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EU Gets Go-Ahead for Tariffs in Airbus

A World Trade Organization arbitrator gave the European Union the go ahead yesterday to impose some \$4 billion in retaliatory tariffs against the United States in the long-running dispute over subsidies to aircraft manufacturers.

The arbitrator set the amount of retaliation based on the adverse affects suffered by Europe's Airbus because of a tax cut subsidy provided to US manufacturer Boeing by Washington state.

Airbus suffered lost sales for its single-aisle large civil aircraft to the United Arab Emirates, according to the arbitrator's decision.

The United States immediately contended that the arbitration decision actually does not allow the EU to impose tariffs because the Washington state government repealed the business and occupation tax rate reduction on April 1 of this year.

"Because Washington State repealed that tax break earlier this year, the EU has no valid basis to retaliate against any US products," US Trade Representative Robert Lighthizer said. "Any imposition of tariffs based on a measure that has been eliminated is plainly contrary to WTO principles and will force a US response."

At the same time, Mr. Lighthizer said that Washington is prepared to find a negotiated resolution to the dispute "that addresses the massive subsidies European governments have provided to Airbus." The WTO last year gave the United States authorization to impose \$7.5 billion of tariffs on the EU because of European subsidies provided to Airbus. The United States chose to impose less tariffs than authorized in hopes of reaching a negotiated settlement.

Washington is awaiting a response from Brussels to a US recent proposal to settle the dispute, according to Mr. Lighthizer.

EU Seeks Negotiation

European Trade Commissioner Valdis Dombrovskis also expressed hope that a settlement can be reached. "This long-awaited decision allows the European Union to impose tariffs on American products entering Europe," he said. "I would much prefer not to do so – additional duties are not in the economic interest of either side, particularly as we strive to recover from the Covid-19 recession."

But he also said the European Commission will finalize its list of US products that would be hit with retaliatory tariffs in case negotiations fail. Brussels must ask the WTO's Dispute Settlement Body for authorization to impose countermeasures before it could actually tariff US goods. The next DSB meeting is scheduled for October 26.

Washington should drop the tariffs imposed on the EU, Mr. Dombrovskis said. "This would generate positive momentum both economically and politically, and help us to find common ground in other key areas," he continued. "The EU will continue to vigorously pursue this outcome. If it does not happen, we will be forced to exercise our rights and impose similar tariffs. While we are fully prepared for this possibility, we will do so reluctantly."

The EU trade official argued that France, Spain, Germany and the United Kingdom all have taken steps to comply with the WTO decision on subsidies to Airbus.

Fight over S&DT Continues

Geneva – The United States and other industrialized countries yesterday suffered a setback in their push to negotiate rules on differentiating developing countries for availing special and differential treatment as well as on market-oriented reforms at the World Trade Organization, WTD has learned.

Many developing countries, including China, India and South Africa among others, rejected the US proposals on reforming the negotiating function and committing to market-oriented conditions at the WTO. The countries insisted they only will adhere to the treaty-embedded S&DT provisions for which they had paid in the previous rounds of trade negotiations.

At a General Council meeting, the two sides remained opposed to each other over these two divisive issues. Brazil, Japan and Australia supported the US proposal on “procedures to strengthen the negotiating function of the WTO,” that aims to differentiate/graduate major developing countries from availing themselves of S&DT provisions in current and future trade negotiations – with the ongoing fisheries subsidies negotiations as the first point of departure, said people present at the meeting.

The European Union also shared the concerns raised by the United States while articulating that S&DT should be decided in a much more granular framework based on case-by-case examination.

Norway also presented a nuanced approach for extending S&DT to developing countries that most need it, essentially implying that blanket S&DT based on self-designation must be reconsidered, said a trade envoy who asked not to be quoted.

US Responds

In his intervention, Deputy US Trade Representative and trade envoy to the WTO Ambassador Dennis Shea said “today there are three categories – first, those Members to which all obligations apply; second, the LDCs that enjoy enhanced flexibilities; and third, the majority of Members – around 90 – that claim entitlement to blanket S&D as self-declared developing countries.”

Ambassador Shea suggested that it is the last category of members, which represent significantly divergent economies, that “do not fit the same mold or have the same needs.” He suggested they can negotiate the specific flexibilities they need without “availing themselves of blanket S&DT.”

Offering the example of China, the US envoy said “China’s global merchandise exports are 14 times greater than the combined exports of all 49 countries that the UN categorizes as LDCs... Its economy is more than 11 times the economies of all 49 LDCs combined... China’s per capita income is more than five times higher than that of the LDC average – a remarkable development since 1995, when China’s per capita income was within \$900 of the LDC’s average.”

“The issue and the need for reform is not going away,” Ambassador Shea said, adding that Washington looks forward to continue its engagement with members on this issue.”

Brazil echoed the US position saying “specific sensibilities” could be addressed, while the EU said S&DT can be considered case-by-case such as in the ongoing fisheries subsidies negotiation.

S&DT a Right

In a sharp response, India urged members to refer to the joint proposal with China, South Africa and several other countries as it deals with most of the issues raised by the United States since last year. India underlined that S&DT is a treaty-embedded right at the WTO and an entitlement that developing countries paid for in previous rounds of trade negotiations. It cannot be taken away based on certain arbitrary assumptions.

India suggested that proposing membership in the G20 as a criteria for whether a country needs S&DT is flawed, cautioning that such a divisive approach will only increase the trust deficit at the WTO. India said S&DT is meant to provide flexibility for integrating into the multilateral trading system and members with economic and social disparities cannot be put in the same category.

India said it is unfair to put it – with a per capita income of \$2500 – in the same category as the United States that has a per capita income 25 times more than India. The gaps between the developing and developed countries have actually increased with the COVID-19 pandemic widening the economic and digital divide among countries. Livelihood and food security problems have become worse because of the COVID-19, India said, suggesting that members may be facing the same storm but they are not in the same boat, according to people present at the meeting. Therefore, S&DT has become more essential and “we can not forego S&DT”, India said.

India urged the United States, EU, Norway, Japan and Switzerland among others to forego the S&DT they are availing in various WTO agreements, including the aggregate measurement of support, green box subsidies, special safeguards, and the flexibilities under the Nairobi decision on export competition. New Delhi argued that these flexibilities are not available to developing countries, pointing out that the WTO members must consider a case-by-case approach to address the reverse S&DT availed by developed countries.

China cautioned the United States that “the debate on criteria to differentiate developing members are totally meaningless, as it is a systematic and directional mistake.” It argued that “Development is one of the key objectives of the WTO, which is also an important attraction for many countries choosing to join in this Organization.”

“As WTO members, our focus on development should be on how to implement the rationale of development into practice rather than anything else,” China said, suggesting that “to be specific, our collective efforts should be focused on how to effectively enforce the existing special and differential treatment (S&DT) provisions, and negotiate meaningful S&DT for the developing countries needed, for example in the fisheries subsidy negotiations.”

China said it did “a preliminary review on the current 155 S&DT provisions contained in the 16 WTO agreements, finding that at least 105 provisions are too general to operate, accounting for 67.7%; for the remaining 50 provisions, at least half of them are related to transitional period or technical assistance.”

So, there are only 25 S&DT provisions in existing WTO agreements that are directly linked to individual Members’ rights and obligations, accounting for 16.1 percent of the total, China said. It is therefore fair to say the overwhelming majority of current S&DT provisions are only “pie in the sky,” according to Beijing.

No Blank Check

“There never be almighty blank cheque,” China argued, emphasizing that “it is a long-standing consensus to make S&DT provisions more “precise, effective, and operational,” which is also a commitment across WTO Agreements. China endorsed the G90 proposals, supporting South Africa’s statement that “in the past 20 years, G90 has been compromising by reducing their requests from 88 in Doha, to 25 in Nairobi, and to 10 in Buenos Aires, demonstrating their utmost sincerity and restraint attitude.”

China said the reduction in the G90 proposals “is not because their request was wrong. It is because they do hope all Members could be engaged and show sincerity.”

China elaborated on the G90’s ten proposals by suggesting that “some are to fill the loopholes of existing provisions, such as proposing procedural arrangement to invoke Article 18 of GATT; some are to restore good practices in multilateral rules, such as treating subsidies granted by LDCs and developing members facing certain constraints as non-actionable subsidies according to Article 8 of ASCM; some are to allow developing members to have longer time-frames for transitions or comments, such as granting 180 days for members facing capacity constraints to make comments on SPS measures notified by developed members, whereas the current practice is 90 days; some are to urge developed members to honor their already-committed obligations, including technology transfer.”

Promised Commitments

China said the WTO is a rule-based organization and “if we want to win back people’s confidence to this organization, the most fundamental thing is to treat existing rules and implement promised commitments, with respect and fear.” Consequently, “to make existing S&DT provisions “more precise, effective and operational” is the clear commitment and unfinished mission of all members, which is also the most urgent task in the area of development,” China said, urging all members “to show our sincerity by meaningfully engaging in the discussion of G90 proposals and carefully responding to practical concerns of developing members, rather than wasting time and resources on no outcome debates.”

In its intervention, South Africa argued that the “mandate on S&D is in accordance with paragraph 44 of the Doha Ministerial Declaration and it is to strengthen S&D provisions to make them precise, effective and operational.” It argued that “S&D is not an obsolete concept in trade negotiations,” suggesting that “the more the trade agenda is expanded, the more demanding the commitments are, and the more necessary it is to accommodate the various interests and levels of development of the WTO members.”

Around the Globe

- China’s trade picked up in September as global demand for masks and medical supplies boosted exports and the economy’s early reopening gave producers an edge over foreign competitors, the

Associated Press news service reported.

Exports rose 9.9% over a year earlier to \$239.8 billion, up from August's 9.5%, the fourth straight month of growth, customs data showed Tuesday. Imports gained 13.2% to \$202.8 billion, up from the previous month's 2.1% contraction as the world's second-largest economy regained momentum. Exports had a "comprehensive recovery" in the three months ending in September, said a spokesman for the customs agency, Li Kuiwen. He said China has exported masks and other medical supplies worth 1 trillion yuan (\$150 billion).

China has "successfully filled the global supply shortage," Li said at a news conference. Chinese exporters have benefited from relative early end of travel and trade curbs after the ruling Communist Party declared victory over the outbreak in March. They are taking market share from foreign competitors that are hampered by anti-disease controls.

China's global trade surplus swelled 6.6% over a year earlier to \$37 billion but was down sharply from August's \$58.9 billion gap, thanks to higher exports. Exports to the United States rose 20.5% over a year ago to \$44 billion despite higher U.S. tariffs in a fight with the Trump administration over Beijing's technology ambitions and trade surplus. Imports of American goods rose 24.5% to \$13.2 billion.

- Reuters news service reported that the European Union demanded "substantive" movement on Tuesday from Britain on fisheries, dispute settlement and guarantees of fair competition in their talks on a post-Brexit trade deal, with Germany saying they were at a "critical stage." France said the 27-nation bloc must not yield on fishing rights, while Ireland – the EU member most exposed to any abrupt economic split at the end of the year – said Britain was running out of time to seal the terms of a deal.

Britain, the world's sixth-biggest economy, left the EU in January and has since been locked in painstaking talks with the world's largest trading bloc to keep trade flowing freely. EU leaders hold a summit in Brussels on Thursday and Friday to assess progress, and British Prime Minister Boris Johnson has also said he wants to know by Oct. 15 if a deal can be reached. The European affairs minister of Germany – current holder of the bloc's rotating presidency – said the EU was working hard for a deal but was ready if necessary to trade from 2021 without an accord.

"We are at a very critical stage in the negotiations and we are extremely under pressure," Michael Roth told his 26 fellow ministers. "In terms of substance we have not really made progress. We expect substantial progress by our friends in the United Kingdom in key areas: in particular on governance, 'level playing field' and fisheries." Roth said the EU would step up contingency planning in case of failure in the negotiations on a new partnership – which is meant to cover many areas from trade to transport and nuclear ties – from Jan. 1, when London's post-Brexit standstill transition ends.

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