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The Washington Monitor is a product of the Japan Fair Trade Center in cooperation with the international trade practice of the U.S. law firm of Winston & Strawn LLP. All questions concerning its content should be addressed to:

Washington Monitor
Winston & Strawn L.L.P.
1700 K Street, N.W.
Washington, D.C. 20006
rmassony@winston.com

Trade Briefs

Trade Enforcement Act of 2009 Introduced

On January 15, House Ways and Means Committee Chairman Charlie Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI) introduced the Trade Enforcement Act of 2009 (H.R. 496), significant legislation that would substantially strengthen the institutions used to enforce trade law. It is virtually identical to the Trade Enforcement Act of 2008 (H.R. 6530), a bill that was proposed in July 2008 by Rangel and Levin.

H.R. 496 is designed to address three areas: foreign trade barriers, U.S. trade remedies, and intellectual property rights (IPR) and product safety. The bill is Sino-centric, with provisions specifically designed to counteract what Rangel and Levin see as unfair trade practices by the Chinese. However, it could have broad implications for the overall trade policy of the U.S.

H.R. 496 aims to ensure that U.S. trading partners “live up to their trade obligations” by requiring the United States Trade Representative (USTR) to annually identify foreign countries with unfair barriers and to “take action.” The focus is on making the Administration more proactive in taking action against identified trade barriers. Also, the bill calls for the restoration of the “Super 301” provision which gives the president authority to investigate unfair trade barriers and retaliate. As in the IPR and product safety enforcement provisions, H.R. 496 calls for bureaucratic expansion. The bill would elevate the USTR’s General Counsel to ambassadorial rank and would create a new office: Congressional Trade Enforcer.

On trade remedy, the bill seeks to ensure that the U.S. “fully utilizes its rights” under the World Trade Organization in protecting itself from unfair trade practices that disadvantage American producers.

H.R. 496 makes two China specific changes. First, it mandates the Department of Commerce’s (DOC) continued application of countervailing duties (CVD) to injurious imports from non-market economies (NME). This provision is clearly aimed at China, but it also gives Congress a role in deciding which economies constitute NMEs. Second, H.R. 496 strengthens the safeguard mechanism providing temporary relief to U.S. industry affected by Chinese imports, limiting the discretion of the president to deny relief. U.S. industry have been very frustrated that the ITC has often recommended relief, but the President then has denied that relief.

The bill also makes more general changes to U.S. trade law. First, the bill would require Commerce to resume the WTO inconsistent practice of “zeroing”—setting negative dumping margins equal to zero before completing an overall average margin of dumping. This change would undo a significant WTO development in this area, and raise dumping margins in many original investigations.

Second, the bill would overturn the controversial Court of Appeals decision in the Bratsk case. That court decision requires the International Trade Commission (ITC) to make additional findings in cases involving commodity goods that the imposition of duties

will have some benefit to the domestic industry, and will not simply lead countries not subject to the duties to increase their exports to the United States and thus replace the imports that were subject to the duties. This change would make it harder for foreign respondents to defend themselves successfully at the ITC.

H.R. 496 calls for the creation of a Director of Intellectual Property Rights (IPR) Enforcement to bring greater focus on IPR enforcement and prevention. On product safety, the bill calls for the creation of a voluntary government-private sector import safety program. In addition, the bill proposes an increase in staffing, resources, training, and coordination for Customs enforcement activities.

When H.R. 6530 was proposed in July, it seemed likely that this type of legislation would be more likely to pass in the 111th Congress. Now, Rangel and Levin have taken the first step in the process of enacting this legislation.

Rangel and Levin are very important Democratic voices in the House of Representatives. The Ways and Means Committee is the chief tax-committee of the House, and Rangel's chairmanship gives him a great deal of power over many issues, including trade. Levin chairs the Ways and Means Subcommittee on Trade. Therefore, it is likely that legislation authored by these congressmen will be seriously considered.

However, even with greater Democratic majorities in the Senate and House, it is not clear how much support H.R. 496 will receive or whether it has a chance of being enacted in its current form. Additionally, as legislation moves through Congress, it is often "watered down" with amendments in order to garner support. Therefore, at the end of the lawmaking process, H.R. 496 could be substantially different from its current form.

Dumping Watch

Final Results of CVD Review Regarding Corrosion-Resistant Carbon Steel Flat Products from Korea

On January 15, the Department of Commerce (DOC) announced final results of the administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products from Korea. The CVD order on this product from Korea was originally put in place in August 1993. In September 2008, the DOC published preliminary results of an administrative review on this CVD order, finding that Pohang Iron and Steel Co., Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu) received de minimis countervailable subsidies. After reviewing comments from POSCO, the DOC issued final results consistent with the preliminary results: POSCO and Dongbu received de minimis countervailable subsidies during the period of review. The rate for POSCO was determined to be 0.09% and the rate for Dongbu was determined to be 0.22%. Within 15 days of the announcement of these final results, the DOC will instruct Customs and Border Protection (CBP) to liquidate the subject merchandise from POSCO and Dongbu that entered during the period of review.

Final Results of AD Administrative Review Regarding SS Butt-Weld Pipe Fittings from Taiwan

On January 12, the DOC gave notice of final results and final rescission in part of the administrative review of the antidumping (AD) duty order on certain stainless steel butt-weld pipe fittings from Taiwan. The DOC confirmed the rescission of the review for four producers of these pipe fittings and established a dumping margin for another producer. In July 2008, the DOC reached preliminary results in this administrative review. The preliminary results included a notice of intent to rescind the review with respect to four companies: Liang Feng Stainless Steel Fitting Co., Ltd. (Liang Feng), Tru-Flow Industrial Co., Ltd. (Tru-Flow), Censor International Corporation (Censor), and PFP Taiwan Co., Ltd. (PFP). The DOC had reached this result because these producers had no entries of the subject merchandise into the U.S. during the period of review. In the final results, the DOC has upheld this decision and will rescind the review for Liang Feng, Tru-Flow, Censor, and PFP. Also, based upon the analysis of the comments received in response to the preliminary results, the DOC has adjusted its margin calculation. The weighted-average margin for Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) was calculated to be 2.45%. The all-others rate for entries of this merchandise from Taiwan will remain at 51.01%.

Federal Register Notices

International Trade Administration

[A-549-821] Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review *74 FR 2511-2512*, January 15, 2009.

[C-580-818] Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review *74 FR 2512-2514*, January 15, 2009.

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Cotton Woven Fabrics for Calendar Year 2009 *74 FR 2047*, January 14, 2009.

[A-549-807] Notice of Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Review: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand 74 FR 2048-2049, January 14, 2009.

[A-552-801] Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review 74 FR 2049, January 14, 2009.

[A-570-929] Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China 74 FR 2049-2055, January 14, 2009.

[A-570-890] Wooden Bedroom Furniture from the People's Republic of China: Amended Final Results Pursuant to a Final Court Decision 74 FR 2055-2057, January 14, 2009.

Mission Statement; Jordan and Egypt Business Development Mission; February 14-19, 2009 74 FR 2057-2059, January 14, 2009.

Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations; Extension of Time To Comment 74 FR 2059, January 14, 2009.

[Application No. 97-9A003] Export Trade Certificate of Review 74 FR 1662-1663, January 13, 2009.

[A-475-818] Certain Pasta from Italy: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of Order 74 FR 1173, January 12, 2009.

[A-583-816] Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review 74 FR 1174-1175, January 12, 2009.

International Trade Commission

[19 CFR Part 207] Revised Procedures and Requests for Information During Adequacy Phase of Five-Year Reviews 74 FR 2847-2849, January 16, 2009.

[Investigation No. 731-TA-1012 (Review)] Certain Frozen Fish Fillets From Vietnam 74 FR 2616-2617, January 15, 2009.

[Inv. No. 337-TA-624] In the Matter of: Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Cross-Licensing Agreement 74 FR 2098-2099, January 14, 2009.

[Inv. No. 337-TA-666] In the Matter of Certain Cold Cathode Fluorescent Lamp ("CCFL") Inverter Circuits and Products Containing Same; Notice of Investigation 74 FR 2099, January 14, 2009.

[USITC SE-09-001] Government in the Sunshine Act Meeting Notice 74 FR 2100, January 14, 2009.

[Investigation No. 701-TA-455 (Final)] Circular Welded Carbon Quality Steel Line Pipe From China 74 FR 1706, January 13, 2009.

[Investigation No. 731-TA-1022 (Review)] Refined Brown Aluminum Oxide From China 74 FR 1706-1707, January 13, 2009.

The Week Ahead

- On Monday, January 19, the ITC was closed for the Martin Luther King, Jr. holiday.
- On Tuesday, January 20, the ITC was closed for the Presidential Inauguration.
- On Wednesday, January 21, the ITC is scheduled to vote on the five-year sunset review of the antidumping duty order on Barium Carbonate from China.