

Vol. 36, No. 48**December 5, 2016**

Cuba Opening Gets Harder to Reverse Post-Castro

With the death of Fidel Castro Nov. 25 on one hand and the first commercial flights to Havana starting three days later on the other, the opening of relations, trade and tourism with Cuba got even harder to reverse. A Trump administration, however, could demand even more reforms from Havana before any changes are made to remaining sanctions.

White House Press Secretary Josh Earnest in a press briefing Nov. 28 argued that Trump could find it difficult to unwind the policy. “What I’m merely highlighting and trying to underscore here... is that it’s just not as simple as one tweet might make it seem,” he said.

Earlier that day, Trump tweeted, “If Cuba is unwilling to make a better deal for the Cuban people, the Cuban/American people and the U.S. as a whole, I will terminate [the] deal.”

“That’s just an objective fact when you consider how the American people and U.S. businesses have implemented this deal in a way that has provided significant benefits to the American people and provided significant benefits to the Cuban people,” Earnest added. “So there are significant diplomatic, economic, cultural costs that will have to be accounted for if this policy is rolled back,” he noted.

Industry groups noted that despite those costs, the normalization of relations is reversible. “Nothing [Obama] has done in the past 23 months cannot be reversed by President-elect Trump with a signature,” said John S. Kavulich, president of the U.S.-Cuba Trade and Economic Council. “The only impediment to president-elect Trump reversing or revising the initiatives of President Obama is a lack of ink in his pen.”

WTO Rules in Favor of European Union in Boeing Dispute

A World Trade Organization (WTO) panel ruled Nov. 28 that a tax break provided by Washington State to airplane manufacturer Boeing was a prohibited subsidy. Washington

State agreed to a tax cut in November 2013 when Boeing mulled over where to assemble its 777X jetliner. The European Union (EU) cried foul and filed a complaint with the WTO in December 2014.

Boeing and European rival Airbus have traded many disputes over the years. In September a WTO compliance panel confirmed that the EU, Germany, France, the United Kingdom and Spain provided \$22 billion in subsidized financing to Airbus in violation of their WTO commitments (see **WTTL**, Sept. 26, page 1).

The EU complaint identified seven tax incentives that it said were prohibited under Articles 3.1(b) and 3.2 of the WTO Subsidies and Countervailing Measures (SCM) Agreement. In the latest ruling, the panel mostly backed the EU's position that the tax incentives were subsidies, but in six of the seven instances found that the EU had "not demonstrated that, on their own, and based on their express terms, the First Siting Provision or the Second Siting Provision make the challenged aerospace tax measures *de jure* contingent upon the use of domestic over imported goods."

In the seventh instance the panel found "that the reduced business and occupation for the manufacturing or sale of commercial airplanes under the 777X [program] is inconsistent with Article 3.1(b) of the SCM Agreement, the Panel also found that the United States has acted inconsistently with Article 3.2 of the SCM Agreement."

"Today's WTO ruling is an important victory for the EU and its aircraft industry," said EU Trade Commissioner Cecilia Malmstrom in a statement. "We expect the U.S. to respect the rules, uphold fair competition, and withdraw these subsidies without any delay," she added.

But Boeing's general counsel J. Michael Luttig couched the ruling as a victory. "The WTO found in September that Airbus has received \$22 billion in illegal subsidies from the EU and that without these subsidies neither Airbus itself nor any of its airplanes would even exist today. By contrast, in rejecting virtually every claim made by the EU in this case, the WTO found today that Boeing has not received a penny of impermissible subsidies." Luttig said he expects the EU and Airbus will appeal.

China May Need WTO Deal to Save Face After Excessive Demands

Negotiations for a WTO Environmental Goods Agreement (EGA) Dec. 3-4 may mark a transformation in perception on China's role in international trade if ministers aren't able to bridge increasing differences to find a landing zone. Chinese demands could deliver a healthy case of Monday morning quarterbacking if a deal falls through, and the country could face blowback that it is a persistent beggar of spare change and favors.

A consensus list of about 250 environmental goods was worth capturing, one high-ranking trade negotiator said. Yet China complicated talks in the days and hours before ministers were expected to meet. At press time, no landing zone was in sight, a trade official told **WTTL**.

Negotiators have felt a rising sense of urgency because an EGA deal seems close, while parallel efforts to conclude a plurilateral agreement on services trade have deflated along with the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP). At the same time, the Trump administration likely won't signal interest in plurilateral or multilateral initiatives for at least two years.

Talks for an EGA aim to eliminate tariffs on covered goods, either immediately or over a transition period, with follow-on work on associated non-tariff barriers, and services such as installation, service agreements, maintenance and repair, a high-ranking trade official said. U.S. Trade Representative (USTR) Froman and EU Trade Commissioner Cecilia Malmström planned to co-chair a mini-ministerial meeting to try to conclude the agreement Dec. 3-4, the European Commission website said Dec. 2.

“It's too late to conclude an agreement,” a former U.S. trade official suggested. U.S. negotiators in Geneva won't have much scope for changes in the position advocated over months, he said. In addition, trade negotiators know any proposed U.S. initiatives are a “very lame duck” with only weeks until the next administration, he said. Why would anyone make a significant concession to the U.S. with the uncertainty associated with the incoming administration, he asked.

Trump is instead expected to insist other countries implement existing rules, and to insist on “correct application” of existing WTO laws, a high-ranking trade official said. The U.S. will “up its game” on notification of subsidies, he said. The Trump administration hasn't instilled confidence in the possibility of an EGA deal later, despite industry and environmental interest, he said.

For its part, China has pushed for tariff-free treatment for 50 types of industrial goods that don't appear related to environmental use, trade officials and executives said. One trade official said China wanted to include vacuum cleaners as an environmental good. China wants to preserve rights in an APEC agreement on environmental goods, which allow it to maintain a 5% tariff, a trade official said. Talks have not yet determined if the agreement will eliminate all tariffs or if some countries will be able to keep tariffs.

In another example, China and the EU are at odds over the sensitivities of bicycles as an environmental good. Chinese production capacity in bicycles amounts to 140% of world consumption, a trade negotiator said. The EU is defending bicycles with claims that poorer EU countries have high unemployment in industries allied with bicycles. The EU did not appear ready to fall on a sword for bicycles, trade officials suggested.

China is the main problem, one trade official said. They also want so-called “snap back,” which would allow China to re-impose higher tariffs on products in the agreement if participants fall below the global trade coverage threshold for the products, for instance, Brazil or India becomes a big exporter of environmental goods. China wanted a similar thing for the Information Technology Agreement (ITA), but agreed to periodically review the agreement.

Levin to Step Down as Ranking Member, Neal Steps In

Rep. Richard Neal (D-Mass.) will become the next ranking member of the House Ways and Means Committee, but his path to ascendancy took several rapid twists and turns, beginning with Rep. Sander Levin's (D-Mich.) announcement that he would not seek reelection to the post.

Levin said the outcome of the presidential election "changes virtually everything" thus prompting his decision to step down. In a letter circulated Nov. 29 to his Democratic colleagues, Levin gave two reasons for not seeking reelection to the ranking member seat: "First, it is imperative that we support younger Members as they seek to fully assume the mantle of leadership in the four years ahead, as we also continue to tap the experience of those who have led so many of these battles. Second, I want to be free to focus in addition to tax reform on two of my legislative passions: health care and trade."

The following day, Levin endorsed Rep. Xavier Becerra (D-Calif.) in another letter circulated to Democratic colleagues. Levin described Becerra as "strong and collaborative" and praised Becerra's work as Caucus Chair and a Ways and Means Committee member. However, in another twist, California Gov. Jerry Brown (D) offered Becerra the opportunity to become the state's attorney general (AG). Becerra described Brown's offer as an opportunity he could not refuse. He will replace current California AG Kamala Harris (D) who won her Senate race to replace the retiring Sen. Barbara Boxer (D).

Becerra's bowing out paved the way for Neal to position himself for the ranking member role. Levin promptly offered his endorsement. "The Ways and Means Committee will also be in good hands with Rich Neal as the Ranking Member and I endorse his election. He has the experience, dedication, and commitment to lead our committee. He has a track record of giving voice to working America and I look forward to working with him to counter reckless proposals by President-elect Trump or House Republicans that seek to turn back the progress we have made," Levin said in a statement. Neal was elected by Democratic House Caucus Dec. 2.

Meanwhile, another committee member is angling for a new job. Rep. Charles Boustany (R-La.) lost his Senate race and has since turned his efforts to trying to win appointment as the next USTR. The president-elect's transition team has been tight-lipped on whether Boustany is being considered. Boustany has been in favor of all the trade deals the president-elect has vowed to reject and the Louisiana lawmaker endorsed Trump late in the election cycle.

Coalition for a Prosperous America (CPA), a bipartisan trade group, urged Trump to reject Boustany's efforts. "There are few House members more out of step with President-elect Trump than Representative Boustany," said Michael Stumo, CEO of CPA, in a statement. "The Congressman has voted wrong on trade throughout his career. Working class Americans would seriously question Trump's commitment to fixing U.S. trade performance if Boustany is appointed."

*** * * Briefs * * ***

IRAN: Senate passed Iran Sanctions Extension Act (H.R. 6297) Dec. 1 in 99-0 vote. Legislation extends Iran Sanctions Act (ISA) for 10 years. ISA expires Dec. 31. House passed bill Nov. 19 in near unanimous vote (see **WTTL**, Nov. 21, page 6). Legislation awaits President Obama's signature. White House previously said president would reject bill if it undermined Joint Comprehensive Plan of Action (JCPOA). Lawmakers maintain it does not undermine agreement.

MORE IRAN: Reza Olangian, dual citizen of U.S. and Iran, was found guilty after two-week trial in Manhattan U.S. District Court of conspiring and attempting to send surface-to-air missiles (SAMs) and military aircraft parts to government of Iran. In 2012, Olangian worked to negotiate missile deal with confidential source (CS), who was working with Drug Enforcement Administration (DEA) and who purported to be weapons and aircraft broker, Justice noted in press release Nov. 29. Olangian was arrested in Estonia in October 2012 and was extradited to the U.S. in March 2013. Sentencing is scheduled for March 13, 2017.

MEXICO: BIS in Federal Register Dec. 1 extended time limits under License Exception Temporary (TMP) to four years to cover exports under Mexico's Decree for Promotion of Manufacturing, Maquiladora and Export Services (IMMEX) program. Current one-year period under TMP "does not align with the time constraints of Mexico's IMMEX program, which allows imports of items for manufacturing operations on a time limit that may exceed 18 months," BIS noted. "Because BIS received only one comment, which was positive, regarding the August 23 rule, this final rule implements the proposed rule without change" (see **WTTL**, Sept. 5, page 12).

HAND TOOLS: In 6-0 "sunset" vote Nov. 29, ITC said revoking antidumping duty orders on heavy forged hand tools from China would renew injury to U.S. industry.

NORTH KOREA: OFAC Dec. 2 designated 16 entities and seven individuals for ties to North Korean government or its nuclear and weapons proliferation efforts and identified 16 aircraft blocked as property of designated entity in response to country's September 2016 nuclear test, ongoing prohibited development of weapons of mass destruction, and continued violations of UN Security Council resolutions. Entities include Air Koryo, national flag carrier for North Korea, five banks, Korean National Insurance Corporation and Korea Oil Exploration Corporation. UN Security Council Nov. 30 unanimously voted stronger sanctions against North Korea.

VEU: BIS in Federal Register Dec. 5 removes Semiconductor Manufacturing International Corporation (SMIC) from list of validated end-users in China. "BIS makes this change at the company's request, and not in response to activities of concern," notice says.

IRAQ: BIS in Federal Register Dec. 5 removes Special Iraq Reconstruction License (SIRL) from Export Administration Regulations (EAR). "SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq," notice said. Agency established SIRL in July 2004. BIS proposed removal in June and received no comments in response (see **WTTL**, June 13, page 9).

CBP: Senate Nov. 29 unanimously passed Cross-Border Trade Enhancement Act of 2016 (S. 461). Legislation, introduced in February 2015 by Sen. John Cornyn (R-Texas), authorizes of Customs and Border Protection (CBP) commissioner to enter into agreements "to provide customs, agricultural processing, border security, or inspection-related immigration services at a land

border port of entry, subject to payment of a fee to reimburse the CBP for providing such services.” It allows for private persons to enter into cost-sharing or reimbursement agreements for construction or maintenance of CBP or GSA facilities. Private persons can also make donations (money and property) for construction or maintenance of CBP and GSA facilities. Legislation moved to House Nov. 30.

WTO: Dominica and Mongolia ratified WTO Trade Facilitation Agreement (TFA) Nov. 28, putting total number of member ratifications at 100. Ten more ratifications are needed to bring agreement into force. WTO economists said in 2015 that full implementation would reduce members’ trade costs average of 14.3%. “The final countdown begins for realizing a global trade deal that could boost global merchandise exports by up to \$1 trillion per annum by slashing trade costs and cutting red tape at the border,” WTO boasted in press release.

MORE WTO: WTO Director-General Roberto Azevedo said global trade body will need to “intensify” its work in 2017. Azevedo Dec. 1 reflected on 2016, which he called “a constructive year of discussion and debate.” “We can be pleased with the progress made and positive about the way forward. But, in order to make further progress, and with [Ministerial Conference] 11 in mind, we will clearly need to intensify our work in the New Year.” MC11 will be held in Buenos Aires in December 2017.

EX-IM BANK: National Association of Manufacturers (NAM) Dec. 2 urged Congress to restore Ex-Im Bank to full functionality during lame-duck session. “A supermajority of Congress has already settled the question of Ex-Im reauthorization. Voters just reaffirmed the importance they place on strengthening manufacturing, and manufacturers need a fully functional Ex-Im Bank to compete and win again in the global economy,” NAM President and CEO Jay Timmons said in statement. Senate Banking Committee has not acted on President Obama’s two nominations, leaving Ex-Im board unable to reach quorum (see **WTTL**, Sept. 26, page 8).

TRADE DEFICIT: Reps. Dan Lipinski (D-Ill.) and Mo Brooks (R-Ala.) Nov. 30 introduced H.Con.Res.175 urging Congress and President to “prioritize the reduction and elimination, over a reasonable period of time, of the overall trade deficit of the United States.” Coalition for a Prosperous America (CPA), bipartisan nonprofit group, expressed strong support. “Trade deficits are a drag on economic and employment growth. The recent election made clear that America’s dismal trade performance is a major voter concern,” said CPA CEO Michael Stumo in statement.

NOMINATIONS: President-elect Trump Nov. 30 formally announced intent to nominate former Goldman Sachs banker Steven Mnuchin as Treasury secretary, industrial investor Wilbur Ross as Commerce secretary and Chicago Cubs co-owner Todd Ricketts as deputy Commerce secretary (see **WTTL**, Nov. 28, page 4). Justice “landing team” now includes McGuire Woods attorney J. Patrick Rowan who, as leader of department’s national security division, supervised such prosecutions as case against ex-University of Tennessee Professor J. Reece Roth.