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RNI No. 42906/84

# WORLD TRADE SCANNER

ISSN: 0971-8095

Single copy Rs. 20 \$2

Vol. XXXI No 32 29 October - 04 November 2014

Promoted by Indian Institute of Foreign Trade, World Trade Centre,  
Academy of Business Studies

Annual subscription Rs. 950

## Gold Import in Official and Smuggling Route Rise as Price Falls to \$1200

Gold imports have jumped by around 450 per cent year-on-year in September touching \$3.75 billion. The figures is double that in the previous month of August. (This is inspite of the many non tariff restrictions like matching imports with exports).

"There were 2,150 seizures of gold made by the DRI across the country worth over Rs 600 crore in the last six months. This is huge when compared to 500 seizures worth Rs 150 crore made last year during the same period," This is when DRI can lay its hands on less than five percent of smuggled gold.

In the Budget 2014-15, the government did not reduce the import duty on gold despite the current account deficit (CAD) coming down to 1.7 per cent in 2013-14 from a high of 4.8 per cent in 2012-13. It did not want to forego the revenue from the import.

Last year, the government had taken a slew of measures, including raising the import duty to 10 per cent in phases and restrictions on import, to cut down gold imports. However, the measures led to a rise in smuggling which figure has only risen.

### Gloom Ahead

Total gold exports from Switzerland have doubled from 3 billion Swiss francs in August to 6.4 billion Swiss francs in September. This shows the gloom descending on the world economy following scaling down of growth forecasts. Very soon, the prices will rise if growth does not pickup.

Other Asian countries such as China, Hong Kong, Thailand and

Singapore have also upped their share substantially.

For instance, in August, Hong Kong imported about 100 million Swiss francs worth of gold, which shot up to around 900 million Swiss francs in September. Thailand and China, too, witnessed a similar surge.

India's share in Switzerland's gold exports in fact dropped to 34 per cent in September from 37 per cent in August.

The increase in in September appears to have been prompted by falling gold prices and the annual pick-up in demand ahead of the festive season. Gold prices have fallen almost 10 per cent since July due to the strengthening dollar. As gold moved close to

the \$1,200 per ounce level in September, investors and consumers across the globe seem to have stocked up.

### Trade Deficit Widens again

The RBI has already eased some import controls by allowing seven trading houses to import the metal, driving a sharp jump in overseas buying despite a record import duty of 10 percent.

A surge rise in gold imports widened the trade deficit to an 18-month high of \$14.25 billion in September, creating concerns for the government of Prime Minister Narendra Modi.

Gold is India's second-biggest expense on imports after oil, and shipments of the metal tend to jump ahead of key festivals in October.



## G-20 Meets in Brisbane in Mid Nov, Seeks 2% Extra Growth Formula

### Curbs on Global Tax Dodging on the Anvil



The G-20 leaders' summit is the most high profile event in the G20 year, is set for November 14-15 in Brisbane, Prime Minister Narendra Modi representing India will lead the delegation. He should include FM Jetley who will participate in the two day meeting of Finance Ministers preceding the 15-16 summits. UK, Germany, France and China heads will follow G-20 with state visits to Sydney and Canberra. Some of them including PM Modi will address Australian Parliament. The Australian presidency of the G20 has witnessed a focus on the fundamentals: trade, tax issues, infrastructure, employment and banking.

On trade, India will be cornered again WTO trade facilitation agreement finalised during last year's 'Bali Ministerial'. Australia leads in anti subsidy on food as leader of Cairns group. India is a votary of food subsidy exceeding the 10% limit set by WTO.

One of the key outcomes of last year's G20 summit in St Petersburg back any new instalments of trade or investment related protectionist measures until the end of 2016.

## Protests Mount on Meeting of the G-20 Rich

*World Trade Scanner Editor will be in Brisbane to cover the G-20 meet 15-16 Nov. He will send you on the spot report on the scenes there. Here is a story in the run up to the Brisbane.*

The first two protesters banned from Brisbane's G20 will be added to the police prohibited person's list in the next fortnight, Queensland Police's Assistant Commissioner Katarina Carroll told reporters in Brisbane on 28 October.

The news came as Queensland police confirmed that 24 groups had told police they intend to protest at Brisbane's G20, from November 14 to 16.

The "prohibited persons" ban means these people are banned from attending the event and will be arrested if they attend.

Ms Carroll said the numbers of people on the prohibited person's list could increase as G20 - to run November 14-16 - approached.

Ms Carroll said police had gathered intelligence about "Black bloc" protest groups possibly coming to Brisbane's G20.

Ms Carroll said police understood Black Bloc as a tactic used by protestors, rather than a specific protest group.

## Gas Pricing or Gas Wars?

V Ranganathan, Prof IIMB (Retd)



A recent book 'Gas Wars' by journalist Guha Thakurtha has been withdrawn by the publisher after RIL sued the author and publisher for defamation. However, the Government has to now come out with its stand on gas pricing and has a hot potato on its hand. If it goes with Rangarajan Report, and hikes the price of gas to \$8.4 per mmbtu, it will be accused of fostering crony capitalism, by giving a largess to private sector and if it opts for the status quo-not so low \$4.2 per mmbtu-price it will be accused of not maintaining the sanctity of contract. What should it do?

Prof. Rangarajan's gas pricing has been commented upon right from Surya Sethi, former Advisor, Energy, Planning Commission, and an MBA from IIM, and Dr. EAS Sarma, former Secretary, Ministry of Power, and Ministry of Finance, but none of them have attacked the core of the problem, which is how to set the market price of gas when there is no single market price, and who should set it.

Now, for some history. Ministry devised a New Exploration and Licensing Policy (NELP) to attract global explorers to explore for oil and gas in India, which at that time-before Krishna Godavari basin discovery-was considered barren. The public sector, ONGC had been sitting on its ores all these years, without adding a single discovery after Bombay High. So, the Govt. had to give liberal incentives on the one hand to attract private players and introduce competitive bids, on the other, to protect State interest, as far as possible. In the instant case, of RIL in KG D6 basin, revenue share to the Government was the bid parameter and the revenue share was allowed to vary with the money still to be recovered by the private sector, in different years, called investment multiple. The first half of the story was that RIL gave a schedule of revenue share such that, roughly, till the money recovered by the private sector is 1.5 times the investment ploughed by it, it can take 85% of profit petroleum and give to Government only 15%, but once the number crossed 1.5, the share proportions were reversed, 85% to Government and 15% to Company. That looks fair, but there was scope for gaming, by adding investments and keep the date of reaching 1.5 farther and farther away. That this was indeed happening, was pointed out by none other than Anil Ambani who complained that investment increased 4 fold while output only doubled; this was contrary to the intuition of economies of scale and investment productivity, and suggested that such investments could be fictitious. That is why, the upstream gas regulator, Petroleum Secretary, and the Minister, all had to leave under some cloud; viz. for insufficient diligence to prevent the possibility of private sector to 'gold plate'.

Now, to the second half of the story on gas pricing: The production Sharing Contract had specified that the prices shall be 'arms length', a short hand for prices being market determined. But it did not say when or at what frequency the price will be revised. The other problem was there

was really no homogeneous market for gas, unlike oil. There was one price in US, falling with the advent of shale gas; a higher price in Europe with gas price indexed to oil price, and a still higher price in Japan because of transport costs. Rangarajan Committee took the average of the prices the producers in US, UK and suppliers to Japan would get, without the transport cost component. It would be an average of the past one year, and reset every 3 months. For April 2014, this worked out to \$8.4, double of the prevailing \$4.20. Gas suppliers who were in sellers market were able to get linking gas prices to oil prices, which were increasing, even though gas and oil were neither perfect substitutes nor gas had a homogenous market like that of oil. The recent Russia-China deal has reversed this link of gas price to oil, and has brought it closer to cost of production. The lesson is that there is no one unique and right approach to gas pricing and a lot depends on participants' bargaining power.

Surya Sethi was cut up that no experts (meaning himself) were not included in the Committee. He also asked 'why incentive price for an already discovered gas?'. But that was what was pre-agreed in the Production Sharing Contract. He also attacked it as 'bureaucratically set market price'. He attacked saying that the Committee had set the price of bananas by taking the average prices of apples and oranges. But his remedy was unimaginative; he said it should be cost based, which was a clear violation of PSC and also the principle of incentives. EAS Sarma's criticisms were also pedestrian and commonplace. He said the price has increased while the world prices are coming down. Surely, if they came down, prices will be reset in future with 1 year lag.

So, where do we go from here? The central question is 'how to determine the market price'? We have to go from first principles, and agree that market prices must be set by the market, not by Government nor Committees, but by buyers and sellers. So, why should Government take up this task at all? Just leave it to the buyers and the seller, and through better wisdom and by negotiation, they will settle the price themselves! It is to avoid the intractable problem of allowable investments which has been the bone of contention between the representatives of the Government

## US for Plurilateral on TFA without India!

Speculation in Geneva has grown over lately whether some members may try to advance the TFA in a different way, with the Financial Times confirming that the US and other major trade players have been discussing the possibility of taking a "plurilateral" approach among a subset of countries should the deadlock at the WTO keep on for much longer.

"Frankly, we know that members have been talking about the other, non-multilateral options that are open to them," the WTO Director-General Azevedo acknowledged last week.

In his intervention last week, US Ambassador Michael Punke acknowledged that the US has been analysing a range of avenues for moving the TFA forward.

"In considering options for preserving our work,

## Gas Price of \$5.05 mmBtu for Five Months Notified

The petroleum ministry has notified the new base price for domestically produced gas as \$5.05 per million British thermal units (mBtu), based on the gross calorific value (GCV) that takes into account the heat value of the fuel, including impurities.

The new price will replace the existing price of \$4.2 per mBtu and will be in effect for five months from November 1, 2014, to March 31, 2015. "In accordance with the New Domestic Natural Gas Pricing Guidelines 2014 issued by the ministry, the price of domestic natural gas would be \$5.05 per mBtu on GCV basis," the oil ministry said.

The Union Cabinet had on October 18 approved increasing the gas price from the current \$4.2 per mBtu based on net calorific value (NCV) to \$5.61 per mBtu. In GCV terms, the price was seen increasing from \$3.79 to \$5.05 per mBtu.

Heat produced from natural gas is measured in calorific value. Gas producers prefer GCV because it translates into higher price realisation for them whereas net payment is made after discounting for fuel impurities. For state-run Oil and Natural Gas Corporation, every \$1 increase in gas price translates into Rs 4,000 crore of revenue and Rs 2,300 crore of profit after tax, according to its chairman and managing director D K Sarraf.

Overall, the gas price rise will raise the rate of gas-based power by 63 paise a unit, fertiliser costs by Rs 1,370 a tonne, compressed natural gas rates by Rs 4.25 a kg while piped natural gas prices will rise by Rs 2.60 a standard cubic metre.

The new gas price will be reviewed every six months and would be applicable to all gas produced from nomination fields of ONGC and OIL India, NELP blocks, a few Pre-NELP blocks and CBM blocks.

and the private sector in the management committee, Rangarajan had suggested to move away from profit sharing to revenue sharing. But then, this suggestion has since been overturned by the Kelkar Committee, which has opted for Production Sharing instead of revenue sharing.

### DGAD Initiates Investigation on Phenol from EU, Singapore and Korea on HOC Plus SI Group Complaint

*[Anti-dumping Initiation Notification No.14/13/2014-DGAD dated 15<sup>th</sup> October 2014]*

*Subject: Initiation of anti-dumping duty investigation in respect of the imports of Phenol originating in or exported from European Union, Singapore and Korea RP.*

Whereas M/s Hindustan Organic Chemicals Ltd. and SI Group (India) Ltd. have filed a petition before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules) for initiation of anti dumping duty investigation concerning imports of Phenol (hereinafter also referred to as the subject goods) originating in or exported from European Union, Singapore and Korea RP (hereinafter also referred to as the subject countries) and requested the Authority for levy of anti dumping duties on the subject goods.

2. And whereas, the Authority finds that the petition filed by M/s Hindustan Organic Chemicals Ltd. and SI Group (India) Ltd. contains sufficient evidence of dumping of the subject goods originating in or exported from the subject countries; injury to the domestic industry; and the causal link between the alleged dumping and injury, to justify initiation of anti-dumping investigation, and the Authority hereby initiates anti dumping investigation into the alleged dumping of the subject goods from the subject countries, and consequent injury to the domestic industry in terms of Rule 5 of the AD Rules, to determine the existence, degree and effect of any alleged dumping and to recommend the amount of antidumping duty, which if levied, would be adequate to remove the injury to the domestic industry.

#### Domestic Industry & Standing

3. The petition has been filed by M/s Hindustan Organic Chemicals Ltd. and SI Group-India-Ltd. The petitioners have claimed that they are the only producers of the subject goods in India and there is no other producer of the product under consideration in India. As per the evidence available on record, the Authority notes that the production of the petitioners accounts for the major proportion of the total domestic production of the like article. The Authority, therefore, determines that M/s Hindustan Organic Chemicals Ltd. and SI Group-India-Ltd. (hereinafter referred to as the domestic industry or the petitioners) constitute the domestic industry within the meaning of Rule 2 (b) and the petition satisfies the criteria of standing in terms of Rule 5 (3) of the Rules supra.

#### Product under consideration

4. The product under consideration for the purpose of present investigation is "Phenol" originating in or exported from European Union, Singapore and Korea RP.

5. Phenol is a basic organic chemical with a chemical formula C<sub>6</sub>H<sub>5</sub>OH. The product is marketed in two forms – bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide etc. Phenol is normally classified under Chapter 29 of the Customs Tariff Act under Customs Tariff heading no. 2907.1110 as per Indian Trade Classification.

6. The Customs and ITC HS classifications are, however, indicative only and in no way binding on the scope of the present investigation.

#### Like Article

7. The petitioners have claimed that the subject goods, which are being allegedly dumped into India, are identical to the goods produced by the domestic industry. Consumers can use and are using the two interchangeably. The Authority, for the purpose of the present investigation, has considered that the product produced by the domestic industry is comparable to the product imported from the subject countries in terms of essential product characteristics such as physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification. The two are technically and commercially substitutable. The Authority treats the subject goods produced by the domestic industry as 'Like Article' to the subject goods being imported from the subject countries.

#### Subject Countries

8. The countries involved in the present investigation are European Union, Singapore and Korea RP.

#### Normal Value

9. The petitioners have submitted that efforts were made to get information/evidence of price of subject goods in the domestic market of subject countries but the same could not be obtained. The petitioners have, therefore, constructed normal value in the subject countries considering constructed value approach, based on international price of Benzene, (major raw material), power cost as per cost prevailing in the subject countries, other elements of cost as per the domestic producers.

#### Export Price

10. The petitioners have determined export price by using secondary source data to assess the volume and value of imports in India. Price adjustments have been made on account of Ocean Freight, marine insurance, commission, port ex-

### Submission of Utilisation Certificate for Excise Extended to 12 Months from Six Months for LNG and Natural Gas Import by GAIL, NTPC or Patronet

Ntfn 30 In exercise of the powers  
20.10.2014 conferred by sub-section (1)  
(DoR) of section 25 of the Customs  
Act, 1962 (52 of 1962), the

Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.185 (E), dated the 17th March, 2012, namely:-

In the said notification, in the ANNEXURE, in condition number 100, in clause (b), for the words "within a period of six months" the words "within a period of twelve months" shall be substituted.

[F. No. 354/125/2014-TRU]

penses, inland freight expenses and bank charges.

#### Dumping Margin

11. The petitioners have provided sufficient prima facie evidence that the normal values of the subject goods in the subject countries are significantly higher than the net export prices, prima facie, indicating that the subject goods originating in or exported from the subject countries are being dumped into India to justify initiation of anti dumping investigation.

#### Injury and Causal Link

12. The petitioners have furnished prima facie evidence regarding the injury having taken place as a result of the alleged dumping in the form of increased volume of dumped imports, price undercutting, price suppression and decline in profitability, return on capital employed etc. There is sufficient prima facie evidence of the injury being suffered by the petitioner caused by the dumped imports from the subject countries to justify initiation of an anti dumping investigation.

#### Period of Investigation

13. The period of investigation (POI) is the period from 01.04.2013 to 31.03.2014. However, for the purpose of analyzing injury, the data of previous three years, i.e., 2010-11, 2011-12, 2012-13 and the proposed period of investigation will also be considered.

#### Submission of information

14. The known exporters in the subject countries and their Governments through their Embassies in India, importers and users in India known to be concerned with the subject goods and the domestic industry are being informed separately to enable them to file all the relevant information in the form and manner prescribed within the time limit set out below. Any other interested party may also make its submissions relevant to the

investigation in the form and manner prescribed within the time limit set out below. The information/submissions may be submitted to:

The Designated Authority,  
Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce & Industry, Department of Commerce 4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

15. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below. Any party making any confidential submission before the Authority is required to make a non-confidential version of the same available to the other parties.

#### Time Limit

16. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 days) from the date of the communication. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the AD Rules.

17. All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application within forty days (40 days) from the date of publication of this Notification. The information must be submitted in hard copies as well as soft copies.

#### Submission of information on confidential basis

18. The parties making any submission (including Appendices/Annexure attached thereto), before the authority including questionnaire response, are required to file the same in two separate sets, in case "confidentiality" is claimed on any part thereof:-

(a) one set marked as Confidential (with title, number of pages, index, etc.), and

(b) the other set marked as Non-Confidential (with title, number of pages, index, etc.).

19. The "confidential" or "non-confidential" submissions must be clearly marked as "confidential" or "non-confidential" at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Authority and the Authority shall be at liberty to allow the other interested parties to inspect such submissions. Soft copies of both the versions will also be required to be submitted, along with the hard copies, in five (5) sets of each.

20. The confidential version shall contain all information which are by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information can not be disclosed.

21. The non-confidential version is required to be a replica of the confidential version with the

confidential information preferably indexed or blanked out (in case indexing is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarization is not possible, must be provided to the satisfaction of the Authority.

22. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Authority is satisfied that the request for confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.

23. Any submission made without a meaningful

non-confidential version thereof or without a good cause statement on the confidentiality claim shall not be taken on record by the Authority.

24. The Authority on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

#### Inspection of Public File

25. In terms of Rule 6(7) of the AD Rules, any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

#### Non-cooperation

26. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

## Dried Silk Worm Pupae to EU Allowed Subject to Health Certificate and Plant Approval thru CAPEXIL

*Subject: Export of Dried Silk Worm Pupae to EU.*

95-Ntnf(RE) In exercise of the powers  
22.10.2014 conferred by Section 5 of the  
(DGFT) Foreign Trade (Development &  
Regulation) Act, 1992 (No.22 of  
1992), as amended, read with Para 1.3 of the  
Foreign Trade Policy, 2009-2014, the Central  
Government hereby makes the following amend-

ments in Chapter 5 of Schedule 2 (Export Policy) of ITC(HS) Classification of Export & Import Items:

2. With immediate effect, a new entry at Sl. No. 41A is added in Chapter 5 of Schedule 2 (Export Policy) of ITC (HS) Classification of Export & Import Items, as follows:

SNo.	Tariff Item HS Code	Unit	Item Description	Export Policy	Nature of Restriction
41 A	051199	Kg	Dried Silk Worm Pupae when exported to European Union	Free	Export to EU allowed subject to the following conditions: (i) A 'Shipment Clearance Certificate' is to be issued consignment-wise by the CAPEXIL indicating details of the name and address of the exporter, address of the registered plant, IEC No. of the exporter, plant approval number, nature of export product, quantity, invoice number and date, port of loading (Name of the port) and destination. (ii) After the shipment is made, the exporter shall also provide a 'Health Certificate' consignment wise to the buyer giving details of vessel name, shipping bill number with date, etc. as per the requirement of EU. The certificate would be issued jointly by CAPEXIL & Regional Animal Quarantine Officer, Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture, Government of India.

### 3. Effect of this notification

Conditions for export of Dried Silk Worm Pupae to EU have been notified.

## US Origin COOL Labels are not Cool, says WTO Panel

A WTO panel confirmed on Tuesday, 21 October that the amended version of the US' country-of-origin labelling (COOL) requirements for livestock and meat imports still violates the non-discrimination requirements featured in global trade rules.

Furthermore, the panel said, the revised measure – enacted in 2013 in response to losing a WTO dispute on the subject – had also increased the "considerable degree of trade-restrictiveness" found in the original case.

Nonetheless, the panel said, the alternative measures proposed by complainants Canada

and Mexico did not meet the conditions of being both less trade-restrictive than the US' amended measure while also making an equivalent contribution to the objective of providing consumer information on origin.

Under the original policy, which was actually a series of instruments enacted under the 2002 US Farm Bill and then revised in 2009, producers were required to inform consumers of meat's country of origin via a label on the sale package. The label could fall under five different categories, each divided into three sub-categories.

In order to be able to comply with the measure,

which required that meat of mixed origin be labelled – even where the cattle were “mixed” right after birth – producers had to regularly monitor and segregate the different cattle and hogs. Processing only domestically-born, raised, and slaughtered meat, on the other hand, did not require such monitoring, making foreign livestock clearly less competitive, the judges found.

Following the 2012 Appellate Body ruling, United States amended the COOL statute in 2013, imposing new point-of-production labelling requirements.

For animals slaughtered in the US, there would be three labelling categories: US origin, US and other countries mixed origins, and imported for immediate slaughter. These labels would indicate where each production step – birth, raising, and slaughtering – occurred.

For animals slaughtered abroad, including specific location information related to the various production steps under the foreign origin label is voluntary, provided that records to substantiate these claims are maintained.

#### **Non-discrimination claims**

Canada and Mexico claimed that the amended COOL measure accorded cattle and hogs imported from their respective countries less

favourable treatment than that given to American ones. This, they said, constituted a violation of certain non-discrimination provisions of WTO agreements.

The panel found that, similar to the original measure, the amended COOL measure necessitates segregation of meat and livestock according to the origin.

Moreover, the point-of-production labelling requirement in the amended COOL measure, and the removal of two flexibilities provided in the original measure, has actually caused an increase in the number of distinct labels needed for certain types of muscle cuts of mixed origins and those imported for immediate slaughter, and therefore entails more need for segregation.

The panel also said that the increase in both the number of distinct labels and in segregation logically entails a higher recordkeeping burden for US-slaughtered livestock and the resulting muscle cuts of meats.

Taken together with actual US market conditions for imported livestock, the panel said that these showed that the new COOL measure creates an increased incentive in favour of domestic livestock and therefore makes it more difficult for imported livestock to compete in the US market.

## **Fake Exports from China to HK Surface, \$10bn Detected**

The gap between China’s reported exports to Hong Kong and the territory’s imports from the mainland widened in September to the most this year, suggesting fake export-invoicing is again skewing China’s trade data.

China recorded \$1.56 of exports to Hong Kong last month for every \$1 in imports Hong Kong registered, leading to a \$13.5 billion difference. Hong Kong’s imports from China climbed 5.5 percent from a year earlier to \$24.1 billion, figures showed on 26 October; China’s exports to Hong Kong surged 34 percent to \$37.6 billion, according to mainland data on Oct. 13.

While China’s government has strict rules on importing capital, those seeking to exploit yuan appreciation can evade the limit by disguising money inflows as payment for goods exported to foreign countries or territories, especially Hong Kong. The latest trade mismatch coincided with renewed appreciation of China’s currency, leading analysts at banks and brokerages including Everbright Securities Co. and Australia & New Zealand Banking Group Ltd. to question the export surge.

#### **Industrial Profits**

Data added to evidence of moderating economic growth on 27 October. Industrial profits rose 0.4 percent in September from a year earlier, following a 0.6 percent decline in August - the weakest two months since mid-2012.

Gross domestic product rose 7.3 percent in the July-September period from a year earlier, the slowest expansion since the first quarter of 2009. Export demand has been a bright spot in an economy weighted by a property slump and a decline in investment growth.

Although a rapid increase in luxury goods shipments suggests some of the exports to Hong Kong should be attributed to capital inflows, exports of processed goods including the iPhone drove the September surge, said Hua Changchun,

a China economist at Nomura Holdings Inc. in Hong Kong.

“The fake invoicing problem is not as severe as last year,” Hua said.

#### **Yuan Bets**

After almost uninterrupted annual gains since 2005 that saw the yuan rise about 33 percent versus the dollar, speculators have come to see China’s currency as a one-way trade. That prompts hot money to seek out China on currency appreciation bets. Worries about distortions had abated this year after a government crack down and as the yuan dropped.

Companies have “faked, forged and illegally re-used” documents for exports and imports, Wu Ruijin, a deputy head of the State Administration of Foreign Exchange’s inspection department, said at a briefing in Beijing last month. The country has uncovered almost \$10 billion in fraudulent trades nationwide since April last year.

China’s government noticed the rapid increase in trade of some merchandise with Hong Kong in September, Shen Danyang, spokesman of the Ministry of Commerce, said at a briefing on Oct. 16. The spokesman said the ministry will step up scrutiny and analysis.

The State Administration of Foreign Exchange of China didn’t immediately respond to a fax sent on 26 October asking about the reliability of the data.

The China-Hong Kong export gap highlights a “policy risk” if authorities respond with disciplinary action and foreign exchange intervention, analysts at ANZ Bank led by Raymond Yeung wrote in a note on 26 October.

“We believe that the People’s Bank of China is paying close attention to possible resurrection of cross border financial arbitrage and non-genuine trade activities,” the analysts wrote. “We should pay close attention to the possible consequences.”

## **Milk Powder Falls 50%, Kiwi Drops**

New Zealand’s currency may drop to a more than two-year low, according to Morgan Stanley, as a 50 percent slide in milk powder fuels speculation the central bank will delay interest-rate increases.

The price of whole milk powder fell this month to a five-year low at auctions held by GlobalDairyTrade, which is owned by Auckland-based Fonterra Cooperative Group Ltd.

The kiwi tumbled 9.6 percent since June 30 to 79.21 U.S. cents as of 10 a.m. in Tokyo, the worst-performing major currency after the Brazilian real.

Morgan Stanley this month cut its year-end forecast for the kiwi to 76 U.S. cents, a level the currency hasn’t traded at since June 2012, from a previous projection of 80 cents. It expects the New Zealand dollar to decline to 67 cents at the end of next year, rather than to 73 cents as previously estimated.

Dairy prices have slumped this year as China, Fonterra’s biggest customer, bought less in fortnightly auctions after earlier building up milk-powder stocks. Fonterra cut its forecast milk pay-out to New Zealand farmers in September. It said on Sept. 24 it will pay its 10,500 farmer suppliers NZ\$5.30 (\$4.20) a kilogram of milk solids in the current season, down from a previous estimate of NZ\$6.

## **Prabha Sridevan to Head IPR Think Tank for DIPP, Ex WIPO Man Secy**

Department of Industrial Policy and Promotion has constituted a IPR Think Tank to draft the National Intellectual Property Rights Policy and to advise the Department of Industrial Policy and Promotion on IPR issues on 24 October.

2. The composition of the IPR Think Tank will be as follows:-

- i. Justice (Retd) Prabha Sridevan, Chairperson, IPR Think Tank;
- ii. Ms. Pratibha M Singh, Sr. Advocate, Singh & Singh Law Firm, Member;
- iii. Ms. Punita Bhargava, Advocate, Inventure IP, Member;
- iv. Dr. Unnat Pandit, Cadila Pharmaceuticals Limited, Member;
- v. Shri Rajeev Srinivasan, Director, Asian School of Business, Thiruvananthapuram, Member; and
- vi. Shri Narendra K. Sabarwal, Retired DDG, WIPO, Member and Convener.

3. The terms of reference of the IPR Think Tank will be as follows:-

- i. To draft National Intellectual Property Rights Policy.
- ii. To identify areas in the IPRs where study needs to be conducted and to furnish recommendations in this regard to the Ministry.
- iii. To provide views on the possible implications of demands placed by the negotiating partners.

- iv. To keep the Government regularly informed about the developments taking place in IPR cases which have an impact upon India's IPR Policy.
- v. To advise the Government on best practices to be followed in Trademark Offices, Patent Offices and other Government Offices dealing with IPR in order to create an efficient and transparent system of functioning in the said offices.
- vi. To prepare periodic reports on best practice followed in foreign countries.
- vii. To highlight anomalies in the present IPR legislations and to advise possible solutions to the Ministry.
- viii. To give suggestions on the steps that may be taken for improving infrastructure in IP offices and Tribunals.
- ix. To examine the current issues raised by industry associations and those that may have appeared in media and to give suggestions to the Ministry on such issues.

[Ref: PIB (MoC&I) Press Release dated 24<sup>th</sup> October 2014]

## Indonesia Settles with US on Clove Cigarettes, Accepts Ban in Return for Concessions

### US Made Menthol Cigarettes to Substitute Indonesia Clove Cigarettes

Indonesia announced on Tuesday that it has reached an agreement with the US to settle its WTO dispute (DS406) concerning Washington's ban on the production and distribution of clove cigarettes, bringing the long-standing row to a close. The deal appears to keep the US ban in place, while making concessions to Indonesia in other trade areas.

The dispute has been one of the WTO's more high-profile, given that it highlighted the difficult issue of how to reconcile public health goals with international trade rules.

The case has been significant in terms of clarifying specific aspects of WTO law, namely the organisation's Technical Barriers to Trade (TBT) Agreement.

Together with separate cases on a US dolphin-safe labelling scheme and the US' country-of-origin labelling requirement for livestock and meat exports, the clove cigarettes case had raised the question of how to design technical regulations - such as those aimed at achieving other public policy objectives, like consumer health - without creating unnecessary obstacles to trade.

According to Jakarta's trade ministry, the two countries now have a Memorandum of Understanding, or MOU, in place that will bring the dispute to an end "by way of a settlement accommodating to the interests of both parties involved."

The news comes just a week after Washington announced it had reached a settlement in a separate WTO case with Brazil, this one involving US cotton subsidies.

#### Prolonged dispute

Dispute proceedings on the subject had kicked off at the WTO four years ago, with Indonesia filing a request for consultations in April 2010.

At issue in the case was the US' Family Smoking Prevention and Tobacco Control Act of 2009, which banned the production and sale of clove and most other flavoured cigarettes in the United States in the hopes of discouraging young

people from smoking. However, menthol cigarettes were not included in the ban.

Among other claims, Jakarta had argued that menthol and clove cigarettes are like products, and that since menthol cigarettes consumed in the US are primarily US-produced, this gave them an unfair advantage over other flavoured cigarettes.

The 2009 ban had particular significance for Indonesia, the world leader in clove cigarette production. Prior to the prohibition, clove cigarettes consumed in the US were primarily imported from the island country.



The lawmaker cited alleged evidence that Kretek International, a company that imports clove tobacco products from Indonesia and had controlled 97 percent of the US clove cigarette market prior to the ban, had introduced clove-favoured cigars to circumvent the measure.

In August 2013, Indonesia asked the WTO's Dispute Settlement Body (DSB) to authorise retaliatory measures, the value of which was reportedly around US\$55 million, against the US, claiming that Washington had not taken the necessary steps to bring its measures into compliance with global trade rules.

Beyond just ending the clove cigarette saga, Washington and Jakarta have agreed to intensify their trade and investment cooperation in the context of the Indonesia-US Trade and Investment Framework Arrangement (TIFA).

The US will also refrain from submitting any WTO challenges regarding Indonesia's controversial mineral export restrictions.

Other potential benefits to Jakarta from the deal include a pledge by the US to grant additional "facilities" under Washington's Generalised System of Preferences (GSP) scheme "that exceed certain value limitations for the next five years," without going into further detail.

The GSP expired in mid-2013, though renewal of the preference scheme is expected.

Additional cooperation in the area of intellectual property rights has also been promised. Furthermore, Bachrul said, the MOU does not eliminate the fact that the DSB has found Washington guilty of violating WTO agreements.

## EU, China Resolve Telecoms Trade Dispute in "Give and Take" Spirit

Brussels and Beijing have clinched a deal that would end their long-running disagreement over telecommunications trade, according to EU Trade Commissioner Karel De Gucht, who confirmed the news to the Reuters media outlet on Tuesday.

The news comes as officials from both sides prepare to meet in Milan, Italy on 16-17 October for the Asia-Europe Meeting (ASEM), which is billed as an informal dialogue bringing together the EU's 28 members and two other European countries with twenty Asian nations, including China.

The EU had long alleged that Chinese telecoms network producers were receiving unfair state aid, which was in turn giving them an undue competitive edge over their European counterparts; the threat of the Commission moving forward with its anti-subsidy investigation had in turn put a significant damper on ties between the two trading partners.

The resolution to the telecoms issue was reported to be a major goal of De Gucht's before the end of his term, scheduled for 31 October. Cecilia Malmström of Sweden has been nominated to take his place from 1 November onward, and she is expected to be confirmed when the full slate of

Commissioners-designate goes for a vote on 22 October, given that she was already approved by the EU Parliament's trade committee.

#### Subsidies in question

After months of speculation and burgeoning trade tensions, the row formally kicked off in May of last year, when the EU trade chief announced a decision "in principle" to start both anti-dumping and anti-subsidy investigations into imported mobile telecoms networks and their essential elements - namely radio access network and mobile network core - from China.

Such probes would have been aimed at, respectively, determining whether or not Chinese telecommunications equipment had been sold on the European market at prices below their normal value - a practice known in trade jargon as dumping - and whether Chinese producers had been the recipients of unfair government support.

This past March, the Commission then announced that it was revising its decision "in principle" in order to address only anti-subsidy claims, explaining that it found the problems being faced by the European market were largely the result of unfair subsidisation and not, as initially believed, the result of dumping.

## TPP Meet in Sydney 25-27 Oct, Annual Meet in Nov

Members of the 12-country Trans-Pacific Partnership (TPP) talks appear to be ramping up their negotiating efforts in the hopes of reaching the main elements of an agreement by the end of this year, with Australia confirming last week that it would be hosting a ministerial-level meeting in Sydney later this month.

"After more than four years of intense negotiations the conclusion of the world's largest regional trade agreement is within reach," said Australian trade minister Andrew Robb in a statement announcing the 25-27 October meeting.

The goal of the event, the trade minister's office said, was to advance the talks "with an eye to concluding the basic elements of the agreement before the end of the year."

Robb had previously been one of the officials suggesting that a completed TPP would be unlikely this year, and was more likely for early 2015.

The announcement has also prompted specula-

tion that a basic TPP deal could be ready in time for US President Barack Obama's trip to Asia next month for the Asia-Pacific Economic Cooperation (APEC) leaders' meetings, despite earlier scepticism over the feasibility of this goal.

All 12 TPP members are part of the 21-country regional group, which will be having its annual gathering in China this November. The US executive has said that he would like to see some sort of document that Congress and the public could look at by that time.

### Eyes on US, Japan

Whether the US and Japan will be able to resolve their differences on agricultural and automobile trade in time for the Sydney meeting is unclear, particularly given that ministerial-level meetings last month between US Trade Representative (USTR) Michael Froman and Japanese Trade and Economy Minister Akira Amari failed to yield any significant breakthroughs.

## Biodiversity Meet in South Korea

Delegates meeting under the umbrella of the Convention on Biological Diversity (CBD) on Friday, 17 October closed a two-week long meet held in South Korea after agreeing to a series of 33 decisions. These form a so-called "Pyeongchang roadmap," named after the city in which the meetings were held, geared towards enhancing international efforts around biodiversity conservation and sustainable use.

The near 3000 delegates that made the trip to the mountains sought to tackle a wide range of issues. These included finance for biodiversity conservation, national biodiversity action plans, access and benefit sharing regarding the use of genetic resources, guidelines for tackling foreign species imported into new environments, and emerging issues such as synthetic biology.

A high-level ministerial segment held towards the end of last week also resulted in a Gangwon Declaration that calls for links between the work of the CBD and the ongoing post-2015 development agenda process.

Conservation organisation WWF also published a study ahead of the meeting suggesting that vertebrate animal populations have declined by around 52 percent over the last 40 years. This includes a 76 percent decline in freshwater species and 40 percent decline in land-based animals.

An estimated US\$36-50 billion is currently spent each year on tackling biodiversity challenges across the globe.

### Nagoya Protocol

Among the landmark events of the latest CBD meeting was the much-anticipated entry into force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS). A total of 54 parties have now ratified the protocol and last week they held their first Meeting of the Parties (MOP).

Clinched after late-night negotiations at the 2010 CBD meet in Japan, the instrument seeks to flesh out a legally binding framework for determin-

ing how users, providers, and stakeholders each access genetic resources and how the benefits derived from their commercialisation are then shared back to provider communities.

Genetic resources are defined by the UN body as genetic material from plants, animals, and microbes that contain the functional units of heredity. These resources, along with biological compounds derived from them, are often heavily used and traded in a range of pharmaceutical, health, cosmetic, and agricultural products.

As a transparency measure, the MOP established an ABS Clearing House that had been in a pilot test phase in recent months. The Clearing House would receive certificates of compliance from competent national authorities of parties to the Nagoya Protocol.

These certificates will indicate when genetic resources have been accessed with permission and under what conditions, helping those researchers involved avoid claims of biopiracy – in other words, when a genetic resource has allegedly been misappropriated.

### Invasive alien species

One specific trade-related move at the Pyeongchang meet was an agreement on guidelines to help address the challenges posed by invasive alien species (IAS), specifically in relation to animals traded as pets, for aquariums, as live bait, or as food.

Various forms of fauna and flora are increasingly crossing borders and traded for a range of reasons, finding new homes in foreign habitats and presenting a threat to the ecological balance when they do so. Some estimates pin the damage to the global economy caused by invasive species, for example crop damage due to foreign pests, at US\$1.4 trillion.

The new voluntary rules will help parties towards achieving the ninth Aichi target that calls for an identification, control, and eradication of IAS introductions by 2020.

The guidelines fill a gap in the governance of IAS and offer standards that national or relevant au-

thorities could use to develop codes of conduct in this area.

A related decision on the establishment of a Global IAS Information Partnership emphasises the need to work alongside other organisations, such as the UN Food and Agriculture Organization (FAO), recognising several existing organisations and agreements that regulate risks associated with trade in wildlife and plants. The CBD Secretariat is also invited to explore with standard-setting partners, including those recognised by the WTO, ways to identify risks posed by IAS sold via online transactions.

## EU, Singapore Finalises Investment Negotiations, Provisions of ISDS in Dispute

Singapore and the EU announced last week that they had completed the final section of their free trade deal, specifically the investment talks that had been left outstanding when the rest of the pact was completed a year ago.

The discussions have been watched closely given the brewing controversy in other trade negotiations – particularly those recently completed with Canada – over what types of investment protection provisions should be included in such deals.

Before EU negotiators inked their trade deal with Canada (CETA) in late September, German Economy Minister Sigmar Gabriel said that his country would be hesitant to ratify CETA unless investor-state dispute settlement (ISDS) provisions are revised or removed.

Although Germany has not yet commented publicly on the EU-Singapore deal, some observers have suggested that Berlin could take a similar stance. Neither deal will go into effect without the approval of their respective legislatures. On the EU side, this requires approval both at the level of the European Parliament, as well as within each member state.

The investor protection section of the EU-Singapore deal will first need to undergo a "legal scrubbing" before the signing and ratification processes can begin.

According to the Singaporean Ministry of Trade and Industry, Singapore is the EU's 15th largest trading partner, and the largest in Southeast Asia. In 2013, bilateral trade generated over US\$75 billion.

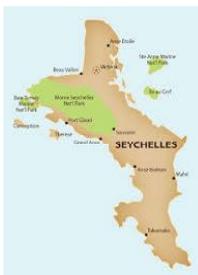
The bilateral pact has broadly been touted as a gateway for Brussels to clinch future deals with other members of the Association of Southeast Asian Nations, or ASEAN, given that the two sides had previously hoped to have a region-to-region agreement between them. The EU is currently negotiating trade deals with fellow ASEAN members Malaysia, Thailand, and Vietnam.

### ISDS mechanism

While trade negotiators have touted the deal's potential for being a "gateway" to the Southeast Asian region, critics have focused on the inclusion of an ISDS mechanism, which they claim could put at risk hard-won public policy protections.

If the agreement is approved, investors will be allowed to file some complaints – such as in

# Seychelles Set for 161 Position as WTO Member, Binds Tariff at 9.5%, Adopts IPR Laws Will Join ITA, GPA



After nearly two decades of negotiations, Seychelles is set to become the WTO's 161st member, with the Working Party tasked with the negotiations signing off on the island nation's accession terms on 17 October.

Seychelles' accession package will now be forwarded to the General Council, which is the WTO's highest decision-making body outside the ministerial conference.

The General Council is set to review the terms in December; upon its approval, the accession package will then need to be ratified domestically in Seychelles in order for membership to become official. The deadline for that has been given as 1 June 2015.

"It is particularly timely as the world is marking the International Year of Small Island Developing States. The WTO provides a vital platform for small economies like Seychelles to make their voice heard at the global level," said WTO Director-General Roberto Azevêdo, acknowledging the hard work that was required to complete this accession process.

Pierre Laporte, who serves as Seychelles' Minister of Finance, Trade and Investment, similarly welcomed WTO membership, calling it "a platform [for his country] to continue to reform its trade regime."

Seychelles' accession process started nearly two decades ago, with the WTO Working Party being established in 1995. Negotiations gained momentum in 2008, when the government of the island state started to enact new legislation on sanitary and phytosanitary measures and on the protection of copyright and industrial property.

### Seychelles' membership terms

Subsequently, Seychelles concluded bilateral agreements with nine interested WTO members, namely Canada, the European Union, Japan, Mauritius, Oman, South Africa, Switzerland, Thailand, and – as the last step on 10 September this year – the United States.

In its accession package, the Indian Ocean archipelago has committed to binding its tariff rates at an average of 9.5 percent – 16.9 percent for agricultural products and 8.3 percent for industrial goods.

Seychelles has also agreed to join the WTO's Information Technology Agreement and to initiate negotiations to join the WTO's Government Procurement Agreement within 12 months of its accession, among other commitments.

cases of allegedly unfair expropriation or discriminatory treatment – directly against host governments through international arbitration panels, rather than local courts.

Those opposed argue that EU courts are fully competent to handle disputes, and that arbitration panels cannot be trusted to fully protect domestic labour, environmental, data protection, or food standards legislation or regulations.

Trade officials, in turn, have long stressed that ISDS will protect state's rights to regulate in the public interest while ensuring "that legitimate government public policy decisions cannot be successfully challenged."

### Long-standing practice

Although the controversy around ISDS has reached new highs in recent months, direct investor-state arbitration is itself not new. For years, ISDS has been standard practice in most bilateral investment treaties (BITs).

EU member states currently belong to more than 1400 BITs, almost all of which include ISDS provisions. Germany has fourteen such agreements with other EU states alone.

### Protracted accessions

Seychelles' integration into the WTO will move the world's multilateral trade body an inch closer to universal coverage of economic activity. After Yemen joined last June, Azevêdo affirmed that "97.1 percent of the global economy now falls under the rules-based multilateral trading system."

Notwithstanding the expanding orbit of the WTO, experts have argued that the organisation's accession process has become increasingly difficult, particularly for poorer nations, such as the least developed countries (LDC).

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\*See details in [www.worldtradescanner.com](http://www.worldtradescanner.com)

### Customs Valuation Exchange Rates

17 October 2014		
	Imports	Exports
<b>Schedule I</b> [Rate of exchange of one unit of foreign currency equipment to Indian Rupees]		
1 Australian Dollar	54.75	53.45
2 Bahrain Dinar	167.95	158.80
3 Canadian Dollar	55.30	54.05
4 Danish Kroner	10.75	10.45
5 EURO	79.90	78.00
6 Hong Kong Dollar	8.00	7.80
7 Kuwaiti Dinar	220.00	207.55
8 New Zealand Dollar	49.80	48.40
9 Norwegian Kroner	9.55	9.25
10 Pound Sterling	99.45	97.25
11 Singapore Dollar	48.95	47.90
12 South African Rand	5.70	5.40
13 South Arabian Riyal	16.90	15.95
14 Swedish Kroner	8.70	8.45
15 Swiss Franc	66.20	64.60
16 UAE Dirham	17.25	16.30
17 U.S. Dollar	62.05	61.05
<b>Schedule II</b> [Rate of exchange of 100 units of foreign currency equivalent to Indian rupees]		
1 Japanese Yen	58.70	57.30
2 Kenyan Shilling	71.25	67.05

(Source: Customs Notification 98(NT)/16.10.2014)