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Industry Open to ITA Talks after EU Comes into Compliance

Technology industry sources say they would be interested in negotiating a second Information Technology Agreement (ITA), if the European Commission (EC), the European Union's administrative arm, first comes into compliance with a draft WTO panel report that has found the EC in violation of the existing accord. The still confidential report has been given to the U.S. and EC for comment before a final report is issued in a few months.

> Sources say the interim report found in favor of the U.S., Japan and Taiwan complaints in three key areas. Both the U.S. and EU declined to comment on the interim report, claiming it is still confidential. "All I can say is that the issue before the panel is technical and complex and that we are studying the interim report now," an EC spokesperson said.

The EC floated the idea of negotiating another ITA for months before the U.S. filed its complaint at the WTO. The timing of a formal EC proposal one week before the matter went to the WTO Dispute Settlement Body elicited "a lot of rightful skepticism about what they really wanted to achieve," one industry source said. The difficulty is how to start negotiations when fundamental disagreements hang over current commitments, the industry source said. With clarity on current EU tariff practices, industry would be interested in moving forward, he said.

The interim panel report addressed three products that the U.S. claimed should be duty-free under the ITA but have had tariffs placed on them by the EC. The panel found that the EC's approach and theories on those products were inconsistent with the its WTO commitments, one source reported. The EC had argued that the products had certain functions that were not covered by the ITA and were thus dutiable.

At issue were two set-top boxes and liquid crystal display computer monitors with ports that could be hooked up to an external device, such as a DVD player, that let them act as a TV monitor. "There has been increasing recognition that the EC has been taking an overly narrow approach in interpreting this agreement and approaching these products," one industry source said, referring to two European Court of Justice rulings against the EC approach.

Administration Aims to Ease Political Pressure over China

In an effort to blunt congressional criticism of its China policy, the Obama administration is expected to unveil new trade complaints against China before U.S. Trade Representative

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(USTR) Ron Kirk and Commerce Secretary Gary Locke testify June 23 before the Senate Finance Committee. The new requests for consultations at the World Trade Organization (WTO) are expected to address Beijing's restrictions on foreign credit card companies in China and its export restrictions on rare earth minerals.

> The move also may deflect building political pressure on the administration to declare China a currency manipulator and the threat of legislation aimed at China's exchange rate (see **WTTL**, June 14, page 3). A sign of the increase pressure on the administration to act came at a June 16 House Ways and Means Committee hearing on China's trade policies.

Ways and Means Chairman Sander Levin (D-Mich.) complained that China has not made progress in correcting its exchange rate policy. "Seven years of patience from the United States and the international community have run out," he declared in his opening statement. "The administration constructively set the G-20 meeting as an important juncture for China to change its inflexible currency practices. If China does not act and the Administration does not respond promptly thereafter, the Congress will act," he warned.

The USTR's annual Foreign Trade Barriers report highlighted China's restrictions on electronic payment processing, including credit cards. It said China had made a commitment to open these services to foreign firms. "These electronic payment and related commitments were to be implemented by no later than December 11, 2006," the report said. "The United States remains concerned that China has not yet issued regulations to allow foreign companies to operate electronic payment systems for single brand, RMB-denominated credit and debit cards. China Union Pay, an entity created by the People's Bank of China and owned by participating Chinese banks, remains the sole authorized provider of electronic payment services in China," it stated.

Complaints about China's export restrictions on rare-earth minerals is part of a broader concern about its export restraints on raw materials. The U.S. already has a WTO case pending against Beijing's export restrictions on certain industrial raw materials. International fears about China's rare-earth restrictions have been growing and were intensified by a recent proposal to the China State Council to restrict production to a few Chinese companies. China controls about 93% of world production of rare-earth materials, such as dysprosium, terbium and neodymium, which are used in components for wind turbines, electric cars, ipods and missiles. Warnings about this concentration were included in the last report of the U.S.-China Economic and Security Commission (see **WTTL**, Nov. 23, page 2).

Brazil Agrees to Deal to Postpone Cotton Sanctions

The Framework Agreement on cotton that Brazil accepted June 17 will require slight reductions in Washington's subsidies for American cotton producers over the next three years but also includes an implied warning to U.S. lawmakers that failure to address cotton subsidies adequately in the 2012 Farm Bill could lead to renewed sanctions against U.S. exporters and intellectual property rights (IPR) holders. Brazil's Board of Foreign Trade (CAMEX) approved a deal that has been under bilateral negotiations ever since the U.S. and Brazil reached an interim accord in April.

> The framework reflects "a certain realism" of Brazil "that there's nothing going to happen until the Farm Bill," said an executive who has been following the dispute. "It also shows a clear case that they are not really looking to push the button too hard for the U.S," he added. The deal also warns Congress that if it doesn't do something on cotton, "it will be costly for U.S. exports, potentially very costly," he said. It's "definitely" an additional incentive for Congress to look seriously into it, he said.

Under the accord, Brazil has agreed to suspend its retaliation against U.S. goods and IPR properties in exchange for a U.S. pledge to pay $147.3 million annually to Brazil in compensation and to work to correct in the Farm Bill subsidy programs that the WTO had declared to be illegal (see **WTTL**, June 14, page 1). “This Framework Agreement is not the ultimate solution to the dispute, but contains a number of important parameters for a process of progressive reductions aimed at the effects of subsidy programs in North America,” said an unofficial translation of the CAMEX statement.

> U.S. Agriculture Secretary Tom Vilsack said it provides a way forward to work with Congress on a new Farm Bill. “Although it is not a permanent solution, I am pleased that it allows us to maintain our programs while considering adjustments and avoiding the immediate imposition of countermeasures against U.S. exports as a result of the WTO cotton decision,” he said in a statement.

The Brazilians said they will review the final Farm Bill to see if it adequately corrects the problems with the cotton program and reserve the right to reimpose sanctions, if the measure doesn’t correct them. The agreement would limit U.S. support for cotton to levels significantly below the average for the years 1999-2005, which was the period the WTO examined. It also calls for quarterly bilateral consultations. The agreement includes a formula for increasing premiums U.S. cotton exporters would have to pay under the Credit Guarantees Exports (GSM-102) program, with the rate increasing when the level of credit guarantees increases.

The framework confirms the concerns raised by African cotton nations, one source said. While the Obama administration will consult with Brazil on what it proposes to Congress for the Farm Bill, it is not clear what role African cotton-growing countries will have in that process. Both the U.S. and Brazil have told the Africans they would be “associated” with the settlement “in one way or another,” the executive reported. That “probably means that when they’re finished, they will tell them what happened,” he said.

U.S., EU Expand Sanctions against Iran

The U.S. and EU went beyond the global sanctions that the United Nations (UN) adopted against Iran earlier in June and imposed new restrictions aimed at Iranian banks, ocean shippers and oil and gas industries. The Obama administration also brought back an old export control and nonproliferation official, Bob Einhorn, to oversee implementation of Iran sanctions at State. In addition to implementing UN sanctions, the new restrictions are aimed at stopping Tehran’s circumvention of previously imposed sanctions on its international business.

> The new sanctions announced June 16 target Post Bank of Iran, Islamic Revolutionary Guard Corps (IRGC) entities and individuals, the IRGC Air Force and IRGC Missile Command, Rah Sahel and Sepanir Oil and Gas Engineering Co., two individuals linked to the IRGC, two individuals and two entities for their ties to Iran's Weapons of Mass Destruction (WMD) programs, including Javedan Mehr Toos, and five Islamic Republic of Iran Shipping Lines (IRISL) front companies.

Treasury also blocked 27 vessels because of their connection to IRISL and updated the entries for 71 already-blocked IRISL vessels to identify new names given to these vessels as part of IRISL's efforts to evade sanctions. Treasury also identified 22 petroleum, energy, and insurance companies owned or controlled by the government of Iran, including 17 located outside Iran and many that are not easily identifiable as Iranian.

“At one time, Post Bank's business was conducted almost entirely within Iran,” Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey told a press briefing. “But when some of Iran's largest banks were exposed for financing proliferation, Iran began to use Post Bank to facilitate international trade. In fact, Post Bank stepped into the shoes of Bank Sepah, which is under UN sanctions, to carry out Bank Sepah's transactions and hide its identity,” he said. “International banks that would never deal with Bank Sepah have been handling these transactions that they think are really for Post Bank,” Levey added. “We know that officials in Iran have been anxious about this new round of sanctions.” Levey said. “If the

Iranian government holds true to form, it will scramble to identify 'work-arounds,' hiding behind front companies, doctoring wire transfers, falsifying shipping documents. We will continue to expose this deception, thereby reinforcing the very reasons why the private sector is increasingly shunning Iran," he said.

> The EU Council of Ministers approved new restrictions on Iran June 17. The package of measures include the new UN sanctions plus prohibitions on investments by EU countries in oil and gas projects in Iran, as well as the transfer of technology and equipment for this sector.

The EU decided to go further than the UN, "because we wish to keep the diplomatic option open," said Spanish Foreign Affairs Minister Miguel Ángel Moratinos. He said "placing sanctions in the Security Council's resolution does not mean that we are abandoning the path of diplomacy and negotiation." The restrictive measures include new visa restrictions, the freezing in EU territory of the assets of top Iranian officials, especially the IRGC and new limitations on Iranian banks, IRISL vessels and air-freight transportation.

Commerce Pilot Testing Electronic Filing for Trade Cases

The International Trade Administration (ITA) is conducting a pilot test this summer of an electronic filing system for antidumping (AD) and countervailing duty (CVD) cases and has invited participants in 12 pending AD and two pending CVD cases, including administrative reviews, to be part of the test. In a June 8 Federal Register notice, the agency invited public comment on adoption of the system and provided information on what will be needed to participate in the pilot. The new system will be called the Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).

> Electronic filing systems already exist at the International Trade Commission and the Court of International Trade. Adoption of an electronic system will require amendment to ITA rules which require submission of six copies of all documents.

ITA said it intends to provide more detailed procedures for IA ACCESS on its website prior to issuing regulations. "IA ACCESS will be implemented in three separate phases, or releases, with each phase implementing an additional feature of IA ACCESS," it said. These phases will allow (1) the electronic submission of documents, (2) the electronic release of public documents, and (3) the electronic release of business proprietary documents to authorized applicants. The pilot program will run from July 1 to Sept. 30, 2010.

* * * Briefs * * *

ITC: Deanna Tanner Okun became chairman June 17 when term of Shara Aranoff ended. Okun's term on commission expired in 2008, but she has been able to remain member under statutory provisions that allow ITC commissioner to remain in office until successor is confirmed by Senate, and, so far, President Obama has not nominated anyone for post.

EXPORT ENFORCEMENT: Omid Khalili, Iranian national, pleaded guilty June 17 in Mobile, Ala., U.S. District Court to attempting to export fighter jet or military aircraft parts illegally to Iran. He and co-defendant, known only as "Masun," were charged in nine-count indictment in January 2010 after they contacted federal undercover agent seeking parts for military aircraft for export to Iran. Masun remains at large. According to Khalili's factual proffer and documents filed in court, he and Masun, have been actively working with the Iranian government to procure military items for the Iranian military.

SORBITOL: On 6-0 vote June 15 in "sunset review" case, ITC determined that injury would not recur to U.S. industry, if antidumping order on sorbitol from France were revoked.

ANTIBOYCOTT: Messina, Inc., of Dallas, Texas, which provides chemicals, fluid systems and engineering services to oilfields, agreed to pay $10,800 civil fine in agreement with BIS May 20 to settle two charges of violating antiboycott regulations by furnishing boycott-related information to Standard Charter Bank (New York) for customer in UAE.