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U.S., EU Sanctions Hit More Russian, Ukraine Entities

After weeks of threats, the U.S. and European Union (EU) announced more sanctions July 16 against Russian and Ukrainian entities in response to Moscow's support for Ukrainian separatists. More sanctions could come, however, if early reports prove true that the separatists, using Russian anti-aircraft weapons, shot down a Malaysian Airlines plane July 17, causing the death of 298 passengers and crew members. During a July 18 White House press conference, President Obama confirmed that the missile that shot down the plane came from the separatist-controlled region of Ukraine.

> "We will continue to make clear that as Russia engages in efforts that are supporting the separatists, that we have the capacity to increase the costs that we impose on them. And we will do so," Obama said. "This certainly will be a wake-up call for Europe and the world that there are consequences to an escalating conflict in eastern Ukraine; that it is not going to be localized, it is not going to be contained," he said.

As part of wide-ranging sanctions, the Bureau of Industry and Security (BIS) and Treasury's Office of Foreign Assets Control (OFAC) added dozens of individuals and companies to their respective lists of blocked persons. BIS added 11 parties in 12 entries, including the Donetsk and Luhansk People's Republics in Ukraine and nine Russian arms manufacturers, to its Entity List. OFAC added those names to its Specially Designated Nationals (SDN) list, along with Aleksandr Borodai, the self-declared "prime minister" of Donetsk. OFAC June 20 previously added seven other "separatists" in Ukraine to its SDN List (see **WTTL**, June 23, page 9).

Treasury sanctioned two major Russian financial institutions, Gazprombank OAO and VEB, and two Russian energy firms, OAO Novatek and Rosneft. It prohibited transactions with the banks longer than 90 days maturity or new equity interests in property. Other transactions are permitted, Treasury said. The EU July 16 also expanded its travel ban and asset freeze to include Borodai and 10 other new individuals.

Solicitor General Opposes Supreme Court Review of Byrd

The U.S. Solicitor General urged the Supreme Court July 14 to reject a petition for a writ of certiorari to review the constitutionality of the Byrd Amendment's requirement

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that only domestic parties that supported petitioners in antidumping and countervailing duty cases are entitled to a share of collected funds. The government's brief came in response to a plea filed by Ashley Furniture seeking to overturn Court of Appeals for the Federal Circuit (CAFC) and Court of International Trade (CIT) rulings that upheld the criteria in the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) and denied payments to Ashley (see **WTTL**, June 23, page 2).

> "The court of appeals correctly held that the CDSOA is constitutional, and that holding does not conflict with any decision of this court or of any other court of appeals," the government brief argued. "In addition, the question presented has even less prospective significance than it had when the court denied review in *SKF*, since the CDSOA was repealed in 2006 and applies only to a diminishing pool of antidumping duties collected on goods that entered the United States before October 1, 2007," it noted.

In contrast to the high court's ruling in *AID v. Alliance for Open Society International*, the Byrd Amendment didn't require parties to agree with a government policy, the Solicitor General said. "The government did not even *have* a view on that issue at the time petitioners' views were solicited in this case. Instead, the government solicited domestic producers' *own* views on whether they supported an antidumping petition, in an effort to inform the government's administrative decision-making process," its brief stated.

The government also contended that other precedents cited by Ashley don't apply in this case. "The CDSOA's support requirement was thus analogous to a requirement that a potential plaintiff join in litigation, or allow class action representation, in order to share in the recovery if the litigation is successful. Although the decision to participate in the litigation may affect how the plaintiff is perceived by others, treating that decision as a prerequisite to participation in any recovery has never been deemed to raise a First Amendment issue of the sort that this court identified in *AID,*" the breif said.

"Contrary to petitioners' contention, the court of appeals' application of the First Amendment in the unique context of the CDSOA distribution scheme will not necessarily affect the constitutional analysis of other statutes. Nor have they identified any other statute that is substantially similar for purposes of First Amendment analysis, it said.

In a separate brief filed July 14 in opposition to Ashley's petition, the American Furniture Manufacturers Committee for Legal Trade (AFMC) claimed Ashley and co-petitioner Ethan Allen have not satisfied the requirements for certiorari. "No court of appeals, and certainly no decision from this Court, has ever held that a statute that distributes benefits to prevailing parties in litigation-like contexts involves viewpoint- or content-based discrimination," said the brief filed by AFMC attorney's at King & Spalding. "Granting review to revisit *SKF* would not advance this court's First Amendment jurisprudence, but it would disrupt settled expectations and delay the prompt resolution of the handful of remaining cases to which the CDSOA still applies," it continued.

Holleyman Gets Short, Sweet Confirmation Hearing

At a Senate Finance Committee hearing July 16, Robert Holleyman, the nominee to be deputy U.S. Trade Representative (USTR), got mostly softball questions and in return, committed to nothing more than working with that committee and the rest of the Con-

gress in pursuing the USTR's ambitious trade agenda. President Obama's nomination in February of Holleyman, the former president of the Business Software Alliance (BSA), has drawn praise from the business community but also charges that he represents another example of the government-industry revolving door. Holleyman would fill the deputy post that has been vacant since Demetrios Marantis left the job in May 2013 to join the technology firm Square (see **WTTL**, March 3, page 3).

> At the confirmation hearing, only Chairman Ron Wyden (D-Ore.) and Sen. John Thune (R-S.D.) were even present for the whole hearing to ask questions. Those questions touched on such topics as digital trade barriers, transparency in trade agreements, trade enforcement against China, intellectual property rights, net neutrality, agriculture and biotech patent approvals. Holleyman agreed that all these issues are important.

In one exchange, Wyden said transparency in negotiations is an "absolute prerequisite in order to build a new bipartisan coalition for trade policy." Asked what he would do to ensure the public is brought into agreements, Holleyman responded, "I commit to doing everything I can to work with you and this committee as we look to ensure the greatest level of confidence and information, and I commit to making this a chief priority."

Holleyman has been a member of USTR's Advisory Committee for Trade Policy and Negotiations since September 2010. Prior to his 23 years at BSA, he served as senior counsel for the Senate Commerce Committee and before that was legislative director and assistant to former Sen. Russell B. Long (D-La.).

Trade Facilitation Agreement Awaits G-20 Talks

As WTTL was going to press, "India and South Africa continue to take a hard line" against World Trade Organization (WTO) adoption of a protocol to implement the trade facilitation agreement reached at its ministerial meeting in Bali in December, according to one source in Sydney, Australia, where trade ministers from the world's 20 largest economies (G-20) were about to meet July 19. U.S. and WTO officials were looking to the G-20 meeting as a last-ditch effort to get agreement to move protocol forward after months of opposition from India and several African countries.

> WTO Director-General Roberto Azevedo reportedly was working hard at the G-20 meeting to broker a deal that would allow the WTO General Council to adopt the protocol at its July 24-25 meeting. Under the agreement in Bali, July 31 is supposed to be the deadline for adoption of the protocol.

Even if the G-20 ministers reach an agreement in Sydney, the Preparatory Committee on Trade Facilitation (PCTF) will still have to rush to prepare a final version of the protocol in time for the General Council meeting. If there is a delay, the council may agree to suspend its meeting for a few days to give the PCTF time to complete its work, one source in Geneva suggested.

In testimony to the House Ways and Means trade subcommittee July 16, Deputy USTR Michael Punke said there have been mixed signals from India about its stand on trade facilitation, but more positive signs had been seen in the last 24 hours. "We certainly hope that the more positive signals that we have heard are the ones that will prevail

in Geneva at the General Council meeting next week," Punke told the subcommittee. Later, speaking to reporters, he conceded that the positive sign was a statement by India's commerce secretary that Punke had read in a newspaper but that no direct communication had come from India.

> Almost while Punke was testifying, Indian Commerce Secretary Shri Rajeev Kher issued a statement saying he was "completely misquoted" in the press report. The news article had quoted him as saying India would not block adoption of the protocol over its demand that the WTO begin work on food security. He noted the statement India made at the July 2 meeting of the PCTF remains unchanged.

"It was also reiterated by the Commerce Secretary that there should be more clarity on this issue and Members' concerns satisfactorily addressed including on Public Stockholding," the statement continued. "It seems that by attributing 'wrong statement', to India an effort is being made to divide developing countries who have taken a clear stand on the issue," it said.

Perhaps not coincidentally, the U.S. submitted a paper to the WTO Agriculture Committee July 15 proposing a work program on food security to carry out the mandate adopted at the Bali meeting. The paper is mostly procedural, outlining the elements of a work program that should include an evaluation of members' experiences with food security and food security policies as well as development of best practices and recommendations.

WTO Panel Ruling Could Force Reopening on China Cases

Although the U.S. is certain to appeal the ruling, a WTO dispute-settlement panel report July 14 could force Commerce to reopen several antidumping and countervailing duty (CVD) cases involving imports from China. Among its findings, the panel ruled that the U.S. acted inconsistent with WTO rules in its treatment of Chinese firms as state-owned enterprises (SOE), in the application of its "rebuttable presumption" policies and in the accounting for alleged subsidies. Even though the panel found in favor of the U.S. on several points, the U.S. will have defend its policies again in front of the WTO Appellate Body, which has previously ruled against these practices.

> USTR Michael Froman tried to put a positive face on the panel's decision, stressing the arguments that the U.S. won. "The WTO panel's decision to reject many of China's challenges to U.S. countervailing duties on unfairly subsidized Chinese imports is a victory for American businesses and workers," he said in a statement. He said the administration is evaluating its options on what to do with the parts of the case that it lost.

The Chinese had complained to the WTO about how Commerce had treated allegedly dumped and subsidized imports from China of solar panels; wind towers; thermal paper; coated paper; tow-behind lawn groomers; kitchen shelving; steel sinks; citric acid; magnesia carbon bricks; pressure pipe; line pipe; seamless pipe; steel cylinders; drill pipe; oil country tubular goods; wire strand; and aluminum extrusions. "The Panel finds that in the 12 countervailing duty investigations challenged by China, the United States acted inconsistently with Article 1.1(a)(1) of the SCM [Subsidies and Countervailing Measures] Agreement when the USDOC found that SOEs were public bodies based solely

on the grounds that these enterprises were (majority) owned, or otherwise controlled, by the Government of China," the panel report stated.

> This ruling stemmed from the panel's conclusion that Commerce's application of a "rebuttable presumption" to the aid given Chinese firms from these public bodies is a "measure" that can be challenged at the WTO. "The policy establishes that the burden is on an interested party to provide information or evidence that would warrant consideration of any other factors," the panel noted.

"As a consequence, under the policy of the 'rebuttable presumption', the USDOC does not look for other information, unless an interested party raises it. It effectively thus restricts the USDOC to consider other evidence on its own initiative," the panel report stated. On this basis, the policy is inconsistent with WTO requirements, it concluded.

The panel rejected several Chinese complaints and found U.S. policies permissible. Among the rulings in favor of the U.S. were the panel's finding Commerce acted appropriately in its use of facts available, benchmarks and specificity. It chose not to deal with several Chinese complaints that it felt it didn't have to address for various reasons.

Theft of F-35 Documents May Lead to Export Charges

A man charged with the interstate transfer of stolen documents containing technical data on the F-35 Joint Strike Fighter (JSF) could face additional charges of violating the International Traffic in Arms Regulations (ITAR) for attempting to export the data to Iran. A judge in Bridgeport, Conn., U.S. District Court denied bail July 2 for Mozaffar Khazaee, an Iranian-born, naturalized U.S. citizen, who worked for several defense contractors, including United Technologies, where he allegedly obtained some documents.

> In its brief opposing the granting of bail, the government noted that the documents Khazaee allegedly stole and attempted to send to Iran included technical data subject to export controls. "The crimes involved in this case carry very serious penalties. In addition, the Government is continuing its investigation and the agents have received confirmation from the State Department that some of the documents that Khazaee was attempting to ship were subject to strict export controls," the Justice memo said.

A spokesman for the U.S. Attorney in Bridgeport confirmed that its office is looking into additional charges "but none have been lodged yet" and "there are no additional charges at this point." He told WTTL that the office doesn't "confirm grand jury activity." Customs and Border Protection (CBP) agents blocked the export of a container labeled as "household goods" and destined for Iran in Long Beach, Calif., in November 2013.

After Homeland Security Investigations (HSI) agents examined the documents, they were to include F-35-related information and not household goods. Khazaee was later arrested at Newark International Airport about to board a plane for Iran. While 50,000 pages of seized documents were being investigated for ITAR violations, a superseding indictment Feb. 18 charged Khazaee with three counts of transportation of stolen property. An affidavit filed by HSI Special Agent Breanne Chavez with the original complaint against Khazaee said the documents included warnings that they were export controlled. "The

documents examined were labeled as 'Export-Controlled,' as well as stamped with 'ITAR-controlled' warnings. Several of the documents also bore markings indicating that they were the property of at least three defense contractors, referred to here as Company A, Company B, and Company C," she stated.

One document carried this statement, she noted: "WARNING this document contains technical data the export of which is or may be restricted by the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR) , 22 C.F.R. parts 120-130. Diversion contrary to U.S. law is prohibited. The export, reexport, transfer or re-transfer of this technical data to any other company, entity, person, or destination, or for any use or purpose other than that for which the technical data was originally provided by [Company A], is prohibited without prior written approval from [Company A] and authorization under applicable export control laws. ITAR USML Category (Subcategory): VIII(I) This document is marked to the highest level of export control and may contain technical data that is controlled at a lower level. Consult your local Business Area Export Representative to determine if it is possible to revise or redact the document to change the level of export control."

WTO Panel Finds Fault with ITC Use of Cumulation in India Case

In the second adverse WTO ruling against U.S. trade remedy practices on the same day, a WTO dispute-settlement panel report released July 14 found the U.S. acted inconsistent with WTO rules in a countervailing duty (CVD) determination against certain hot-rolled carbon steel flat products from India. The panel, however, found in favor of the U.S. in parts of the dispute, allowing USTR Michael Froman to claim a partial victory.

> "The WTO panel's findings rejecting most of India's numerous challenges to our laws and determinations is a significant victory for the United States and for the workers and businesses making these steel products," Froman said in a statement.

Among the U.S. practices that the panel said violated WTO rules was the International Trade Commission's (ITC) practice of cumulating imports from several countries that are part of the same group of antidumping and CVD cases. ITC cumulated simultaneously imports from India with those of imports from ten other countries. Imports from five of the countries were the subject of both AD and CVD investigations, but imports from six were the subject of only AD investigations.

"We agree with India that the term 'simultaneously' suggests that imports under consideration must all be subject to CVD investigations at the same time. In our view, the plain text of Article 15.3 [of the WTO subsidies agreement] only allows a cumulative assessment of the effects of imports which are *simultaneously subject to countervailing duty investigations*. We consider that this fact, that imports are subject to simultaneous CVD investigations, is a necessary pre-condition for a cumulative assessment to be undertaken consistently with Article 15.3," the panel found (its emphasis).

"Imports which are only the subject of a parallel, simultaneous anti-dumping duty investigation plainly do not satisfy this requirement as a matter of fact. Thus, we agree with India both that the requirement that imports be subject to a CVD investigation is a threshold requirement for cumulation, and that under Article 15.3 the effects of imports

which are not subject to CVD investigation cannot be cumulatively assessed with those of imports which are subject to CVD investigation," the panel ruled. "Thus, we consider that Article 15.3 does not authorize investigating authorities to cumulatively assess the effects of imports that are not subject to simultaneous CVD investigations with the effects of imports which are subject to CVD investigation, for purposes of making an injury determination in a countervailing duty investigation," it added.

> The panel also found that the U.S. had not properly taken into account mandatory factors regarding specificity, failing to consider domestic price information, not relying on accurate information for a coal program, and relying on "facts available" in some parts without a factual foundation. The panel rejected numerous Indian complaints, including ones aimed at the use of facts available in other parts, Commerce's benchmark regulations, the U.S. determination on what are "public bodies" and the ITC determination in the underlying investigation.

TTIP Talks Keep Focus on Technical Issues

If trade negotiators are like the foxes and hedgehogs described by philosopher Isaiah Berlin, U.S. and European Union (EU) negotiators working on a Transatlantic Trade and Investment Parnership (TTIP) are certainly hedgehogs, talks in Brussels July 14-18 suggest. The sixth round of talks on a TTIP focused on technical issues in nine areas and especially on regulatory cooperation.

> "We have had intense discussions in most of the areas we intend to cover in this agreement. The work this week has again been highly technical. This work is essential to prepare the ground for the political decisions that would need to be taken at a later stage of the negotiations," said chief EU negotiator Ignacio Garcia Bercero at the end of the meeting. USTR Michael Froman also issued statement saying, "U.S. and EU negotiators worked productively this week to identify paths forward across the negotiations."

Bercero said talks on services address proposals both sides have put on the table. The EU proposal reflected its commitments under the EU-Korea free trade agreement and other trade pacts the EU and U.S. have entered. "The objective is therefore to build from that and identify additional elements in TTIP which would go beyond our respective bilateral, plurilateral or multilateral commitments," he said.

On state-to-state dispute settlement, "we have continued our work on the basis of a consolidated text and made progress in bringing our positions closer," he said. Bercero called government procurement one of "the most fundamental elements" of the talks. "On this basis, we have discussed during the week how to achieve ambition on all the items which need to be addressed in order to fulfill such objective including procurement by federal entities, the conditions attached to the use of federal funds for procurement by non-Federal entities, and the measures applied at the sub-federal level," he noted.

The TTIP talks came after EU Trade Commissioner Karel De Gucht gave a strong endorsement of the negotiations to a German audience July 3. While touting the benefits a deal would give both Europe and America, he also stressed that some EU rules will not change. "The EU will not be changing its laws on genetically modified food. And we

will not be changing our laws on beef hormones. And we will never surrender our regulatory sovereignty," he declared. He also promised that TTIP won't affect cultural diversity policies "such as public support for theatres, operas, film production, or public radio and television, nor Germany's system of fixed prices for books, will be subject of negotiation in TTIP. These issues are simply not being discussed at all in TTIP."

> De Gucht also defended the TTIP negotiating process. "We act under the democratic and detailed scrutiny of national governments and the European Parliament. Business is not part of the negotiation; there is no secret text; and when there is an agreement it will be fully public before any democratic decision is made to adopt it or not," he said.

OCTG Makers Say Imports Cut Them Out of "Golden Age"

The oil and gas boom is changing the U.S. economy, but makers of oil country tubular goods (OCTG) complained July 15 that they have not fully benefitted from it because of unfair imports from nine countries. Foreign respondents, however, told an International Trade Commission (ITC) hearing that the domestic industry caused its own problems by overbuilding capacity and cutting prices. At the almost nine-hour ITC hearing on the injury phase of the antidumping and countervailing duty cases against the imports, representatives of both sides cited data from the same ITC staff report to draw opposite conclusions on the causes of the industry's problems (see **WTTL**, July 14, page 9).

> From 2010 to 2013, demand for OCTG grew by more than two million tons. This was "one of the great boom markets we have ever seen for any steel product," Mario Longhi, president and CEO of U.S. Steel, told the commission. "But what should have been a golden age has turned into a nightmarish challenge," he said. In addition to the oil and gas boom, domestic firms expected to benefit from exclusion of Chinese OCTG that was hit with AD and CVD duties in 2009 and 2010 and excluded from the U.S. market, he noted. Instead, the subject imports came in and replaced the Chinese product, he contended.

A key question facing the ITC is what caused OCTG prices to fall during this period of higher demand. ITC members seemed to focus on the capacity issue in their questioning of witnesses. Another issue for the ITC will be whether to cumulate all nine countries in its finding or, as small suppliers urged, exclude countries that supplied small amounts of OCTG, such as India and Saudi Arabia. It also will have to decide if imports, which mainly were for lower-end products, could cause harm to higher-quality, higher-priced OCTG, which the domestic industry mainly produces.

The domestic industry's expansion of capacity was a "rational" decision in light of increases in oil and gas drilling in the U.S., conceded Donald Cameron of Morris, Manning & Martin, which represents several respondents, including some from South Korea. The problem, he argued, was that several domestic firms made the same decision and created over-capacity. Richard Cunningham of Steptoe & Johnson, which represents South Korea's ILJIN Steel, argued that building capacity made "common sense" but led to what "usually happens when there is a boom in demand." He also claimed the industry practiced aggressive pricing and offered volume discount to keep mills operating. Stephen Vaughn of Skadden Arps, which represents U.S. Steel, countered these arguments by

noting that demand exceeded capacity during the period of investigation. He pointed out that producers in three countries, Vietnam, the Philippines and Taiwan, were set up by Chinese OCTG makers that were knocked out of the U.S. market. In addition, at least one Korean OCTG producers benefits from its relationship to Chinese steel firms.

> Commissioner Dean Pinkert asked where the ITC should consider the Court of Appeals for the Federal Circuit's *Bratsk* ruling, which would require the ITC to look at non-subject imports and weigh whether imports are a commodity products for which other suppliers would just replace subject imports if the commission found injury.

Alan Price of Wiley Rein, which represents domestic producer Maverick Tube, said he anticipated that question. "We do not view this as a commodity product," he responded. OCTG is not like products traded on future exchanges. "This is somewhat different," Price said. "This is not a pure commodity," he added. "While the products are very highly substitutable, the products are not a perfect substitute; they are not pure commodities; they are commodity-like," he said.

Imports of nonsubject imports should be considered, respondents argued, noting that several U.S. petitioners are subsidiaries of foreign steel firms and import some OCTG for their own sales. TMK IPSCO is a subsidiary of Russia's OAO TMK. Tenaris North America is a subsidiary of Tenaris of Luxembourg, and Vallourec USA is a subsidiary of Vallourec in France. Leo Gerard, president of the United Steelworkers, denied that there was any conspiracy to not include those related imports in the case. "If we thought they were in a conspiracy, we would be the first to blow the whistle," he said.

Gerard also admitted employment in the U.S. industry would have gone up only by 200 to 300 workers without the unfair imports. Data cited from the ITC staff report showed domestic prices declined 9.8% from 2012 to 2013, while import prices were down just 10.1%. While the combined AD and CVD margins for some respondents added up to less than 10%, one U.S. industry executive told WTTL the important thing in winning the case would be having imports come under Commerce scrutiny and administrative reviews that would keep the foreign firms from lowering prices in the future.

NAFTA Mixed Effect Due to Economic Conditions, Not Trade Pact

Twenty years after the North American Free Trade Agreement (NAFTA) was enacted, it still engenders controversy and disagreement over whether it helped or hurt the U.S. economy and jobs. At an event hosted by the Peterson Institute for International Economics (PIIE) in Washington July 15, NAFTA defenders had their day in the sun.

> Timed with the publication of his PIIE policy brief, Gary Hufbauer laid out four "misleading" charges against the effect of NAFTA on the U.S. economy: The boom in U.S. agricultural exports turned rural Mexicans into illegal emigrants; NAFTA fostered a growing U.S. trade deficit; trade with Mexico increased U.S. unemployment; and job loss depressed U.S. wages, especially in manufacturing.

In truth, under 5% of "dislocated" U.S. workers over the past decades can be attributed to rising imports from Mexico (about 200,000 out of 4 million), Hufbauer asserted.

Demand for both domestic labor and foreign goods are dominated by local economic conditions, not trade policy, he added. As far as the trade deficit, internal Mexican events -- the Peso Crisis and Mexican reforms -- were important contributors, but the main reason was the growing imbalance between income and spending within the United States, Hufbauer noted. "No proponent argues that North America entered a golden age after NAFTA. But critics are wrong when they blame NAFTA for ills that should not be laid at the agreement's doorstep and wrong when they dismiss the genuine achievements of the tripartite pact," Hufbauer's brief said.

> At the PIIE event, Lindsay Oldenski of Georgetown University also presented data that seemed to defy conventional logic. Instead of investment of multinational corporations (MNCs) in Mexico replacing domestic funding, Oldenski found evidence that "foreign sales, employment, and investment by U.S. firms complement their sales, employment, and investment at home."

Contrary to criticism that U.S. jobs are being lost to Mexico, Oldenski claimed that when U.S. firms add an average of 131 jobs in Mexico, they create 333 new jobs in the U.S. at that same firm. "This doesn't mean that there are never any negative effects of offshoring on individual workers or firms, just that the positive effects are larger," she added.

ITC Violated Its Own Rules in Reversing ALJ Order, CAFC Rules

The ITC violated its own rules when it reversed an administrative law judge's termination order in a Section 337 case, the Court of Appeals for the Federal Circuit (CAFC) ruled July 18. While ITC rules allow the commission to review and reverse an ALJ's initial determination in a case, they don't allow reversal of an order, even though the commission claimed the ALJ's action inappropriately called his decision an order when it should have been an initial determination.

> In *Align Technology v. ITC*, Align had sought an ITC ruling that respondents in an earlier consent agreement had violated the agreement by importing data for the patent-infringing dental devices. The ALJ issued an order denying the respondents' motion for termination of the investigation. He found the data was covered, the commission found they were not.

"Whether an ALJ's ruling issues as an initial determination or an order is important because it determines whether the commission may review the ALJ's decision," wrote CAFC Judge Raymond Chen for the three-judge panel. "The ITC's regulatory regime contemplates that an ALJ's *grant* of certain kinds of relief, such as to terminate a proceeding or permit a party to intervene, justifies immediate Commission review. But, at the same time, the regulations treat the denial of such requests for relief as not warranting immediate review. Moreover, the regulations provide a mechanism for interlocutory review of Order No. 57 that Intervenors could have used, but did not. Therefore, the rules clearly prohibited the commission from reviewing orders like this one," he wrote.

"The commission here concluded that even though it has jurisdiction and authority, as a general matter, over the importation of digital data through electronic transmissions, it has a historic practice of requiring that cease-and-desist orders explicitly reference digital data, and this practice both logically extended to consent orders and put the public on notice as to this requirement," the judge noted. The ITC has rules that would

allow it to waive this review policy but didn't properly invoke them in this case. "But under these circumstances, the commission cannot circumvent its own rules. If it desires to do so, Rule 201.4(b) gives it broad authority to waive, suspend, or even amend its rules, none of which happened here. Until it does, its rules are binding and the Commission must follow them," Chen wrote.

> "The commission may invoke waiver of Rule 210.42(c) properly on remand, propelling this case back to us without the errant procedural flaw but otherwise substantially unchanged," Chen stated. "The interests of judicial efficiency, therefore, compel us to note that, should the commission again rely on its allegedly established practice of requiring remedial orders to explicitly mention digital data for it to be covered, we do not find that reasoning persuasive," he added.

* * * Breifs * * *

OFAC: Tofasco of America, Inc. of La Verne, Calif., agreed July 17 to pay $21,375 to settle charge of violating Weapons of Mass Destruction Proliferators Sanctions Regulations. In April 2009, Tofasco allegedly dealt in blocked property by "engaging a bank to process a blocked letter of credit transaction representing payment for a shipment of recreational chairs with a substitute bill of lading omitting reference to the Islamic Republic of Iran Shipping Lines (IRISL)," OFAC noted. Firm initially presented documents to another bank that refused to handle transaction due to IRISL's involvement. Tofasco did not disclose actions.

FCPA: Another ex-executive of France's Alstom Power pleaded guilty July 17 in New Haven, Conn., U.S. District Court to bribing Indonesian officials to secure power contracts. William Pomponi, former VP of regional sales, was charged with conspiracy to violate FCPA and money laundering. Sentencing is set for Oct. 22. Alstom partner Marubeni Corporation pleaded guilty March 19 in same court to one count of conspiracy to violate FCPA and seven counts of violating FCPA. It agreed to pay $88 million criminal fine (see **WTTL**, March 24, page 7).

EX-IM BANK: Jose Mirabent-Paez, Mexican citizen and owner of Mexican construction company, was sentenced July 10 in Miami U.S. District Court to 24 months' probation for role in scheme to defraud Ex-Im Bank of approximately $1 million in 2006. Mirabent pleaded guilty at same hearing to one count of making false statement on loan and credit application.

MORE EX-IM BANK: Bank July 15 named Scott Schloegel as senior vice president and chief of staff to Chairman and President Fred P. Hochberg. Since January 2011, Schloegel has been bank's senior vice president of congressional affairs. He replaces Scott Mulhauser, who now serves as chief of staff to U.S. Ambassador to China Max Baucus.

TRADE PEOPLE: Michael Farren, former under secretary of Commerce for international trade in administration of George H.W. Bush and legal counsel for President George W. Bush, was convicted July 11 in Stamford, Conn., Superior Court after week-long trial on charges of attempted strangulation and attempted murder of his wife Mary Farren, who was attorney with Skadden Arps in Washington, according to *Stamford Advocate*. Farren was originally arraigned Jan. 7, 2010 (see **WTTL**, Jan. 11, 2010, page 4). Sentencing is scheduled for Sept. 11.

TPP: Acting Deputy USTR Wendy Cutler concluded latest rounds of talks with two different Japanese officials on motor vehicle trade and market access for agriculture in TPP. On autos, "both governments continued to make steady progress and narrow the remaining differences," USTR said July 18. In ag talks, two sides "continued to make some progress in narrowing the gaps on treatment of a range of agricultural products," office said July 16. Next agriculture meetings will be Aug. 4-5 in Washington, while next auto talks had not been scheduled.