

Vol. 32, No. 14

April 2, 2012

Romney to Push Trade Issues in Presidential Election

Just as presidential candidate Barack Obama made trade an issue in the 2008 presidential election, former Massachusetts Governor Mitt Romney also intends to push the subject if he wins the Republican nomination, his advisors told WTTL. Manufacturing, trade and trade enforcement will be issues that Romney will focus on, said former Maryland Governor Robert Ehrlich Jr., who chairs the Romney campaign in Maryland. “I predict these issues will be more center stage,” Ehrlich told WTTL in an exclusive interview. “I think these issues will be more front and center than they traditionally have been,” he said.

Romney has pressed particularly hard on the need to counter China’s unfair trade practices and supports legislation to declare China’s manipulation of its currency a countervailable subsidy. As part of his tax reform plan, he has called for adopting a territorial tax system.

Ehrlich acknowledged that Romney will need to balance strong rhetoric against China with the Republican Party’s traditional free trade stand. “You need to define your terms,” he said. “We’re all for free trade but where do you draw the line? Defining that line is something Mitt can do well,” he said. “I think in a debate, that’s his task. I think he has the skill set to do it,” Ehrlich said. One example of Romney’s position on trade will be his support for renewal of fast-track negotiating authority, also called trade promotion authority. “As someone who has been an executive, he wants it pretty strong,” he said. “That is the task – how to get that line worker to understand that that trade pact will benefit his or her future,” Ehrlich told WTTL.

Currency and Trade Spark Heated Debate at WTO Symposium

A World Trade Organization (WTO) symposium on currency and trade March 27-28 produced a heated debate over misalignment, but an ambiguous assessment of the effects of exchange rates and caution about how to approach the issue. One testy discussion was over whether certain currencies, such as the Chinese renminbi, were deliberately being misaligned. Another pitted a U.S. official against a representative of China’s Export-Import Bank following the bank’s presentation, according to one participant at the meeting, which was closed to the press. “When trading partners believe others are allowing their exchange rates to adjust in line with fundamentals, there is less pressure for protectionism and more support for trade liberalization,” said Mark Sobel, a Treasury deputy assistant secretary, in a statement. The International Monetary Fund (IMF) “has a core mandate to exercise rigorous surveillance over its members’ exchange rate policies and it must carry out this vital core mission,” Sobel said. Despite the lack of a



common conclusion to the debate, Brazil's ambassador to the WTO, Roberto Azevedo, declared, "mission accomplished" after the meeting. "Everybody agreed that there is a relationship between trade and exchange rates," Azevedo told reporters. "The question is what kind of relationship it is, how deep it goes," he said. Azevedo said the WTO is "not at that point yet" to revise its rules to address the currency issue.

In his speech to the symposium, WTO Director General Pascal Lamy conceded that exchange rates have always been "a highly sensitive subject" in the WTO. He said WTO rules reflect two things: (1) the attachment of the trade community to exchange rate stability and (2) the need for that community to ensure that the trading system is not frustrated by the undisciplined use of exchange restrictions or multiple exchange rates.

"These provisions are still part of our rule book. But they have not been interpreted and thus what they mean today, in a WTO and non-Bretton Woods context, remains to be tested," Lamy said. Many speakers said currency misalignment can affect trade, but not trade balances, one trade official said. "Ambiguous" was likely the most used word to describe the effect of currency misalignment on trade flows, another said. Speakers stressed the role of the IMF and the need for the WTO to work more closely with it.

Court Dismisses FCPA Charges Against Last Three Gun Dealers

Three gun dealers who had pleaded guilty to violating the Foreign Corrupt Practices Act (FCPA) had their pleas reversed and charges dismissed March 27 in D.C. U.S. District Court on a Justice motion. The three, Jonathan M. Spiller, Haim Geri and Daniel Alvarez, were among 22 dealers who were caught in a government sting and charged with attempting to bribe a person they thought was a Gabon defense official. Charges against the other 19 dealers caught in the sting were dismissed in February (see **WTTL**, Feb. 27, page 2).

"Based on a review of the record, the government has concluded that the Court's ruling in the second trial as to the Gabon conspiracy count would apply equally to defendants Spiller, Geri, and Alvarez," the Justice motion said. "Although, as the Court knows, the government argued extensively in opposition to the defendants' Rule 29 motions and does not agree with the Court's ruling, the government accepts the Court's decision," it added.

Industry Urges Energy to Revise Proposed Nuclear Export Rules

Judging from industry lawyers and public comments on the Department of Energy's (DOE) proposed changes to its nuclear export regulations, the department has some work left to do. In the Federal Register Sept. 7, 2011, DOE proposed the first major update to the Part 810 Regulations since 1986. The proposed amendments would revise the rules as they relate to deemed exports, exempt activities, the scope of general and specific authorizations, and the information required to be submitted to DOE for specific authorizations. Of particular concern to industry is a proposed change to the identification of countries that need DOE authorization for an export and those that don't and the rules that apply to both groups.

DOE said the proposed rule is intended to simplify this exercise by placing into one regulatory provision an affirmative list of the generally authorized activities and 48 generally authorized countries, now called the "good guy" list. It proposed that specific authorizations have to be obtained for any activity that is not generally authorized. But industry points out that many countries that were not on the "bad guy" list, including the Philippines, are not on the proposed "good guy" list either. Industry organizations have taken issue with this change in policy especially as it applies to exports to countries that have reached bilateral agreements with the U.S. under Section 123 of the Atomic Energy Act – also known as 123 Agreements. In a March 20 letter, the Nuclear Energy Institute (NEI), a nuclear industry trade association, said the list

of countries requiring specific authorization under the current rule is out of date and contains several countries that have Section 123 Agreements in force. “Rather than updating this list in the proposed rule to remove countries that no longer exist and countries with Section 123 Agreements, DOE proposes to reverse over 25 years of U.S. policy with a new approach that would require specific authorizations for 73 additional countries,” NEI wrote. The U.S. Chamber of Commerce echoed that sentiment, saying “the proposed Part 810 rule fails to correct the shortcomings of the current regulation and introduces new elements that have wide-ranging adverse consequences for the U.S. nuclear industry.” It urged DOE “to withdraw the proposed rule and re-publish it in a form that avoids unintended consequences.”

Cattlemen’s Groups Disagree on Response to WTO COOL Ruling

The U.S. decision March 23 to appeal a WTO panel report against U.S. Country of Origin Labeling (COOL) rules has drawn diametrically opposed responses from two U.S. farm groups (see **WTTL**, Nov. 21, page 4). The U.S. has asked the WTO Appellate Body to find the panel acted inconsistently by failing to make an objective assessment of the facts in the dispute.

The National Cattlemen’s Beef Association said it was very disappointed in the USTR decision. “Instead of working diligently to bring the United States into WTO compliance, our government has opted to engage in an appeal process, which jeopardizes our strong trade relationship with Canada and Mexico, the two largest importers of U.S. beef,” said its vice president, Bob McCan. On the other hand, a Ranchers-Cattlemen Action Legal Fund letter to USTR Ron Kirk and Agriculture Secretary Tom Vilsack Jan. 23 urged “aggressive appeal” of the WTO ruling.

SolarWorld President Positive on Final Outcome of Case

The president of Solar World Industries, which filed the antidumping and countervailing duty (CVD) against imports of solar panels from China, remains upbeat that Commerce will increase the final CVD margin from the low margin it found in its preliminary ruling March 20 (see **WTTL**, March 26, page 3). “We’re confident the right numbers will come out at the end,” he told reporters after speaking March 27 at a conference on manufacturing in Washington. “This was the preliminary. Commerce indicated that it had not fully investigated all the subsidies that we had allegations on. So they have some more work to do,” he said.

In the ruling, published in the March 26 Federal Register, the International Trade Administration (ITA) identified several Chinese programs that need additional investigation. “After gathering and analyzing the additional information, the Department intends to issue a post-preliminary analysis regarding whether these programs are countervailable,” it said.

ITA found relatively low preliminary CVD rates for Chinese respondents despite the use of adverse facts available (AFA) data and the finding that Chinese respondents paid less than adequate remuneration (LTAR) for some production and land inputs. It said the government of China had not provided adequate information on the role of Chinese Communist Party officials in the ownership of some Chinese solar manufacturers and suppliers.

FCPA Probe of Medical Devices Industry Catches Biomet

The Justice Department’s and Securities and Exchange Commission’s (SEC) focus on violations of the Foreign Corrupt Practices Act (FCPA) among firms in the medical device industry snared another company when Biomet Inc., a medical device company in Warsaw, Ind., agreed March 26 to pay over \$22 million to settle charges that it violated the antibribery law. The government had charged Biomet with violating the FCPA when its subsidiaries and agents bribed

public doctors in Argentina, Brazil and China for nearly a decade to win business. The settlement is part of an SEC and Justice probe into bribery by medical device companies of health care providers and administrators employed by foreign government institutions. Previously, Johnson & Johnson and Smith & Nephew Inc. agreed to pay criminal penalties and entered into deferred prosecution agreements (DPA) for alleged FCPA violations (see **WTTL**, Feb. 13, page 4). “The investigation into bribery in the medical device industry is continuing,” the SEC noted in a statement. Biomet’s penalty was reduced because it cooperated in the ongoing investigation of other companies and individuals, Justice said.

“Biomet has long been committed to upholding the highest standards of ethical and legal conduct both in the United States and abroad,” Biomet President and CEO Jeffrey R. Binder said in a statement. In the agreement with the SEC, Biomet agreed to pay \$5.4 million in disgorgement of profits, including pre-judgment interest. As part of a DPA with Justice, it will pay a \$17.28 million criminal penalty, implement rigorous internal controls, cooperate fully with the department and retain a compliance monitor for 18 months.

* * * **Briefs** * * *

MTB: Both House Ways and Means Committee and Senate Finance Committee announced procedures March 30 for handling bills introduced to go in next miscellaneous tariff bill and deadlines for action.

GSP: President Obama March 26 granted Republic of South Sudan eligibility under Generalized System of Preferences (GSP). Proclamation suspended GSP for Argentina because it has failed to pay two longstanding arbitral awards of about \$300 million in favor of U.S. companies.

COLOMBIA: WTO confirmed March 28 that Colombia intends to join Information Technology Agreement (ITA) after it completes negotiations and commits to schedule of liberalization. WTO also said it plans to hold symposium on ITA to mark its 15th anniversary (see **WTTL**, March 19, page 3).

EAST AFRICA: USTR March 28 requested ITC conduct Section 332 investigation into “recent developments relating to trade facilitation in the EAC [East African Community] and request a description of the potential benefits of trade facilitation to the EAC countries.”

EX-IM BANK: Rafael E. Cuarezma of Miami was sentenced March 22 in Ft. Lauderdale U.S. District Court to five months in jail and five months home incarceration for conspiracy to commit wire fraud and wire fraud in scheme to defraud Ex-Im Bank. Cuarezma, general manager of LFM International in Miami, also was ordered to pay \$355,046.08 in restitution and serve 36 months of supervised release.

CHANGED CIRCUMSTANCES: Commerce has discretion to apply “changed circumstances” decisions to entries that predate completion of administrative reviews, CIT Senior Judge Richard Goldberg ruled March 21 (slip op. 12-38). “This Court previously rejected, and again rejects as unreasonable, Commerce’s arguments that the principle of administrative finality prevails over any discretion the agency has in selecting an effective date of revocation or that the completion of an administrative review precludes the agency from retroactively revoking an order,” he wrote in *Heveafil v. U.S.*

INDONESIA: At meeting of WTO committee on sanitary and phytosanitary measures March 27-28, U.S., EU, Australia, Chile, Canada, New Zealand and South Africa complained about Indonesia’s plan to close four ports for imports of fruit and vegetables, including the Port of Jakarta.

ARGENTINA: In unusual show of unity, U.S., Australia, EU, Israel, Japan, Korea, Mexico, New Zealand, Norway, Panama, Switzerland, Chinese Taipei, Thailand and Turkey issued joint statement March 30 at WTO Council for Trade in Goods criticizing Argentina’s import restrictions. “We would like to express jointly our continuing and deepening concerns regarding the nature and application of trade-restrictive measures taken by Argentina, which are adversely affecting imports into Argentina from a growing number of WTO Members,” part of statement said.

AIRBUS: EU reacted quickly to U.S. decision to seek establishment of WTO compliance panel to review EU’s proposed remedies to comply with WTO ruling against subsidies granted to Airbus. U.S. officials said plans didn’t adequately correct WTO inconsistent measures (see **WTTL**, March 19, page 2). “We regret that the U.S. has chosen to take this step, since the EU notified its compliance with its WTO obligations in the package of steps taken at the end of 2011, and the U.S. has yet to do the same in the Boeing case,” said statement from EU Trade Spokesman John Clancy.