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U.S., Canada Reach Deal on Buy American, Buy Canada

The U.S. and Canada announced Feb. 5 that they have reached a tentative deal to allow companies in each country to sell goods and services to projects covered by Buy American and Buy Canada legislation. The accord, which is to be signed Feb. 16, includes permanent and reciprocal commitments under the World Trade Organization (WTO) Government Procurement Agreement (GPA) and would cover provincial, territorial and state procurement. Approval of the deal by Canadian provinces is expected but still needed as well as notification to the WTO.

> Government procurement has been a controversial issue between the U.S. and Canada ever since the negotiation of the U.S.-Canada Free Trade Agreement in 1988. Canadian provinces had opposed inclusion of open procurement provisions in the pact to preserve their own local-content requirements. The issue flared up again when the U.S. enacted the 2009 Recovery Act with Buy American restrictions that gave access to stimulus projects to firms of GPA signatories but excluded Canadian suppliers because Canadian provinces hadn't formally endorsed the GPA. Bilateral talks have been underway ever since to resolve the problem (see **WTTL**, June 15, page 3).

"This administration made clear to Canada from the outset that any agreement to provide Canada with expanded access to U.S. procurement absolutely must provide guaranteed reciprocal access for U.S. exporters to supply goods and services to Canada through provincial and territorial procurement contracts," said U.S. Trade Representative (USTR) Ron Kirk in a statement. "For years, U.S. firms have sought market access to Canadian provincial procurement under the WTO Government Procurement Agreement (GPA), which Canada resisted. USTR took this opportunity to get Canada to open its provincial procurement markets, and also won new additional access for U.S. firms to provincial and municipal construction contracts across Canada," Kirk added.

Taiwan Says Ban Won't Affect Most U.S. Beef Exports

Taiwan does not appear likely to back off from new restrictions it has imposed on certain imports of beef from the U.S., claiming most current U.S. exports won't be affected by the new rules, according to a senior Taiwanese official. "The amendment to the Food Sanitation Act to ban trade in some types of U.S. beef reflects Taiwan consumers' concerns over the safety of U.S. beef," Chih-peng Huang, director general of the Bureau of Foreign Trade in the Ministry of Economic Affairs, told WTTL in an e-mail. "Since this amendment was passed by

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the Legislative Yuan, the administrative agencies must respect this result," he added. "This amendment does not restrict imports of U.S. boneless and bone-in beef, which account for 98% of the Taiwan-U.S. beef trade," he said. "Thus, the result of this amendment will not have any major impact on the current U.S.-Taiwan beef trade," Huang argued. The new law prohibits imports of certain cattle organs and ground beef that have been linked to Bovine Spongiform Encephalopathy (BSE). "Trade of boneless and bone-in beef will be unaffected, and our government will ensure the continuity of the boneless and bone-in beef trade," Huang stated.

> The U.S. protested adoption of the restriction, claiming it violates a protocol reached in 2009 between Taiwan and the American Institute in Taiwan, which represents the U.S. in Taipei. Under the protocol's terms, all tissues posing a BSE risk, known as specified risk materials (SRMs), must be removed from beef, and no SRMs or beef containing SRMs will be eligible for export to Taiwan. Qualifying beef, including cattle 30 months old and older, could be imported.

The U.S. says it is ready to talk with Taiwan but wants the protocol implemented. "Our doors are open, but what we expect is the protocol that was negotiated, which is consistent with the OIE [World Organization for Animal Health] and consistent with sound science, be implemented," Deputy USTR Demetrios Marantis told reporters Jan. 28. "We said strongly that this issue on beef really calls into question Taiwan's reliability as a trading partner," he added. Marantis said the U.S. is "looking at all of our options, including the WTO," to resolve the dispute.

Huang told WTTL that a mutually beneficial relationship is important to both the U.S. and Taiwan. "Our administrative agencies will work with the U.S. to seek a solution to solve both sides' concerns," he said. "To ensure the continuity of the boneless and bone-in beef trade, our government has held several meetings with the American Institute in Taiwan. Both sides have discussed the inspection and quarantine issues related to U.S. beef imports," Huang told WTTL.

Consent Agreement Settles Charges for Circumventing ITAR

Interturbine Aviation Logistics, GmbH, of Kaltenkirchen, Germany, and its U.S. subsidiary in Grand Praire, Texas, have reached a consent agreement with the Directorate of Defense Trade Controls (DDTC) to settle charges that one of its employees deliberately tried to circumvent the International Traffic in Arms Regulations (ITAR) with the export of aviation materials to Germany without a license. The settlement, made public Feb. 3, ends a case dating back to 2004.

> Under the agreement, DDTC imposed a $1 million civil penalty on the firm, but agreed that only $100,000 had to be paid by Jan. 19. Of the remaining $900,000, $400,000 was suspended on the condition that Interturbine remains in compliance with the regulations, doesn't seek to register as a defense manufacturer and doesn't export any ITAR items. If Interturbine does seek to register and export ITAR items, that $400,000 will have to be applied toward remedial actions. The remaining $500,000 was suspended based on the firm having already spent an equivalent amount on remedial measures.

Interturbine is a worldwide distributor of aviation supplies. One product it exported was Dow Corning's 93-104 Ablative Material and Sealant. In June 2004, Dow Corning informed customers that the material had been classified as subject to the U.S. Munitions List (USML) and could no longer be exported without a license from State. When a German company, Bayern-Chemie, sought to buy the product, an Interturbine employee in Germany arranged to have the product shipped to Germany by misstating its classification on export documents. After the shipment arrived at its plant, Bayern-Chemie asked about the export license and when it did not get the paperwork, it stopped payment and quarantined the material.

"Subsequently, Interturbine initiated an internal investigation and consulted outside counsel in the U.S.," the Charging Letter recounted. Based on advice of counsel, it retrieved the shipment from Bayern-Chemie and tried to send it back to its Texas facility. When the shipment arrived in the U.S., it was seized by Customs and ICE launched an investigation, which led to charges being filed in Dallas U.S. District Court. The government withdrew those charges based on Interturbine's agreement to institute remedial actions, including hiring an outside consultant.

Kirk's Absence from Davos Ministerial Chills Doha Talks

The absence of USTR Ron Kirk from the World Economic Forum annual meeting in Davos, Switzerland, Jan. 30 is another sign that Doha Round dealmaking is on ice for the U.S. Kirk reportedly stayed in Washington to attend President Obama's State of the Union address and to meet with members of Congress to discuss Obama's new export promotion program (see **WTTL,** Feb. 1, page 1). A meeting of 17 trade ministers on the sidelines of the Forum called for returning to the negotiating table to revise draft texts and narrow differences.

> Without Kirk there, the Davos meeting wasn't able to give impetus to the planned end-of-March "stocktaking" on the round, noted a trade attorney based in Geneva. "It's not a good signal," he said. Since the Senate hasn't confirmed a deputy USTR for Geneva, the U.S. was represented at the meeting by the acting head of the U.S. mission who wasn't authorized to speak. "A meeting of that sort at which the U.S. doesn't speak really is Hamlet without the prince," the attorney said.

The Davos session included trade ministers from Australia, Brazil, India, China, Japan and South Africa, as well as WTO Director General Pascal Lamy. They agreed that they want to use "what is on the table as the basis for entering the last stage of the DDA negotiations," Swiss President Doris Leuthard, who hosted the meeting, said in a statement. "Unraveling the main pillars of the package is not an option, if we want to conclude the Round. We recognize that the more time is elapsing the risks of back-tracking from the results on the table are increasing. We ministers agreed to do the utmost to prevent this from happening," she said.

Meanwhile, there are only six weeks before the March goal for holding a stocktaking meeting that is supposed to determine whether there is any chance that the round could be completed in 2010. For ministers to come to Geneva for stocktaking, there will have to be progress, "and there's precious little sign of that," one trade official in Geneva told WTTL. The chairman of the agriculture talks has reported signs of possible movement in the small group meetings he has held, particularly on the Special Safeguard Mechanism, one source noted. The next test will be whether anything comes out of two weeks of technical meetings ending Feb 12, he said. Senior officials will be in Geneva staring on Feb. 15. Nothing appears to have changed since the latest series of alternating delegations and senior-officials meetings that started in September, the official said. "It's difficult to see what's changed since then," he said.

Obama Backs Export Promotion Initiative in Budget Proposal

The Obama administration is backing up the National Export Initiative (NEI) that the president announced in his State of the Union address with a request Feb. 1 for a sharp increase in funds in the proposed 2011 budget for the trade promotion activities of Commerce's International Trade Administration (ITA), the Export-Import Bank and Agriculture's Foreign Agriculture Service (FAS) (see **WTTL,** Feb. 1, page 1). The budget, for the fiscal year starting Oct. 1, 2010, calls for the largest jump in ITA spending in history, a 20% increase of $88 million to $534 million, with the biggest slice – $59 million -- for the U.S./Foreign Commercial Service.

ITA will have another $21 million available from other government sources. FAS would see its budget authority increase by $79 million to $259 million, with another $116 million available from offsetting collections. The FAS budget continues to show the disproportionate aid given farm exports over industrial goods. Total FAS spending would be 68% of the ITA budget and would support about $100 billion in farm exports compared to almost $1 trillion in manufactured exports. Commerce Secretary Gary Locke spelled out the details of the NEI in a Feb. 4 speech. He said the program will aim to educate U.S. companies about opportunities overseas, directly connect them with new customers and advocate more forcefully for their interests. It also will provide more export financing for small and medium-size companies and continue "rigorous enforcement" of the trade laws. In addition, he said a new Export Promotion Cabinet will be created and will report to the president. This group will include top officials from Agriculture, Commerce, State, Treasury, the Export-Import Bank, the USTR's office and the Small Business Administration. This is what the Trade Promotion Coordinating Committee (TPPC) was supposed to do when it was created in 1993. Locke said he has revitalized the TPPC and acknowledged that it "had been ignored in recent years," he said.

> Elsewhere in the budget, after being on a restricted budget diet for three years, the Bureau of Industry and Security (BIS) would see the second big boost in its budget in two years, if Congress passes Obama's proposal. BIS' fiscal 2010 budget approved in December raised its budget to $100 million from $84 million. The 2011 proposal would add another $10 million for a total of $110 million, plus $3 million from other sources. The biggest jump would be for enforcement, which would see its budget rise to $51 million from $40 million. Export admin-stration, which handles licensing, would rise just $2 million to $56 million.

U.S. Protests Japan's Cash-for-Clunkers Rules

It's starting to sound like the 1990s again, with the U.S. raising complaints against Japanese restrictions on foreign cars. This time Washington is complaining that Japan's version of the "Cash-for-Clunkers" trade-in program is discriminating against U.S. automobiles. Perhaps not by coincidence, the protest is coming at the same time that U.S. Transportation Department officials are threatening Toyota with major fines for its alleged failure to report and deal with reports about sticking gas pedals on several Toyota models.

> The U.S. had thought Japan had revised its Cash-for Clunkers program to address earlier U.S. objections to plans to limit new car purchases under the program only to Japanese brands. Japan changed the program again on Jan. 19 to impose new mileage requirements that the U.S. says discriminate against U.S. models.

"We are disappointed with Japan's announcement today to limit the number of U.S. autos models that qualify for its 'cash-for-clunkers' program," said USTR Ron Kirk in a statement Feb. 3.. "This is particularly unfortunate in light of its recent announcement to open oppor-tunities for U.S. autos to qualify for its program, which was a welcome step," he said. "We will continue to urge Japan to implement its program in a manner that is transparent and as inclusive of U.S. autos as possible," Kirk added. Kirk's statement came after Tokyo released a list of U.S. car models that qualify for its Eco-Friendly Vehicle Purchase Program. The list was based on the Environmental Protection Agency's "city" mileage ratings rather than the combined "city/highway" mileage, thus limiting the number of American cars that qualified for the program. The U.S. wants the combine rating to be used.

* * * Briefs * * *

CORRECTION: U.S goods exports in 2009 are likely to be around $1 trillion not $1 billion as reported in WTTL (see **WTTL**, Feb. 1, page 1). Exports in 2008 were $1.3 trillion not $1.3 billion, as stated.

BIS: Senate Banking Committee Feb.4 favorably reported out nominations of David Mills to be BIS assis-tant secretary for export enforcement and Kevin Wolf to be assistant secretary for export administration.

EXPORT ENFORCEMENT: Federal agents Feb. 3 arrested Yi-Lan Chen in Guam on criminal complaint charging him with exporting EAR items to Iran via Hong Kong without licenses, including turbine engines that can be used in model airplanes and unmanned aerial vehicles.

ANTIDUMPING: CIT Judge Donald Pogue Feb. 2 upheld ITA policy of applying changes in antidumping orders only "prospectively" after issuance of Section 129 determinations bringing decisions into com-pliance with WTO panel rulings (Slip Op. 10-12).