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## China Joins WTO Information Technology Agreement Talks

Negotiators hailed the decision of China to join World Trade Organization (WTO) talks to revise and update the Information Technology Agreement (ITA) as the most notable developments during ITA discussions the week of Sept. 24 in Geneva. Beijing's apparent desire "to play ball" was applauded by one official who said the Chinese "were quite constructive in the negotiations." China's involvement greatly boosts the chances that a new accord will cover enough of world trade to be effective, another official said (see **WTTL**, May 21, page 4).

The Chinese brought to the talks a list of sensitive products they felt justified keeping out of a new ITA. They are preparing another list of products they want included. Other countries also raised concerns about products with "high" or "serious" sensitivities, one official noted.

The ITA talks, which were characterized as "very positive" by trade officials, have moved from technical-level discussions about product lists to actual negotiations, including among countries that haven't submitted lists. Bilateral talks were held during the week by countries that have proposed product lists and others newly interested in the talks, including China, Singapore and Switzerland. More ITA bilaterals are set for the week of Oct. 1. U.S. Trade Representative (USTR) Ron Kirk asked the International Trade Commission in July to conduct a study the information technology industry and a list of 435 products that could be added to the accord.

Among the issues discussed at the meetings is the need to clarify the "IT-relatedness" of products that have both IT and non-IT functions. The idea so far for these "dual-use" items is to maintain the existing ITA structure, namely a product list with product descriptions that would be used to interpret whether or not they qualify for tariff-free treatment. Customs officials from several countries that participated in the meetings stressed the need for clarity on what products are covered. Tensions have already emerged over the coverage of medical devices that are increasingly being linked with IT functions. "Certainly not medical services, but discussions may take place on whether some medical devices with a high IT content should be covered. The outcome of such discussions, however, is uncertain as some may argue that they are strictly speaking not IT products," one EU official told **WTTL** in an e-mail.

## White House May Renew Trade Restructuring Proposals

A former Clinton administration official expects the White House, if President Obama is reelected, to renew its push to restructure U.S. trade agencies. "In the next two months there is



going to be a brief flurry of discussion within the White House about whether or not to embrace the idea of restructuring the Commerce Department and all trade agencies. It's there; it's under the surface. It has been put off until after the election," former Commerce Assistant Secretary David Rothkopf told the Export-Import Bank's advisory committee Sept. 25. "The likely time to make a change would be immediately after the election. I know it's a very controversial subject," he said.

Rothkopf, who is now president of Garten Rothkopf, an international advisory firm, said he supports the restructuring as a way to improve U.S. competitiveness policy by combining U.S. negotiations with other trade-related agencies. "I think it would make sense to have the brain connected to the arms and legs. I think, if you want to have a successful competitiveness policy, what you've got to do is say: 'Here's our strategy; here's how we enforce it with our enforcement agencies; here's how we negotiate it; here's how we finance it'," he said.

After his presentation, Rothkopf told WTTL his expectations about the renewed push for trade restructuring come from discussions with Obama administration officials. He said the plan would make sense because the president will have several key positions to fill in a second administration, including the now-vacant post of Commerce secretary and the expected departure of USTR Ron Kirk after the election. He acknowledged that the president would need legislative authority to make the changes, but suggested the proposed restructuring would give the White House the chance to test Republican interest in reducing the cost of government.

Rothkopf told the advisory committee that competitiveness policy will become a more important factor in trade policy because of the slow growth in Europe and some emerging markets. He noted a conversation he had with one International Monetary Fund senior official who predicted growth in Europe will remain at recession levels for the next five years and even longer in Southern Europe. He said emerging markets, including China, Brazil, India and Russia, also face slower growth. Argentina "is flying off the cliff," he said. "The drivers of economic growth are going to be gummed up for the next couple of years," Rothkopf predicted.

## Ex-Im Having Difficulty Meeting Small Business Goals

The Export-Import Bank is having trouble meeting a congressionally mandated goal for 20% of its financing to go to small business. "Small business still remains one of the more challenging areas for us to hit the 20% number, particularly with some of the large transactions we're seeing," Ex-Im President Fred Hochberg told Ex-Im's advisory committee Sept. 25. Many banks are reluctant to finance small business exports because the deals are often small and there isn't enough profit in them to warrant the cost of administering the financing, he explained.

After nearing \$6 billion in fiscal 2011, Ex-Im financing of small exporters has fallen back to about \$4.3 billion as of August 2012, one month before the end of fiscal 2012. Hochberg complained that Congress doesn't allow the bank to count indirect exports of small firms that are suppliers to larger exporters. "I don't think that is necessarily appropriate," he said. "Currently Congress doesn't count suppliers or indirect exports. We're going to report on them anyway, because I think it's important," he said.

Hochberg said Ex-Im financing is still needed because "liquidity in the financial markets is still a challenge." One main problem is Europe. "European banks have largely exited trade finance," he reported. "We used to rely on French banks enormously," he noted; pointing out that France's four largest banks have "all really virtually exited that work." He said he expects Ex-Im financing in fiscal 2012, which ended Sept. 30, to reach another record, exceeding the \$32.7 billion it supplied last year. It had issued \$30 billion in aid as of August. That goal was helped by the bank's approval Sept. 27 of a \$4.975 billion direct loan to Sadara Chemical Company for the export of American goods and services required in the construction of a petrochemical complex in Jubail Industrial City II in the Kingdom of Saudi Arabia. The financing

is a record amount for Ex-Im. Among the approximately 70 American exporters involved in the transaction are KBR, ABB Inc. and Dow Chemical Company. More than 20 of the exporters are small businesses, Ex-Im said.

Hochberg also reported on talks between the U.S. and China aimed at reaching an agreement on export financing by the end of 2014. "It looked a little faster at the beginning; it looks a little slower now," he said. "But let's remember, China is going through a once-in-a-decade change of leadership," Hochberg added. He also advised that other developing and developed countries are joining the talks. A multilateral agreement is "more desired, but not moving as fast," he said.

## **Tyco Pays \$26 Million to Settle SEC, Justice FCPA Charges**

Tyco International Ltd. and its indirect wholly owned subsidiary, Tyco Valves & Controls Middle East, Inc. (TVC ME), reached agreements Sept. 24 with the Securities and Exchange Commission (SEC) and Justice to settle Foreign Corrupt Practices Act (FCPA) charges with the payment of \$26 million in penalties and fines. The violations involved bribes TVC ME paid to officials employed by Saudi Aramco, an oil and gas company controlled and managed by the government of Saudi Arabia, to obtain contracts. The SEC complaint alleged Tyco subsidiaries arranged illicit payments to foreign officials in more than a dozen countries.

TVC ME pleaded guilty in Alexandria, Va., U.S. District Court to conspiring to violate the antibribery provisions of the FCPA and paid a \$2.1 million fine. As part of a nonprosecution agreement (NPA) with Justice, Tyco agreed to pay a \$13.68 million penalty for falsifying books and records in connection with payments by its subsidiaries to government officials in various countries to obtain and retain business. To settle SEC charges, Tyco agreed to pay \$10,564,992 in disgorgement and \$2,566,517 in prejudgment interest.

"Tyco voluntarily and promptly disclosed these issues we found through an internal review," said Tyco spokesperson Brett Ludwig. "We are pleased to have reached a final resolution on these matters. We are committed to maintaining our compliance program across all business activities," he said.

## **Boeing WTO Compliance: Yes, We Did; No, You Didn't**

After the U.S. notified the WTO Sept. 24 that it had come into compliance with a WTO ruling that Boeing had received illegal export subsidies, the EU reacted by requesting consultations Sept. 25 and then asking the WTO Sept. 27 for permission to retaliate against the U.S. with \$12 billion annually in countermeasures. The U.S. said the National Aeronautics and Space Administration and Defense Department have modified certain contracts with Boeing to make them compatible with commercial practices. It also said Washington State and the City of Wichita have changed programs to be WTO compliant. "Through these actions, the United States has withdrawn the subsidy or removed the adverse effects with respect to each of the subsidies found to be inconsistent with Article 5(c) of the SCM Agreement," it reported.

Not so fast, the EU replied. It said the U.S. has neither withdrawn the illegal subsidies nor removed their adverse effects and may have given Boeing new subsidies. "We had expected that the U.S. would have finally complied in good faith with its international commitments and would have abided by the WTO rulings that clearly condemned U.S. subsidies to Boeing," said EU Trade Commissioner Karel De Gucht in a statement. "We are disappointed that this does not seem to be the case," he said. Under a procedural "sequencing agreement" the U.S. and EU reached in April, the EU asked for the consultations and for WTO permission to retaliate. "The sequencing agreement also stipulates that today's request under Article 22.2 of the WTO Dispute Settlement Understanding can be referred to arbitration. This arbitration would, however, be suspended until the WTO will have ruled on the U.S.'s compliance," it explained.

## Commerce Agrees to End Tomato Suspension Agreement

Commerce's International Trade Administration (ITA) agreed Sept. 27 that "substantially all" U.S. tomato growers support the termination of a suspension agreement that has controlled the price of fresh and chilled tomatoes from Mexico for 16 years. In a preliminary changed-circumstance review determination, the agency said it would continue the review and issue a final decision in nine months (see **WTTL**, Sept. 3, page 1). The group of U.S. growers that had sought the termination of the agreement so it could file a new antidumping petition had submitted the names of 80 U.S. producers who support their position, claiming they represent 90% of U.S. growers and more than the 85% threshold ITA has defined as "substantially all."

ITA rejected the argument of Mexican growers/exporters who contended there are over 40,000 tomato-growing operations in the U.S. The agency refused their request to initiate a comprehensive process to determine the most appropriate method for measuring U.S. production. It said it considered Agriculture Department data to be adequate to determining the number of producers.

ITA also rejected the Mexicans' contention that it should make a "public interest" finding that the suspension accord should remain in place. "We disagree. The public interest finding was a necessary, but not sufficient, condition of entering into the suspension agreement under section 734(c) of the Act. Finding the suspension agreement to be in the public interest did not require the Department to enter into the agreement, but only permitted it to do so. Conversely, finding continuation of the agreement to be in the public interest would not necessarily require the Department to maintain the agreement," the decision memo argued.

The Mexican government issued a statement saying it "regrets the hasty manner in which the Department adopted this preliminary decision, regardless of the application of our Mexican industry, presented from August 15, to consult with the DOC in order to find a negotiated settlement mutually satisfactory." It said it "is deeply concerned about the negative impact that this preliminary decision could represent in our bilateral trade relationship."

### \* \* \* Briefs \* \* \*

**PLYWOOD:** Coalition for Fair Trade of Hardwood Plywood Sept. 27 filed countervailing and antidumping complaints at ITC and ITA on imports of hardwood plywood from China.

**BURMA:** Secretary of State Hillary Clinton told Burmese President Thein Sein Sept. 26 U.S. is moving toward lifting ban on imports from Burma. "We will begin the process of easing restrictions on imports of Burmese goods into the United States," she said. Also on Sept. 26 Treasury repealed special measures directed at two Burmese banks that no longer exist -- Myanmar Mayflower Bank and Asia Wealth Bank.

**EXPORT ENFORCEMENT:** Ming Suan Zhang, a Chinese national, was arrested Sept. 26 and charged in Brooklyn U.S. District Court with attempting to illegally export to China thousands of pounds of aerospace-grade Toray M60JB-3000-50B carbon fiber for use in Chinese fighter plane without required Commerce licenses. Zhang came to attention of federal authorities after two Taiwanese accomplices attempted to locate large quantities of specialized carbon fiber via remote Internet contacts, Justice said.

**MORE EXPORT ENFORCEMENT:** Sixing Liu, Chinese citizen and former employee of **L-3 Communications**, Space and Navigation Division, in Budd Lake, N.J., was convicted Sept. 26 in Newark U.S. District Court of nine charges of exporting sensitive U.S. military technology, including performance and design of guidance systems for missiles, rockets, target locators and unmanned aerial vehicles to China, stealing trade secrets, and lying to federal agents. Sentencing is set for Jan. 7, 2013. Liu remains in custody.

**TRADE PEOPLE:** Stephen Schaefer, former Republican chief international trade council for Senate Finance Committee, named vice president at Emergency Committee for American Trade. He starts Oct. 1.

**ISRAEL:** USTR Ron Kirk announced Sept. 24 that he has removed Israel from Special 301 Priority Watch List based on improvements Israel made to its protection of intellectual property rights. Israel has taken first steps under 2010 memorandum of understanding with USTR, including introduction in Knesset of three laws to improve its pharmaceutical patent regime. USTR's office said Israel would be removed from Special 301 Watch List once laws are enacted.