

Vol. 36, No. 22

May 30, 2016

During Visit, Obama Lifts Vietnam Arms Embargo

As many expected, President Obama in Hanoi May 23 announced a lifting of the 50-year-old arms embargo on Vietnam, replacing it with a case-by-case review of export licenses. Deputy National Security Advisor Ben Rhodes had said the administration was considering the action even before the president left for the trip (see **WTTL**, May 23, page 1).

The policy could be a boon for U.S. defense manufacturers, even before the Trans-Pacific Partnership (TPP) is fully implemented. Vietnam military expenditures in 2015 were estimated to be \$4.4 billion, according to the Stockholm International Peace Research Institute.

“As with all our defense partners, sales will need to still meet strict requirements, including those related to human rights. But this change will ensure that Vietnam has access to the equipment it needs to defend itself and removes a lingering vestige of the Cold War,” President Obama said during a joint press conference with Vietnamese President Tran Dai Quang. State’s Directorate of Defense Trade Controls (DDTC) posted an industry notice on the policy change on its website May 23 effective immediately.

In addition to the potential arms sales, the president noted commercial deals signed during his visit. “American and Vietnamese companies are moving ahead with the new commercial deals worth more than \$16 billion. Boeing will sell 100 aircraft to VietJet. Pratt & Whitney will sell advanced engines. GE Wind will partner with the Vietnamese government to develop more wind power,” he said.

Congress Responds to Vietnam Policy with Reservations

As could be predicted, members of Congress had mixed responses to President Obama’s announcement. “The security situation in Southeast Asia is driving several countries to seek closer military ties with the United States. That’s influence the administration could

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WTTL is published weekly 50 times a year except last week
in August and December. Subscriptions are \$697 a year.
Additional users pay only \$100 each with full-priced sub-
scription. Site and corporate licenses are also available.
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use to press Vietnam to better its very bad human rights record. But that's now leverage lost with today's action," House Foreign Affairs Committee Chairman Ed Royce (R-Calif.) said in a statement.

"The Obama administration's 'pivot to Asia' should be about security ties, but also standing up for brave Vietnamese believers in democracy when they are under assault in Vietnam," Royce added.

Sen. Ben Cardin (D-Md.), ranking member of the Senate Foreign Relations Committee, applauded the ban's lifting, but with reservations. "I welcome this development as an important element of our effort to build a stronger, deeper partnership with Vietnam, but I do so with my reiterated call to better balance security needs with adherence to basic human rights," he said.

"The onus is now on the government of Vietnam to make tangible progress to secure and protect greater human dignity for their people, and on the United States, as a partner and friend, to hold Vietnam accountable," Cardin added.

U.S. Opposes Reappointment of Korean Judge to WTO Appellate Body

The U.S. kicked up a firestorm in its lone opposition to the reappointment of Seung Wha Chang of South Korea to the World Trade Organization's (WTO) Appellate Body, as even the U.S. chair of the body and dozens of WTO members supported the move.

Chris Wilson, deputy chief of mission to the WTO, confirmed to Dispute Settlement Body (DSB) members in Geneva May 23 that the U.S. does not "consider that [Chang's] service reflects the role assigned to the appellate body by WTO members in the WTO agreements."

Should the U.S. maintain its opposition to Chang, his term will expire May 31, potentially leaving two vacancies on the seven-member panel. The next regular DSB meeting is scheduled for June 22.

Though appellate rulings are handed down as a collectively authored document, the U.S. in its written statement to the DSB said Chang was the driving force behind the panel's overreach in four cases. First, in a ruling on a financial services dispute between Panama and Argentina, two-thirds of the Appellate Body's analysis "served no purpose in resolving the dispute."

"The Appellate Body is not an academic body that may pursue issues simply because they are of interest to them or may be to certain Members in the abstract. Indeed, as the Appellate Body itself had said many years ago, it is not the role of panels or the Appellate Body to 'make law' outside of the context of a dispute - in effect, to use an appeal as an occasion to write a treatise on a WTO agreement," the U.S. statement noted. In another ruling, which favored the U.S. in its dispute with India on the import ban on U.S. poultry

products, the U.S. accused the Appellate Body of engaging in “lengthy abstract discussion” that was not tied to the appeal and devoting “considerable time” to an issue that the U.S., India and third parties agreed had not been raised by either party in its arguments and was not subject to any panel findings.

The U.S. further accused the Appellate Body of attempting to “conduct independent investigations and apply new legal standards, regardless of what either party actually argues” in conflict with what is outlined by the Dispute Settlement Understanding (DSU). Finally, in a ruling that upheld China’s stance that the U.S. unfairly calculated anti-dumping and countervailing duties, the U.S. accused the panel of taking a “problematic and erroneous approach to reviewing a Member's domestic law.”

“We also are concerned about the manner in which this member has served at oral hearings, including that the questions posed spent a considerable amount of time considering issues not on appeal or not focused on the resolution of the matter between the parties,” the U.S. wrote. The U.S. also raised these concerns in its closing statement in its poultry dispute hearing with India.

The U.S. insisted its opposition to Chang's reappointment was not related to the outcomes of the aforementioned cases. The U.S. has brought the most cases before the Appellate Body; in fact, the Appellate Body will soon consider a U.S. appeal of a DSB decision regarding imports of residential washers from South Korea (see **WTTL**, April 25, page 8).

The U.S. reminded members that reappointment is not automatic per Article 17.2 of the DSU, which specifies that each Appellate Body member “may be reappointed once” by consensus of the WTO members.

South Korea shot back swiftly against the U.S. position in a statement released May 23. “[The U.S.] opposition is, to put it bluntly, an attempt to use reappointment as a tool to rein in Appellate Body Members for decisions they make on the bench. Its message is loud and clear: ‘If AB Members make decisions that do not conform to U.S. perspectives, they are not going to be reappointed.’” Some 30 WTO members offered written comments in agreement with South Korea’s position.

Current members of the Appellate Body, led by their chair, Thomas Graham of the U.S., wrote to DSB Chair Xavier Carim May 18 in support of their colleague and raised concerns about tying Appellate Body reappointment to interpretations in specific cases. “The dispute settlement system depends upon WTO Members trusting the independence and impartiality of Appellate Body Members. Linking the reappointment of a Member to specific cases could affect that trust,” they wrote.

The second and final term of Appellate Body Member Yue Jiao Zhang of China ends May 31. The DSB chairman reported that the selection committee could not recommend a candidate who could earn the consensus of the membership. Seven nominees were considered, hailing from Japan, Nepal, China, Turkey, Australia and Malaysia. The committee will continue its search.

Treasury Official Defends U.S. Iran Sanctions

Acting Treasury Undersecretary for Terrorism and Financial Intelligence Adam Szubin denied that the administration is trying to persuade European businesses and banks to make deals with Iran nor is the administration giving Iran access to U.S. financial institutions. But in Szubin's testimony before the Senate Banking Committee May 25, he could not guarantee that Iran won't have access to the U.S. dollar.

Szubin emphasized that Iran is not allowed access to U.S. financial institutions, and the U.S. has not authorized U-turn transactions (offshore to offshore banking with a U.S. bank in the middle). However, if foreign institutions do business with Iran and use U.S. dollars that those banks have on hand that is permitted because the U.S. dollar bill is not treated as a controlled commodity. Iran would like access to the dollar because it is seen as a sign of legitimacy, Szubin said.

Several Republican senators brought up the April purchase of heavy water from Iran by the U.S. Szubin acknowledged the transaction, but when pressed by Sen. Tom Cotton (R-Ark.) as to what currency was used in the approximately \$8.6 million purchase, Szubin did not know if U.S. dollars were used.

Several senators, most notably Sen. Mark Kirk (R-Ill.), repeatedly brought up a recent op-ed by Stuart Levey, who served from 2004-2011 in the position for which Szubin hopes to be confirmed, and is now chief legal officer for HSBC Holdings. Szubin was first nominated by President Obama in April 2015 and still awaits a full Senate vote.

Levey argued in his May 12 Wall Street Journal op-ed that the administration is taking the "very odd position" of "pushing non-U.S. banks to do what it is still illegal for American banks to do."

Secretary of State John Kerry and Treasury officials met with European bankers May 12 in London and assured those gathered that "legitimate business, which is clear under the definition of the agreement, is available to banks." EU and U.S. officials released a joint statement a week later, saying "We will not stand in the way of permitted business activity with Iran" (see **WTTL**, May 23, page 8).

"Kerry wants non-U.S. banks to do business with Iran without a U.S. repudiation of its prior statements about the associated financial-crime risks. There are no assurances as to how such activity would subsequently be viewed by U.S. regulatory and law-enforcement authorities, which might seek to take enforcement action against banks that enter the Iranian market and run afoul of complicated U.S. restrictions," Levey wrote. HSBC will not do any new business with Iran, he said.

Szubin, who said he considers Levey a "close friend," addressed the op-ed with Sen. Robert Menendez (D-N.J.), who voted against the Iran nuclear agreement. "What we are doing is being very clear about what the sanctions scenario looks like, so while it may be a very risky proposition dealing with Iran in the sense of allowing their foreign reserves to flow, purchasing crude oil from them, purchasing petrochemicals, exporting car kits, was once

sanctionable even if it was a foreign actor whose business didn't touch our shores, you could get in trouble with my office for doing that. And that's no longer the case after implementation day," Szubin told the senator.

"[It's] a strange posture to be in, where we've got tough U.S. sanctions in place, but foreign actors are allowed to do the business," said Szubin. "It's also the norm when it comes to our sanctions...U.S. companies are held to our standards, foreign companies are held to different standards and typically their sanctions regimes aren't quite as high," he added.

Szubin and Stephen Mull, State's lead coordinator for the Iran nuclear implementation, acknowledged that the Joint Comprehensive Plan of Action (JCPOA) was not a panacea for Iran's bad behaviors. Sanctions are still in place for Iran's human rights abuses and support for terrorism. Szubin told the committee that it is certainly within Congress' purview to enact new sanctions and renew the Iran Sanctions Act that expires at the end of 2016, but the administration will object to any sanctions that weaken the JCPOA.

"If legislation were to undermine the deal, by taking off the table commitments that we had put on the table, that would be a problem," said Szubin. U.S. allies would see such action as "taking back major chunks of the sanctions relief as bad faith," he added.

EU Highlights Differences in TTIP Talks

"Significant differences" remain between the U.S. and the European Union (EU) in the areas of services, public procurement, and investor-state dispute settlement of the Transatlantic Trade and Investment Partnership (TTIP), a 19-page summary of the 13th round of negotiations published May 24 revealed.

Progress was made during the April 25-29 round held in N.Y. in simplifying technical regulations and on rules, with text consolidation in the chapter on small and medium-size enterprises (SME) and on customs and trade facilitation. To speed along the negotiating process, several working groups agreed to meet before the next negotiating round in July, the European Commission said.

The European Commission also released a fact sheet on regulatory cooperation on pharmaceuticals and addressed "sensitive or controversial issues" that have been the subject of protest in Europe. The EU regulations on clinical trials, as outlined in 2014 by the European Medicines Agency, will remain out of bounds for negotiation, for example.

Intellectual property rights protections in TTIP will strike a "delicate balance by allowing companies to profit from their research and remain amongst the most competitive in the world" and allow "patients to benefit from new medicines." The Commission pledged it would not negotiate anything that would increase costs for EU nations' respective national health systems, which the fact sheet described as "already stretched."

Public health groups, such as the European Public Health Alliance (EPHA), aren't

convinced. EPHA wants “evidence that TTIP will actually lead to lower prices for medicines in Europe, rather than a convergence with the even higher prices that are today's reality in the USA,” EPHA Secretary-General Nina Renshaw said in a statement. She also said that without assurances of access to affordable medicines, the European Commission should halt negotiations on the pharmaceuticals chapter.

Industry Urges Stronger Commercial Ties with India

Ahead of Indian Prime Minister Narendra Modi's U.S. visit June 7-8, the Alliance for Fair Trade with India (AFTI) sent letters May 23 to Republican and Democratic Congressional leadership and President Obama asking them to “produce a stronger and more-promising U.S.-India commercial relationship.”

Modi will speak before the U.S.-India Business Council (USIBC) June 7 and address a joint session of Congress the following day. He is expected to speak with President Obama about defense, security, energy and economic ties.

“As Prime Minister Modi finishes the second year of his leadership, however, we are concerned that the high hopes and positive rhetoric that accompanied the beginning of his tenure have yet to be translated into concrete measures to improve the business environment for U.S. workers and companies operating in and exporting to India,” the AFTI wrote.

The group wrote that progress remains “elusive” and backsliding has taken place. It called attention to India's new National Intellectual Property Rights Policy, which they said “falls short of industry expectations” by allowing sectoral regulations to trump copyright law. Localization policies in the information technology and energy sectors, high tariffs, bans or barriers to foreign direct investment “continue to hinder company operations and ensure that India remains a challenging place for U.S. companies to do business,” the letter noted.

In a separate letter to Obama May 23, USIBC President Dr. Mukesh Aghi praised Modi. “Despite deep legislative challenges, Prime Minister Modi has incrementally worked on micro-level reforms to boost investor confidence,” Aghi wrote.

At a May 24 hearing of the Senate Foreign Relations Committee, Nisha Biswal, assistant secretary of State for south and central Asian affairs, said that Modi's ambitious reforms have been slow to pass Parliament and reach implementation. Some progress has been made, she said, in regards to energy supply. U.S. power supply companies can now supply nuclear power to India without fear of being sued for billions should a disaster occur. In her testimony, Biswal said the establishment of an insurance pool for companies to utilize in the event of a crisis and India's ratification of the Convention on Supplementary Compensation for Nuclear Damage eases the way for foreign investment in India's energy infrastructure.

Commerce Hits More Chinese Steel with Huge Tariffs

Commerce continued its efforts against steel imports and for the U.S. steel industry May 25 when it announced its final antidumping duty (AD) and countervailing duty (CVD) margins of over 200% on imports of corrosion-resistant steel products (CORE) from China. Producers in India, Italy, Korea and Taiwan could get much smaller margins.

Commerce calculated dumping margins of 209.97% for all Chinese producers and exporters. The department found a 4.44% dumping margin for Indian producer JSW Steel Ltd. and JSW Coated Products Limited, a 3.05% AD margin for Uttam Galva and its subsidiaries, and 3.86% AD for all other Indian producers.

Commerce calculated a dumping margin of 92.12% for Marcegaglia S.p.A., and 12.63% for all other Italian producers and exporters. In its Korean investigation, Commerce found dumping occurred at margins of 8.75% for Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd., 47.80% for Hyundai Steel Company, and 28.28% for all other Korean producers and exporters.

Two Taiwanese producers were treated as a single entity and dumping was calculated at a 3.77% margin, the same rate applied to all other Taiwan producers and exporters. Commerce determined that Taiwanese respondents did not receive countervailable subsidies, so no CVD rate is applied to either the companies investigated or all others.

In China, Commerce calculated subsidy rates of 241.07% for seven specific producers; and 39.05% for all others. The department calculated subsidy rates of 29.46% for JSW Steel Limited, 8% for Uttam Galva Steels Limited, and 18.73% for all others in India.

It calculated subsidy rates of .48% for Acciaieria Arvedi S.p.A., .07% for Marcegaglia S.p.A., 38.51% for Ilva S.p.A., and 13.02% for all others from Italy. Commerce calculated subsidy rates of .72% (de minimis) for Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd., and 1.19% for all other Korean producers.

Companies that did not participate in the investigation, which included all the Chinese producers, received a subsidy rate based on adverse facts available. One Italian firm provided bad information to Commerce.

United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc. filed the initial petitions in June 2015 (see **WTTL**, June 8, 2015, page 9). The ITC will make its final injury determinations July 8. Should the ITC make an affirmative determination, then Commerce will issue AD and CVD orders.

According to Commerce statistics, corrosion-resistant steel product imports from China in 2015 totaled 705,600 metric tons for a value of \$500.3 million; from India, 294,300 metric tons at \$219.5 million; from Italy, 151,000 metric tons at \$109.9 million; from South Korea, 594,000 metric tons at \$509 million; and from Taiwan, 603,200 metric tons at \$534.4 million.

G7 leaders, who met in Japan May 26-27, acknowledged the global steel glut in a wide-ranging declaration published May 27. “We recognize the negative impact of global excess capacity across industrial sectors, especially steel, on our economies, trade and workers. In particular, we are concerned about subsidies and other support by governments and government-supported institutions that distort the market and contribute to global excess capacity, including such supports granted to overseas expansion of the capacity.” The leaders pledged to move quickly and utilize fora like the OECD to enforce nations’ rights.

TPP War of Words Continues

More than 400 business organizations and associations from around the country signed onto pro-TPP letters delivered to members of Congress May 23. The letters were organized by the U.S. Coalition for TPP, whose membership includes the National Association of Manufacturers and the Emergency Committee for American Trade.

“The Asia-Pacific will continue to be the most vibrant region in the global economy for the foreseeable future. Yet, we are falling behind, as other countries that have negotiated preferential trade agreements in the region place our manufacturers, innovators, service providers, farmers and ranchers, and workers at a competitive disadvantage. Approval of the TPP will close the gap, and place U.S. companies, farmers and ranchers, and workers at the center of this dynamic regional economy,” the groups wrote.

Speaking alongside Vietnamese President Tran Dai Quang in Hanoi May 23, President Obama remained optimistic about the deal’s chances. “Every trade deal is painful” to conclude, particularly multilateral deals being scrutinized during an election year, he said. “Having said that, I remain confident we’re going to get it done. And the reason I’m confident is because it’s the right thing to do. It’s good for the country. It’s good for America. It’s good for the region. It’s good for the world,” added Obama.

The pro-trade deal letter counters the anti-deal sentiment of the American Automotive Policy Council (AAPC), which represents Ford and General Motors. “American automakers remain concerned about possible currency manipulation by TPP trade partners, including Japan. AAPC, as well as economists from across the ideological spectrum, agree that the U.S. government should include enforceable rules prohibiting currency manipulation in its trade agreements to produce a positive economic impact on American manufacturing,” AAPC President Matt Blunt said in a statement May 26.

* * * Briefs * * *

AMMONIUM SULFATE: PCI Nitrogen, LLC filed antidumping and countervailing duty petitions May 25 at ITA and ITC against ammonium sulfate from China.

EXPORT ENFORCEMENT: Unisol International of Miami agreed May 24 to pay BIS \$250,000 to settle five charges of acting with knowledge of violation in connection with export of Axis Q1921-E thermal imaging cameras to Ecuador, Venezuela and Mexico without licenses. Items were worth

approximately \$67,080, classified under ECCN 6A003 and controlled for national security and regional stability reasons. Of settlement, \$100,000 will be suspended for two years then waived if the company commits no further violations. Unisol neither admitted nor denied charges.

MORE EXPORT ENFORCEMENT: Ali Reza Parsa, 45, Canadian-Iranian dual citizen and resident of Canada, was sentenced May 20 in Manhattan U.S. District Court to three years in prison for conspiracy to violate Iran sanctions between 2009 and 2015. Parsa conspired to obtain high-tech electronic components, including cryogenic accelerometers, from U.S. companies for transshipment via UAE to Iran and other countries. Parsa was arrested in October 2014 and pleaded guilty in January 2016.

EVEN MORE EXPORT ENFORCEMENT: UK citizen Ahmad Feras Diri formally pleaded guilty May 26 in Scranton, Pa., U.S. District Court to conspiracy to export laboratory equipment, portable gas scanner, flowmeters and other items used to detect chemical warfare agents to Syria without licenses (see **WTTL**, May 2, page 9). Harold Rinko of Hallstead, Pa., pleaded guilty in September 2014 in same court to related charges and is awaiting sentencing.

EX-IM BANK: Reps. Steny Hoyer (D-Md.), Maxine Waters (D-Calif.), Gwen Moore (D-Wis.) and Denny Heck (D-Wash.) sent letter May 23 to Senate Banking Committee Chairman Richard Shelby (R-Ala.) urging vote on nomination of J. Mark McWatters to Ex-Im Bank board. Without board quorum, Ex-Im cannot approve medium and long-term transactions worth more than \$10 million (see **WTTL**, April 11, page 10). Shelby previously said he won't advance any Ex-Im nominees because he is opposed to bank, calling its actions "corporate welfare."

CUBA: U.S. Agriculture Coalition for Cuba (USACC) and Cuba's Grupo Empresarial Agricola (GEA) signed MOU May 26 in Havana to re-establish Cuban marketplace for U.S. food and agricultural products. Agreement "will help to ensure both American producers and Cuban buyers have what they need as our relationship continues to grow together," American Soybean Association VP Ron Moore said in statement.

TISA: EU announced 18th round of talks on Trade in Services Agreement (TiSA) began May 26 in Geneva and will focus on market access. "Text-based discussions will continue over the coming week on telecommunication services, e-commerce, financial services, the localisation issues, transport, temporary movement of people for purposes of service delivery (known as 'Mode 4'), as well as TiSA institutional provisions," EU statement noted.

STEEL: International Trade Commission (ITC) voted May 26 to institute wide-ranging Section 337 investigation of certain carbon and alloy steel products from China (see **WTTL**, May 2, page 1). Decision "may provide a path to significant relief. The broad case may finally force Chinese companies to account for their policies and practices that have damaged U.S. steel producers and workers," United Steelworkers (USW) International President Leo W. Gerard said in statement.

CHILE: USTR Michael Froman May 24 asked ITC to investigate probable economic effect of U.S. trade under Chile FTA, total U.S. trade, and on domestic producers of affected articles. "Our negotiators have recently reached agreement in principle with representatives of the government of Chile on modifications to the FTA rules of origin," Froman wrote. "They are the result of determinations that U.S. and Chilean producers are unable to produce rayon filament yarns in commercial quantities in a timely manner," he added.