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Democrats Urge USTR to Restart WTO Environmental Agreement

Consider it a four-year lunch break. A group of congressional Democrats April 7 introduced a resolution (H.Res.295) to direct the U.S. Trade Representative (USTR) to resume negotiations toward the World Trade Organization (WTO) Environmental Goods Agreement (EGA) that stalled in December 2016.

> In June 2017, several EGA negotiating members called for the relaunch of negotiations (see **WTTL**, June 26, 2017, page 7). "EGA members continue to take stock on the way forward for negotiations and call on others to consider joining," Australia's Andrew Martin, chair of the negotiations, said. The U.S., which is an EGA negotiating member, did not offer a position at the time.

The EGA "would eliminate tariffs on a broad range of environmental goods including wind turbines, water treatment filters, solar water heaters, and bicycles," the resolution notes. The deal "must be part of a larger set of efforts aimed at combating the climate emergency, achieving a clean energy economy, and reaching net-zero emissions by the year 2050," it adds.

"As our nation recovers from the COVID-19 pandemic, the Biden administration is prioritizing bold, transformative change towards a clean energy economy. Finalizing the Environmental Goods Agreement is a critical component in achieving that goal, supporting American workers and manufacturers, and restoring American leadership on the global stage," Rep. Suzan DelBene (D-Wash.) said in a statement. In addition to DelBene, cosponsors include Reps. Jimmy Panetta (D-Calif.), Don Beyer (D-Va.), Terri Sewell (D-Ala.) and Ron Kind (D-Wis.).

Iran Deal Partners Agree to Keep Talking

No one threw a shoe, and no knives were drawn. Participants in the Joint Commission on the Joint Comprehensive Plan of Action (JCPOA), or the Iran nuclear deal, agreed to keep

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talking about the U.S. rejoining the deal, after a meeting in Vienna April 9. What has made matters messy is Iran's insistence on the U.S. lifting sanctions as a first step, while the U.S. has insisted on Iran's compliance as a precondition.

"The Joint Commission tasked expert groups to continue their work and agreed to reconvene in Vienna in the course of next week," the Joint Commission chair said in a statement. The meeting was attended by representatives of China, France, Germany, Russia, the United Kingdom (UK) and Iran. News of progress that the U.S. would take further steps to rejoin the JCPOA drew a welcome reaction the week before (see **WTTL**, April 5, page 1).

> "Participants took stock of the discussions held at various levels since the last Joint Commission in view of a possible return of the U.S. to the JCPOA and discussed modalities to ensure the return to its full and effective implementation. The Joint Commission was briefed on the work of the two expert groups on sanctions lifting and nuclear implementation measures and participants noted the constructive and results oriented exchanges," the chair noted.

At a press conference the day before the final meeting, State Spokesperson Ned Price described the two sides of the discussions. "It comes to the two tasks, the Iranians have a task and that is to determine if and how they might return to compliance with the nuclear deal, to return to compliance with the strictest verification and monitoring regime ever negotiated. Our task, if it gets there, is to determine how we might resume compliance with our commitments under the JCPOA."

"If we get there – which of course remains an if – we have said that we are prepared to take the necessary steps to return to compliance with the JCPOA and that would include lifting sanctions that are inconsistent with the JCPOA," Price added.

Seyyed Abbas Araqchi, the head of the Iranian delegation, stressed that the removal of the U.S. sanctions is the first and most necessary move to revive the JCPOA. "Iran is fully prepared to stop its remedial nuclear measures and return to the full implementation of the JCPOA immediately after it verifies the removal of sanctions," he added.

"China hopes all parties will consolidate and continue the current positive momentum and reach an early consensus on bringing the U.S. and Iran back to the deal at an early date," Foreign Ministry Spokesperson Zhao Lijian said at his regular press conference. "The U.S. is expected to return to the agreement unconditionally as soon as possible and lift all relevant sanctions, including the long-arm jurisdiction over any third party, while Iran should resume its compliance reciprocally on this basis," Zhao added.

CIT Knocks Down Section 232 Tariffs on Derivative Products

A Court of International Trade (CIT) panel April 5 knocked down the former president's January 2020 order increasing Section 232 tariffs on "certain derivative" steel imports by

25% and aluminum imports by 10%, citing the announcement came after the congressionally mandated timeline. In the order, the former president added specific derivative products to the tariffs, including steel nails, tacks, drawing pins, corrugated nails and staples, and aluminum stranded wire, cables and plaited bands (see **WTTL**, Jan. 27, 2020, page 1). Although steel and aluminum imports had declined since the imposition of the tariffs, imports of certain derivatives of steel and aluminum articles "have significantly increased since the imposition of the tariffs and quotas," the presidential order said.

"Because the President issued Proclamation 9980 after the congressionally delegated authority to adjust imports of the products addressed in that proclamation had expired, Proclamation 9980 was action outside of delegated authority," CIT Chief Judge Timothy C. Stanceu and Judge Jennifer Choe-Groves wrote in *PrimeSource Bldg. Prods., Inc. v. U.S.* "We reject defendants' position that Congress intended for the time limitations in Section 232(c)(1) to be merely directory, and we find in the untimeliness of Proclamation 9980 a significant procedural violation," they added. Judge M. Miller Baker dissented.

> Two days after the ruling, Commerce Secretary Gina Raimondo defended the original steel and aluminum tariffs at a White House press briefing. The tariffs "helped save American jobs in the steel and aluminum industries. So what do we do with tariffs? We have to level the playing field. No one can outcompete the American worker if the playing field is leveled," she told reporters. "I plan to use all the tools in my toolbox, as aggressively as possible, to protect American workers and businesses from unfair Chinese practices," Raimondo added.

As a result of the CIT ruling, all the entries affected by this litigation will be liquidated without the assessment of duties, "with refund of any deposits for such duty liability that may have been collected," the judges wrote. "Should any entries of PrimeSource's merchandise at issue in this litigation have liquidated with the assessment of 25% duties pursuant to Proclamation 9980, PrimeSource is entitled to reliquidation of those entries and a refund of any duties deposited or paid, with interest as provided by law," they added.

Observers noted that congressional action is still needed to overhaul the Section 232 tariff program. CIT "ruled narrowly on the former point (the deadlines for action). The court's decision will likely be extended to other companies that filed lawsuits similar to Primesource's and should be welcomed by free traders and importers – particularly U.S. construction companies that are now reeling from sky high materials prices," Cato Institute experts Inu Manak and Scott Lincicome wrote in a blog post.

Industry Argues for Smarter, Targeted Export Controls

While responses to the Bureau of Industry and Security (BIS) request for comments on President Biden's recent executive orders on U.S. supply chains varied widely, many companies cited more "targeted" and "smarter" export controls as solutions to a semiconductor shortage and other business risks.

In its March request, BIS specifically asked for information regarding risks in the semiconductor manufacturing and advanced packaging supply chains (see **WTTL**, March 15, page 1). Biden previously ordered a 100-day supply chain review of four key products: semiconductors; critical minerals, including rare earth elements; pharmaceuticals and active ingredients; and high-capacity batteries, including electric-vehicle batteries.

"Both Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) controls and licensing processes limit off-shore procurement and drive the industry to use less-advanced on-shore manufacturing processes," Boeing commented. "Export licensing agencies and partner agencies should establish an overarching licensing policy and implement a consistent approach to enable risk-aware technology decisions to be made on programs that leverage the latest semiconductor processes and components," the company added.

> Qualcomm commented that "the Federal Government can facilitate the development of a robust and resilient supply chain through maintaining strong patent and trade secret protections; targeted export controls; supporting major investments in R&D and manufacturing through grants and tax incentives; building a skilled workforce; coordinating with allies around the world; and promoting collaboration between the public and private sectors."

More specifically, the federal government should control emerging technologies consistent with the standards set forth in the Export Control Reform Act of 2018 (ECRA), the company added. "The imposition of unilateral U.S. export controls on the work that Qualcomm does in these technologies is likely to have little or no impact on the ability of non-U.S. companies to develop comparable technologies or commodities from such technologies, including in China," Qualcomm wrote.

HP urged the continued use of Buy America provisions and government procurement agreements. "Because the reshoring effort will take time and may not be competitive for every semiconductor product, we encourage collaboration with trusted allies and preservation of existing exemptions and waivers to the Buy America Act. We encourage the Administration to continue allowing waivers to the Buy America Act that U.S. companies largely use to supply the USG: Commercial Off the Shelf (COTS) exemption for IT goods; and Trade Agreements Act (TAA) waivers," HP commented.

Intel also argued for smarter multilateral exports controls. "We recommend that the BIS generally avoid the imposition of unilateral export controls as these restriction place undue hardship on U.S. semiconductor companies, especially when similar items are available in foreign markets. The foreign availability of products and technology typically leads to the substitution of U.S.-origin products and technology for comparable non-U.S. origin items that are not similarly controlled," the company wrote.

Hitachi argued that "Government policies and actions are one of the major risks to the semiconductor supply chain. From time to time, trade restrictions, prohibitions on exports, and unilateral sanctions against firms have caused disruptions in semiconductor availability. When the U.S. acts unilaterally, the response from some companies and countries has been to stockpile semiconductors, which creates artificial demand in specific industry sectors. At times, countries have also retaliated with their own export controls, crimping the supply chain further."

> "When that happens, global semiconductor manufacturers may shift production to meet this artificial demand need, thus diverting production of other products needed in a different industry sector, creating a shortage, and negatively impacting trade and production on a global scale. Additionally, government regulations domestically can also impinge and disrupt the supply chain," Hitachi commented.

The Semiconductor Industry Association (SIA) echoed those sentiments. "Some of these export controls encompass the entire semiconductor supply chain, including EDA [electronic design automation] and manufacturing equipment that incorporates technology developed in the U.S."

"Given that U.S. companies are currently the only viable suppliers of EDA and critical equipment such as doping or metrology, these controls for now effectively block the impacted Chinese entities from sourcing semiconductors, even from non-U.S. suppliers. These rules have encouraged China to develop and seek alternatives, and although it may take some time to do so, the trend towards reduction of dependence on U.S. semiconductor suppliers and indigenization of the supply chain is beginning to take shape," SIA wrote.

* * * Briefs * * *

TRADE FIGURES: Merchandise exports in February declined 5.15% from year ago to $131.1 billion, Commerce reported April 7. Services exports dropped 19.6% to $56.1 billion from February 2020. Goods imports jumped 10.3% from February 2020 to record-high $219.1 billion, as services imports fell 17.35% to $39.2 billion.

IRAN SANCTIONS: Indictment against Michael Rose of Ridgefield, Conn., president of Forsythe Cosmetic Group, was unsealed April 6 in Manhattan U.S. District Court on charges of violating Iran sanctions. Between 2015 and 2018, Rose allegedly participated in conspiracy to export more than $350,000 worth of cosmetics to importer in Iran without OFAC license. Rose also filed false and misleading information on Shipper's Export Declaration (SED) forms. SED forms fraudulently stated that "ultimate consignee" was in intermediary shell company in UAE, not Iran, indictment noted. In March 2016, Rose also falsely "lowered the purchase price for the goods purchased by Company-1 in order to aid [co-conspirator] in evading UAE customs payments," it added.

MOBILE ACCESS EQUIPMENT: In 5-0 final vote April 9, ITC determined U.S. industry is materially injured by dumped and subsidized imports of mobile access equipment from China.

ENGINES: In 5-0 final vote April 6, ITC found U.S. industry is materially injured by dumped and subsidized imports of small vertical shaft engines from China. Commission also made affirmative finding on critical circumstances on these imports.

BURMA: OFAC April 8 designated Myanma Gems Enterprise (MGE), Burmese state-owned entity that is responsible for all gemstone activities in Burma. "Gemstones are a key economic resource for the Burmese military regime that is violently repressing pro-democracy protests," agency said. Week earlier, U.S. Trade Representative (USTR) Katherine Tai suspended all U.S. engagement with country under 2013 Trade and Investment Framework Agreement (TIFA) (see **WTTL**, April 5, page 2).

ENTITY LIST: BIS April 8 added to its Entity List seven Chinese entities "involved with building supercomputers used by China's military actors, its destabilizing military modernization efforts, and/or weapons of mass destruction (WMD) programs." Entities include National Supercomputing Center Jinan, National Supercomputing Center Shenzhen, National Supercomputing Center Wuxi, National Supercomputer Center Zhengzhou, Shanghai High-Performance Integrated Circuit Design Center, Sunway Microelectronics and Tianjin Phytium Information Technology. "The U.S. government, driven by a desire to maintain its scientific monopoly and hegemony and to contain China's development, has time and again abused the national security concept, its state power and 'entity list' to unscrupulously and maliciously suppress Chinese high-tech companies," Chinese Foreign Ministry Spokesperson Zhao Lijian said in press briefing.

CENSORSHIP: Sen. Ron Wyden (D-Ore.) April 8 requested ITC divide Section 332 investigation of censorship as non-tariff barrier into two volumes. First volume would include: "identification and descriptions of various foreign censorship practices, in particular any examples that U.S. businesses consider to impede trade or investment in key foreign markets." Second volume would provide: "an analysis of the trade and economic effects of such policies and practices on affected businesses" in U.S. and their global operations. Sen. Chuck Grassley (R-Iowa) requested full investigation in January (see **WTTL**, Jan. 11, page 6).