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WTO Compliance Panel Will Examine New U.S. Tuna Rules

Despite Mexico's objections, the World Trade Organization (WTO) dispute-settlement body (DSB) May 9 agreed to establish a compliance panel to examine new "dolphin-safe" tuna import labeling rules that National Oceanographic and Atmospheric Administration (NOAA) published in March.

> Mexico first rejected the request in April (see **WTTL**, April 25, page 8). The U.S. says that its revised measures are now in compliance but Mexico disagrees. Mexico, for its part, has requested authorization for $472.3 million in annual "sanctions" against the U.S.

Despite multiple discussions of the new rules, Mexico continues to indicate that it is not prepared to refer the matter of compliance back to a compliance panel. Rather, Mexico continues to insist that the arbitration to review its request for authorization to suspend concessions must move forward immediately.

Geneva sources say Mexico appears to be pursuing an incorrect course of action that would have the DSB ignore that the measure at issue is changed and that Mexico can require the WTO to act to authorize suspension of concessions even if the United States has come into compliance. At the special meeting of the DSB, Chinese Taipei noted "that, in the absence of an agreement between the parties, the pending arbitration should not be suspended simply as a result of a declaration of compliance by the member concerned," the WTO said.

DDTC Loosens Restrictions on RMI-Related Exports

Almost two years after the company requested it, State's Directorate of Defense Trade Controls (DDTC) May 9 allowed Rocky Mountain Instrument Company (RMI) "indirect participation" in transactions under the International Traffic in Arms Regulations (ITAR). Under an oversight agreement, DDTC modified RMI's statutory debarment for RMI's revised compliance program. The company was originally debarred after pleading guilty

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to knowingly and willfully exporting defense articles without a license in June 2010. At the time, the company agreed to a $1 million criminal forfeiture and five years probation.

RMI requested the rescission of statutory debarment and reinstatement of export privileges in a letter to State in July 2014, the agreement noted. Specifically, the agency authorized applications submitted by persons other than RMI for the export or temporary import of defense articles manufactured by RMI or manufactured by persons other than RMI that incorporate a defense article manufactured by RMI as a component, accessory, attachment, part, firmware, software, or system.

> In addition, it now allows the use of other approvals by persons other than RMI for the export or temporary import of defense articles described above; and applications submitted by persons other than RMI for agreements in which RMI is identified as a U.S. signatory to the agreement.

The oversight agreement is "intended to allow the Department to oversee RMI's implementation and application of its ITAR compliance program while RMI participates in the limited ITAR-related activities," a State press release said. Under the terms of the two-year Agreement, RMI will appoint a Responsible Official to oversee the Agreement, RMI's compliance program, and ITAR training regimen, and conduct an external audit of its compliance program and additional required compliance measures, State noted.

DDTC will review "all requests for authorizations, or use of exemptions, involving RMI that fall within the scope of the specific categories above." Those requests "do not require the submission of a separate transaction exception request, but should include reference to, or a copy of, this notice," DDTC said in its Federal Register notice. "Including an explanation of how the proposed transaction falls within the scope of an exception category above will facilitate review of the request," it added.

Chicken Fight Heads Back to WTO

The U.S. is yet again challenging China's antidumping duties on U.S. broiler chicken products at the WTO, U.S. Trade Representative (USTR) Michael Froman and Sens. Tom Carper (D- Del.), Johnny Isakson (R-Ga.), Chris Coons (D-Del.) and John Boozman (R-Ark.) announced May 10. China has 15 days to respond to the request for consultation.

This is the second chicken-related complaint from the U.S. In 2010, China imposed antidumping duties up to 105.4% and countervailing duties of up to 30.3% on U.S. broiler chicken products. The World Trade Organization (WTO) found in favor of the U.S. in August 2013 and adopted recommendations in September 2013 (see **WTTL**, Aug. 5, 2013, page 1). China was given until July 2014 to comply.

China reinvestigated the matter and issued a redetermination that reduced antidumping duties to up to 73.3% and countervailing taxes up to 4.2%. USTR objects to the methodology China used in its redetermination, accuses China of opaque investigations, and

claims breach of WTO rules in China's finding that U.S. poultry exports have hurt Chinese producers. "We're challenging all duties, we're challenging antidumping and countervailing. We think there should be no duties whatsoever," a trade official told reports. This is the 12th complaint the current administration has brought against China.

> Though this latest dispute relates to the previous ruling, it is considered a new challenge because of the Chinese redetermination. Should the U.S. win a compliance proceeding, the U.S. would have grounds to request permission to retaliate.

"This trade enforcement action is necessary to hold China accountable for unfair taxes imposed on U.S. chicken producers so that farmers in Arkansas and around the country have a level playing field," said Boozman. "Arkansas is a leader in chicken production and this is a step in the right direction to allow our producers an opportunity to compete fairly in the global marketplace."

A Chinese official with the Department of Treaty and Law said China respected the 2013 WTO ruling and had followed through on implementation. China is "sorry for the U.S. request for consultation" and will handle it in accordance with WTO's disputes settlement system, according to a post on China's Ministry of Commerce (MOFCOM) website May 11.

In a separate case, China notified the WTO May 13 of its request for consultations with the U.S. regarding alleged non-compliance with the Dispute Settlement Body's ruling regarding countervailing duties the U.S. placed on items from China. The U.S. "was found to have acted inconsistently with several obligations in the Subsidies and Countervailing Measures (SCM) Agreement relating to countervailing duty determinations with respect to methodologies pertaining to key SCM concepts," according to the WTO.

The U.S. had until April 1 to comply, but China alleges that the U.S. continues to place countervailing duties on pressure pipe, line pipe, lawn groomers, wire strand, and other related products.

House Committee Tackles Iran's Economic Recovery

When the Joint Comprehensive Plan of Action (JCPOA) was signed, critics were concerned with the billions of dollars Iran was set to receive, but it appears that European and Asian banks have made little movement toward financing Iranian projects. At a House Foreign Affairs Committee hearing May 12, Congress weighed the risks of economic engagement with Iran and what is holding Iran back from economic recovery.

For starters, the international Financial Action Task Force (FATF) in February advised the 35 member countries "to give special attention to business relationships and transactions with Iran," a warning that has been used with one other country, North Korea. FATF's warning has effectively slowed Iran's economy, as have longstanding accusations of corruption, Islamic Revolutionary Guard Corps' (IRGC) outsize role in Iran's economy, the country's support for terrorist groups designated by the U.S. and the European Union (EU), and "garden-variety corruption," as one witness put it.

"Banks don't want to do business with Iran. They understand the risks. They see the same patterns of dangerous behavior that the rest of the world has seen for years: an illegal ballistic missile program, support for terrorist groups, human-rights abuses, corruption and money laundering," said Rep. Eliot Engel (D-N.Y.).

"Businesses should not use the United States as an excuse if they don't want to do business or if they don't see a good business deal," Secretary of State John Kerry told reporters in London May 10 prior to meetings with European banks two days later to discuss Iran.

> The JCPOA unwound sanctions related to the nuclear program, but sanctions related to Iran's human rights abuses and terrorism activity remain in place. Iran has complained that the U.S. is warning bankers away because of the due diligence those banks would have to do to not run afoul of the continuing sanctions regime.

Still, several members of Congress and two of the panelists worried that Iran might be granted access to the dollar, thus legitimizing its activities. In fact, legislation has been introduced in both houses to prevent the Obama administration from giving Iran access to U.S. dollar transactions, so long as Iran is engaged in illicit activities (see **WTTL**, April 25, page 9).

"It's important to understand that the administration has committed to not giving Iran access to the U.S. financial system, but the Treasury officials have been very clear that that means U-turns to the U.S. financial system," said Mark Dubowitz, executive director at the Foundation for the Defense of Democracies.

"My concern is that they're going to give dollarized transactions, they're going to give access to the U.S. dollar offshore and why this is important is because getting access to the dollar means that it facilitates international financial transactions, most importantly, as Chairman Royce said, it's a stamp of approval on Iran. It's part of their legitimization policy," he added. That also benefits the IRGC, which will work through cutouts and front companies in such a scenario, Dubowitz noted.

But Elizabeth Rosenberg, senior fellow at the Center for a New American Security, clarified that "it is not practically possible to do a lot of dollar activity or large numbers of transactions outside of the U.S. financial system without using a U.S. financial institution and that is because at some point, those dollars need to be cleared through the U.S. financial system."

That would only incentivize actors to create offshore clearing systems to facilitate IRGC activity, Juan Zarate, chairman of the Financial Integrity Network, testified. "If we allow this concession in the context of the spirit of the deal, we will be conceding access to the dollar is actually a part of the nuclear sanctions-related relief. That then doesn't allow us to use non-access to the dollar as a tool for all the other activity that's important."

Iran is also frustrated because it wants to make money off its oil reserves, but as Rosenberg testified, though there is ease in geology in Iran, making contracts is extremely

difficult. When questioned by Rep. Brad Sherman (D-Calif.) on how the U.S. can make it harder for oil companies to invest in Iran, Rosenberg replied, "There is nothing the U.S. government can do [more] than the collapse in oil prices, which have shut global oil companies out of sanctioning any kind of major energy project anywhere in the world."

In response to Sherman's question, Dubowitz suggested going to Saudi Arabia and getting that country to leverage its buyers to make a choice between doing business with the Saudis or the Iranians.

Senators Question Customs Commissioner on Enforcement

Three months after President Obama signed the Trade Facilitation and Trade Enforcement Act of 2015, also known as the Customs bill, the Senate Finance Committee questioned Customs Commissioner Gil Kerlikowske on plans to implement various provisions of the bill, ranging from enforcement of duty invasion, transshipment of steel imports, and forced labor.

> In his opening statement, Sen. Ron Wyden (D-Ore.) said he was specifically interested in "CBP's plans to implement the ENFORCE Act, which gives CBP six months to put in place procedures to ensure that American workers and firms aren't injured by foreign products that are evading our laws."

"We will plan on issuing an interim final rule within that 180-day process. We have certainly heard in my meetings with nongovernmental organizations and stakeholders, what they hope and would like to see that would be possible to give us a more forward-leaning posture when it comes to that enforcement," Kerlikowske said.

Sen. Rob Portman (R- Ohio) highlighted the problem of Chinese firms transshipping steel products through countries such as Malaysia to evade duties. "Imports from Malaysia were non-existent in 2008 – like, none. They increased to 4.7 million pounds in 2009 and then surged to 32.8 million pounds in 2010. While imports on China, by the way, because of the orders that were in place, declined. So this is happening, and these duty evaders are becoming more brazen every day," Portman noted.

The Ohio Senator then asked if Customs would be able to meet the various deadlines set by the bill. "There are a number of deadlines that were included in the passage of the law. It is our intent, although there are several that are very challenging for quickly working and pulling them together. It is my intent that we will meet those deadlines, including an interim final rule on the issue that was discussed earlier. So we would like to do that," Kerlikowske responded.

"Our posture to do enforcement and listen to the wire companies in Alabama or Ohio is very critical to us, because of the transshipment issue. We need to be more aggressive, we need to have better outreach, and we need to be able to take those tips and that information and move forward," he added.

Sen. Sherrod Brown (D-Ohio) pushed for full implementation of his amendment to put an end to the importation of products made with forced labor into the U.S. Kerlikowske said his goal was to block all imports from forced labor, and that the agency plans on self-initiating investigations, rather than waiting for petitions from industry. So far, Customs has blocked two shipments from China since President Obama signed the bill in February (see **WTTL**, April 18, page 8).

India to Challenge U.S. at WTO in Tit-for-Tat Spat

When asked "whether it is a fact that the government is going to file 16 cases against the U.S. for violating World Trade Organization treaties," during the question session in the upper house of India's Parliament May 11, Commerce and Industry Minister Nirmala Sitharaman replied in the affirmative, multiple Indian news outlets reported.

> Sitharaman reportedly elaborated that the Indian government believes that certain renewable energy programs in the U.S. are inconsistent with the General Agreement on Tariffs and Trade (GATT) and Trade-Related Investment Measures (TRIMs) rules.

The announcement comes in the wake of India's appeal April 20 before the WTO's appellate body regarding its dispute with the U.S. over India's domestic solar program (see **WTTL**, April 22, page 8). In February, the WTO panel found that India's local content requirement for solar modules violated TRIMs Article 2.1 and GATT Article III:4. Following the announcement, India's Power Minister said it would appeal the ruling and launch an investigation into nine U.S. states that allegedly have protective programs in place for its domestic solar power manufacturers.

In response to another question, Sitharaman criticized India's placement on the priority watch list in the USTR's Special 301 report released April 27 (see **WTTL**, May 2, page 5). "The Special 301 report issued by the U.S. under their Trade Act of 1974 is a unilateral measure to create pressure on countries to enhance [intellectual property rights] protection beyond the [Trade-Related Aspects on Intellectual Property Rights] Agreement," she said. "Special 301, which is an extra territorial application of the domestic law of a country, is inconsistent with established norms of the WTO," she noted.

How Difficult is it to Define 'Digital Protectionism'?

When is digital protectionism acceptable, if ever? And how does the government define digital protectionism? Information Technology and Innovation Foundation (ITIF) President Rob Atkinson and George Washington University Professor Susan Aaronson debated digital protectionism May 7 in Washington and though seemingly opposed on most fronts, both laid blame on the U.S. government for failing to provide a clear framework on the issue. The debate centered around a piece Aaronson authored in March for the Council on Foreign Relations, in which she pointed to "conflicting objectives" the

U.S. has with regards to the digital economy. On the one hand, Aaronson wrote, the U.S. wants to encourage an open Internet with few barriers, but on the other hand, the U.S. wants to maintain its Internet dominance as China, India and other developing nations bring more of their populations online. While the U.S. has made fighting digital protectionism a priority, it has failed to adequately define digital protectionism and has not applied its definition equally, she said.

> Aaronson noted a 2015 USTR complaint about Canadian procurement policies that don't allow U.S. firms to bid on government cloud servers, even though the U.S. cites national security reasons for limiting its own cloud-related procurement.

"It seems the United States both criticizes other governments for failing to develop clear or adequate approaches to enforcing privacy and cites privacy as a barrier to trade. Moreover, the United States has long argued that privacy protections maintain trust in the Internet and that they are essential to stimulating the growth of digital technologies. Hence, it is surprising to see the United States describe too much privacy and inadequate privacy regulations as protectionist," Aaronson wrote.

During the debate, Atkinson refuted Aaronson repeatedly, particularly on defining digital protectionism. "Non-tariff protection is extremely difficult to define. There are all sorts of complicating factors around is something protectionism or not. It's easy with tariffs; tariffs are a solved problem more or less, so it's no different than the rest of the trade space and we don't throw up our hands in frustration; we try to solve them and work on it. I don't see digital data flows and digital trade as any different," he said.

He rebutted Aaronson's Canadian example, saying the Defense Department is not hypocritical or protectionist because its protectionist program is defined and narrowly confined to information that is vital to national security. Personnel information, for example, could be stored outside the U.S.

Both agreed that the U.S. government has not done enough to define what level of protectionism is acceptable for privacy or security and what is not. They also agreed that the U.S. should bring more cases before the WTO, though questioned whether there is a deep enough well of knowledge on digital protectionism to execute such cases.

* * * Briefs * * *

FERROVANADIUM: In 6-0 preliminary vote May 11, ITC found U.S. industry may be injured by allegedly dumped imports of ferrovanadium from Korea.

VISAS: India and U.S. held consultations at WTO May 11-12 on increase in H-1B and L-1 visa fees (see **WTTL**, March 7, page 1). In advance of meetings, Indian Commerce Minister Nirmala Sitharaman said she hopes U.S. will "constructively engage with India to address its concerns regarding recent U.S. measures which impair the ability of both U.S. based Indian companies and competitiveness of India's services industry engaged in the U.S. market, but also creating uncertainties for Indian service suppliers."

CHINA: Sens. Al Franken (D-Minn.), Amy Klobuchar (D-Minn.) and Tammy Baldwin (D-Wisc.) introduced China Market Economy Status Congressional Review Act in Senate May 9. Rep. Rosa DeLauro (D-Conn.) introduced companion measure (H.R. 4927) April 13 (see **WTTL**, May 2, page 1). Legislation would give Congress right to vote on whether China should be upgraded to market economy status. China believes per its 2001 WTO accession that other countries must treat it as market economy beginning Dec. 11, 2016. EU Parliament approved non-binding resolution May 12 that "China is not a market economy and that the five criteria established by the EU to define market economies have not yet been fulfilled."

MTB: American Manufacturing Competitiveness Act of 2016 (H.R. 4923) passed Senate by unanimous consent May 10 and now heads to president's desk. House passed tariff relief bill 415-2 April 27 (see **WTTL**, May 2, page 3).

TRADE PEOPLE: William Reinsch named distinguished fellow May 9 to Trade in the 21st Century initiative (Trade21) at Stimson Center. Reinsch previously served as president of National Foreign Trade Council.

AFRICA: USTR Michael Froman traveled to Kigali, Rwanda, for World Economic Forum Africa May 11-14. Per African Growth and Opportunity Act, deadline is fast approaching for USTR to give Congress list of sub-Saharan countries interested in negotiating FTAs with U.S.

CUBA: U.S. and Cuba to hold third Bilateral Commission in Havana May 16. State Counselor Kristie Kenney will lead American delegation. Deputy Assistant Secretary John S. Creamer will also attend. Josefina Vidal, Foreign Ministry's Director General for U.S. Affairs, will lead Cuban delegation. Talks expected to cover: environmental protection, agriculture, law enforcement, health, migration, civil aviation, direct mail, maritime and port security, educational and cultural exchanges, telecommunications, trafficking in persons, regulatory issues, human rights, and claims for remainder of 2016, State said. Last Bilateral Commission met in November 2015.

TRADE SECRETS: President Obama signed Defend Trade Secrets Act (S. 1890) May 11. Sponsored by Sen. Orrin Hatch (R-Utah), law allows trade secret owner to file civil action in U.S. district court. Law passed 87-0 in Senate and 410-2 in House (see **WTTL**, May 2, page 8).

ACID: In 6-0 preliminary vote May 13, ITC found U.S. industry may be injured by allegedly dumped and subsidized imports of 1-hydroxyethylidene-1, 1-diphosphonic acid from China.

CRUDE OIL: In May 12 Federal Register, BIS removed short supply license requirements in EAR for crude oil. Final rule removes Commerce Control List (CCL) entry and corresponding short supply provisions, as well as conforming changes to certain other EAR provisions. Ban on crude oil exports was lifted in December 2015 (see **WTTL**, Jan. 4, page 1). Exports of crude oil continue to require BIS authorization to embargoed or sanctioned countries or persons and to persons subject to denial of export privileges, agency noted.

EX-IM FRAUD: Isabel C. Sanchez, who owned Miami export company Ex-Im of America, Inc., and her husband Gustavo Giral were sentenced to prison May 13 in Miami U.S. District Court for conspiracy to commit wire fraud, wire fraud, and conspiracy to commit money laundering in scheme to defraud Ex-Im Bank from 2007 through 2012. Sanchez received 48 months and Giral 41 months, both followed by three years supervised release. Both pleaded guilty in February. Sanchez' father Guillermo M. Sanchez pleaded guilty in March and sentencing is set for June 8 (see **WTTL**, March 28, page 9). Defendants allegedly created fictitious invoices for sales of merchandise that never occurred.