Commerce Jan. 3 corrected slight "ministerial errors" in its countervailing duty (CVD) and antidumping (AD) orders on Canadian softwood lumber. Even so, the Canadian government is none too pleased.

For one, West Fraser's subsidy rate decreased to 17.99% ad valorem from 18.19% due to "ministerial errors in the final determination," Commerce said in the Federal Register notice. Those errors also caused the "all others" rate to decrease to 14.19% from 14.25%. Commerce published the final dumping and subsidy rates in November (see **WTTL**, Nov. 6, page 1).

Canfor Corporation likewise complained about errors leading to a miscalculation of the company's dumping margin in the final determination. Commerce amended Canfor's dumping margin to 7.28% from 8.89% and the "all others" rate down to 6.04% from 6.58%.

> "U.S. duties on Canadian softwood lumber are unfair, unwarranted and troubling. They are harmful to Canada's lumber producers, workers and communities, and they add to the cost of home building, renovations and other projects for American middle-class families," said Canadian Foreign Affairs Minister Chrystia Freeland in a statement.

Canada requested a NAFTA panel review on softwood lumber in November (see **WTTL**, Dec. 4, page 8). "Canada has already begun legal challenges of these duties under NAFTA and through the WTO, where Canadian litigation has proven successful in the past. We will continue to work with the provinces and territories, as well as with Canadian industry and workers, to find an enduring solution. Canada will also continue to engage with the U.S. Administration and with American legislators to come to a new agreement on softwood lumber," Freeland added.

In an unusual move, USTR responded with a tweet, rather than a formal statement. "We are completely confident that [Commerce] and the U.S. International Trade Commission closely followed U.S. law and that their actions are consistent with our WTO obligations. We will of course defend this case and expect to prevail."

Washer Producers Spin over Section 201 Remedies

At an interagency Trade Policy Staff Committee hearing Jan. 3, elected officials from South Carolina and Tennessee, representatives from the Korean government and from Samsung and LG pushed back against the International Trade Commission's (ITC) recommendation that the president impose a three-year tariff-rate quota (TRQ) on washer imports (see **WTTL**, Nov. 27, page 1). Whirlpool filed the Section 201 global safeguard petition in May.

Korean Deputy Director-General of Bilateral Economic Affairs Bureau, Ministry of Foreign Affairs, Kim Hee-sang said a globally distributed TRQ would be the least harmful remedy in this case and disputed accusations of country-hopping. Korea is home to

Samsung and LG that produce washers for domestic sale in addition to exports. Korean counsel James Durling assured the panel that Korea has made multimillion-dollar investments to produce covered parts in the U.S., and LG intends to open a washer production plant in Clarksville, Tenn.

Hence why Clarksville Mayor Kim McMillan and Mayor Jim Durrett of Montgomery County, Tenn., as well as Rep. Ralph Norman (R-S.C.) and Gov. Henry McMaster (R-S.C.), testified. Samsung said it plans to hire 1,000 U.S. workers at its plant in Newberry, S.C. Durrett testified that a TRQ would hurt competition. This case is not about unfair trade, he testified; rather, "this case is just about volume of imports. Looking to the near future, most large residential washers sold in the U.S. will be made in Tennessee, South Carolina, Ohio and Kentucky," he predicted.

> "Duties or quotas will not speed up the process. Until we get up and running, some washers will have to be produced abroad and imported to meet demand. A tariff that cuts off Samsung's imports will undermine our ramp-up and transition strategy for South Carolina," added Newberry plant manager Tony Fraley.

Whirlpool's representatives accused those in opposition of trying to relitigate the ITC's decision. Attorney Jack Levy said the ITC had found injury and that as a result of dumping, the price on large residential washers is "anything but healthy." He further told the committee, "I would ask you to be very discerning and to discriminate between the interests of Samsung and LG as foreign producers and importers on the one hand, and their interests as future domestic producers" on the other.

Ohio Sens. Rob Portman (R) and Sherrod Brown (D) made their concerns known to USTR Robert Lighthizer in a letter Jan. 3. Whirlpool invested $100 million in its Clyde, Ohio, plant in 2008 and the same year ceased sourcing its washers from overseas facilities. "Mindful of the need for a strong remedy, we are concerned that the ITC's recommendation is insufficient to provide meaningful relief to domestic washer manufacturers and the thousands of workers they employ," the senators wrote.

Full remedy would take three parts, Portman and Brown noted: first, a 50% tariff on washer import; second, a global safeguard remedy and third, a quota on covered parts (tubs, drums and cabinets). "We are pleased to see the ITC find that there has been injury in this case, and that the ITC agreed that there should be no product exclusion as part of the remedy. These findings form the basis of a strong remedy that helps American workers and communities, like Clyde, continue to grow, and we believe that with the inclusion of the above recommendations, this global safeguard action will be a success," the senators concluded.

Companies, Trade Associations Urge GSP Renewal

In a case of déjà vu all over again, the Generalized System of Preferences (GSP) program expired Dec. 31, distressing hundreds of associations and companies who urged congressional leaders to pass legislation quickly that renews the program and retroactively applies benefits. Congress previously renewed the program in June 2015. Because GSP lapsed almost two years earlier, in July 2013, the measure applied the tariff reductions retroactively to that date, including opportunities for reliquidation, a step that prior GSP bills have done when passed after the law had expired.

As a result of the program's expiration, "American employers must now pay over $2 million per day to invest in our companies and workers," 399 companies and trade associations wrote to Sens. Mitch McConnell (R-Ky.) and Chuck Schumer (D-N.Y.) and Reps. Paul Ryan (R-Wis.) and Nancy Pelosi (D-Calif.) Jan. 4. Among the undersigned were the American Apparel & Footwear Association, Outdoor Industry Association, and Footwear Distributors & Retailers of America.

> "The GSP program enjoys strong bipartisan support in Congress. Nearly 400 representatives and 97 senators voted in favor of GSP renewal legislation in 2015, and a bipartisan group of 38 House members sent a letter urging renewal in late 2016. A retroactive GSP renewal fits squarely on a congressional agenda to pass legislation that benefits American families, workers, and companies," the letter said.

Separately, the Alliance for Fair Trade with India (AFTI) also called for GSP reauthorization in a statement Jan. 2. "The program is an important trade tool that supports a stronger economic relationship between the U.S. and India based on specific eligibility criteria. The GSP program provides the U.S. government an opportunity to engage with its Indian counterparts on economic priorities, including market access and intellectual property issues in India," AFTI wrote.

Though GSP expired, Customs and Border Protection (CBP) strongly encouraged importers "to continue to flag GSP-eligible importations with the SPI [Special Program Indicator] 'A,' even as they pay normal trade relations (column 1) duty rates on otherwise GSP-eligible importations. Importers may not file SPI 'A' without duties," the agency noted on its website. "CBP is developing programming that, in the event that GSP is renewed with a retroactive refund clause, will allow CBP to automate the duty refund process," it added.

Shortly before Christmas, the administration suspended some of Ukraine's GSP, restored Argentina's GSP eligibility and restored eligibility for Gambia and Swaziland under the African Growth and Opportunity Act (see **WTTL**, Jan. 1, page 4).

* * * Briefs * * *

<u>TUBING</u>: In 4-0 final vote Jan. 5, ITC found U.S. industry is materially injured by subsidized imports of cold-drawn mechanical tubing from China and India. Commission also made negative finding concerning critical circumstances on imports from China.

<u>PIPE AND TUBE</u>: In 4-0 "sunset" vote Jan. 4, ITC said revoking countervailing and antidumping duty orders on imports of circular welded pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand and Turkey would renew injury to U.S. industry.

TOOL CHESTS: In 4-0 final vote Jan. 3, ITC found U.S. industry is materially injured by subsidized imports of tool chests and cabinets from China.

TRADE FIGURES: Merchandise exports in November jumped 10.6% from year ago to $134.6 billion, Commerce reported Jan. 5. Services exports gained 3.9% to $65.6 billion from November 2016. Goods imports increased 9.0% from November 2016 to record-high $205.5 billion, as services imports gained 5.9% to record-high $45.3 billion.

TRADE PEOPLE: William Reinsch Jan. 3 named new Scholl Chair in International Business at Center for Strategic and International Studies (CSIS). He joins CSIS from Stimson Center where he served as distinguished fellow (see **WTTL**, May 16, page 8). He led National Foreign Trade Council for 15 years and was member of U.S.-China Economic and Security Review Commission. Reinsch continues to serve as senior advisor at Kelley Drye & Warren LLP.

MILESTONE: Senate Finance Committee Chairman Orrin Hatch (R-Utah) will retire at end of current term, he announced Jan. 2. "When the president visited Utah last month, he said I was a fighter. I've always been a fighter. I was an amateur boxer in my youth and I've brought that fighting spirit with me to Washington," Hatch said in video announcement. Hatch has long been supportive of free trade and trade agreements; "In a general sense I don't think this will result in some shift from what already exists for the usual congressional Republican position of being for trade and wanting to expand trade," Stephen Claeys, partner at Wiley Rein, wrote in blog post.

CIVIL PENALTIES: State in Federal Register Jan. 3 adjusted maximum amounts of civil monetary penalties (CMPs) it assesses under Arms Export Control Act (AECA) to apply 2018 cost-of-living adjustment multiplier. Under new rule, for each violation of AECA section 38(e), new maximum adjusted penalty level will be $1,134,602 (previously $1,111,908); section 39A(c), $824,959 (previously $808,458); and section 40(k), $981,935 (previously $962,295)… In Jan. 8 Federal Register, Commerce adjusted maximum CMP under International Emergency Economic Powers Act from $289,238 to $295,141.

IRAN: OFAC Jan. 4 sanctioned five Iranian entities -- Shahid Kharrazi Industries, Shahid Sanikhani Industries, Shahid Moghaddam Industries, Shahid Eslami Research Center and Shahid Shustari Industries -- for being owned or controlled by Iran's Shahid Bakeri Industrial Group, which is subject to U.S., UN and EU sanctions. "These sanctions target key entities involved in Iran's ballistic missile program, which the Iranian regime prioritizes over the economic well-being of the Iranian people," Treasury Secretary Steven Mnuchin said in statement.

VENEZUELA: OFAC Jan. 5 designated four current or former Venezuelan government officials, all senior military officers, including former food minister, who were associated with corruption and repression. "Through their own continuing actions, the four officials designated today have forsaken the professional republican mission of the military institution," agency noted. OFAC designated ten Venezuelan government officials in November (see **WTTL**, Nov. 13, page 5).

SANCTIONS: Jury in Manhattan U.S. District Court Jan. 3 convicted Turkish banker Mehmet Hakan Atilla after four-week trial on five charges, including conspiracy to defraud U.S., conspiracy to violate International Emergency Economic Powers Act and bank fraud, for his role in scheme to violate U.S. Iran sanctions by conducting international financial transactions on behalf of Iranian government and other blocked entities, including Bank Mellat, between 2010 and 2015. Sentencing is set for April 11. Iranian-Turkish gold trader Reza Zarrab pleaded guilty to related charges and testified at Atilla's trial in November (see **WTTL**, Dec. 4, page 8).

MOTORHOMES: CAFC Jan. 5 affirmed CIT opinion that motorhomes no longer resembled exported cargo vans that were converted in Canada then imported into U.S. and thus were not eligible for favorable import-duty treatment. CIT "determined that the motorhomes 'no longer resembled the exported cargo vans,' were 'no longer classifiable as motor vehicles for the transport of goods,' and were sold at 'different price points than the exported vehicles.' Those determinations were proper on this summary judgment record, and so was the conclusion that the Pleasure-Way motorhomes were commercially different from the Sprinter vans," CIT Judge Richard Taranto wrote for three-judge panel in *Pleasure-Way Industries, Inc. v. U.S.*

ALUMINUM EXTRUSIONS: CAFC Jan. 4 affirmed CIT dismissal of two Capella complaints on disparity between 374.15% all-others CVD rate from Commerce's final determination on aluminum extrusions and ultimate 7.37% rate resulting from *MacLean-Fogg* litigation (see **WTTL**, June 9, 2014, page 3). "Because there was no dispute that Capella's entries were made before the *Timken* notice and that Capella did not participate in the *MacLean-Fogg* litigation or request administrative review of its entries, Capella could not claim the benefit of the lower all-others rate awarded to the *MacLean-Fogg* litigants," CAFC Alan Lourie wrote for three-judge panel in *Capella Sales & Services Ltd. v. U.S.* "In sum, we agree with the Trade Court that Capella has not alleged sufficient facts to state a claim on which relief can be granted," he added.

KORUS: U.S. and Korean delegates met in Washington Jan. 5 for "negotiations on amendments and modifications" of U.S.-Korea Free Trade Agreement" (KORUS), USTR tweeted. U.S. team led by Assistant USTR Michael Beeman; Myung-hee Yoo, director general for FTA negotiation at Ministry of Trade, Industry and Energy, led Koreans. After back and forth, two countries agreed in December to meet (see **WTTL**, Jan. 1, page 9).