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Obama Warns Against Rushing to Do Business in Iran

Even with the easing of sanctions as part of an interim deal to curtail Tehran's nuclear program, firms should not rush to resume business with Iran, President Obama said Feb. 11. "We have been extraordinarily firm that even during this interim agreement, we will fully enforce all applicable sanctions," Obama said during a joint press conference with French President Francois Hollande.

> The president's comments came in response to a question about a recent French trade mission to Iran seeking to take advantage of the eased sanctions. "Businesses may be exploring are there some possibilities to get in sooner rather than later if and when there is an actual agreement to be had, but I can tell you that they do so at their own peril right now because we will come down on them like a ton of bricks with respect to the sanctions that we control, and we expect full compliance with respect to the P5-plus-1 during this interim," he declared.

Through a translator, Hollande agreed with Obama. "For those of you who are unfamiliar with the French situation, the president of the republic is not the president of the Employers Union in France -- and he certainly doesn't wish to be," he said. "So companies just make those decisions when it comes to traveling. But I certainly let them know that sanctions were in force and would remain in force. And if contacts were to be made with a view to a new situation in Iran, a situation where Iran would have renounced the nuclear weapon fully and comprehensively -- well, unless such a new situation would prevail, no commercial agreement could be signed," he added.

CIT Relieves Commerce from Directive on Zeroing

Commerce won't have to defend again its use of zeroing in administrative reviews based on the Court of Appeals for the Federal Circuit (CAFC) ruling in Union Steel, CIT Judge Timothy Stanceu ruled Feb. 10 (slip op. 14-13). "The court relieves Commerce of the directive concerning zeroing in the Second Remand Order based on the intervening decision of the Court of Appeals in Union Steel," he declared in the latest decision in the *JTEKT Corp. v. U.S.* legal battle over administrative reviews of antidumping duty orders on ball bearings and parts from France, Germany, Italy, Japan and the United Kingdom. "In Union Steel, the Court of Appeals affirmed a decision of this Court that

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held reasonable the Department's explanation for the continued use of zeroing in administrative reviews despite the Department's having eliminated the methodology in antidumping investigations," Stanceu noted. The JTEKT case was one of the few that remained affected by the CAFC ruling.

> "As defendant notes in its status report following the decision in Union Steel, that decision effected an intervening change in the controlling law. Based on the decision in Union Steel, the court concludes that defendant and Timken are entitled to relief from the court's Second Remand Order under USCIT Rule 59(d) for reasons not stated in the parties' motions," he concluded (see **WTTL**, April 22, 2013, page 4).

"Because it appears that the claims challenging zeroing in this case are indistinguishable from those rejected in Union Steel, in which the Court of Appeals affirmed the Department's use of zeroing, the court is considering whether to affirm the Final Results as to zeroing. The court, however, will hold in abeyance any ruling on whether to affirm the Final Results with respect to zeroing until the parties have had 'an opportunity to be heard' in accordance with the notice requirement of USCIT Rule 59(d)," he added.

He gave parties 30 days to file supplemental briefs on the "narrow question of whether the holding of Union Steel is dispositive of plaintiffs' zeroing claims, and if not, what further action the court should take to resolve those claims." Any such submission is voluntarily, he said.

U.S. Says Indian Solar Program Still Violates WTO Obligations

Four months after India initiated Phase II of its National Solar Mission (NSM) with the same domestic content requirements as in Phase I, the U.S. has again responded with a request Feb. 10 for formal consultations under World Trade Organization (WTO) dispute settle-ment provisions as it did the when New Delhi launched the first phase (see **WTTL**, Feb. 11, 2013). The first round of consultations failed to get India to change the program, and the new requests seeks to restart those talks.

> "These domestic content requirements discriminate against U.S. exports by requiring solar power developers to use Indian-manufactured equipment instead of U.S. equipment," U.S. Trade Representative (USTR) Michael Froman told reporters Feb. 10. "Domestic content requirements detract from successful cooperation on clean energy and actually impede India's deployment of solar energy by raising its cost," he added.

In addition to continuing the domestic content requirements from the first phase, Phase II also includes more solar energy products, such as thin film technology that was exempt from such requirements under Phase I. "As thin film currently comprises the majority of U.S. solar product exports to India, these domestic content requirements are likely to cause even greater harm to U.S. producers than under Phase I," the USTR office said.

The first U.S. request for consultations claimed the NSM requirements are inconsistent with India's obligations under the General Agreement on Tariffs and Trade, as well as the Agreement on Trade-Related Investment Measures (TRIMS). "The formal consultations failed to resolve U.S. concerns," the USTR office said. Japan and Australia

subsequently requested to join the consultations. India released guidelines for Phase II in October 2013. "Provision of requirement of domestic content for setting up solar power projects was kept in the guidelines for Phase I with a view to develop indigenous capacities and generate employment. It was noted that the production capacities for solar PV cells and modules have expanded in the country," the Indian guidelines noted.

> As expected, the U.S. solar industry expressed support for the latest action. "Over the past three years, the U.S. government has provided India every opportunity to remove restrictive and unfair marketplace requirements. In the absence of any meaningful effort by India to find common ground, it's now time for the WTO to finally resolve these long-festering issues," Rhone Resch, president and CEO of the Solar Energy Industries Association (SEIA) said in a statement (see related story below).

Indian Policy Impacts Vary Widely, Depending on Who's Asking

Someone must have had some bad curry this week. On Monday, USTR Michael Froman announced a request for dispute-settlement consultations with India on its domestic content requirements in the solar industry and on Feb. 12, U.S. trade groups used an International Trade Commission (ITC) hearing to complain about other Indian trade policies. The timing doesn't seem coincidental (see related story above).

> Many of the arguments raised at the ITC hearing weren't new. Pharmaceutical industry representatives renewed complaints about India's denial of patents and compulsory licenses, while India and public health advocates defended the policies, citing greater access to needed medicines.

The National Association of Manufacturers and the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC) cited a long list of industry concerns over local content requirements, intellectual property protection and patent policy. These policies have "significantly damaged business confidence," GIPC Executive Vice President Mark Elliot testified. In its annual GIPC Index issued Jan. 28, India ranked last overall out of 25 countries, including China, Elliot noted.

Other witnesses defended India's policies and its compliance with the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). "India has demonstrated its adherence to TRIPS and to non-protectionism and a national treatment regime by revamping its systems, instituting massive changes to further intellectual property rights and by establishing prudent IP standards that apply equally to both domestic and foreign companies," noted Srividhya Ragavan of the University of Oklahoma College of Law and Sean Flynn of American University Washington College of Law in a joint statement to the hearing.

Nonprofit organization Doctors Without Borders took issue with the entire premise of the ITC investigation. "The request for an investigation is the latest and most aggressive effort by members of Congress and leaders in the U.S. pharmaceutical industry to exert pressure on India for intellectual property laws they have deemed anti-business and discriminatory, but which are completely in line with all existing international trade rules," it said in a statement prior to its Feb. 14 testimony. The ITC hearing on India's trade, investment and industrial policies was part of an investigation that leaders of the

Senate Finance and House Ways and Means committees asked the ITC to conduct in August 2013. Lawmakers said they wanted the ITC to examine "Indian industrial policies that discriminate against U.S. imports and investment for the sake of supporting Indian domestic industries, and the effect that those barriers have on the U.S. economy and U.S. jobs" (see **WTTL**, Aug. 5, 2013, page 8).

USTR Updates List of "Notorious Markets" for IPR Violations

In its annual game of Whack-a-Mole, also known was the Special 301 Out-of-Cycle Review, the U.S. Trade Representative's (USTR) office named 23 websites and 31 physical markets in more than 15 countries Feb. 12 as "notorious markets" that "have been the subject of enforcement actions or that may merit further investigation for possible intellectual property rights (IPR) infringements."

> Websites and physical markets included in the 2013 list do business in such countries as Argentina, Bulgaria, India, Mexico, Spain, Sweden and Ukraine, as well as, of course, China. "The Notorious Markets List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general IPR protection and enforcement climate in the country concerned," the report noted.

One of the markets in the USTR report, Aiseesoft.com, does not directly stream movies or other copyrighted materials but provides tools to do the job. While rights holders and USTR may not appreciate these tools, they are reportedly legal in other countries according to some bloggers that cover the copyright industry.

"Rights holders indicate that this site's operators, reportedly based in China, develop and make available to customers worldwide various 'high-quality' DVD converter tools, video converter tools, and a DVD and video converter suite that… allow users to circumvent technical protection measures and view video content in an unauthorized manner," the USTR report noted.

The office also removed several streaming sites from its previously released list, including Canada-based IsoHunt.com, which it called "one of the largest BitTorrent indexes in the world." It also dropped the Chinese website PaiPai.com, which "streamlined its notice and takedown procedures, accelerated its response to complaints, and engaged rights holders to develop additional cooperative procedures," it noted.

Also removed was Urdu Bazaar in Karachi and Lahore, Pakistan, as well as Pulga Rio Market in Mexico. "In 2013, Pakistani authorities in Karachi and Lahore took several enforcement actions against book pirates at the Urdu Bazaars and other, related operations," the USTR noted. Despite continued industry concern, the USTR had removed another Chinese website in its 2012 report: Taobao.com, which the office said it continues to monitor (see **WTTL**, Dec. 17, 2012).

"Although challenges remain, Taobao.com has continued working to rid its marketplace of infringing products through the procedures established in 2012. Taobao.com has assured the United States that it will continue to work with rights holders and law enforcement officials in China to address remaining issues raised by software, publishing and apparel and footwear companies," the USTR noted in the 2013 report. While the

BSA Software Alliance applauded the latest report, it highlighted the ongoing issues with Taobao. The site "is a continuing source of concern for the software industry," said BSA General Counsel and Senior Vice President Jodie Kelley in a statement.

Avon Says It Expects to Pay $132 Million in FCPA Penalties

Avon Products, the door-to-door cosmetic company, reported Feb. 13 that it expects to pay as much as $132 million in fines to settled expected charges that it violated the Foreign Corrupt Practices Act (FCPA) as part of its business in China and other countries. Avon has previously reported that it is in negotiations with the Securities and Exchange Commission (SEC) and Justice on a settlement.

> In a press release and filing with the SEC on end-of-year sales and earnings, Avon said it has set aside $89 million for a settlement and "estimates the aggregate amount of any potential settlements with the government could exceed this accrual by up to approximately $43 million." The expected settlement amount does not include what the company has spent on its own internal investigations and audits, which often can exceed fines.

Avon made a voluntary disclosure to the SEC and Justice of potential FCPA violations in 2008. It has provided details on the SEC and Justice investigations and settlement negotiations in previous SEC filings, including an October 2013 report. The company has said it has conducted extensive audits of its operations, adopted remedial measures to strengthen its ethics policies, and has entered into a tolling agreement with the government while negotiations on a settlement continue. It also revealed that the SEC and Justice rejected its proposed settlement payment (see **WTTL**, April 19, 2010, page 3).

"We expect any such settlements will include civil and/or criminal fines and penalties, and may also include non-monetary remedies, such as oversight requirements and additional remediation and compliance requirements," Avon said in its October 2013 Form 10-Q filing. "We may be required to incur significant future costs to comply with the non-monetary terms of any settlements with the SEC and the DOJ," it added. "In September 2013, the staff of the SEC proposed terms of potential settlement that included monetary penalties of a magnitude significantly greater than our earlier offer. We disagree with the SEC staff's assumptions and the methodology used in its calculations and believe that monetary penalties at the level proposed by the SEC staff are not warranted," Avon said in October.

"We anticipate that the DOJ also will propose terms of potential settlement, although they have not yet done so and we are unable to predict the timing or terms of any such proposal. If the DOJ's offer is comparable to the SEC's offer and if the Company were to enter into settlements with the SEC and the DOJ at such levels, we believe that the Company's earnings, cash flows, liquidity, financial condition and ongoing business would be materially adversely impacted," Avon said.

Stanceu Refuses to Clarify Remand Order to Commerce

CIT Judge Timothy Stanceu Feb. 13 rejected a Commerce request for clarification of his remand order on its administrative review of the antidumping order on tapered roller

bearings (TRB) from China. Nonetheless, in his short opinion, he made it clear he didn't agree with Commerce's interpretation of his earlier ruling *Peer Bearings* (see **WTTL,** June 10, page 11). In the long-running legal battle over TRBs, Stanceu had remanded the last review because he said the decision was not supported by substantial evidence.

> "The court declines to modify the substance of its previous ruling and concludes that clarification of Peer Bearing beyond what is set forth in this Opinion and Order is unnecessary," Stanceu ruled (slip op. 14-15). At issue was whether TRBs produced in Thailand had gone through substantial transformation and were no longer of Chinese origin. Commerce asked whether it could make new findings under the six criteria for transformation.

"In positing these alternatives, defendant's request for clarification incorrectly interprets the court's Opinion and Order in Peer Bearing. With respect to the first alternative, defendant's formulation too broadly describes the court's holding," he wrote. Commerce had argued that the ruling permits it to make new findings under each of the six criteria.

"Any ultimate country of origin finding Commerce reaches in its second remand redetermination must rest on findings of fact that are supported by substantial evidence on the record and also must comply with the other requirements of the court's Opinion and Order in Peer Bearing," Stanceu wrote. Commerce's request to make new findings under each of the six criteria and make a determination based on these new findings "rests on an assumption that the court affirmed the criteria Commerce used to determine the country of origin for the subject merchandise in the first remand redetermination. In fact, the court did not do so," he stated.

Pelosi Joins Reid in Opposing Fast-Track Legislation

President Obama is finding it hard to find Democratic friends for his trade agenda in Congress. Although it came as no surprise, House Minority Leader Nancy Pelosi (D-Calif.) joined Senate Majority Leader Harry Reid (D-Utah) Feb. 12 in coming out strongly against renewal of the president's fast-track trade promotion authority (TPA). At a press conference with other House Democratic leaders and in a speech to the United Steelworkers (USW), Pelosi said she opposed TPA legislation drafted by former Senate Finance Committee Chairman Max Baucus (D-Mont.) and House Ways and Means Committee Chairman Dave Camp (R-Mich.)

> "Camp-Baucus, in its present form, is unacceptable to me," she told reporters. "I have worked with many of our colleagues to try to find some common ground, but in its present form, it is unacceptable. That is not, as you suggested, a rejection of the President's trade agenda. It's a rejection of the current form of the Camp-Baucus," she added.

Pelosi tried to separate her stand on fast-track from the rest of Obama's trade agenda. "The trade issue is a very important one, because we're the party of John F. Kennedy, we're the party of free trade, fair trade, and we believe that the global economy is here to stay, and we're part of it."

At the Steelworkers' BlueGreen Alliance Rally the same day, where trade-bashing was like red meat in the lion's den, Pelosi grew even more animated in her rejection of fast

track and other trade initiatives. She said he has told Camp that Democrats can't support his bill. "I don't know of much support in our caucus for that," Pelosi said. She also said the White House and Congress have to hit the currency manipulation issue "head on."

> Pelosi also recounted how the Democratic House in 2007 blocked President George W. Bush from sending up the trade deal with Colombia. "According to the rules of the House, it had to be taken up immediately. So what did we do with the leadership and the majority? We changed the rules of the House. No fast track. And that's why there's been no fast track since 2007," she boasted. She drew applause in her closing declaration: "No on Fast Track – Camp-Baucus – out of the question. Out of the question."

* * * Briefs * * *

SENATE FINANCE COMMITTEE: Sen. Ron Wyden (D-Ore.), who succeeded Max Baucus (D-Mont.) as Finance chairman Feb. 11, moved quickly to replace most of top Baucus staffers on committee, including chief international trade counsel Bruce Hirsh (see **WTTL**, Feb. 10, page 5). New chief trade staffer will be Jayme White, who was staff director on Finance trade subcommittee, which Wyden chaired. In statement Feb. 14, Wyden said: "In the early days of my Chairmanship I intend to meet with my colleagues to find the right paths forward on reforming the tax code, protecting the Medicare guarantee while lowering costs, improving America's ability to compete overseas and ensuring that Americans continue to have access to quality, affordable health care."

EXPORT ENFORCEMENT: See Kee Chin, aka Alfred Chin, Chinese citizen from Hong Kong, was arrested Feb. 10 at Seatac Airport in Seattle and charged with violating Arms Control Export Act for attempting to obtain and export certain Q-Flex accelerometers without State licenses. Items are covered under USML Category XII.

TRADE PEOPLE: President Obama Feb. 12 nominated D. Nathan Sheets to be under secretary of Treasury for international affairs, replacing Lael Brainard, who has been nominated for Federal Reserve Board. Sheets has been global head of international economics at Citigroup since 2011. Prior to Citigroup, he worked at Board of Governors of Federal Reserve System for 18 years. He received B.A. from Brigham Young University and Ph.D. from MIT.

CUSTOMS: CIT Senior Judge Richard W. Goldberg dismissed suit by Canadian chemical firm, Netchem, Inc., which protested Customs classification of its imports of lanthanum oxide, agreeing with government that court lacked jurisdiction to hear complaint. "Seventeen of Netchem's entries were not liquidated before being protested, divesting the court of authority to decide them. Another twenty-five entries were unpaid when Netchem filed this action, again depriving the court of jurisdiction. And although one entry —UPS 3811755-6— was timely liquidated and paid, the court cannot adjudicate it because it was protested at the wrong port," Goldberg ruled in slip op. 14-16.

STATE: Senate Feb. 12 confirmed by voice vote Catherine Novelli to be under secretary of State for economic growth, energy, and environment (see **WTTL**, Sept. 30, page 8). Day earlier it voted 92-6 to confirm Charles Hammerman Rivkin to be assistant secretary of State for economic and business affairs. Rivkin is former ambassador to France and Monaco. Earlier, he was CEO of Wildbrain film production company and before that was president of The Jim Henson Company, creator of Muppets. Rivkin received B.A. from Yale and MBA from Harvard Business School.

SILICON PHOTOVOLTAIC PRODUCTS: ITC in 4-0 preliminary vote Feb. 14 found U.S. industry may be materially injured by dumped and subsidized imports of certain crystalline silicon photovoltaic products from China and dumped imports from Taiwan. Commissioners Shara L. Aranoff and F. Scott Kieff did not participate in investigations.

ZEROING: CIT Judge Jane Restani denied suit by Tianjin Wanhua to bar Commerce from using zeroing in administrative review, citing Court of Appeals for Federal Circuit ruling in Union Steel. "Plaintiffs have failed to put forth an argument distinguishing this case from Union Steel, and, in fact, concede that this court is bound by Union Steel," she wrote Feb. 12 (slip op. 14-14). "Accordingly, the court grants the Government's motion to dismiss for failure to state a claim and denies plaintiffs' motion for judgment on the agency record," Restani ruled.

TPP: Legislators from Australia, Canada, Japan, Malaysia, Mexico, New Zealand and Peru issued letter Feb. 11 calling for release of draft TPP agreement text "before any final agreement is signed with sufficient time to enable effective legislative scrutiny and public debate." Nonprofit groups Oxfam and Article 19 jointly published letter. TPP trade ministers will meet in Singapore Feb. 22-25 for next round of talks.

MADE IN RURAL AMERICA: It's not clear who at White House thinks there are lots of potential exporters in rural America, except farmers, who would benefit from Washington's help, but President Obama Feb. 7 announced new "Made in Rural America" Export and Investment Initiative. "This initiative is charged with bringing together federal resources to help rural businesses and leaders take advantage of new investment opportunities and access new customers and markets abroad," White House said. President has ordered his Rural Council with Agriculture, Commerce, SBA, Export-Import Bank and USTR's office to connect more rural businesses to export information and assistance through a comprehensive strategy.

BRAZIL: Commerce and Brazil's Apex-Brasil signed memorandum of intent Feb. 7 to encourage foreign direct investment (FDI) in both countries. Deal is part of department's SelectUSA initiative to attract foreign investment to U.S. Commerce noted that Brazilian FDI in U.S. increased 10% in 2012 to $14 billion. U.S. FDI in Brazil totalled $79 billion.

EXPORT-IMPORT BANK: Bank celebrated its 80th anniversary Feb. 12. President Franklin D. Roosevelt established bank by executive order Feb. 2, but it became operational Feb. 12 with initial purpose of providing loans to Soviet Union. No loans were made because USSR had unpaid war debts. Export-Import Bank Act of 1945 created Ex-Im as independent agency with $3.5 billion lending authority.

WILDLIFE: In statement supporting new White House initiative Feb. 11 to combat wildlife trafficking, USTR Michael Froman said protection of wildlife will be part of Trans-Pacific Partnership. TPP "presents an important opportunity to advance our conservation efforts, including through groundbreaking U.S. proposals to combat wildlife trafficking, address illegal logging, and protect marine fisheries," Froman said in statement.