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# Washington Tariff & Trade Letter®

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## Request Will Test Role of Obama's Enforcement Center

The role of the Obama administration's newly created Interagency Trade Enforcement Center (ITEC) will get its first test in how it responds to a request from a Texas cement company to help investigate allegedly unfair imports of cement from Korea and Greece. An attorney for TXI Operations, LP, a subsidiary of Texas Industries, Inc., asked Commerce Aug. 24 to self-initiate a regional antidumping and countervailing duty investigation into imports of gray Portland cement from the two countries. The letter also asked the ITEC to "support Commerce in this effort by conducting such preliminary investigations and research as Commerce might request in order to self-initiate the investigations."

> The letter recalled President Obama's State of the Union address in which he said the ITEC would be charged with investigating unfair trading practices. "In the spirit of the President's creation of ITEC, self-initiation of antidumping and countervailing duty investigations by Commerce is appropriate based on the data showing significant and increasing imports of dumped and subsidized cement that undersell and injure the domestic industry and its workers." wrote Joseph Dorn of King and Spalding. "Given the existing high levels of unemployment, it is particularly important for the Obama Administration to vigorously enforce our trade laws so as not to support the off-shoring of American jobs," he added.

In asking for a regional trade case focused on Texas, the letter said "TXI has suffered material injury in the Texas region, and believes that its experience is shared by Texas producers accounting for all or almost all of Texas production." It noted that "significant volume of dumped and subsidized imports into the Texas region has primarily come from Korea, but in 2012 Greece also became a significant source of dumped and subsidized cement." The letter asserted that all the cement imports from Korea came from one company, Tong Yang Cement Corporation, which is part of the Tong Yang Group, while all imports from Greece into Texas are from one Greek producer, Titan Cement Company S.A.

## New Fight Brews over Mexican Tomato Imports

Mexican officials reportedly are threatening to take retaliatory action against U.S. imports, if Commerce agrees to a request from domestic U.S. tomato growers to terminate a 16-year-old suspension agreement that has dictated prices on Mexican tomatoes and deferred antidumping duties on the imports (see **WTTL**, Oct. 14, 1996, page 2). Rather than agreeing to the request from the original petitioners, who included growers in Florida, California and eight other states,



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to terminate the accord, Commerce announced the launching of a changed circumstance review (CCR) in the Aug. 21 Federal Register to determine whether "substantially all" U.S. producers support termination of the agreement.

> In comments filed before the Sept. 4 deadline for submissions, both sides are trying to show that petitioners either do or don't represent 85% of domestic production, which is considered substantially all. Everyone is taking sides, with lawmakers from different states siding with their local interests, customs brokers supporting the deal and state agriculture departments backing their farmers. "Granting this termination would also likely lead to more protectionism and, ultimately, less trade," wrote Sen. Jon Kyl (R-Ariz.) in a letter to Commerce.

Domestic producers complain that the suspension agreement is out of date because the reference price used to determine import prices is based on data collected in the original investigation for 1992 and 1993. They contend production costs in Mexico have increased significantly since then, so the reference price now reflects dumping of the tomatoes in the U.S. Based on current costs and prices, the reference price is less than half of fair market value for Mexican tomatoes and has suppressed prices in the U.S., they argue. Although the filing of a new antidumping petition is one option the domestic industry might take if the agreement were terminated, no decision has been made on what the domestic industry's next step would be, its attorney, Terence Stewart of Stewart and Stewart, told WTTL.

Senior officials from Mexico's economic and agriculture ministries, as well as representatives of Mexican tomato growers and their lawyers, met Aug. 16 with Commerce Under Secretary Francisco Sanchez and other International Trade Administration (ITA) officials to voice support for the current agreement and to seek information on the process ITA will use to consider the CCR. Francisco de Rosenzweig, Mexican under secretary of the economy, told the Commerce officials that Mexican growers asked for consultations on the agreement on Aug. 15. ITA Deputy Assistant Secretary for Import Administration Ronald Lorentzen said "Commerce would get back to the Mexican signatories as quickly as possible concerning the request for consultations," an ITA memo of the meeting reported.

According to the memo, Robert LaRussa of Shearman & Sterling, which represents the Mexican growers, said the "Mexican signatories are prepared to address any problems that Florida sees with the agreement through negotiations." LaRussa also noted that Commerce has discretion to decide whether to terminate the deal. "Mr. LaRussa urged the Department to consider the broader public interest, arguing that even if the petitioners account for 85 percent of U.S. production, that fact alone should not be dispositive for termination," the memo recounted.

## SEC Rule on Conflict Minerals Gives Filers Grace Period

U.S. firms will have up to two years and smaller firms even longer to file their first reports with the Securities and Exchange Commission (SEC) disclosing their use of so-called "conflict minerals." In final rules issued Aug. 22, the SEC spelled out requirements for reporting the use of conflict minerals originating in the Democratic Republic of the Congo (DRC) or an adjoining country. The conflict minerals, tantalum, tin, gold and tungsten, are used in electronic components, jewelry, automobiles, and many other manufactured products.

Under the final rule, which was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, companies must file their first specialized disclosure report on May 31, 2014, for the 2013 calendar year and annually on May 31 every year thereafter.

The rule applies to companies that use the four minerals if: they file reports with the SEC, and the minerals are "necessary to the functionality or production" of a product they manufacture or contract to be manufactured. Reports will be filed on a new SEC Form SD. The SEC also has created an "indeterminate" status. "For a temporary two-year period (or four-year period for smaller reporting companies), if the company is unable to determine whether the minerals in its

products originated in the covered countries or financed or benefited armed groups in those countries, then those products are considered 'DRC conflict undeterminable,'" it advised.

> While nonprofit groups say they are pleased with the rule, they are unhappy with the grace period. Global Witness is "extremely disappointed that the rule will allow companies to describe the origin of their minerals as 'undeterminable' for a period of two years - or four years for small companies," the group said. "By allowing companies to say 'I don't know where my minerals are from,' the regulators are effectively inviting issuers to evade all of the substantive measures required by the law. The incentive for companies to plead ignorance will be overwhelming," it said.

Industry associations, such as IPC, the trade group representing circuit board makers, applauded the final rule. "The final rule provides burden relief to the industry by establishing a unified reporting schedule, creating an indeterminate category, implementing a phase-in period, and removing the requirement that a CMR report is required for any recycled or scrap materials contained in a product. IPC has been a strong advocate for these provisions and are very pleased they are included in the final rules," the group said in a statement.

## Report Claims Japan in TPP Could Cost Thousands of U.S. Jobs

Opponents of Japan joining the Trans-Pacific Partnership (TPP) got ammunition for their case in a new report that claims the U.S. could lose 26,500 jobs if tariffs on Japanese auto imports were dropped under the deal. As the 14th negotiating round of TPP talks are set to start Sept. 6 in the Virginia suburbs of Washington, press reports in Japan say Japanese Prime Minister Noda will put off until 2013 a decision on joining the talks (see **WTTL** Aug. 13, page 1).

> In a report released Aug. 21, the Center for Automotive Research (CAR) estimated Japanese vehicle exports to the U.S. would "increase by 105,000 units or $2.2 billion (an increase of 6.2 percent) due to the elimination of a 2.5 percent tariff." This would cause U.S. production to fall by 65,100 units and 2,600 direct auto manufacturing jobs to be lost, CAR claimed. "An additional loss of U.S. supplier jobs is estimated at 9,000 and the loss of spin-off jobs at 14,900. The total U.S. employment loss then for this scenario is 26,500 jobs," CAR claimed.

The job loss could be greater if the yen depreciates against the dollar, which CAR predicts. CAR said a combination of elimination of the tariff and a change in the exchange rate from 90 to 100 yen/dollar would result "in a loss of about 225,000 units of U.S. vehicle production and a total loss in U.S. employment of about 91,500, 26,500 from the FTA, and 65,000 from an appreciation [sic] of the yen."

Members of the Michigan congressional delegation used the report to reiterate their opposition to Japan entering the agreement. "At a time when we're still recovering from the biggest economic downturn since the Great Depression, it's beyond comprehension that we would even consider entering into a free trade agreement that would put close to 30,000 Americans out of work," said Rep. John D. Dingell (D-Mich.).

CAR's estimate didn't count trucks imported from Japan. The tariff on trucks is 25%. "The elimination of this tariff as the result of an FTA between Japan and the United States could still result in a significant increase in exports of Japanese truck models with fuel efficient engines. This potential is not covered by the estimation presented...above and is all the more likely in the event of a significant depreciation of the yen against the U.S. dollar," it said.

In a separate report Aug. 24, the Congressional Research Service (CRS) cited the U.S. auto industry's opposition to Japan's entry into the talks. "The three Detroit-based car manufacturers — Chrysler, Ford, and General Motors — have responded to the possibility of Japan joining the TPP by charging that Japanese government regulations continue to prevent them from obtaining their fair share of Japanese domestic vehicle sales. They cite the traditionally

small share of total car sales in Japan that consist of imported cars—around 5%. In contrast, imports accounted for 26% of U.S. sales of light vehicles in 2010," the CRS report said.

## U.S. Seeks Consultations with Argentina on Import Restrictions

The U.S. and Japan escalated their dispute with Argentina Aug. 21, requesting formal World Trade Organization (WTO) consultations to resolve complaints over Argentina's import restrictions. The request follows a similar call for consultations the European Union (EU) requested in May and complaints that 14 countries raised in March (see **WTTL**, May 28, page 4). "Argentina's protectionist measures adversely affect a broad segment of U.S. industry, which exports billions of dollars in goods each year to Argentina," said a statement from U.S. Trade Representative (USTR) Ron Kirk. He said the Interagency Trade Enforcement Center (ITEC) "provided key support for this enforcement action and will continue to do so."

> Argentina reacted Aug. 30 with the filing of its own request for consultations with the U.S. on its complaints against U.S. restrictions on imports of Argentinian meat and other products of animal origin. "Argentina claims that the restrictions, applied on sanitary grounds, don't have scientific justification...[and] cancel or impair the benefits for Argentina derived from the relevant WTO Agreements," a WTO statement noted. Argentina's foreign ministry earlier issued a statement also complaining about U.S. restrictions on the import of lemons from Argentina.

The U.S. and Japan say Argentina has expanded its import licensing requirements to some 600 items, including laptops, home appliances, air conditioners, tractors, machinery and tools, autos and auto parts, plastics, chemicals, tires, toys, footwear, textiles and apparel, luggage, bicycles and paper products. "In February 2012, Argentina adopted an additional licensing requirement that applies to all imports of goods into the country," the USTR's office said.

## * * * Briefs * * *

FOREIGN WORKERS: In guidance posted Aug. 20, Directorate of Defense Trade Controls (DDTC) removed requirement for certain foreign employees of U.S. companies to be licensed to receive technical data under both DSP-5 and technical assistance agreement, saying instead that all requests should be made through DSP-5 only. "After close review, DDTC has determined this 'double' licensing to be redundant," it said.

IRAN: Tiny island nation of Tuvalu responded quickly to U.S. pressure to stop registering Iranian ships (see **WTTL,** Aug. 20, page 1). It issued statement Aug. 16 saying Tuvalu Ship Registry has begun to de-register ships belonging to National Iranian Tanker Company (NITC). "The Tuvalu Ship Registry has commenced de-registering the NITC tankers and any other possible Iranian-linked vessels," it said.

SECTION 337: Court of Appeals for Federal Circuit Aug. 22 reversed and remanded ITC finding of no infringement in Section 337 case on encapsulated integrated circuit devices. In *Amkor Technology v. ITC*, court said ITC incorrectly interpreted "prior invention" rules under Section 102(g)(2) and requirements for foreign invention. "While this court's limited precedent on this issue establishes that writings *can* satisfy the full domestic disclosure requirement, the cases do not establish any per se requirement that such disclosure must be in writing," court stated. "[Respondent] could only show a range of dates of possible United States disclosure, the first 30 days of which pre-dated Amkor's possible conception date, and the last 31 days of which overlapped with Amkor's possible conception dates. Such a showing, at best, establishes that the ASAT inventor *might have* conceived of the invention first. Evidence establishing that there might have been a prior conception is not sufficient to meet the clear and convincing burden needed to invalidate a patent," it ruled.

STEEL LINE: ITC made "sunset" determination Aug. 21 on 4-0 vote that revoking existing antidumping order on seamless carbon and alloy steel standard, line and pressure pipe from Germany would likely lead to continuation or recurrence of material injury to U.S. industry.

TRADE PEOPLE: Peter D. Ehrenhaft, long-time trade attorney with several law firms in Washington and deputy assistant secretary of Treasury in 1970s, died July 25 at hospital in Denver, it was reported in late August...Scott Miller, who retired as director of global trade policy at Procter & Gamble, has joined Center for Strategic and International Studies as William M. Scholl Chair in International Business.