



WASHINGTON MONITOR

A Weekly Review of U.S. Trade Policy Developments Affecting Japan

30 September 2008

Volume 12 Issue 32

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Trade Briefs

China's Request for Consultations over U.S. AD and CVD Practices

On Friday, September 19, China filed a request for consultations with the World Trade Organization (WTO) and the United States challenging anti-dumping and countervailing duty measures in eight separate U.S. AD/CVD actions covering four distinct products. Among the four products are two types of steel pipe: circular welded carbon quality steel pipe (CW pipe) and light-walled rectangular pipe (LWR pipe). Also included in the complaint are Chinese off-the-road tires and laminated woven sacks.

China's request for consultations concerns eight separate actions on these four products. China asserts that U.S. AD/CVD duties applied in these eight actions are inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) and related WTO Agreements. Key claims raised by China involve:

- U.S. findings that state-owned enterprises and banks in China are "public bodies" within the meaning of Article 1.1(a)(1) of the SCM Agreements and therefore capable of providing a government "financial contribution" through the provision of goods or loans;
- In the absence of proper "public body" findings, the U.S. failure to demonstrate government "entrustment or direction" of enterprises and banks providing goods and services;
- U.S. "specificity" findings with respect to the provision of land and loans;
- U.S. findings that subsidies conferred through the provision of goods pass through private trading companies when the goods are later purchased by the final recipients;
- U.S. application of surrogate benchmarks to measure alleged subsidy benefits in China;
- Double remedies attributed to the use of CVD and non-market economy (NME) antidumping methodologies in combination; and
- Various procedural issues related to the collection and consideration of information by the U.S. authority;

In a dispute such as this, the WTO has a specific procedure and timeline for resolving the conflict between the two member states:

First, one member, the complainant, requests consultations with another member, the respondent. The respondent is obliged to enter into consultations within 30 days unless otherwise agreed. If there is no resolution within 60 days, the complainant can request a panel. In practice, the two members often allow themselves more than the minimum time limit so they can continue consultations.

Second, if consultations fail and a panel is required, the complainant will file a formal request to the dispute settlement body (DSB) and the dispute will be made public among other WTO members. This commences the adjudicative stage of the process. A panel will be formed and it will take written submissions and hold meetings where the parties give oral arguments. Panel proceedings are usually required to issue a decision within six months of their formation, but deadlines are often extended such that the average decision is reached in 12 months.

A proposed timeline for the panel, based on the Uruguay Round Agreement's "Understanding on Rules and Procedures Governing the Settlement of Disputes," suggests a duration of 23-34 weeks.

Once the panel has reached a decision and its final report has been circulated to the relevant members, the DSB will adopt the report between 20 and 60 days later, unless there is negative consensus or there is an appeal. An appellate review is available, and must generally be completed within 60 days and in no case take longer than 90 days.

A final ruling that is adopted by the DSB, if not possible to be implemented immediately, must be implemented in a "reasonable period of time." A guideline for a reasonable period of time is 15 months, but it must be agreed upon by both parties or determined by an arbitrator. If 20 days after the end of the reasonable period of time the parties have not agreed on satisfactory compensation, the complainant may seek to impose trade sanctions against the respondent. This requires a previous authorization of the DSB, which must be given within 30 days of the expiration of the reasonable period of time. The DSB will approve this authorization except in cases where there is negative consensus. Therefore, retaliation in the form of suspension of WTO obligations at this stage is virtually automatic.

Earlier this month, press reports surfaced suggesting that the U.S. Trade Representative (USTR) was preparing a case at the WTO against China challenging it for the use of export restrictions on raw materials used to manufacture steel. This, along with China's complaint over U.S. AD and CVD practices, portend an eventful year for the U.S. and China at the WTO.

Dumping Watch

ITC Schedules Final Phase AD and CVD Investigations into Circular Welded Carbon Quality Steel Line Pipe from China and Korea

The International Trade Commission (ITC) gave notice on September 22 of its scheduling the final phase of countervailing duty (CVD) and antidumping (AD) investigations into circular welded carbon quality steel line pipe from China and Korea.

The final phase is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce (DOC) that certain Chinese programs substitute subsidies for domestic producers of this kind of steel pipe. The DOC has postponed its preliminary determination as to whether imports of this pipe from China and Korea are being sold in the U.S. for less than fair value, then, in order to schedule the final phase of both the CVD and AD investigations concurrently.

The ITC will hold a hearing at 9:30 a.m. on November 24, 2008. The deadline for filing a prehearing brief is November 17, 2008.

ITC Schedules Five-Year Reviews on AD Duty Orders on Polyvinyl Alcohol from China, Japan, and Korea

On September 22, the ITC gave notice of its scheduling full five-year reviews on AD duty orders on polyvinyl alcohol from China, Japan, and Korea. The ITC will hold a hearing regarding these reviews at 9:30 a.m. on January 27, 2009.

Federal Register Notices

International Trade Administration

[A-552-801] Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:

Extension of Time Limits for the Preliminary Results of the New Shipper Reviews. 73 FR 55496. September 25, 2008.

[A-533-810] Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Bar from India.

73 FR 55497-55498. September 25, 2008.

[A-533-808] Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Wire Rods from India.

73 FR 55498-55500. September 25, 2008.

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Imports of Certain Cotton Shirting Fabric to Persons Who Cut and Sew Men's and Boys' Cotton Shirts in the United States. 73 FR 55500. September 25, 2008.

A-351-841 Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil. 73 FR 55035-55036. September 24, 2008.

[A-520-803] Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value. 73 FR 55036-55039. September 24, 2008.

[A-570-924] Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value. 73 FR 55039-55042. September 24, 2008.

Export Trade Certificate of Review ACTION: Notice of Application To Amend an Export Trade Certificate of Review Issued to U.S. Shippers Association.. 73 FR 55042-55043. September 24, 2008.

[C-570-923] Raw Flexible Magnets From the People's Republic of China: Countervailing Duty Order . 73 FR 55043. September 24, 2008.

[A-549-825] Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand. 73 FR 55043-55045. September 24, 2008.

[A-552-802] Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review. 73 FR 54788. September 23, 2008.

[A-475-703] Amended Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy 73 FR 54557-54560, September 22, 2008.

[A-570-929] Small Diameter Graphite Electrodes from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value 73 FR 54561-54563, September 22, 2008.

International Trade Commission

[Investigation No. 337-TA-622] In the Matter of Certain Base Plugs; Notice of Commission Decision Not to Review an Initial Determination Granting a Joint Motion To Terminate Investigation. 73 FR 55131-55132. September 24, 2008.

[Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary)] Certain Kitchen Appliance Shelving and Racks From China. 73 FR 55132-55133. September 24, 2008.

[Inv. No. 337-TA-658] In The Matter of: Certain Video Game Machines and Related Three- Dimensional Pointing Devices; Notice of Investigation. 73 FR 54854-54855. September 23, 2008.

[Inv. No. 337-TA-657] In the Matter of: Certain Automotive Multimedia Display and Navigation Systems, Components Thereof, and Products Containing Same; Notice of Investigation 73 FR 54617, September 22, 2008.

[Investigations Nos. 701-TA-455 (Final) and 731-TA-1149-1150 (Final)] Circular Welded Carbon Quality Steel Line Pipe From China and Korea 73 FR 54618-54619, September 22, 2008.

[Investigation Nos. 731-TA-1014, 1016, and 1017 (Review)] Polyvinyl Alcohol from China, Japan, and Korea 73 FR 54619-54620, September 22, 2008.

The Week Ahead

- On Thursday, October 2, the ITC will hold a hearing to schedule final phase CVD and AD investigations into certain lightweight thermal paper from China and Germany.