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Apple Faces Rejection in India

Apple is looking to new markets to bolster declining sales of the iPhone, but won't find success easily in one of the world's fastest growing cell phone markets, as the Indian government recently rejected Apple's request to import and sell refurbished iPhones.

India's government is promoting a 'Make in India' initiative and viewed Apple's request as an encroachment on domestic phone manufacturers. "India does not encourage dumping or recycling of hazardous materials," N. N. Kaul, India's Communications and Information Technology spokesperson, said. The Indian government came under pressure from the Consumer Electronics and Appliances Manufacturers Association, which asked the government to stall Apple's proposal.

Apple has just shy of 2% market share in India, compared to Samsung, which has 25.3% market share, according to the International Data Corporation. Less expensive older generation iPhones do well in India, but the demand for newer models is low. Cost is a driving factor.

The iPhone SE retails for the equivalent of \$585, which is more expensive than what U.S. customers pay. The discrepancy is due to import tariffs and increased pricing from distributors and importers looking to increase their margins. Apple successfully sells refurbished iPhones in the U.S. and other countries. Despite the setback, Apple is in talks to open its first Apple Store in India.

U.S., EU Trade Officials Defend TTIP Following Document Leak

U.S. and European Union (EU) trade officials moved quickly to repudiate the claims of opponents of the Transatlantic Trade and Investment Partnership (TTIP) after Greenpeace Netherlands, an ardent TTIP opponent, released 248 pages from the ongoing negotiations May 2. The 13 chapters prove that "TTIP would put corporations at the center of policy making, to the detriment of environment and public health," Greenpeace

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EU Director Jorgo Riss said in releasing the text. Trade officials obviously disagreed. “While the United States does not comment on the validity of alleged leaks, the interpretations being given to these texts appear to be misleading at best and flat out wrong at worst,” a U.S. Trade Representative (USTR) spokesman said Monday morning.

EU officials noted its TTIP round reports, position papers and textual proposal documents are available on the EU Commission website. “First of all, and contrary to what many seem to believe, so-called ‘consolidated texts’ in a trade negotiation are not the same thing as an outcome. They reflect each side’s negotiating position, nothing else. And it shouldn’t come as a surprise that there are areas where the EU and the U.S. have different views,” EU Trade Commissioner Cecilia Malmstrom shot back in a post May 2.

“It begs to be said, again and again: No EU trade agreement will ever lower our level of protection of consumers, or food safety, or of the environment. Trade agreements will not change our laws on GMOs, or how to produce safe beef, or how to protect the environment,” she added.

But Riss was having none of it. “Malmström may well promise not to undermine environmental and consumer protection, but the evidence tells a different story. In several areas the U.S. proposes to lower EU standards, but there are no EU proposals in the leaked consolidated documents to counter this,” Riss said in response to Malmstrom’s blog post. He challenged her to release the latest consolidated chapters as proof that the EU will not acquiesce to the “influence of industry lobbies on trade negotiators.”

EU and U.S. negotiators have insisted that they plan to finish TTIP negotiations before the end of the year. The 13th round of negotiations was held in New York at the end of April, and the 14th round is scheduled for July (see [WTTL](#), May 2, page 4).

Greenpeace did not disclose how they came to possess the documents, but noted on its website that precautions were taken to remove markers - deliberate typos or formatting - prior to public release to avoid identifying the origin of the leak. Greenpeace said it was motivated by “secrecy surrounding the negotiation process.”

William Reinsch, president of the National Foreign Trade Council, defended negotiators in a blog post May 5. “Once again, to the surprise of nobody, the anti-trade folks are demonstrating their skill at the art of the leak – find and make public documents that reveal government positions, exaggerate the significance of both the documents and the positions, attack the positions knowing that government cannot fully respond without breaching its own confidentiality rules, and then conclude that the entire agreement under negotiation is fatally flawed,” he wrote.

Commerce Can’t Use Prior Reviews to Set Dumping Margin, Court Rules

When conducting a new administrative review in an antidumping case, Commerce cannot use the margins from a previous review to set margins in the subsequent review, the Court of Appeals for the Federal Circuit (CAFC) ruled May 2. The court partly upheld and

partly reversed a Court of International Trade (CIT) decision on the department's third administrative review of the dumping order on certain activated carbon from China.

In the multiparty case, three non-examined Chinese exporters claimed they were entitled to an average margin based on the *de minimis* determinations for the reviewed exporters in the third administrative review. Commerce had assigned them margins based on the second administrative review.

The government argued that there was no evidence in the record to demonstrate that the non-examined exporters engaged in pricing behavior similar to the examined exporters. That "is backwards," wrote CAFC Judge Timothy Dyk for the three-judge panel in *Albermarle v. U.S.* "The burden is not on the separate respondents to show that their dumping is the same as that of the individually examined respondents. Rather, Commerce must find based on substantial evidence that there is a reasonable basis for concluding that the separate respondents' dumping is different," he wrote.

"There is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period," he contended. "In short, as we have previously recognized 'there is a clear congressional intent' that administrative reviews 'be as accurate and current as possible'," he noted, citing a previous court ruling. The legislative history emphasized the importance of using current information to make determinations, he added.

"In light of this established doctrine, it is not open to Commerce to argue that prior review data is reliable simply because it is 'temporally proximate'," Dyk wrote. "That the prior rates were near in time cannot in and of itself justify their use in a subsequent review," he declared. "The government's policy simply cannot be distilled from the statute in this context, and Commerce's insistence on using its hostility to *de minimis* rates as the driving force behind its methodology is on its face arbitrary and capricious," the appellate judge asserted.

He cited a counsel for the government who admitted at oral argument that Commerce would have used a preliminary low margin for the non-examined exporters if that rate had been assigned in the final review. "This demonstrates the arbitrariness of Commerce's approach," Dyk wrote.

Congress Urges Increase in Sugar Quota

Citing growing interest in non-genetically engineered food and the unintended consequences of a bilateral trade agreement, 45 House and Senate members May 5 urged Agriculture Secretary Tom Vilsack to allow an increase in the tariff rate quota (TRQ) for raw sugar. "We strongly urge you to act immediately to increase the TRQ by an amount large enough to adequately supply the cane refining sector at reasonable prices. In addition, we would expect that the increase be allocated to all eligible countries able to supply sugar, in order to ensure that the increase enters as raw sugar usable by American cane refineries," the bipartisan group wrote.

“Cane sugar refiners are having difficulty in obtaining raw sugar supplies because of unintended consequences stemming from a bilateral agreement between the United States and Mexico. At the same time, the demand for cane sugar has been on the upswing because of growing interest in non-genetically engineered food,” the members added.

The diverse group of signers included Sens. Jeanne Shaheen (D-N.H.), Kelly Ayotte (R-N.H.), Dianne Feinstein (D-Calif.), Lamar Alexander (R-Tenn.), and Reps. Earl Blumenauer (D-Ore.), James Sensenbrenner (R-Wisc.) and Bob Goodlatte (R-Va.).

“Given market demand and the tight feedstock supply situation, what is needed now is a commercially significant increase in the TRQ, and we commend members of Congress for standing up and calling for an increase in sugar supplies needed by America’s sugar-using industries, which support an estimated 600,000 American jobs,” Rick Pasco, president of the Sweetener Users Association, said in a statement.

Obama Turns to Editorial Page to Push TPP

From the bully pulpit of a major newspaper’s editorial page, President Obama warned the American public that “the Asia-Pacific region will continue its economic integration, with or without the United States. We can lead that process, or we can sit on the sidelines and watch prosperity pass us by.”

Obama’s opinion piece, published in The Washington Post May 3, is the latest push from the administration to get Congress to approve the Trans-Pacific Partnership (TPP) before China concludes the Regional Comprehensive Economic Partnership, a deal that “won’t prevent unfair competition among government-subsidized, state-owned enterprises,” among other complaints, Obama said.

The president acknowledged the criticism from labor unions. “I understand the skepticism people have about trade agreements, particularly in communities where the effects of automation and globalization have hit workers and families the hardest. But building walls to isolate ourselves from the global economy would only isolate us from the incredible opportunities it provides. Instead, America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around,” Obama wrote.

But Senate Majority Leader Mitch McConnell (R-Ky.) said the outlook for a vote on TPP this year is “bleak.” In an interview with Agri-Pulse on May 1, McConnell said the substance of the agreement did not treat tobacco or pharmaceuticals fairly, but “the biggest problem right now is the political environment to pass a trade bill is worse than any time since I’ve been in the Senate because we’re right in the middle of this election year.” He noted that the major presidential candidates of both parties do not support TPP. Former Secretary of State Hillary Clinton May 5 told the Oregon Fair Trade Campaign, a coalition of Oregon labor unions and environmental groups: “I have said I oppose the TPP agreement –and that means before and after the election.”

Reform's Effects Seen in Diverse Export Statistics

The effects of export control reform can be seen in more than simply the number of products moved from State's Directorate of Defense Trade Controls (DDTC) to Commerce jurisdiction, and the number of license applications going up or down for each agency. Also affected are the number of denials, those approved with conditions or provisos and those DDTC licenses under an agreement.

For one, Bureau of Industry and Security (BIS) denials have more than doubled from 2011 to 2015. Last year, the agency denied 306 applications out of 35,018 processed, up from 130 denials in 2011, BIS Deputy Assistant Secretary Matt Borman told the agency's Export Control Forum in April.

"What that really reflects is as we have 600-series items in the Commerce system, the same licensing policy applies to the 600 series items on the Commerce list as they did when they were on the USML [U.S. Munitions List] items. In other words, if there's a foreign policy reason to have a denial, say to a country like Bahrain or Azerbaijan when it was a USML item, that same licensing policy applies on the Commerce system. We don't have a different licensing policy for military items that are now under Commerce jurisdiction," Borman said.

On the other side, DDTC saw 11.7% of its license applications (44,607 in 2015) under technical assistance agreements and manufacturing licensing agreements, up from 9.5% in 2013 (78,810 total). "We see the future more and more in the agreements... than in the more classic hardware exports. More and more we're moving into technology, technical data and agreements. It's our speculation [that] we'll continue to see the blue space in the pie chart shrink, and the orange space widen," DDTC policy chief Ed Peartree noted.

For both agencies, the number of licenses approved with provisos or conditions is expanding. The Defense Technology Security Agency (DTSA), which reviews applications from both DDTC and BIS, recommended approval with conditions for 36% of munitions licenses in 2015, while a whopping 91% of dual-use items received such conditions. "On military items, each item has a specific end-use; it's going to do what it's designed to do. On the CCL side, though, the items may have multiple end-uses, so we may put a condition on the license, which tries to put the item or the end-use in a box," Taurus Brackett, acting licensing director, DTSA Dual-Use Division, explained.

At DDTC, approvals with provisos have expanded by about 8% from 2013 to 2015, Peartree noted. "More and more munitions licenses are approved with additional conditions. What's left on the USML tends to be more sensitive items, the crown jewels. So it's not surprising that percentage of cases being approved with provisos is expanding," he said.

***** Briefs *****

TRADE FIGURES: Merchandise exports in March fell 8.1% from year ago to \$116.8 billion, lowest level since December 2010, Commerce reported May 4. Services exports gained 0.4% to \$59.8

billion from last March. Imports dropped 11.6% from March 2015 to \$175.3 billion, as services imports gained 2.9% to \$41.7 billion.

SRI LANKA: DDTC will review applications for ITAR licenses to export or temporarily import defense articles and defense services to or from Sri Lanka on case-by-case basis, agency announced on website May 4. Licensing restrictions from previous years' appropriations bill "were not carried forward" to current bill, DDTC said.

COTE D'IVOIRE: DDTC also will review applications for ITAR licenses to export or temporarily import defense articles and services to or from Cote d'Ivoire on case-by-case basis, agency announced May 5. UN Security Council sanctions against country were terminated April 28.

HONEY: Special agents of Immigration and Customs Enforcement (ICE) in Chicago April 28 seized nearly 60 tons of illegally imported Chinese honey valued at more than \$200,000. Three containers (195 barrels) of bulk honey were falsely declared as originating from Vietnam to evade antidumping duties on Chinese-origin honey, ICE said in press release. Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 644) included specific language on illegally imported honey.

TRADE ENFORCEMENT: Customs and Border Protection (CBP) has formed Trade Enforcement Task Force, agency announced May 2. Task Force to focus enforcement of antidumping and countervailing duty laws and interdiction of imported products using forced labor. CBP Task Force leverages new enforcement authorities from the Trade Facilitation and Trade Enforcement Act of 2015 (see **WTTL**, Feb. 29, page 8).

BOEING: Illinois Republican Reps. Peter Roskam, Robert Dold and Randy Hultgren sent letter May 3 to Boeing Chairman and CEO Dennis Muilenburg urging the airplane manufacturer not to sell planes to Iran. Congressmen said they communicated same message to Boeing's international competitors. Boeing is reportedly in ongoing discussions with Iran Air, which was delisted from sanctions list as part of Joint Comprehensive Plan of Action (see **WTTL**, Jan. 25, page 1).

NORTH AMERICAN MEETUP: President Obama, Canadian Prime Minister Justin Trudeau, and Mexican President Enrique Pena Nieto will meet in Ottawa, Canada June 29 for North American Leaders' Summit, White House announced May 4. While there, Obama will address joint session of Canada's Parliament. Last trilateral summit was hosted by Mexico in 2014.

TPP: House Minority Leader Nancy Pelosi led bipartisan congressional delegation to TPP countries Mexico, Peru and Chile during week of May 1. Pelosi said part of delegation mission was "to learn more about how the Trans-Pacific Partnership trade agreement will impact the people and economies of the region and the United States." Representatives from American Chamber of Commerce gave presentations on potential benefits and challenges of TPP. Bilateral FTAs were topic of discussion in Mexico and Peru.

SILENCERS: Rep. Chris Stewart (R-Utah) and 17 Republican colleagues April 29 introduced Suppressor Export Act (H.R. 5135), which would amend the Arms Export Control Act (AECA) and require State to allow commercial export of U.S.-made suppressors, also known as silencers, to foreign markets where suppressors are legal to own and operate and that are not under arms embargo. Bill was referred to House Foreign Affairs Committee.