ISSN 0276-8275

WTTLonline.com

Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Publisher: Martin Kalin • Editor: Meredith Gilston • Associate Editor: Melissa Apter

Vol. 37, No. 24 June 12, 2017

U.S.-China BIT Not at Top of Agenda

Don't expect a U.S.-China Bilateral Investment Treaty (BIT) anytime soon. Though it's on the current administration's agenda, "I wouldn't say it's at the very top of our agenda," Treasury Secretary Steven Mnuchin said June 6. President Trump wants to see progress on other trade issues with China first, particularly an expansion of U.S. exports.

> "I think what we're looking for is, opposed to just negotiating a large agreement, we're looking to negotiate very specific issues that deal with market issues today, deal with market fairness today, deal with opening their markets," Mnuchin told a meeting of the U.S.-China Business Council. "Once we make progress on that, we can turn to the bilateral investment agreement," he added.

On currency manipulation, Mnuchin said that China is not currently depressing its currency, but his department remains on alert. "It is definitely something we're going to be vigilant about and make sure that in no way is that used for competitive advantage on their part," he said.

Overall, Mnuchin shed U.S.-China relations in a positive light, pointing out the president's relationship with Chinese President Xi Jinping, who visited the U.S. in April (see **WTTL**, April 10, page 1). Mnuchin and Commerce Secretary Wilbur Ross will host the U.S.-China Comprehensive Dialogue this summer.

EU, Boeing Claim Victory in WTO Panel Decision

In the latest in a long-running dispute between the European Union (EU) and the U.S. over subsidies to its domestic aircraft manufacturers, a World Trade Organization (WTO) compliance panel found the U.S. failed to comply with previous rulings on one state subsidy, but rejected almost all of EU's claims on other national and state financing programs. The compliance panel found that the U.S. failed to take appropriate steps to

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional users pay only $100 each with full-priced subscription. Site and corporate licenses are also available. Phone: 301-460-3060 Fax 301-460-3086

remove the adverse effects of subsidies granted to aircraft manufacturer Boeing with regards to a business and occupancy (B&O) tax rate reduction enacted in Washington state for the production of Boeing aircraft totalling $325 million from 2013-2015, and only in relation to three single-aisle aircraft sales campaigns involving customers from the United Arab Emirates, Canada and Iceland.

At the same time, the compliance panel rejected significant aspects of the EU's case. For one, it found the EU failed to demonstrate that post-2012 certain aeronautics research and development (R&D) subsidies and other subsidies for Boeing were causing adverse effects to EU interests through significant lost sales, significant price suppression, and/or impedance of imports and exports of Airbus aircraft to the U.S. and third-country markets.

> The panel also found that the EU failed to demonstrate that Defense Department military R&D procurement involved a subsidy to Boeing, and that all the subsidies in question were prohibited export subsidies contingent on exportation or on the use of domestic over imported goods.

The panel declined the EU's request that it review certain amendments to the Washington state tax measures that entered into force in November 2013; these measures are now subject to separate panel proceedings the EU initiated in December 2014. A panel ruled in November 2016 that the tax break was a prohibited subsidy (see **WTTL**, Dec. 5, page 1).

Both sides claimed victory, despite the seeming uneven decision. Of the 29 U.S. state and federal programs the EU challenged, the panel found that 28 programs were consistent with WTO rules, the U.S. Trade Representative's office (USTR) noted in a statement. The USTR's office said it would appeal the findings on the one Washington state program. Later the agency tweeted, "At WTO, EU lost 28 of 29 claims today. It's time for EU to stop making excuses and start removing their WTO-inconsistent Airbus subsidies."

"Today's ruling is another victory for the EU, its industry and EU workers in this strategic sector. The panel agrees that the U.S. has simply ignored existing WTO rulings and has continued to subsidize Boeing," said EU Trade Commissioner Cecilia Malmström in a statement. "EU companies must be able to compete on fair and equal terms. Today's panel report is an important step in that direction," she added.

Boeing echoed the USTR's sentiments in its own statement. "Today, the EU and Airbus suffered yet another resounding defeat in this decade-long dispute. It is finally time for them to comply with their global trade obligations and eliminate and remedy the $22 billion of launch aid and other illegal subsidies that are harming U.S. aerospace companies and American workers," said Boeing General Counsel J. Michael Luttig.

U.S., Mexico Achieve Last-Minute Sugar Agreement in Principle

After a last-minute 24-hour deadline extension, U.S. and Mexico negotiators announced June 6 a new agreement in principle to suspend antidumping and countervailing duties on Mexican sugar imports, but U.S. sugar industry is deeply unhappy, pointing to what they describe as a "major loophole."

The revised suspension agreement raises the price on raw sugar sold at the mill in Mexico from 22.5 cents to 23 cents per pound, and an increase from 26 cents to 28 cents per pound for refined sugar, excluding packaging and transportation. The measure is meant to protect U.S. industry from dumping. The amount of refined sugar that can be imported will be dropped from 53% to 30%. To further protect against unfair competition from Mexican subsidized imports, polarity will be reduced from 99.5 to 99.2 purity. "Estandar," a common Mexican sugar, will therefore count against the 30% import limit. Mexico also agreed to increase enforcement.

Mexico accepted the modifications on condition that it be granted a "right of first refusal to supply 100% of any 'additional need' for sugar identified by USDA after April 1 of each year," according to a Commerce fact sheet.

> "We have gotten the Mexico side to agree to nearly every request made by U.S. industry to address flaws in the current system and ensure fair treatment of American sugar growers and refiners," said Commerce Secretary Wilbur Ross. But these measures did not please domestic sugar producers.

"U.S. sugar producers are concerned that the agreement in principle contains a major loophole in the section dealing with additional U.S. needs. Mexico could exploit this loophole to continue to dump subsidized sugar into the U.S. market and short U.S. refineries of raw sugar inputs. This loophole takes away the existing power of the U.S. government to determine the type and polarity of any additional sugar that needs to be imported and cedes that power to the Mexican government," the American Sugar Alliance said in a statement.

The Coalition for Sugar Reform called the announcement the "worst form of crony capitalism" in its own statement. "The agreement in principle does not address the fact that the price of sugar in this country is already 80% higher than the world price. In fact, it will result in higher prices, costing U.S. consumers an estimated $1 billion a year. What the agreement does do is solidify that it's time for Congress to shoulder the responsibility of fixing this broken program in the 2018 farm bill if not before," reads the Coalition's statement.

The Sweetener Users Association said that the suspension agreements make "two bad agreements far worse. Through what amounts to a stealth price support increase, the modifications will further distort U.S. sugar markets and increase prices, enriching the U.S. sugar lobby while harming U.S. consumers and the food and beverage industries and their employees," their statement noted.

Ross acknowledged industry's displeasure, saying that he remains "hopeful that further progress can be made during the drafting process."

Section 232 Steel Investigation to Conclude Shortly

Commerce's Section 232 steel investigation will conclude "very shortly," Commerce Secretary Wilbur Ross testified before the Senate Appropriations commerce subcommittee June 8. He mused on three potential recommendations Commerce could give President Trump, on the assumption that current steel imports impact U.S. national security, as industry has strongly argued.

> Bureau of Industry and Security (BIS) June 5 posted online the almost 200 public comments it received as part of its investigation. Comments were due May 31 following a packed public hearing May 24 (see **WTTL**, May 29, page 3).

Commerce could recommend imposing tariffs "above and beyond" current countervailing and antidumping duties. They could also recommend imposing steel import quotas, or go a third "hybrid, a so-called tariff rate quota" that would include quotas on certain products and impose tariffs on imports above those levels, Ross said.

He does not think that a tariff rate quota would impact inflation. "It would essentially say we're protecting something like the original status quo and only imposing an additional tariff burden in the event the quotas are exceeded," he told the subcommittee.

Ross' testimony came a day after Trump addressed a crowd in Cincinnati. "Wait until you see what I'm going to do for steel and for your steel companies. We're going to stop the dumping, and stop all of these wonderful other countries from coming in and killing our companies and our workers. You'll be seeing that very soon," Trump said.

"We are very mindful of the need both to protect domestic steel producers from inappropriate behavior on the part of foreign dumpers, but also to protect the steel consumers, steel fabricators, the auto companies, everybody else that uses steel," said Ross.

Canada's Foreign Minister Makes Case for Trade

Speaking before Canada's House of Commons June 6, Foreign Affairs Minister Chrystia Freeland outlined a vision for Canada taking a more proactive stance globally, particularly on free and fair trade. Like other U.S. partners including the European Union, Freeland made it clear she's not waiting around for the U.S. to come to call.

A "key benefit for Canada from an international system based on rules is, of course, free trade," said Freeland. In a clear rebuke of the current U.S. administration's America-first policies, Freeland said, "Rising trade barriers hurt the people they are intended to help. They curb growth, stifle innovation and kill employment."

She further urged Canada to work with other nations to integrate Asian countries, particularly China, into the world's economic and political system in a manner "that preserves the best of the old order that preceded their rise, and that addresses the existential threat of climate change." Freeland also addressed the anxiety of the middle class toward a flawed system. "It's true that the system is flawed, but international trade is the wrong target. The real culprit is domestic policy that fails to appreciate that continued growth and political stability depend on domestic measures that share wealth," she said.

Toward the end of her remarks, Freeland stated plainly that Canada is a trading nation. "Far from seeing trade as a zero-sum game, we believe in trading relationships that benefit all parties. We look forward to working with our continental partners to modernize [NAFTA], and to making a great trading partnership even better. We will also intensify our efforts to diversify Canadian trade worldwide. We will actively seek new trade agreements that further Canadian economic interests and that reflect our values—with the Canada-EU Trade Agreement as our template," she said.

Déjà Vu at OECD Ministerial Meeting

At the meeting of the Organization for Economic Cooperation and Development's (OECD) ministerial-level meeting June 7-8, the U.S. once again refused to endorse anti-protectionist language, resulting in a modified joint statement and the issuance of a separate statement from the Ministerial Council Meeting chair. These events mirror almost exactly the outcomes of the Asia-Pacific Economic Cooperation trade ministers' meeting in May (see **WTTL**, May 29, page 6).

> U.S. Trade Representative (USTR) Robert Lighthizer met with EU Trade Commissioner Cecilia Malmstrom on the sidelines of the meeting. The meeting was "cordial," according to a USTR readout, and the two discussed U.S.-EU trade, expanding export opportunities and WTO Ministerial Meeting preparations.

In his separate statement, Chairman Lars Løkke Rasmussen of Denmark noted that there was "near consensus" on the "importance of reaffirming standstill and rollback commitments to resist all forms of protectionism, and to stand firm against unfair trade practices and urge all countries to abide by international trade rules."

In response, the U.S. released its own statement: "The United States believes that free and fair trade and international investment can lead to economic growth and job creation. At the same time, we acknowledge that trade has not always worked to the benefit of everyone, given that unfair trade practices on the part of some countries disadvantage workers, farmers, ranchers, and businesses in global markets and can result in large, persistent trade imbalances."

"We stress the importance of achieving access to markets through the elimination of barriers and unfair trading practices. Accordingly, we support the removal of trade-distorting practices such as dumping, discriminatory non-tariff barriers, forced technology transfers, non-economic capacity, subsidies and other support by governments and government-controlled or -owned institutions that distort markets, so as to foster a truly level playing field. We acknowledge the right to use World Trade Organization (WTO)-consistent trade remedies to tackle such practices and enforce our rights," the U.S. added.

The U.S. also said it "recognizes the importance of international trading systems, including WTO-consistent trade agreements. We also commit to working with other Members to improve the functioning of the WTO, to ensure full and transparent implementation and effective and timely enforcement of the WTO agreements as negotiated and to make the utmost efforts to achieve a successful 11th WTO Ministerial Conference."

* * * Briefs * * *

SANCTIONS: American Honda Finance Corporation (AHFC) agreed June 8 to pay OFAC $87,255 civil penalty to settle charges of violating Cuba sanctions between February 2011 and March 2014. Honda Canada Finance, Inc. — majority-owned subsidiary of AHFC in Canada — approved and financed 13 lease agreements between unaffiliated Honda dealership in Ottawa, Canada and Cuban Embassy. AHFC voluntarily self-disclosed alleged violations. OFAC later issued specific license to AHFC in June 2015 regarding subject leases.

NOMINATIONS: President Trump June 6 sent Senate nominations of Elizabeth Erin Walsh to be assistant secretary of Commerce and director general of U.S. and Foreign Commercial Service and Ray Washburne to be president of Overseas Private Investment Corporation. President announced intent to nominate Walsh in May (see **WTTL**, May 22, page 8). Washburne is president and CEO of Charter Holdings, private real estate investment company in Dallas, as well as co-founder and co-owner of M Crowd Restaurant Group, which owns and operates Mi Cocina, Taco Diner and The Mercury restaurants.

CITRIC ACID: Archer Daniels Midland Company, Cargill and Tate & Lyle Ingredients Americas LLC June 2 filed antidumping and countervailing duty petitions at ITA and ITC against imports of citric acid and certain citrate salts from Belgium, Colombia and Thailand.

AIRCRAFT: In 5-0 preliminary vote June 9, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of 100- to 150-seat large civil aircraft from Canada.

TUBING: In 5-0 preliminary vote June 2, ITC found U.S. industry may be injured by allegedly dumped imports of cold-drawn mechanical tubing from China, Germany, India, Italy, Korea and Switzerland and subsidized imports from China and India.

PISTACHIOS: Watch for shells. In 5-0 "sunset" vote June 2, ITC said revoking antidumping duty orders on imports of raw in-shell pistachios from Iran would renew injury to U.S. industry.

MTB: ITC will reopen its Miscellaneous Tariff Bill (MTB) online portal June 12 "to allow members of the public to submit additional, limited public comments on certain petitions for duty suspensions and tariff reductions," Commission said in notice posted on website. Commission will only accept "comments on petitions that the Commission has included as Category VI petitions (i.e., petitions that the Commission does not recommend for inclusion in [MTB] …) in its preliminary report" to Congress, it noted. ITC provided recommendations on 2,536 petitions, commission said. Of all, it assigned 763 to Category VI. Portal and report can be found here: https://mtbps.usitc.gov/external/

GSP: In public report released June 6, ITC provided advice on likely impact on U.S. imports, competing U.S. industries, and U.S. consumers of addition of certain Harmonized Tariff Schedule (HTS) subheadings under GSP. Products include rolled or flaked grains of cereals, other than of barley or oats; pineapples; and cellulose nitrates, among others. Commission also provided advice on impact of removing glycine from eligibility, as well as of competitive need limitation waivers for certain coniferous-shaped wood. ITC held hearing on products in February (see **WTTL**, Feb. 27, page 6).

PATENT OFFICE: U.S. Patent and Trademark Office (USPTO) Director Michelle Lee resigned, Commerce confirmed June 6. USPTO Associate Solicitor Joseph Matal named June 7 as interim director. Matal previously served as Judiciary Committee general counsel for now-Attorney General Jeff Sessions and former Sen. Jon Kyl (R-Ariz.). In that role, he drafted and negotiated Leahy-Smith America Invents Act. Lee was appointed under President Obama, though current administration said in mid-March she would continue in position. "As the first woman in our country's history to serve as Director of the United States Patent and Trademark Office, Michelle has worked tirelessly to serve our stakeholders and the American public," Commerce Secretary Wilbur Ross said in statement.

BREXIT: British Prime Minister Theresa May to form coalition government after May's party failed to achieve majority in UK snap elections June 8. May justified early elections declaring she needed clear majority to negotiate UK's exit from EU (see **WTTL**, April 24, page 9). Despite election blow, May said June 9, "This government will guide the country through the crucial Brexit talks that begin in just 10 days, and deliver on the will of the British people by taking the United Kingdom out of the European Union. … The government I lead will put fairness and opportunity at the heart of everything we do, so that we fulfill the promise of Brexit together and – over the next five years – build a country in which no one and no community is left behind."

WTO: India June 12 requested WTO dispute consultations with U.S. over compliance with WTO ruling on countervailing duties on imports of hot-rolled carbon steel flat products from India (DS436). Original compliance deadline of March 19, 2016 was extended to April 18, 2016. When deadline passed, two countries reached understanding in May 2016, in which U.S. agreed to accept establishment of compliance panel upon first request by India.

TRADE PEOPLE: Shane Warren named June 8 as Senate Finance Committee Chief International Trade Counsel, replacing Everett Eissenstat, who moved to National Economic Council to be deputy director. Warren joined Committee as international trade counsel in 2013. Prior, Warren served at USTR as assistant general counsel and previously represented USTR at WTO in Geneva.

IRAN: Senate voted on cloture motion 91-8 June 7 to move forward with Countering Iran's Destabilizing Activities Act of 2017 (see **WTTL**, May 29, page 4). Motion to proceed to measure considered in Senate June 8.

RUSSIA: Sen. Ben Cardin (D-Md.) renewed calls June 8 for comprehensive Russia sanctions after former FBI Director James Comey testified at Senate Intelligence Committee. "Comey's testimony today regarding Russia's actions during the 2016 presidential campaign was as damning as his testimony about President Trump," he said in statement. "We urgently need tough new sanctions against Russia like my bill with Senator McCain that has 20 bipartisan cosponsors," Cardin added. Senators in January introduced Countering Russian Hostilities Act of 2017 (S.94), bill to impose sanctions in response to Russian cyber intrusions and other aggressive activities (see **WTTL**, Jan. 16, page 5).