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Contents

Trade Briefs

- USW Files 421 Case Against Chinese Tires

Dumping Watch

- DOC Rescinds Review of AD Order on Circular Welded Carbon Steel Pipes and Tubes from Taiwan

The Week Ahead

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Trade Briefs

USW Files 421 Case Against Chinese Tires

On Monday, April 20, the United Steelworkers (USW) filed a Section 421 trade case alleging unfair importation of pneumatic consumer tires from China. The USW argues that there has been a surge of tire imports from China over the past five years and asks that the government impose strict quotas on Chinese consumer tires. The 421 safeguard is likely to be used by domestic steel manufacturers as a barrier to other Chinese imports.

A 421 investigation is an investigation under the authority of Section 421 of the Trade Act of 1974. It is a China-specific safeguard for imported products. As part of China's accession to the WTO, China accepted transitional remedies to address import surges into other countries that cause market disruption. Section 421 is such a remedy. This safeguard applies only to imports from China and has a lower threshold for demonstrating possible harm and for securing temporary relief from import surges than the global safeguard (Section 201).

A Section 421 investigation can be requested by the President, a domestic industry, the USTR, the House Committee on Ways and Means or the Senate Finance Committee. Once a 421 investigation is requested, the ITC initiates an investigation into whether Chinese imports are causing market disruption for a U.S. industry that produces a like or competitive product. If they found market disruption, they could propose a remedy. The ITC then sends its report and proposed remedy to the President and the USTR, and the President makes the final remedy decision.

To reach a conclusion that a safeguard remedy is appropriate in a given situation, the ITC must find: (1) that there is market disruption or the threat of market disruption to domestic producers of the subject merchandise or a like product; and (2) that imports from China have surged in a manner that causes or threatens to cause such market disruption. Furthermore, the statute provides three factors for the ITC to consider in determining the existence of market disruption: rapid increase in import volume of the subject merchandise, material injury or the threat of material injury to the domestic industry, and that the cause of this injury is the increase in imports. Although no single factor is dispositive, the ITC must make a finding for each. If the ITC makes an affirmative determination, it may recommend as a remedy any import restriction. For example, the ITC could require increased duties, a tariff-rate quota, or a quantitative restriction.

When Section 421 was imposed, many believed that these investigations would become more prevalent than antidumping (AD) investigations against China. 421 investigations can be done cheaper and faster than AD investigations, and they only require a finding of "material injury" as opposed to the World Trade Organization (WTO) requirement of "serious injury." However, this did not prove to be the case under President Bush.

The President has discretion on imposing a remedy, except in a case where denying the relief would have an adverse impact on the greater U.S. economy greater than the positive impact of the remedy. This language is ambiguous, and Bush denied relief in many cases by arguing that imposition of a remedy was not in the nation's interest. Often, Bush

cited diplomatic concerns or potential harm to other industries when denying relief. The result was that Bush unilaterally defanged Section 421.

Bush's attitude toward 421 investigations may not be assumed by President Obama. During the campaign, Obama specifically opposed Bush's use—or lack thereof—of Section 421. In a letter to the National Council of Textile Organizations (NCTO) in October 2008, he said that he would decide these cases "on their merits, not on the basis of an ideological rejection of import relief like that of the current Administration." It is possible, then, that the use of 421 investigations will increase under Obama.

In this petition, the USW asked for relief from the government for what it called a "dramatic surge" of tires from China. Specifically, the USW first alleges that imports from China have increased 215 percent by volume and 295 percent by value from 2004 through 2008. Accordingly, the USW claims, the importation of tires clearly satisfies the requirement of a "surge" in imports.

The USW makes several factual claims to establish the existence of material injury or threat of material injury to the domestic industry. In support of its allegation of actual material injury, the USW cites to the inability of domestic producers to maintain a reasonable profit level, which has resulted in the idling of production facilities and increasing layoffs within the industry. Because the petition is the product of the USW, and not a member of the domestic industry, the petition relies on vague data to substantiate these claims. To support its claim that the surge in imports poses a threat to the domestic industry, the USW cites the unused productive capacity in China as evidence that further surges in importation are likely to arise. In doing so, however, the USW provides no concrete evidence to support its allegation that any further surge may actually occur.

Lastly, the USW contends that the surge in imports has caused material injury to the domestic industry by pointing to the factual allegations already made: that Chinese imports of consumer tires have shown dramatic growth, and that the domestic market share has shown a corresponding decline. While citing to data, the USW does nothing to show any actual correlation between these two contentions.

The USW is requesting that the government impose an import quota on Chinese tires limiting it to 21 million tires per year. The USW claims that this would bring the imports back to 2005 levels. Also, the USW says that the quota would rise 5% every year for three years.

Now that the petition has been filed, the ITC will initiate an investigation to determine whether or not the importation of Chinese tires has materially injured domestic industry. If the ITC determines that imports of this merchandise has caused or threatened to cause material injury, it will propose a remedy to President Obama and U.S. Trade Representative Ron Kirk. President Obama will then make the final decision.

Dumping Watch

DOC Rescinds Review of AD Order on Circular Welded Carbon Steel Pipes and Tubes from Taiwan

On Monday, April 20, the Department of Commerce (DOC) gave notice that it would 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 announced its intention to rescind the administrative review.

Since that announcement in January 2009, the DOC has not received any comment from an interested party. Therefore, the DOC is satisfied that there were no U.S. entries of the subject merchandise from Yieh Hsing and will go ahead with rescission of this review.

Federal Register Notices

International Trade Administration

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

Extension of Time Limit for Preliminary Results of the Fifth Antidumping Duty Administrative Review *74 FR 18549-18550*, April 23, 2009.

[A-570-881] Continuation of Antidumping Duty Order on Malleable Cast Iron Pipe Fittings From the People's Republic of China *74 FR 18349-18350*, April 22, 2009.

[A-583-833] Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review *74 FR 18348-18349*, April 22, 2009.

Application(s) for Duty-Free Entry of Scientific Instruments *74 FR 18350*, April 22, 2009.

Notice of Consolidated Decision on Application for Duty-Free Entry of Electron Microscope *74 FR 18351*, April 22, 2009.

Application(s) for Duty-Free Entry of Scientific Instruments *74 FR 18351*, April 22, 2009.

Request for Applicants for the Appointment to the United States-Brazil CEO Forum *74 FR 18351-18352*, April 22, 2009.

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

Extension of Time Limit for Final Results of the Third New Shipper Review *74 FR 18199*, April 21, 2009.

[A-583-008] Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Rescission of Antidumping Duty Administrative Review *74 FR 17950-17951*, April 20, 2009.

[A-533-820] Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review *74 FR 17951-17953*, April 20, 2009.

[A-570-890] Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews *74 FR 17951*, April 20, 2009.

International Trade Commission

[Investigation Nos. 731-TA-1146-1147 (Final)] 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) From China and India *74 FR 18593*, April 23, 2009.

[Investigations Nos. 701-TA-458 and 731-TA-1154 (Final)] Certain Kitchen Appliance Shelving and Racks From China *74 FR 18249-18250*, April 21, 2009.

Office of the U.S. Trade Representative

[Docket No. WTO/DS381] WTO Dispute Settlement Proceeding Regarding United States--Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products *74 FR 18433-18434*, April 22, 2009.

The Week Ahead

- On Wednesday, April 29, the ITC will hold a conference on the preliminary phase countervailing duty investigation into oil country tubular goods from China.