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Trade Briefs

Obama Chooses Ron Kirk for USTR

President-elect Barack Obama has chosen Ron Kirk to serve as U.S. Trade Representative in his Administration. Kirk was the first African American mayor of Dallas, and he ran an unsuccessful bid for U.S. Senate in 2002. Most recently, he was a partner with Vinson & Elkins, a law firm in Dallas, TX.

In contrast to others considered for the position who regularly dealt with trade issues, Kirk does not have any particular expertise or experience in international trade. He has occasionally commented publicly on trade issues, but not in great depth. For instance, during his Senate run, he noted his opposition to Trade Promotion Authority (TPA), or "fast track." Also, as mayor he went on trade missions to Central America, Europe, and East Asia (not including Japan, apparently).

One potential indicator of his views on trade is his relationship to former Sen. Lloyd Bentsen (D-TX). Kirk is thought of as a protégé of Bentsen, one-time Chairman of the Senate Finance Committee and Treasury Secretary under Clinton. Kirk worked for Bentsen in both his Senate office and at the Treasury Department, and many believe he has been strongly influenced by Bentsen's policy views. Bentsen was a staunch free trader, and at Treasury he helped push through the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Based on his work at Treasury, then, Kirk undoubtedly has some basic understanding of these agreements, but it is not clear that he is as committed to trade as his mentor. His public statements during his Texas Senate race suggest a greater ambivalence about trade.

Kirk had been mentioned for a number of possible cabinet positions in the Obama Administration including Secretary of Transportation, Secretary of Housing and Urban Development (HUD). This would suggest that he was a serious contender for a Cabinet level position in general, rather than a clear choice for USTR.

Kirk is a major player in Texas Democratic politics, and he supported Obama over Hillary Clinton in the Democratic Primary in Texas. At the time, supporting Obama was not an obvious move, and it was certainly not without significant political risk. Therefore, Obama may be seeking to reward Kirk for his support, a common purpose to be fulfilled through political appointments in any new Administration..

However, there are reasons that Kirk's appointment to USTR could be strategic as opposed to purely political. One possible selling point for Kirk is his strong ties to business. As the mayor of Dallas and in his run for the Senate, Kirk openly courted pro-business constituencies, and he is somewhat unique in Democratic circles as someone who is trusted by the business community. Therefore, he could act as a bridge-builder between the Obama Administration and groups like the U.S. Chamber of Commerce or the National Association of Manufacturers (NAM). He might be able to sell less-palatable trade policies to these groups.

Many prior USTRs have come from high-profile political jobs such as governor or senator. And while Kirk is a relatively popular figure in the Democratic party, he

will not bring the same amount of political weight to the position of USTR as some others. His appointment to USTR probably signals a lesser emphasis on the trade issue. If, on the other hand, a major national figure like Governor Bill Richardson (who has already accepted a position as Secretary of Commerce) had been chosen as USTR, it probably would have been an indication of a substantial focus on trade policy.

Obama's selection of Kirk as USTR seems to indicate that trade will not be a high priority for the Obama Administration. And the fact that the USTR appointment was so far removed from the announcement of Obama's economic team and his Secretary of Commerce appears to bolster this assumption.

China Requests WTO Panel re U.S. AD and CVD Practices

On Friday, December 12, China filed an official request for the formation of a World Trade Organization (WTO) panel to examine U.S. antidumping (AD) and countervailing duties (CVD) on certain Chinese products. China's request is the next logical step in the WTO's dispute resolution process, and it was not completely unexpected. However, this development is noteworthy for two reasons: it is the first time that China has used the WTO dispute resolution process to attack trade remedy actions of its trading partners; and the China WTO case challenges important fundamental approaches concerning how the United States address allegedly unfair (i.e. dumped/subsidized) imports from China. Should China prevail in its WTO case, the U.S. would likely be asked to change these approaches that could well decrease the ability of the U.S. to impose high AD/CVD duties on imports from China.

On September 19, 2008, China filed a complaint with the World Trade Organization (WTO) challenging anti-dumping and countervailing duty measures in eight separate U.S. AD/CVD investigations covering four distinct products. The specific trade investigations at the center of China's WTO case include the following:

- *Circular Welded Carbon Quality Steel Pipe from China* (both AD and CVD)
- *Certain New Pneumatic Off-the-Road Tires from China* (both AD and CVD)
- *Light-Walled Rectangular Pipe and Tube from China* (both AD and CVD)
- *Laminated Woven Sacks from China* (both AD and CVD)

In its request for a WTO panel, China asserts that U.S. AD/CVD duties applied in these eight cases are inconsistent with various provisions of the following WTO Agreements: (a) General Agreement on Tariffs and Trade (GATT) 1947; (b) the WTO Antidumping Agreement and (c) the Subsidies and Countervailing Measures (SCM) Agreement.

The China WTO case not only attacks certain specific findings made by the U.S. Commerce Department in its respective AD and CVD determinations, but also the China WTO case attacks the very ability of the WTO to apply the CVD law against China while at the same time applying non-market economy NME antidumping calculation rules in AD cases against China. As such, the China WTO case challenges the very basis of the current U.S. approach for addressing allegedly dumped and subsidized imports from China.

Specifically, the China WTO case makes two types of challenges to the US AD And CVD investigations: "as such claims," and "as applied claims."

In WTO cases "as such claims" are those claims that typically challenge the underlying legislation. China's "as such claims" argue that the underlying U.S. AD and CVD legislation (i.e. the Tariff Act of 1930, as amended) is inconsistent with the various provisions of the WTO Antidumping Agreement and the WTO SCM Agreement because there is no mechanism in the legislation to avoid the "double counting" of duties that results from applying both the CVD law and NME AD methodology to China. For example, as part of its as such claims, China argues that the failure of the U.S. to take action to avoid the double counting of duties that results from the combined application of CVD NMD AD methodology is contrary to the provisions of the AD and SCM agreements that limit AD and CVD duties to "appropriate amounts."

In addition, as part of its "as such claims, China argues that the combined application of CVD and NME methodology to China violates the "most favored nation treatment" provisions of Article 1 of GATT 1947. Specifically, China argues that whereas the U.S. AD/CVD methodology applied to all other (market-economy) countries takes into account the fact that both cases are being applied together, no such account is required when the U.S. applies both CVD law and NME AD methodology.

"As applied claims" include those claims that challenge specific determinations that a Member as made in applying its legislation. Therefore, as applied claims are used to attack specific findings set forth in individual AD/CVD determinations. China's WTO case includes numerous "as applied" claims that challenge various individual findings/determinations set forth in the eight different AD/CVD determinations being appealed. For the most part, China's as applied claims challenge the new methodologies and practices that the U.S. has adopted in applying the CVD law to China. Among the most significant of these claims include those challenging the following:

- the ruling by the DOC that mere government ownership makes a Chinese producer a government "public body" that is able to bestow subsidies
- the decision by DOC that it did not need to analyze whether the alleged subsidy benefit received from government-owned suppliers actually was passed through to the producer-exporters of the targeted merchandise

- the ruling by DOC that state-owned commercial banks (SOCB's) are public bodies for purposes of determining whether the government made loans to the targeted industry at below market interest rates
- the decision by DOC to use market benchmarks *outside China* to determine the level of unfair subsidization
- the DOC decision that government regulation of land-use rights satisfies the specificity test of the SCM Agreement
- various procedural issues related to the collection and consideration of information by the U.S. authority

Since entering the WTO in 2001, China has brought only three offensive cases to the level of consultations, all of them against the U.S. And in one of these cases, the case regarding preliminary antidumping and countervailing duty determinations on Chinese coated free sheet paper, China has not yet requested formation of a panel. By comparison, the U.S. has been the complainant in 22 cases since 2001. And during the same time period, the European Communities (EC) have been the complainant in 24 cases. It is therefore quite rare for China to bring this type of action, likely out of fear of upsetting the delicate political balance in its largest trading partner. Therefore, this case could be the beginning of a more confrontational China on trade issues. On the other hand, it could be a natural reaction to blatantly unfair U.S. protectionism. Whatever the case, the U.S. is expected to be more active in prosecuting Chinese trade practices under President Barack Obama, which will likely result in heightened tensions over the trade issue.

Dumping Watch

DOC to Revoke, in Part, AD Duty Finding on Polychloroprene Rubber from Japan

On December 18, the Department of Commerce (DOC) gave notice of final results of the changed circumstances review and determination to revoke, in part, the antidumping (AD) duty finding on polychloroprene rubber from Japan. After publishing preliminary results in this case, the DOC invited domestic petitioners to comment. However, no comments were received and the DOC has subsequently moved to revoke the AD finding, in part.

Preliminary Results of Review of AD Duty on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea

On December 19, the DOC gave notice of preliminary results of the administrative review of the AD duty order on certain cut-to-length carbon-quality steel plate from Korea. In February 2000, the DOC put out an AD order on this type of steel plate from Korea. And in February 2008, the DOC gave notice of an opportunity to request an administrative review of this order. Dongkuk Steel Mill Co. (DSM) subsequently requested an administrative review. As a result of this review, the DOC found that DSM made sales at less than normal value. The weighted-average dumping margin for DSM was calculated to be 9.27%.

Federal Register Notices

International Trade Administration

[A-570-873; A-791-815] Ferrovanadium from the People's Republic of China and the Republic of South Africa: Continuation of Antidumping Duty Orders *73 FR 77609-77610*, December 19, 2008.

[A-533-840] Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review *73 FR 77610-77612*, December 19, 2008.

[A-549-822] Certain Frozen Warmwater Shrimp from Thailand: Partial Rescission of Antidumping Duty Administrative Review *73 FR 77612-77614*, December 19, 2008.

[A-580-836] Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review *73 FR 77614-77618*, December 19, 2008.

[A-533-820] Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review *73 FR 77618-77622*, December 19, 2008.

[A-570-846] Brake Rotors From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review *73 FR 77004-77005*, December 18, 2008.

[A-122-840] Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review *73 FR 77005-77007*, December 18, 2008.

[A-588-046] Polychloroprene Rubber From Japan: Final Results of Changed Circumstances Review and Determination To Revoke Antidumping Duty Finding, in Part 73 FR 77007-77008, December 18, 2008.

[RIN 0625-AA75] Changes in Procedures for Florence Agreement Program 73 FR 76571-76573, December 17, 2008.

Proposed Information Collection; Comment Request; Commercial Service--Client Focus Groups 73 FR 76614, December 17, 2008.

[A-570-868] Folding Metal Tables and Chairs From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review 73 FR 76615, December 17, 2008.

[A-469-814] Chlorinated Isocyanurates from Spain: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review 73 FR 76335-76336, December 16, 2008.

[A-570-832] Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 73 FR 76336-76338, December 16, 2008.

Export Trade Certificate of Review 73 FR 75999-76001, December 15, 2008.

International Trade Commission

[Inv. No. 337-TA-662] In the Matter of Certain Tunable Laser Chips, Assemblies and Products Containing Same; Notice of Investigation 73 FR 77839-77840, December 19, 2008.

[Investigation Nos. 701-TA-459 and 731-TA-1155 (Preliminary)] Commodity Matchbooks from India; Determinations 73 FR 77840-77841, December 19, 2008.

[Investigation No. 731-TA-745 (Second Review)] Steel Concrete Reinforcing Bar From Turkey; Determination 73 FR 77841, December 19, 2008.

[Investigation No. 731-TA-1020 (Review)] Barium Carbonate From China 73 FR 77058-77059, December 18, 2008.

[Inv. No. 337-TA-664] In the Matter of Certain Flash Memory Chips and Products Containing the Same Notice of Investigation 73 FR 77059-77061, December 18, 2008.

[Inv. No. 337-TA-663] In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, Components Thereof; Notice of Investigation 73 FR 77061, December 18, 2008.

[Investigation No. 332-502] Sub-Saharan African Textile and Apparel Inputs: Potential for Competitive Production 73 FR 77061-77062, December 18, 2008.

The Week Ahead

- On Monday, December 22, the ITC held a vote on the final phase countervailing duty investigation into circular welded carbon quality steel line pipe from China.
- The ITC will be closed on Thursday, December 25, for the Christmas holiday.