

# *Inside U.S. Trade*

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## **G20 leaders, in joint statement, set deadlines for tackling steel overcapacity**

HAMBURG — After tough negotiations, all members of the G20, including the United States, agreed on language for a trade communiqué that calls for “collective solutions” to tackle the global overcapacity issue and includes a call to fight protectionism, sources told *Inside U.S. Trade* — though the document leaves out controversial language referring to the World Trade Organization as the “multilateral trading system.”

“Recognizing the sustained negative impacts on domestic production, trade and workers due to excess capacity in industrial sectors, we commit to further strengthening our cooperation to find collective solutions to tackle this global challenge,” the joint statement, signed by the leaders on July 8, read.

“We urgently call for the removal of market-distorting subsidies and other types of support by governments and related entities. Each of us commits to take the necessary actions to deliver the collective solutions that foster a truly

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## **U.S. request for joint committee meeting does not call for KORUS redo**

U.S. Trade Representative Robert Lighthizer has officially conveyed to Korea the Trump administration’s request for a special session of a U.S.-Korea Free Trade Agreement joint committee, calling for the deal to be modified rather than renegotiated.

“I believe that this session and the follow-up negotiations will provide an opportunity to review progress on the implementation of the Agreement, resolve several problems regarding market access in Korea for U.S. exports, and, most importantly, address our significant trade imbalance,” Lighthizer wrote in a July 12 letter to the Korean Ministry of Trade, Industry and Energy.

The letter — which *Inside U.S. Trade* reported was imminent earlier on July 12 — calls for the special session of the trade deal’s joint committee to “consider matters affecting the operation of the Agreement, including possible amend-

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## **Juncker: EU will react within days if 232 steel measures hit Europe**

HAMBURG — European Commission President Jean-Claude Juncker said the European Union is ready to react quickly and with appropriate countermeasures should a U.S. Section 232 investigation result in quotas or tariffs against imports of European steel.

“We’re hearing that some are considering imposing restrictions on steel imports in the near future,” Juncker said at a July 7 press conference on the sidelines of the G20 summit in Hamburg, without mentioning the U.S. “Should this happen, the EU will know how to react appropriately.”

Juncker did not provide any details on what actions the EU was planning to take, but, he said, “I want to inform you that we would react with countermeasures within days; we do not need two months. In the hope that this is not necessary but we are in elevated battle mode.”

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## **U.S.-China economic review commissioner picked for WTO ambassador**

President Trump has nominated Dennis Shea, the vice chairman of the U.S.-China Economic and Security Review Commission, to serve as ambassador to the World Trade Organization.

Shea, who has served on the commission since 2007, and as chairman or vice chairman since 2012, is an attorney “with more than 25 years of experience in government and public policy,” according to his commission bio.

The White House announced the president’s intent to nominate Shea for deputy U.S. Trade Representative in Geneva within minutes of announcing that the nomination had been sent to the Senate on July 11.

Shea is the founder of Shea Public Strategies LLC, a public affairs firm based in Alexandria, Virginia.

“Before starting the firm, he served as Vice President for Government Affairs — Americas for Pitney Bowes Inc., a Fortune 500 company,” the commission bio adds.

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The White House said in a statement that Shea once served as assistant secretary for policy development and research at the Department of Housing and Urban Development.

“Earlier in his career, he was deputy chief of staff and counsel to then-Senate Majority Leader Bob Dole,” the statement adds. He later advised Sen. Elizabeth Dole in her capacity as chair of the National Republican Senatorial Committee.

The U.S.-China Economic and Security Review Commission was set up by Congress in 2000 to monitor the national security implications of the U.S.-China bilateral trade and economic relationship.

In its latest annual report, issued last November when Shea was chairman, the commission took a largely negative view of bilateral trade issues, lamenting Beijing’s compliance with its World Trade Organization obligations and its efforts to reform state-owned enterprises and rein in industrial overcapacity.

The report painted a picture of an environment in China that increasingly frustrated U.S. companies seeking to operate there.

Overall, the commission reports that “Beijing’s ongoing failure to uphold its World Trade Organization (WTO) commitments, ineffective efforts to cut industrial overcapacity, and unfair treatment of U.S. companies are straining the bilateral relationship.”

The commission recommended that Congress amend the statute underlying the authorization of the Committee on Foreign Investment in the U.S. — which can block or modify the conditions of foreign mergers and acquisitions for potential national security risks — to prohibit Chinese state-owned enterprises “from acquiring or otherwise gaining effective control of U.S. companies.”

When the report was issued, Shea asked, “We don’t want the U.S. government owning large chunks of the U.S. economy, so why do we want the Chinese Communist Party owning large chunks of the U.S. economy?” — *Dan Dupont*

## **DHS reviewing customs and border AD, CVD reports, due to Trump soon**

The Department of Homeland Security is reviewing two reports — called for by an executive order in March — on how to enhance the collection of antidumping and countervailing duties at the border, with both expected to be submitted to the White House soon, according to DHS.

President Trump’s March 31 executive order called for the reports to be submitted within 90 days, which ended June 29. A DHS spokeswoman told *Inside U.S. Trade* the reports are under review by the agency and are expected to be submitted to the White House soon.

Trump’s order — establishing “Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws” — directs Homeland Security Secretary John Kelly, in consultation with other agencies, to develop a strategy for combating such violations and establishes “enhanced” measures to curtail the flow of counterfeited goods.

“Within 90 days of the date of this order, the Secretary of Homeland Security, through the Commissioner of [Customs and Border Protection], shall develop and implement a strategy and plan for combating violations of United States trade and customs laws for goods and for enabling interdiction and disposal, including through methods other than seizure, of inadmissible merchandise entering through any mode of transportation, to the extent authorized by law,” according to the order. The Department of Homeland Security oversees Customs and Border Protection.

The order also directed that DHS, within 90 days, develop a plan requiring “covered importers” — defined in the order as those that pose a risk to U.S. revenue — to provide security for AD and CVD liability “through bonds and other legal measures, and would also identify other appropriate enforcement measures.” The Commerce and Treasury departments and the Office of the U.S. Trade Representative were to be consulted on the report.

According to the order, as of May 2015, “\$2.3 billion in antidumping and countervailing duties owed to the Government remained uncollected, often from importers that lack assets located in the United States.”

“It is therefore the policy of the United States to impose appropriate bonding requirements, based on risk assessments, on entries of articles subject to antidumping and countervailing duties, when necessary to protect the revenue of the United States,” the order states.

On July 13, the Senate Finance Committee will hold a confirmation hearing for Kevin McAleenan, the Trump administration’s pick to lead CBP. McAleenan is likely to be questioned on a variety of trade-related issues, including the March executive order.

McAleenan has been deputy commissioner since 2014. He is also the agency’s chief operating officer and senior career official. — *Isabelle Hoagland*

## Acting Ex-Im chairman hopes for operational board by end of September

The acting chairman of the Export-Import Bank is anticipating that the Senate will act to fill the vacancies on the bank's board of directors by the end of September, which would make the bank fully operational for the first time in over two years.

Acting Ex-Im Chairman Charles Hall said the White House is vetting three names — one Republican and two Democrats — that along with two nominations sent to the Senate by President Trump last month would give the board a quorum for the first time since July 2015.

Hall, speaking at the Center for Strategic and International Studies on July 6, said he expects the White House to send three nominations to the Senate by the end of the month. Trump nominated former Reps. Scott Garrett (R-NJ) and Spencer Bachus last month. Senate Banking Committee Chairman Mike Crapo (R-ID) said last month that he would like to consider the all the nominations for the Ex-Im board as a group.

Garrett's nomination has drawn the ire of Democrats because he was a vocal critic of the bank and fought against the its reauthorization. But Hall believes that his successor will work to expand the bank's operations because Trump has given the bank his full support.

"The key point here is that [Garrett] has been nominated by President Trump, who has made it clear that he wants to see U.S. Ex-Im Bank not only restored to full functionality but in fact ... enhance in its ability to support U.S. exports," Hall said. "I would anticipate that any person, whether it's Mr. Garrett or anyone else who is nominated and eventually confirmed for the chairmanship of the Ex-Im Bank would follow the policy of the president of the United States who nominated him. I would expect that Mr. Garrett would follow those policies in the direction of increasing the Ex-Im Bank's abilities to support U.S. exporters rather than decrease them."

Hall also said that the board could examine applications for \$15 billion in transactions within three months of having a quorum. Without a quorum, the bank has been unable to authorize transactions worth more than \$10 million. In 2016, the bank authorized \$5 billion worth of transactions.

The U.S. needs a fully functional Ex-Im, Hall argued, to compete with the export credit agencies (ECAs) of other countries.

"It's not enough for us to come back to the way we were in 2015. The export credit agency world has moved on in the two years we've been out of action," he said. "We have to come back better and bolder than we were in 2015. We're working on that internally, but we need to expand our capabilities to match and defend against what the other ECAs have started doing. We're working on our programs to be able to do that, but we need our board of directors to approve those changes in our policies and procedures that will be necessary for us to do that."

He specifically cited the increased activity of China's ECAs, which combined to authorize \$576 billion in transactions in 2015, as an example. Ex-Im would never reach the size of China's ECAs, Hall said, but he suggested authorizations of \$15-20 billion would be "stable" for the bank.

**Hall also said Ex-Im should have longer reauthorizations in order to give the export community confidence** that it will be a reliable partner. Ex-Im's authorization is set to expire in September 2019.

Trump's election could also quell the congressional fight over Ex-Im's authorization, Hall said, because Republicans will hold both Congress and the White House. Opposition to the bank from Tea Party Republicans led to a lapse in the bank's authorization from July to December 2015. Opponents of the bank say it provides "corporate welfare."

The bank will likely face at least some opposition when the question of its reauthorization again reaches Capitol Hill as Rep. Justin Amash (R-MI) introduced a bill on June 30 that would eliminate the bank. Hall called the bill a "perennial" that is introduced every session and characterized the opposition of the bank as a philosophical issue that dates back to the Jefferson-Hamilton divide over the function of government. — *Brett Fortnam*

## NAFTA, steel, TPP issues arise in hearing on Farm Bill export programs

A July 13 Senate Agriculture Committee hearing on the Farm Bill and its agricultural export promotion programs turned into a platform for senators and members of the agricultural industry to voice their concerns over a slew of trade issues including the NAFTA renegotiation, the Commerce Department's Section 232 steel investigation and the status of U.S. competitiveness in the Asia-Pacific.

Committee Chairman Pat Roberts (R-KS), at the close of the hearing, sought to ease some of the concerns shared by other members of the panel and the witnesses on those issues, including the possible loss of market share and influence in the Asia-Pacific as a result of withdrawal from the Trans-Pacific Partnership.

Recalling a meeting he had with President Trump 10 days ago on crop insurance, Roberts said "trade became a subject matter," adding, "we are not in the business of terminating — bad word — with regards to NAFTA. That has shifted to renegotiate, modernize, improvement, whatever adjective you want to use."

"With regards to those three letters we don't say anymore," Roberts added, referring to TPP, "we just say Pacific rim countries — that helps; it's been seven years we've been working with those countries. That also has national security impacts and I'm very confident the president understands that."

"I'm also worried about the talk about possibility of tariffs on imported steel," he continued. "If you just look at the

countries that are being talked about, those are the same countries that we've all talked about in terms of agriculture trade. So we do have some challenges out there."

Major agriculture groups sent a letter to Commerce Secretary Wilbur Ross on July 11 warning that the industry is extremely vulnerable to retaliation stemming from barriers the U.S. could erect to curb steel and aluminum imports as a result of its Section 232 investigations.

**Witnesses included Greg Hanes, vice president of international marketing and programs at the U.S. Meat Export Federation, and Eric Halverson, who testified on behalf of the National Potato Council and United Fresh Produce Association.**

Both endorsed continued and additional funding for the Agriculture Department's Market Access Program and Foreign Market Development programs, as have a slew of Senate Agriculture Committee members. The Trump administration, on the other hand, has proposed zeroing out those programs, which Hanes and Halverson described as critical to maintaining and prying open new market opportunities.

Beyond MAP, FMD and the Farm Bill, Hanes and Halverson raised concerns about the U.S. position in the Asia-Pacific.

For U.S. potatoes and certain meat exports like pork and beef, Japan is the top export destination. A new political agreement on an EU-Japan FTA and the U.S. withdrawal from TPP threatens U.S. access and competitive footing in those markets and chief suppliers, they said.

Halverson, in his prepared remarks, noted that TPP would have removed an 8.5 percent tariff Japan levies on frozen fry imports.

"Although specifics are not yet known about the EU-Japan agreement, it is safe to assume that Japan has agreed to eliminate their tariff on European fries and thereby disadvantage U.S. exporters who remain burdened with the 8.5% tariff. This is particularly alarming because sourcing decisions for fries can be made based on a difference of cents," he said.

Hanes reiterated the meat industry's gripe that withdrawal from TPP squandered a shot at reducing Japan's 38.5 percent tariff on beef to nine percent, and now the EU and, potentially, the remaining TPP members will have a significant advantage over U.S. beef exporters in that market. Australia already has a free trade agreement with Japan, Hanes added.

"The sooner we can do some type of trade agreement I think is critical," Hanes said. "The TPP framework I think was excellent for agriculture and the red meat industry."

Hanes called for a bilateral trade deal with Japan, or for pushing for changes to TPP that would allow U.S. reentry. Tokyo has been cool to the prospect of a bilateral deal with the U.S., and TPP11 countries are wrapping up a meeting in Hakone, Japan, this week, trying to find a way forward without the U.S.

"The TPP11 is continuing," Hanes continued. "Japan has already ratified TPP so they're looking at moving forward with those countries that are already engaged and we can't afford to be left out." — *Jack Caporal*

## **Analysts: Trump must balance politics with technical wins in NAFTA redo**

President Trump, elected on a platform that denigrated NAFTA and a promise to bring manufacturing jobs back to the United States, may have trouble locking in victories for his base while achieving technical upgrades to the trade deal that benefit all three partners, business leaders and analysts said Wednesday.

"The threat to pull out of NAFTA was not a negotiating tactic; it was quite real," said Christopher Padilla, an executive at IBM and former Commerce Department trade under secretary, citing conversations with administration officials in the wake of Trump's dalliance with withdrawal in April. "That possibility remains quite real," he added.

"So I think we cannot — in the business community or those of us who care about the region — delude ourselves to thinking that we're going to be able to get away with a few minor things and declare victory," he said at a July 12 event on NAFTA hosted by the American Society and Council of the Americas. "There's going to have to be, politically, for the president to declare that this is a success, probably more manufacturing, investment and jobs in the middle of the country in the United States, not in the region generally, and if he can't then I think there's a possibility we can be in for an impasse. And an impasse could lead to a disaster."

Padilla, who said IBM has a business plan to respond to a withdrawal, was not the only member of the five-person panel to warn that the political dynamic the Trump administration brings to the negotiating table is dangerous for NAFTA and could ultimately be fatal for the deal.

Members of the panel said a political win and overall upgrade to the agreement for all countries could be achieved if Trump agrees to tweak to some parts of NAFTA like rules of origin, which could boost U.S. manufacturing, while also adding on provisions like digital trade rules, disciplines on state-owned enterprises and other areas.

But business representatives and analysts also warned that the need for Trump to secure a win for his political base could endanger the talks — and the agreement itself.

"Canada and Mexico both have their red lines," Eric Miller, president of Rideau Potomac Strategy Group and a former high-level executive at the Business Council of Canada, said at the event. "It could fall apart depending on where things go," he said, adding that the governments in Canada and Mexico have had discussions about what to do if the deal



collapses.

Canada's red line is that investor-state dispute settlement and Chapter 19, which covers dispute settlement in antidumping and countervailing duty cases, must remain in a redone NAFTA, while Mexico's red line is U.S. market access, Miller said. He added that a push by the Trump administration to take out Chapter 19 or ISDS would lead either to protracted talks or short and unsuccessful negotiations.

"The United States holds most of the leverage," Padilla said, "and there's a very real possibility the president could exercise that leverage and it would be disastrous for the political relationships, certainly for the Mexican economy."

An open question debated by the panel members involved whether Trump might choose to pull the U.S. out of NAFTA if negotiations fail or drag on too long.

"But if you're willing to blow up NAFTA I wonder about other global trade institutions like the WTO as well. Once you start demolishing the superstructure you're on a pretty dark path," Miller added. U.S. international prestige and credibility would also be walloped by NAFTA withdrawal, he said.

Antonio Ortiz-Mena, senior adviser at Albright Stonebridge Group and former head of economic affairs at the Mexican Embassy in Washington, warned that a negative NAFTA outcome could lead to a breakdown in cooperation between the U.S. and Mexico on security and immigration issues.

**Padilla added that there are three options the administration could pursue to secure a political win on U.S. manufacturing:** raise tariffs and quotas on Mexican products, withdraw from NAFTA, or change NAFTA rules of origin for particular products in a way that is designed to add more U.S. content.

The first option, he contended, would fail because companies would choose to import products from outside the NAFTA region. As for the second option, he reiterated that U.S. withdrawal from NAFTA remains a real possibility.

The third option, however, is also possible, Padilla added — especially given Commerce Secretary Wilbur Ross' involvement in NAFTA discussions thus far. Ross has floated the idea of revisiting NAFTA rules of origin.

Padilla said he worked with Ross in the early 2000s on the Dominican Republic-Central American FTA textile rule of origin to benefit Ross's textile business while also crafting the rules to foster integration among the members of the agreement.

If Trump can pull off rule-of-origin changes while adding provisions on digital trade, state-owned enterprises and intellectual property rights, he added, a win for all three NAFTA countries could be declared.

"It will require some changes in supply chains; not everyone will be happy about that. But that's a political path to success," he said.

One of the industries that would suffer from rule-of-origin tweaks is the auto industry, including parts manufacturers and suppliers, Ann Wilson, senior vice president of government affairs at the Motor & Equipment Manufacturers Association, said during the panel discussion.

Wilson, along with representatives of the auto industries in the U.S. and Canada, has vehemently opposed changes to the NAFTA auto rule of origin. The administration, however, is thinking about changing it, Wilson said.

She said MEMA has been engaged in a back-and-forth with the Trump administration on the issue.

MEMA has advanced two main arguments for why increasing auto rules of origin would not increase employment in the U.S., Wilson said. First, there is no additional auto manufacturing capacity to add in the U.S. Auto parts manufacturers are operating at 85 percent to 90 percent capacity, and vehicle assemblers are operating at about 110 percent capacity, and companies are not investing to boost capacity, Wilson said.

Second, not enough U.S. workers are trained for the jobs open in the auto manufacturing industry, Wilson added. If the industry cannot fill open jobs, then actions aimed at increasing production in the sector will prove fruitless, she said. — *Jack Caporal*

## **U.S., Canadian autoworker unions issue joint NAFTA priorities**

Unifor and United Autoworkers, representing Canadian and U.S. autoworkers, have laid out four priorities the unions say must be addressed in the renegotiation of NAFTA: strengthening labor standards and boosting wages; balanced trade; "real 'made in North America' rules"; and benefits for workers being fairly shared in all three NAFTA countries.

The unions also list a slew of other concerns, including the need to eliminate investor-state dispute settlement, stronger environmental standards, rules to address currency manipulation, "better procurement policies" and "tax fairness."

The unions also note the absence of Mexican autoworkers backing the July 11 statement: "We would have welcomed the participation of representatives from Mexican free trade unions in the auto sector but there are none that can speak for Mexican workers — and that is at the core of the problem."

Unifor and UAW argue that manufacturers in the U.S. and Canada are keen to move operations to countries with lower wage and general costs, such as Mexico. The unions claim that "Mexico's general failures to enforce labour and other laws have left workers without real recourse regarding violations of freedom of association, working conditions, or other problems."

"Despite this realization, NAFTA does not provide any adequate way to address these abuses, in turn encouraging

them,” they contend.

The unions do note that Mexico is undertaking labor reforms, but add that it is too early to determine if they will be meaningful. “We hope history will not repeat itself but would be naïve to assume after 23 years of inaction under NAFTA that they will succeed in making real changes,” they say.

UAW, in its recent comments on NAFTA renegotiation objectives, stated that a new agreement should include enforceable labor and environmental standards that must be complied with before the rest of the deal comes into effect; if not, tariffs should be put in place until compliance is proven. U.S. Trade Representative Robert Lighthizer has told members of Congress that he does not support compliance with labor standards as a pre-condition for a redone NAFTA to enter into force.

For Mexico to comply with the International Labor Organization Declaration on Fundamental Principles and Rights at Work and ILO Convention 182, UAW says it must at minimum: require independent, democratic unions; require workers to vote on all contracts and union leadership; require that unions provide copies of contracts to workers; and require that unions have a duty to represent their members.

The autoworkers union also calls for labor violations to be “subject to special punitive duties” under dispute settlement proceedings due to what it sees as Mexico’s history of suppressing labor rights. Additionally, labor unions in all three NAFTA countries should have standing to bring cases regardless of whether a union represents the workers in question.

A new NAFTA should also allow parties to slap antidumping duties on goods “subsidized” by low wages or environmental practices not allowed in the importing country, UAW wrote in its comments.

Meanwhile, over the past decade the auto production capacity has increased in Mexico and declined in Canada and the U.S., Unifor and UAW say in their joint statement.

Citing a May Congressional Research Service report on NAFTA, UAW and Unifor note that in 1993 the U.S. automotive trade deficit with Mexico was \$3.5 billion, which jumped to \$45.1 billion in 2016. In auto parts, the U.S. trade deficit with Mexico in 1993 was \$100 million, which grew to \$23.8 billion in 2016.

On top of the auto parts trade deficit, UAW in its comments noted more than 400,000 auto parts workers in Mexico, almost as many as in the U.S., but said on average they get paid just \$3.95 an hour. Employment in U.S. auto parts supplier companies has declined, as have wages, while U.S. imports of auto parts have increased, UAW adds.

“Almost every major automaker has increased or plans to increase capacity in Mexico and has opened new plants or has announced plans to do so,” UAW wrote.

**The joint UAW-Unifor statement does not explicitly address rule of origin for autos and parts** but does reference what the unions call a need for “real ‘made in North America’ rules.”

UAW, however, said in its NAFTA comments that it supports increasing rule-of-origin requirements and eliminating loopholes. This puts UAW at odds with the American Automotive Policy Council and the Canadian counterparts of its member companies, which have strongly warned against raising the automotive rule of origin in NAFTA.

The auto industry and autoworker unions do share some common ground, however, as both have called for currency rules in NAFTA, updated labor and environment provisions and the elimination of investor-state dispute settlement.

“The vast majority of U.S. companies doing business in Mexico and Canada have not used or benefited from the ISDS provisions, while the inclusion of ISDS raises significant concerns for other stakeholders. Given the development levels of the countries involved (i.e., members of Organization for Economic Cooperation and Development), we believe including ISDS provisions in NAFTA is unnecessary,” the American Automotive Policy Council wrote in its NAFTA comments.

“We, however, may support the inclusion of ISDS provisions in other U.S. agreements in order to protect investments and citizens outside of the United States,” it added.

UAW in its comments also called for the complete elimination of NAFTA’s procurement chapter and an end to the requirement that the federal government treat foreign bidders as though they are U.S. bidders.

“The time has come to make major changes to NAFTA. Little tweaks, or a do-nothing approach, won’t cut it,” UAW President Dennis Williams said on July 11. — *Jack Caporal*

**SUBSCRIPTIONS:**

**703-416-8500 or**

**800-424-9068**

**custsvc@iwpnews.com**

**NEWSOFFICE:**

**703-416-8539**

**Fax: 703-416-8543**

**trade@iwpnews.com**

Chief Editor: Charlie Mitchell (cmitchell@iwpnews.com)

Managing Editor: Dan Dupont (ddupont@iwpnews.com)

Associate Editors: Brett Fortnam (bfortnam@iwpnews.com)

Jack Caporal (jcaporal@iwpnews.com)

Jenny Leonard (jleonard@iwpnews.com)

Isabelle Hoagland (ihoagland@iwpnews.com)

Production Manager: Lori Nicholson (lori.nicholson@iwpnews.com)

Production Specialists: Daniel Arrieta, Michelle Moodhe

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## NGOs skewer Privacy Shield, U.S. data practices in response to EU query

Civil society groups are slamming the U.S.-European Union Privacy Shield data protection framework — which underpins transatlantic commercial data flows - for failing to provide adequate data protection for EU citizens nearly a year after it came into force and months ahead of its first review, with one organization calling for the framework to be scrapped altogether.

The Center for Digital Democracy and Access Now, in separate July 5 responses to a questionnaire distributed to non-governmental organizations by the European Commission, lambasted the framework for failing to accomplish its stated goal of ensuring EU citizens' personal data are afforded the same protections when handled by U.S. companies as afforded in the EU.

CDD Executive Director Jeffrey Chester wrote to Bruno Gencairelli, the head of the European Commission's DG Justice and Consumers International Data Flows and Protection Unit, that "EU citizens and consumers who deal with companies enrolled in the Privacy Shield program confront a serious erosion of their data protection and privacy rights. The Rights of EU citizens under the Privacy Shield program are not equivalent to how they would be protected by EU law."

"We urge the Commission and EU Data Protection Authorities to suspend the Privacy Shield in light of its lack of any policies, rules, or enforcement that would provide [meaningful] adequacy or equivalency," Chester added.

CDD structured its complaints under four arguments: that the U.S. has no effective legal framework to protect consumer privacy; the Privacy Shield does not prohibit or constrain data practices that EU law takes into account; self-certification, which companies may do to make use of Privacy Shield, does guarantee protection of EU citizens' data; and the Privacy Shield website and submissions are rife with errors.

"Companies participating under the 'cover' of the Privacy Shield are able to use programmatic and other automated and data-driven decision-making and practices that [affect] EU citizens' and consumers' ability to obtain financial services, health information, and buy products and services fairly," CDD added.

"The failure of the U.S. to have its own effective legal privacy framework, the lack of oversight and enforcement by the Commerce Department and the FCC, and the failure of Privacy Shield participants not only to disclose their practices but also to ensure that they fully respect the EU approach to data protection, are among the reasons why the Commission must act now to protect the public."

Central to CDD's stance is the fact that the Federal Communication Commission's 2016 Broadband Consumer Privacy Rule was dismantled in 2017 via legislation signed by President Trump. The rule set limits on how internet service providers could use data and other information mined from consumers web actions, application usage, location data, and other information gathered from computers and mobile devices.

"While industry lobbyists and supporters of killing the FCC privacy rule claimed that it wasn't necessary because of the work of the Federal Trade Commission, such an argument was a sad joke on the American public. The industry knows, as does anyone who follows the U.S. data-gathering system, that the FTC does not have any meaningful rulemaking authority to regulate privacy," CDD wrote.

"Many of the problems that the EU public now faces regarding how companies gather and use their information can be tied to the failure of the FTC to respond to what has been an alarming loss of privacy," CDD added.

Those problems include U.S. digital marketing companies being able to access and use a mountain of consumer and personal data which CDD says undermines privacy.

"All of these practices have been exported and applied to the EU market by companies enrolled in the Privacy Shield—because they set the global baseline for how the digital ad market operates—and have been implemented by EU-based companies as well."

**Another problem is the fact that Privacy Shield's notice and choice framework does not effectively require** companies to clearly inform consumers how their data will be used, CDD argues, listing a slew of companies it analyzed.

"In light of these findings, CDD calls on the Commission to terminate the Privacy Shield agreement and to call on the U.S. to enact privacy rules that meaningfully reflect the principles and policies of the forthcoming GDPR," Chester wrote, referencing the EU's General Data Protection Regulation framework which enters into force in mid-2018.

The GDPR seeks to ease intra-EU data transfers and third-party compliance with EU rules by harmonizing personal data protection regulations across all 28 EU member states. The regulation also offers a platform for companies based in third-countries to process EU citizens' personal data and, similar to the Privacy Shield framework, contains a number of principles required for the European Commission to determine that an adequate level of protection exists in that third country.

Those conditions are laid out in Chapter V of the GDPR alongside principles that individual companies may meet in contracts or other arrangements allowing them to process EU citizens' personal data if those companies are based in countries that have not been deemed to provide an adequate level of data protection by the Commission.

While there is some overlap between the principles in the Privacy Shield framework and requirements for third-countries operating under the GDPR, the two frameworks offer two separate paths that U.S.-based companies may use to provide the level of protection necessary to handle EU citizens' personal data.

Access Now, on the other hand, did not take as hardline an approach as CDD, but called for the Commission to work

with Congress on improving U.S. laws related to surveillance and data collection as well as the Trump administration in amending the Privacy Shield, in addition to other reviews.

The NGO reiterated its previously stated concerns about the lack of a quorum on the U.S. Privacy and Civil Liberties Oversight Board and Executive Order 12333 that was signed by President Obama in 2015 and allows surveillance data gathered by the National Security Agency to be shared with other agencies.

It also restated issues it has with Section 702 of the Foreign Intelligence Surveillance Act, which generally allows U.S. agencies to target non-U.S. citizens outside the U.S. for data collection, and is set to expire on Dec. 31. Congress is debating the renewal and potential reform of Section 702, some of which Access Now backs. Those reforms include codifying Presidential Policy Directive 28, limiting surveillance to only target foreign powers or agents of foreign powers, and prohibiting the acquisition of communications that are not to or from targets of surveillance.

But Access Now also warns that senators have introduced a bill that would permanently reauthorize Section 702 as it currently stands and roll back the USA FREEDOM Act, which reformed U.S. surveillance practices in 2015 and was a central component of U.S. data collection assurances provided to the Commission in Privacy Shield negotiations.

“While it does not yet have broad support in Congress, officials from the intelligence community have offered their support for reauthorization without further sunset. The presence of this bill will undoubtedly influence Congressional conversations about reform, and it demonstrates a broadly held opinion in Congress that non-U.S. persons, including people in the EU, do not and should not have cognizable human rights protections,” Access Now wrote to the Commission.

Access Now also raised questions as to whether the U.S. intelligence community is circumventing legal requirements for surveillance under Section 702.

European Commissioner for Justice Vira Jourová in March said the Commission will closely follow debates around Section 702 ahead of the first annual bilateral Privacy Shield review set to take place in September.

The NGO also blasted Director of National Intelligence Dan Coats for renegeing on a promise to provide Congress an estimate of the number of people who have had their communications incidentally collected under Section 702.

“People in the EU cannot expect to gain the necessary transparency into the impact of U.S. surveillance upon their own personal information when the DNI treats his commitments to U.S. persons with such casual disregard,” Access Now said.

The group also reiterated its long-standing complaints regarding redress individuals have under the Privacy Shield framework as it relates both to the ombudsperson set up to respond to allegations of personal data misuse by the U.S. government or recourse options available if commercial companies violate Privacy Shield obligations. — *Jack Caporal*

## **G20 leaders set Aug. deadline for global steel forum . . . begins on page one**

level playing field,” it said.

The leaders called on the Global Forum on Steel Excess Capacity, which was created by the G20 members last year and which met on the sidelines of this year’s summit in Hamburg, “to fulfill their commitments on enhancing information sharing and cooperation by August 2017, and to rapidly develop concrete policy solutions that reduce steel excess capacity.”

A “substantive” report with “concrete policy solutions” is to be submitted by November, the leaders added — serving as “a basis for tangible and swift policy action, and follow-up progress reporting in 2018.”

Sources from several delegations told *Inside U.S. Trade* they were satisfied with the outcome on steel. One source described the language as “very strong text” because it includes “concrete deadlines.”

The agreement on a path forward for overcapacity comes as the Trump administration is finalizing a report on the national security implications of steel imports, which could lead to efforts to curb them. That prospect, however, has been met with criticism and pushback not only from the international community but also from within President Trump’s cabinet.

German Chancellor Angela Merkel told reporters on July 7 that discussions on the trade and steel overcapacity portions of the agreement were “very difficult” and said she expected the G20 sherpas, who are responsible for negotiating the statement, would be working on finding a solution until the early morning hours on July 8.

She also pledged to advocate for a multilateral solution on steel overcapacity to prevent bilateral actions, such as the U.S. use of Section 232.

“It’s a chance to solve the steel overcapacity issue in a multilateral way, in the community of the G20,” Merkel said. “Otherwise the likelihood of bilateral measures will increase, and that is why today during the meeting I have expressed that we should try to solve this issue through the global forum, because we created this forum for one another.”

European Commission President Jean-Claude Juncker faulted prospective trade-restrictive measures on steel — without mentioning the U.S. — and said at the summit that the EU was prepared to hit back fast if any were imposed. He, too, pushed for a focus on overcapacity.

**Sources described the leaders’ communiqué as a “type of Taormina plus” because in many ways** — most notably its anti-protectionism pledge — it goes beyond what was negotiated at the G7 summit in Taormina, Italy, in May.

The joint statement says G20 members “will keep markets open noting the importance of reciprocal and mutually



advantageous trade and investment frameworks and the principle of non-discrimination, and continue to fight protectionism including all unfair trade practices and recognise the role of legitimate trade defence instruments in this regard.”

The G7 statement said “we reiterate our commitment to keep markets open and to fight protectionism, while standing firm against all unfair trade practices.”

Sources said the pledge against protectionism and all unfair trade practices was seen as a “tradeoff” for the U.S., which was pushing for the inclusion of language on “legitimate trade defence instruments.”

The mention of “reciprocal” is also a change from last year’s statement and represents wording the Trump administration has pushed to include in every negotiation for joint statements. Sources said the same holds true for the inclusion of a focus on a “truly” level playing field, also a term favored by Trump’s team.

These sources told *Inside U.S. Trade* that the words “fair” and “reciprocal” were among the issues of contention during negotiations on the communiqué, as was the wording on the WTO.

This year’s statement — unlike the 2016 one — does not refer to the WTO as the multilateral trading system or acknowledge the WTO’s central role, but instead says leaders value its monitoring activities.

“We further reaffirm the importance of transparency for predictable and mutually beneficial trade relations. To this end, we value the monitoring activities by WTO, UNCTAD and OECD within their existing mandates,” the communiqué says. “We commit to further strengthen G20 trade and investment cooperation. We call on the OECD, WTO, WBG and IMF to continue their work to better understand trade impacts and report back to G20 Leaders in 2018.”

One source lamented that the language on the WTO, compared to last year’s statement, was made “weaker” because it referred to the boundaries of “existing mandates.” Some countries were hoping to expand the WTO’s monitoring work.

In 2016, leaders said they “extend our commitments to standstill and rollback of protectionist measures till the end of 2018, reaffirm our determination to deliver on them and support the work of the WTO, UNCTAD and OECD in monitoring protectionism.”

Some sources told *Inside U.S. Trade* on July 7 that because of many unresolved issues and sticking points it was possible the G20 leaders could conclude the summit without a joint communiqué on trade, and instead have each delegation issue their own statements, which one said would have been “of little value.” — *Jenny Leonard*

## **Merkel: Trade talk with U.S. will remain difficult, ‘every word weighed’**

HAMBURG — German Chancellor Angela Merkel, in concluding this year’s G20 summit, said she did not expect discussions with the Trump administration on trade issues to become easier in the future, but added that she hoped the countries could make progress quickly on steel overcapacity — a “dicey” issue — and that the Global Forum would deliver policy solutions in the near future to avoid bilateral trade-restrictive measures on steel, which she did not rule out.

“I don’t want to beat around the bushes — it’s still difficult to discuss trade questions; every word is weighed there,” she said about the negotiations with the U.S. administration on a trade communiqué, which she said were “exceptionally hard” due to the Trump team’s approach to trade.

“Steel is in fact a dicey issue, and I put a lot of effort into — and asked everyone to compromise — that we could arrive at a timetable, an ambitious timetable with August and November, to make sure the issue isn’t pushed back too far,” she added, “because otherwise one would have to fear bilateral measures, which I would not approve of.”

She also stressed that steel was “only one of many trade issues,” and while she believed the developments on the issue at the G20 were positive, “the discussions will remain difficult.”

Merkel as well as European Commission President Jean-Claude Juncker made clear the focus should be on finding solutions to the overcapacity problem in a multilateral setting rather than on pursuing trade-restrictive measures on a unilateral or bilateral basis.

Agreement on a path forward for steel on July 8 came against the backdrop of potentially imminent tariffs or quotas on steel imports by the U.S. administration, which has invoked Section 232 of the 1962 Trade Expansion Act with the aim of reducing foreign steel imports on national security grounds.

The G20 leaders, in their joint statement, agreed to tackle the issue collectively and “urgently” called for the removal of market-distorting subsidies and other types of support by governments and related entities. They also agreed to direct the Global Forum on Steel Excess Capacity to “rapidly develop concrete policy solutions” on the issue.

“Each of us commits to take the necessary actions to deliver the collective solutions that foster a truly level playing field,” they said in the communiqué, which *Inside U.S. Trade* obtained earlier on July 8.

Merkel at the press conference noted that the Trump administration, especially its sherpa Everett Eissenstat, have “actively contributed” to the outcomes of the final statement and that all delegations — including, she stressed, the Americans and the Chinese — agreed to the ambitious timetable on steel and to the decision to tackle it in a multilateral framework.

The chancellor called the outcome “an important step” and said she “really” hoped the action plan would be implemented, but also noted that August “isn’t that far away, and that means we all have to work hard.”

Some lamented the language as not strong enough for the U.S. steel industry, which is hoping for the 232 steel report

to recommend permanent relief for the domestic sector, while others said it would serve as a concession from other nations that the Trump administration could take home and present as a “win.”

One source told *Inside U.S. Trade* the text is “very clear as to the time bound commitment” and on the need to withdraw subsidies. The source noted that, most importantly, the U.S. got a commitment from the European Union and other G20 members that they are willing and ready to work with the United States “to put pressure on China to deliver.”

**Some sources told *Inside U.S. Trade* ahead of the summit that some in the Trump administration** were looking to hold off on announcing any punitive action on steel and instead to use the Commerce Department’s 232 steel report to engage other countries in a “serious discussion” on how to tackle overcapacity.

The interagency review of the report has caused pushback from various Cabinet members and delayed the release for weeks. It is still unclear when the report, including its recommendations for actions, will be sent to the president, and whether the president will decide to take action — although he has made clear he was prepared to do so “if necessary.”

He is also facing pressure to act from others in his Cabinet, including Commerce Secretary Wilbur Ross, and senior advisers Steve Bannon, Stephen Miller and Peter Navarro, director of the Office of Trade and Manufacturing Policy.

When asked about the potential scenario in which the U.S. imposed punitive measures on steel despite the outcomes at the G20, Merkel acknowledged that she “obviously can’t say what’s going to come tomorrow or the day after.”

“But this is what we could do in the framework of the G20 — to reaffirm our commitment to the rules-based trading system and to work on the steel problem — those are the doable steps,” she said. “But the topic of trade will remain on the agenda.”

The leaders’ statement also included language on the World Trade Organization that many observers said was “reassuring.” For example, members underlined “the crucial role of the rules-based international trading system,” which is similar to language used in previous joint statements.

Leaders also noted “the importance of bilateral, regional and plurilateral agreements being open, transparent, inclusive and WTO-consistent, and commit to working to ensure they complement the multilateral trade agreements,” the statement reads.

Sources told *Inside U.S. Trade* on July 7 that some countries were pushing for language on the WTO to be the “multilateral trading system,” but that others, including the U.S., were opposed to such wording.

Sherpas also faced roadblocks when discussing the potential inclusion of the terms “reciprocal” and “fair.”

Some sources said the term “reciprocal” is too focused on the trade balance — an area in which the Trump administration has repeatedly stressed it will work to decrease its trade deficits with countries that have significant surpluses with the United States. Among those countries is Germany, which was faulted by several U.S. officials for its large trade surplus that Trump called “very, very bad.”

The G20 joint statement said all members would work together with all members of the WTO to make the ministerial this year “a success” but did not elaborate on deliverables or potential outcomes.

“To further improve the functioning of the WTO, we will cooperate to ensure the effective and timely enforcement of trade rules and commitments as well as improve its negotiating, monitoring and dispute settlement functions,” it adds.

U.S. Trade Representative Robert Lighthizer has long advocated strongly for reforms to the WTO’s dispute settlement system and told Capitol Hill last month that it is already a topic of discussion in Geneva.

Merkel on July 8 said WTO Director General Roberto Azevêdo, who also attended the summit, was “pretty satisfied with this result, and he is more independent than me as a member state and host.”

Asked whether she believed President Trump and his administration, after having participated in the Hamburg summit, appeared to better understand the multilateral system and its values, Merkel said “I can only take things at face value, and I have to say that in many respects we have reached pretty good solutions.” — *Jenny Leonard*

## **Merkel: Global forum on steel offers ‘chance’ to solve overcapacity issue**

HAMBURG — German Chancellor Angela Merkel pushed the global forum on steel, which was created by the G20 members at last year’s summit and is overseen by the OECD, to work “faster” on tackling the industry’s overcapacity problem — and warned that a lack of successful outcomes in the multilateral sphere would result in trade-restrictive actions, such as the Trump administration’s Section 232 investigations.

“A lot of G20 members urged the forum to work faster because so far the work has been slow given that it has almost been a year since the last summit,” Merkel told reporters on July 7 on the sidelines of the G20 summit.

“It’s a chance to solve the steel overcapacity issue in a multilateral way, in the community of the G20. Otherwise the likelihood of bilateral measures will increase, and that is why today during the meeting I have expressed that we should try to solve this issue through the global forum, because we created this forum for one another. Whether and how this will succeed I cannot tell you today.”

The question came amid plans by the Trump administration to finalize a report on the national security implications of steel imports and potential measures to curb products from several countries, including Germany.

Merkel said steel played “a big role” in the July 7 session on trade, during which she said several leaders, not only the U.S., brought up the issue of “fair trade.”

## Trump says trade deal with UK will be ‘very powerful,’ done ‘very quickly’

HAMBURG — President Trump, ahead of a bilateral meeting with United Kingdom Prime Minister Theresa May, said the U.S. and UK were working on a “very big” trade agreement — and added that he expected negotiations to be concluded rapidly.

“We are working on a trade deal — a very, very big deal, a very powerful deal. Great for both countries. And I think we’ll have that done very, very quickly,” Trump said on July 8 on the sidelines of the G20 summit.

“There is no country that could possibly be closer than our countries. Prime Minister May and I have developed a very special relationship, and I think trade will be a very big factor between our two countries,” he added.

Before the UK can engage in trade talks with other nations it must conclude its exit from the European Union. That process, expected to take two years, officially began in March, when May triggered the so-called Article 50.

Trump, noting that Commerce Secretary Wilbur Ross was with him in Germany, said “We have all of our trade people. We have Wilbur Ross with us. We have all of the trade people.”

U.S. Trade Representative Robert Lighthizer, however, did not travel to Germany with the president.

Trump and May discussed the “groundwork” for a future bilateral trade agreement when May became the first foreign leader to visit the U.S. following Trump’s inauguration in January. In a joint statement following the meeting, May said “I’m convinced that a trade deal between the U.S. and the UK is in the national interest of both countries and will cement the crucial relationship that exists between us, particularly as the UK leaves the European Union and reaches out to the world.”

UK Trade Minister Liam Fox, in a July 7 speech, said “Economically, the UK will remain committed to the values of free and open trade. The British government has no interest in erecting barriers where none yet exist. It is in all our interests to maintain the freest possible trade between Britain and the European Union, just as it is in Britain’s interests to see the EU succeed.”

“Whilst we remain within the EU,” he added, “we will continue to work tirelessly towards those free trade agreements and preferences that are under negotiation.”

Fox met with Lighthizer in June, after which the USTR said in a statement that “As UK negotiations with the European Union begin, I look forward to working with Dr. Fox and the United States Congress to lay the groundwork for our future trade relationship, including exploring the possibility of a new U.S.-UK trade agreement. In the meantime, the United States is committed to continuing discussions for improving trade and investment and coordinating on addressing global excess capacity issues.”

Trump said in Germany that he would be traveling to London, adding that the two countries would “work out” the details at a later point.

Fox is also slated to visit Washington, DC, the week of July 24 for a meeting of a U.S.-UK working group. The discussions will focus on strengthening the bilateral trade and investment relationship between the U.S. and UK and lay the groundwork for a free trade agreement, according to UK’s Department of International Trade. — *Jenny Leonard*

## Aluminum groups’ call for global excess capacity forum ignored at G20

International aluminum industry group requests for a global forum on excess capacity did not lead to an agreement at the G20 leaders summit in Germany last week.

In March, aluminum groups from the U.S., Canada and Europe published a joint letter calling on their respective G20 sherpas to advocate for the creation of a global forum at the Hamburg summit, pointing to the forum on steel excess capacity that resulted from last year’s summit. The initiative also gained support from Brazil and Russia.

The Global Forum on Steel Excess Capacity received attention during the July 7-8 summit, where leaders agreed to direct the forum to “rapidly develop concrete policy solutions” on the issue and set deadlines for deliverables aimed at tackling overcapacity. Specifically, leaders of the summit called on the forum to submit a “substantive” report with “concrete policy solutions” by November — a report that is expected to serve as “a basis for tangible and swift policy action, and follow-up progress reporting in 2018.”

A July 8 joint statement from G20 leaders included a section on “excess capacities,” but it does not mention a forum on aluminum.

Aluminum industry groups were disappointed. “The commitment to take necessary actions that foster a truly level playing field should have included the creation of a Global Forum on aluminium excess capacity,” Gerd Götz, director general of European Aluminium, said in a July 8 statement.

“A dedicated platform would increase transparent information sharing and cooperation, in order to re-establish fair trade conditions for the global aluminium industry. As the G20 represents more than 80 percent of all primary production and an even greater proportion of the world’s semi-fabrication this group remains the appropriate configuration to address this issue,” Götz said.

“Nevertheless, we regret that the Summit failed to specifically address the problem of global excess capacity in the aluminium industry,” he said.

The U.S. Aluminum Association said the industry was happy that overcapacity was discussed during the summit, but lamented what it called a missed opportunity. “We are encouraged by how high-profile this issue has become and the

broad recognition it has received from governments around the world,” a spokesman said, adding that “an aluminum-specific forum” would have been an optimal outcome. Asked about next steps, the U.S. Aluminum Association said it was “continuing to coordinate closely with our counterparts in Europe and Canada.”

The Russian Aluminum Association — a consistent backer of a forum — said “Despite the unobvious outcome of the Hamburg negotiations on the matter, we anticipate the initiative will get its logical build-up in the near future.”

Jean Simard, president and CEO of the Canadian Aluminum Association, said the G20 summit set up “time parameters” that will lead to a quick response to address overcapacity — pointing to the concrete deadlines established for the steel forum.

**While a 2017 aluminum forum would have been optimal, he said the industry understands that “getting on** such a strategic and high-level agenda is an incremental process.” Simard noted that the steel industry’s efforts to address overcapacity predate that of the aluminum industry’s.

Simard said that while the global aluminum industry “was nowhere in sight a year ago,” it made its presence known at the G7 summit in Italy, this May, and was “active” at the B20 summit — a gathering of the G20 business community — held ahead of the G7.

Simard said while the industry will push for a forum to be created at the next G20 summit, set to be held in Buenos Aires in 2018, it plans to continue to learn from the steel forum. “What’s been going on through the steel exercise can only benefit the aluminum industry,” he said. “We know how to go about it and how not to go about it.”

Asserting that aluminum industry groups are generally aligned in their objectives — citing a shared goal to combat what it sees as excess Chinese production — Simard said “now we have to agree upon how, when and where this is addressed.”

Additionally, he said an aluminum forum would be “nurtured” by the U.S. International Trade Commission’s recent fact-finding report on the competitive conditions impacting the U.S. aluminum industry, which he called a “well-substantiated analysis” that confirms the aluminum industry’s beliefs about China’s overcapacity and its impact on global markets. “This [report] will feed into the eventual G20 processes,” he said. — *Isabelle Hoagland*

## **USTR: KORUS needs to benefit U.S. economy as well . . . begins on page one**

ments and modifications.” KORUS holds that if a special session is requested, it must be held within 30 days.

The language in the letter could mollify some in the business community and on Capitol Hill who worried the administration would call for a full-fledged renegotiation of KORUS, which could have angered Korea.

President Trump said in late June that the U.S. and Korea were renegotiating the deal “right now.” He earlier threatened to terminate it if new terms could not be agreed to.

A source said an insistence on the word “renegotiation” could be “toxic” for Korea.

Sources who earlier told *Inside U.S. Trade* the letter would likely call for a renegotiation instead of a modernization said later on July 12 that the letter’s final language was a “very good” development. One source said it was an indication that the administration is being “sensitive to the severe political challenge that word would have engendered and the challenge they would have faced with congressional committees of jurisdiction.”

**In the letter, Lighthizer calls Korea an important ally and trading partner, but adds that “in order** to strengthen our relationship, we need free, fair and balanced trade.”

KORUS, he adds, must benefit the U.S. economy as much as it does that of Korea.

Noting the Trump administration’s focus on reducing trade deficits, Lighthizer says “we have real concerns about our significant trade imbalance with Korea.”

The U.S., he noted, has had a “persistent goods deficit with Korea for nearly two decades. When the KORUS Agreement was negotiated, expectations were high that both of our economies would realize significant gains.”

That hasn’t happened, Lighthizer continues, adding that the goods deficit has “doubled” since KORUS went into force.

“It is critical that we achieve real progress that fosters a truly fair and level playing field, and a more balanced trade relationship,” Lighthizer adds.

The letter proposes that U.S. and Korean officials meet soon to agree on a date for the special session.

Sources said last week that the first-ever request for the special session might hold until Korea’s new trade minister took office. On July 3 — the day the administration confirmed it wanted a special session — South Korean President Moon-Jae tapped Paik Un-gyu, an engineering expert, to serve as minister of trade, industry and energy.

While Paik does not require parliamentary approval, hearings must be held and a reorganization bill passed before he and other cabinet members can be approved. The special session of Korea’s national assembly ends on July 18, and sources said it was unlikely that Korean lawmakers could pass the bill by then.

That did not deter the administration from seeking the special session this week under KORUS Article 22.2., which says the joint committee can be co-chaired by the USTR and the Minister for Trade of Korea, “or their respective designees.”

The letter is addressed to the current minister of trade, industry and energy, Joo Hyunghwan, who has consistently defended the deal as a contributor to bilateral trade growth since its implementation in 2012.

The Ministry of Trade, Industry and Energy likely will have to choose a designee for the session; sources said Seoul to date has not decided who will be responsible for the file. — *Jenny Leonard and Dan Dupont*



## **CATO paper: Cybersecurity claims mask ongoing U.S.-China 'trade war'**

A new paper by the libertarian-leaning CATO Institute says the U.S. and China have been engaged in “a low-profile, high-technology trade war” under the guise of cybersecurity, and that the two sides should take their mutual allegations of protectionism to the World Trade Organization, if necessary, while addressing legitimate cyber issues outside of the trade policy arena.

“For several years, Chinese information and communications technology (ICT) companies effectively have been blacklisted by the U.S. government, which continues to actively advise U.S. telecommunications firms to avoid purchasing their products,” according to the paper by CATO’s Daniel Ikenson.

Ikenson says the U.S. security concerns around Chinese tech products are based more on “innuendo” than fact, and suggests “No other government is as affronted by China’s push to achieve technological preeminence as is the U.S. government because the U.S. economy is the incumbent in that space.”

The concern over Chinese-made tech products has been shared by the U.S. Congress, which for years has required specific security reviews if U.S. agencies want to purchase such ICT products from Chinese government-controlled entities.

According to Ikenson, the Chinese government has implemented laws that “effectively require imported ICT products and components to be secure and controllable. U.S. companies are interpreting that to mean that there will be delays and other uncertainties that adversely affect their supply chains and that they will be forced to provide Chinese authorities with proprietary information about their products, which could compromise their intellectual property and deter trade, investment, and the scope for collaboration in these industries.”

He writes, “All countries have legitimate concerns over privacy and national security, but China is the principal country addressing these concerns by requiring foreign companies to transfer their technology and to surrender their brand and operating control in order to do business.”

What’s the answer to this trade policy dilemma? “To achieve greater cybersecurity, the United States and China can and should adopt policies that wed valid statistical methods with best business practices, while minimizing disruptions to legitimate, growth-enhancing trade and investment,” Ikenson writes.

“Meanwhile, protectionism need not be met with protectionism. Instead, protectionist policies can and should be redressed by harnessing the rules and resources of the WTO,” he concludes.

## **Korea says it doesn’t view KORUS talks as a renegotiation**

Korea has no plans to radically alter its free trade deal with the U.S., a trade official said on July 13.

Dow Jones Newswire quoted Yeo Han-koo, director gen-

eral of the Bureau of Trade Policy, as saying the Korean government “basically recognizes the South Korea-U.S. free-trade agreement as mutually beneficial, and so do the businesses from both countries. The government wants to keep the framework as it is, not shaking it up greatly.”

The U.S. on July 12 sent Korea a letter requesting a special session of the KORUS joint committee, which must meet within 30 days. U.S. Trade Representative Robert Lighthizer said the session and “the follow-up negotiations will provide an opportunity to review progress on the implementation of the Agreement, resolve several problems regarding market access in Korea for U.S. exports, and, most importantly, address our significant trade imbalance.”

The letter calls for “possible amendments and modifications” but does not use the word renegotiation, a prospect that had alarmed the business community and Capitol Hill. A Reuters report said Korea rejected the idea of a renegotiation after Lighthizer’s letter.

## **NAM president blasts Trump’s pick to lead Ex-Im, urges his withdrawal**

The National Association of Manufacturers has come out against the Trump administration’s pick to lead the Export-Import Bank.

NAM President and CEO Jay Timmons, in a *Wall Street Journal* op-ed, wrote that the confirmation of former congressman Scott Garrett as president of Ex-Im would be “a terrible trade deal for our country,” and urged the president to withdraw his nomination.

“President Trump has been a vigorous and outspoken supporter of manufacturers,” Timmons said. “That’s why his nomination of Scott Garrett as president of the U.S. Export-Import Bank is such a disappointment.”

Timmons noted that as a congressman, Garrett voted against reauthorizing the bank in 2015 and urged his House colleagues to take the opportunity to “keep the Export-Import Bank out of business.” He said Garrett “isn’t a reformer; he’s a destroyer,” referring to Garrett’s work to shutter Ex-Im permanently.

Timmons heartily endorsed a “fully functioning” Ex-Im Bank and lamented the lack of a quorum on its board that has kept it from approving major deals, while “countries like China and Germany are devoting hundreds of billions of dollars to their official export credit agencies and inflicting long-lasting harm on the U.S. manufacturing base.”

“Those like Mr. Garrett who have stood in the path of a fully functioning Ex-Im Bank are responsible for moving our jobs, our wealth and our factories to other countries,” Timmons concluded. “The president should withdraw his nomination.”

## **Plastics groups from NAFTA countries endorse ‘continued labor cost flexibility’**

Major plastics industry groups from the U.S., Canada and Mexico met last week to discuss joint priorities for the renegotiation of NAFTA, including “continued labor cost

flexibility” and possible tweaks to the deal’s rules of origin.

The summit in Mexico City featured leaders from the U.S. Plastics Industry Association, the Canadian Plastics Industry Association and the Asociación Nacional de Industrias del Plástico A.C. They “outlined a unified platform of policy priorities for the forthcoming modernization of the North American Free Trade Agreement (NAFTA) that will strengthen each nation’s plastics industry,” according to a statement from the groups.

The groups will push for no new tariffs in a new NAFTA, they said.

In addition, the associations said the “diversity of labor costs in North America provides immense benefits to our industries, and allows each of them to be competitive globally and to play to the strengths of each individual country’s plastics industry.”

Accordingly, the plastics groups vowed to “oppose attempts to restrict the choices manufacturers have when it comes to where and how they make their products.”

The joint priorities include the endorsement of a “review” of rules of origin and their enforcement. Other goals include a harmonization of regulations, the simplification and of trade and customs documentation and “Ease of employee access throughout the continent.”

### **Texas lawmaker: Labor, environment updates would garner Democratic NAFTA votes**

Rep. Will Hurd, a Texas Republican, believes that with strong labor and environmental provisions a NAFTA redo implementing bill would garner more Democratic votes than those cast for the 2015 Trade Promotion Authority law.

“There’s going to be a labor section of NAFTA, and my friends on the left that ultimately support trade agreements and recognize that labor and environment is a critical piece, they’re going to probably be happy with it,” Hurd said at a NAFTA discussion hosted by the Americas Society and Council of the Americas.

“So the devil’s obviously going to be in the details, and I think when it comes to some of the labor and environment provisions, the Mexican government wants to see those things strengthened as well, and I think they’re going to be in line with some of the issues that our folks on the left want to see,” he added.

Hurd also said that the tough vote scenario the Obama administration faced with the Trans-Pacific Partnership is not likely to be repeated when it comes to a NAFTA 2.0 implementing bill because of the significance lawmakers place on the U.S. relationship with Canada and Mexico.

“So the question to me is, was the vote on TPA — is that the ceiling or the floor when it comes to the number of votes we’re going to get from Democrats on this? But I also think this is very different from TPP or [the Transatlantic Trade and Investment Partnership] because of the important relationship between Mexico and Canada,” Hurd said. “And I think you actually get a couple more votes just because it’s NAFTA than you did on trade agreements.”

But some Democrats, including Ways and Means member Sandy Levin (MI), already appear to be at odds with the administration’s approach to labor issues in the NAFTA redo. Levin, during a Ways & Means Committee hearing last month, lamented that he did not to get a commitment from U.S. Trade

Representative Robert Lighthizer that Mexico must implement reforms to improve workers’ rights before Congress votes to approve and implement a redone NAFTA

Chris Padilla, an executive at IBM and former Commerce Department trade under secretary, said earlier at the event that securing votes in Congress for a new NAFTA implementing bill will be difficult “no matter what.”

“Labor and environment might help with some Democrats, although I doubt it,” Padilla said. “We’ve been talking labor and environment improvements for 15 years and none of them have ever been good enough to get Sandy Levin on board, and I’m skeptical that will happen.”

### **Former economic advisers urge administration not to take action under Section 232**

A coalition of former economic advisers to presidents from both parties is urging President Trump to avoid taking trade actions in the name of national security, pointing to what they view as unsuccessful impositions of “emergency tariffs” under previous administrations as reasons to avoid new tariffs on steel imports.

In a July 12 letter to Trump, 15 former chairs of the President’s Council of Economic Advisers pressed the administration to avoid taking action under Section 232 of the Trade Expansion Act of 1962, in part because of “150 countervailing and antidumping duties on steel imports, including some as high as 266 percent,” the group wrote.

“The diplomatic costs might be worth it if the tariffs generated economic benefits. But they would not,” the group argues, contending that further steel tariffs “would actually damage the U.S. economy.”

The letter was signed by Martin Baily, Alan Krueger, Ben Bernanke, Edward Lazear, Michael Boskin, Greg Mankiw, Martin Feldstein, Christina Romer, Jason Furman, Harvey Rosen, Austan Goolsbee, Joseph Stiglitz, Alan Greenspan, Laura Tyson and Glenn Hubbard. The signatories have served presidents of both parties dating back to Gerald Ford.

“Tariffs would raise costs for manufacturers, reduce employment in manufacturing, and increase prices for consumers,” they said.

The group contended that additional tariffs would taint relations with “important allies.”

“We import steel from over 110 countries and territories, but the top source countries are important allies like Canada, Brazil, South Korea, and Mexico,” they said. “Additional tariffs would likely do harm to our relations with these friendly nations.”

The former advisers pointed to steel tariffs imposed in 2002 by President Bush, pursuant to Section 204 of the U.S. Trade Act of 1974, which were eventually derailed by the World Trade Organization. “Previous experience with emergency steel tariffs under President Bush bear out these concerns. Canada, Mexico, Argentina, Thailand, and Turkey were given exemptions in response to the backlash, and the World Trade Organization ultimately ruled against the steel tariffs,” they said.

The group concluded the letter by asking the administration to “avoid a policy that would likely incur greater economic and diplomatic costs than any conceivable national security gain.”

## **Major ag groups fear ‘devastating’ retaliation if 232 investigations lead to new barriers**

Fearing a “trade war,” a slew of major agriculture industry associations has asked Commerce Secretary Wilbur Ross to be cautious in taking any actions to curb steel and aluminum imports as a result of two Section 232 investigations.

In a July 11 letter, the groups, representing all major agricultural sectors, say new barriers resulting from the two investigations could lead to retaliation that would be “disastrous for the global trading system and for U.S. agriculture in particular.”

“U.S. agriculture is highly dependent on exports, which means it is particularly vulnerable to retaliation,” they write. “Many countries that export steel to the United States are also large importers of U.S. agriculture products. The potential for retaliation from these trading partners is very real.”

“Short of explicit retaliation, these countries may also stall efforts to resolve current trade issues if they believe they have been unfairly targeted over legitimately traded products,” they continue.

The groups also warn that the U.S., by citing national security concerns as a reason for new actions, could open “Pandora’s Box” and open the door for other countries to impose trade barriers on sensitive products because on the basis of national security.

“We urge the Department of Commerce to consider the consequences to the rest of the U.S. economy and avoid igniting a trade war through new restrictions on steel or aluminum trade under Section 232,” the groups conclude.

The signatories: The American Farm Bureau Federation; the American Soybean Association; the National Association of Wheat Growers; the National Barley Growers Association; the National Cattlemen’s Beef Association; the National Corn Growers Association; the National Council of Farmer Cooperatives; the National Milk Producers Federation; the National Pork Producers Council; the National Sunflower Association; the National Turkey Federation; the U.S. Apple Association; the U.S. Canola Association; the U.S. Dry Bean Council; U.S. Wheat Associates; the U.S. Grains Council; the USA Dry Pea and Lentil Council; and the USA Rice Federation.

## **White House blasts Senate Democrats for ‘obstruction’ of nominees, including CEA pick Hassett**

The White House is decrying what it says is the “obstruction” of its nominees by Senate Democrats, singling out President Trump’s pick for chairman of the Council of Economic Advisers as needlessly blocked.

“Senate Democrats have decided to obstruct President Donald J. Trump’s Administration, and the American people, by refusing to confirm qualified nominations,” the White House said in a statement claiming that the Senate has confirmed only 23 percent of 216 nominations to date.

Of those nominees not yet confirmed is Kevin Hassett, Trump’s choice to chair the CEA. Hassett, director of research for domestic policy at the conservative American Enterprise Institute, has also served as a senior economist for the Federal Reserve Board.

“Forty-four economists from across the political spectrum sent a letter to the Senate supporting Hassett’s nomina-

tion,” the White House said, noting that “even economists serving in the Obama administration” believe Hassett should be confirmed.

The signatories of that letter, sent on June 5 to Senate Banking Committee Chairman Mike Crapo (R-ID) and ranking member Sherrod Brown (D-OH), included former Federal Reserve chairmen Alan Greenspan and Ben Bernanke as well as Jason Furman, chair of the CEA under President Obama.

“While we disagree on many issues, as economists we all agree that the Nation would be well served if Kevin Hassett is confirmed as Chairman of the Council of Economic Advisers,” they wrote.

The White House said that “For the past ten CEA chair nominations, the time waiting for confirmation averaged 8 days. Hassett has already waited twenty-seven days.”

## **Finance postpones hearing for CBP nominee McAleenan**

The Senate Finance Committee postponed a July 13 confirmation hearing for acting Customs and Border Protection Commissioner Kevin McAleenan, who was nominated by President Trump in March to take over the position on a permanent basis.

“The Finance Committee hearing has been postponed subject to the call of the chair to enable the committee to complete its review of the nomination,” a Finance Committee spokeswoman said in a statement to *Inside U.S. Trade*.

McAleenan was tapped as acting CBP commission on Jan 20 — the day Trump was sworn into office. Prior to that appointment, McAleenan had served as CBP’s deputy commissioner since November 2014.

## **Trump tweets, post-G20: U.S. ‘must fix the many bad trade deals it has made’**

President Trump on Sunday declared his trip to the G20 leaders summit a “great success for the U.S.,” saying on Twitter he had “explained” to his counterparts that the U.S. is intent on improving its trade deals. The U.S., he said, “must fix the many bad trade deals it has made. Will get done!”

“The G 20 Summit was a great success for the U.S.” Trump tweeted. “Explained that the U.S. must fix the many bad trade deals it has made. Will get done!”

The leaders summit led to a joint statement “noting the importance of reciprocal and mutually advantageous trade and investment frameworks and the principle of non-discrimination” and pledging to “continue to fight protectionism including all unfair trade practices and recognise the role of legitimate trade defence instruments in this regard.”

The communiqué also calls for “collective solutions” to tackle the global overcapacity issue.

The statement’s language on trade was the product of difficult talks in which the U.S. pushed for the inclusion of the term “reciprocal,” as it has in other negotiations.

Treasury Secretary Steven Mnuchin, briefing reporters on July 8 after the G20 summit, said the communiqué represented a significant step forward from the G20 finance ministers meeting in March, “where we had one sentence on trade — and I think as you all know, it was kind of 19 to 1, me being the one.”

“Here,” he added, “I think the trade paragraph has enor-



mous substance to it. It incorporates the concept of reciprocal and fair trade. And I think there was a real focus on dumping and other issues on steel. I think there was an incredible consensus, and now it's many months later."

Mnuchin was also asked about Trump's bilateral meeting with German Chancellor Angela Merkel, telling reporters the president "addressed issues of trade very directly. Merkel was very direct. It could not have gone better. I think it was very clear we're on the same page on almost every issue."

Merkel, at the end of the summit, said she did not expect discussions with the Trump administration on trade issues to get any easier. "I don't want to beat around the bushes — it's still difficult to discuss trade questions; every word is

weighed there," she said about talks with the U.S. on the communiqué, which she called "exceptionally hard."

Senior economic adviser Gary Cohn noted the president's emphasis on trade deficits at the summit, telling reporters that Trump made clear "how we've got to get our trade and our trade numbers better, and our trade imbalance, and how we've got deficits with most of the countries — most of the countries around the table."

"He talked about the trade deficit," Cohn said. "He talked about nearly \$800 billion of trade deficits and goods for the United States last year alone. He talked about how he wants to rectify that and how we're going to fight to level the playing field on trade and climate. So he delivered that speech to the group there."

## ITC fact-finding report finds U.S. shed aluminum production, points to China

A long-awaited report from the U.S. International Trade Commission has determined that the competitiveness of the U.S. aluminum industry has been diminished by Chinese excess production, while acknowledging that various reasons factor into the competitiveness of different industry segments.

The report, examining the competitive conditions affecting the domestic aluminum industry, was originally requested by the House Ways & Means Committee last February. The report was made public on July 7 after being submitted to Congress on June 26.

Instigated under the Tariff Act of 1930's fact-finding statute — known as Section 332 — the report found that U.S. aluminum capacity plummeted, while China and Middle Eastern countries forming the Gulf Cooperation Council expanded their capacity from 2011 to 2015. Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain and Oman comprise the council.

**"The United States shed 19 percent of its primary aluminum capacity between 2011 and 2015,"** the report states. "In contrast, China and the Gulf Cooperation Council countries expanded their capacity by more than 40 percent, despite the declining global prices over this time period."

The Commission asserted that the global aluminum market experienced price declines of 30 percent due to oversupply and falling production costs.

House Ways & Means Committee Chairman Kevin Brady (R-TX) and trade subcommittee Chairman Dave Reichert (R-WA) said the Commission's analysis will help guide congressional responses.

"The ITC's report will be tremendously valuable as lawmakers, industry participants, and Trump Administration officials work together to find targeted, effective, and appropriate solutions to the problem of Chinese overcapacity and other distortions in global aluminum markets," Brady said in a July 7 statement.

Reichert said the report will "serve as an important roadmap" as Congress and the administration consider ways to address global overcapacity in the aluminum sector.

The U.S. Aluminum Association planned to release a review of the report and told *Inside U.S. Trade* it continues to believe that aluminum overcapacity in China is the fundamental issue affecting the industry today.

The Ways & Means Committee asked the ITC to analyze a broad scope of aluminum products, including both unwrought — primary and secondary — and wrought — semi-finished aluminum products.

The Commission pegged China's "dramatic growth" of aluminum output and consumption as the primary agent driving global production of both primary and wrought aluminum, which they claim each rose by approximately 25 percent during the period under review.

Additionally, the report flags government intervention "through policies and programs that principally impact primary aluminum production costs" as another factor impeding the global aluminum market.

As of 2015, China assumed the role as "world's largest" aluminum producer and consumer — accounting for over half of the world's production and consumption of "both primary wrought and unwrought" aluminum, the report says.

The U.S. primary unwrought sector was more negatively affected than the secondary and wrought aluminum segments — which the Commission claims "remained very competitive." The study says high electricity costs and "limited investments in smelting technologies during a period of declining prices" were the primary hindrances affecting the competitiveness of the primary unwrought sector.

**Access to inexpensive and reliable scrap supplies was the "chief determinant of competitiveness"** regarding secondary aluminum and "proximity to end markets" for semi-finished goods. The report states the secondary aluminum sector benefited from abundance of low-cost scrap while the wrought aluminum sector benefited from "proximity and



close collaboration with consumers in the large U.S. market.”

Industry sources told *Inside U.S. Trade* the fact-finding report is likely also being used to inform the concurrent national security investigation invoked under Section 232 of the Trade Expansion Act of 1962, where the Commerce Department is inspecting the national security implications of imported aluminum goods.

Last week, Brady told reporters that his advice to the Trump administration continues to be to take into account input from lawmakers, the business community as well as the findings from the ITC’s report when considering an outcome of the investigation.

Lawmakers and business groups are urging the administration to take into account the end-users of aluminum products, contending that import restrictions would lead to immediate price hikes.

Despite the 270-day time line in the statute, the Commerce Department is expected to submit the report — complete with any trade restriction recommendations — to President Trump soon.

In late June, the agency held a public hearing and solicited written submissions to inform the report, where industry groups urged the administration to exempt countries practicing fair trade and slammed China.

The Aluminum Extruders Council, however, said no tariffs should be placed on imported primary aluminum — arguing that doing so would not halt the looming threats of Chinese excess capacity because the country does not export primary aluminum.

“In fact, U.S. tariffs on primary aluminum will paradoxically support China’s policies of subsidizing their semi-fabricated aluminum producers through restraints on primary aluminum exports,” the group said. “In the coming weeks, the AEC will be taking this message to policy makers and members on Capitol Hill to be sure it is heard,” the group said last week. — *Isabelle Hoagland*

## **Biodiesel industry files for ‘critical circumstance’ relief in Argentina case**

The National Biodiesel Board is requesting that antidumping and countervailing duties be retroactively imposed on biodiesel imports from Argentina if the Commerce Department determines those imports are harming the U.S. industry.

The NBB Fair Trade Coalition, in a July 10 filing with the Department of Commerce, alleged so-called critical circumstances relating to imports of biodiesel from Argentina. A finding of critical circumstances by Commerce would allow duties to be imposed retroactively by a maximum of 90 days from preliminary determinations of subsidization and dumping.

In late June, the biodiesel group said a critical circumstance request was one option it could pursue to combat what it calls a flood of subsidized and dumped imports from Argentina. The coalition claims that imports have risen by 144.5 percent since AD and CVD petitions were filed in March.

To determine whether critical circumstances exist, the Commerce Department must find a history of dumping and material injury in the U.S. or elsewhere and determine that the importer was aware, or should have been aware, that the exporter was selling the item at less than fair value and that injury could be incurred domestically.

Commerce must also find that “massive” imports of the item in question have occurred over a “relatively short period of time.” Imports are found to be massive when they increase by 15 percent or more from the base period to the comparison period, while a relatively short period of time usually begins with the filing of the petition and extends three months.

The ITC in May determined imports were injuring the U.S. industry. Commerce is expected to announce preliminary CVD rates on Aug. 22 and preliminary AD rates on Oct. 20.

The industry, in its request for a critical circumstance finding, argues that each of the requirements for such a finding have been met.

On the history of dumping requirement, the filing points to Argentine imports of biodiesel into the European Union and Peru, which have been met with AD duties. “When we see biodiesel from Argentina selling at a discount to the market price of soyoil — the main input into biodiesel — we know we are facing dumped pricing,” said Paul Soanes, CEO and president of Renewable Biofuels.

The European Union in 2016 lost a dispute at the WTO concerning its duties on imports of Argentine biodiesel because it calculated those duties in part by constructing the cost of production for Argentine biodiesel producers by using the average reference price of soybeans.

That resulted in higher production costs and, accordingly, higher AD duty margins because the Argentine government’s soybean reference price reflected the international market, while domestic Argentine soybean prices were lower than international prices due to a differential export tax system that places higher export taxes on soybeans than on biodiesel.

Central to that ruling was the fact that the European Commission failed to construct the normal value of the product in question — Argentine biodiesel — on the basis of the cost of production in the country of origin, Argentina.

The U.S. biodiesel industry’s request for a critical circumstances finding acknowledges the EU’s loss in that dispute, but notes that “there is no indication that the Europeans are planning to reduce or remove the duties” by Aug. 10, the reasonable period of time for the EU to come into compliance with the Appellate Body decision.

The U.S. industry also says the Argentinian government provides subsidies to biodiesel producers, is reducing export taxes on biodiesel and provides tax exemptions and incentives for producers. — *Jack Caporal*

## Tusk lauds ‘surprisingly promising’ talk from Trump . . . begins on page one

The administration last month missed its self-imposed deadline to release its report on the steel probe and it is still unclear when it will be issued. National Economic Council Director Gary Cohn hinted that the Trump administration would use the steel report to engage other leaders at the G20 meetings in a serious discussion on overcapacity.

“There has been consensus among our G7 allies that there is overcapacity and there’s dumping in steel,” Cohn told reporters on June 29. “We ask the G20 economies to join us in this effort and to take concrete actions to solve these problems. But let us be clear: We will act to ensure a level playing field for all.”

Juncker and European Council President Donald Tusk wrote a letter ahead of the G20 stating that steel overcapacity was “a matter of utmost priority” for the high-level meetings in Hamburg. They also urged the G20 to “adhere to its anti-protectionism pledge and strengthen the rules-based multilateral trading system anchored in the World Trade Organisation (WTO), which is our best chance for a global level playing field” — and pledged that Europe would speak with a “united voice” to promote free and fair trade.

The two-day summit went from July 7-8, but President Trump also met with foreign leaders leading up to the summit.

Against the backdrop of President Trump’s trade policies, and his decision to withdraw from the Paris climate change agreement, observers expected trade and climate to be on the agenda for his July 6 bilateral meeting with German Chancellor Angela Merkel.

A readout of their meeting provided by the White House, however, did not mention either issue. Instead, it said the two leaders met “to coordinate on key policy areas ahead of tomorrow’s G20 Summit. The leaders conferred on a range of shared foreign and security policy priorities, including re-energizing implementation of the Minsk Agreements, de-escalating the conflict between Qatar and some of its Gulf and Arab neighbors, and denuclearization of the Korean Peninsula.”

Tusk, at the July 7 press conference, said he was pleasantly surprised by what he heard when Trump spoke in Warsaw, Poland on July 6, but noted the U.S. president would have to prove his words are followed by actions.

“I heard yesterday in Warsaw surprisingly promising words from the American president about the transatlantic community, about cooperation between the United States and Europe, about our common political traditions and civilization and about the readiness to protect and to defend the whole Western community,” Tusk said. “We’ve been waiting for a long time to hear these words from President Trump and the real question is ‘was this a one-time incident or a new policy?’ President Trump said yesterday that words are easy but it’s actions that matter, and the first test will be our meeting here in Hamburg.” — *Jenny Leonard*

## Japan publishes list of potential GIs that includes feta, asiago cheeses

Japan’s Ministry of Agriculture, Forestry and Fisheries on July 11 published a list of potential geographical indications that includes product descriptions, such as feta, gorgonzola and asiago cheeses, that the U.S. dairy industry believes are generic terms.

The publication of the list follows the announcement last week that the European Union and Japan have reached a political agreement on a trade deal. The EU has been touting the deal’s provisions on GIs since the agreement was announced.

“Japan would recognise more than 200 European Geographical Indications chosen by EU Member States for their actual or potential export value in the Japanese market,” a July 6 EU fact sheet on the deal said. “Only products with this status would be allowed to be sold in Japan under the corresponding name.”

The public has three months — until Oct. 11 — to comment on the proposed GIs, according to the applications. As of press time, Japan had published 71 applications for EU-based GIs. The Consortium for Common Food Names, an international industry coalition led by U.S. dairy producers, hopes to use the comment period to remove generic food names from the final list of GIs Japan will protect.

“Our full expectation as Japan proceeds with this GI evaluation process is that Japan’s trading partners’ market access rights must be preserved and as such restrictions on common food names must be rejected,” CCFN said in a statement to *Inside U.S. Trade*. “We will be actively participating in this process to help ensure that that is the case and that GIs are not misused to create barriers to trade in one of the world’s most important import markets.”

CCFN also criticized the simultaneous nature of all of the EU’s GI applications.

“We commend Japan for refusing to handle the EU’s GI demands behind closed doors and abdicate the due process system that it set up in recent years for GIs in Japan,” the statement said. “We do think however that this deluge of over 200 simultaneous applications at once puts a tremendous burden on those that may want to object to several of the terms and would now be forced to marshal all evidence and expense within one consolidated time period.”

Protecting GIs was a major sticking point in Transatlantic Trade and Investment Partnership negotiations between the U.S. and EU. The EU wanted the U.S. to recognize its GIs, but the U.S. maintained that its legal system provided adequate protection for EU food names.

The U.S. secured provisions in the Trans-Pacific Partnership that would allow interested parties to challenge the validity of a GI protected under an international agreement concluded after TPP. Those provisions require TPP parties to “provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow

for the protection or recognition to be cancelled,” according to paragraph 2 of Article 18.32 of TPP.

The grounds for opposition or cancellation of a GI, as described in paragraph 1 of Article 18.32, are that a GI is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the party; a GI is likely to cause confusion with a preexisting trademark; or a GI is the common name for the relevant good in the territory of the country. — *Brett Fortnam*

## **Japan, following FTA agreement, urges EU to develop data flow provisions**

Despite the July 5 announcement of a political agreement on a trade deal between Tokyo and Brussels, Japan used the European Union’s biennial trade policy review at the World Trade Organization to urge its future FTA partner to develop its position on cross-border data flows.

The U.S. has urged the EU to develop its position in the context of the Trade in Services Agreement negotiations, going as far as to offer language it hoped would reconcile the EU’s concerns over personal data protection and the U.S. position on the free flow of data across borders.

The EU and Japan announced last week that they had reached a political agreement on a trade deal that will not include provisions on cross-border data flows. Instead, it will include a review clause that will allow the two sides to revisit the issue once the EU has a stated position.

In its intervention at the EU’s trade policy review last week, Japan said it expected the EU to develop policies promoting the free flow of data that take into account personal data protection. Observers believed that in the EU-Japan negotiations, Tokyo would push for data flow positions that would result in the EU coming out with a clarified position. In the TISA negotiations, the EU repeatedly delayed submitting a proposal on data flows because of disparate positions between the Commission’s trade and justice departments.

On July 7 — the second day of the EU’s TPR — the EU responded to several questions posed by other WTO members, including the U.S. and China. In its statement, China called on the EU to recognize it as a market economy while also criticizing the EU’s use of trade remedies on Chinese iron and steel products. The EU rebuffed both critiques.

“In a world where a level playing field is a distant dream, where dumping is more common than we would like, and where massive amount of subsidies are threatening the competitiveness of our businesses and leading to overcapacity, trade defence will remain an integral and necessary part of our trade policy,” the EU statement said. “Such tools will remain in place and will continue to be used until others reign in their policies.”

“China referred in its statement to the need to live up to commitments,” it continued. “I fully agree and the EU has taken the necessary steps to fulfill its obligations. The issue is now subject to dispute settlement, so it would be inappropriate to comment further apart from saying that the EU will vigorously and staunchly defend its legislation.”

The EU also defended its oft-criticized biotech authorization system, pointing out that 10 biotech traits were approved for food and feed purposes in 2016. Additionally, the Commission approved five more biotech traits this month, the EU said.

In its intervention, the U.S. complained about the EU’s sanitary and phytosanitary measures not being based on sound science, but did not specifically mention biotech approvals.

The EU also backed its maximum residue levels (MRLs) requirements for pesticides, which the U.S. has charged are set too high and without any scientific basis, which results in a de facto ban on U.S. fruit and vegetable exports.

“The EU sets MRLs as low as reasonably achievable for the protection of consumers,” the EU statement said. “This means that if a substance is not approved in the EU, the MRLs for the substance are set at the level of detection. The EU has circulated an information note to all WTO Members explaining in detail the process of applying import tolerances.” — *Brett Fortnam*

## **Brown, Portman urge CBP commissioner to take a hard line on duty evasion**

Sens. Sherrod Brown (D-OH) and Rob Portman (R-OH) are urging acting Customs and Border Protection Commissioner Kevin McAleenan to crack down on foreign entities that sidestep duties, advocating a revised rule bolstering CBP’s efforts to address duty evasion.

In a July 11 letter to McAleenan, the senators back “full compliance” with the 2015 Enforce and Protect Act as part of the Trump administration’s efforts to bolster antidumping and countervailing duty collection. The two, however, are concerned that CBP’s interim final rule on the implementation of the act — published last August — might undermine the agency’s efforts to address duty evasion.

McAleenan, who has been nominated to take over the commissioner’s job permanently, was scheduled to appear before the Senate Finance Committee for a confirmation hearing on July 13, but the hearing was postponed so the committee could complete its review of the nomination. McAleenan was expected to face questions on a variety of trade-related issues, including a March executive order aimed at improving the collections of duties and mitigating further evasion by foreign entities.

Lauding the administration’s efforts to combat duty evasion via that order, Brown and Portman say they believe

further improvements to the collection process are needed.

“Congress passed the Enforce and Protect Act in 2016 to strengthen CBP’s enforcement efforts against duty evasion,” the senators wrote. “We are concerned that CBP’s Interim Final Rule (“rule”) and implementation of the Enforce and Protect Act are inconsistent with the spirit of the Executive Order and Congress’ intent and will weaken efforts to address duty evasion.”

The senators took aim at five aspects of the rule that they believe would undermine future efforts to address the issue.

First, they argued the rule does not establish an administrative protective order (APO) process for duty evasion cases — which means investigations are non-transparent for stakeholders. “We ask you to establish an APO process for duty evasion proceedings to ensure maximum participation and accessibility,” they write.

Second, they claim that the rule’s language blocks some stakeholders from participating in the proceedings by using the phrase “parties to the investigation.” That term, the letter, says, “is not included in the [EAPA] law. In fact, Congress explicitly intended for a much broader group of stakeholders to be able to participate in duty evasion proceedings.”

The senators also say it is “imperative” that CBP accepts an allegation of duty evasion even in cases of unknown importers. “The rule’s standards require an allegation of evasion to include the ‘name and address of importer against whom the allegation is brought,’” they said, adding such a requirement is not “substantiated in the EAPA.”

Fourth, the two assert that CBP’s “infrequent notifications” during evasion proceedings has made it challenging for interested parties to follow cases. “We ask you to formally adopt disclosure standards that require CBP to publicly announce when key steps in an investigation are made to enhance transparency and accountability in proceedings,” they say.

Lastly, they cite “the discussion accompanying the rule” that said CBP will “strive to ensure compliance” with the deadlines outlined by Congress. “The language noted above raises doubts about whether CBP will adhere to the statute’s deadlines, and we urge CBP to clarify that it will follow the law and complete investigations within the required period of time,” they said. EAPA provides up to 300 days for the completion of an investigation after its initiation date.

The Department of Homeland Security, which oversees CBP, is reviewing two reports — called for by the March executive order — on ways to enhance the collection of antidumping and countervailing duties at the border, with both expected to be submitted to the White House soon, according to DHS. — *Isabelle Hoagland*

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