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DOT Proposes Commercial Flights to Havana

Authorized travelers to Cuba's capital city will be able to book scheduled flights from ten U.S. cities on eight domestic airlines as early as this fall, Transportation (DOT) proposed July 7. DOT last month approved the applications of six domestic airlines to begin scheduled flights between five U.S. cities and nine other cities in Cuba (see **WTTL**, June 13, page 1).

The airlines receiving the tentative awards are Alaska, American, Delta, Frontier, JetBlue, Southwest, Spirit and United Airlines. The U.S. cities are Atlanta, Charlotte, Fort Lauderdale, Houston, LA, Miami, Newark, New York, Orlando and Tampa. "DOT's proposal allocates nonstop Havana service to areas of substantial Cuban-American population, as well as to important aviation hub cities," the department said.

A dozen U.S. airlines originally applied for the chance to operate scheduled passenger and cargo service to Havana. The "proposed selections would simultaneously address service needs while promoting competition," DOT noted. Objections to DOT's tentative decision are due July 22, and the department expects to reach a final decision later this summer.

While almost all the chosen airlines welcomed the news, civil society groups used the announcement to push for unlimited travel to the island. "This is great news. But, as the administration uses its authority to expand flights so more Americans can engage in people-to-people travel to Cuba, Congress must still act to restore the freedom to travel to Cuba for all Americans," Sarah Stephens, executive director of the Center for Democracy in the Americas (CDA), said in a statement.

Apparel Groups "Deeply Disappointed" by GSP Decision

The apparel and sports industry July 5 expressed its "deep disappointment" with the administration's decision to eliminate duties on 28 travel goods made eligible for the

Generalized System of Preferences (GSP), but initially only for African Growth and Opportunity Act (AGOA) countries and GSP Least Developed Beneficiary Developing Countries (LDBDC).

AGOA and LDBDC countries currently lack the capability to meet industry's needs and giving those nations a break will not alter the "commercial and supply chain reality," the American Apparel & Footwear Association (AAFA), Outdoor Industry Association (OIA), Sports & Fitness Industry (SFIA), and Travel Goods Association (TGA) argued in a letter to U.S. Trade Representative (USTR) Michael Froman.

"We are deeply disappointed with President Obama's decision. If President Obama had granted benefits to travel goods from all GSP-eligible countries, we estimate the industry would have received benefits that could exceed \$75 million dollars during the first year alone," AAFA President Rick Helfenbein said in a statement.

According to industry, in 2015 the U.S. imported 2.1 billion items under the 28 subheadings in question; 85% from China, .01% from AGOA countries, and 1.3% from least developed countries (including from AGOA). In its letter to Froman, industry said it wanted to "diversify in a significant way beyond China" and therefore wants the Philippines, Thailand, Pakistan, Indonesia and Sri Lanka to have access to duty-free benefits of GSP.

"We are, in fact stunned that the intent of Congress as well as our stakeholder views as expressed at both the International Trade Commission (ITC) and Trade Policy Staff Committee hearings, and in numerous other communications with your office, were disregarded, despite virtually unanimous stakeholder and strong bipartisan support for the product expansion," the letter read.

"Moreover, deferring the decision for other GSP-eligible countries, which is not a decision, without any indication of the timeline for a final decision, further harms U.S. businesses and the development of other GSP beneficiary countries by creating confusion and uncertainty," it continued.

The Obama administration also decided to remove "products from specific GSP countries where the country is sufficiently competitive and so as to no longer need tariff preferences to compete in the U.S. market," and granted "competitive need limitation (CNL) waivers, ensuring continued GSP duty-free benefits, for 114 products from 15 countries." The GSP 2015/2016 Annual Review was made public June 30.

Industry Applauds EU Committee Adoption of Privacy Shield

To the delight of U.S. industry, the European Union (EU)-U.S. Privacy Shield framework July 8 is one step closer to conclusion, as EU Member States (the Article 31 committee) have given their "strong support" to the renewed framework for transatlantic data flows. "This paves the way for the formal adoption of the legal texts and for getting the EU-U.S.

Privacy Shield up and running,” said EU Vice President Andrus Ansip and Justice Commissioner Vera Jourova in a joint statement. “For the first time, the U.S. has given the EU written assurance that the access of public authorities for law enforcement and national security will be subject to clear limitations, safeguards and oversight mechanisms and has ruled out indiscriminate mass surveillance of European citizens’ data,” the ministers noted.

In May EU officials, including European Data Protection Supervisor (EDPS) Giovanni Buttarelli, expressed remaining skepticism on the controversial framework, which was finalized in February (see **WTTL**, June 6, page 4).

Industry welcomed the vote and looked forward to a formal approval scheduled for July 12. Trans-Atlantic Business Council (TABC) applauded the qualified majority vote and urged the EU College of Commissioners to grant final approval of the deal. The framework “is a predictable and productive tool for transatlantic business that enables both data flows and compliance with applicable data protection requirements. Finalization is an enormous success not only for the transatlantic economy but the overall transatlantic relationship,” TABC Director General/CEO Tim Bennett said in a statement.

Bumpy Skies Ahead for Boeing and Iran Air

There may be bumpy skies ahead for Boeing following a House vote July 7 to block Boeing’s \$25 billion planned sale of commercial aircraft to Iran Air (see **WTTL**, June 27, page 2). Two amendments aimed at blocking the transaction, both authored by Rep. Peter Roskam (R-Ill.), were approved by voice vote.

Amendment 45 of the Financial Services and General Government Appropriations Act (passed 239-189) prevents Treasury’s Office of Foreign Assets Control (OFAC) from “using funds to authorize a license necessary to allow aircraft to be sold to Iran.” Amendment 46 prohibits OFAC from using funds to authorize a transaction by U.S. financial institutions to export or re-export commercial passenger aircraft to Iran.

“Iran systemically uses commercial aircraft to spread death, destruction and mayhem, and we can do something about it,” Roskam said on the House floor July 7. While this action is not in violation of the Joint Comprehensive Plan of Action that lifted sanctions on Iran Air, Roskam said, “This is our ability to stop an iconic American company that has basically said, ‘Well, look, somebody else is doing it.’ Let me ask you one question in closing Mr. Chairman, when does history ever treat well the entity that said ‘I did this terrible thing because somebody did it too?’”

Court Rejects Furniture Importer’s Claim on Liquidation

The Court of Appeals for the Federal Circuit (CAFC) rejected July 6 a bedroom furniture importer’s complaint that Customs and Border Protection (CBP) liquidated its imports from China at the wrong rate. The decision of the three-judge panel affirmed an earlier

Court of International Trade (CIT) ruling, which also denied the suit for lack of subject matter jurisdiction. In a complex chain of events, Hutchinson Quality Furniture objected to having its goods liquidated at 83.55% instead of the 7.24% rate at which it entered the U.S.

The higher rate was based on a Commerce remand determination of an administrative review of another importer's furniture. Because of disagreement over when the CIT's affirmation of the remand became effective, Hutchinson claimed its furniture should have been deemed liquidated at the lower rate.

"While Hutchison could have raised its deemed liquidation argument at any time before Customs denied its protest, see 19 U.S.C. Section 1514(c)(1), its failure to do so means the CIT was unable to exercise jurisdiction pursuant to Section 1581(a)," wrote CAFC Judge Evan Wallach for the court, citing the precedent in *Fujitsu*. "With that avenue closed, Hutchison likely regarded Section 1581(i)(4) as its only option for judicial review. However, a party's failure to timely raise an argument to Customs in a protest does not change the fact that jurisdiction under section 1581(a) could have been available if the argument had been timely raised...Therefore, the CIT properly dismissed the case for lack of jurisdiction," Wallach ruled in *Hutchison Quality Furniture, Inc. v. U.S.*

"Hutchison's contention that the true nature of its action focuses on Commerce's instructions belies the terms of its Complaint. Hutchison included only one count in its Complaint, and that count speaks only to deemed liquidation, an action committed solely to Customs," Wallach explained. "Had Hutchison intended its action to concern Commerce's liquidation instructions, we suspect it would have included an additional count with the relevant allegations and legal authority. Our decision in *Fujitsu* confirms that the true nature of Hutchison's appeal concerns Customs' liquidation of its entries," he wrote.

"Accordingly, we agree with the CIT that Hutchison 'is challenging a decision by [Customs] as to the appropriate time for liquidation,' that this 'decision would have been protestable under 19 U.S.C. Section 1514(a)(5),' and any denial of the protest would have been reviewable under 28 U.S.C. Section 1581(a)," Wallach declared.

Brexit: What Happens Next?

There's plenty of uncertainty in the global market following the Brexit vote, but the U.S.-UK relationship is unlikely to change significantly in the short term, explained Matthew Slaughter, Dean of the Tuck School and Professor of International Business at Dartmouth College, at a luncheon in Washington July 6.

Trade between the U.S. and UK is not huge, said Slaughter. It amounts, as of 2015, to about \$56 billion in exports and \$58 billion in imports, which isn't small, but it's not a whole lot when stacked against the \$18 trillion U.S. economy, he noted. The depreciation of the pound versus the dollar, the fact that the UK is a huge destination for U.S. foreign investment is causing some uncertainty, particularly for the approximately 1 million people in the U.S. who work for UK subsidiaries.

It's not all "doom and gloom," he said, pointing to the recent news that George Osborne, UK Chancellor of the Exchequer, said he'd like to cut corporate tax to less than 15% in order to stabilize the economy and incentivize companies to stay in the UK.

More troubling is the reason why the Leave campaign prevailed when most experts agreed Remain would win out (see **WTTL**, July 4, page 2). "The Remain leaders failed to voice a compelling story," said Slaughter. Remain leaders cited white papers instead of offering arguments that resonated with Leave voters who tended to be less educated, older, and live in depressed economic areas as compared to Remain voters who skewed younger and more cosmopolitan.

What UK politicians discovered (and should have already known) is that young people don't vote. Only 36% of eligible voters 18-24 voted, compared to 83% of eligible voters ages 65 and older. As pro-Brexit UK Justice Secretary Michael Gove said in a television interview prior to the referendum, "People in this country have had enough of experts."

That sentiment rings true in the U.S. too with all of the major presidential candidates opposed to the Trans-Pacific Partnership (TPP). Slaughter said voters are looking at their paychecks and asking themselves if they're better off now than they were before NAFTA and other free trade agreements. Overwhelmingly, people are feeling worse off than they were in 2000, even with the decrease in unemployment during the Obama administration.

Slaughter explained that "not all boats are rising." Higher education, for example, is not the guaranteed path to greater earning anymore. High-school dropouts make up 8% of the labor force, but the average change in inflation-adjusted total earnings from 2000 through 2014 was a decline of 5.8%; high school graduates, 27% of the labor force, saw a decline of 6.7%; bachelor's degree saw a decline of 11.2%. Only PhDs and those with professional degrees (doctors, lawyers) saw an increase in their earnings.

That makes it difficult for average voters to see that "globalization on average is great for the U.S., it's great for the world," said Slaughter. "The narrative of that has been lost. Right now it has been anecdote and assertion, shockingly so, that all of this has to do with unfettered trade agreements, we need walls built, you name it. The real answer is a lot more nuanced."

"You give me slow productivity growth because of slow investment in R&D, crumbling physical infrastructure, messed up corporate tax growth – I give you poor productivity growth. But that's a more complicated, nuanced message," said Slaughter. Households would be better off with greater productivity growth that globalization spurs, but inequality is a more compelling narrative to the average American, he explained.

Canadian Companies Discuss Forming PAC to Increase U.S. Influence

Canadian businesses with commercial ties to the U.S. are exploring the possibility of creating a political action committee. "Canada PAC" or "Canada-U.S. PAC" could be coming soon, said Dan Ujczko, an attorney specializing in U.S.-Canada relations, in a

recent interview on Canadian TV. Canada's strategy for too long has been "we're your best friend, an argument that 120 countries now use in talks with U.S. lawmakers," said Ujcz in an interview with Canada's Cable Public Affairs Channel ahead of the North American Leaders Summit in Ottawa June 29.

But Canada's advantage is that it's "in every legislator's backyard and they do have the capacity to provide funds to campaigns to help those people become elected and continue to serve their public, so one of our strategies will be to look at ways to coordinate that through something equivalent to a PAC or super PAC," he said. There is already plenty of Canadian money being spent on lobbying in Washington currently, Ujcz noted, but right now it's being spent on individual objectives rather than big picture objectives.

When questioned on the legality of such a set-up, Ujcz explained that Canadian companies have U.S. subsidiaries that "for all intents and purposes are U.S. companies, U.S. entities that can contribute to U.S. campaigns." Ujcz said the proposal was well received at a conference of 60 Canadian-U.S. organizations and Canadian and U.S. leadership held at The Ohio State University campus in June.

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TRADE FIGURES: Merchandise exports in May fell 6.1% from year ago to \$119.8 billion, lowest level since February 2011, Commerce reported July 6. Services exports gained 0.33% to \$62.5 billion from last May. Goods imports dropped 4.15% from May 2015 to \$182.1 billion, as services imports gained 2.1% to \$41.4 billion.

SANCTIONS: Alcon Laboratories of Fort Worth, Texas, Alcon Pharmaceuticals and Alcon Management, SA, of Switzerland, agreed July 5 to pay OFAC and BIS \$7,617,150 to settle charges of violating Iran and Sudan sanctions. From August 2008 to December 2011, Alcon engaged in sale and exportation of medical end-use surgical and pharmaceutical products from U.S. to distributors in Iran and Sudan without OFAC authorization. Company did not disclose violations. "Since the acquisition by Novartis in April 2011, Alcon has taken concrete steps and devoted significant resources to further strengthen its global integrity and compliance efforts by embedding important policies and internal controls into its business processes and providing enhanced training to employees," Eric Althoff, head of Novartis Global Media Relations, wrote WTTL in email. "Alcon will submit payment of the agreed civil monetary penalties and comply with the respective OFAC and BIS civil settlement agreements; there are no further obligations of Alcon," he added.

EXPORT ENFORCEMENT: Audi N. Sumilat, of El Paso, Texas, pleaded guilty July 5 in Concord, N.H. U.S. District Court to conspiracy to make false statements in connection with acquisition of a firearm, to make false statements in records federal firearms licensees are required to keep, and to smuggle goods from U.S. Sumilat admitted to participating in scheme to buy numerous guns then smuggle them to members of Indonesian Presidential Guard. Sentencing is set for Oct. 11.

NORTH KOREA: OFAC July 6 added 11 North Korean officials, including leader Kim Jong Un, and five entities to Specially Designated Nationals (SDN) list, for their ties to North Korea's notorious abuses of human rights. "These sanctions are an important step that can help force change – and they must be aggressively enforced," House Foreign Affairs Committee Chair Ed Royce (R-Calif.) said in statement. Treasury announced finding that North Korea is "jurisdiction of 'primary money laundering concern'" in June (see **WTTL**, June 6, page 6).

TTIP: “I think a deal in 2016 is impossible and everyone knows it, including those who say otherwise,” French Trade Minister Matthias Fekl said in statement July 5. “We are waiting for so many serious offers from the United States that there is absolutely no chance of things happening before the end of the Obama administration,” he added. Fekl statement contradicts EU Trade Commissioner Cecilia Malmstrom who said previously all EU members are on board to complete TTIP soon (see **WTTL**, July 4, page 2).

MORE TTIP: Transatlantic insurance industry reiterated need for financial services regulatory cooperation in TTIP. American Insurance Association, Insurance Europe, and American Council of Life Insurers said industry supports negotiations for “international ‘covered agreement’ on specific insurance prudential matters,” but believes TTIP offers opportunity to “create enduring structures for broad, ongoing regulatory cooperation,” groups said in statement July 7.

STEEL: Sen. Rob Portman (R-Ohio) campaign spent \$1 million on television ad buys starting July 6. New ads portray Portman as savior of Ohio’s steel industry and harsh on China’s steel glut. Portman faces stiff competition from former Ohio Gov. Ted Strickland who attacked Portman’s past support for trade liberalization and China’s accession to WTO. Portman was USTR under President George W. Bush.

NAFTA: Labor Department July 8 found “insufficient evidence” to support charges related to Mexican government’s failure to enforce its labor laws at Chedraui stores. Labor issued report in response to 2015 submission filed by U.S. and Mexican labor unions, including United Food & Commercial Workers, and worker advocacy groups under North American Agreement on Labor Cooperation (NAALC).

CUBA: BIS July 7 reminded industry to use correct codes when filing Cuban exports in Automated Export System (AES). Agency has identified many transactions improperly coded as No License Required (NLR). “Only shipments of informational materials and certain other items that are not subject to the EAR may be designated in AES as NLR. All other shipments of items require use of the appropriate AES code corresponding to the BIS license exception rather than NLR,” BIS noted.

THERMAL PAPER: CIT upheld on July 6 Commerce’s rejection of both petitioner and respondent complaints against department’s remand determination of administrative review on lightweight thermal paper from Germany. Although department erred in how it corroborated its dumping rate for German papermaker Koehler, it was justified in using adverse facts available based on finding that Koehler submitted fraudulent data. “In Section 1677e(c), Commerce created a general qualification that applies both to the use of facts otherwise available (as provided for in Section 1677e(a)) and the use of an adverse inference (as provided for in Section 1677e(b)),” wrote CIT Chief Judge Timothy C. Stanceu (slip op. 16-67). “In the rare factual circumstance in which the objectives of the two provisions come into direct conflict, the more specific purpose of Section 1677e(b) must prevail. Doing otherwise would produce the absurd result in which Commerce could recognize the serious misconduct and have no useful authority to apply an inference that is sufficiently adverse and thereby deter that misconduct in the future,” he explained.

FCPA: Richard Hirsch of Makaati, Philippines, and James McClung of Dubai, UAE, former executives of Louis Berger International (LBI), were sentenced in Trenton N.J. U.S. District Court for bribing foreign officials in India, Indonesia, Vietnam and Kuwait to secure government construction management contracts. Hirsch was sentenced July 8 to two years’ probation and fined \$10,000. McClung was sentenced July 7 to one year plus one day in jail. Pair pleaded guilty in July 2015 to conspiracy to violate FCPA and violating FCPA (see **WTTL**, July 27, 2015, page 7). LBI entered into deferred prosecution agreement in July 2015 admitting its own criminal conduct.