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WTO Rejects Indonesia's Claims in Coated Paper Dispute

The U.S. scored a victory Dec. 6 when a World Trade Organization (WTO) dispute panel thoroughly rejected Indonesia's complaint against antidumping (AD) and countervailing (CVD) duties imposed by Commerce on imports of certain coated paper. The panel rejected all Indonesian challenges that the U.S. violated the Anti-Dumping Agreement or the Agreement on Subsidies and Countervailing Measures.

Neither does the International Trade Commission's (ITC) policy on affirmative injury determination in the case of a tie vote violate WTO rules, the panel ruled. Specifically, Indonesia challenged certain aspects of Commerce's final determination in its CVD, as well as the ITC's final threat of injury determination.

Indonesia first requested consultations in March 2015 to challenge AD and CVD orders published in November 2010 that levied 17.94% CVD on Indonesian coated paper imports. Consultations were held in June 2015 and a dispute panel established in September 2015. Indonesia has 60 days to decide whether it wants to appeal.

"The Trump Administration has brought an elevated emphasis to keeping our trade laws strong and strictly enforced. That emphasis is taking many forms, including the kind of skillful and vigorous defense of U.S. law and procedure needed to win in Geneva," Tom Sneeringer, Committee to Support U.S. Trade Laws president, said in a statement.

"This is long overdue good news for the workers whose jobs were hanging in the balance in this challenge," United Steelworkers President Leo Gerard said in a statement. "The panel's decision is consistent with the WTO agreements as written and negotiated," Gerard added.

Wassenaar Welcomes India as Newest Member

The Wassenaar Arrangement's (WA) annual updating of its control lists Dec. 6-7 included dozens of changes to performance thresholds for computers, lasers and other items, and

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perhaps a bit of clarity to controls on cyber security products that U.S. negotiators have been hoping to get. In addition, the WA welcomed India as the 42nd member of the club.

Participating states “reviewed the progress of a number of current membership applications and agreed at the Plenary meeting to admit India which will become the Arrangement’s 42nd Participating State as soon as the necessary procedural arrangements for joining the WA are completed,” noted the plenary chair in a statement.

India formally joined the arrangement Dec. 8 “following the completion of internal procedures,” India’s External Affairs Ministry said in a press release. “India’s entry into the Arrangement would be mutually beneficial and further contribute to international security and non-proliferation objectives,” it added. The U.S. reaffirmed its support for India’s early membership of the Australia Group and the Wassenaar Arrangement in August 2016 after the country formally joined the Missile Technology Control Regime (MTCR) two months earlier (see **WTTL**, Sept. 5, 2016, page 1).

At the plenary, members also “adopted new export controls in a number of areas, including military explosives and specific electronic components. Existing controls were further clarified regarding ground stations for spacecraft, submarine diesel engines, technology related to intrusion software, software for testing gas turbine engines, analogue-to-digital converters, non-volatile memories and information security,” the chair noted.

Pretty standard changes were made to computer controls in category 4, including increasing the ‘Adjusted Peak Performance’ (APP) to 29 weighted teraflops. For others, “control entries were either deleted, or performance thresholds were updated taking into account the rapidly evolving capabilities of civil market products,” he said.

In the controversial area of intrusion software, the updated controls list now includes two new notes and two technical notes: “Note 1: 4.E.1.a. and 4.E.1.c. do not apply to ‘vulnerability disclosure’ or ‘cyber incident response.’ Note 2: Note 1 does not diminish national authorities’ rights to ascertain compliance with 4.E.1.a. and 4.E.1.c.”

The two new technical notes include relevant definitions. “‘Vulnerability disclosure’ means the process of identifying, reporting, or communicating a vulnerability to, or analyzing a vulnerability with, individuals or organizations responsible for conducting or coordinating remediation for the purpose of resolving the vulnerability.” In addition, ‘cyber incident response’ is defined as “the process of exchanging necessary information on a cyber security incident with individuals or organizations responsible for conducting or coordinating remediation to address the cyber security incident.”

Industry Suggests New Definitions of Routed Export Transactions

In its quest to cut through industry confusion over routed export transactions (RETs), Census perhaps invited even more. The bureau received 44 responses to its request for

public comments on the “clarity, usability, and any other matters” related to RETs. Most of the commenters provided helpful if perhaps slightly divergent definitions of the term, as well as the responsibilities of parties, including the U.S principal party in interest (USPPI) and the foreign principal party in interest (FPPI) (see **WTTL**, Oct. 9, page 8).

The current definition is: “a transaction in which the FPPI authorizes a U.S. agent to facilitate export of items from the U.S. on its behalf and prepare and file the EEI [Electronic Export Information].” Most of the commenters thought the current definition is unclear and ambiguous; suggestions primarily involved controlling the movement or arranging the transportation of freight.

For example, CompTIA suggested this definition: “A transaction in which the FPPI controls the movement of freight by assigning an authorized agent to facilitate the export of items from the U.S. and filing the EEI on its behalf.” Alternately, it offered a wordier version: “a transaction in which the FPPI controls the movement of freight through its supply chain logistics providers, including the assignment of an authorized agent to facilitate the export of items from the U.S. and file the EEI on its behalf.”

General Electric noted that “perhaps a better definition of routed would be ‘an export for which the USPPI has transferred filing responsibility to the FPPI in writing.’” The fundamental issue with the current concept “is that it is designed for a very small set of transactions – those in which the FPPI potentially does not want to disclose to the USPPI the ultimate consignee (for example),” GE noted.

Raytheon suggested a better definition would be “a transaction in which the FPPI authorizes a U.S. agent to arrange for the transportation of the goods from the U.S. on its behalf.” The company recommended that “preparation and filing of the EEI be the responsibility of the license registrant/USPPI or its U.S agents for all exports, but especially for exports of export licensed, permitted, and exempted materials, even in cases where the FPPI arranges and pays for the transportation of the goods out of the country,” the company noted.

Similarly, Boeing offered: “A transaction in which the FPPI authorizes a U.S. agent to arrange transportation and file EEI for items being exported from the United States.” In addition, the company noted that “at present the responsibilities are not clearly stated. Boeing believes the most important clarifications concern the responsibility for determining the export authority.”

United Technologies (UTC) suggested: “Any export transaction whereby the freight forwarder or carrier arranging to move the goods out of the United States is working on behalf” of the FPPI. UTC further recommended “that the FPPI’s obligations be separated from the definition.”

“In our experience, many individuals in industry incorrectly believe that a transaction is only an RET *if* the FPPI expressly authorizes its U.S. agent to file the Electronic Export

Information (EEI), rather than recognizing that any transaction in which the FPPI uses its own freight forwarder to arrange the transport of goods out of the United States is an RET,” the company wrote.

In contrast to many of the other comments, Access USA Shipping said it “believes the current definition of ‘routed export transaction’ is clear and should not be altered.” Access USA does business as MyUS.com, providing U.S. addresses to international customers. The firm agreed in March to pay \$27 million to settle 150 Bureau of Industry and Security (BIS) charges of exporting controlled goods without required licenses from April 2011 through January 2013 (see **WTTL**, March 20, page 4). In April 2012, Commerce awarded MyUS the President's “E” Award for Exports.

WTO Ministerial Conference Begins with Challenges

The World Trade Organization’s (WTO) 11th Ministerial Conference runs Dec. 10-13 in Buenos Aires, where ministers are expected to tackle thorny issues, elect new officers and determine the date and location for the 12th ministerial. Attendees will broach a wide range of topics including fish trade and fisheries subsidies, e-commerce, WTO accessions, and strengthening the WTO dispute settlement system.

An annual report of the dispute settlement body concludes that “the WTO dispute settlement mechanism is operating at a very high level of activity. This is positive but it is also presenting challenges in coping with the resultant workload.” A task not made easier by the U.S. which has thrown up multiple roadblocks to replacing vacancies (see **WTTL**, Nov. 20, page 5). No wonder then that the side event dedicated to the subject is titled, “Saving the Crown Jewel: Strengthening the WTO Dispute Settlement System in Turbulent Times.”

Add to that just 10 days prior to the ministerial, 63 civil society experts from 40 non-governmental organizations were barred from participating (see **WTTL**, Dec. 4, page 3). Some attendees registered on behalf of some NGOs “have made explicit calls to manifestations of violence through social networks, expressing their vocation of generating schemes of intimidation and chaos,” the Argentine Foreign Ministry said in a press release Dec. 2.

State Department Criticisms Follow Tillerson to Europe

Rumors about his length of stay at State and criticisms of his proposed department redesign followed Secretary of State Rex Tillerson to Europe. While the secretary was abroad Dec. 4-8, Senate Foreign Relations Committee members urged department leadership to end the hiring freeze and more fully explain its ongoing redesign efforts.

In a letter to Tillerson’s deputy John Sullivan, Sens. Ben Cardin (D-Md.) and Todd Young (R-Ind.) Dec. 5 criticized the secretary’s remarks at an event the previous week, where he

denied that State is “hollowing out” (see **WTTL**, Dec. 4, page 5). The two senators wrote they are “deeply concerned” about developments at State that are “adversely affecting America’s Foreign Service and Civil Service professionals.”

“First, in suggesting that success in some conflict areas will reduce the overall need for America’s diplomatic resources, [Tillerson] said, ‘part of this bringing the budget numbers back down is reflective of an expectation that we’re going to have success in some of these conflict areas of getting these conflicts resolved and moving to a different place in terms of the kind of support that we have to give them,’” the lawmakers wrote.

“There is no doubt our Department of State professionals have been working diligently to achieve progress. However, we see no evidence that there will be a decline in the need for our nation’s diplomatic capabilities. On the contrary - in virtually every region of the world - we see the need for capable and effective American leadership and diplomacy increasing,” the senators wrote Dec. 5.

Cardin and Young concluded by requesting that State reassess its “assumptions guiding” the redesign effort, end the hiring freeze and improve transparency with Congress. Sullivan, in testimony before the House Foreign Affairs Committee in September, acknowledged the slow-going in filling State positions and shared few specifics of the redesign with the committee (see **WTTL**, Oct. 2, page 3).

The next day, Cardin and his fellow committee Democrats again asked for the department’s hiring freeze to be lifted immediately and requested a response and a briefing by Dec. 20. “We are extremely concerned that — intended or not — the reorganization and budget pressures on the Department are depleting one of the core instruments of U.S. national security, and as a result, these efforts will hamper our Foreign and Civil Services from fully performing their functions,” the senators wrote.

In remarks in Belgium Dec. 5, Tillerson acknowledged the criticisms. “The redesign, which everyone seems to be an expert on, we’re actually going to be doing some town halls here before the end of the year, because the teams, your teams – and this is an employee-led effort – all the teams are led by your colleagues at the State Department. We’ve had multiple teams working on the redesign. We’ve been through phase one, now we’ve just completed phase two, and we’re going to transition to phase three, which is now execution,” said Tillerson.

He said “quick wins” will be announced in the next few weeks. Earlier he said, “While we don’t have any wins on the board yet, I can tell you we are much better positioned to advance America’s interest around the world than we were 10 months ago, and it’s all attributable to the great men and women of this department.”

NAFTA Intersessional Meetings Come to Washington

While their trade ministers are in Buenos Aires for the WTO ministerial, NAFTA negotiators will hold intersessional meetings in Washington Dec. 9-15 and are expected to make progress on the least controversial aspects of the negotiations. Canada will host the next official round of negotiations starting Jan. 23 in Montreal.

An official outline was not available as of press time, but industry believes that during the intersessional meetings progress will be made on digital trade, telecommunications, food safety and customs. Working groups on rules of origin, financial services, regulatory practices and sectoral annexes likely will meet. Negotiators are not expected to tackle dispute settlement.

On that thorny subject, Public Citizen convened a forum on Capitol Hill Dec. 5 to support the elimination of investor-state dispute settlement (ISDS) from NAFTA. “Provision of justice should not be privatized and ISDS does this for no good reason other than to prioritize benefits to corporations. It is a system that treats foreign firms more favorably and encourages American businesses to invest abroad,” economist Joseph Stiglitz said during the forum.

“So instead of creating jobs here, we will continue to lose them. Americans should not be held up by business groups’ threat to not move forward with a renegotiated NAFTA that doesn’t include ISDS. If something is wrong with our system of adjudication, why not change it to benefit every firm and not just foreign ones?” Stiglitz added.

Cato’s Dan Ikenson criticized ISDS as a “subsidy that encourages outsourcing” that “undermines how the free market is supposed to work.” Canada and Mexico want to keep NAFTA Chapter 19 dispute settlement intact, while the U.S. wants it eliminated, setting up what could be a testy showdown. Canada requested a NAFTA panel review on softwood lumber in November (see **WTTL**, Dec. 4, page 8).

Despite these areas of contention, Canadian government officials projected optimism that the deal will survive. Canada’s ambassador to the U.S. said during a television interview Dec. 7 that he hopes “we get there by the end of March, certainly I think NAFTA has been good for all three countries,” said Ambassador David MacNaughton. He echoed the sentiments of Prime Minister Justin Trudeau, although Trudeau also said that if talks fail, it’s possible for the U.S. and Canada to revert back to their pre-NAFTA trade deal.

Geronimo Gutierrez, Mexico’s ambassador to the U.S., moderated his words in a separate television interview. “I’m moderately optimistic we can in fact reach an agreement in the next few months,” he said. Mexico’s presidential election will take place this coming summer, adding extra pressure to wrap up negotiations.

While the intersessional meetings are taking place, the House Foreign Affairs Committee trade subcommittee will hold a hearing Dec. 12 on NAFTA’s future.

Solar Companies Duke it out One More Time over 201 Case

With the exception of a new plan proposed by the Solar Energy Industries Association (SEIA), opponents and proponents of tariffs on imports of crystalline silicon photovoltaic (CSPV) cells stuck to their well-tread talking points in a packed eight-hour hearing hosted by USTR Dec. 6.

International Trade Commission (ITC) members earlier recommended that the administration place tariffs and import restrictions on CSPV cells, but USTR requested additional information, thus delaying a decision in the Section 201 trade case (see **WTTL**, Dec. 4, page 9). The president is expected to make a decision by Jan. 26.

SEIA, the most vocal critic of petitioners Suniva and SolarWorld, unveiled its America First Plan for Solar Energy Dec. 4 and championed their blueprint at the hearing. The plan recommends six steps the administration can take to boost the domestic solar industry, including creating an import license fee system. “License revenues collected by the U.S. government are then distributed to the domestic industry to incentivize manufacturing growth. A fee of a half cent per watt, this would raise roughly \$192 million over three years for U.S. manufacturers. A 1 cent per watt fee would raise \$384 million,” SEIA’s plan notes.

Suniva and SolarWorld rejected SEIA’s proposed plan, stating that it would not revive the industry. “It should be lost on absolutely no one that SEIA’s proposal relies solely on China and their proxies to supply the U.S. market. That is a strange, sad, definition of America First,” Suniva Executive VP Matt Card said in his prepared testimony. “Claims that an increase in the cost of importing modules is going to kill demand have been sensationalized and historically proven to be wrong. However, what is really at stake for our opponents is not demand, but rather the market distortion that is the fruit of the poisoned tree of Chinese subsidies and IP theft,” Card added.

* * * Briefs * * *

BIODIESEL: In 4-0 final vote Dec. 5, ITC found U.S. industry is materially injured by subsidized imports of biodiesel from Argentina and Indonesia.

PLYWOOD: In 4-0 final vote Dec. 1, ITC found U.S. industry is materially injured by dumped and subsidized imports of hardwood plywood from China. Commission also made negative finding concerning critical circumstances (see **WTTL**, Oct. 30, page 7). Sen. Ron Wyden (D-Ore.) applauded vote. “Subsidized and dumped Chinese hardwood plywood imports have devastated American producers of hardwood plywood and their workers, as well as communities in Oregon and throughout the country that depend on mill jobs,” he said in statement.

TRADE FIGURES: Merchandise exports in October jumped 6.4% from year ago to \$130.3 billion, Commerce reported Dec. 5. Services exports gained 4.0% to \$65.6 billion from October 2016. Goods imports increased 7.25% from October 2016 to \$199.4 billion, as services imports gained 5.8% to record-high \$45.2 billion.

IRAN: Dentsply Sirona Inc. (DSI), successor in interest to Dentsply International Inc. (DII), agreed Dec. 6 to pay OFAC \$1,220,400 to settle 37 charges of violating Iran sanctions between November 2009 and July 2012. DII subsidiaries UK International (UKI) and DS Healthcare Inc. (dba Sultan Healthcare), exported dental equipment and supplies “directly or indirectly to Iran, to distributors in third-countries, with knowledge or reason to know that the goods were ultimately destined for Iran,” OFAC said. DII did not voluntarily disclose apparent violations.

SOFTWOOD LUMBER: In 4-0 final vote Dec. 7, ITC found U.S. industry is materially injured by dumped and subsidized imports of softwood lumber from Canada. Commission also made negative finding concerning critical circumstances. Canadian Foreign Minister Chrystia Freeland called the “punitive” duties “unwarranted and troubling.” Ottawa Nov. 28 formally requested WTO consultations with U.S. in dispute (see **WTTL**, Dec. 4, page 8). “The massive subsidies that the Canadian government provides to its lumber industry and the dumping of lumber products into the U.S. market by Canadian companies cause real harm to U.S. producers and workers,” U.S. Lumber Coalition Co-Chair Jason Brochu said in statement.

EXPORT ENFORCEMENT: John Roberts of Clarksville, Tenn., was sentenced Dec. 5 in Nashville U.S. District Court to 15 years in prison and \$4.2 million in restitution for reselling sensitive U.S. Army equipment to foreign bidders on eBay without licenses. Civilian Roberts was found guilty by federal jury in August. He was arrested in October 2016 with civilian Cory Wilson and indicted on charges of violating Arms Export Control Act and wire fraud (see **WTTL**, Oct. 10, 2016, page 9). Wilson pleaded guilty in April in same court. His sentencing is set for Jan. 8, 2018. Six Army soldiers also were charged with stealing more than \$1 million worth of equipment and reselling to Roberts and Wilson. Items included night vision helmet mounts and advanced communications headset helmets sold to buyers in Russia, China and Kazakhstan, among others.

MTB: Almost 200 organizations and companies Dec. 6 urged Congress to move quickly on comprehensive Miscellaneous Tariff Bill (MTB). House Ways and Means and Senate Finance committee leadership in November introduced MTB Act of 2017 (H.R. 4318) (see **WTTL**, Nov. 13, page 6). Legislation would eliminate import tariffs of more than \$1.1 billion over next three years and boost U.S. manufacturing output by more than \$3.1 billion, groups wrote. Represented sectors include chemicals, agriculture, textiles and footwear, electrical equipment, machinery and sporting equipment.

AIRCRAFT: Boeing Dec. 8 responded to media reports that Canada will purchase F/A-18 Classic Hornets from Royal Australian Air Force rather than new Super Hornet fighter jets. Company “respects the Canadian government’s decision and applauds the government’s continued use of a two engine fighter solution, which is a critical part of their northern Arctic border defense, NORAD cooperation, and coast to coast to coast security. Although we will not have the opportunity to grow our supply base, industrial partnerships and jobs in Canada the way we would if Canada purchased new Super Hornets, we will continue to look to find productive ways to work together in the future,” Boeing said in statement. This is latest in ongoing dispute between Boeing and Bombardier (see **WTTL**, Oct. 16, page 3).

RETIRING: Rep. Sandy Levin (D-Mich.) will not seek reelection in 2018, he announced Dec. 2. Levin chaired Ways and Means from 2010-2011 and served as ranking member until 2016 (see **WTTL**, Dec. 5, 2016, page 4). His son, Andy, will run for seat. Levin will join staff of University of Michigan’s Gerald R. Ford School of Public Policy.

CBP: Senate Finance Committee Dec. 7 advanced nomination of Kevin McAleenan to be Customs and Border Protection (CBP) commissioner via voice vote. “CBP plays an important role in

facilitating trade and ensuring the nation's borders are protected, and it is essential that the agency is led by someone who understands how trade impacts the competitiveness of our economy. McAleenan is the right man for the job, and I hope he receives swift and fair consideration on the floor," Committee Chairman Orrin Hatch (R-Utah) said in statement. McAleenan has been acting commissioner since Jan. 20 and previously served as deputy commissioner (see **WTTL**, Oct. 30, page 3).

BREXIT: European Commission (EC) recommended to European Council Dec. 8 "sufficient progress" has been made in first phase of Article 50 negotiations with UK. Now European Council must decide by Dec. 15 if sufficient progress has been made for negotiations to enter second phase. "This is a difficult negotiation but we have now made a first breakthrough. I am satisfied with the fair deal we have reached with the United Kingdom. If the 27 Member States agree with our assessment, the European Commission and our Chief Negotiator Michel Barnier stand ready to begin work on the second phase of the negotiations immediately," EC President Jean-Claude Juncker said.

EX-IM BANK: Acting Ex-Im Bank Chairman and President Charles J. Hall stepped down Dec. 2, leaving one remaining board member, acting vice chairman and first VP Scott Schloegel.

RUSSIA: Administration pursuing sanctions against Russia for violating Intermediate-Range Nuclear Forces (INF) Treaty. Moscow "has taken steps to develop, test, and deploy a ground-launched cruise missile system that can fly to" prohibited ranges, State spokesperson Heather Nauert said in statement Dec. 8. "While the United States will continue to pursue a diplomatic solution, we are now pursuing economic and military measures intended to induce the Russian Federation to return to compliance," she said. "For years, Putin has disregarded Russia's obligations under the landmark INF Treaty. Glad the admin is acting to hold Russia accountable," House Foreign Affairs Committee Chair Ed Royce (R-Calif.) tweeted.

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