

## **Congress, Administration To Consult On Possible Japan TPP Participation**

Key congressional staff and the Obama administration are poised to begin consultations on the possibility that Japan could join the ongoing Trans-Pacific Partnership (TPP) negotiations, following the announcement by Japanese Prime Minister Yoshihiko Noda last week that Japan was interested in exploring whether to join the talks.

The possibility that Japan may join the talks has emerged fairly quickly, and staff for the chairmen and ranking members of the trade committees have not yet developed specific demands they want Japan to meet if it were to join the negotiations to present to the administration, sources said.

However, the likely areas where they would seek concessions are already fairly clear. In a Nov. 8 letter, the chairmen and ranking members of the two committees flagged agriculture, insurance, drugs and medical devices as examples of where U.S. firms face serious market access barriers in Japan (*Inside U.S. Trade*, Nov. 11).

*continued on page 23*

## **Russia's SPS Agreement Falls Short Of U.S. Bilateral On Plant Inspection**

Russia's commitments on sanitary and phytosanitary (SPS) measures contained in its World Trade Organization accession package fall short of the U.S. poultry industry's desire to see strong language on plant inspections, and are not as robust as the commitments to which Russia agreed in the context of bilateral talks with the United States in 2006.

But this shortcoming won't compromise the industry's support for a congressional vote that would have the effect of granting Russia permanent most favored nation (MFN) status. Even though the accession report is not as robust as industry groups would have liked, they recognize they will still benefit overall from Russia's SPS commitments.

The industry wanted Russia's working party report to reflect the provisions in the 2006 U.S.-Russia bilateral agreement on plant inspections for pork and poultry, which gave the United States the authority to re-certify plants for export that had taken corrective action after being de-listed for export to Russia by Russian authorities due to

*continued on page 20*

## **Major Ag Groups Oppose CCP Reform As Proposed By Southern Farmers**

Seven major farm groups this week urged the leaders of the two congressional agriculture committees to reject a proposal forwarded by groups representing Southern commodities, arguing that it would distort planting decisions and prove too costly in a time when Congress is trying to slash spending.

"We will not support a farm policy that distorts planting decisions and incentivizes producers to plant for a farm program rather than the marketplace," the groups wrote in a letter to the committees' chairmen and ranking members. "We know this is bad policy — costly, ineffective and simply unacceptable to our members and the American public."

The Nov. 15 letter was signed by the American Soybean Association, the National Association of Wheat Growers, the National Barley Growers Association, the National Corn Growers Association, the National Sunflower Association, the U.S. Canola Association and the USA Dry Pea & Lentil Council.

*continued on page 24*

## **Korean Ruling Party Giving Up On Compromise, Readies For FTA Vote**

The leadership of South Korea's ruling party yesterday (Nov. 17) signaled it will no longer hold out for a compromise deal with opposition lawmakers and instead will push ahead to ratify the Korea-U.S. free trade agreement unilaterally, something they have long been hesitant to do because of the likely damaging political consequences.

"The Democratic Party continues to oppose for the sake of opposing and makes stubborn demands, and we have now done all we can do to convince them," Grand National Party (GNP) leader Hong Joon-pyo said following a party meeting yesterday. "In a situation where we have accepted 100 percent of their demands, we cannot delay any longer."

Hong's remarks, which were posted on the GNP's official website, were similar to sentiments voiced by other ranking party officials. They came a day after the opposition Democratic Party (DP) rejected as insufficient a pledge by President Lee Myung-bak to ask the U.S. for a renegotiation of the controversial investor-state dispute settlement

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provisions within three months after FTA goes into effect.

Lee's promise appeared aimed at solidifying a tenuous agreement announced last week by some members of the DP and the GNP to try and move the FTA forward. Under the terms of that deal, the DP would agree not to physically block passage of the trade deal as long as the Korean government requested — and the U.S. government agreed — to launch talks on the investor-state provisions within three months of entry into force (*Inside U.S. Trade*, Nov. 11).

A U.S. trade official this week said the U.S. is "prepared to consult with Korea on any issue they may raise pertaining to KORUS after entry into force of the agreement." These comments were widely reported in Korean media and later confirmed to *Inside U.S. Trade*.

"Through a recent exchange of letters between Minister Kim and Ambassador Kirk we established a new KORUS Committee on Services and Investment where any specific issue in those areas can be discussed, including Investor-State Dispute Settlement," the official said.

Following a Nov. 16 party meeting, however, DP leader Sohn Hak-kyu said there has been "no change" in the party leadership's position that the provisions must be removed before the FTA is ratified by the Korean National Assembly. He also appeared to dismiss Lee's promise, made during a Nov. 15 visit to the assembly, as untrustworthy, according to an informal translation of Sohn's remarks posted on the DP website.

The GNP holds an absolute majority in the 299-seat unicameral National Assembly, meaning that it has the power to pass the FTA unilaterally. While Hong has been seeking to do that since August, he has been held up by a faction in his party that has wanted to avoid a violent clash in the parliament — something that is relatively commonplace in Korean politics — by negotiating a deal with the DP.

But a National Assembly source said yesterday that the members of the GNP who want to simply push the FTA through are now in the majority, largely because time is running out. The assembly is scheduled to close out this year's session on Dec. 2, and although this date could be pushed back, lawmakers must also pass the budget for next year.

This source added that the GNP is still holding out hope that it can fully implement the agreement by Jan. 1, 2012. To do this, lawmakers will have to pass 14 laws at the same time as the FTA, and then the Korean government will have to issue regulations and notify the U.S., he said, adding that this process would take at least one month.

The source added that the party's position is that the FTA debate should not drag on until next year, because this would run the risk that the deal would not be passed for a long time. One observer in Washington agreed, pointing out that trying to ratify the FTA in early 2012 would require the GNP to open up a special session — calling extra attention to an already thorny political issue just months before the April parliamentary elections.

The soonest date that the GNP could take action on the FTA is Nov. 24, when a plenary session is scheduled. It is also technically possible to pass next year's budget and the FTA on Dec. 2, although sources questioned whether this would be a wise political strategy.

The FTA has not been passed out of the assembly's trade committee because multiple attempts by the chairman have been blocked by opposition lawmakers, but the speaker of the assembly has the authority to pull the bill to the floor.

A business source in Seoul lamented that even though the GNP has made significant efforts to satisfy the DP's demands, it will likely be depicted as the "bad guy" if it rams the bill through. This source also criticized the opposition's focused attack on the investor-state provisions, noting that similar provisions are contained in dozens of FTAs that South Korea has sealed with other countries.

Observers have said that the DP's arguments are targeted at striking an emotional chord with younger voters, with whom fears about U.S. companies violating Korean sovereignty are more likely to resonate.

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## Hirschhorn Highlights Short-Term Export Control Reforms In Advance Of Election

A senior Commerce Department official this week said the administration is now focused on delivering short-term results from its export control reform initiative over the next year in light of the fact that President Obama may not be re-elected next November.

“We understand there’s a clock ticking. We hope it’s a five-year clock, [but] we appreciate it might be a one-year clock,” Eric Hirschhorn, undersecretary of Commerce for export administration, said at a Nov. 14 meeting of the President’s Export Council Subcommittee on Export Administration (PECSEA).

“We are hard at it in trying to make sure we get as much as possible done as quickly as possible,” he added. The goals he outlined fall short of the administration’s earlier focus of administratively harmonizing both U.S. export control lists by ranking their items based on the military or intelligence advantage they provide to the United States.

The harmonizing of both control lists under a tiered system would have been a major step towards what the administration had identified as its ultimate goal: a single export control list administered by a single agency under a single set of regulations.

Such an arrangement, which would require legislation, faces considerable congressional opposition.

Earlier this month, a senior administration official revealed that the administration has stepped away from the tiered approach because it had the potential to delay the entire reform process, limiting what could be completed prior to the 2012 election (*Inside U.S. Trade*, Nov. 4).

Congressional sources said that this represents a realization by administration officials that their final goal may have been too ambitious.

**According to Hirschhorn, the goals for the export control reform initiative over the next year will include the revision of all the U.S. Munition List (USML) categories to determine which items can be transferred to the Commerce Control List (CCL).**

Additionally, he said the administration would work to complete the statutory requirement of notifying Congress of the transfers of items from a great majority of the categories by March 31, but admitted that this would be a “tall order” (see related story).

The administration’s second short-term goal is completing a “substantial transition regulation” that would provide a road map to industry as the administration considers the licensing process for items that transfer from the USML to the CCL.

This regulation would include grandfathering licenses to prevent a company from having to take out two licenses on the same product if its list status is still uncertain; giving companies time to change their information technology systems to handle the new licensing process; and authorizations that will simplify the export of parts and components subject to the CCL that are being exported at the same time as an end item still on the USML.

Hirschhorn also said the Bureau of Industry and Security (BIS) this month is intensifying its “outreach and compliance efforts” with companies that seek to use the Strategic Trade Authorization (STA) license exception.

Commerce Department officials over the past few weeks have been framing the reform effort in terms of the benefits that the STA will provide for items being transferred to the CCL from the USML.

The STA license exception will allow for these items to be shipped without an individual license if they are to be used by a foreign government that is included in a group of 36 closely allied countries, which pose little or no diversion risk.

Previously, officials have framed the overall success of the export control reform in the context of the single list, agency and regulation that will allow for an ultimate consolidation of the export control process.

In his PECSEA speech, Hirschhorn rejected what he said were rumors that there is a lack of commitment at the highest level of government to proceed aggressively with the export control reform initiative.

“Let there be no misunderstanding about the commitment of this administration to keep at it,” he said, pointing to a Nov. 7 meeting that he and Andrew Shapiro, assistant secretary of State for the Bureau of Political-Military Affairs, had with President Obama on the export control reform effort.

“The president was very supportive of our continuing and doing everything we can do from a regulatory standpoint,” he said.

In Honolulu this past weekend, Obama addressed the issue of export control reform at a CEO business summit during the Asia-Pacific Economic Cooperation (APEC) leader’s meeting.

“We are, I think, starting to see that process bear fruit,” Obama said. “We’re going to need some cooperation from Congress, but there’s some things we can do on the executive side.” He said the goal of the reform is to clear away impediments for exports of items that do not have military applications or dated technology in order to focus on truly sensitive items.

## EU, Japan Wrestle With Final GPA Deal, While EU, U.S. Narrow Differences

Outstanding issues on government procurement coverage between the European Union and Japan are now the major obstacle to completing the renegotiation of the Government Procurement Agreement (GPA) as the U.S. and EU appear on track to complete their market access negotiations, according to Geneva sources.

Officials are under pressure to complete these bilateral market access negotiations before the end of the month, as negotiators for all GPA signatories are slated to hold a final meeting in the week of Nov. 28 to wrap up the technical work. This would clear the way for ministers to approve the revised GPA during the Dec. 15-17 ministerial meeting of the World Trade Organization.

At a Nov. 15 meeting of Geneva ambassadors representing GPA parties, the EU said that it is “very close” to a final deal on market access with the U.S. and that the two parties are in contact on a daily basis to hammer out the final terms, sources said. The U.S. said it remains optimistic that GPA parties will be able to conclude a deal on a revised agreement.

The EU and Japan said at the meeting that their capital-based negotiators are slated to hold a teleconference on Nov. 17 to discuss their final positions in the coverage talks and potential solutions, sources said. Japan noted that both sides already held a three-hour discussion on this issue earlier in the week.

The European Commission on Nov. 18 is slated to present to EU member states an outline of the concessions the U.S. and Japan are offering, and member states are expected to make a decision on whether to support the deal at that meeting or at another session later this month (*Inside U.S. Trade*, Nov. 11).

In the coverage talks, the EU has pressed Japan to remove effective barriers to foreign participation in railway sector procurement and reduce the threshold above which the GPA’s non-discrimination disciplines apply to local public works projects.

The EU had demanded that the United States bind additional sub-central and federal entities to the GPA and to remove a restriction on EU companies participating in procurement for highway and mass transit projects.

Nicholas Niggli, who heads the talks as chair of the Government Procurement Committee in the WTO, said at the Nov. 15 meeting that the GPA parties are very close to concluding a deal, but stressed that a final push is needed to complete it.

Ambassadors of GPA parties are expected to meet again next week, possibly on Nov. 22, to discuss progress in the talks, one source said. This source said there is a feeling of optimism that the talks can be concluded by December both because of the intensifying contacts between the major parties and a strong desire among parties to conclude the talks.

At the Nov. 15 heads of delegation meeting, the GPA parties also discussed the content of a declaration that ministers will agree to at a committee meeting during the December ministerial, this source said.

That statement will likely consist of a formal recognition that negotiations have concluded and that all that remains to be done is the technical verification of the agreement. This technical verification would include correcting parties’ schedules, but would not amount to substantive negotiations.

The declaration would also highlight the significance of a revised GPA for the multilateral trading system, encourage non-members to accede to the GPA, and pledge support for the future work programs that are part of the revised agreement, sources said.

**The Government Procurement Committee met separately on Nov. 15 at the technical level for a “housekeeping” meeting during which all parties signed off on the committee’s annual report that will be presented to the General Council at its Nov. 30-Dec. 1 meeting, sources said.**

The public report includes a summary of the committee’s work over the past year as well as updates on the renegotiation of the GPA and current accessions to the agreement. It also includes a summary of notifications by GPA members of changes in their schedules as well as statistics they have reported.

With respect to China’s accession, the report says GPA parties have expressed their appreciation for the efforts China is making in preparing its second revised offer, which they expect to be submitted by the end of the year. Parties expect that this second revised offer will fulfill China’s commitments to include coverage of sub-central entities and also address other requests for improvements from GPA parties, according to the report.

Among those are requests that China improve its offer by reducing the thresholds above which the GPA’s non-discrimination market access rules apply, expand its coverage of services, and remove general notes at the end of its proposed schedule that restrict coverage. The parties also reiterated the importance of China bringing its national procurement legislation in line with the requirements of the GPA.

At the Nov. 15 technical meeting, the EU and U.S. stressed that they expect China to offer a level of coverage that is comparable to that of existing GPA parties, one source said.

## Auto Companies Condition Japan's Entry Into TPP Talks On Market Share

U.S. car companies represented by the American Automotive Policy Council (AAPC) are expressing adamant opposition to Japan's participation in the Trans-Pacific Partnership (TPP) negotiations until Japan can prove that foreign auto companies are making inroads into its domestic market.

Japan should not be allowed to join the TPP negotiations until U.S. and other foreign cars have achieved a higher market share there, AAPC President Matt Blunt said in a Nov. 17 interview with *Inside U.S. Trade*. He said that the "only way to know with any real assuredness" that Japan is serious about engaging in free trade is an increased share for foreign cars in its market.

Blunt said he did not have a "target number" for such an increased share, but noted that the 2010 share of all foreign cars in Japan was 4.5 percent of the market, compared to the 40 percent average of industrialized countries represented in the Organization for Economic Cooperation and Development (OECD).

He also made it clear that U.S. car companies believe that the kinds of barriers they face in Japan are endemic and unlikely to be addressed in a trade agreement, including restrictions on dealers carrying foreign cars in their showrooms.

According to Blunt, AAPC does not intend to develop an exact list of barriers its members face in Japan and that AAPC would want the administration to address in the context of the TPP. In talks with administration officials, AAPC will "certainly provide examples [of such barriers], but only for illustrative purposes," he said.

AAPC — which represents Ford, Chrysler and General Motors — does not consider it effective to provide a list of Japanese barriers as a "checklist" for the negotiations, Blunt said. That would be a "classic whack-a-mole" approach under which the United States would seek to address one barrier only to have another one pop up, according to Blunt.

Sources close to the Japanese auto industry reject the AAPC view and say U.S. car companies do not manufacture the smaller cars to compete in the Japanese market, and are not willing to incur the costs of doing business there.

Blunt said that AAPC has expressed its objections to Japan's TPP participation in "general terms" to a number of administration officials in the Office of the U.S. Trade Representative, as well as the Commerce, Treasury and State departments. He said AAPC has also reached out to congressional staff on this issue.

A private-sector lobbyist said this week that the industry so far has not expressed a specific reason for its opposition to Japan joining the TPP talks other than that it does not want to increase the competitive pressure that Japanese automakers exert on U.S. companies without offsetting benefits.

In a related development, labor unions are unlikely to take a formal position in the near term on Japan's possible entry into the TPP, according to a union source. The AFL-CIO is discussing Japan's potential membership in the TPP and getting feedback from affiliates, but at this moment does not plan on taking a formal position, a labor union source said.

Blunt expressed support for the current TPP negotiations, which do not include Japan, and said that if Japan joined the negotiations now it would "delay them for years, if not forever." This potential problem is acknowledged even among supporters of Japan joining the talks, and it is unclear whether an expansion of TPP members could be reconciled with the stated U.S. goal of concluding the deal next year.

On the other hand, a private-sector source said, many U.S. companies harbor a great deal of skepticism on whether the TPP will come together in the near term. This source said that would likely change if Congress next year began consideration of granting the administration negotiating authority for TPP.

Blunt noted that Japan has no tariffs on autos, and that the problem lies with its non-tariff barriers on foreign car imports that exacerbate the large bilateral trade deficit. About 70 percent of the \$60 billion bilateral U.S. trade deficit with Japan is due to automotive trade, and some experts expect that to increase this year, he said.

Japan is the third largest automotive market in the world, and Japanese trade barriers have contributed to this substantial deficit with the United States, he said. Blunt noted that the magnitude of the competition that U.S. companies would face from Japanese firms is vastly larger than what they face from Korean firms under the U.S.-Korea FTA.

**AAPC publicly announced its opposition to Japan's participation in the TPP in a Nov. 11 statement**, arguing that bilateral trade in automobiles is unbalanced and that Japan must open up its automotive market before joining the negotiations.

"Pretending this can be easily corrected is not good for the American economy or American workers," he added. "Japan should demonstrate they are serious about opening their market before the United States grants additional trade benefits."

In that statement, Blunt noted that Japan already ships more than 200 cars to the United States for every one car the United States sends there.

In the interview, Blunt emphasized that the AAPC statement is issued on behalf of the three member companies. Separately, the Ford Motor Company provided a statement to reporters arguing that allowing Japan, "the world's most protectionist economy," to participate in the TPP would hurt American jobs and exports.

The U.S. imposes a 2.5 percent tariff on passenger cars and a 25 percent tariffs on light trucks. Roughly half of the Japanese nameplate cars sold in the United States are imported, and the other half is produced by Japanese companies in

the United States, meaning that the tariff still has huge value for U.S. car companies, industry sources said.

“[P]roviding preferential trade benefits to Japan, while they continue to embrace closed-market policies, would only serve to undermine the competitive gains made by American automakers,” Blunt argued.

Japan’s participation in the talks at this time is also opposed by members of Congress representing automotive manufacturers, including Sens. Carl Levin (D-MI) and Debbie Stabenow (D-MI), who both sent letters to President Obama last week urging him to hold off on allowing Japan to join the talks.

## Ag Groups, Auto Companies At Odds Over Japan Entering TPP In Near Term

U.S. business groups are fractured on the issue of Japan possibly joining the Trans-Pacific Partnership (TPP) negotiations in the near term, with major agricultural groups and U.S. auto companies at odds on the issue and most major trade associations taking a nuanced, cautious approach.

U.S. auto companies have expressed to congressional staff and administration officials what seems to be the strongest opposition to Japan entering the TPP talks. They see little chance that Japanese barriers to automotive imports can be addressed in the context of a trade agreement (see related story).

For these companies, opening the Japanese market is not so much a matter of addressing specific regulatory barriers as it is of tackling more endemic problems that relate to anti-trust matters, such as pressure by Japanese car companies on dealers not to carry foreign cars. It is extremely unlikely the TPP talks could address these issues, they argue.

By contrast, farm groups like the National Pork Producers Council (NPPC), American Farm Bureau Federation, and the National Milk Producers Federation believe that including Japan in the talks would greatly enhance the value of the TPP for U.S. agricultural exporters. The same is true for agribusiness firms such as Cargill.

These agriculture interests are considering sending letters to the administration in coming weeks outlining their support for Japan’s TPP participation. Last week, NPPC expressed strong support for letting Japan join the negotiations in the near term.

But other members of the agriculture sector express their support in a more nuanced manner. For instance, Cargill, the Farm Bureau and groups representing the U.S. beef industry want Japan to take concrete steps to further open up its beef market to U.S. exports before it enters the TPP negotiations, sources said.

One beef industry source said the U.S. beef groups have already told the administration that they will not support Japan’s entry into the ongoing TPP talks unless it first establishes at least a concrete path for opening up its market to beef from U.S. cattle up to at least 30 months of age.

The beef industry would likely not demand that Japan actually open its market to U.S. beef to that extent prior to Japan joining the TPP talks, according to the source. He said he expects that members of Congress, including Finance Committee Chairman Max Baucus (D-MT), would likely also feel comfortable with Japan establishing a concrete plan for opening the beef market, instead of demanding full access as a precondition.

Bill Westman, vice president of international trade at the American Meat Institute, hinted at the need for Japan to act on beef market access prior to joining the TPP in statement sent to *Inside U.S. Trade* this week. “We must wait and see if the Japanese government is willing to take the steps necessary to become part of this important partnership,” he said.

Several sources said this week that Japan appears to understand the need to move on its beef trade restrictions before potentially joining the TPP talks, and the early signals are that it would be prepared to do so. Japan knows that beef market access is a major issue, particularly for members of the Senate, one observer said.

At this time, the beef industry favors a low-key approach in terms of its demands because it does not want to arouse public opposition in Japan to letting in more U.S. beef imports, or create the impression that the United States is pressuring Japan on this issue, the beef industry source said.

**Major trade associations seem to take a middle of the road approach to Japan’s potential participation** in the TPP. They recognize that Japan, a major economy, would greatly enhance the economic potential of the TPP if it is willing to meet the high standard set by other TPP partners.

At the same time, these groups do not want Japan’s possible entry to slow down the pace of the talks. This reflects a larger worry among many in the business community that even without Japan joining, it will be extremely difficult to ink a meaningful TPP deal anytime soon; many believe a deal is impossible before sometime in 2013, or later.

Many business sources this week declined to say whether they would prefer swifter conclusion of the talks or the addition in the near term of new participants like Japan. These sources said it is still unclear if Japan has enough domestic support to join, and so it is unnecessary for the U.S. business groups to express a preference at this time.

A similar ambiguity is reflected in statements by administration officials, who have welcomed Japan’s interest in joining the TPP talks but also stressed that they want to press ahead with an ambitious timetable for concluding the negotiations sometime next year (see related story).

Among major business groups, the National Foreign Trade Council (NFTC) has made clear it does not want to sacrifice the speedy conclusion of a strong TPP agreement over Japan’s participation. In a Nov. 11 release, it welcomed

Japan's interest but also cautioned that "maintaining the TPP's momentum and high standards must take precedence."

In a Nov. 12 statement, the Emergency Committee for American Trade (ECAT) was less explicit, but also stressed that TPP partners should not allow Japan's possible entry to delay the TPP negotiations.

"We look forward to consulting closely with the U.S. government so that Japan's participation in the TPP will ensure the same ambitious and timely outcome envisioned by the current TPP negotiating partners," ECAT President Calman Cohen said in that statement. President Obama last week said TPP partners want to conclude negotiations next year.

The Business Roundtable (BRT) welcomed Japan's interest in TPP participation in a Nov. 13 press release, but included a statement by Doug Oberhelman, who chairs BRT's International Engagement Committee, that BRT "will continue to work ... to ensure the expedited completion of an ambitious agreement."

The National Association of Manufacturers (NAM) declined to issue a press release after Noda last week announced his intention to explore joining the TPP negotiations. One source indicated the reason may be that NAM has a diverse membership, with some companies opposing Japan's participation and others supporting it.

U.S. Chamber of Commerce President and CEO Thomas Donohue appeared more willing to support Japan entering the talks in the near term. In a Nov. 11 release, he argued that if Japan can meet the high standard current TPP partners have set, "then its goal of becoming a TPP partner should be favorably considered."

Yet the Chamber, along with ECAT and other business groups from the Asia-Pacific region, signed a statement last week arguing that negotiators should seek to conclude a TPP deal by the middle of next year. That statement did not specifically address whether that timetable would still hold if Japan were to join the talks.

One source indicated that the Chamber has also not decided whether it will ultimately prioritize conclusion of the talks, or expansion to new members like Japan in the near term.

## Canada's Renewed Interest In Joining TPP Seen As Response To Japan

The renewed interest of Canada in joining the Trans-Pacific Partnership (TPP) negotiations is likely a response to the possibility that Japan could gain entry to those negotiations in the near term.

Japan is a major trading partner for Canada, and a TPP deal that includes Japan but excludes Canada would likely mean Canadian exporters would lose market share to their U.S. competitors. Canada has long signaled that if Japan were to join the TPP, Canada would also look to join, sources said.

Japanese Prime Minister Yoshihiko Noda announced on Nov. 12 that Japan would hold consultations with TPP partners to explore the possibility of joining the TPP negotiations (see related story). One day later, Canadian Prime Minister Stephen Harper declared that Canada was also interested in conducting such consultations.

While Harper has never before publicly declared Canada's interest in the TPP talks, his statement contains no new information. Canada has long expressed its interest in joining the TPP talks, and held exploratory discussions with TPP partners on that topic last year, but TPP partners told Canadian officials last fall that Canada was not ready to join.

Canadian industry sources, who said they were not notified by their government of any renewed interest in again trying to join the TPP talks in advance of the Harper announcement, said it was unclear what could have changed since that rejection such that TPP partners would now be more willing to let Canada join the ongoing talks.

A spokeswoman in the Office of the U.S. Trade Representative declined to comment on that critical point, beyond stating that the United States "will consult with Canada on a range of issues."

Canadian private-sector sources speculated that Harper may have felt pressured to make a TPP announcement while attending a summit of Asia-Pacific Economic Cooperation (APEC) forum leaders last weekend in order to respond to the interest expressed by Japan just before the APEC summit.

Officials in Harper's office have taken offense at what they perceive to be a fairly warm reception in the United States to the idea that Japan could join the talks in the near term, especially because Japan has huge agricultural sensitivities and it is unclear how much reform Japan could agree to in the context of TPP, sources said.

This issue irks Canadian officials, as U.S. officials told their Canadian counterparts last year that Canada was not ready to join the talks due to sensitivities in the Canadian agricultural sector, and doubts on the extent to which Canada was prepared to reform its agricultural supply management system (*Inside U.S. Trade*, Oct. 22, 2010).

Canadian proponents of joining TPP doubt that Japan could provide more robust signals on a willingness to make concessions in agriculture than Canada, which has long made clear that it is willing to put "all issues on the table" were it to join the TPP negotiations, as it has done in bilateral talks with the European Union.

The U.S. business community is also far more interested in the prospect of Japan joining the TPP talks than Canada, which already has preferential trade with the United States under the North American Free Trade Agreement (NAFTA), one business source conceded.

At the same time, sources stressed that it remains unclear whether Japan or Canada will join the talks in the near term (see related story).

Speaking to reporters at the APEC summit, Harper said there were two reasons why Canada is now publicly declar-

ing its interest in holding consultations with TPP partners.

The first reason is that Canada looked at the “framework” deal unveiled by TPP partners at the APEC summit, which outlines areas where agreement has thus far been reached, and concluded that it could “easily” meet all of the criteria contained in that framework, he said, according to a transcript of his remarks.

Second, Harper said President Obama had indicated his interest in having Canada join the TPP talks. Harper also reiterated that “all matters are on the table” when Canada enters trade negotiations, but that Canada would “seek to defend and promote our specific interests in every single sector of the economy.”

**The announcement from Harper at the APEC summit represents a sudden turnaround for Canada**, given that Canadian Trade Minister Ed Fast just days before appeared to downplay the notion that Canada was pushing hard to join the TPP talks in the near term.

“At this point in time, we just have not determined that participating in those talks ... is in the best interest of Canada,” Fast said in a Nov. 9 press conference, according to a transcript obtained by *Inside U.S. Trade*. “So at this point in time, I’m very comfortable with us representing Canadian interests and continuing to monitor that situation.”

Fast also stressed that Canada will continue to defend its system of supply management for such commodities as dairy and poultry, while refusing to say whether this could make it harder for Canada to join the TPP talks.

“I have articulated time and time again that our government will continue to defend Canada’s system of supply management. We’ve been unambiguous in taking that position and I’m not going to speculate as to what conditions some of the partners within the TPP might impose on us,” Fast said.

Fast added that the Canadian government has not established any time frame within which to make a decision on joining the TPP talks, and pointed out that “a number of other Asian countries” have not joined the TPP negotiations, a possible reference to the fact that Japan was not participating.

But that message swiftly changed this week. In a Nov. 14 statement, Fast affirmed the interest of Canada in joining voiced informally by Harper last weekend.

“Canada has strong and growing ties to the Asia-Pacific region,” Fast said in the statement. “We recognize the TPP as a means to further strengthen those ties and contribute to what promises to become a broadly-based vehicle for economic integration in the region, a goal we all share as members of APEC.”

**One source noted that Canada has started explorations of a bilateral trade deal with Japan, and was comfortable with the idea of forming an alliance with Japan outside the TPP.** In the context of a bilateral trade deal, Canada and Japan could both exclude sensitive agricultural items, this source noted.

But the prospect of Japan joining has likely made Ottawa nervous because it could put Canadian exports to Japan of canola seed, pork, wheat, beef, as well as in the transportation and services sector, at a disadvantage, sources said. One source also feared that if Japan were to join the TPP, the Canada-Japan FTA could be put on indefinite hold.

Canadian sources in favor of joining the TPP said they would now ramp up pressure on their government.

The Harper government has long stressed the importance of engaging in Asia, but has yet to negotiate a single trade deal with an Asian country. Canadian exporters are also nervous that they will lose market share in South Korea due to the U.S.-South Korea trade deal and a separate deal between South Korea and the European Union, sources said.

South Korea has also indicated an interest in joining the TPP at some point, although for now it is focused on passing and implementing its bilateral deal with the United States (see related story).

Korean Deputy Minister for Public Relations Cho Byung-jae said in a Nov. 10 press briefing that the Korean government is making an “all-out effort” to win ratification of the U.S.-Korea FTA. “We plan to mull over joining the TPP after examining its potential contributions to and role in other trade liberalization processes in the Asia-Pacific region,” he said, according to a transcript.

**In a Nov. 13 statement welcoming the interest of Canada and Mexico in the TPP talks**, U.S. Trade Representative Ron Kirk said he looked forward to initiating consultations with these countries and with Congress and domestic stakeholders to discuss TPP’s high standards and “specific issues of concern to the United States.”

“These will include stronger protection of intellectual property rights, additional specific opportunities for U.S. goods, services and investment, and the elimination of various non-tariff barriers,” Kirk said, without elaborating.

In a separate White House statement, also issued on Nov. 13, President Obama welcomed the expressions of interest from both NAFTA partners in the TPP talks.

Obama “welcomed [Canadian] Prime Minister [Stephen] Harper’s expression of Canada’s interest in seeking to join the Trans-Pacific Partnership talks and initiating consultations toward that goal,” according to a White House press statement issued after the two leaders met on Nov. 13.

“The Leaders discussed the importance of meeting the TPP’s high standard for trade liberalization and addressing outstanding trade and investment issues in that process,” the White House statement added. Obama also invited Harper to come to Washington in early December, according to the statement.

The supply management system in Canada limits the supply in the Canadian market of key agricultural products, including dairy and poultry, with domestic production constraints and import restraints, thereby benefiting Canadian farmers by ensuring higher prices. The supply management system is most relevant for Quebec and Ontario.

## U.S. TPP Environment Proposal Follows ‘May 10,’ But May Have Different Effects

The environmental proposal that the United States has tabled in the Trans-Pacific Partnership (TPP) negotiations on its face replicates the approach of the so-called May 10, 2007, template on environmental protections, but the way in which it would function in the TPP context likely implies less extensive environmental commitments.

Like the environmental provisions of the May 10 deal, the U.S. TPP proposal references a list of seven multilateral environmental agreements (MEAs) and commits TPP countries to uphold the provisions of the MEAs in that group to which they have already signed up, a U.S. trade official signaled last week.

The U.S. proposal in TPP would not require countries to sign up to MEAs to which they are not already parties, as was the case in the May 10 deal. “There’s nothing in May 10 that compelled countries to join MEAs to which they were not parties,” the official said in an interview with *Inside U.S. Trade*.

“There are any variety of considerations a country will take into account in terms of ratifying an MEA, and we have not sought [in TPP] to prejudice those kinds of considerations in our proposal. And again, it is ... the approach that was in the May 10 package,” the official said.

The difference is not the approach that U.S. negotiators are taking, but rather its effect. That is because the four countries to which the environmental provisions of the May 10 applied — South Korea, Colombia, Panama and Peru — are parties to a majority of the seven MEAs referenced. Therefore, they have binding FTA obligations with regards to those MEA commitments.

Specifically, South Korea and Peru are parties to all seven MEAs, while Panama and Colombia are party to all except the Convention on Conservation of Antarctic Marine Living Resources. In the Colombian government’s view, the FTA requires Colombia to adhere to its obligations under those six MEAs only, one source said.

The level of participation in the seven covered MEAs is much lower among some TPP countries, especially Vietnam and Malaysia. Out of the list of seven MEAs covered by the May 10 deal, there are only two — the Convention On International Trade in Endangered Species (CITES) and the Montreal Protocol on Ozone Depleting Substances — that all TPP parties have currently signed.

In practice, therefore, the U.S. proposal would appear to impose fewer binding obligations on TPP partners than was the case with Colombia, Peru, Panama and South Korea, simply because TPP partners have not signed up to as many of the MEAs referenced in the May 10 deal.

In addition to CITES and the Montreal Protocol on Ozone Depleting Substances, Vietnam and Malaysia have both signed up to the Ramsar Convention on the Wetlands. The U.S. proposal would apparently only bind Vietnam and Malaysia to uphold their commitments under those three MEAs.

The May 10 approach in the TPP context has also raised new complications that the United States has not yet completely worked through. For instance, it remains unclear how dispute settlement would function with regards to obligations under the covered MEAs, because different TPP partners have signed up to different MEAs, the official said.

This presents the theoretical possibility that a country that has not even signed up to a particular MEA, and therefore faces no binding commitments under the U.S. proposal to implement the obligations under that MEA, could challenge another country that has signed up to that MEA for failing to adhere to its commitments, the official said.

“We have raised the question, although not offered text yet, on circumstances in which a TPP party is not a party to a particular MEA, and whether it should be able to challenge another TPP party regarding its implementation of [that] MEA,” the official said. “So that’s an open question, but again we haven’t offered text to address that.”

According to the official, the U.S. environmental proposal with respect to MEAs, which it tabled in September, is identical to that of the May 10 agreement, aside from two technical changes that are not significant. These changes relate to “circumstances in which the TPP parties would consult bodies or experts associated with the MEAs that have been proposed,” the official said.

The May 10 deal was negotiated between House Democrats and the Bush administration and strengthened labor rights and environmental protections in trade deals with Colombia, Panama and Peru, while also offering these countries additional flexibilities in the area of intellectual property rights in order to promote access to medicines.

The labor and environmental provisions of the May 10 deal also applied to the U.S. free trade agreement with South Korea.

On environment, the May 10 deal added the obligation for parties to adopt, implement and effectively enforce laws and regulations to fulfill their obligations under the covered MEAs. This obligation is subject to dispute settlement in the FTAs, and panels are to find an inconsistency if the failure to uphold an MEA obligation affects trade and investment.

**According to the official, the U.S. has tabled a complete set of environmental proposals in the TPP, the key areas of which are the May 10 language and a conservation proposal. The conservation proposal, which has general support from TPP members, seeks disciplines on fisheries subsidies, shark preservation, illegal trade in wildlife and plant products, and illegal logging (*Inside U.S. Trade*, Sept. 16).**

The U.S. environmental text also includes general provisions on public participation, environmental cooperation, procedural matters, and measures to enhance environmental performance, the official said. Those provisions parallel

provisions in previous U.S. FTAs, according to the official.

At the most recent negotiating round in Lima last month, environmental negotiators engaged largely in a procedural discussion about how to combine all the environmental proposals into a single negotiating text. The official said that discussion was a “significant step” because the negotiation process is somewhat hampered without a single text.

The official added it would be relatively straightforward to create the unified text, and that Australia was helping with some of the mechanics in this regard. The United States and New Zealand are working to combine their proposals on marine issues into one single text, the official added.

This process of consolidation is easier in areas where there is only one proposal, which is the case with U.S. proposals on a general conservation framework, illegal logging and invasive species, the official said.

**The official declined to comment directly on how the possible entry into the TPP talks of Japan — a major user of fisheries subsidies — would impact the negotiations in that area.**

Instead, he stressed that there is “much potential for positive work with Japan” given that it has been a strong advocate in international fora on marine fisheries issues, including implementation of regional fisheries management organizations and efforts to address illegal, unreported, and unregulated (IUU) fishing.

The official noted that the United States and Japan have a history of negotiating on fisheries subsidies in the stalled Doha round in the World Trade Organization. He acknowledged that both countries have differences in some areas and parallel interests in others, such as prohibiting subsidies related to IUU fishing.

In a Nov. 12 e-mailed statement, conservation group Oceana said Japan’s potential entry into the TPP talks represented a “major positive addition” to the TPP overall, but specifically with regard to fisheries negotiations, given that Japan is a major fishing country and importer of seafood.

Japan’s involvement in TPP would also give it an opportunity to step up and take concrete action on several issues which it has claimed leadership on in international fora, Oceana Senior Campaign Director Courtney Sakai said in the statement.

“And with its economic and political global standing, Japan has a real and timely obligation to take leadership on fisheries in the TPP. Particularly since what the TPP is addressing are exactly the kinds of ‘bad practices’ that Japan abhors and publicly and vocally say they seek to curtail.”

Two of those issues, which are being discussed for potential inclusion in a final TPP deal, are disciplines to prevent fishing in over-fished stocks and to prohibit subsidies that support illegal fishing practices, according to an NGO source.

## **Tech Business Groups Welcome APEC Pledge To Pursue Expansion Of ITA**

Business groups representing American high-tech companies this week welcomed a pledge by leaders of Asia-Pacific countries to work to expand both the product coverage and the membership of the World Trade Organization’s Information Technology Agreement (ITA).

In a declaration issued Nov. 13 by the 21 members of Asia-Pacific Economic Cooperation (APEC) forum, the heads of state announced they will play a leadership role in “launching negotiations to expand the product coverage and membership of the WTO Information Technology Agreement, in order to build on the contribution this Agreement has made to promoting trade and investment and driving innovation in APEC economies.”

The ITA, which was signed in 1996, commits signatories to give zero-tariff treatment to a broad range of technology goods for all WTO members. The U.S. high-tech industry lobbied the U.S. government in the run-up to last weekend’s APEC summit in Hawaii to garner support for the language ultimately adopted in the so-called “Honolulu Declaration.”

John Neuffer, vice president for global policy at the Information Technology Industry Council (ITI), said in a statement the council is “extremely pleased the APEC leaders have declared they will take a leadership role in launching negotiations to expand the Information Technology Agreement.”

Neuffer said the ITA is considered by the high-tech community to be one of the most successful trade agreements in the WTO. “It’s high time to increase the product scope and membership of the ITA, a move that will do even more to promote jobs, prosperity, and innovation in the region and around the world,” he said.

Other tech industry officials, however, tempered their satisfaction with the APEC pledge with the knowledge that the hard work of negotiating an expanded agreement still lies ahead.

“We are optimistic, but realistic,” Bruce Mehlman, executive director of the Technology CEO Council, said in an interview with *Inside U.S. Trade*. “This is exactly the first step we were hoping for, but we acknowledge that efforts such as this are complex and require long-term focus.”

This week, the private-sector members of the President’s Export Council sent a letter to President Obama urging him to move forward with an ITA expansion.

One high-tech industry source said that Russia’s last-minute retreat from its pledge to join to ITA upon accession to the WTO underscored to the business community that expanding the agreement is likely to be difficult. This source agreed with some others who said Russia’s final commitment in its WTO working party report was less certain than what the business community thought it had just months ago (*Inside U.S. Trade*, Nov. 11)

It is unclear what the future work plan is for negotiations to expand the ITA, according to another tech industry

source. Events are likely to be held in Geneva next year to celebrate the 15th anniversary of the agreement's signing, and there is some talk that discussions on expansion might be held on the sidelines, this source said.

In the weeks prior to the APEC summit, sources said the U.S. had won the backing for the expansion initiative from key technology exporters in the Asia-Pacific including Japan and South Korea. But they said China had been tight-lipped on the issue, although it would likely be a major beneficiary of an expanded ITA (*Inside U.S. Trade*, Oct. 28).

China's support will be critical to any effort to expand the ITA, officials and observers have said. This is because the ITA operates on the principle of "critical mass," meaning that it must cover 90 percent of total world trade in technology goods, and China is also a major tech exporter.

The U.S. industry's chief aim in expanding the product coverage of the ITA is to include the growing number of "convergence" products such as smartphones that have been invented since the deal was originally signed in the late 1990s. But they also want to fold in other major economies like Brazil and Mexico that until now have been "free riding" on the agreement.

Many observers have doubted that Brazil will be willing to join the ITA as it tries to build a nascent technology sector. But failing to include new signatories would not lead to the downfall of the expansion effort, sources have said, as long as the necessary critical mass is preserved.

## TPP Framework Endorses Investor-State Rules, Leaves Open Key Issues

The "framework agreement" unveiled by countries participating in the Trans-Pacific Partnership (TPP) talks last weekend endorses an investor-state mechanism, but provides few details about its substance or whether it will apply to all TPP countries.

According to the framework, the TPP investment text "will include provisions for expeditious, fair, and transparent investor-State dispute settlement." At the same time, it says, these provisions will be "subject to appropriate safeguards," and that talks continue on "scope and coverage" of the investment provisions.

In light of these caveats, it is unclear whether the investor-state provisions will apply to all TPP countries. While strong and comprehensive provisions are a U.S. priority, Australia has resisted their inclusion in the TPP deal.

Australia raised similar objections to an investor-state mechanism when negotiating its bilateral free trade agreement with the U.S., and succeeded in excluding it from the final text.

While the United States would favor an investor-state mechanism similar to the one found in its other bilateral FTAs, it is unclear whether the framework's reference to "appropriate safeguards" means the TPP will create a new approach on investor-state that differs from what the United States has done in most of its bilateral FTAs.

"Our goal in the TPP investment chapter is to secure for U.S. investors in each of the TPP countries important protections comparable to those available in the United States — including protections against discrimination and unlawful expropriation, and neutral, effective dispute settlement procedures," a spokeswoman in the Office of the U.S. Trade Representative said.

The United States also wants to ensure that TPP country investors in the United States "are not accorded any greater substantive rights than U.S. investors in the United States," the spokeswoman added. This statement reflects arguments from critics of investor-state rules in FTAs, who charge that they afford greater rights to foreign investors than U.S. investor under U.S. law.

The TPP deal will also include prohibitions on specified performance requirements that distort trade and investment, according to the framework. Negotiators are also working on provisions on non-discrimination, minimum standard of treatment, and rules on expropriation, according to the framework.

**TPP countries also endorsed the development of a single tariff schedule, though this commitment is not reflected in the framework but in a ministers' report endorsed by TPP leaders on Nov. 12.**

This is notable because the United States is negotiating goods market access bilaterally with the TPP countries with which it does not already have a trade deal.

The critical issue at stake is whether the United States will extend the same tariff preferences to all other TPP countries for all products under a completed deal, or whether it will offer different tariff levels to different TPP partners in at least some cases.

A USTR spokeswoman this week indicated that the latter scenario is more likely, though she emphasized that TPP officials are still negotiating the schedules. "We are seeking a single schedule that will be as common as possible among the parties," she said.

One observer said this means there will not truly be a "single tariff schedule" for all goods and that sensitive items will likely be handled differently with respect to various trading partners.

However, the report does little to clarify how U.S. bilateral negotiations with Vietnam, Malaysia, Brunei and New Zealand, which would presumably produce four different tariff schedules, could be combined into a common, single schedule. Other TPP partners have stressed the importance of a single schedule to make TPP a "regional" agreement.

At the same time, the framework agreement clarifies that TPP negotiators are developing common rules of origin for the entire TPP region, meaning U.S. negotiators are not hashing out different rules of origin for goods when holding

separate bilateral talks with Vietnam, Brunei, New Zealand and Malaysia.

**On sanitary and phytosanitary (SPS) measures, the framework endorses going** beyond the SPS disciplines in the World Trade Organization, which is a priority for business groups.

The framework says TPP countries have agreed to “build upon existing rights and obligations,” and that the TPP will contain a “series of new commitments on science, transparency, regionalization, cooperation, and equivalence.”

The framework deal also makes clear that TPP negotiators anticipate giving some flexibility to developing countries in terms of implementing TPP commitments.

For instance, it states that countries “have agreed on the need to appropriately address sensitivities and the unique challenges faced by developing country members, including through trade capacity building, technical assistance, and staging of commitments as appropriate.”

Likewise, in its section on government procurement, the framework states that negotiators are seeking “comparable coverage of procurement by all the countries, while recognizing the need to facilitate the opening of the procurement markets of developing countries through the use of transitional measures.”

Overall, the framework provides few details of progress in the different negotiating areas, although it does reveal some new details of the ongoing talks.

In the environmental chapter, negotiators are discussing “an effective institutional arrangement to oversee implementation and a specific cooperation framework for addressing capacity building needs,” according to the framework. They are also discussing proposals on conservation issues, invasive species, climate change and environmental goods and services.

On goods market access, countries are “considering proposals related to import and export licensing and remanufactured goods,” it states. Provisions on agricultural export competition and food security are also under discussion, it adds.

Regarding the temporary entry of people into TPP countries, the framework says that negotiators have “substantially concluded” general provisions designed to “promote transparency and efficiency in the processing of applications,” but adds that “specific obligations related to individual categories of business person are under discussion.”

## **U.S. Lumber Coalition Flags New Problem With Canada’s SLA Compliance**

U.S. lumber producers are flagging a new problem with the timber pricing system in the coastal region of British Columbia, which they say could constitute a breach of the 2006 Softwood Lumber Agreement (SLA) if not adequately addressed in the near term, a claim that British Columbia government and industry officials this week vigorously denied.

In a Nov. 8 statement, the U.S. Lumber Coalition argued that British Columbia has failed to implement the 2011 regular update to the Market Pricing System (MPS) for the coastal region of the province “in a timely manner.” The U.S. industry had expected this update to occur by July 1, or by Oct. 1 at the latest, according to an industry source.

The update has typically occurred every two years for the coast region MPS, and the last update occurred in January 2009, this source pointed out.

According to information obtained by the Coalition, the British Columbia government has already determined that this periodic update would raise prices that Canadian lumber producers would have to pay to harvest government-owned timber. The government appears to be holding off on implementing the new, higher rate to appease Canadian lumber producers, who would oppose paying more for timber, the Coalition argues.

Failure to implement the new, higher rate amounts to an “extra Canadian subsidy” that could have the effect of circumventing the export measures imposed under SLA, according to the Coalition. The SLA restricts exports of softwood lumber from Canada to the U.S. through a combination of export taxes and export quotas, and Article XVII prohibits either party from taking any action that has the effect of offsetting or reducing those measures.

While the SLA provides that provincial timber pricing systems as they existed on July 1, 2006 are “grandfathered” under the agreement — including British Columbia’s MPS — any changes to these timber pricing system that do not bring timber prices closer to market conditions can constitute circumvention.

According to the U.S. industry source, the failure to implement the coastal MPS update could be viewed as a change from the MPS as it was grandfathered under the SLA, and therefore amount to circumvention. That is because periodic updates are implicit in the MPS as it existed in July 2006, and have been Canada’s practice both before and after the SLA went into effect, usually at two-year intervals, this source said.

These periodic updates are an “essential part of the system,” this source argued, because they make sure the MPS tracks the most recent market data on timber auctions. If such an update is necessary, but the provincial government is not implementing it for some reason, then that could constitute circumvention, this source said.

**But British Columbia government and industry officials said this week that the claim by the U.S. lumber industry is unfounded** because there is no specific timeline for implementing the MPS update in the coast region. “Updates are implemented periodically and not according to a ‘regular’ schedule,” a spokeswoman for British Columbia’s

forest ministry said in a Nov. 17 e-mailed statement.

John Allan, president of the BC Lumber Trade Council, echoed that point in an interview. "There is no requirement within the Softwood Lumber Agreement to update the coastal MPS system on a regularly scheduled basis," he said. The U.S. industry source acknowledged the SLA does not specify the time frames at which MPS updates should occur.

The Coalition decided to flag this issue publicly last week in hopes that bringing attention to it will spur the British Columbia government go ahead and implement the update, according to the U.S. industry source. This source added that the Coalition has notified the Office of the U.S. Trade Representative about this problem, but at this time is not seeking any action from the U.S. government.

That said, if British Columbia fails to implement the update in the near term, the Coalition could move to ask USTR or members of Congress to take further action, this source said. While the Coalition believes that failure to implement the MPS update could constitute a breach of the SLA, it is unclear if USTR shares that view, this source noted.

In the interview, Allan speculated that the public announcement by the Coalition was meant as a tactical distraction ahead of Canada's imminent release of a legal brief in a separate arbitration under the SLA based on U.S. allegations of timber underpricing in the British Columbia interior region.

That brief, known as a "statement of defense," is expected to rebut U.S. claims that British Columbia implemented four changes to its system for grading logs in the interior region, which had the effect of providing usable logs to lumber producers at cut-rate prices reserved for damaged timber (*Inside U.S. Trade*, Aug. 19).

**The U.S. industry had expected British Columbia's government to announce or implement the update on or about July 1, as that is when it carries out a similar annual update for the MPS that governs the province's interior region. While the interior MPS is updated annually, the coastal MPS has typically been updated every two years, this source said.**

The last coast MPS update occurred in January 2009, and resulted in a significant decrease in the government-set price for most British Columbia coast timber. In its statement, the Coalition charged that the province moved swiftly in that case to implement the MPS update because it benefited the British Columbia lumber industry.

"BC cannot claim it has 'market-based' timber pricing if it rushes to implement price decreases, but then drags out the implementation of price increases," Coalition Chairman Steve Swanson said in the statement.

According to information obtained by the Coalition, the provincial government has informed the British Columbia lumber industry that the coast MPS update is expected to raise timber prices on average by seven Canadian dollars per cubic meter. Because the coast region harvests about 10 million cubic meters of softwood lumber per year, delaying this price increase by a year would save British Columbia lumber producers 70 million Canadian dollars, according to the Coalition.

In the interview, Allan declined to respond directly when asked whether British Columbia lumber producers had been informed that the coastal MPS update would raise timber prices. Instead, he stressed that both MPS systems are under constant review and that the timing of updates are up to the provincial government.

**In a Nov. 9 teleconference, Canadian Trade Minister Ed Fast declined to speculate on whether the allegations by the Coalition could lead to a new dispute under the SLA. Instead, he emphasized that the SLA has brought stability and predictability to the industry and is favored by both the U.S. and Canadian governments as well as their industries.**

Both governments favor extending the agreement by two years and are moving toward a formal extension (*Inside U.S. Trade*, Aug. 5).

Under British Columbia's timber pricing system, only about 20 percent of government-owned timber is sold by auction. The rate lumber producers pay for the remainder of the government-owned timber is determined through the MPS, which uses the auction data to create a mathematical model that can predict the price of non-auctioned timber stands based on variables such as species mix, distance from a sawmill, topography and quality of timber, sources said.

Once those variables are determined for a non-auctioned timber stand, they can be plugged into the model to determine the price for that stand. The mathematical model is based on auction data from 2004-2008, and an update would presumably change the data range to the 2006-2010 period. The update could also add new variables not included in the earlier model, one source said.

**SUBSCRIPTIONS:**

**703-416-8500 or  
800-424-9068  
custsvc@iwppnews.com**

**NEWS OFFICE:**

**703-416-8539  
Fax: 703-416-8543  
trade@iwppnews.com**

Chief Editor: Jutta Hennig  
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Associate Editors: Adam Behsudi, Matthew Schewel, Alex Lawson, Ben Hancock  
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## Administration Wrestles With New Approach To Export Control Notification

Administration export control officials remain at odds with staff of congressional oversight committees on how to develop a new approach to notifying Congress of its intent to move thousands of items from the U.S. Munitions List (USML) to the Commerce Control List (CCL), according to private-sector sources.

The challenge facing the administration is finding the middle path between the traditional approach of notifying each individual item, which is not feasible given the magnitude of the planned transfers, and the broad categorization of items that it has used in its *Federal Register* (FR) notices proposing the revamping of USML categories.

Congressional staff of the export control oversight committees want a better description of the items than found in the Federal Register notices, a better explanation of the rationale for moving these items off the USML, and a better explanation of how the administration plans to enforce its new rules to prevent diversions, sources said.

Congressional staff seem to want to guard against too broad a description or categorization that would allow an item to be transferred or decontrolled that their respective members would oppose, one source said.

For example, congressional staff objected to the scope and process of the most recent proposed revision of USML Category VIII, which covers military aircraft. It said the proposed revision would potentially lead to transferring significant military end items off the USML (*Inside U.S. Trade*, Nov. 11).

Another private-sector source speculated that the negotiations will ultimately come down to the number of items that the committees feel they must review in order to fulfill their national security oversight obligations.

Eric Hirschhorn, under secretary of Commerce for export administration, this week acknowledged the difficulties the administration is facing on the notification process.

“There are frank discussions going on, not everybody immediately agrees with everything we suggest,” Hirschhorn said at a Nov. 14 meeting of the President’s Export Council Subcommittee on Export Administration (PECSEA). “We are confident that once we are able to explain what we’re doing we will not have significant difficulties.”

Congressional staff has opposed the use of the FR notice as the administration’s formal notification because it contained broad categories of items, including significant end-items, rather than specific product descriptions (*Inside U.S. Trade*, Nov. 11).

But Hirschhorn did not discuss in detail the substantive issues raised in the consultations with Congress except to allude to the fears that the reform could weaken national security. He emphasized that the process has the support of the Defense Department, the intelligence community and other national security stakeholders and that this should allay fears in Congress that the proposed transfer of items to the CCL is not in the best interests of U.S. national security.

Hirschhorn argued that defense and intelligence stakeholders have made it clear that to continue “business as usual” under the International Trafficking in Arms Regulations (ITAR), which regulates the USML, especially with regard to parts and components, would be harmful to national security.

Officials have said, for example, that tighter controls on U.S. parts and components will lead foreign companies to “design out” U.S. content which will erode the U.S. military industrial base by encouraging the development of weapons systems elsewhere.

**Hirschhorn spoke directly only about the administration’s efforts to shorten the informal part of the notification process.** “We’re discussing with congressional staff a process that gives an ample but finite time to review the list of items proposed for transfer before we start the formal 30-day statutory clock,” he said.

Similarly, Michael Froman, deputy national security adviser for international economic affairs, said at a Nov. 16 meeting of the President’s Export Council that it has taken an average of 200 days to move an item off the USML and “we need to come up with a new process with Congress so that each item doesn’t take 200 days to move.”

This kind of timeline would be a significant obstacle as the administration is seeking to transfer hundreds of thousands of items from the USML to the CCL as part of the export control reform process, he said.

But a private-sector source said while the timelines are an issue, congressional staff will place more importance on the detail and amount of information on the items to be transferred from the USML to the CCL.

The source noted that Congress has usually taken a long time during the pre-notification period because the administration has not provided enough up-front information on the items that it wants to transfer.

In the consultations, the congressional staff has asked the administration to come up with a creative approach, but has not volunteered to provide any clearer guidance, private-sector sources said. One source said that Congress does not want to make its specific demands on notifications known to the White House because it considers it the administration’s job to come up with an acceptable proposal.

In the staff’s view, it does not want to create a situation where it would be negotiating with itself for the terms of the notification, the source said.

The source held out the hope that the two sides could still come to an agreement on how to proceed because the committees of jurisdiction do seem to be open to a workable notification process.

But congressional staff isn’t likely to make any proposals for a new notification process until they receive further

guidance from their principals, which has not been evident, according to a private-sector source. Whether these negotiations will succeed also depends on high-level engagement between senior administration officials and leaders of the committees of jurisdiction, this source added.

Two other private-sector sources expressed more skepticism that the notification dilemma can be resolved. One said that congressional committees are clearly trying to draw out the process and that House Foreign Affairs Committee Chairwoman Ileana Ros-Lehtinen (R-FL) will not go out of her way to help the implementation of the administration's export control reform.

Under Section 38(f) of the Arms Export Control Act, the president is required to give Congress a notification period of 30 days when it moves something off the USML. The process has been informally expanded to include a "pre-notification" period that Hirschhorn admitted has become lengthy over the years. Placing disciplines on this time period would cut down the time before Congress feel comfortable with starting the formal 30-day notification period.

Hirschhorn said the administration is attempting to send up notifications on a majority of the revised USML categories by March 31, although he admitted that this would be a "tall order."

A private-sector source said this goal is overly optimistic and that it is really up to the State Department to work out the USML notification disciplines. He noted that the State Department has approached the notification process with great caution in the past.

## **APEC Leaders Announce Broad Agreement To Cut Tariffs On Green Goods**

Asia-Pacific leaders this week announced a broad agreement to slash tariffs on environmental goods to five percent or less by 2015, a move that analysts said represented a positive step given China's opposition to trade liberalization in this sector. But observers also acknowledged that the deal puts off until next year the historically difficult task of hammering out a list of goods on which to cut duties.

The so-called "Honolulu Declaration" by leaders of the Asia-Pacific Economic Cooperation (APEC) forum following their Nov. 12-13 summit in Hawaii commits them to "work to develop an APEC list of environmental goods that directly and positively contribute to green growth and sustainable development objectives."

On these goods, leaders said they are "resolved to reduce by the end of 2015 our applied tariff rates to 5 percent or less, taking into account economies' economic circumstances, without prejudice to economies' positions in the [World Trade Organization]," according to the declaration.

This commitment appears to roughly reflect the U.S. proposal on green goods within APEC, which was outlined by U.S. Trade Representative Ron Kirk prior to the Honolulu summit. But it was not clear whether the U.S. had initially sought a more aggressive timeline or put forth a specific list of goods.

USTR did not respond to a request for comment by press time.

Joshua Meltzer, a fellow at the Brookings Institution who focuses on international trade, said that while the language appeared to be relatively strong for APEC — which does not generate binding agreements — it likely represented a compromise given China's public resistance to lowering duties on environmental goods in the context of APEC.

Meltzer also noted that agreeing on a list of green products has been difficult in the WTO Doha round negotiations, which are badly deadlocked. "Compiling a list of goods has bedeviled more or less everyone," he said in an interview with *Inside U.S. Trade*.

Reducing tariffs may also have less of an impact on the U.S. than it would for countries like China. According to Meltzer, U.S. duties on many green goods already sit at 5 percent or below, while China's are significantly higher.

Chinese Assistant Commerce Minister Yu Jianhua said in a Nov. 7 briefing with journalists on APEC that liberalization of environmental goods and services should be "realistic, move forward steadily, and be linked with WTO negotiations," according to an official summary of his remarks. Another Chinese official criticized the U.S. proposal for APEC outright as too ambitious for developing economies, according to press reports.

Michael Levi, senior fellow for energy and the environment at the Council on Foreign Relations, said that even if the APEC countries can agree on products on which to cut tariffs, U.S. green energy companies looking to ship to China would still face significant non-tariff barriers (NTBs), such as discriminatory procurement policies.

"It doesn't matter if the tariffs are five percent or 50 percent if the Chinese government tells [state-owned enterprises] only to buy from domestic suppliers," Levi said in an interview. China will likely continue to resist tariff cuts because it may fear that agreeing on duties would set a precedent for the U.S. and other countries to pressure it on NTBs, Levi said.

He interpreted China's argument that the U.S. proposal is too ambitious for developing countries as tactical, and said its position on the issue should be viewed in the context of broader Chinese industrial policy.

"There is a long-standing debate on the wisdom of protective barriers for infant industries," Levi said. "The reality is that developing countries benefit enormously from open markets in developed countries."

## White House Eyes Mid-2012 TPP Deal, But Says No 'Firm Deadline' Set

President Obama late last week announced that the nine countries negotiating the Trans-Pacific Partnership (TPP) agreement are aiming to finalize the negotiations in 2012, while conceding that this goal is ambitious and that much work remains in the talks, which are roughly two years old.

"There are still plenty of details to work out, but we are confident that we can do so. So we've directed our teams to finalize this agreement in the coming year. It is an ambitious goal, but we are optimistic that we can get it done," he said on Nov. 12, after meeting with TPP leaders.

Speaking to reporters afterward, a top White House official stressed that TPP leaders did not set a "firm deadline" for concluding the talks next year, but held out the possibility that countries may be able to reach a critical breakthrough as soon as the middle of 2012.

Michael Froman, deputy national security adviser for international economic affairs, suggested that TPP countries could "finish a legal text" for TPP trade ministers to review when they meet under the auspices of the Asia-Pacific Economic Cooperation (APEC) forum in mid-2012.

"But no firm deadline in terms of we will have to have an agreement then, or not. We'll have to see where we are [in] the negotiations and whether the status of the negotiations is such that we could achieve a high-standard agreement by that date," Froman said.

"Over the course of the next year ... the leaders would hope that they could complete the legal text of the agreement and make as much progress as possible on the schedules, the tariff schedules, and the other specifics of the agreement," he added.

## Obama, Kirk Highlight Need To Extend Permanent MFN To Russia

President Barack Obama and U.S. Trade Representative Ron Kirk have highlighted the need to extend permanent most favored nation (MFN) status to Russia as it is expected to join the World Trade Organization next month, or else risk putting U.S. exporters at a disadvantage.

Without permanent MFN in place, the U.S. will have to invoke a non-application clause which will mean U.S. exporters will not get the full benefit of Russia's concessions made as part of its WTO accession package. Kirk told a Nov. 16 meeting of the President's Export Council (PEC) that would be a "horrible" development.

Nevertheless, USTR has acknowledged that even with non-application, the U.S. would get the benefits of Russia's tariff cuts under a 1992 bilateral commercial agreement with Russia. That agreement obligates each side to extend the same customs duties to each others' goods that it extends to those of other trading partners.

Kirk signaled that it will be an uphill battle to get Congress to revoke the so-called Jackson-Vanik amendment, which conditions Russia's MFN status on its emigration policy toward its Jewish citizens. He said there is a "compressed" congressional calendar and lagging interest in Congress to have the vote.

"We're going to need [your] help in getting a Congress that may have a little bit of trade fatigue and certainly not ready to go through this experience on Russia," Kirk said.

Informed sources said the success of a Russia vote in Congress will largely depend on the degree to which the business community will lobby the issue in the coming months because the Russian government is not likely to get involved in pushing for such a vote. However, up to this point, Congress has not yet seen an aggressive lobbying effort from the business community, these sources said.

A private-sector source said this week that congressional Democrats do not want to have another trade vote before the election. According to this source, Republicans would only be ready to have it in the face of major business pressure, which so far has not been evident.

In addition, key House Republicans, including Speaker John Boehner (R-OH), have made it clear they oppose Obama's reset policy with Russia, of which WTO accession is a part (*Inside U.S. Trade*, Oct. 28).

Some sources questioned the extent to which the administration wants to have the vote in 2012, and Kirk gave no indication of a potential timetable. He said that the U.S. has "a bit of time" because the Russian Duma has to implement the new WTO obligations, but said he did not want to bet on how long that would take.

Russia has until June 15, 2012 to ratify its accession package if it is formally invited to join the WTO at the December ministerial meeting.

Similarly, Obama said in a Nov. 12 press conference that in light of the imminent Russian WTO membership, it is a "good time" to consult with Congress on extending permanent MFN.

"Those consultations will be taking place in the weeks and months to come," Obama said in a joint press conference with Russian President Dmitry Medvedev after a bilateral meeting also held on Nov. 12.

He said that the United States very much appreciates the cooperation and partnership it has forged with Russia around the WTO entry. "We think it's an example of the importance that both countries place on economic reform and economic growth," Obama said.

He also said that extending permanent MFN to Russia will allow U.S. businesses to take advantage of Russia's

concessions made as part of its WTO accession. In absence of permanent MFN, the U.S. is expected to invoke the non-application clause.

Kirk also acknowledged that members of Congress are skeptical that Russia's WTO membership will benefit the United States, particularly since benefits that were expected with China's accession to the WTO have not materialized.

But Kirk insisted that the administration has taken a different approach to Russia's accession than the Clinton administration took to China in the run-up to its WTO accession.

"One of the important changes we have made is China had very long periods of time to implement many of its commitments," he told the PEC. "In the case of Russia, we have required them to do probably 80-90 percent up front."

He said conveying that difference is one important message that business can help the administration to get across to Congress. "If we can just help people understand this is a different world — we did learn from China," he said.

Businesses also need to convey that bringing Russia into the rules-based system of the WTO is a benefit to the U.S. since there is the added benefit of dispute settlement, Kirk said.

Some lobbyists have speculated that invoking non-application and subsequently placing U.S. exporters at a disadvantage will serve to increase pressure on Congress to hold the permanent MFN vote next year (*Inside U.S. Trade*, Oct. 14). But others have said that such a controversial vote is unlikely to take place in a presidential election year.

## WTO Members Nearing End Of Deliberations On Ministerial Agenda Items

World Trade Organization members are nearing the end of their deliberations on which items to include in the agenda for the mid-December ministerial meeting, given that members faced an informal deadline of today (Nov. 18) to submit items that had gained consensus to the chairman of the WTO's General Council.

Today was seen as a deadline because any items that are going to be formally included on the ministerial agenda must first be approved by the General Council, which is set to hold a two-day meeting beginning on Nov. 30. The agenda for the General Council meeting, in turn, must be determined 10 days in advance.

That said, one Geneva source said deliberations would likely still spill over into the beginning of next week. The chairman of the General Council originally set an early November deadline for members to achieve consensus on their proposals, but deliberations have nonetheless continued, this source pointed out.

At press time, Geneva sources said there was still no consensus on any ministerial proposals besides those that can be described at this point as fairly "administrative" in nature. One source said members may not be able to actually agree on more substantive proposals, although discussions continued at a rapid pace late this week.

The proposals under consideration included a proposal by Egypt to help secure food supplies for least developed countries (LDCs) and net food-importing countries; a European Union proposal to limit food export restrictions; proposals to improve the functioning of the WTO's Trade Policy Review Mechanism (TPRM); various issues prioritized by LDCs; and a proposal by Australia on regional trade agreements, sources said.

This week, WTO members informally reached consensus on extending the prohibition of challenges of government policies or measures that undermine the benefits of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) without directly violating that accord for another two years.

They also agreed to an essentially meaningless commitment related to an extension of the mid-2013 deadline for LDCs to implement full obligations under the TRIPS Agreement. LDCs originally faced a 2005 deadline to implement TRIPS obligations, but that deadline was subsequently extended until July 1, 2013.

Under the auspices of the TRIPS Council, WTO members are able to further extend the 2013 deadline on their own, and one observer said they will likely do so. This week, WTO members agreed to have ministers endorse language in mid-December recommending that the TRIPS Council consider extending the 2013 deadline.

One observer said the purpose of this convoluted formulation is primarily to give a political "win" to LDCs that have worked hard to get their issues on the ministerial agenda. Another source said ministers would also likely endorse LDC demands to seek to improve the WTO accession process for aspiring LDC members next year.

Ministers are also expected to extend another existing "moratorium" that bars the imposition of customs duties on electronic transmissions, Geneva sources said.

The WTO's Agriculture Committee met on Nov. 16 to discuss Egypt's proposal, but sources said a range of issues still remained at that meeting's conclusion. The proposal asks ministers to direct the WTO to set up a work program for least-developed and net food-importing countries to ensure these countries have access to food, consider new rules to exempt them from other WTO members' export restrictions, and help these countries have access to trade finance.

At the meeting, most members supported the idea of a work program, but many had questions and pointed out they had only received the proposal in the last few days. Some also argued the WTO is not in a position to ensure food security for anyone, only to devise rules that improve the conditions for food supplies, sources said.

The theme of this proposal is closely linked to the EU proposal, under which ministers would agree to remove food export restrictions or extraordinary taxes on food purchased for non-commercial humanitarian purposes by the World Food Program, and to not impose such restrictions in the future.

Australia has urged WTO members to increase WTO monitoring of regional trade deals, although some sources have

doubted that will make it onto the ministerial agenda (*Inside U.S. Trade*, Nov. 11).

At some point, these agenda items will have to be “merged” in some fashion with the ongoing work spearheaded by WTO Director-General Pascal Lamy to determine what message the ministerial will impart on the Doha round. That, however, is not the focus of work in Geneva this week, Geneva sources said.

## House Approves Massive Funding Bill, Including USTR Staffing Provisions

The House yesterday (Nov. 17) approved by a 298 to 121 vote the conference report on a large funding bill covering numerous federal agencies for fiscal year 2012 along with a continuing resolution (CR) to keep the federal government funded through Dec. 16. The current CR was set to expire today (Nov. 18).

The Senate was poised to vote on the report at press time, and several observers said it was likely to pass. The bill will then require the president’s signature by the end of the day today in order to avert a government shutdown.

Among the agencies receiving FY 2012 funding from the legislation are the Office of the U.S. Trade Representative, the Commerce Department, the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA).

The House examined the measure under a closed rule with no amendments possible, and the Senate was also set to hold an up-or-down vote without amendments.

The conference report granted modest increases to USTR, FDA, the International Trade Administration (ITA) and the Bureau of Industry and Security (BIS) when compared to their FY 2011 funding, while reducing funding for the USDA’s Foreign Agriculture Service. Both ITA and BIS are part of the Commerce Department.

The report also addressed some of the major discrepancies regarding trade-related funding between the House and Senate versions of the appropriations bill, and in the case of USTR added a completely new provision to ensure the agency remains adequately staffed both in general and specifically with respect to its China enforcement operations.

The conference report granted \$51.3 million to USTR, an increase from the \$47.7 million it received in FY 2011, but a level consistent with the amount of funding Obama requested in his February budget request and the amount provided in the Senate version of the appropriations bill.

In a statement accompanying the conference report for H.R. 2112, the House and Senate conferees directed USTR to hire no less than four additional staff members for the monitoring and enforcement office.

The conferees further stipulated in their statement that the new staffers shall be fluent in Chinese; monitor and enforce China’s compliance with its WTO obligations; and assist in early stage identification and review of measures arising out of China’s Five-Year Plans.

The four additional staff would presumably include a new assistant USTR for monitoring and enforcement. That post is currently vacant, according to the USTR website.

In a February House Ways and Means Committee hearing, USTR Ron Kirk said his office was “woefully short” of funding in its investigation division, adding that it had burned through a year’s translation budget in three months in the tire safeguard case against China (*Inside U.S. Trade*, Feb. 11).

The conferees’ statement also asked USTR to submit a report to both appropriations committees on the number of so-called “critical vacancies” within USTR. The members did not explicitly define what would constitute a critical vacancy, but encouraged USTR to focus its report on the intellectual property enforcement area and the steps USTR is taking to address these “shortfalls.”

The report, which is due no later than 60 days after the law’s enactment, should also provide an assessment of USTR’s current staffing in China with respect to enforcement needs, according to the statement.

Finally, the conferees’ statement admonished USTR for its delay in providing yearly budget justifications and instructed USTR to submit its FY 2013 budget request “not later than two days” after President Obama’s FY 2013 budget request is submitted to Congress. The president traditionally issues his budget request in mid-February.

**One of the largest gaps between the two chambers regarding trade-related funding in the appropriations bill** was for the FDA, which is tasked with enforcing the Food Safety Modernization Act (FSMA) that Congress passed last year. The conference report grants \$2.506 billion for FDA, an increase from the \$2.457 billion it received during the previous fiscal year. Prior to the conferencing process, the Senate gave FDA \$2.497 billion for FY 2012 while the House-approved funding was roughly \$335 million less than that.

Of FDA’s \$2.506 billion appropriation, \$39 million is to be used to implement the FSMA, a level that was met with praise from Alliance for a Stronger FDA Vice President Margaret Anderson.

With respect to farm subsidies under USDA, the conferees also kept in place a measure inserted during the Senate’s debate last month from Sen. Tom Coburn (R-OK) that capped the threshold for direct payment recipients at \$1 million of adjusted gross income. The House version of the legislation set the direct payment threshold at \$750,000 of “in-farm income.” Coburn introduced his amendment in an effort to cut off payments to millionaires who collect subsidies despite not earning income from farm plots.

The Commerce Department’s ITA received \$465 million for the forthcoming fiscal year, a boost from the \$450.1

million it received for FY 2011. The bill also directs Commerce to establish a task force on “job repatriation and manufacturing growth” and further directs the department to produce a report on “related incentive strategies and implementation plans.”

Rep. Frank Wolf (R-VA) issued a statement following the filing of the conference report that said the goal of this provision is “to develop a national job repatriation strategy to bring jobs back to America that have been outsourced to China and other countries.”

The conference report allocated \$101 million of funding to BIS, which administers dual-use export controls, a slight increase from the \$100.1 million BIS received in FY 2011.

The USDA’s Foreign Agriculture Service was given \$176.3 million, a reduction from \$192 million it received in FY 2011.

**The bill, H.R. 2112, was subject to a conference because the House initially passed legislation to fund only** USDA, FDA and other related agencies. When that bill was transferred to the Senate, Appropriations Committee Chairman Daniel Inouye (D-HI) inserted a substitute amendment that added funding for the Commerce, Justice and Science group of agencies as well as the Department of Transportation and the Department of Housing and Urban Development (HUD). The Senate approved the measure earlier this month and both chambers then appointed conferees to reach a compromise on the differences between the two bills.

The CR attached to the report is a clean extension of the CR currently funding the government. It continues funding through Dec. 16 for all federal agencies not covered by the three underlying appropriations bills in the conference report. The new CR also renews the charter of the Export-Import Bank of the United States through that same period, allowing it to continue operating. Separate House and Senate legislation that would provide a long-term re-authorization for the Ex-Im Bank has not yet come to a floor vote in either chamber.

The appropriations bill drew opposition from conservative groups such as Heritage Action and the Club For Growth, who urged members to oppose the bill based on a measure in the HUD appropriations that would allow the federal government to finance larger mortgages through Fannie Mae, Freddie Mac and the Federal Housing Administration.

While it is possible that the Joint Select Committee on Deficit Reduction (JSC) may slash some of the newly appropriated funds within the report, observers said such action was unlikely given that the conference report represents a bipartisan compromise between two chambers and that the JSC’s recommendations will apply to fiscal year 2013 and beyond. The JSC is tasked with trimming \$1.2 trillion from the federal budget by Thanksgiving.

## News Briefs

### Administration Opens Export Enforcement Coordination Center

An inter-agency Export Enforcement Coordination Center (EECC) opened its doors last week in a temporary location in Washington and will be moving to a permanent home by January, a senior Commerce Department official said this week.

The EECC is part of the administration’s overall export control reform initiative and will serve to coordinate information sharing among the agencies that are tasked with enforcing export controls.

The permanent headquarters of the EECC is currently being constructed in Tysons Corner, Va., and will be operational by January, Eric Hirschhorn, under secretary of Commerce for export administration, said at a Nov. 14 meeting of the President’s Export Council Subcommittee on Export Administration (PECSEA).

The EECC will be directed by the Department of Homeland Security’s Immigration and Customs Enforcement (ICE) agency. Deputy directors will be assigned from the Federal Bureau of Investigation and the Commerce Department’s Bureau of Industry and Security (BIS) Export Enforcement Office to minimize duplicative enforcement efforts.

BIS is also working on establishing 24 new positions in the agency that will focus specifically on the increase in licenses the agency will process as a result of the reform effort, which is expected to transfer thousands of items from the State Depart-

ment-administered U.S. Munitions List (USML) to the Commerce Control List (CCL).

These employees will not only process the licenses where an exception is not available but also conduct outreach and education on the new system for companies, according to Kevin Wolf, assistant secretary of Commerce for export administration, who also attended the PECSEA meeting.

The Commerce Department is also in the process of setting up a new intelligence unit that will liaison with other members of the intelligence community in other government agencies.

This unit will vet license applications under the new system to consider whether the parties in a transaction are legitimate, consider parties for the entity list and renew the entity list as required, David Mills, assistant secretary of Commerce for export enforcement, said at the meeting.

### Ahead of JCCT, Consumer Group Urges Vilsack To Not Cut Poultry Deal

A consumer health group last week stepped up pressure on Agriculture Secretary Tom Vilsack not to cut a deal with China under which the United States would let Chinese exports of cooked poultry into the U.S. market in exchange for a commitment from China to lower barriers facing U.S. meat exports.

Ahead of his trip to China that begins on Nov. 20, Food &

Water Watch Executive Director Wenonah Hauter submitted to Vilsack a petition signed by 28,245 U.S. consumers who said they are not confident that Chinese food products are safe.

In an accompanying Nov. 10 letter, Hauter urged Vilsack to communicate this unease to Chinese officials, and to not make a “quid pro quo for opening trade opportunities ... in exchange for sacrificing food safety standards.”

The petition comes on the heels of a letter sent to Vilsack on Oct. 24 by Food & Water Watch and five other consumer health groups telling the agriculture secretary to “proceed cautiously” in considering whether to grant Chinese facilities the right to export cooked poultry to the United States.

A rule that would allow this kind of trade, as long as the poultry was raised in the United States or Canada, was finalized in 2006, but no Chinese facility has yet made a shipment.

A U.S. Department of Agriculture audit conducted in December 2010, the results of which were made public on Oct. 6, showed that while China’s health authority met the “principal requirements” to show it can uphold sanitation standards equivalent with the U.S., certain guidelines were not clearly defined. USDA requested that China submit further clarification before moving forward.

The consumer health groups’ letters came in part as a reaction to another letter sent in October by meat industry groups, who conversely urged Vilsack to press ahead with allowing Chinese poultry imports. Those groups view China’s various restrictions on U.S. meat shipments, including its total ban on U.S. beef, as tightly linked with the poultry issue — although industry sources say that China has not set any conditions explicitly.

Vilsack is set to visit Chengdu, China, on Nov. 20-21 for the 22nd session of the U.S.-China Joint Commission on Commerce and Trade (JCCT) with Chinese Vice Premier Wang Qishan. He will be joined by U.S. Trade Representative Ron Kirk and U.S. Commerce Secretary John Bryson, who lead the U.S. JCCT delegation.

### **USTR Official Joins Senate Finance Committee Democratic Trade Staff**

Bruce Hirsh has left his job at the Office of the U.S. Trade Representative and last month joined the Senate Finance Committee Democratic staff as international trade counsel, according to informed sources.

Hirsh had served as the deputy assistant USTR for WTO and multilateral affairs for the past four years, they said.

In a related development, Michael Smart left his job last month as international trade counsel at the Finance Committee, which he has held since July 2009, to join Rock Creek Global Advisors as a vice president. Rock Creek is an international consulting firm founded by Daniel Price and Joshua Bolten, former senior officials in both the George H.W. Bush and George W. Bush administrations (*Inside U.S. Trade*, July 8).

At the Finance Committee, Smart’s portfolio included WTO issues such as the Doha round, dispute settlement and accession. He also covered agricultural trade issues, trade and environment and trade promotion authority.

Before joining Finance, Smart served as the director for international trade and investment at the National Security Council from July 2007 to January 2009.

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## **Russia Backtracks On Plant Inspections . . . begins on page one**

some violation.

By contrast, the working party report, adopted in Geneva last week, does not provide U.S. authorities the ability to unilaterally re-certify plants. Instead, it gives that authority only to Russia, and some industry sources worry that this could lead to unreasonable delays when it comes to re-certification of plants for export.

This marks the second time that the final accession package may not reflect the terms to which Russia previously agreed in bilateral talks with the United States. High-tech groups also worry that the working party report does not commit Russia to join the Information Technology Agreement upon accession (*Inside U.S. Trade*, Nov. 11).

Under the terms of the 2006 bilateral agreement on plant inspections, Russia was to grant the re-certification authority to the United States immediately, rather than waiting until accession actually takes place. But Russia backed out of the deal in 2008, when it failed to comply with its terms for poultry plant inspections, sources said.

An official the Office of the U.S. Trade Representative this week said the United States is “engaging with Russia to revise the bilateral Plant Inspection Agreement,” in reference to the 2006 bilateral deal.

The official said Russia’s terms of accession contain extensive details and commitments on how it will conduct inspections and approval of meat and poultry facilities. “Under those commitments Russia must comply with relevant provisions of the SPS Agreement and international standards for conducting inspections,” the official said.

In a joint Nov. 10 statement, the National Chicken Council, National Turkey Federation and the USA Poultry and Egg Export Council commended the Office of the U.S. Trade Representative for concluding accession negotiations with and reaching an agreement that will continue to allow Russia to be a top export market for U.S. poultry products.

However, the groups concluded in their statement that they “will continue to work with USTR, U.S. Department of Agriculture and Congress to help ensure the negotiated access for our products to Russia.”

An industry source said the statement was phrased carefully to thank the U.S. government for its work but also refrain from offering resounding support for the provisions that were negotiated on SPS and market access. Russia not only failed to live up to the 2006 deal, but also kept its global tariff-rate quota (TRQ) for poultry static when compared to the current level and increased the in-quota and out-of-quota tariffs (see related story).

Industry sources said Russia’s adherence to the WTO agreement on the application of SPS measures will add more

predictability and accountability for agricultural imports. U.S. imports have often been thwarted by Russian policies that have blocked shipments based on what industry considers to be arbitrary and non-science based criteria.

**The 2006 agreement provides strict language that would give the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) the authority to unilaterally inspect and certify new plants or re-certify existing plants that had completed corrective actions in accordance with Russian requirements after being de-listed by Russian authorities.**

This new procedure was meant to minimize interruptions in exports of poultry to Russia from new plants or plants needing to remedy a deficiency found during a joint U.S.-Russian audit, because under the previous system these plants would not be able to export until another joint audit was performed.

The agreement also prevented delays that U.S. producers said were caused by the long periods of time it took for Russian officials to formally approve facilities after inspection and provide their customs officials with an updated list of approved facilities.

Russia unilaterally opted out of this agreement about three years ago. After joint audits of U.S. pork and poultry plants, Russia de-listed a number of facilities as eligible for export and refused to acknowledge the authority granted under the agreement to FSIS to inspect and re-certify plants that had completed corrective actions, sources said.

An industry source said Russia likely made this decision because it viewed the agreement as an impediment to its ability to block exports as it looked for ways to decrease competition and promote its own domestic industry. The WTO's SPS Agreement, to which Russia will be bound once it joins the WTO, does not clearly give FSIS the authority to unilaterally certify or re-certify U.S. plants for export, this source said.

However, Russia's commitments, except in cases of serious risks to animal or human health, do prevent it from suspending imports from plants based on the results of on-site inspections until it has given the exporting country the opportunity to propose corrective measures. This process would require Rosselkhoznadzor, Russia's Federal Service for Veterinary and Phytosanitary Surveillance, to send a preliminary report to the competent authority of the exporting country for comments.

This commitment, while an improvement from Russia's current system, does not give the competent authority in the United States the ability to unilaterally re-certify a plant for export if it determines that the facility has taken corrective actions in accordance with Russian requirements, sources said.

Industry generally welcomed Russia's commitment to the SPS agreement because it will hold Russia's decisions to restrict imports accountable to international standards, recommendations and guidelines.

It will also subject Russia to the dispute settlement process if a member argues that Russia has taken measures that are not based on scientific principles.

Although the SPS agreement does not define scientific principles, Russia is expected to develop and apply international standards on SPS based on its membership and participation in the Codex Alimentarius Commission, the World Organization for Animal Health, and the International Plant Protection Convention, sources said.

## **Russian TRQs In Accession Deal Lock In Reduced Access For U.S. Poultry**

Russia's meat tariff-rate quotas (TRQs) negotiated as part of its World Trade Organization accession package will lock in current tonnage levels for U.S. poultry producers but increase the tariffs they face; largely maintain the access for U.S. pork producers; and improve export opportunities for beef producers, according to Geneva sources.

The accession package locks in the 2011 global TRQ for poultry exports, and provides no country-specific quotas. This constitutes a drastic loss for U.S. poultry producers, who as recently as 2008 enjoyed a country-specific TRQ allocation that was two-thirds larger than the 2011 global TRQ.

Poultry imports also face an increase in in-quota and out-of-quota tariffs in the accession package compared to the tariffs they faced this year.

U.S. pork producers were able to largely maintain their current market access in the accession package. The package offers them a TRQ that is 14 percent smaller than their 2011 access, but also decreases both in-quota and out-of-quota tariffs compared to current levels.

Faring best are U.S. beef producers, who saw a minimal increase in the global combined TRQ for frozen and fresh beef, but gained a 50 percent increase in their country-specific TRQ for frozen beef compared to the status quo. They also saw a reduction in the out-of-quota tariff that is applied to all types of beef.

The accession package obligates Russia to phase out the pork TRQ in nine years, but allows it to keep in place both the poultry and beef TRQs indefinitely.

An industry source said U.S. producers are able to live with the outcome of Russia's accession commitments, but would have preferred an agreement providing for a larger overall poultry TRQ and a lower in-quota tariff for poultry.

This lackluster feeling appeared to be reflected in a joint statement issued by U.S. poultry groups.

"We appreciate Ambassador Kirk and his team of negotiators for their tireless and determined work," the groups said. "We recognize that the conclusion for Russia's membership involved tough negotiations," and the agreement that

was reached “will continue to allow Russia to remain one of the top export markets for U.S. poultry products,” it states.

Signing the Nov. 10 statement were the National Chicken Council, National Turkey Federation, and USA Poultry and Egg Export Council.

For poultry, Russia’s final goods schedule includes a 250,000 metric ton TRQ for frozen, boned chicken parts and a TRQ of 100,000 metric tons for frozen, mechanically de-boned chicken, which U.S. industry groups typically do not ship to Russia.

Both of those TRQs are “global,” which means they are open to all foreign exporters. The combined numbers match the global 350,000 metric ton TRQ Russia set for chicken for 2011.

This is a drastic reduction from the access U.S. poultry exporters enjoyed as recently as 2008. At that time, they had a TRQ of 900,000 metric tons that was reserved only for them, and not available to other foreign exporters.

The industry held out little hope that Russia would grant U.S. exporters the 2008 access in its accession schedule due to the limited access offered in 2011 and the expected TRQ for 2012, which was set at 330,000 metric tons.

The accession package also calls for an in-quota tariff of 25 percent and an out-of-quota tariff of 80 percent. Russia now imposes an in-quota tariff of 15 percent and an out-of-quota tariff of 75 percent for all types of meat.

The European Union was the only WTO member for which the accession package provides a member-specific poultry TRQ. The EU as a whole will have a specific allotment of 80,000 metric tons carved out of the total TRQ for frozen, boneless chicken.

An industry source said this is not a major setback for U.S. producers because U.S. companies do not generally ship this type of chicken to Russia because of salmonella risk. Russian authorities also test U.S. boneless chicken more thoroughly for salmonella than similar EU products, which raises the risk of having U.S. processing plants removed from the list of approved exporters to Russia, this source alleged.

If Russia ever phased out its chicken TRQ, the accession package allows it to still impose a 37.5 percent tariff. The TRQ included in the accession package also does not include whole birds, which will be subject to a 80 percent tariff, sources said.

This exclusion mainly hurts Brazil, which primarily exports whole chickens, an industry source said. Russia’s accession package also includes a 14,000 metric-ton TRQ for turkey, with the same in-quota and out-of-quota tariffs that apply to chicken.

**Russia will establish a TRQ of 400,000 metric tons for fresh, chilled and frozen pork**, and a TRQ of 30,000 metric tons for pork trimmings.

This is a decrease from the 500,000 metric-ton TRQ Russia set for 2011, but still higher than the TRQ of 350,000 tons it set for 2012. The United States was granted a country-specific allocation of 57,500 metric tons in 2011.

However, Russia’s WTO accession TRQ for pork also does not include country-specific allocations. The in-quota tariff is set at zero and the out-of-quota tariff is set at 65 percent. The TRQ for pork will be phased out by Jan. 1, 2020 and replaced by a flat tariff rate of 25 percent, sources said.

For beef, Russia’s WTO goods schedule includes a 530,000 metric ton TRQ for frozen beef, of which the United States and EU will each get a 60,000-ton, country-specific allotment. Costa Rica, the only other country to receive a country-specific allocation, was granted 3,000 metric tons.

Russia also agreed to a 40,000 ton TRQ for fresh and chilled beef with no country-specific allocation. The in-quota tariff was set at 15 percent and the out-of-quota tariff is set at 55 percent, sources said.

A Geneva source said Costa Rica got its allocation as a tradeoff for not demanding more concessions from Russia on access for sugar.

Russia, in its goods schedule, was able to retain a minimal tariff reduction on sugar to protect its own sugar beet industry. Russia also agreed to work on reforming its tariff regime for sugar in 2012 “with a view to further liberalization,” according to a WTO press release.

Russia’s beef TRQs would be extended indefinitely, but if Russia chooses to eliminate them, all beef will be subject to a 27.5 percent tariff.

Russia’s combined TRQ allowance for beef in its accession package — 570,000 metric tons — is slightly higher than the 560,000 metric tons of TRQ access Russia provided in 2011, which was the same amount set for 2012.

In addition, U.S. exporters will benefit from the 60,000 metric ton country-specific TRQ for frozen beef. That U.S. country-specific allocation was only 41,700 metric tons in 2011, and Russia had previously said it would eliminate it altogether next year.

Russia also pledged to work on an acceptable definition of “high-quality” beef within 18 months of its accession, with the stipulation that it not discriminate among WTO members. This was one of the final issues that Russia needed to address before members agreed to adopt the accession package at a Nov. 10 working party meeting in Geneva.

Russia also agreed to a 15,000 metric-ton TRQ for whey products, with a 10 percent in-quota tariff and a 15 percent tariff for product shipped outside the quota.

It also agreed to enter the WTO with a commitment to limit trade-distorting agricultural subsidies to \$9 billion initially, and reduce them to \$4.4 billion by 2018. Russia also agreed to limit its product-specific subsidies to 30 percent of its total trade-distorting subsidy level. This cap on product-specific subsidies would be in place until Dec. 31, 2017.

Russia also agreed to eliminate export subsidies for all agricultural exports.

## Congress Mulls Possibility Of Japan Joining TPP . . . begins on page one

In order to identify specific trade barriers that Japan would need to address, congressional staff needs to hold further consultations with stakeholders and spend more time researching the issues. Some U.S. stakeholders are already reaching out to congressional staff, including auto industry representatives, sources said (see related story).

But Congress will likely move quickly, as Japan's potential TPP participation is a "high priority" issue that members want to address in the near term, a House aide said.

According to this aide, whether Japan will join the ongoing TPP talks, and the timing for when it could do so, will likely be determined by the outcome of further talks between the United States and Japan. These talks will allow the U.S. to determine if Japan is ready to join the negotiations, the source said.

Those bilateral talks, in turn, will follow the internal U.S. consultations between Congress and the administration, the aide said. Other sources said the administration will also reach out to stakeholders to assess what issues they want addressed and how to address them.

A U.S. Trade Representative spokeswoman this week said that no meetings between the United States and Japan to discuss Japan's interest in TPP have yet been scheduled. She declined to comment on whether Japan would have to make any market-liberalizing moves in areas like beef market access before it could participate in the talks (see related story).

**It remains far from clear that Japan will actually enter the ongoing talks in the near term.** That is partly due to the tentative nature of Noda's announcement, which appeared to be scaled back at the last minute from a more definitive announcement that Japan would seek to join the TPP talks, sources said.

On Nov. 11, Noda announced that Japan will enter into consultations with current TPP partners to explore the possibility of joining the talks, but stopped short of declaring that Japan is unequivocally committed to doing so. In subsequent press conferences, Noda downplayed the extent of his commitment.

In a Nov. 13 press conference, for instance, Noda stressed that he has only committed Japan to enter into consultations with TPP partners towards participating in the TPP negotiations, and said he hoped his comments will be perceived "as no more and no less than what I have stated."

Japan seeks to hold these negotiations, and the process "will then continue through sufficient national debate, and we will reach a conclusion on the TPP faithfully from the viewpoint of our national interests," he added.

Observers said this commitment is considerably less than what many TPP officials were expecting after meeting with their Japanese counterparts last month on the sidelines of the TPP negotiating round in Lima, Peru. These Japanese officials did not participate in the negotiations at that last round.

It is also unclear how strongly committed the Obama administration is to having Japan quickly join the ongoing talks. While several sources insisted that foreign policy experts in the administration want Japan to join for geopolitical reasons, top officials last weekend also stressed that Japan's interest will not slow down the pace of the talks among current members.

TPP partners "don't want the expressions of interest of potential new members to either delay or dilute the path we're on," Michael Froman, deputy national security adviser for international economic affairs, said last weekend while attending the Asia-Pacific Economic Cooperation (APEC) forum summit.

He said the current plan is for TPP countries to put a "lot of emphasis and energy" around adhering to an ambitious timetable in the talks, and simultaneously talk with Japan to discuss its possible entry, and then "see where that takes us."

One business source argued that Japan will face a more difficult time getting into the talks in light of the fact that Canada and Mexico last weekend also expressed their interest in joining the TPP talks.

TPP partners may conclude that admitting all three countries to the ongoing talks is too burdensome. At the same time, they may be hard-pressed to explain, for instance, why Japan is ready to enter the talks but not Canada. In light of that reality, TPP partners may simply agree to hold off on any new entrants for now, this source speculated.

At the same time, several observers argued that if Japan reaches a domestic consensus and pushes hard to join the talks, the United States and other TPP partners would not be able to deny it entry, given its status as a major economy and a critical ally in the Asia-Pacific region.

According to Froman, any possible new entrants to the TPP negotiations would likely have to accept what has already been agreed upon by current TPP negotiators. "I don't think it is likely that with new entrants the TPP parties are likely to reopen agreed-upon texts," he said.

Froman suggested that TPP countries could "finish a legal text" by the middle of next year, although he conceded that more time may be necessary to wrap up an entire deal. "Over the course of the next year ... the leaders would hope that they could complete the legal text of the agreement and make as much progress as possible on the schedules, the tariff schedules, and the other specifics of the agreement," he added.

**Japan's commitment to a broad market opening was the subject of controversy immediately after the bilateral meeting between President Obama and Noda in Hawaii.**

A Nov. 12 White House statement issued after that meeting states that Obama welcomed Noda's statement "that he would put all goods, as well as services, on the negotiating table for trade liberalization." On its face, this statement does

not appear to commit Japan to anything, except not to seek up-front exclusions in the negotiations.

But even this statement was sufficient to stir up controversy in Tokyo. The White House this week was asked repeatedly by reporters whether it will issue a correction to the statement in light of the objection by Japanese officials that this was an incorrect characterization. The White House responded that there was no reason to do so.

In a Nov. 11 statement, USTR Ron Kirk welcomed Noda's announcement but stressed that Japan must be prepared to take on serious commitments if it is to join the talks.

"To join the negotiations, Japan must be prepared to meet the TPP's high standards for liberalizing trade and to address specific issues of concern to the United States regarding barriers to agriculture, services, and manufacturing trade, including non-tariff measures," Kirk said.

Japan already held an initial round of consultations with TPP countries under its previous prime minister, even though at that point it had not reached an internal consensus on whether or not to attempt to join.

## **Agriculture Groups Divided On Farm Bill Spending . . . begins on page one**

The letter responds to proposals put forth by Southern growers of rice, peanuts, sorghum and cotton for programs to be included by the agriculture committees in suggestions that they are trying to put forth to the Joint Select Committee on Deficit Reduction (JSC).

Southern farm groups argue that the proposal endorsed by growers of wheat, corn and soybeans — which is a revenue insurance scheme — would not prove as effective a safety net for them. For that reason, many Southern farmers are asking Congress to bolster the counter-cyclical payment (CCP) program to make it more effective for them.

They are especially keen to achieve this upgrade to the CCP program because it now appears likely that Congress will opt to do away completely with direct payments, a farm subsidy that has most benefited Southern farmers. They believe the revenue insurance scheme will not make up for the loss of direct payments, sources said.

Direct payments are classified under the World Trade Organization as non-trade-distorting subsidies, while crop insurance and CCPs are viewed as more trade-distorting.

The seven groups who wrote the letter do not object to a CCP system as such, but object to the details of the Southern proposal. They fear it would be costly to implement, and would take too much of the limited money available for all farm programs away from the revenue insurance scheme, making that insurance scheme less effective.

The chairs of the agriculture committees, Sen. Debbie Stabenow (D-MI) and Rep. Frank Lucas (R-OK), have struggled to craft a proposal to submit to the JSC that will achieve an agreed-upon \$23 billion in savings over 10 years, in part due to the infighting among agricultural groups on how to best spend that money.

Because it is hard to determine cuts without also drafting the corresponding policy, Stabenow and Lucas are essentially trying to write the 2012 farm bill by themselves, an effort that normally involves months of debate and hearings in Congress.

They missed a self-imposed Nov. 1 deadline to submit legislation to the JSC, and many agriculture sources this week questioned whether they would be able to finalize the legislation before Nov. 23, the date by which the JSC must submit its legislation to Congress for an up-or-down vote.

**In essence, Southern farmers of rice, peanuts and sorghum are demanding that Congress raise the target prices for the CCP program to make it more relevant to today's market.** Under the CCP program, farmers receive payments when prices dip below certain levels, but those levels are set so low right now that payments rarely occur.

Under the Southern proposal, the new target price would likely not be so high as to guarantee that a farmer would break even, due to budget constraints, but this approach would still help compensate for the fact that Southern farmers are likely to lose the direct payment program that has typically benefited them the most, one proponent said.

These Southern growers also want Congress to change the way CCP payments are calculated, so that payments are based on a farmer's actual planted acres and yield, rather than based on historical production of crops that the farmer may no longer be planting.

This would help to increase payments to Southern farmers, many of whom have only two-thirds of their crop covered under the CCP system due to its reliance on base acres, rather than actual planted acres. Lucas has endorsed these proposed changes, sources said.

Southern farmers argue that farmers should be free to choose between the bolstered CCP scheme and the revenue insurance scheme favored by growers of corn, wheat, soybeans, and other crops. But many Southern farmers would likely choose the former, in part because market prices for Southern commodities in recent years have been relatively low, with the exception of a spike in 2008. Revenue insurance scheme payments are based in part on past prices.

In their letter, the seven groups rejected these proposed changes to the CCP program. They said payments must be based on historical base acreage and historical yield, because otherwise farmers would make planting decisions based on federal income guarantees instead of market signals, leading to over-planting and distortions in the market.

The seven groups also criticized a separate approach forwarded by the National Cotton Council (NCC), which is referred to as the Stacked Income Protection Plan, or STAX, and would only be available to upland cotton growers.

Cotton is also considered a “Southern” crop, but NCC is favoring a distinct approach for cotton growers.

NCC’s approach is similar to that suggested by corn growers and others in that it would replace existing CCPs, direct payments and the Average Crop Revenue Election (ACRE) program with a revenue guarantee program, according to an analysis by the Congressional Research Service.

But it also contains a key difference — the inclusion of a “fixed reference” price to act as a floor price guarantee when projected harvest prices fall.

The letter this week was also notable in that it appeared to signal a significant shift in policy by the National Corn Growers Association, which has said that revenue protection measures should be triggered based on crop reporting district-level indicators.

In the letter, however, the signatories argue for farm-level protection, which is favored by commodity groups like the American Soybean Association with members in Western states where crop reporting districts are larger.

That has been a sticking point for lawmakers. Last week, Sen. Max Baucus (D-MT), who sits on the JSC, rejected a proposal by Lucas and Stabenow that would have triggered payments for losses at the county-level.

Baucus and Sen. Kent Conrad (D-ND) argued that farm-level revenue insurance against “shallow losses” is necessary for Western states, where counties are larger and weather patterns are more variable. There, it more likely that farmers could see individual revenue declines due to bad weather, but not receive a payment because the county-wide average did not decrease (*Inside U.S. Trade*, Nov. 11).

The revenue insurance scheme being discussed by agriculture committee leaders would guarantee a small percent of revenue that is not covered by crop insurance policies in the case of a “shallow loss,” and bases its guarantee levels in part on market prices over the past five years. This benefits crops like corn and soybeans because they have experienced high prices in recent years, according to one proponent of the Southern approach.

## **U.S., EU Find Areas For Cooperation In Middle East, But Admit Differences**

U.S. and European Union trade officials this week offered a broad outline of areas where they can pursue joint efforts to help spur trade integration in the Middle East and North Africa, but also acknowledged that they may not be the most natural allies in the effort because of competing business and investment interests.

Daniel Mullaney, assistant U.S. Trade Representative for Europe and the Middle East, and EU trade and agriculture counselor Hiddo Houben at a public event this week agreed that they have different approaches when it comes to what kind of regulatory reforms they would like to see Middle Eastern countries adopt.

While the EU believes it is in the interests of these countries to bring their regulations into compliance with the EU single market — which would allow closer economic integration with a geographical neighbor — the U.S. is wary of countries in the region adopting standards that may later prove burdensome to American companies.

For example, the U.S. and EU have long disagreed on issues such as geographical indicators and the use of hormones in beef production, Mullaney said after the event. Business sources have also said that when Middle Eastern countries adopt EU-style auto regulations, it poses new challenges to trade for U.S. auto companies trying to export to the region.

“At first glance, one has to recognize that there are challenges” to the U.S. and EU working together, Mullaney said at the event, which was hosted by the Center for Strategic and International Studies in Washington. “When it comes to U.S.-EU cooperation, I don’t think we want to be naive.”

At the same time, the two officials said they believed they could work together to encourage the adoption of general good regulatory practices — such as posting proposed regulations for comment in advance — even while they may disagree on substance.

That is one of four areas that the U.S. and EU have identified as representing a potential for cooperation, according to Mullaney. The others are creating business-friendly environments that are transparent, predictable and offer recourse to investors; smoothing the flow of goods across borders; and helping small and medium enterprises (SMEs) in the region boost investment.

On a practical level, Mullaney said the EU and U.S. could also cooperate by encouraging countries to sign up to a set of principles on trade in information and communication technology (ICT) services that the U.S. and EU agreed to in April, under the framework of the Transatlantic Economic Council. Those principles — which are backed by many U.S. technology companies — include maintaining open networks for consumers to access and distribute information, applications and services of their choice, and transparency of rules affecting trade in ICT services.

Cooperating with the EU is a key part of the U.S. initiative to boost trade ties within the MENA region, which was first outlined by President Obama in an April speech. The effort also aims to increase trade and investment between MENA countries and the U.S., and to “open the door” to those countries forming their own regional trade arrangement, Mullaney said, reiterating earlier comments by other U.S. trade officials.

The U.S. is still in the preliminary stages of talking with officials in countries in the region, specifically Egypt and Tunisia, to better understand what their priorities are, he added. Both Mullaney and Houben underscored that they do not want to take a prescriptive approach, but instead want to respond to what MENA leaders want in terms of the speed, level

and intensity of trade liberalizing reforms.

While acknowledging their differences, Mullaney said that U.S.-EU cooperation on the initiative was strategically important. Countries are more likely to react positively to suggestions that come collectively from the U.S., EU and other trading partners because they will trust that they are truly focused on creating better practices, and are not simply aimed at responding to the interests of one party, he argued.

Cooperation with the EU is also important because both economies are facing difficult budgetary situations, and must work together to leverage their resources, Mullaney said.

**Meanwhile, Khush Choksy, head of the U.S.-Egypt Business Council, expressed alarm that the EU appears to already be taking concrete steps to deepen its trading relationship with the Middle East and North Africa.** Speaking to *Inside U.S. Trade* after the event, Choksy said he was worried the U.S. might be falling behind.

At the event, Houben said that the European Commission in September submitted to the Council of Ministers a request to grant it authority to enter into new negotiations with Egypt, Morocco, Tunisia and Jordan. He said he expects that the Council will do so by December, allowing the EU launch talks by early next year.

The EU has first-generation trade agreements with these countries covering industrial goods and most agriculture, but wants to expand them to cover services, competition policy and regulatory practices, according to Houben.

The business council, in comments submitted to USTR, urged it to consider deepening trade ties in countries like Egypt that are more likely to be receptive to reforms before taking on the historically difficult task of boosting trade integration in the region. According to Houben, only about 7 percent of all trade conducted by countries in the Middle East and North Africa is within the region, while in Asia about 30 percent of trade is intra-region.

Mullaney acknowledged that regional trade integration is not a new objective and that it has been hindered for a number of political and structural reasons, including the fact that many countries make the same types of products. He said that USTR was working on taking new approaches, such as harmonizing regional standards and regulations, which could increase the ability of companies to operate in neighboring countries.

Mullaney also acknowledged that the U.S. private sector is wary of the administration repeating similar strategies — like the hub-and-spoke approach of sealing FTAs in the region — with the hope that doing so will lead to increased trade among those FTA countries. “Clearly, some creative thinking is needed,” he said.

In a Nov. 16 letter, the President’s Export Council (PEC), a private sector advisory group, encouraged the administration to “keep an open mind” when considering how to move forward with the trade initiative over the long term. It suggested that the U.S. focus on “trade fundamentals” — such as harmonizing standards — and promoting engagement through existing regional integration efforts by the Gulf Cooperation Council.

The PEC letter also identified eight key areas on which it suggested the government focus its efforts in the Middle East and North Africa. They are investment, regulatory convergence, standards, customs, governance, tariffs, government procurement and services, with an emphasis on improving laws and regulations impacting ICT services and the free movement of data.

## **Vilsack Presses Vietnam On Beef Access; Faces Pressure On Catfish Rule**

U.S. Agriculture Secretary Tom Vilsack this week urged Vietnamese officials to loosen restrictions on imports of beef and offal as well as fruits and vegetables from the United States, and faced questions from his Vietnamese counterparts about how the United States plans to regulate Vietnamese catfish exports to its market.

In a Nov. 16 teleconference from Hanoi, Vilsack said he made some progress with the Vietnamese agriculture minister in getting him to acknowledge “in principle” that there is an opportunity for the U.S. and Vietnam to expand offal trade.

He stressed that Vietnam is the 15th-largest agricultural trading partner for the U.S., and is continuing to grow. Currently, Vietnam restricts imports of bone-in and boneless beef to cattle under 30 months of age, according to the U.S. Department of Agriculture (USDA). It also only allows imports of beef heart, liver and kidney products from cattle under 30 months, but prohibits imports of all other types of beef, pork and poultry offal.

During his meetings, Vietnamese officials pressed Vilsack about a proposed USDA rule that will change the way the U.S. government regulates catfish as stipulated in the 2008 farm bill. Catfish captured under the proposed rule will be subject to more rigorous food safety inspection in USDA, as opposed to the less stringent system currently handled by the Food and Drug Administration (FDA).

The controversy surrounding the rule centers on whether its definition of catfish is narrow to capture largely Chinese catfish imports or broad to capture catfish exports from Vietnam and other destinations (*Inside U.S. Trade*, Feb. 25).

Vietnam and other foreign governments with significant catfish exporters have pushed for the narrow definition, as have Senate Finance Committee Chairman Max Baucus (D-MT) and other senators. These senators fear that restrictions on its catfish imports will lead Vietnam to retaliate by restricting imports of U.S. beef products and other goods.

In contrast, senators representing U.S. catfish farmers have argued for the broader rule. Possibly as a result of inter-agency differences, USDA has been slow to process the proposed rule. A 120-day comment period for the proposed rule

ended in June, but the final rule has not yet been issued.

Vilsack said he reassured Vietnamese officials that the U.S. has an open and transparent rule making process, and stressed that it is important for the U.S. government to take the time to consider the comments it has received.

Vilsack said that once Vietnamese officials raised the proposed catfish rule, he took the opportunity to emphasize that a new food safety law that Vietnam is drafting must be done in a way that allows the U.S. and other countries to weigh in with comments.

This is important in order to ensure that the new law does not run afoul of international sanitary and phytosanitary (SPS) standards and maintains a science-based system, Vilsack said.

Vilsack, who met with Vietnam's agriculture minister and deputy prime minister during the trip, is the first sitting U.S. Agriculture secretary to travel to Vietnam, according to the USDA.

He spoke to reporters before traveling to China for the Joint Commission on Commerce and Trade, where he said he would continue to press China to open its beef market consistent with the guidelines of the World Organization for Animal Health (OIE) on bovine spongiform encephalopathy (BSE).

China stopped accepting all cuts of U.S. beef after a 2003 case of BSE in the U.S. herd was discovered in Washington state.

Vilsack stressed repeatedly that Asian countries can relax their beef market restrictions in stages but that the final goal has to be full market access in accordance with the OIE guidelines. He signaled this was the "road map" the U.S. and Korea reached in their beef protocol.

**Vilsack also announced that USDA had awarded funding to 70 U.S. agricultural trade associations** for fiscal year 2012 under two export promotion programs. Among the groups that received funds under the Market Access Program (MAP) was the U.S. Meat Export Federation (USMEF), which received roughly \$19.7 million, the largest of any organization.

The Obama administration had pledged to increase the money it makes available to USMEF under MAP as one of the commitments that convinced Baucus to support the U.S.-Korea FTA. The other was the administration's pledge to Baucus that the U.S. would request consultations with Korea on expanding beef market access once the FTA enters into force (*Inside U.S. Trade*, May 6).

Specifically, USDA awarded USMEF an additional \$1 million in MAP funds for fiscal year 2011, and pledged that it would "favorably review" USMEF's request for \$10 million for a five-year beef promotion program in South Korea beginning in FY 2012.

USMEF spokesman Joe Schuele said this week that the FY 2012 allocation was "consistent" with what Baucus had championed and that it met the group's expectations, although he declined to say how much of the FY 2012 funding would be allocated to Korea. Groups that receive MAP funds typically match that allocation with their own money.

In the conference call, Vilsack said that despite budget pressures he did not expect Congress would seek to cut MAP funding in the future both because lawmakers recognize that these programs generate export activity and because the funding was left intact in the FY 2011 and FY 2012 budgets.

# China Update

From *ChinaTradeExtra.com*, Inside U.S. Trade's sister news service

Appearing below are summaries of some of the top stories from *ChinaTradeExtra's* Nov. 16 edition of *Inside US-China Trade*. For more details on these and other stories, and an ever-expanding library of documents relating to U.S.-China trade and investment, call 703-416-8500 to subscribe, or to receive a free trial.

## Obama Uses Bilateral, Multilateral Fora To Push China On Currency, IPR

President Obama highlighted growing U.S. impatience with the slow pace of Chinese action to address key U.S. economic priorities such as currency undervaluation and lax intellectual property protection during last weekend's bilateral meeting with Chinese President Hu Jintao, according to senior White House aides and Obama's public comments.

The United States and other countries "understandably feel that enough is enough" when it comes to China delaying the steps its leaders say they want to take to shift their economy away from export dependence toward more reliance on domestic consumption, Obama said on Nov. 13.

"The problem is, is that you've got a bunch of export producers in China who like the system as it is, and making changes are difficult for them politically," Obama said. "I get it. But the United States and other countries, I think understandably, feel that enough is enough."

In his Nov. 12 bilateral meeting with Chinese President Hu Jintao, Obama pressed his counterpart on "both the currency issue and on rebalancing and domestic demand," said Deputy National Security Advisor for International Economic Affairs Mike Froman. The meeting took place on the margins of a leaders' summit of the Asia-Pacific Economic Cooperation (APEC) forum.

Obama "made it very clear that the American people and the American business community were growing increasingly impatient and frustrated with the state of change in the China economic policy and the evolution of the U.S.-China economic relationship, and pointed out the critical importance of work-

ing together to try and resolve outstanding issues and to make progress on these longstanding concerns in the economic relationship," according to Froman.

## USCBC: IPR Deliverable, Focus On Investment Likely at Next Week's JCCT

New Chinese moves to bolster the protection of intellectual property rights (IPR) are likely to emerge as a principal deliverable at next week's annual cabinet-level meeting of the Joint Commission on Commerce and Trade (JCCT), a top U.S. business leader predicted this week.

China may reveal details of its decision to set up a nationwide office under the auspices of its ruling State Council — announced in broad terms by Premier Wen Jiabao on Nov. 9 — in the context of the Nov. 20-21 JCCT that will be held in Chengdu, China, according to US-China Business Council President John Frisbie.

The new office announced by Wen "appears on the surface" to respond to demands by the Obama administration and U.S. business representatives made since the last JCCT in December 2010 that China set up a permanent IPR anti-piracy campaign led by a national office established at the State Council level, Frisbie said in a Nov. 15 briefing with reporters. But it also seems to respond to their call for tougher penalties, including the use of criminal penalties, he said.

Wen's announcement also appears to indicate that protection of IPR would be made part of local officials' personal evaluations, which Frisbie said is a proposal that has been pushed by the U.S. government and private sector for several years.

## In This Issue

|  |    |
|--|----|
| Congress, Administration To Consult On Possible Japan TPP Participation .....        | 1  |
| Russia's SPS Agreement Falls Short Of U.S. Bilateral On Plant Inspection .....       | 1  |
| Major Ag Groups Oppose CCP Reform As Proposed By Southern Farmers .....              | 1  |
| Korean Ruling Party Giving Up On Compromise, Readies For FTA Vote .....              | 1  |
| Hirschhorn Highlights Short-Term Export Control Reforms In Advance Of Election ..... | 3  |
| EU, Japan Wrestle With Final GPA Deal, While EU, U.S. Narrow Differences .....       | 4  |
| Auto Companies Condition Japan's Entry Into TPP Talks On Market Share .....          | 5  |
| Ag Groups, Auto Companies At Odds Over Japan Entering TPP In Near Term .....         | 6  |
| Canada's Renewed Interest In Joining TPP Seen As Response To Japan .....             | 7  |
| U.S. TPP Environment Proposal Follows 'May 10,' But May Have Different Effects ..... | 9  |
| Tech Business Groups Welcome APEC Pledge To Pursue Expansion Of ITA .....            | 10 |
| TPP Framework Endorses Investor-State Rules, Leaves Open Key Issues .....            | 11 |

|   |    |
|---|----|
| U.S. Lumber Coalition Flags New Problem With Canada's SLA Compliance .....      | 12 |
| Administration Wrestles With New Approach To Export Control Notification .....  | 14 |
| APEC Leaders Announce Broad Agreement To Cut Tariffs On Green Goods .....       | 15 |
| White House Eyes Mid-2012 TPP Deal, But Says No 'Firm Deadline' Set .....       | 16 |
| Obama, Kirk Highlight Need To Extend Permanent MFN To Russia .....              | 16 |
| WTO Members Nearing End Of Deliberations On Ministerial Agenda Items .....      | 17 |
| House Approves Massive Funding Bill, Including USTR Staffing Provisions .....   | 18 |
| News Briefs .....   | 19 |
| Russian TRQs In Accession Deal Lock In Reduced Access For U.S. Poultry .....    | 21 |
| U.S., EU Find Areas For Cooperation In Middle East, But Admit Differences ..... | 25 |
| Vilsack Presses Vietnam On Beef Access; Faces Pressure On Catfish Rule .....    | 26 |
| China Update .....  | 28 |