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USTR Blocks Illegal Timber Imports from Peru

In perhaps a first enforcement of environmental provisions of a free trade agreement, what the U.S. Trade Representative's (USTR) office called an "unprecedented action," USTR Oct. 19 directed Customs to block future timber imports from Peruvian exporter Inversiones Oroza for three years "based on illegally harvested timber found in its supply chain," USTR said. The agency took the action time under the U.S.-Peru Trade Promotion Agreement's (PTPA) Annex on Forest Sector Governance.

After a meeting with USTR in November 2016, Peru announced a set of unilateral actions to address ongoing challenges including "holding all of the relevant actors involved in the Oroza shipment accountable, amending export documentation requirements to improve traceability, enhancing timber inspections, and implementing a timber tracking system in the Amazon corridor," USTR said (see **WTTL**, Nov. 21, 2016, page 6).

> However, Peru's verification process subsequently under the deal "revealed that significant portions of the Oroza shipment were not compliant with Peru's law, regulations, and other measures on harvest and trade of timber products," USTR noted.

At the same time, the home page of Oroza's English-language website flashes the text: "We guarantee the legal origin of our timber and products." Elsewhere, the company highlights its commitment to "its responsibility for sustainable forest management of the Amazon forests of Peru" and its participation in the National Pact for Legal Timber as of October 2016.

Canada, Mexico Balk at U.S. NAFTA Proposals

Tensions among the NAFTA countries were on full display at the conclusion of the fourth round of negotiations Oct. 17 in Arlington, Va., with accusations that the U.S. has intentionally put forth proposals that Canada and Mexico cannot accept. Hoping to

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salvage the negotiations, the three countries agreed to extend talks into the first quarter of 2018 and will meet for a fifth round Nov. 17-21 in Mexico City.

Canadian Foreign Affairs Minister Chrystia Freeland lambasted "unconventional" demands from the U.S. In rounds three and four, "we have seen proposals that turn back the clock on 23 years of predictability, openness and collaboration under NAFTA," said Freeland during a joint appearance of the three ministers. Speaking with reporters at the Canadian Embassy immediately following the latest round's closing, Freeland signaled that Canada is willing to walk away. "We need to be prepared in a very sensible, pragmatic, dare I say it, a no-fuss Canadian way, for the worst possible outcome."

Mexican Economy Secretary Ildefonso Guajardo Villarreal was less combative. He told reporters at the joint appearance that "a bad deal would be against the interest of Mexico itself, and therefore, you have my guarantee that there will not be a bad deal." Canada and Mexico are taking a "good sense" approach, he said, and despite their frustrations will not leave the negotiating table – unless the U.S. withdraws from NAFTA during the talks (see **WTTL**, Oct. 16, page 7).

USTR Robert Lighthizer spoke last. "Frankly, I am surprised and disappointed by the resistance to change from our negotiating partners on both fronts," he said. "Now, I understand that after many years of one-sided benefits, their companies have become reliant on special preferences and not just comparative advantage. Countries are reluctant to give up unfair advantage," he added.

After seven full days of negotiations among 30 groups, the three countries "substantively completed discussions in the chapter on competition," a trilateral statement declared. Negotiators made progress in customs and trade facilitation, digital trade, good regulatory practices and certain sectoral annexes. Initial text proposals have been put forward, but "new proposals have created challenges and Ministers discussed the significant conceptual gaps among the Parties."

International law firm Haynes and Boone, LLP, with contributions from Canadian firm McCarthy Tetrault LLP, put together a "NAFTA Renegotiation Monitor" that highlights the "challenges" alluded to in the trilateral statement. The U.S. is seeking trade in goods deficit reduction, whereas Canada and Mexico do not view trade in goods deficit as the best way to evaluate trade relationships. (When services are factored in, the U.S. enjoys a surplus with Canada, and as one former trade official noted, the overall deficit in goods with Mexico is "two-tenths of one percent of our economy.")

Perhaps most controversially, the U.S. administration wants to raise the NAFTA content requirement in autos to 85% and 50% U.S. origin. Another proposal Canada and Mexico refuse to accept is a five-year sunset clause that would see the deal collapse if not specifically renewed. The three countries have locked heads over the Chapter 19 dispute settlement arbitral panels: the U.S. wants Chapter 19 gone; Mexico and Canada want it to stay (especially vis-à-vis the last softwood lumber dispute between the U.S. and Canada, the Monitor notes).

Rufus Yerxa, president of the National Foreign Trade Council and a former deputy USTR, told reporters Oct. 19 that many of the proposals, including on dispute settlement, are contrary to Trade Promotion Authority objectives. This, in addition to a lack of domestic consensus on NAFTA objectives, proves that the administration did not sufficiently consult with Congress, industry and the private sector, he noted.

Yerxa, whose organization supported the Trans-Pacific Partnership, criticized the administration for squandering political capital arguing with neighbors when China's inroads in the Asia-Pacific are a larger threat. "If you're spending all your political capital, energy, on a negotiation with our two closest neighbors with whom we've been building a big and more successful competitive economic platform, and you're busy creating chaos in that relationship, how are you strengthening your hand with China?"

With China focused on advancing a Regional Comprehensive Economic Partnership and the implementation of Made in China 2025, "they must be pinching themselves in Beijing with where the administration is taking our trade policies," said Yerxa.

Bombardier, Airbus Join Forces Against Boeing

Bombardier and Airbus are teaming up to produce the C Series aircraft at the center of the Bombardier-Boeing dispute, the companies announced Oct. 16, in what is seen as an effort to skirt Commerce's huge preliminary antidumping and countervailing duty findings. In response, Boeing said, not so fast, those tariffs may still apply.

> Per their agreement, Airbus "will provide procurement, sales and marketing, and customer support to the C Series Aircraft Limited Partnership (CSALP), the entity that manufactures and sells the C Series. At closing, Airbus will acquire a 50.01% interest in CSALP. Bombardier and Investissement Quebec (IQ) will own approximately 31% and 19% respectively," the two companies announced jointly. Headquarters and primary assembly line will remain in Canada, while additional C-Series production will take place at Airbus' manufacturing site in Alabama.

"The arrival of Airbus as a strategic partner today will ensure the sustainability and growth of the C Series programme, as well as consolidating the entire Québec aerospace cluster. In the current context, the partnership with Airbus is, for us, the best solution to ensure the maintenance and creation of jobs in this strategic sector of the Québec economy," Québec's Deputy Prime Minister Dominique Anglade said in a statement.

"This looks like a questionable deal between two heavily state-subsidized competitors to skirt the U.S. government findings. Everyone should play by the same rules for free and fair trade to work," Boeing responded on Twitter.

"The announced deal has no impact or effect on the pending proceedings at all. Any duties finally levied against the C Series (which are now expected to be 300%) will have to be paid on any imported C Series airplane or part, or it will not be permitted into the country," Michael Luttig, Boeing's general counsel, said in a statement Oct. 17.

Commerce hit Bombardier with a preliminary 219.63% countervailing duty Sept. 26 and a preliminary antidumping duty of 79.82% Oct. 5 as part of investigations into 100 to 150-large civil aircraft from Canada (see **WTTL**, Oct. 9, page 8). Boeing is the petitioner.

U.S., Japanese Officials Cite Initial Progress

After meeting in Washington Oct. 16, Vice President Mike Pence and Japanese Deputy Prime Minister Taro Aso expressed platitudes about the importance of cooperation, but Japan resisted calls to negotiate a bilateral trade deal. The two met for the second round of the U.S.-Japan Economic Dialogue.

> A joint statement issued following the meeting noted that progress has been made on some bilateral trade issues, such as lifting restrictions on Japanese persimmons and Idaho potatoes. On the automotive front, Japan agreed to streamline noise and emissions testing for U.S. auto exports certified under Japan's Preferential Handling Procedure. "Both sides affirmed that they would intensify work to achieve further progress in the near term on bilateral trade issues," the officials said.

No agreement was announced to address the 50% safeguard tariffs Tokyo placed on U.S. frozen beef exports in July. Australia, which does have a bilateral agreement with Japan, enjoys a 27% tariff rate, a number that irks agriculture industry groups (see **WTTL**, Oct. 16, page 7). USTR Robert Lighthizer previously raised the beef issue with Japanese Foreign Minister Taro Kono during their August meeting.

"We would like to continue constructive discussions so as to further deepen the Japan-U.S. economic relationship that is extremely important also in strategic terms, as the security environment in the Asia-Pacific region has become increasingly severe," Aso told reporters following the meeting, alluding to rising tensions with North Korea.

Pence affirmed the U.S. stance on North Korea and called for "a common strategy on trade and investment rules and issues to ensure a free and fair trading relationship between our two nations." The talks come ahead of President Trump's Nov. 3-14 visit to the region, which will include stops in Japan, Korea, China, Vietnam and the Philippines. Commerce Secretary Wilbur Ross will lead a trade mission to China at the same time.

Industry Groups Target India's GSP Benefits

In response to the USTR's request for comments as it begins its annual review of the Generalized System of Preferences (GSP), several industry groups targeted India's benefits under the program in comments posted Oct. 17.

AdvaMed, a trade association representing nearly 350 companies in the medical device sector, urged the USTR to "suspend or withdraw, in whole or in part, India's benefits under [GSP], in view of its failure to provide equitable and reasonable access to its market for medical devices."

"As a result of its recent series of actions against innovative medical device technology, including price controls that discriminate against imports of high-technology products and measures that effectively force US producers to sell in India at a loss, India fails to provide equitable and reasonable access to its market," the group said.

"AdvaMed and its members are deeply concerned about recently implemented price controls on coronary stents and knee replacement implants in India that have slashed prices by as much as 85% and 70%, respectively, followed by signals that price caps for additional life-saving and life-improving medical devices may be forthcoming," Advamed President and CEO Scott Whitaker said in a separate statement.

In a joint comment, the National Milk Producers Federation and the U.S. Dairy Export Council also recommended USTR limit India's benefits. "Since 2003 India has maintained unscientific requirements for dairy imports and refused extensive good-faith efforts, spanning two administrations to date, to restore trade in dairy products between the U.S. and India," the groups said.

"We urge USTR not to extend to India unilateral preferences while India steadfastly continues to block our dairy exports from its market and refuses to consider reasonable proposals for resolution of this issue. While the U.S. should continue to honor its WTO commitments to India, despite India's blatant refusal to do the same with respect to dairy products; the U.S. is under no obligation to reward India's barriers to agricultural trade with unearned unilateral benefits to this market," they wrote.

The U.S. Chamber of Commerce defended India's benefits under the program, citing U.S. companies' use of bottle-grade PET Resin from India used for packaging a wide range of consumer goods, such as carbonated soft drinks, juices, bottled water, salad dressing, peanut butter, shampoo, and liquid soap, the Chamber said. "Exclusion of GSP benefits from India would effectively raise the U.S. tariff from zero to 6.5%, with sourcing likely switching to more developed or industrialized exporters," it noted.

"This may translate into higher production costs, shifts in material sourcing, and a host of hidden costs associated with the necessary adjustments within the industry. The ultimate result would be increased prices for consumers and potentially negative economic consequences for developing-country exporters," the Chamber added.

USTR requested petitions to "modify the list of articles eligible for duty-free treatment under the GSP and new petitions to review the GSP status of any beneficiary developing country." In total, the agency received 14 comments, of which it posted nine for public review.

* * * Briefs * * *

TRADE PEOPLE: Assistant USTR and chief TPP negotiator Barbara Weisel retired from government after 13 years in position, USTR's office announced Oct. 19. She is managing director at Rock Creek Global Advisors, same firm as former Deputy Commerce Secretary Bruce Andrews and other former government officials. "For decades, Americans across the country have benefited from her commitment in expanding U.S. exports, removing trade barriers, and strengthening U.S. trade relations with the Asia-Pacific region," USTR Lighthizer said in statement.

MORE TRADE PEOPLE: Former Commerce Secretary and Hyatt hotel heir Penny Pritzker nominated to Microsoft board of directors, company said Oct. 16. Arne Sorenson, president and CEO of Marriott International, also nominated.... Pritzker's official portrait unveiled at Commerce building Oct. 18. "I commend Secretary Pritzker for her dedication to public service. Forgoing her position in the private sector, she brought well-honed business acumen to the Federal government, a model that this Administration has expanded upon," Commerce Secretary Wilbur Ross said in statement.

EX-IM BANK: Senate Banking Committee will hold hearing for six Export-Import Bank (Ex-Im) board nominees Nov. 1, committee announced Oct. 19. Former Rep. Scott Garrett, nominee for Ex-Im board president, faces significant opposition (see **WTTL**, Oct.2, page 7). ...Rep. Charles Dent (R-Pa.) Oct. 11 introduced bill (H.R. 4007) that would revise Ex-Im board quorum from "at least three members" to "the lesser of three members or the number of members holding office on the Board."

STEEL CYLINDERS: In 4-0 "sunset" votes Oct. 16, ITC said revoking antidumping and countervailing duty orders on imports of high pressure steel cylinders from China would renew injury to U.S. industry.

END-USERS: Commerce Inspector General (IG) initiated audit of BIS enforcement efforts involving foreign end-users, Assistant IG Carol Rice wrote in memo to BIS Under Secretary Mira Ricardel Oct. 12. "Our audit objective is to assess the effectiveness of BIS' efforts to ensure foreign end users are suitable to receive and use controlled U.S. exports in accordance with the Export Administration Regulations," memo said.

ANTIBOYCOTT: Whirlpool Corp of Benton Harbor, Mich., and its Italian subsidiary agreed Sept. 25 to pay total of $81,450 civil penalty to settle 24 violations of BIS antiboycott regulations. Whirlpool and Whirlpool Europe allegedly refused to do business, furnished information about business relationships with boycotted countries or blacklisted persons and failed to report receipt of request to engage in restrictive trade practice or foreign boycott against country friendly to U.S. from December 2009 through October 2010 during transactions with Lebanon, Yemen and Qatar. Companies voluntarily disclosed "information concerning certain of its transactions" to BIS, agency said.

VEU: In Oct. 23 Federal Register BIS updates list of eligible destinations (facilities) and eligible items for Lam Research Service Co., Ltd. (Lam) in response to Lam request. BIS adds six facilities to Lam's validated end-user (VEU) authorization, removes one facility, and updates address for one facility, names of two facilities, and both name and address of one facility. Rule also limits authorization for "3D001 software (excluding source code) for all facilities to allow only such software that is specially designed for the 'development' or 'production' of equipment controlled by paragraph .e of ECCN 3B001," notice said.

CURRENCY: Treasury again concluded no major U.S. trading partner met standards for currency manipulation in semiannual report to Congress Oct. 17. No country met all three criteria established under Trade Facilitation and Trade Enforcement Act of 2015, department said. Monitoring list for report included China, Japan, Korea, Germany and Switzerland (see **WTTL**, April 17, page 2). Treasury removed Taiwan from Monitoring List because country met only one of three criteria for two consecutive reports.

PRIVACY SHIELD: In official report on annual review of EU-U.S. Privacy Shield released Oct. 18, EU found U.S. "continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield" from EU to organizations in U.S. At same time, it found "the practical implementation of the Privacy Shield framework can be further improved in order to ensure that the guarantees and safeguards provided therein continue to function as intended." Recommendations include regular searches for companies making false claims about participation in framework. Three companies in September agreed to settle Federal Trade Commission (FTC) charges of such false claims (see **WTTL**, Sept. 25, page 3). In addition, report recommends companies should not be allowed to make public representations about their certification before Commerce has finalized certification and included company on Privacy Shield list.

WTO: World Trade Organization (WTO) Director-General Roberto Azevedo met with USTR Robert Lighthizer Oct. 16 in Washington. "We discussed a range of issues including the agenda for MC11 [Ministerial Conference] in Buenos Aires & U.S. concerns about the way the WTO settles trade disputes. I assured him that I take the U.S. concerns very seriously. I explained my perspective and I was also able to convey what other Members have shared with me. We agreed to continue this conversation," Azevedo wrote in series of tweets.

CAFC: Court of Appeals for Federal Circuit (CAFC) affirmed ITC limited exclusion order on certain network devices, related software and components based on determination that Arista Networks infringed three Cisco patents. ITC "sufficiently articulated its findings that the components of Arista's accused products induce infringement of the '537 patent. The Commission found that Arista's 'switch hardware is designed to run the EOS software containing Sys[DB] and is run each time EOS is booted,'" Circuit Judge Jimmie V. Reyna wrote for three-judge panel in *Arista Networks, Inc. v. ITC* in opinion dated Sept. 27 but posted Oct. 18.

IRAN: In joint statement released at end of Missile Technology Control Regime (MTCR) plenary in Dublin Oct. 20, partners noted "continuing process of implementation" of Joint Comprehensive Plan of Action (JCPOA). "Partners confirmed their commitment to implement this resolution, having in mind the ballistic missile-related provisions in Annex B of this resolution. Partners agreed to continue exchanging views on missile programme developments," statement said. In opening statement to plenary, Irish Foreign Minister Simon Coveney called on Congress to "maintain its commitment to the agreement as a key pillar of the non-proliferation architecture. We also call on Iran to demonstrate its commitment to the JCPOA by ceasing all activities related to ballistic missiles which are not in keeping with the spirit of the agreement." India became 35th MTCR member in June 2016 (see **WTTL**, July 4, 2016, page 1).