WHITE & CASE

US & Multilateral Trade and Policy Developments

Japan External Trade Organization

December 2015

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US General Trade Policy Highlights

United States Lowers Import Tariffs on Certain Environmental Goods to Implement APEC Commitment

On December 23, 2015, President Obama issued a proclamation reducing import tariffs on six types of environmental goods in order to implement a commitment made by the United States in the Asia-Pacific Economic Cooperation (APEC) Leaders' Declaration of September 9, 2012.[1] In the Leaders' Declaration, the United States and all other APEC countries agreed to reduce their applied tariff rates on 54 environmental goods to five percent or less by the end of 2015. The US Congress authorized President Obama to implement the relevant tariff reductions in Section 502 of the *Protecting Americans from Tax Hikes Act of 2015* (P.L. 114-113), which was approved by Congress and signed into law on December 18, 2015.

Prior to December 23, the United States had maintained tariff rates in excess of five percent on six of the 54 environmental goods listed in the Leaders' Declaration. Tariff rates on those items have been modified as follows:

HTSUS No.	Description	Previous Duty Rate	New Duty Rate
4418.72.95	Assembled flooring panels – other, multilayer	8%	5%
8404.20.00	Condensers for steam or other vapor power units	5.6%	5%
8406.90.20	Parts of steam turbines – Rotors, finished for final assembly	6.7%	5%
8406.90.30	Parts of steam turbines – Rotors, not further advanced than cleaned or machined for removal of fins, gates, sprues, and risers, or to permit location in finishing machinery	6.7%	5%
8406.90.40	Parts of steam turbines – Blades, rotating or stationary	6.7%	5%
8406.90.45	Parts of steam turbines – Other	6.7%	5%

US Trade Representative's 2015 Review of Notorious Markets Highlights Increasing Focus on Online Markets

On December 17, 2015, the Office of the United States Trade Representative (USTR) released the 2015 Out-of-Cycle Review of Notorious Markets ("Review"), which highlights select physical and online markets around the world that reportedly facilitate and engage in copyright piracy and trademark counterfeiting.[2] This year's Review reflects an increasing focus by USTR and US intellectual property rights (IPR) holders on the alleged growth of online markets for counterfeit and pirated products. Regarding physical markets, the Review continues to focus on China while noting that USTR also is concerned by new reports of notorious physical markets in Turkey, the United Arab Emirates, Kuwait, Vietnam, and Spain.

Increasing Focus on Online Markets

USTR has highlighted its increasing focus on online markets throughout the Review, including in a new section dedicated to "Emerging Marketing and Distribution Tactics in Internet-Facilitated Counterfeiting". According to USTR, such emerging tactics include (i) the use of e-commerce sites, such as auction sites, that provide large-scale

[1] Click **here** for a copy of the Presidential Proclamation. The full APEC List of Environmental Goods is available **here**.

[2] Click **here** for a copy of USTR's 2015 Review of Notorious Markets.

platforms for counterfeit sellers and wholesalers to reach a global customer base; and (ii) standalone websites offering counterfeit versions of branded products or mimicking the look and feel of a legitimate retailer. The Review notes that sales of counterfeit goods through online vendors increased by an estimated 15 percent in 2014, and that rights holders have seen an increase in the services that support such operations in recent years. Several websites that allegedly facilitate the streaming or download of pirated content also are featured in the Review.

USTR's increased focus on online markets likely reflects the shifting priorities of US IPR holders. Indeed, USTR has noted that, in response to its *Federal Register* notice seeking comments for the 2015 Review, "USTR again received fewer nominations for physical markets than in the past, particularly from copyright-intensive industries. Several commenters focused exclusively on notorious markets online due to the rise of digital distribution and online infringement." In the Review, USTR urges foreign government authorities to (i) investigate reports of piracy and counterfeiting in online markets; (ii) ensure that appropriate enforcement tools are available to rights holders and government authorities; and (iii) close "loopholes" that facilitate online IPR violations.

List of Alleged "Notorious" Markets

The Review highlights a total of 30 allegedly "notorious" markets, 16 of which are physical markets located in China, Nigeria, Paraguay, Brazil, Indonesia, Argentina, India, Mexico, and Thailand. The 14 online markets listed in the Review allegedly are based in or tied to China, Indonesia, Ukraine, Canada, Switzerland, Sweden, Panama, Russia, Spain, France, and the Netherlands. The Review notes that, as in past years, US IPR holders continue to identify China as the "primary source" of counterfeit products. However, the Review acknowledges that online markets in China have been the subject of deterrent enforcement actions in China's courts, and that Chinese authorities reportedly engage in routine enforcement actions in some physical markets.

According to USTR, the markets listed in the Review were selected "not only because they exemplify global counterfeiting and piracy concerns, but also because the scale of infringing activity in such markets can cause significant economic harm to U.S. [IPR] holders." However, the list is not exhaustive, and the Review does not reflect findings of legal violations or the U.S. Government's analysis of the general IPR protection and enforcement climate in the countries connected with the listed markets.

USTR Publishes Annual Report to Congress on China's WTO Compliance

On December 29, 2015, the Office of the United States Trade Representative (USTR) released its 14th Annual Report to Congress on China's WTO Compliance, pursuant to Section 421 of the *U.S.-China Relations Act of 2000* (P.L. 106-286).[3] The report examines nine categories of WTO commitments undertaken by China, and China's compliance therewith: (i) trading rights; (ii) import regulation; (iii) export regulation; (iv) internal policies affecting trade; (v) investment; (vi) agriculture; (vii) intellectual property rights (IPR); (viii) services; and (ix) legal framework. Within these nine categories, USTR identifies the following six "priority" areas in which China's trade policies and practices cause "particular concern" for the United States and U.S. stakeholders:

- **Intellectual Property.** In addition to perennial concerns regarding trade secrets protection, counterfeiting, and piracy, USTR cites the Chinese government's provision of regulatory preferences in the pharmaceuticals sector as a "serious and emerging concern that arose in 2015." In particular, the report alleges that China has sought to promote government-directed indigenous innovation and technology transfer through the provision of such preferences, citing a 2015 State Council measure that calls for expedited regulatory approval to be granted to new drugs if the applicant's manufacturing capacity has been shifted to China. The report also reiterates U.S. concerns regarding market access for pharmaceuticals, citing China's allegedly "backlogged" regulatory approval system.

[3] Click **here** for a copy of the report.

- **Industrial Policies.** As in previous years, the report highlights US concerns with China's alleged use of export restraints and subsidies, value-added tax (VAT) rebates, import substitution policies, excess capacity in manufacturing, and government support for "strategic emerging industries." In addition, a new concern identified by USTR in 2015 relates to China's proposed requirements for the use of "secure and controllable" information and communications technology (ICT) in various sectors. In this regard, the report cites China's proposed *Guidelines on Promoting the Application of Secure and Controllable Information Technology in the Banking Industry* and similar proposed measures in the insurance and e-commerce sectors (*please refer to the W&C US Trade Alert dated August 28, 2015.*) Such measures would, according to USTR, impose local content requirements on ICT used by these sectors, impeding market access for foreign ICT suppliers. Similarly, the report states that China's 2015 draft laws on counterterrorism and cybersecurity would impose "far-reaching and onerous trade restrictions on imported ICT products and services in China" if approved in their current draft form.

- **Services.** Although the report does not identify any major new concerns related to services, it does reiterate longstanding U.S. concerns, in particular with respect to electronic payment services, telecommunications, banking, and insurance. Regarding electronic payments, USTR implies that China has yet to bring its policies into compliance with the WTO's rulings in DS413 (*China – Certain Measures Affecting Electronic Payment Services*), and suggests that the United States is considering whether to initiate compliance proceedings at the WTO. Other longstanding concerns highlighted in the report include (i) foreign equity limits in the insurance sector; (ii) working capital requirements in the banking sector; (iii) regulations limiting the provision of currency services by foreign banks; and (iv) restrictions on basic telecommunications services, such as informal bans on new entry, "exceedingly high" capital requirements, and a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises (SOEs).

- **Agriculture.** As in previous years, USTR highlights three main concerns in the agricultural sector: (i) "questionable" sanitary and phytosanitary (SPS) measures that restrict market access for US exports of beef, poultry, and pork; (ii) delays in China's approvals of agricultural products derived from biotechnology; and (iii) "significantly increasing" domestic subsidies and other support measures provided to the agricultural sector. Regarding support programs, USTR also expresses concern with the notifications provided by China to the WTO, stating that "the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates."

- **Transparency.** USTR acknowledges that China issued a measure in March 2015 requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation. However, USTR notes that the United States is pressing China to ensure that it similarly publishes translations of trade-related laws and administrative regulations before implementation, as required by China's WTO accession agreement. USTR also reiterates concerns that not all of China's central government entities publish their trade-related measures in a single official journal administered by the Ministry of Commerce, as required in China's WTO accession agreement.

- **Legal Framework.** As in previous years, USTR highlights ongoing concerns regarding the implementation of China's *Anti-Monopoly Law* (AML), including uncertainties regarding the law's application to Chinese state-owned enterprises, and concerns about the procedural fairness of AML investigations against foreign companies.

Despite these and other issues identified in the report, USTR notes that China's current leadership "has highlighted the need for and has begun to pursue further economic reform in China". In this regard, USTR notes that the United States in the coming year will focus on China's implementation of the Third Plenum Decision, whose goals include reform of China's SOEs, reduced government intervention in the economy, and an acceleration of China's opening up to foreign goods and services. According to USTR, the United States will continue to urge China to "speedily implement these promising reforms". However, the report notes that the United States will not hesitate to invoke the dispute settlement mechanism at the WTO if bilateral dialogue is ineffective in resolving U.S. concerns.

United States Repeals Crude Oil Export Restrictions and COOL Requirements in Omnibus Spending Bill

On December 18, 2015, President Obama signed into law the *Consolidated Appropriations Act, 2016* (P.L. 114-113 or "Omnibus Bill"), which allocated funding to U.S. federal agencies and programs for the 2016 Fiscal Year.[4] As is frequently the case with essential appropriations measures, the Omnibus Bill included a number of "policy riders" (*i.e.*, attached legislative measures that are unrelated to the subject matter of the bill), including provisions repealing the U.S. crude oil export restrictions and country-of-origin labelling (COOL) requirements for beef and pork. We summarize these aspects of the Omnibus Bill below.

- **Repeal of U.S. crude oil export restrictions.** Section 101 of the Omnibus Bill (i) repeals the U.S. crude oil export licensing regime established by the *Energy Policy and Conservation Act* (42 U.S.C. 6212), pursuant to which the United States has maintained an effective ban on almost all exports of U.S. crude oil since 1975; and (ii) authorizes the President to impose, for a period of not more than one year, export licensing requirements or "other restrictions on the export of crude oil" under three specified conditions: (a) during national emergencies; (b) in the context of trade sanctions or restrictions related to national security; or (c) when crude oil exports directly cause sustained supply shortages or price increases that cause or are likely to cause sustained negative employment effects in the U.S. These new provisions (particularly condition (c)) could raise concerns under Article XI of the General Agreement on Trade and Tariffs (GATT); however, because any such licensing system or restrictions are merely authorized, the new provisions would only raise significant concerns under Article XI where the President actually implemented them.

- **Repeal of Country-of-Origin Labeling Requirements.** Section 759 of the Omnibus Bill repeals the U.S. country-of-origin labelling (COOL) requirements for beef and pork in order to bring the United States into compliance with the WTO Dispute Settlement Body (DSB) rulings in DS384/386 (*United States — Certain Country of Origin Labelling* (*COOL*) *Requirements*). In these disputes brought by Canada and Mexico, the DSB found the COOL measure to be inconsistent with Article 2.1 of the Agreement on Technical Barriers to Trade and Article X:3(a) of the GATT. Although the Omnibus Bill repealed the measure at issue in these disputes, the US Department of Agriculture (USDA) has yet to formally amend the COOL regulations to reflect the repeal. Canada and Mexico on December 21 received formal authorization from the DSB to impose retaliatory tariffs on US products in the amount of USD 780 million and 227.7 million, respectively, but have indicated that they do not intend to retaliate so long as USDA promptly amends the COOL regulations to reflect the repeal. US Secretary of Agriculture Tom Vilsack stated on December 18 that USDA would no longer enforce the COOL requirements "effective immediately", and will amend the COOL regulations "as expeditiously as possible".

[4] Click **here** for the full text of the Omnibus Bill.

Multilateral Highlights

Argentina to Eliminate Advance Sworn Import Statement Procedure by December 31, 2015 to Comply With WTO Ruling

On December 14, 2015, Argentine Minister of Production Francisco Cabrera announced that Argentina will eliminate its Advance Sworn Import Statement (*Declaración Jurada Anticipada de Importación* – DJAI) procedure by December 31, 2015 in order to comply with the WTO Appellate Body ruling in *Argentina – Measures Affecting the Importation of Goods* (DS438/444/445). The Appellate Body ruled in January 2015 that the DJAI procedure was an import restriction inconsistent with Article XI:1 of the General Agreement on Trade and Tariffs (GATT), and that an accompanying trade-related requirement (TRR) measure was inconsistent with GATT Articles III:4 and XI:1 (*please refer to the W&C Argentina Trade Alert dated January 17, 2015*.) The parties agreed in July 2015 that the reasonable period of time (RPT) for Argentina to implement the Appellate Body's rulings and recommendations would expire on December 31, 2015.

Under the DJAI procedure, which took effect in February 2012, Argentina requires importers to file an online affidavit and await government review and approval before importing goods. All goods imported for consumption are subject to the DJAI procedure. According to the complainants in DS438/444/445, the DJAI procedure creates delays and is used to enforce the TRR measure. The TRR measure is an unwritten policy whereby the Argentine government requires companies to undertake certain commitments as a condition to import into Argentina, such as commitments to (i) offset the value of imports with an equivalent value of exports; (ii) limit the volume and value of imports; (iii) reach a certain level of local content in domestic production; (iv) make investments in Argentina; and (v) refrain from repatriating profits from Argentina.

According to Minister Cabrera, Argentina will replace the DJAI system with a new Integrated System of Import Monitoring (ISIM) by December 31. Under the ISIM, automatic import licenses will be granted for approximately 18,000 of the 19,000 Mercosur Common Nomenclature (NCM) tariff headings. Goods classified under the remaining 1,000 tariff headings will continue to be subject to non-automatic licensing. The Argentine government has not yet announced the list of tariff lines that will remain subject to non-automatic licensing, and Minister Cabrera did not state whether Argentina will cease to maintain the TRR measure with respect to these tariff lines.

If the complaining parties (the United States, the EU, and Japan) consider that Argentina has not implemented the DSB rulings by December 31, they can request the establishment of a compliance panel to rule on the WTO-consistency of Argentina's implementing measures.

WTO Update: Bleak Prospects for the WTO's 10th Ministerial Conference

WTO Members have concluded the preparatory phase of negotiations for their 10th Ministerial Conference in Nairobi, from December 15-18, without agreement on any element of the outcome. Since September, with no hope of delivering results on the big market access or rules issues in the Doha Round, Members have tried to find agreement instead on a small package of deliverables for Nairobi ("Doha-minus") and a statement on how to continue the trade negotiations after the Ministerial Conference.

Even that, however, has proved to be too ambitious. At the meeting of the General Council on December 7, wrapping up the process in Geneva, WTO Director-General Roberto Azevedo said: "We currently … have no deliverables for Nairobi – either on the potential outcomes that we identified, or on the Ministerial Declaration". There had been hope that separate, plurilateral negotiations on an enhanced Information Technology Agreement and an Environmental Goods Agreement to liberalize trade in high-tech and "green" products would have produced results that could have been harvested by the WTO in Nairobi, but although these are far more advanced than the Doha negotiations neither of them will be ready in time.

Intensive negotiations will therefore have to continue at the Ministerial Conference. Selected Ministers have been invited to act as "facilitators" on each issue, using bracketed draft texts submitted from Geneva that reflect all of the main areas of disagreement which the facilitators will try to reconcile. This formula has been used in previous Ministerial Conferences with mixed results. It has the best chance of succeeding when the divergences among Members are few in number and can be presented to Ministers for political decision in simple (usually "yes" or "no") terms.

The differences separating Members in Nairobi seem to be a lot more complex than that. If they cannot be reconciled, the Conference will have to end with a statement from the Chair that will not have any political or legal force and that will leave open the most critical issue of all: whether to continue the Doha Round, close it down, or to find some other basis upon which to continue WTO negotiations after Nairobi.

"Doha-minus"

Two months ago, it seemed possible to forge agreement on three deliverables for Nairobi: (i) an end to agricultural export subsidies; (ii) some benefits for least-developed countries (LDCs); and (iii) improved transparency of trade remedy procedures and certain fisheries subsidies.

Many WTO Members wanted more than this minimal package, but few agreed with each other on what could be added to the list. Lowering the level of ambition so much from the full Doha agenda was intended to make it easier to find common ground by setting aside intractable problems in areas such as market access that have beset the negotiations for years. The problem with such a limited objective, however, is that it is hard to produce a balanced outcome. The gains are small and narrowly distributed, yet some Members still have to make difficult political concessions if there is to be an agreement, and there is an opening for others to complicate the equation by demanding additional benefits in areas they care about in exchange for their buy-in.

Agricultural Export Subsidies

These are the most trade-distorting form of farm subsidies. Agreeing in Nairobi to discipline them would be a major breakthrough for the WTO after decades of trying. Most Members, including the United States and the EU who historically have been the largest users of agricultural export subsidies, have seemed willing to accept new disciplines. The problem has been reaching agreement on the details. At the General Council meeting on December 7, Azevedo said that Members still have "a large list of issues which are unresolved".

The United States can agree to the prohibition of direct export subsidies, but it wants flexibility for its export credit and food aid programmes. Canada wants to continue using its state-trading farm export programmes. Switzerland wants a long delay before it would have to phase-out its export subsidies. The United States and the EU want emerging economies to accept the same disciplines as developed countries, but China and India have rejected any limits on their access to Special and Differential Treatment flexibilities that allow developing countries to continue using export subsidies. Watering down the level of ambition might present a way forward in Nairobi, but competitive agricultural exporters, such as Argentina, Australia, and Brazil are reluctant to settle for that when it would probably push back for years the prospect of achieving the full prohibition that they want. With so many "red lines" in play, very little headway was made in drafting a consensus text in Geneva.

Finding an accommodation on agricultural export subsidies is also threatened by a demand from India supported by the G-33, – a large group of developing country food importers (including China) – that any result on export subsidies must be accompanied by agreement on a new special safeguard mechanism (SSM) to allow developing countries to protect their farmers against food import surges. The SSM has been contested for years in the negotiations on agricultural market access, and the United States, the EU, Australia, Brazil and others have flatly rejected considering it for Nairobi. Azevedo's assessment is that negotiations on the SSM have reached an impasse.

India has also pressed for a permanent carve-out from WTO disciplines for domestic subsidies that developing countries use to pay to stockpile food for their food security. That might be more easily negotiable as a *quid pro quo* for new disciplines on agricultural export subsidies than the SSM, since it was conceded in principle already by the

United States, the EU and others in 2014. However, there has been no agreement on the details; Azevedo said that negotiations "so far have not taken us much closer to convergence".

Least-developed countries

The objective has been to provide the WTO's 34 Least-Developed Countries (LDCs) with: (i) preferential rules of origin for their exports; (ii) duty-free, quota-free market access; (iii) an improvement in market access for their cotton exports; (iv) preferential access for their Services exports; and (v) a TRIPs agreement on public health to provide LDCs with better access to patent-protected medicines. Agreement has been reached already to grant them flexibility under the TRIPs Agreement. In the other areas there are still difficulties to overcome.

The United States is resisting cuts to domestic support for its cotton farmers and the elimination of export subsidies for cotton is held up by the failure to agree on the general prohibition of agricultural export subsidies. The United States and other developed countries have offered "best endeavour" or time-bound undertakings on the other LDC issues, but not binding commitments. Also, the United States, the EU and others are asking emerging economies to make stronger commitments in favor of LDCs, but China and India have resisted doing that for fear it could open the door to a general weakening of their access to SDT flexibilities. Nonetheless, there would appear to be more likelihood of success in this area. Azevedo has expressed encouragement "that there are potential outcomes on the table for some of these issues" but "there is a long way still to go".

Transparency

Negotiations on WTO Rules had been aiming at one stage for possible new disciplines on horizontal subsidies, anti-dumping measures, fisheries subsidies, and Regional Trade Agreements (RTAs), but these made little headway. So for Nairobi, the focus has been narrowed to just increasing the transparency of trade remedy procedures, mainly anti-dumping procedures, and certain fisheries subsidies. Even that has proved too difficult to achieve so far. Relatively few WTO Members have pressed for results in these areas, and that has not been enough to persuade the membership generally of the value of getting a result. Azevedo's assessment is that there has not been "a high level of engagement" and Members have not converged on any proposals on fisheries subsidies or anti-dumping or countervailing measures.

Transparency is an issue on which all WTO Members seem able to agree in principle but that many fail to apply in practice. As long as existing transparency provisions in WTO Agreements are poorly implemented, there is reluctance to add to them. Many developing countries have concerns about taking on new, administratively burdensome transparency obligations and questioned the benefit of doing so, particularly when the United States has ruled out SDT flexibilities for the emerging economies. Some of the heaviest users of anti-dumping measures are sensitive about more probing into their domestic procedures. Some WTO Members with large, open-water, fishing fleets have resisted greater transparency of their fisheries subsidies (as well as proposals to prohibit certain fisheries subsidies) as long as other industrial subsidies are not targeted in the same way.

Ministerial Statement on Further Trade Negotiations

All WTO Members seem willing to continue negotiations after Nairobi on the key issues in the Doha Round, such as agriculture, tariffs and services. That is positive, since the benefits of a multilateral result would outweigh anything that can be produced regionally or plurilaterally because of its inclusiveness and its non-discriminatory application. The value of the result would be underpinned by the dispute settlement and surveillance functions of the WTO, and experience has shown that some subjects, such as agriculture, can only be tackled successfully at the multilateral level since, time and again, they have been carved out from bilateral and regional agreements.

Where WTO Members differ sharply with each other is on the mandate for further negotiations in the WTO. Most developing countries want to continue with the original mandate of the Doha Round, with its strong development orientation, and to build on what they feel has been achieved since 2001. Developed countries, led by the United States, the EU, Australia and Japan, disagree. They feel that the Doha mandate is no longer fit for purpose and has no chance of producing a result, and while it continues to rule the negotiations it precludes addressing important new issues such as investment. They therefore want to start negotiations again from a clean slate.

There are many factors underlying the difference of view over the future conduct of negotiations in the WTO, but two in particular stand out:

In an increasingly competitive global market, what is the purpose of multilateral negotiations – is it to further liberalise trade and investment, as the United States firmly believes, or to deliver "development" by consolidating WTO rules around current levels of import protection, as India and a large number of developing countries favor?

What contribution should emerging economies, such as China and India, make to the negotiations – are they still entitled to full SDT flexibilities, along with other developing countries, as they insist, or are they now such influential players in world trade that they should accept WTO obligations that are more like those that apply to developed countries, as the United States and the EU believe?

These differences have frustrated efforts to find common ground on even a minimal outcome in Nairobi and they lie at the heart of what has become an existential crisis for the negotiating arm of the WTO: can meaningful results still be produced at the multilateral level, or is the WTO membership now so diverse and divided over the role that trade liberalisation should play in economic growth and development that only regional or plurilateral efforts among like-minded countries have a chance of succeeding?

The choice confronting Ministers in Nairobi is to declare the Doha Round dead or to agree to continue negotiations within the Doha Round framework. It seems highly improbable that either side in that debate will concede to the other at this stage. It may be possible to find some form of compromise language for the sake of producing a consensus Declaration to conclude the Nairobi Ministerial Conference, but that will only put off the day of reckoning. Until WTO Members agree on what they want to achieve through negotiating in the WTO, the stalemate that has set in on the Doha Round is likely to continue.

WTO Members Conclude 10th Ministerial Conference Without Consensus on Doha Round

On December 19, 2015, WTO Members concluded their 10th Ministerial Conference in Nairobi with two significant results – agreements on the enhanced Information Technology Agreement (ITA II) and the elimination of direct agricultural export subsidies – as well as a small package of agreements to benefit least-developed countries (LDCs). WTO Members averted a potential breakdown at the Nairobi Conference by achieving these modest outcomes, but failed to agree on other hoped-for results. In particular, there was no agreement on the most important issue before the Conference, whether to continue or abandon the 14-year long Doha Round. The Nairobi Ministerial Declaration simply reflects, and does not resolve, the longstanding disagreement between developed and developing Members on this key issue, which has been referred back to officials for further discussion in Geneva in 2016. We summarize the outcomes of the Nairobi Conference below.

"Nairobi Package"

- **Agricultural export subsidies**. In the Ministerial Decision on Export Competition, developed members committed to eliminate export subsidies for most agricultural products immediately. Developing members committed to eliminate such subsidies by the end of 2018, but will retain the flexibility to cover marketing and transportation costs for agricultural exports through 2023. The Decision also includes disciplines intended to prevent certain export policies from indirectly subsidizing agricultural exports, such as limitations on the terms of export financing provided to agriculture exporters (with a four year phase-in period for developing members) and rules for state trading enterprises involved in agriculture. Although the decision to eliminate export subsidies is the most notable success from the Nairobi Conference, it has been achieved at only a low level of ambition, with carve-outs for the United States, Canada and Switzerland, in particular, allowing them to continue using certain export subsidy practices for years to come.

- **Cotton**. In addition to eliminating export subsidies for cotton, developed members committed to grant, to the extent provided for in their respective preferential trade arrangements, duty-free and quota-free market access for certain cotton products from LDCs beginning on January 1, 2016. Developing members committed to eliminate their export subsidies for cotton by January 1, 2017. This is a weak result from the perspective of LDCs, and in particular, African cotton producers, as it eliminates export subsidies but does not address other market access impediments such as domestic support.
- **Other agriculture issues**. Members failed to agree on a permanent solution to the issue of public food stockholding, and deferred a final decision on the issue until the 11th Ministerial Conference in 2017. Members also did not reach agreement on a proposed special safeguard mechanism for developing countries, which will be the subject of further negotiations in Geneva.
- **Least-developed countries**. The LDC package fell below the expectations of LDC Members, as it excluded several issues that were under negotiation such as new duty-free quota-free market access. However, Members agreed on a new set of binding provisions establishing preferential rules of origin for LDCs. In addition, Members agreed to extend the LDC services waiver, under which Members may grant preferential treatment to LDC services and services suppliers, until December 31, 2030.
- **Rules**. The negotiations on Rules issues, which covered areas such as Anti-Dumping, Subsidies and Countervailing Measures, and Fisheries Subsidies, produced no agreement and no outcome. The draft texts that were being negotiated in these areas cannot re-appear in Geneva since they stated in part that: "The …. texts do not purport to represent a consensus. Their aim is to assist Ministers to find common ground, and in keeping with this aim they should be considered to expire at the end of the Tenth Ministerial Conference."

Expanded Information Technology Agreement

The 53 WTO Members participating in the ITA-II negotiations reached a final agreement on December 16, following a breakthrough in which the participants agreed to accept China's staging offer. Tariffs on approximately 65 percent of the 201 products covered by the ITA-II are to be fully eliminated by July 1, 2016, while tariffs on most of the remaining products will be fully eliminated in four stages over three years. The tariff reductions made by ITA-II participants will apply to imports originating from all WTO Members, including those Members that are not participating in the ITA-II. The Agreement has been negotiated plurilaterally among a sub-set of Members, but its benefits are extended to all Members on the Most-Favoured Nation principle. This does not require a multilateral decision to launch or close negotiations and is seen by many as the likely pattern for future negotiations in the WTO.

Ministerial Declaration on further trade negotiations

As is illustrated in the Nairobi Ministerial Declaration, WTO Members did not reach agreement as to how further negotiations will be conducted on issues covered by the Doha Round. The conflicting positions of those, mostly developing, countries who wish to continue the Round and those developed countries who wish to abandon it are starkly presented: "We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then … Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations." Thus, the issue has been referred back to officials in Geneva, with no guidance as to how it might be settled. Some observers have already published their conclusion that the Doha Round has effectively been terminated by the refusal of major trading countries to be bound by the Doha mandates. At the heart of the disagreement over the Doha Round lies the demand of developed countries, particularly the United States, that emerging market economies should accept responsibilities commensurate with their economic strength and relinquish some or all of their access to Special and Differential Treatment (SDT) flexibilities, something that India and China have so far refused to accept. This stand-off over SDT prevented there being any results from the "Development" component of the Doha Round in Nairobi, but it also manifested itself through many other parts of the negotiations that took place there and until it is resolved it is hard to envisage any progress being made back in Geneva in unblocking the negotiating arm of the WTO.

From the viewpoint of the WTO, the overall outcome is satisfactory in that it avoids an embarrassing breakdown of the kind that occurred at Seattle in 1999 and at Cancun in 2003. The determination to avoid such a breakdown probably owes much to the constantly emphasized fact that this was the first WTO Ministerial Conference to be held in Africa and could not be allowed to fail. But it cannot be pretended that the Conference has resolved any of the fundamental disagreements between developed and developing countries that have paralyzed the WTO's negotiating function since 2008. Nor has it provided useful guidance on how future negotiations should be pursued, whether on Doha Round issues or new subjects. It has not strengthened the cause of multilateralism.

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