ISSN 0276-8275

WTTLonline.com

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301.570.4544 Fax: 301.570.4545

Vol. 34, No. 28 July 14, 2014

EU, Senators Put Focus on Crude Oil Exports

After flying under the radar for years, Bureau of Industry and Security (BIS) licensing policies for crude oil exports have become the hot topic in U.S.-European Union (EU) trade talks, for environmental groups and for U.S. senators. EU proposals for easing licensing procedures for oil exports to Europe as part of a Transatlantic Trade and Investment Partnership (TTIP) have drawn objections from environmentalists, while Sens. Edward Markey (D-Mass.) and Robert Menendez (D-N.J.) have written to Commerce, criticizing a BIS commodity classification for oil condensates.

> A leaked copy of an EU proposal on crude oil, first obtained by the *Washington Post*, calls for the automatic licensing of oil to the EU as part of TTIP. "The EU proposes to include a legally binding commitment in the TTIP guaranteeing the free export of crude oil and gas resources by transforming any mandatory and non-automatic export licensing procedure into a process by which licenses for exports to the EU are granted automatically and expeditiously," said a "non-paper" EU Trade Commissioner Karel De Gucht sent May 27 to U.S. Trade Representative (USTR) Michael Froman.

"Such a specific commitment would, in the EU's view, not require that the U.S. amend its existing legislation on oil and gas," the document said. It also would be a clear signal that the U.S. accepts "the principle of negotiating a specific chapter including provisions on unrestricted access to U.S. natural resources," it added.

In a July 2 letter to Commerce Secretary Penny Pritzker, Markey and Menendez asked for a detailed explanation of why BIS issued a classification decision to Pioneer Natural Resources and Enterprise Products Partners, allowing them to export their condensate products without licenses. "Exports of condensate or other light crude oils appear to be prohibited unless and until the regulation is revised following notice and public comment," the two lawmakers said (see **WTTL**, June 30, page 6).

Judge Delays Fokker DPA over Voluntary Disclosure

A federal judge July 9 put a stick in the wheels of Justice's deferred prosecution agreement (DPA) with Fokker Services over reports that the company's voluntary self-disclosure (VSD) was not a self-disclosure at all because the government was previously

WTTL is published weekly 50 times a year except last week in August and December. Subscriptions are $697 a year. Additional subscriptions with full-priced subscriptions are $100 each. Site and corporate licenses also available.

investigating the company. Questions raised by D.C. U.S. District Court Judge Richard Leon could put the agreement at risk and force the government to either drop the case or seek criminal prosecution of Fokker.

> In most export cases, the signing of a DPA with Justice and paying a penalty to one or more enforcement agencies is the end of the story, at least for a while. In the case of Fokker, a Dutch aerospace services provider, Leon said he has doubts about important components of the deal.

Behind Leon's questions are reports Fokker was already under investigation as far back as 2009 and 2010 as a result of separate government export enforcement actions and criminal prosecution of another Netherlands firm, Aviation Services International (ASI) BV and its father and son owners, Niels and Robert Kraaipoel. As part of their settlements, the Kraaipoels had agreed to cooperate with the government in identifying other violators. Tips from the Kraaipoels reportedly led to the prosecution of several other Dutch companies and individuals on charges of violating U.S. trade sanctions, including ING Bank. "The Dutch cases were all related to each other," one source said.

Another source said Justice knew about the ongoing investigation of Fokker and had informed the D.C. U.S. Attorney's office, which reached the DPA despite this information. Sources also questioned why Justice sought a DPA when its policy in the past has been not to prosecute companies that make full and truthful VSDs.

Leon at a short evidentiary hearing July 9 said he had "great concerns" about certain parts of DPA, including the amount of the penalty, the 18-month term of the deal, the lack of an independent monitor requirement, the lack of required reporting to the court and the fact that no individuals had been prosecuted for the violations. He asked the parties to submit briefs on these issues and scheduled another hearing for July 24. Fokker was represented at the hearing by lawyers from the firm of Clifford Chance.

In June, Fokker agreed to pay $21 million to settle over 1,100 charges of illegal exporting and re-exporting of aircraft parts, technology and services to Iran, Burma and Sudan from 2005 through 2010, violating U.S. sanctions (see **WTTL**, June 9, page 2). The settlement includes a $10.5 million civil fine paid to the Bureau of Industry and Security (BIS) to resolve allegations by Treasury's Office of Foreign Assets Control (OFAC) and the 18-month DPA with Justice, under which the company is forfeiting an additional $10.5 million.

At the hearing, Leon noted that government justification for this arrangement rested on the VSD Fokker submitted in 2010. Citing a Bloomberg article posted July 9 and forwarded to the court, he said the article "raises some questions" about the accuracy of the court proceedings, including whether government knowledge was based on the VSD or did investigators find out another way. On that point, the court "would be remiss in not following up with the government," he added.

In court documents filed two days before the hearing, Justice defended the settlement. "The government did not initiate the investigation of Fokker Services. Rather, the company made a voluntary self-disclosure after a lengthy and thorough internal investigation. Under prevailing Department of Justice policy, a voluntary self-disclosure alone can be a significant factor in the decision to offer a corporation a DPA," Justice wrote. "Fokker Services also punished employees responsible for the violations and instituted a

comprehensive remediation and compliance program," the document continued. While Fokker had submitted a VSD, a BIS statement announcing the deal made no mention of it. "The charges result from an investigation by OEE [Office of Export Enforcement], along with the Federal Bureau of Investigation, the Defense Criminal Investigative Service, and Homeland Security Investigations, that uncovered numerous violations that occurred between 2005 and 2010," the BIS statement said.

India Becomes New Block to Trade Facilitation Protocol

The World Trade Organization's (WTO) highly touted success at its December ministerial conference in Bali is falling apart and some of the luster around new WTO Director-General Roberto Azevedo is fading. Recent meetings aimed at reviving Doha Round talks on agriculture and non-agriculture market access (NAMA) have shown the same hardened positions that have stalled negotiations for the last six years, and a July 10 session on adopting a protocol to implement the Bali accord on trade facilitation revealed a continuing deadlock (see **WTTL**, July 7, page 2).

> As a result, the WTO General Council may not have a protocol to vote on at its July 24 meeting, which could mean a lengthy delay in the implementation of the trade facilitation agreement. Some sources say there is still an outside chance of getting agreement on a protocol if officials attending a G-20 trade ministers summit in Australia July 19 can come up with a solution. Azevedo will attend the meeting and reportedly will push for G-20 help in getting the protocol adopted.

Initially, it was several countries from Africa and other least developed countries (LDCs) that had blocked adoption of a protocol. In the last two weeks, however, it appears that the Africans have softened their stand – particularly after a meeting of the African Union June 27 in Equatorial Guinea – and may now support the protocol, which would make the trade facilitation agreement part of the existing WTO General Agreement on Tariffs & Trade (GATT).

The Africans and LDCs have wanted the agreement to be adopted only on a "provisional" basis pending completion of the Doha Round. "Nobody knows what they mean by provisional applications," one source in Geneva told WTTL.

Instead of the Africans, India has become the main roadblock to a deal, sources report. With the election of Narendra Modi as India's new prime minister in May, there was hope Modi's pro-business views would lead to a change to India's long-standing resistance to trade deals. That hope may have been crushed by a statement from the Indian representative to the Preparatory Committee on Trade Facilitation (PCTF) July 2, showing that India's policies and attitudes at the WTO haven't changed.

Unexpectedly, India is trying to link the trade facilitation agreement to a separate agreement reached in Bali on food security and government purchases of food stocks. "The pace of implementation of the Bali Decisions has been heavily skewed in favour of Trade Facilitation and virtually all other Decisions have been relegated to the background. This is unacceptable," an Indian official at the PCTF meeting said, according to his prepared statement. "Till we have an assurance and visible outcomes which convince developing countries that Members will engage in negotiations with commitment to finding a

permanent solution on public stockholding and all other Bali deliverables, especially those for the LDCs, India will find it difficult to join the consensus on the Protocol of Amendment," he declared.

> The statement reportedly drew howls of objections from other participants at the meeting because there has been no schedule to take up the food security issue, which the Bali meeting agreed would be addressed by the end of 2017. While India complained about the lack of movement on food security, it has made no proposals of its own on the subject, other sources say.

Commerce Inconsistency Helps U.S. Win Draw in WTO Ruling

Commerce's inconsistency in applying countervailing duty (CVD) law to nonmarket economies (NME), which has drawn complaints from the respondents' trade bar for years, proved helpful to the U.S. in getting a partial win in a ruling from the WTO Appellate Body (AB) July 7. Because the department has changed its application of the law several times, the AB said it couldn't determine what was consistent practice before Congress enacted legislation in 2012 to overturn the Court of Appeals for the Federal Circuit's (CAFC) decision in *GPX I* to make it clear that the department had the authority to apply both antidumping and CVD remedies to NMEs (see **WTTL**, March 31, page 4). As a result, the GPX legislation remains undisturbed.

> At the same time, the Appellate Body upheld the panel's decision that the U.S. had failed to conduct an adequate investigation of 25 NME cases from 2006 to 2012 to prevent "double remedies" that impose antidumping duties on top of CVDs. "As a consequence, the Panel's findings of inconsistency with respect to Articles 10, 19.3, and 32.1 of the SCM Agreement, in paragraphs 7.396 and 8.1.c of the Panel Report, stand," the AB ruled.

Based on technical issues involving the interpretation of the General Agreement on Tariffs and Trade (GATT), the Appellate Body reversed the panel's finding that the U.S. acted consistent with GATT rules and the GPX legislation did not violate GATT provisions barring actions that cause an "advance in a rate of duty or other charge on imports under an established and uniform practice" or impose "a new or more burdensome requirement, restriction or prohibition on imports." The Appellate Body said the panel erred because it had not applied the appropriate "baseline" review of Commerce practice to determine the department's practice before the law was changed and before 2006 when it switched its policy and began applying the CVD law to NME cases.

"While it is clear that the USDOC's practice in applying US countervailing duty law changed in 2006, this fact, in and of itself, cannot resolve the issue of whether the underlying statutory mandate changed with the enactment of Section 1 [of the GPX legislation]," the Appellate Body found. But to find the law created a new burden, the AB said it would have to determine that there was "consistent application of Section 701(a)" by Commerce since the court ruling in *Georgetown Steel*, where the department said the CVD law didn't apply to NMEs.

"We note that the USDOC's official statements made in the process of applying the US countervailing duty law between 1986 and 2012, in particular before and after 2006, do not appear to be entirely consistent, which may be construed as reflecting a certain level

of ambiguity regarding its understanding of the meaning of the CAFC's ruling in *Georgetown Steel*," the AB continued. It also pointed to other cases where Commerce had different interpretations of the law.

> "For these reasons, we consider that the USDOC's practice over the years does not ultimately assist us in ascertaining whether or not the US countervailing duty law precluded or required the application of countervailing duties to imports from NME countries prior to Section 1," it concluded.

"Consequently, our examination of the USDOC's practice as identified above during the relevant period does not provide a basis on which to reach a definitive conclusion on whether, prior to Section 1, the applicable US countervailing duty law prohibited the application of countervailing duties to imports from NME countries, as argued by China, or whether the USDOC was required to impose countervailing duties on imports from NME countries whenever it was possible to identify the existence of a subsidy, as asserted by the United States," it stated. As a result, this issue is moot, it found.

"Today's decision allows U.S. industries to continue to rely on U.S. trade laws to address unfair competition from their subsidized Chinese competitors," said Commerce Secretary Penny Pritzker in a statement. A press release from the USTR's office noted the Appellate Body's rejection of the U.S. appeal regarding double remedies. "The panel report had followed a previous Appellate Body report and found that the United States breached WTO rules by failing to affirmatively investigate an alleged overlap with respect to 25 countervailing duty proceedings. A provision of the *GPX* legislation already directs the Department of Commerce to look at the issue of so-called 'double remedies' and make any necessary adjustments in determinations," it said.

U.S., China Agree in S&ED Talks to Keep Talking

Like a broken record, communiques and statements coming out of the U.S.-China Strategic and Economic Dialogue (S&ED) talks in Beijing July 9-10 sounded very much like those that came out of the meeting a year ago and almost every year earlier. The results were long on generalities about cooperation, commitments, working together and continuing work on some 90 different goals, but short on any details. The meeting, however, showed that Washington and Beijing are still trying to manage their relationship despite many contentious disagreements.

> Chinese Foreign Ministry Spokesperson Hong Lei may have summed up the talks best in a July 10 press conference. "The most important message coming out of the first day of the 6th round of China-U.S. S&ED is that both China and the U.S. will stick to the general direction of building a new model of major-country relationship through cooperation," he said.

After the meeting, USTR Michael Froman issued a statement claiming there was progress on Bilateral Investment Treaty (BIT) talks. "I'm pleased that one year after a major breakthrough on the US-China Bilateral Investment Treaty, we have received China's assurances about a timetable for moving forward with a critical phase of the negotiations regarding a 'negative list'," Froman said. Ahead of the S&ED meeting, Treasury Secretary Jacob Lew said the U.S. was disappointed with China's latest BIT offer (see **WTTL**, July 7, page 1). Froman also said the two sides had "constructive discussions" on the

Information Technology Agreement negotiations, which have been suspended because of Beijing's demands for excluding scores of products from an accord. "We look forward to intensifying our work with China in the coming weeks with the goal of defining a list that is consistent with achieving an ambitious plurilateral agreement," Froman said.

> The Chinese also made general commitments about keeping China's markets open and reducing intervention in currency markets. "Consistent with your reform agenda, China committed to reducing intervention as conditions permit, and China is making preparations to adopt greater transparency, including on foreign exchange, which will accelerate the move to a more market-based exchange rate," Lew said at a joint July 10 press conference with Secretary of State John Kerry, Chinese State Councilor Yang Jiechi and Chinese Vice Premier Wang Yang.

The four officials played down the heated bilateral dispute over Chinese hacking into U.S. government and industry computers. It was spokesman Hong again who was blunt about the discussions. "We keep stressing that China firmly opposes cyber-hacking. This is what we say and what we have been doing. Recently, some American media and internet security firms keep playing the card of China Internet Threat and smear China's image. They cannot produce tenable evidence. Such reports and comments are irresponsible and are not worth refuting," he said.

China and the U.S. agreed to increase cooperation between Customs and Border Protection (CBP) and China's General Administration of China Customs (GACC). A joint communique after the meeting said the two sides "plan to enhance consultations on deployment of China Customs CSI officers at U.S. ports within the parameters of the current Declaration of Principles."

The two agencies also will cooperate on supply chain security. "GACC and CBP have completed 317 joint validations in China, plan to continue discussing mutual recognition arrangement of the Authorized Economic Operator (AEO) programs, and seek to conduct additional joint validations in 2014 and 2015. In addition, GACC and CBP plan to actively continue to align their respective AEOs by conducting on-site validation observation of both programs," the communique said.

In a bipartisan, bicameral letter to U.S. Cabinet officials before the talks, the leaders of the House Ways and Means and Senate Finance committees laid out a long list of concerns about Chinese trade, investment and currency policies, as well as the status of BIT talks and the failure of China to make progress in these areas. "Much more progress than we have seen in the past must be made through S&ED and other forums to ensure that U.S. companies, farmers, ranchers and workers are competing on a level playing field in China," the lawmakers wrote.

"Mega-Regional" Trade Deals Could Help, Hinder WTO

After ten years of stalled Doha Round negotiations to reduce trade barriers, the shift to "mega-regional" deals such as TPP and TTIP offers both good news and bad news for the world trade system, claims a report by the World Economic Forum group. If that sounds ambivalent, it's meant to be so. "We did not reach a single view on the impact of mega-regionals… and it is not the purpose of the report to present one," said group chair

Anabel Gonzalez of the World Bank at an event in Washington July 9. Gonzalez was previously Costa Rica's foreign trade minister and a candidate to be WTO director-general. To this point, trade liberalization has been brought about by a "spaghetti bowl" of regional trade agreements (RTAs), unilateral reforms and Bilateral Investment Treaties (BITs), the report noted. "The good news is that mega-regionals will tidy up the spaghetti bowl – making the spaghetti into lasagne plates, so to speak," it added.

> On the other hand, mega-regionals may undermine world trade governance, in particular the centricity of the WTO. "The danger is that mega-regionals may enfeeble the WTO as a forum for agreeing on new trade rules," the report said. To avoid this, participants in mega-regionals "should consciously craft agreements that are open to additional members and that create more integrated and contestable markets for firms based in both member and non-member countries," the report suggested.

"Regional arrangements can be valuable in their own right and appropriate to reflect the unique needs of particular groups of countries, but they can also help advance progress towards a global system, in which needs that are more universal are achieved through the WTO," the report concluded.

U.S., EU Unions Take Common Stand on TTIP

Ahead of the next round of talks on a Transatlantic Trade and Investment Partnership (TTIP) in Brussels July 14-18, U.S. and EU labor organizations issued a wide-ranging joint statement July 10 calling for an agreement to include strong labor rights protections and not to do anything to weaken existing labor laws in the U.S. and Europe. The joint statement, however, goes far beyond labor issues and joins in solidarity with other interest groups to demand strong environmental protection rules, information privacy and preservation of the EU's "precautionary principles" for food safety and public health.

> Although both the U.S. and EU have strong labor laws and mostly high-wage workers, union opposition to an agreement has been expected. The joint statement puts down a broad marker of reasons organized labor will be able to cite for why it objects to a deal.

The joint statement by the AFL-CIO and the European Trade Union Confederation (ETUC) indirectly suggests that a TTIP deal on labor rights should also apply to U.S. states that have anti-union right-to-work laws. "Labor rights must be enshrined in the body of the agreement, be applicable to all levels of government, and be subject to dispute settlement and trade sanctions equivalent to other issues covered by the agreement," the statement declares.

The unions say TTIP should also deeply integrate legislatures and social partners in the negotiating; protect fundamental labor rights and the environment; preserve the right to legislate and regulate in the public interest, including the use of the precautionary principle; and protect the privacy of personal communications and information.

TTIP must not include an investor-to-state dispute settlement mechanism; impede or deter financial services laws or regulations or interfere with attempts to protect against systemic financial risk; endanger the provision of critical public services; undermine

access to affordable medicines, medical devices or surgical procedures; undermine the place of work principle that must be applied from the beginning to all posted workers or interfere with immigration reform efforts. "While we strongly oppose the inclusion of specific visa commitments under Mode 4, TTIP should contain an explicit mention that national labor, social and collective agreement provisions will be upheld in the case of any and all temporary posting and placement of workers." the two organizations say.

Business Groups See Green in WTO Environmental Talks

Without a clear understanding of what will actually be negotiated, the U.S. and 13 other WTO members formally launched talks July 8 toward an Environmental Goods Agreement (EGA). As with past trade talks, U.S. and international business groups rushed to support a deal that purportedly could reduce tariffs on $1 trillion in annual trade. A recent USTR hearing, however, showed that a major hurdle to an agreement could be the definition of what is an environmental good or service and what should be covered by any eventual agreement (see **WTTL**, June 9, page 1).

> The talks will build on a list of 54 environmental goods put together by the countries of the Asia-Pacific Economic Cooperation (APEC) in 2012 to reduce import tariffs to 5% or less by the end of 2015 for listed products. The EGA will aim to "WTOize the APEC agreement," one source said.

The launch of EGA talks may be an example of WTO hope over experience. The environmental negotiations will be conducted as other trade talks on an Information Technology Agreement (ITA) and Trade in Services Agreement (TISA) remain either blocked or slowed, Doha Round talks face ongoing troubles, and negotiations on trans-Pacific and transatlantic agreements stumble forward.

"The first phase of the negotiations aims to eliminate tariffs or customs duties on a wide range of environmental goods. A second phase will address the bureaucratic or legal issues that could cause hindrances to trade – known as non-tariff barriers — and environmental services," a WTO statement said. In addition to the U.S., other EGA participants are Australia, Canada, China, Chinese Taipei, Costa Rica, the European Union, Hong Kong, Japan, New Zealand, Norway, Singapore, South Korea and Switzerland.

WTO Director-General Roberto Azevêdo said he was pleased negotiations had begun. "Those involved made it clear that these negotiations on environmental goods are open to all WTO members and that all members would benefit from the tariff reductions that arise from any agreement. Above and beyond the economic benefits that enhanced trade in environmental goods will deliver, we remain conscious of the positive role that trade can play in environmental protection," he said in a statement.

One day after the talks were launched, U.S. business groups, including the National Association of Manufacturers (NAM), National Foreign Trade Council (NFTC) and U.S. Council for International Business (USCIB), announced the formation of the Coalition for Green Trade to "educate policymakers and the public on the importance of lowering trade barriers to environmental technologies," a joint statement noted. Business groups from participating countries joined the chorus of praise. "An ambitious EGA will further increase global trade in environmental goods, lowering the cost of addressing environ-

mental and climate challenges by removing tariffs that can be as high as 35 percent," said a July 8 letter from 47 global business groups.

GAO Report on Ex-Im Guns Critics' Engines

As the Export-Import (Ex-Im) Bank fights for its life in Congress, a report from the Government Accountability Office (GAO) gives further ammunition to some critics, especially certain U.S. airlines, that the bank is simply financing large, commercial businesses that might not need its help. As of March 31, Ex-Im's financial exposure in wide-body jets was about $32 billion, which represented about 28% of its total financial exposure, according to the report (GAO-14-642R) published July 8.

> "From 2008 through 2013, Ex-Im supported deliveries of 789 Boeing large commercial aircraft, and European export credit agencies (ECA) supported deliveries of 821 Airbus large commercial aircraft. Large commercial aircraft deliveries supported by Ex-Im and European ECAs rose sharply in 2009 and declined in 2011 and 2013," the report said.

Delta Air Lines, which has sued Ex-Im over its financing of foreign airlines, was quick to respond to the report. "The GAO's recent study illustrates why the Export-Import Bank is in need of reform," it said in a statement. "The Bank devotes too much of its funds to finance wide-body jets purchased by foreign competitors of U.S. airlines and supports too many foreign airlines that simply don't need the help," it added.

In a letter attached to the report, Ex-Im said it "provides financing support to enable Boeing large commercial aircraft to compete based on the performance, quality, technology, and acquisition & operating costs of Boeing aircraft in comparison to Airbus aircraft, and not on the availability and/or terms of the financing offered by the European ECAs with respect to Airbus aircraft."

Meanwhile, the GAO report comes as Sen. Joe Manchin (D-W.Va.) introduced the Senate version of a bill to reauthorize the bank for five years with an increased portfolio cap of $160 billion (see **WTTL**, June 30, page 1). The bill addresses home-state complaints in West Virginia about Ex-Im policies against funding coal-burning power plants as part of Obama administration environment policy. The bill would bar the bank from enforcing "any rule, regulation, policy, or guideline implemented pursuant to the Supplemental Guidelines for High Carbon Intensity Projects approved by the Bank on December 12, 2013," if that enforcement would block any coal-fired or other power-generation project that provides affordable electricity in certain countries or increases exports.

Commerce Finds Low Dumping Margins for Most OCTG

After months of lobbying, press conferences and rallies, U.S. steel companies and unions won only modest antidumping and countervailing duties (CVD) in final Commerce rulings on oil country tubular goods (OCTG) from nine countries July 11. Margins the department found for some imports were only single digit, which may hurt but not stop those imports or lead to a shifting of sourcing. Regardless of the margins, the determinations are likely to face challenge in the Court of International Trade. In one of its main

rulings, Commerce reversed preliminary decisions it reached in March that Korea's two main respondents and suppliers Hyundai HYSCO and Nexteel had zero dumping margins. In its final call, it said Hyundai's dumping margin is 15.75% and Nexteel's is 9.89%. The all-other-rate is 12.82%. Korea was the largest OCTG source under investigation.

> In a sign that the department reads the newspapers, it entered into an agreement with Ukraine July 10 to suspend its investigation. "However, because Commerce received requests to continue the investigation, the investigation was completed," it said in a factsheet.

"Mandatory respondent Interpipe Europe S.A. (and its affiliates) received a final dumping margin of 6.73 percent. All other producers/exporters in Ukraine also received a final dumping margin of 6.73 percent. In light of the suspension agreement, no antidumping cash deposits will be required, and no duties will be collected, while the agreement remains in effect," it explained.

The 24.22% dumping margin found for Vietnam's respondent, SeAH Steel VINA, and the 111.4% all-other-rate, will probably knock Vietnamese producers out of the market. Turkey's Borusan group received a dumping margin of 0% and CVD margins of 15.89%. Other Turkish exporters were hit with dumping margins of 35.86% and CVD margins of 2.53%. Saudi Arabia's Duferco SA received only a 2.69% dumping margin. India's GVN Fuels was found to be dumping at a 2.05% margin and subsidized at a 5.67% rate.

U.S. Steel was pleased with Commerce's final finding of "significant unfair trade margins against the vast majority of subject imports, including South Korea, for the dumping and subsidization of Oil Country Tubular Goods (OCTG) into the American market," said its president, Mario Longhi, in a statement. "This affirmative decision allows the case to move forward to the International Trade Commission hearing on July 15 where U.S. Steel and other petitioners will argue that the domestic OCTG industry is materially injured or threatened with material injury" from the imports, he added.

"In the past few months, Steelworkers across the country rallied for a level playing field. Today their voices were heard. The Commerce Department is to be commended for getting it right and reversing their preliminary decision that would have allowed South Korean steel producers to continue breaking trade rules with no consequences," said United Steelworkers International President Leo W. Gerard in a statement.

* * * Briefs * * *

TRADE PEOPLE: Senate July 9 approved unanimously by voice vote Darci Vetter to be chief agricultural negotiator at USTR. Previously, she was deputy under secretary for farm and foreign agricultural services at Agriculture. "Darci's expertise and experience will make her a formidable advocate for our agricultural community," USTR Michael Froman said in statement.

SECTION 337: Intel did not violate X2Y Attenuators' patent on certain structures for reducing electromagnetic interference in electrical circuits and shielding electrodes from undesirable buildup of charge, known as "parasitic capacitance," Court of Appeals for Federal Circuit (CAFC) ruled July 7, affirming ITC decision in Section 337 case. ITC ruled in favor of Intel, adopting administrative law judge's construction of electrode terms as requiring "a common conductive pathway electrode positioned between paired electromagnetically opposite conductors," noted CAFC Judge Kimberly Moore in opinion for three-judge panel. "We conclude that the ITC correctly construed the electrode terms. The patents' statements that the presence of a

common conductive pathway electrode positioned between paired electromagnetically opposite conductors is 'universal to all the embodiments' and is 'an essential element among all embodiments or connotations of the invention' constitute clear and unmistakable disavowal of claim scope," she wrote. "The standard for finding disavowal, while exacting, was met in this case," she added. In concurring opinion, Judge Jimmie Reyna said: "I write separately to address an error in the claim construction approach adopted by the ALJ and the Commission. The error, while significant, did not affect the result affirmed by this court."

FCPA: Former Noble Corporation CEO Mark A. Jackson and former director and division manager of Noble's Nigeria subsidiary James J. Ruehlen July 7 agreed to settle SEC's pending FCPA charges without paying any fine but consenting to judgments permanently enjoining them from further FCPA violations. In November 2010, Noble Corporation, Swiss company with its main U.S. office in Sugar Land, Texas, entered into non-prosecution agreement for charges involving Nigerian freight forwarding agent, agreeing to pay $2.59 million to Justice and $5.5 million to SEC (see **WTTL**, Nov. 8, 2010, page 3).

STEEL NAILS: In preliminary 5-0 votes July 11, ITC found U.S. industry may be injured by dumped and subsidized imports of certain steel nails from Korea, Malaysia, Oman, Taiwan and Vietnam. Commission further determined that imports of these products from India and Turkey are negligible. Commissioner F. Scott Kieff did not participate in investigations.

HIZBALLAH: OFAC July 10 added to its list of Specially Designated Nationals (SDN) brothers Kamel and Issam Mohamad Amhaz; their consumer electronics business Stars Group Holding; Ayman Ibrahim, general manager of Unique Stars Mobile Phones LLC; Ali Zeaiter, general manager of Stars International Ltd; and Hanna Elias Khalifeh, Hizballah member and Lebanese businessman. In addition, it designated Beirut-based subsidiaries of Stars Group Holding: Stars Communications Ltd., Teleserve Plus Sal, Stars Communications Offshore Sal and Fastlink SARL. OFAC said Stars Group exports support Hizballah's military capabilities, including development of unmanned aerial vehicles, activities in Syria and surveillance in Israel.

NAFTA: In letter to USTR Michael Froman July 10, 14 House Democrats urged him to use "corrected" ITC trade data rather than "raw" Census numbers when reporting U.S. exports to Mexico and Canada. "USTR has claimed that the United States has surpluses with our NAFTA partners in manufacturing and agriculture, including recently indicating that the United States had a manufactured goods trade surplus with NAFTA countries in 2013 of $27 billion. However, the corrected USITC data that removes re-exports show that, in fact, the United States had a NAFTA manufactured goods trade deficit of $65 billion in 2013," letter said.

VASE IS A VASE IS A VASE: Court of Appeals for Federal Circuit (CAFC) July 9 affirmed CIT decision upholding Customs ruling that imported vases used to send flower bouquets are decorative glass vases with duty rate of 30-38% and not packaging with 5.2% rate. "The CIT correctly concluded that the actual use of the merchandise is primarily decorative. It is undisputed that the merchandise is filled with flowers when sold to the end purchaser, and the unit is sold for a price higher than either the flowers or the vase individually. Additionally, purchasers of the unit at retail are able to display flowers in the vases and then reuse the vases in order to display flowers bought later in time," wrote CAFC Judge Evan Wallach for three-judge panel in *Dependable Packaging Solutions v. U.S.*

CBI: CIT Judge Jane Restani ruled July 10 that Puerto Rico Towing & Barge Co. failed to protest correctly and timely CBP's rejection of firm's protest of denial of Caribbean Basin Initiative (CBI) duty-free treatment of ship repairs performed in Dominican Republic. As result, CIT doesn't have jurisdiction, she determined (slip op. 14-80). "Here, PR Towing's letters failed to comply with several provisions of both the statute and regulations, and therefore PR Towing has failed to invoke properly the jurisdiction of the court," Restani wrote. "Perhaps most importantly, the language of the letters makes it clear that PR Towing never intended them to serve as protests within the meaning of Section 1514," she added.