ISSN 0276-8275

WTTLonline.com

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

Washington Tariff & Trade Letter®

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

Vol. 37, No. 16 **April 17, 2017**

Canada Prepares to Join Arms Trade Treaty

While it has not signed the United Nations (UN) Arms Trade Treaty, Canada introduced legislation April 13 that will move the country closer to accession to the pact. The U.S. signed the treaty in September 2013, but has not ratified it primarily due to opposition from the gun lobby. The treaty entered into force without the U.S. in December 2014.

> In fact, U.S. lawmakers concerned about domestic gun rights continue to pass legislation that bars any funds from being used to implement the treaty. Despite debunking by fact-checkers, the National Rifle Association calls the treaty the "most pressing international threat to U.S. gun owners." Most recently, the House in March passed the Department of Defense Appropriations Act 2017 (H.R. 1301), which included such language. A similar provision was included in the 2016 National Defense Authorization Act, which former President Obama vetoed in October 2015 (see **WTTL**, Oct. 5, 2015, page 7).

The proposed Canadian legislation would establish controls over brokering in military goods between two third-party countries; obligate the government to consider certain assessment criteria before authorizing export permits; and increase the maximum fine from $25,000 to $250,000 for summary conviction offenses. "Canada's existing system of export controls meets most of the treaty's thresholds, and this legislation will set our standards in law. We must continue to encourage other countries to join this treaty, and we must ensure it is properly implemented globally," Canadian Foreign Minister Chrystia Freeland said in a statement.

Commerce Takes "Unprecedented" Action Against Korea

In what Commerce Secretary Wilbur Ross April 11 called an "unprecedented" action, the department cited market disruptions in adjusting antidumping duty (AD) margins on oil country tubular goods (OCTG) from Korea. For the first time, Commerce used Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) in its annual administrative

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

review of antidumping duties. The department increased AD margins on NEXTEEL Co., Ltd. to 24.92%, SeAH Steel Corporation to 2.76%, and non-examined companies to 13.84%. In the original final determination, the department set AD rates of 9.89% for NEXTEEL and 15.75% for HYSCO, another respondent. The new findings will be published in the Federal Register April 17.

Korean OCTG exporters failed in August 2016 to get the Court of International Trade (CIT) to reject Commerce's remand determination in the AD case against imports of those products (see **WTTL**, Aug. 8, 2016, page 3).

> Section 504 of the TPEA allows Commerce to disregard respondents' production cost data in "situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price." The review concluded that prices of hot-rolled coil used in OCTG production, as well as Korea's electricity prices, are distorted.

"There is fair and unfair trade, and the distinction is not very hard to make," Ross said in a statement. "We will not stand for the distortions in foreign markets being used against U.S. businesses. The Trump Administration will continue to employ all of the tools provided under the law to take swift action against harmful trade practices and from foreign nations attempting to take advantage of our markets, workers and businesses," he added.

Alan Price, chair of Wiley Rein's international trade practice and counsel to petitioner Maverick Tube Corporation, called the decision a "significant victory" for American industries. "The use of the new particular market situation provision in the Korean OCTG case finally allows the Department to account for distortions such as those caused by steel subsidies and persistent overcapacity problems in China and Korea," he said.

Commerce published its preliminary results of the administrative review in October 2016, but made changes to margin calculations based on its analysis of the comments received. According to Commerce data, OCTG imports from Korea were valued at $1.1 billion (roughly 25% of all imports in that category) during the review period (July 2014 to August 2015).

China Not Named Currency Manipulator

Despite declaring China a currency manipulator repeatedly as a candidate, President Trump declined to give Beijing the official label in the latest Foreign Exchange Policies of Major Trading Partners Report released April 14. The decision came after the president hosted Chinese President Xi Jinping in Florida April 6-7.

"China has a long track record of engaging in persistent, large-scale, one-way foreign exchange intervention, doing so for roughly a decade to resist renminbi (RMB) appreciation even as its trade and current account surpluses soared," the report notes.

"The distortion in the global trading system resulting from China's currency policy over this period imposed significant and long-lasting hardship on American workers and companies. Moreover, China continues to pursue a wide array of policies that limit market access for imported goods and services, and maintains a restrictive investment regime which adversely affects foreign investors."

> No country met all three criteria for being labeled a currency manipulator laid out in the Trade Facilitation and Trade Enforcement Act of 2015. Those include: a significant bilateral trade surplus with the U.S., a material current account surplus, and persistent one-sided intervention in the foreign exchange market.

In its latest report submitted to Congress, Treasury kept China, along with Japan, Korea, Taiwan, Germany and Switzerland, on a "monitoring list" it established in its April 2016 report (see **WTTL**, May 2, 2016, page 2). China met two criteria in the April 2016 report, but only one -- a large trade surplus with the U.S. -- in October 2016 and in the 2017 report. The other five partners on the monitoring list met two of the three criteria.

Before the official report went to press, Rep. Sandy Levin (D-Mich.) strongly criticized Trump's new stance. "Trump's brand of economic nationalism has led him to make wild promises that he can't keep. Instead of excusing away China's currency policies with declarations that he alone has strengthened the dollar, he should be using the April Treasury report to lay out a coherent policy on currency manipulation. The report should make it clear that China's previous manipulation of its currency cost millions of U.S. jobs," Levin said in a statement.

WTO Predicts Uptick in Global Trade

Global trade will expand by 2.4% in 2017, an uptick from the weak 1.3% growth in 2016, according to the World Trade Organization (WTO) forecast issued April 12. However, WTO economists are couching the growth in a 1.8% to 3.6% range due to "uncertainty about near-term economic and policy developments." The WTO further predicted 2018 trade growth between 2.1% and 4%.

"Weak international trade growth in the last few years largely reflects continuing weakness in the global economy. Trade has the potential to strengthen global growth if the movement of goods and supply of services across borders remains largely unfettered. However, if policymakers attempt to address job losses at home with severe restrictions on imports, trade cannot help boost growth and may even constitute a drag on the recovery," WTO Director-General Roberto Azevedo said in a statement.

WTO attributed weak trade growth in 2016 to "cyclical factors," the slump in investment spending in the U.S., and China's rebalancing of its economy from investment toward consumption. Though economic growth has been unbalanced since the 2008 financial crisis, the WTO expects all regions to experience a "synchronized upturn" in 2017, based on stronger trade growth in the first part of the year. In its release, WTO warns that unexpected inflation, Brexit and restrictive trade policies could cut economic growth. For those reasons, WTO economists warn that trade expansion could potentially fall on the lower end of the given range.

Steel Firms Argue Both Sides of Domestic Sourcing

After the Trump administration announced plans to approve the controversial Keystone and Dakota Access pipelines and build them with U.S. steel no less, Commerce requested public comments on domestic sourcing of materials in the construction and maintenance of these pipelines (see **WTTL**, March 20, page 6). Not surprising, in more than 80 comments posted April 10 on regulations.gov, domestic manufacturers defended their ability to provide steel for the pipelines, while steel importers denounced the domestic content requirements.

For example, Richard Chriss, executive director of American Institute for International Steel (AIIS), which supports free trade, noted that the requirements "would disrupt the availability of steel pipe suitable for constructing, retrofitting, repairing, and/or expanding pipelines in the United States. It is questionable whether domestic producers of steel pipe can produce all of the types and quantities of pipe necessary for pipeline construction in the United States."

"Moreover, the proposed domestic content requirements would impose significant burdens on American distributors of steel pipe because they would not only have to segregate pipe by place of origin, but they would have to determine the place of origin of the pipe even though they did not produce the pipe in question," Chriss added.

> In contrast, U.S. producer ArcelorMittal USA wrote that it "stands ready to continue providing these essential steel grades into the domestic pipeline market and would be able to help meet domestic content requirements just as we do for other infrastructure-related products." The firm "has invested significantly in the production of X-70 plate, which is used in large diameter oil and gas transmission pipelines, and would welcome the opportunity to produce and sell it in larger volumes," it added.

The U.S. Chamber of Commerce weighed in, advocating that each firm should make its own purchasing decisions. "While prior Administrations have required American-made iron and steel in federally funded public works, imposing similar mandates upon privately funded commercial projects would be unprecedented," the Chamber noted. "The Chamber does not advocate scaling back existing U.S. domestic source preferences but strongly cautions against expansion of such counterproductive economic policies," it added.

The Australian government helpfully pointed out the international trade law obligations under the World Trade Organization (WTO), as well as the Australia-U.S. Free Trade Agreement (AUSFTA). These provisions include national treatment and government procurement obligations. "We trust these considerations will be taken into account in the development of the American pipelines plan, and look forward to continuing to build our close trade and investment relationship," the embassy wrote.

Trade Enforcement Agencies Need Better Resource Tracking

U.S. agencies responsible for monitoring and enforcing international trade agreements do not have the information necessary to provide a definitive count of the resources used to carry out those responsibilities, the Government Accountability Office noted in report published April 13 (GAO-17-399). Officials explained this was due to shared resources and the lack of detailed time-tracking.

"With the exception of Commerce's National Institute of Standards and Technology (NIST), all the agencies we queried indicated that some of their staff responsible for monitoring and enforcement of trade agreements also had other responsibilities. However, none of the agencies routinely tracks staff time at a level of detail that distinguishes time specifically dedicated to trade agreement monitoring and enforcement from time spent on these other responsibilities," the report said. GAO made no specific recommendations in this report.

The GAO also noted that the majority of capacity-building projects went to helping trade agreement partners fulfill their labor and environmental commitments under the deals, rather than other commitments such as market access or intellectual property. Senate Finance Committee Chairman Orrin Hatch (R-Utah) denounced those findings.

> "The Obama Administration did not commit enough resources to enforce commercial obligations, especially intellectual property rights. If America is to succeed in holding our trading partners accountable, we must give greater priority and federal resources to ensure compliance with all trade obligations – not just those related to labor and the environment," Hatch said in a statement.

Also highlighted in the report was the "Trade Enforcement Trust Fund" established under the Trade Facilitation and Trade Enforcement Act of 2015 from which USTR and other agencies can receive funding for these projects. "These funds may not be used or transferred to other agencies unless authority is provided in an appropriations act; however, as of April 2017, Congress has not passed an appropriations act with the necessary authority. USTR officials stated that they have not taken any action regarding the use of the Trust Fund, given the absence of such an authority in an appropriations act," the report said.

International Agencies Address Globalization, Cooperation

Like the WTO, the International Monetary Fund (IMF) expects an uptick in global activity this year and next to the tune of 3.4% growth in 2017 and 3.6% in 2018 (see related story, page 3). Despite this growth, globalization and other issues still present challenges. German Chancellor Angela Merkel hosted the heads of five multilateral agencies April 10 in Berlin to discuss those challenges, and she will chair a meeting of G20 leaders in Hamburg July 7-8.

After the meeting, Merkel, Organization for Economic Cooperation and Development (OECD) Secretary-General Angel Gurria, IMF Managing Director Christine Lagarde, World Bank Group President Jim Yong Kim, International Labour Organization (ILO) Director-General Guy Ryder and WTO Director-General Roberto Azevedo outlined their ongoing cooperation in six key areas: digitization; structural changes in economies regarding labor market and employment policies; trade policy cooperation; climate change and protection of natural resources; sustainability; and large-scale movements of refugees and migrants.

Specifically, on trade policy cooperation, the group in a joint press release April 11 said it will work hard to prepare for this year's WTO Ministerial in Buenos Aires, which "should lead to concrete outcomes and give a strong signal of the important role of the multilateral trading system in global trade." The group added it appreciates "ongoing efforts to conclude new bilateral and regional free trade agreements as other important tools to spur growth and job opportunities."

"We need to recognize that many people out there hold a negative view about globalization and trade. We need to work hard to make sure that the benefits of trade are more widely held," said Azevêdo.

* * * Briefs * * *

TOOL CHESTS: Waterloo Industries LLP April 11 filed antidumping and countervailing duty petitions at ITA and ITC against imports of tool chests and cabinets from China and Vietnam.

IRAN: Treasury's Office of Foreign Assets Control (OFAC) April 13 added Tehran Prisons Organization and senior prison official Sohrab Soleimani to SDN list "in connection with serious human rights abuses in Iran," OFAC noted. Sanctions "come at a time when Iran continues to unjustly detain in its prison various foreigners," including two U.S. citizens, White House Press Secretary Sean Spicer said in briefing.

CENTRAL AFRICAN REPUBLIC: OFAC April 12 designated militia commanders Abdoulaye Hissene and Maxime Mokom pursuant to Executive Order (EO) 13667 for "engaging in actions that threaten the peace, security, or stability" of country. Collaboration was part of 2015 failed coup attempt.

WASHERS: WTO arbitrator April 13 ruled 15 months as "reasonable period of time" for U.S. to implement dispute-settlement body ruling on large residential Korean washers (see **WTTL**, Oct. 31, page 2). That time will end Dec. 26. U.S. had argued for at least 21 months from September 2016 ruling, while Korea pushed for six to eight months.

ZTE: Ten Republican House members in letter April 11 asked Commerce Secretary Wilbur Ross to publicly identify second company identified as "F7" in Commerce ZTE documents. "Now that we have successfully held ZTE accountable for violating U.S. law, we need to take the next step in identifying F7, fully investigating their alleged crimes, and holding them accountable," Rep. Robert Pittenger (R-N.C.) said in statement.

CANADA: Dairy industry and state agriculture groups in letter April 13 urged President Trump to "address Canada's systemic disregard of U.S. dairy trade obligations." Specifically, groups cited new Class 7 pricing program as part of National Ingredients Strategy. "This program was specifically designed to stop an important U.S. dairy export to Canada and facilitate significant dumping of Canadian dairy products onto world markets," letter said. Groups also highlighted "importance of gaining prompt approval" of Agriculture and USTR nominees. Sens. Charles Schumer (D-N.Y.), Kirsten Gillibrand (D-N.Y.) and Tammy Baldwin (D-Wisc.) sent own letter April 12 to Acting USTR Stephen Vaughn, Commerce Secretary Wilbur Ross and Acting Agriculture Secretary Michael Young, urging administration to "fully investigate" whether programs are in keeping with Canada's commitments under NAFTA and WTO.

STEEL PIPE: Atlas Tube division of Zekelman Industries April 13 asked Commerce for circumvention ruling that antidumping and countervailing duty orders on light-walled rectangular tube also apply to octagonal tube. Zekelman asked for determination that "imports of welded light-walled polygonal carbon steel pipe and tube are merely light-walled rectangular pipe and tube that have undergone a minor alteration," company said in statement.

NOMINATIONS: Administration April 11 announced intent to nominate Gilbert Kaplan of Washington, D.C. to be Commerce undersecretary for international trade and Marshall Billingslea of Virginia to be assistant Treasury secretary for terrorist financing. Kaplan is a partner at King & Spalding (see **WTTL**, Sept. 28, 2009, page 3). He previously served as deputy assistant secretary and first acting assistant secretary of Commerce for import administration. Billingslea currently is managing director of business intelligence services for Deloitte Advisory and previously spent more than a decade at Defense.

EX-IM: President Trump reversed his previous opposition to Export-Import Bank (Ex-Im) April 12, telling Wall Street Journal that he will fill two Ex-Im Board vacancies. "I was very much opposed to Ex-Im Bank because I said what do we need that for IBM and for General Electric [GE]… it turns out that, first of all lots of small companies will really be helped, the vendor companies, but also maybe more importantly other countries give it," said Trump. GE Chairman Jeff Immelt praised Trump on Twitter: "By supporting the Export Import Bank @POTUS is showing great leadership and focusing on creating jobs for American manufacturers." Senate Banking Committee Chairman Richard Shelby (R-Ala.) refused to hold confirmation hearings for Obama nominees (see **WTTL**, Jan. 9, page 4).

STEEL: Commerce April 11 made final affirmative determination in antidumping investigation of finished carbon steel flanges from Spain. Commerce calculated 24.43% final dumping margin for mandatory respondent ULMA Forja, S.Coop and 18.81% for all other Spanish producers/exporters based on adverse facts available. Carbon steel flange imports from Spain were valued at $16.5 million in 2016. Petitioners are Boltex Manufacturing Co. (Texas) and Weldbend Corporation (Ill.). ITC will make its final determination May 26.

PRIVACY SHIELD: Newly launched Swiss-U.S. Privacy Shield Framework is now accepting self-certifications, Commerce Secretary Wilbur Ross announced April 12. Framework aligns with EU-U.S. Privacy Shield, which launched in August 2016 (see **WTTL**, Aug. 8, page 1). EU framework currently includes nearly 2,000 U.S.-based participants, Commerce noted. Department and Swiss Federal Council announced final approval of Swiss program in January.