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WTO Postpones Ministerial over Covid Concerns

At press time Nov. 26 came news that the World Trade Organization (WTO) would postpone its 12th Ministerial Conference (MC12) scheduled for Nov. 30 in Geneva due to concerns over the new covid variant. Earlier in the day, Switzerland forced the WTO's hand, banning direct flights from southern African countries and imposing quarantine restrictions for travelers from other countries, including Hong Kong, Israel and Belgium, that had seen cases of the new Omicron variant. Restrictions involve a negative Covid-19 test and a 10-day quarantine.

“This does not mean that negotiations should stop. On the contrary, delegations in Geneva should be fully empowered to close as many gaps as possible. This new variant reminds us once again of the urgency of the work we are charged with,” Director-General Ngozi Okonjo-Iweala told an emergency meeting of all WTO members. No new date has been set for MC12, which had already been rescheduled from June 2020 due to the pandemic.

In advance of the meeting, Republican congressional trade leadership Nov. 24 urged USTR Katherine Tai to push for strong outcomes. Sen. Mike Crapo (R-Idaho) and Rep. Kevin Brady (R-Texas) outlined five key GOP priorities for MC12 in a letter to Tai: show that the WTO negotiating function can deliver significant trade agreements, including a high-standard fisheries subsidies agreement; pursue opportunities to promote digital trade; show that trade rules support rather than undermine public health; strengthen disciplines to combat subsidies and abusive practices by non-market economies; and reform dispute settlement.

U.S., Turkey, India Settle Disputes over Digital Taxes

It was just a matter of time. A month after the U.S. and five European nations reached a joint compromise over unilateral digital service taxes (DSTs), Treasury announced similar

deals with the remaining holdouts, India and Turkey. Both countries agreed to transition from unilateral measures to the new multilateral solution under the auspices of the Organization of Economic Cooperation and Development (OECD).

Under the agreement, “in defined circumstances the liability from India’s equalization levy on e-commerce supply of services that U.S. companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement,” the U.S. Trade Representative’s (USTR) office said Nov. 24. Two days earlier, it announced a similar agreement with Turkey that allowed “in defined circumstances, DST liability that U.S. companies accrue during the interim period will be creditable against future income taxes accrued under Pillar 1 of the OECD agreement.”

In return, the U.S. agreed to terminate the currently suspended additional duties on Indian and Turkish goods that had been approved in the DST Section 301 investigation. A week before the latest deals, the USTR’s office formally terminated Section 301 actions over DSTs adopted by Austria, France, Italy, Spain and the United Kingdom (UK) based on the countries’ commitments to remove their DSTs (see **WTTL**, Nov. 22, page 9).

To start the ball rolling, the U.S and the five European nations reached a joint compromise in October. Those deals came just two weeks after more than 130 OECD members approved an agreement in principle on a 15% global minimum tax. In June, the USTR’s office found DSTs were worthy of imposing additional tariffs, but then suspended those tariffs while multilateral negotiations continued. Turkey and India previously had not joined the agreement.

DDTC Answers Questions About Disclosures, Debarments

Have questions about violations and disclosures, debarments, rescissions, and reinstatements? State’s Directorate of Defense Trade Controls (DDTC) has answers, in a series of a new Frequently Asked Questions (FAQs) published Nov. 22. The FAQs tackle thorny questions, including what to do when receiving a DDTC request for information.

In that case, take a deep breath. “If DDTC reached out to you with questions regarding a potential violation that you have not previously reported through a voluntary disclosure, please submit a complete and detailed response, attaching any requested or otherwise relevant documentation following the format and procedures for disclosures outlined in ITAR [International Traffic in Arms Regulations] and reference the DDTC letter and the DTCC case number therein. This is referred to as a ‘Directed Disclosure,’” the agency noted.

Other subjects covered include where to send voluntary disclosures, how long it takes to get a voluntary disclosure case number, how to obtain an extension, how to find the status of a previous disclosure, and how much time companies have to file a disclosure after a violation. On statutory debarments, answers include whether individuals who are recipi-

ents of grants under the Deferred Action for Childhood Arrivals (DACA) policy are considered U.S. persons. (No.) DDTC also addressed exceptions for debarred parties to participate in an ITAR-controlled activity. “A request for such authorization is commonly referred to as a ‘transaction exception request.’ DDTC grants transaction exception requests on a case-by-case basis after a full review of the relevant circumstances. The person submitting a transaction exception request to DDTC should explain why the debarred party should be permitted to be part of the transaction,” the agency wrote.

Controversial EU Digital Markets Act Moves Forward

A committee of the European parliament Nov. 23 overwhelmingly approved the Digital Markets Act (DMA), a sweeping tech and privacy reform bill that “blacklists certain practices of large platforms and enables the Commission to carry out market investigations and sanction non-compliant behaviors,” the European Union (EU) said. The proposal “sets rules on what companies with ‘gatekeeper’ status will be allowed *to do* and *not to do* in the EU,” it added.

“The EU stands for competition on the merits, but we do not want bigger companies getting bigger and bigger without getting any better and at the expense of consumers and the European economy,” rapporteur Andreas Schwab said in a statement. The DMA “will rule out these practices, sending a strong signal to all consumers and businesses in the Single Market: rules are set by the co-legislators, not private companies,” he added.

Both Commerce Secretary Gina Raimondo and USTR Katherine Tai met with Executive VP Margrethe Vestager, Europe’s top privacy cop, in June (see **WTTL**, June 28, page 4). “Raimondo welcomed the Vice President’s invitation for further engagement on tech policy developments in the EU, including the Digital Markets Act, and committed to regular and sustained dialogue on these and other topics related to the digital economy,” across both continents, Commerce said at the time.

Industry group Information Technology Industry Council (ITI) urged EU policymakers to “ensure the measure contains clear provisions on the ‘regulatory dialogue,’ which is a necessary step to ensure legal clarity, allowing for further specification and tailoring of obligations proportionate to the service concerned in a timely fashion,” ITI VP and Director General of Policy for Europe Guido Lobrano said in a statement.

OFAC Expands Syrian Humanitarian Exception

A month after releasing the results of the department’s sanctions review, Treasury’s Office of Foreign Assets Control (OFAC) Nov. 24 expanded the authorizations for nongovernmental organizations (NGOs) to engage in certain transactions and activities under an existing General License (GL) in its Syrian sanctions regulations. At an October hearing on the sanctions review, Deputy Treasury Secretary Wally Adeyemo outlined one of the

five initiatives that emerged from the review: “expanding sanctions exceptions to support the flow of legitimate humanitarian assistance” (see **WTTL**, Oct. 25, page 5). The GL authorizes NGOs “to engage in activities in support of certain not-for-profit activities in Syria, including: humanitarian projects that meet basic human needs; democracy-building; education; non-commercial development projects directly benefitting the Syrian people; and the preservation and protection of cultural heritage sites,” Treasury explained in a new Frequently Asked Question (FAQ).

These activities include early-recovery-related transactions and activities by NGOs in certain sectors including the provision of healthcare and health-related services, educational support and training services and agricultural-related services; as well as activities related to shelter and settlement assistance, and clean water assistance, it added.

The transactions and activities that NGOs are authorized to engage in include: transactions with persons who meet the definition of the term Government of Syria that would otherwise be prohibited; new investment (i.e., a transaction that constitutes a commitment or contribution of funds or other assets, or a loan or other extension of credit) in Syria that would otherwise be prohibited; export or reexport of services that would otherwise be prohibited; and purchase of refined petroleum products of Syrian origin for use in Syria that would otherwise be prohibited, the FAQ noted.

“The U.S. government prioritizes expanding humanitarian access throughout Syria to alleviate the suffering of the Syrian people, who continue to face armed conflict, food insecurity, and the COVID-19 pandemic. The U.S. remains committed to ensuring that humanitarian assistance from the international community, including early-recovery-related humanitarian activities, reaches Syrian civilians,” said OFAC Director Andrea Gacki.

*** * * Briefs * * ***

ENTITY LIST: In Federal Register Nov. 26, Bureau of Industry and Security (BIS) added 27 foreign entities and individuals in China, Japan, Pakistan and Singapore to its Entity List, including three affiliates of Corad Technology Limited, Chinese entity added to list in 2019 (see **WTTL**, Aug. 19, 2019, page 5). At same time, agency added Moscow Institute of Physics and Technology to its Military End-User (MEU) list “on the basis of its production of military products for a military end-user,” notice said.

FCPA: Frederick Cushmore Jr. pleaded guilty Nov. 17 in Pittsburgh U.S. District Court to conspiracy to violate Foreign Corrupt Practices Act (FCPA). Cushmore worked for Corsa Coal Corp. between October 2016 and November 2020 in various international sales positions, including VP, head of international sales. “The purpose of the conspiracy was for Cushmore and his co-conspirators... to obtain and retain lucrative sales contracts with, and other business advantages from, Al Nasr [Al Nasr Company for Coke and Chemicals] by making corrupt bribe payments” to Egyptian government officials, criminal information noted. Sentencing is set for March 24, 2022.

VENEZUELA: OFAC Nov. 24 issued General License (GL) 8I, extending previous GL that authorized transactions involving Petróleos de Venezuela, S.A. (PdVSA) necessary for main-

tenance of operations for Chevron, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International. Specifically, OFAC extended GL expiration date to June 1, 2022, from Dec. 1.

SOLAR MODULES: In 5-0 vote Nov. 24, ITC determined that extending Section 201 safeguard relief from imports of crystalline silicon photovoltaic cells is necessary to prevent or remedy serious injury to U.S. industry, and that domestic industry is making positive adjustment to import competition. In two recent rulings, Court of International Trade (CIT) reinstated exclusion of imported bifacial solar modules from safeguard tariffs and reduced tariff rate from 18% to original 15% (see **WTTL**, Nov. 22, page 1). Solar industry denounced ITC ruling. “We are urging President Biden to take a different approach from the previous administration and reject these tariffs. With sensible trade policy and the enactment of Build Back Better legislation, the solar industry will be well positioned to maximize deployment,” Solar Energy Industries Association (SEIA) President and CEO Abigail Ross Hopper said in statement.

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