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## Froman Gives Guatemala More Time to Fix Labor Practices

U.S. Trade Representative (USTR) Michael Froman has given Guatemala more time to implement worker rights reforms to avoid dispute-settlement arbitration under the terms of the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). According to an AFL-CIO spokesperson, Froman called AFL-CIO President Richard Trumka from Asia April 24 to inform him about a second four-month extension of the deadline for meeting the conditions of a bilateral action plan to improve conditions, putting the next decision point in mid-August.

“This decision undermines our confidence in the administration’s claims that the Trans-Pacific Partnership will combat the race to the bottom in global labor standards,” Trumka said in a statement after Froman’s call. “If the Administration is committed to building a trade policy for the 21<sup>st</sup> century, it is sending the wrong message to TPP partners: that they can expect no repercussions for egregious violations of workers’ rights,” Trumka said.

After a March meeting with Guatemala trade and labor ministers, the USTR’s office said the U.S. believes “further action is urgently needed” to implement the plan. At that time, it said if concerns were not addressed by April 25, Washington “reserves the right to restart the dispute settlement proceedings that were suspended as a result of the Enforcement Plan” (see **WTTL**, March 10, page 8).

In an April 21 letter to Froman and Labor Secretary Thomas Perez, the AFL-CIO and Guatemala’s main trade unions urged them to reinstitute the arbitral panel under CAFTA-DR. Guatemala’s actions “thus far have neither fully addressed nor alleviated its failure to enforce labor laws that protect the rights to freedom of association, to organize and bargain collectively, and to acceptable conditions of work,” the unions wrote.

## Ex-Im Reauthorization Faces Toughest Fight Yet

The Obama administration sent Congress draft legislation April 23 to reauthorize the Export-Import Bank (Ex-Im) for another five years amid concerns that the measure will face an even tougher fight to get approved than the last reauthorization bill three years ago. House Financial Services Committee Chairman Jeb Hensarling (R-Texas) has strongly stated his opposition to renewing the bank’s charter, claiming it is a subsidy to

big business and government interference in the free marketplace. He appears to reflect the views of a core of tea party Republicans in the House. Some in the business community say it will be up to House Speaker John Boehner (R-Ohio) to devise a plan to circumvent Hensarling's opposition to the bank's reauthorization and to overcome tea party efforts to block a measure. That might entail linking the Ex-Im bill to other legislation that GOP lawmakers want.

In an exclusive interview with WTTL, Ex-Im Chairman and President Fred Hochberg acknowledged Hensarling's opposition. "Chairman Hensarling has made his views clear, but I don't know what the outcome is," he said. "The mechanics and process between the leadership, committees, the Senate and the Senate leadership, I leave that up to them to sort out," he said. Hochberg said he was unaware of any administration strategy to work with Boehner to get an Ex-Im bill passed.

The bill that the administration sent to Congress, which includes an incremental increase in the cap on the bank's lending authority from \$140 billion to \$160 billion, clearly listens "to the temperature of trying to balance the needs of the business community and the perspective of Congress," Hochberg told WTTL. He noted special requirements that lawmakers imposed on the bank in its last reauthorization. "Last time, Congress put in about 18 reforms, from Federal Register [notices] to reports on transparency, reports on textiles; we have complied with every single reform they put in last time," he said.

While Ex-Im is fighting for its reauthorization, its level of export financing is declining from its peak in fiscal year 2012 when it backed \$35.7 billion in exports and returned a \$1.1 billion profit to Treasury. In fiscal 2013, which ended Sept. 30, 2013, it financed almost 25% less (\$27 billion) and returned a profit of \$1.057 billion, figures that are still far above pre-recession levels when Ex-Im averaged about \$12 billion in loans and guarantees. So far in fiscal 2014, which started Oct. 1, 2013, the decline is continuing, Hochberg conceded.

"That doesn't bother me. Our job is to fill a gap," Hochberg told WTTL. He cited reports that commercial banks are doing more lending as business has become more confident about the recovery of the economy in the U.S. and abroad. "When banks do it on their own, that is our preferred option," he said. The decline, however, "certainly seems to be a trend at the moment. How long a trend, I don't know," he said. Hochberg also explained that financing levels in previous years were higher due to several very large projects that the bank helped finance. "At the moment, that is not exactly on the horizon," he said.

## **U.S.-Japan Trade Talks a Bust During Obama's Visit to Tokyo**

U.S. officials had to reach into the old cliché box to come up with a euphemism for what they failed to achieve in trade talks during President Obama's April 23-25 state visit to Japan. After four days of intense negotiations between U.S. and Japanese trade officials on opening the Japanese auto and agriculture markets as part of a Trans-Pacific Partnership (TPP) deal, the best they could produce was the identification of "a path forward on important bilateral TPP issues," said a joint statement the two countries issued at the end of Obama's visit April 25 (see **WTTL**, April 21, page 1). During Obama's meetings with Japanese Prime Minister Abe, TPP was a major subject but overshadowed by

discussions on military security, Tokyo's confrontation with China in the South China Sea and Japan's relations with Korea. In public statements, Obama tried to tie TPP to Abe's broader effort to revitalize and reform the Japanese economy as well as Tokyo's more assertive role in Asia. "TPP is consistent with those reforms," Obama said at a joint press conference with Abe April 24.

The U.S. and Japan claimed the finding of the "path forward" was actually a breakthrough, although administration officials gave few details about what that meant in a background briefing they held after the visit.

In the market access talks on the key farm commodities that Japan wants to protect, negotiators identified "various factors that go into market access agreement -- the length of time over which a market access barrier might be reduced, which barriers are eliminated and which barriers are reduced and what the relationship is between them, how the market access is structured," one senior administration official said. "We went through each one of these products and oftentimes line by line of the tariffs to determine what was the most robust outcome in terms of opening markets for U.S. exports, and to do so in a way where we could secure Japan's agreement," he added.

When pressed to explain whether Japanese tariffs on those farm products would eventually get to zero as American farm groups are seeking, the official demurred. "I think parameter is a good way of thinking about it. There are these parameters and there are tradeoffs among parameters. The deeper the cut in the tariff, the longer time it may take to get there," the official told reporters. The final package may be "a combination of different things," he said. "There's what the ultimate end point is: Is the tariff eliminated? Is it reduced? Or were there other mechanisms to create market access? How are those structured?" he noted.

During the joint press conference with Abe, Obama conceded that both the U.S. and Japan will have to make concessions to get a TPP deal. "That means that short term, all of us have to move out of our comfort zones and not just expect that we're going to get access to somebody else's market without providing access to our own," the president said. "And it means that we have to sometimes push our constituencies beyond their current comfort levels because ultimately it's going to deliver a greater good for all people," he added.

## **Year After Tragedy, Bangladesh Labor Reforms Still Fall Short**

On the first anniversary of the tragedy at the Rana Plaza textile factory in Bangladesh, administration officials seem unlikely to reinstate the country's Generalized System of Preferences (GSP) privileges, which were ended in July 2013. Even if the U.S. were convinced that Dhaka had made enough progress to improve working conditions and labor rights, a decision would be moot since the GSP program expired on July 31, 2013.

After the Obama administration removed Bangladesh from GSP eligibility, the U.S. and Bangladesh adopted a GSP Action Plan to address worker rights and safety. While some progress has been made since then, the administration officials say not enough has been done. "There continue to be concerns about basic worker rights protections under both Bangladesh's labor law and its special Export Processing Zone law," said a joint statement from Labor, State, the U.S. Trade Representative (USTR) and the U.S. Agency for

International Development April 23. “The Bangladesh government’s hiring of inspectors is lagging, and the results of inspections need to be made publicly available on an easily accessible database. The government of Bangladesh must also do more to ensure protection when workers face intimidation and reprisals for trying to organize,” the statement noted. In addition, USTR signed a Trade and Investment Cooperation Forum Agreement (TICFA) with Bangladesh in November 2013 to track and discuss Bangladeshi efforts to improve worker safety and worker rights (see **WTTL**, Dec. 2, 2013). The next TICFA meeting will be held April 27-28 in Dhaka.

GSP benefitted only a small share of Bangladesh’s exports to the U.S., which overwhelmingly comprise apparel that is exempt from the program. The country’s GSP participation had been under review since 2007, years before the Rana Plaza tragedy that killed more than 1,000 garment workers. The agencies will conduct another review of its GSP eligibility in May, with a decision made in the second half of June, administration officials said. However, they “would not likely be in a position to act on that while the program is without authorization,” one official said.

Ahead that review, Bangladesh submitted a public comment April 15 highlighting its progress to date. It said it “is intensely and proactively engaged in consolidating its efforts to take all precautionary measures. At present, all the actions taken by the government, private sectors and other stakeholders are being pursued without any interruption.”

“The actions that have been taken over last one year cover a broad range of areas including legal and institutional reforms, administrative actions, launching specific programmes, assessment of fire electrical and building safety, follow-up and monitoring. As of April 2014, progress has been made in many areas, which demonstrates forward movements towards improving occupational safety and workers’ rights situation in Bangladesh,” the government added.

Members of Congress continue to urge Bangladesh to improve physical safety, as well as workers’ freedom of association. “Workers must be empowered to speak collectively and refuse unsafe working conditions without fear of economic retaliation. They had no union and no voice,” wrote House Ways and Means Ranking Member Sander Levin (D-Mich.) and Rep. George Miller (D-Calif.) in a letter to Bangladesh Prime Minister Sheikh Hasina.

Separately, the European Union and the International Labor Organization (ILO) created a Sustainability Compact with Bangladesh in July 2013. At an ILO meeting March 27, the EU said, “We are particularly concerned about the labour conditions, including freedom of association, the right to collective bargaining and about the application of health and safety provisions, as we are Bangladesh's largest trade partner.”

## **Commerce Drops “Targeted Dumping” Rule (Correctly This Time)**

After being ordered to follow Administrative Procedure Act (APA) rules, Commerce’s Enforcement and Compliance Office, formerly known as Import Administration, formally withdrew its “targeted dumping” regulation in the April 22 Federal Register. The office had informally dropped its policy in 2008, but the Court of International Trade (CIT) ruled in June 2013 that it had to follow APA proposal-and-comment procedures before it

could abandon policies for determining when targeted dumping was occurring (see **WTTL**, June 24, 2013, page 7). After that ruling, Commerce went through proper APA procedures and then issued its final order. “The Department has considered the comments received and, as explained below, determines to continue not to apply the withdrawn targeted dumping regulations in less-than-fair-value investigations. Rather, the Department will continue to determine whether to apply an alternative comparison method as appropriate based upon the particular facts in each case,” it said.

“The Department agrees with one commenter that case-by-case adjudication allows the Department to unmask dumping more effectively, and allows the Department to fully develop its methodology. Further, this case-by-case adjudication has allowed the Department to develop the newly-introduced differential pricing analysis which itself may be further modified given the specific evidence presented in a particular investigation or review,” Commerce said in the preamble to its order.

“The Department's position is that the determination of which comparison method to apply is highly dependent upon the facts of the individual proceeding, but in all administrative proceedings, interested parties will have the opportunity to comment on whether an alternative comparison method is warranted,” it stated. “With respect to comments that the withdrawn targeted dumping regulations were based on sound policies that remain applicable to the calculation methodology today, the Department disagrees that refinements to its methodology invalidate previously applied analysis methods,” it said.

**\* \* \* Briefs \* \* \***

CATEGORY XII: Commerce, State and Defense officials presented draft language on proposal for transferring some items in USML Category XII to CCL to members of BIS Sensors and Instrumentation Technical Advisory Committee April 22. Closed-door presentation indicated publication of proposal may be coming soon.

ITAR LICENSING: DDTC posted notice on website April 21 saying, “Effective on Apr 21, 2014, the Office of Defense Trade Controls Licensing will temporarily realign responsibility for the review and adjudication of export license applications and other written requests related to U.S. Munitions List (USML) Category VII - Ground Vehicles to the Aircraft Division. Any cases under review at the effective date will continue to be reviewed by the assigned Licensing Officer. Industry action is not required in response to this change as the realignment will be handled automatically when cases are submitted.” Industry sources have been told Category VII cases will be shifted to licensing officers who formerly handled Category VIII (aircraft) licenses applications because Category VIII cases have dropped significantly since many items in category were transferred to CCL (see **WTTL**, March 10, page 1).

EXPORT ENFORCEMENT: Indictment against three individuals and one company was unsealed April 23 in Scranton, Pa., U.S. District Court charging them with conspiracy to illegally export laboratory equipment, including portable gas scanner, flowmeters for measuring gas streams and other items used to detect chemical warfare agents, to Syria without licenses. Harold Rinko of Hallstead, Pa., UK citizen Ahmad Feras Diri, and his brother, Syrian citizen Moawea Deri, along with brothers’ company, d-Deri Contracting & Trading, were indicted in November 2012. Diri was arrested in London in March 2013 and is awaiting extradition to U.S. Rinko waived arraignment and will plead guilty at hearing June 5. Deri remains at large.

MORE EXPORT ENFORCEMENT: C.A. Litzler Co. Inc. of Cleveland agreed April 24 to pay BIS \$45,000 to settle one charge of engaging in prohibited conduct by exporting prepreg

machine to Spain without required Commerce license in May 2005. Machine was classified under ECCN 1B001 and worth approximately \$825,215. Proposed charging letter initially was sent in September 2010 to Western Advanced Engineering Company (WAECO). In June 2013, BIS sent amended letter to Litzler because it “had acquired at least a substantial portion of WAECO’s assets.” Litzler announced acquisition of WAECO “technical assets” in March 2011.

**MORE EXPORT ENFORCEMENT:** Criminal information was filed April 23 in Harrisburg, Pa., U.S. District Court, against Hetran Inc., of Orwigsburg, Pa., and its CEO, Helmut Oertmann, charging them with attempting to smuggle lathe machine worth more than \$800,000 and weighing over 50,000 pounds to Iran via UAE in June 2012 without license. Both agreed to plead guilty and waive indictment. At same time, indictment from December 2012 was unsealed against three Iranians -- Mujahid Ali, Khosrow Kasraei and Reza Ghoreishi -- and two Iranian firms -- FIMCO FZE and Crescent International Trade and Services FZE – in same scheme. Also charged was Indian national Suniel Malhotra, overseas sales representative for Hetran.

**CONTAINERS:** Stoughton Trailers LLC filed antidumping and countervailing duty petitions April 23 with ITA and ITC against imports of 53-foot domestic dry containers from China. Stoughton is only U.S. manufacturer of domestic containers, and market share captured by manufacturers in China has grown to over 95%, company said.

**STEEL LINE PIPE:** In 5-0 “sunset” vote April 23, ITC determined that revoking antidumping and countervailing duty orders on circular welded carbon-quality steel line pipe from China would cause renewed injury to U.S. industry.

**AGOA:** African Growth and Opportunity Act’s (AGOA) benefits have been limited to specific sectors in sub-Saharan Africa, such as apparel and transportation, ITC found in report released April 25 on trade and investment performance under AGOA from 2001-2013 (pub. 4461). On positive note, ITC found that “program’s trade benefits and eligibility criteria appear to have motivated AGOA beneficiary countries to improve their business and investment climates.” On average, crude petroleum accounted for almost 90% of U.S. imports under AGOA, ITC noted.

**SHRIMP:** In two parallel rulings April 23, CIT Judge Jane Restani dismissed suits by Thai shrimp exporters and Royal Thai government seeking review of parts of Commerce negative ruling in countervailing duty case against frozen warmwater shrimp from Thailand. Since department’s decision was negative, plaintiffs lack standing to sue over parts of ruling they disagreed with, Restani found. “Both this court and the Court of Appeals for the Federal Circuit have held that when a respondent challenges an administrative proceeding in which it has prevailed there is no case or controversy, and thus no jurisdiction lies,” she wrote (slip ops. 14-47 and 14-46). “The lack of a CVD order means that plaintiff is currently not suffering any actual or imminent injury in fact due to any alleged errors committed by Commerce,” Restani stated. Any potential injury “is nothing more than speculation at this point,” she added.

**HARDWOOD FLOORING:** Court of Appeals for Federal Circuit (CAFC) April 23 affirmed CIT ruling that upheld Commerce’s application of adverse inference in countervailing duty case against imports of hardwood flooring from China because Chinese government had not provided all requested information even though Chinese exporters were cooperating respondents. “Although it is unfortunate that cooperating respondents may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce’s questions, this result is not contrary to the statute or its purposes, nor is it inconsistent with this court’s precedent,” wrote CAFC Judge S. Jay Plager for three-judge panel. “In reaching its decision, Commerce explained that the government of China failed to cooperate by not acting to the best of its ability to comply with Commerce’s request for information because it did not respond by the deadline dates, nor did it adequately explain why it was unable to provide the requested information. Because the government of China did not provide the requested information, Commerce was forced to substitute for the missing information and did so in accordance with 19 U.S.C. Section 1677e(b),” judge wrote.