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China Claims WTO Victory Against U.S. Antidumping Methods

A World Trade Organization (WTO) Dispute Settlement Body (DSB) panel found fault with the way the U.S. determined antidumping duties on Chinese goods in a report circulated to members Oct. 19. In its claim, China took issue with Commerce's use of exceptional weighted average-to-transaction (WA-T) methodology, particularly "zeroing."

The WTO's Appellate Body similarly criticized this methodology in a ruling on washing machines from South Korea (see **WTTL**, Oct. 3, page 7). China also took issue with Commerce's treatment of exporters from non-market economies (NMEs) that were assessed at a single rate presumption and Commerce's use of adverse facts available (AFA) in determining antidumping duty rates.

The DSB panel agreed with China that Commerce's use of zeroing and the single rate presumption were inconsistent with WTO commitments, but disagreed about Commerce's use of AFA. The panel agreed on the application of Commerce's test in two of three antidumping investigations, "because in seeking to find the relevant pattern among different purchasers and time-periods, [Commerce] failed to take into account the export prices to all purchasers or in all time-periods, and provided no explanation for such an omission."

China first requested consultations in December 2013 and DSB established a panel in March 2014. The U.S. is "disappointed" with the outcome, a U.S. Trade Representative (USTR) spokesperson said in a statement. "Nothing in the report will undermine the commitment of the United States to impose antidumping duties to address injurious dumping," the spokesperson added. The parties have 60 days to appeal the ruling.

U.S., India Dialogue Still Short on Tangible Outcomes

In the last major U.S.-India commercial dialogue of the Obama administration, Indian Commerce Minister Nirmala Sitharaman and USTR Michael Froman met in Delhi Oct. 20

for the tenth ministerial-level meeting of the India and U.S. Trade Policy Forum (TPF). In a joint statement, the ministers “agreed that the TPF has greatly strengthened U.S.-India engagement on bilateral trade and has increased trade and enhanced the overall economic relationship.” However, industry groups still say the forum was long on rhetoric and short on tangible results.

Specifically, the ministers “acknowledged that India issued a National Intellectual Property Policy, liberalized foreign direct investment (FDI) in various sectors, and reduced customs processing time, and that the United States ratified the Defend Trade Secrets Act, and advanced implementation of its single window.”

While the two ministers mentioned some specific progress in agricultural trade, many of the next steps involved “commitment to facilitate efforts to exchange best practices among industry and government,” mutual commitment to strengthening bilateral cooperation in trade and investment,” “work plans for continued engagement,” and commitments to “continue discussion of promoting liberalization” and “deepen collaboration.”

The National Association of Manufacturers (NAM) especially was disappointed in the lack of specifics, writing a blog post Oct. 20 critical of the joint statement. The TPF “proved long on rhetoric but short on new tangible outcomes to address the business issues” that the NAM previously highlighted, the group wrote (see **WTTL**, Sept. 5, page 5).

“Highlights of this year’s fact sheet show the continued focus on dialogue versus action: joint acknowledgement of the value of ‘robust and balanced IPR protection’ and a ‘transparent, predictable, and open business environment,’ updates on regulations on computer-related inventions, and readouts of productive exchanges on trade secrets and trade facilitation that took place on the sidelines of the dialogue,” NAM wrote.

In separate remarks that same day in Delhi, Froman outlined continued concerns about the Indian economy. “India’s efforts to renegotiate and weaken existing agreements is concerning, particularly at a time when other emerging markets, such as China and Vietnam, are working to attract investment by negotiating higher-standard agreements,” he said.

“India’s relatively high tariffs and continued requests for exemptions from global trade rules – the need for which has already been questioned by the Ministry of Finance – only slows India’s full participation into the global economy and the benefits that come with that for hundreds of millions of Indian citizens,” Froman noted.

Travel Goods Industry Takes USTR to Task over GSP Benefits

The administration was taken to task Oct. 19 by the travel goods industry and the governments of developing countries over its June announcement that only African Growth and Opportunity Act (AGOA) countries and Least Developed Beneficiary Developing Countries (LDBDC) would benefit from duty elimination on 28 travel goods.

Industry testified that all countries eligible under the Generalized System of Preferences (GSP) should have access to an extension of benefits. The USTR's office agreed to revisit the issue after industry outcry (see **WTTL**, Sept. 5, page 3).

First to testify were the countries that benefit from the administration's decision. Though the ambassadors from Lesotho, Rwanda and Cambodia spoke passionately about how the extension of GSP benefits to travel goods will help lift their citizens out of poverty, when asked which travel goods they'd have the greatest potential to produce, the ambassadors struggled to answer. After a lengthy pause the ambassador from Lesotho replied with "textiles, handbags," and the Rwandan ambassador said dresses, baskets, handbags and macadamia nuts.

The governments of non-AGOA/non-LDBDC GSP beneficiaries had no difficulty expressing their displeasure. "Sri Lanka was once the third largest supplier of travel goods to the United States in 2000 with an average valuation of \$105 million ... however, as a result of the serious competition posed by the low-cost producer countries since phasing out of the Multi-Fiber Arrangement in 2004, Sri Lanka lost a substantial share of its position in the U.S. market," said Sri Lankan Ambassador Prasad Kariyawasam.

Thailand pointed to evidence that not extending GSP benefits on travel goods to Thailand decreased its exports in that sector. "Because of the ongoing decline in export orders for luggage and bags from 2015 and continuing through the Administration's refusal in June to grant travel goods GSP to Thailand, TWT Manufacturing Company LTD was forced to close one of its two factories in August," Thai Ambassador Dr. Prayoth Benyasut testified.

Representatives of the travel goods industry packed the USTR hearing room and urged the administration to extend GSP benefits to non-AGOA/non-LDBDC. Rich Harper, manager of international trade at Outdoor Industry Association, pulled out a Sitka pack as an example of a high-tech product that he said cannot be produced in AGOA and LDBDC countries.

Tom Cove, president and CEO of the Sports and Fitness Industry Association, agreed, adding that AGOA countries are not equipped in the "short and medium-term" to produce high-end backpacks and sports bags. Cove's clients, meanwhile, are looking to move operations away from China – where some 80% of travel goods production takes place – to growing factories in the Philippines and Indonesia. Without the extension of benefits to travel goods produced in those countries, his clients cannot move their production and remain competitive, Cove said.

Services Firms Voice Support for Strong TISA

USTR Michael Froman, in a taped interview played for attendees of the Global Services Summit Oct. 19, said Trade in Services Agreement (TISA) negotiations are "actually going pretty well" though challenges remain. Chief among the challenges is the European

Union's reticence to including new services in the agreement. Later at the summit, Kent Walker, senior vice president and general counsel at Google, said TISA must "apply equally to both existing services and so-called new services," particularly given the rapid pace of innovation. This point was underscored earlier in the week by other technology and internet associations (see Briefs, page 7).

Sally Jones, director at Deloitte UK, touched on the importance of TISA while discussing the recent Brexit vote and the Transatlantic Trade and Investment Partnership (TTIP). "It's not just TTIP the UK needs to concern itself with [to preserve its relationship with the U.S.] ... I also think TISA is going to be really important for the UK partly because it looks like TISA is going to be concluded more rapidly than other agreements and because, just as with the U.S., service is such an important part of the UK economy. As big for the UK economy as the U.S. economy," Jones said.

The free flow of data across borders is critical for her clients, she added. "Data is one of the really critical issues for the UK and indeed for a company like mine where if we can't send emails across borders then it becomes very difficult to do business." Various EU laws have been transposed into UK law to address such issues, she noted.

In terms of how Brexit has impacted UK businesses, most are taking a "wait and see approach" said Jones, with the exception of some manufacturers who need to plan out their factories years in advance. She emphasized that the separation from the EU will not take place for another two years, during which time there is a lot of business to be done.

As important as the services community sees free trade agreements like TISA, TTIP and the Trans-Pacific Partnership (TPP), the likelihood of the latter two passing this year remains low. TTIP negotiations have dragged on well past original deadlines and TPP remains highly controversial, despite the good Atlanta Mayor Kasim Reed and former Columbus Mayor Michael Coleman said such agreements could mean for U.S. cities.

Angela Ellard, chief trade counsel (Republican staff) to the Ways & Means trade subcommittee, said her office is preparing as though a vote could take place during a lame-duck session, provided outstanding issues are addressed. On the other side of the aisle, Jason Kearns, Ways & Means chief international trade counsel (Democratic staff), said "our view is that if TPP were to come up in the lame duck it would not pass ... and would undermine Americans' trust in the trade agenda."

The following day, the International Trade Commission (ITC) released its annual report on the services trade. In 2015 the U.S. exported \$119.6 billion in financial services and imported \$72.9 billion, resulting in a \$46.7 billion trade surplus. Total U.S. services trade surplus was \$263.5 billion, which is a decrease of \$2.5 billion from 2014. The report found that "financial services are facing significant challenges and disruptions from digital technologies and in navigating the post-recessionary financial landscape of increased regulation and low interest rates." The ITC report also cited cybersecurity risks, growth of the Chinese financial system and climate change as challenges for the industry.

USTR Tees up Ball for Next Administration at WTO

Groundwork laid during the Obama administration has paid off with the turn away from the Doha Round and the start of a new chapter in the multilateral trading system, trade officials said Oct. 17 during a talk in Geneva. New leverage may be emerging to address longstanding issues, officials suggested. Domestic support for agriculture may continue to evolve, along with efforts to improve the record on WTO transparency and disclosure requirements.

The process of revitalizing negotiations is “beginning to turn the corner” to possibly one of the “most exciting periods” in the multilateral trading system, USTR Michael Froman told trade officials and the public. He referred to President Obama’s efforts to steer negotiations away from the Doha Round. Major emerging economies have a responsibility to act when they are responsible for enormous trade distortive agriculture subsidies and are directing investment into excess capacity “in a manner that distorts trade around the world,” he said.

“A new chapter” of the multilateral trading system has begun, with an important “first step” on export subsidies made at the 2015 WTO ministerial, Froman said. Agriculture can't be tackled without addressing market access restrictions, which economists view as “the most distortive,” and domestic support, he added. The source of domestic subsidies, whether from the U.S. or EU, or stockpiling excess supply in China doesn't matter to a cotton farmer in Mali, he noted. New ideas could be floated to address outstanding issues, he said.

When “major emerging economies” provide a larger “volume” of “trade-distortive agricultural subsidies” than “all the developed countries” together, the lack of transparency can no longer be ignored, Froman said. China is providing nearly \$100 billion annually in “highly trade-distortive subsidies” in excess of WTO limits, he said, referring to the most recent WTO case against China’s agriculture policies (see **WTTL**, Sept. 19, page 1). That figure is more than the GDP of 130 countries, he said. It’s not possible to talk about distortions in global agricultural trade by pretending subsidies at this level don't exist, he noted.

Each Chinese farmer receives less than \$100 in domestic support subsidies, Jianhua Yu, China’s ambassador to the WTO, replied. The U.S. provides more than \$20,000 for each farmer, he said. Yu asked if the U.S. was willing to “negotiate and improve the rules” on the existing basis of 5% de minimis domestic support, and China with 8.5%.

Shortfalls in meeting WTO transparency and disclosure obligations threaten the credibility of the trading system, officials said. The WTO’s “credibility will be severely undermined” without improvement, Daniel Blockert, Sweden’s ambassador to the WTO, added. It’s one of the WTO’s “biggest challenges,” he said.

The “record of compliance” with WTO transparency and disclosure requirements “is nothing short of abysmal,” Froman said. Members take either “far too long” to provide

required information or entirely ignore the obligations, he noted. The U.S. has notified subsidies on behalf of other countries, when they “failed to notify,” Froman said. That’s not the desired solution, he added.

Froman noted that obstructionism cannot be leveraged to address the “important issues” of “protection of workers and the environment,” promotion of innovation, “the advent of the digital economy,” the importance of small and medium-size business (SMEs), and stemming the distortive effects of state-owned enterprises. Multilateral agreements should be pursued where consensus is possible; plurilateral agreements where it’s not, he said. Plurilateral agreements may fuel future multilateral arrangements, speakers suggested.

U.S. officials also raised transparency as a major issue at an informal meeting of the WTO Committee on Regional Trade Agreements (RTAs) Oct. 18. At that meeting, 19 delegations called for regular talks to be held on the “systemic implications” RTAs pose on the world trading system. The U.S. said it would be difficult to engage in the discussions “in the face of a massive lack of transparency,” given the backlog of notifications for RTAs and the pending improvements to be made to the Transparency Mechanism on RTAs. The U.S. also said it would like more consultations on what the talks on the systemic implications would cover.

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ENTITY LIST: BIS in Federal Register Oct. 19 requested public comments on procedure for parties on Entity List to request removal or listing modification. Comments are due Dec. 19, 2016.

BELARUS: Treasury Oct. 18 extended authorization of transactions with nine blocked companies in Belarus and any entities owned 50% or more by them until April 30, 2017 (see **WTTL**, May 2, page 9).

JUSTICE: Mary B. McCord Oct. 16 assumed duties of Acting Assistant Attorney General for National Security, replacing John Carlin who officially left day before (see **WTTL**, Oct. 3, page 10). McCord joined NSD as Principal Deputy Assistant Attorney General in October 2014. Prior to that, she was criminal division chief at D.C. U.S. Attorney’s Office.

TRADE PEOPLE: Former DDTC compliance chief Sue Gainor has joined Dallas export consulting firm Globaleyes LLC as president, firm announced Oct. 21. She will establish Globaleyes office in Washington to “expand firm’s business and support existing clients,” it said. Gainor left DDTC in August (see **WTTL**, Aug. 1, page 1).

MORE TRADE PEOPLE: Export control expert Steven Brotherton Oct. 17 joined international trade law firm Sandler, Travis & Rosenberg, P.A. as firm’s Export Controls & Sanctions Practice Leader. Brotherton joins ST&R from Fragomen Worldwide, where he managed firm’s Export Control Practice Group for 15 years. “Fragomen and ST&R have established a relationship to collaborate on export control matters going forward,” ST&R said in statement. He can be contacted at SBrotherton@strtrade.com.

DUTY EVASION: CBP in Federal Register Oct. 21 extended comment period on interim final rule that set forth procedures for investigating claims of evasion of AD and CVD orders (see **WTTL**,

Sept. 5, page 8). “With the goal of establishing the most effective and transparent procedures as possible for CBP to employ to investigate claims of evasion of antidumping and countervailing duty orders, CBP believes that it is very important to have as much public participation as possible in the formulation of the final rule that establishes those procedures for CBP,” agency wrote. Comments are due Dec. 20.

TISA: Internet and technology associations urged USTR Michael Froman Oct. 17 to “intensify efforts” to conclude Trade in Services Agreement (TISA) negotiations. Final agreement must allow data to flow freely across borders, prohibit data localization requirements, apply to all new services, enable open online and cloud platforms, and limit scope of departures TISA parties can take from market access and national treatment obligations, letter to Froman notes. Signatories include Internet Association, Computer and Communications Industry Association, and Information Technology Industry Council. Froman and Deputy USTR Michael Punke traveled to Oslo Oct. 21-22 to attend meetings of “select Ministers responsible for WTO,” TISA and Environmental Goods Agreement (EGA).

CHINA: Sen. Rob Portman (R-Ohio) slammed Treasury’s most recent assessment that China did not meet standard of manipulating currency exchange rate (see **WTTL**, Oct. 17, page 7). “By refusing to take on China over how it manipulates its currency, the Obama administration is giving Chinese workers an unfair advantage over Ohio workers. That’s both indefensible and wrong. At a time when families continue to struggle with the middle-class squeeze, the administration should be working to level the playing field for American workers, farmers and businesses, and that includes taking stronger actions against China when it cheats,” Portman said in statement Oct. 14.

MORE CHINA: Obama administration claimed victory as China ended discriminatory tax exemptions that benefited certain types of Chinese-produced aircraft, USTR Michael Froman announced Oct. 18. U.S. challenged 17% value-added tax imposed on imports of aircraft under 25 metric tons at WTO in December 2015 (see **WTTL**, Dec. 15, 2015, page 4). “While we are happy to announce this discrimination has ended, we remain deeply concerned about China’s lack of transparency on taxes affecting American products,” Froman said in statement.

EX-IM BANK: Lisa Terry was appointed Ex-Im Bank senior VP and chief ethics officer, bank announced Oct. 19. Position was established in 2015 Ex-Im charter. Terry joins Ex-Im from U.S. Office of Special Counsel. She previously served as bank’s assistant general counsel for administration from 2006-2013. “Lisa’s extensive experience in federal government ethics make her the best person for the position,” Ex-Im Chairman and President Fred Hochberg said in statement.

ENVIRONMENTAL GOODS: In Federal Register Oct. 24 USTR requests public comment on interim environmental review of Environmental Goods Agreement (EGA). “Liberalization of trade in environmental goods through the EGA is not expected to have significant adverse environmental impacts” in U.S., USTR review notes. “While the preliminary nature of the scope of the EGA precludes definitive conclusions, the cumulative impacts of the EGA are likely to be positive from an environmental standpoint due to the predicted increase in the trade in, and utilization of, environmentally beneficial goods,” it says. Interim review is available at www.ustr.gov/issue-areas/environment/environmental-reviews. Comments are due Nov. 21.