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Trade Briefs

American Steel First Act of 2009 Introduced, May Conflict with GPA

On January 15, the American Steel First Act of 2009 (H.R. 595) was introduced in the U.S. House of Representatives by Rep. Pete Visclosky (D-IN) and Phil English (R-PA). This legislation seeks to expand government procurement preferences for domestic steel used in government-funded projects, and in turn limit opportunities for foreign steel to fill orders needed to complete those projects. Given the significant amount of federal funds expected to be expended on infrastructure projects as part of a new economic stimulus package, restrictions proposed in H.R.595 could represent a significant limitation on foreign steel sold in the U.S. market. This could have substantial effects on trade between the U.S. and major steel producing countries like Japan.

H.R. 595 further raises issues related to the consistency of the legislation with U.S. obligations under the World Trade Organization (WTO), and more specifically the WTO Government Procurement Agreement (GPA) to which the U.S., Japan and other countries are signatories.

The language of H.R. 595 likely represents the opening position of steel industry advocates on Capitol Hill in prelude to a full debate on the stimulus package, which is expected to propose \$50 billion or more in new infrastructure spending. H.R. 595 would mandate exclusive use of domestic steel in construction projects executed by the Departments of Defense, Homeland Security and Transportation. It would also require a public comment period for all projects that seek an exemption to the bill's requirements, which threatens to serve as a tool to impede foreign bids.

On its face, H.R. 595 offends the general General Agreement on Tariffs and Trade (GATT)/WTO principle of national treatment since it discriminates against imports. Government procurement is generally excluded from the national treatment obligation under Article III:8 of the GATT. However, this general exclusion does not apply to signatories of a separate plurilateral WTO Government Procurement Agreement ("GPA"), which extended the principle of national treatment to cover specific government procurement concessions made by each signatory. The United States and Japan, among other countries, are signatories to the GPA. Thus, the question is whether H.R. 595 would violate U.S. obligations under the GPA.

The GPA adheres to the principle of national treatment; however, several exceptions exist in the form of negotiated concessions. Thus, while it is possible that the provisions in H.R. 595 could violate the GPA's national treatment principles, they would have to be examined in light of the exceptions taken by the United States.

Of significance to the steel industry, under the GPA concessions, the U.S. excluded coverage of federal transit funds distributed to the states (GPO, U.S. Appendix 1, Annex 2, Notes to Annex 2). This eliminates a substantial amount of government procurement that consumes steel. Other exceptions apply under the GPA, such as those related to national security that may generally exempt DOD and other defense-related procurement.

Based on an initial review of the current language in H.R. 595, it is questionable whether technical violations of the GPA would arise as a result of this legislation. The answer can only be discerned from a close examination of the legislation and the specific exclusions the United States took under the GPA.

The future of this legislation is uncertain. Its language may be included in Obama's proposed stimulus plan, the American Recovery and Reinvestment Act. It could be considered and voted upon as an independent piece of legislation. Finally, it may be amended as it works its way through to House and Senate. Regardless, its success or failure is likely to have considerable ramifications for many Japanese exporters.

Dumping Watch

DOC Intends to Rescind Review of AD Order on Circular Welded Carbon Steel Pipes and Tubes from Taiwan

On January 21, the Department of Commerce (DOC) announced the intent to rescind the administrative review of the antidumping (AD) duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The DOC originally instituted this AD duty order in 1984. In May 2008, Allied Tube & Conduit Corporation (Allied) requested that the DOC conduct an administrative review regarding the exports of these pipes and tubes by Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing). Yieh Hsing claimed that it had no shipments of the subject merchandise into the U.S. during the period of review. Allied asked that the administrative review be extended to cover Yieh Phui Enterprise Company, Ltd. (Yieh Phui), as Yieh Phui had been found to be the successor-in-interest in a previous case. This request was denied. The DOC continued with its administrative review, asking Customs and Border Protection (CBP) for import entry information regarding these pipes and tubes from Yieh Hsing. It was preliminarily determined that there were no such shipments, and the DOC intends to rescind the administrative review. A final decision will be made within 120 days of the notice.

Amended Determination, CVD Order Issued on Circular Welded Carbon Quality Steel Line Pipe from China

On January 23, the DOC gave notice of an amended final determination in the countervailing duty (CVD) case against Chinese circular welded carbon quality steel line pipe. Also, the DOC gave notice of a CVD order on this product from China. On November 24, 2008, the DOC gave notice of its final determination in this CVD investigation. On December 1, 2008, a respondent and a petitioner submitted allegations of ministerial error on the part of the DOC with respect to the DOC's final determination. Another petitioner eventually submitted comments on the respondent's allegations. The DOC considered these allegations and comments and accepted some allegations of ministerial error. The subsidy rates for one respondent, Huludao Companies, was reduced from 35.63% to 31.29%. The all-others subsidy rate for this product imported from China was originally calculated by averaging the rates of the two respondents. Since the rate for one of the respondents changed, the all-others rate was recalculated, dropping from 37.84% to 35.67%. On January 7, 2009, the International Trade Commission (ITC) reached the conclusion that a domestic industry had been materially injured by reason of imports of the subject merchandise. Therefore, the DOC will direct Customs and Border Protection (CBP) to continue to suspend liquidations of the subject merchandise and to assess a CVD for each entry of the subject merchandise according to the amended subsidy rates.

Federal Register Notices

International Trade Administration

[C-570-936] Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order *74 FR 4136-4138*, January 23, 2009.

[A-570-882] Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Expedited Sunset Review *74 FR 4138-4139*, January 23, 2009.

[A-570-601] Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review *74 FR 3987-3990*, January 22, 2009.

[A-583-008] Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review *74 FR 3559-3560*, January 21, 2009.

[A-570-868] Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review *74 FR 3560-3563*, January 21, 2009.

[A-423-808] Stainless Steel Plate in Coils from Belgium: Notice of Extension of Time Limit for Preliminary Results of Administrative Review *74 FR 3563*, January 21, 2009.

Imports of Certain Apparel Articles: Interim Procedures for the Implementation of the Earned Import Allowance Program Established Under the Andean Trade Preference Act of 2008 *74 FR 3563-3566*, January 21, 2009.

International Trade Commission

[Inv. No. 337-TA-667] In the Matter of Certain Electronic Devices, Including Handheld Wireless Communications Devices; Notice of Investigation *74 FR 4231*, January 23, 2009.

[Investigation No. 337-TA-602] In the Matter of: Certain GPS Devices and Products Containing Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Orders *74 FR 4232-4233*, January 23, 2009.

[Inv. No. 337-TA-582] In the Matter of: Certain Hydraulic Excavators and Components Thereof General Exclusion Order *74 FR 4051-4052*, January 22, 2009.

[USITC SE-09-002] Government in the Sunshine Act Meeting Notice *74 FR 4052*, January 22, 2009.

Office of the United States Trade Representative

2009 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment *74 FR 4263-4264*, January 23, 2009.

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter Nine of the United States-Peru Trade Promotion Agreement *74 FR 4264-4265*, January 23, 2009.

[Docket No. USTR-2008-0036] Modification of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Ban on Imports of U.S. Beef and Beef Products *74 FR 4265-4268*, January 23, 2009.

Generalized System of Preferences (GSP): Notice Regarding the Acceptance of Competitive Need Limitation Waiver and Further Review of Country Practice Petitions for the 2008 Annual Review *74 FR 3657-3659*, January 21, 2009.

The Week Ahead

- On Tuesday, January 27, the ITC will hold a commission vote on the final phase AD investigation into uncovered innerspring units from China.
- Also on Tuesday, the ITC will hold a hearing on the five-year sunset review regarding the AD duty order on polyvinyl alcohol from China, Japan, and Korea.
- On Thursday, January 29, the ITC will hold a hearing on the general fact-finding investigation into textile and apparel inputs from Sub-Saharan Africa.