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Trade Briefs

USTR Files WTO Case Against Chinese Export Restraints

On June 23, U.S. Trade Representative (USTR) Ron Kirk announced that the U.S. was filing a request with the World Trade Organization (WTO) for consultations with China over its export restraints on various raw materials. The USTR asserts that China's export restrictions unfairly advantage its domestic industry and violate its agreements as a WTO member. The European Union (EU) made a concurrent request regarding Chinese export restrictions with the WTO.

The USTR contends that China maintains a number of policies that restrain exports of certain raw materials. These materials include bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus, and zinc. These inputs are used to make a variety of processed products such as steel, aluminum, and chemicals. Many of these raw materials, therefore, are essential for the production of an enormous number of downstream products.

The USTR asserts that China employs: export quotas, export duties that raise the export price for these materials, export licensing, minimum export price requirements, and export quota administration procedures that limit eligible exporters. Export quotas are prohibited under WTO rules. Also, China explicitly committed not to impose widespread export duties or taxes when it joined the WTO. The WTO also generally prohibits export licensing and minimum export prices.

The USTR also points out that China is one of the top producers for many of these products (and in some cases it is the world's largest supplier). Therefore, China's export restraints potentially play a major factor in inflating the global price of these raw materials. Furthermore, these export restraints give domestic Chinese industries an enormous advantage.

The WTO dispute settlement process calls for two countries in a dispute to consult within 30 days of such a request. If they are unable to resolve the dispute satisfactorily, the country that requested the consultations—in this case, the U.S.—has the right to request that the WTO form a dispute settlement panel to consider the matter.

In its fact sheet, the USTR points to a number of previous cases where the WTO process helped to resolve disputes between the U.S. and China. Some of these cases were resolved during the consultation phase and some required the formation of a panel. It is not clear how difficult this case will prove to resolve.

There was generally a positive reaction from leaders in Congress to the request for WTO consultations. Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) praised Kirk's action, saying that China's policies were unfair to American workers and should be changed.

Labor unions were strongly in favor of this filing. The United Steelworkers (USW) said they supported the USTR, but they also said that this move was "only the first step in what must be a comprehensive approach" to rein in unfair Chinese practices. Interestingly, pro-trade groups voiced support for Kirk. The National Foreign Trade Council (NFTC) said in a statement that they "applaud" the USTR's assertion of its rights under the

WTO. The National Association of Manufacturers (NAM) identified Chinese export restraints as "clear violation[s]" of China's WTO commitments and said that the filing of this case was a "further sign of maturity" in the bilateral relationship.

China dismissed the USTR's accusations of unfair trade policy. The Chinese Ministry of Commerce said that these export policies were primarily intended to "protect the environment and natural resources." Regardless, China said that it would comply with the request for consultations. In what some believe is retaliation for the USTR's request, China requested consultations with the U.S. on the subject of U.S. restrictions on Chinese poultry.

The broad and bipartisan support for this WTO request prove that this action is a political winner for the Obama Administration. Furthermore, the contemporaneous EU filing means that China's export restrictions are widely viewed as unfair. It is possible that retaliatory actions between the U.S. and China could escalate. Already, the atmosphere for trade is tense, and this could make trade relations even more difficult.

ACES Passes, Could Affect Trade

Late on Friday, June 26, the U.S. House of Representatives voted in favor of H.R. 2454, the American Clean Energy and Security Act (ACES). The bill is energy legislation that will aim to reduce greenhouse gas emissions through a cap-and-trade plan as well fund research and development into alternative and renewable energy sources. H.R. 2454 also contains some trade-related provisions that could affect the United States' major trading partners like Japan.

Summary of ACES

ACES's centerpiece is a type of cap-and-trade plan for curbing carbon emissions. Cap-and-trade is a system in which emissions are capped at a predetermined amount, and the government then distributes a finite number of permits for those businesses that are carbon emitters. These permits can be traded or auctioned between emitters, thereby artificially establishing a price for emissions. The theory is that businesses will then have an extra incentive not to emit carbon and will eventually adopt newer technologies that allows them to operate cleanly and efficiently.

In the ACES plan, the cap on emissions would not be very constraining to businesses, and 85% of the permits would be given away instead of sold. More liberal members of Congress and some environmental groups see the bill as inadequate to deal with the threat of climate change. However, the cap would get more severe over time. The goal of the ACES Act would be to cut the U.S. carbon footprint by 80% by 2050.

Even though only 15% of permits would be sold, the ACES cap-and-trade system would still produce considerable revenue. ACES would take that revenue and use it to offset energy costs for low-income and middle-income households, prevent international deforestation, help the U.S. adapt to negative effects of climate change, conduct research and development of advanced clean-energy technologies, and a number of other energy-related initiatives.

ACES would also substantially tighten energy-efficiency standards in power generation, vehicle propulsion, and building construction.

Trade Implications

With regard to international trade, ACES seeks to change the behavior of carbon emitters while also shielding domestic industries that may be hurt by these changes. Therefore, ACES uses the threat of future border measures as well as rebates for domestic industries affected by trade.

ACES requires certain border measures—tariffs—to go into effect if there is no international climate change agreement that also adequately compensates for competitiveness issues. According to the bill, starting in 2020, the president is required to impose a border adjustment on goods from nations that do not act to limit their carbon emissions. The president would need congressional approval to waive any border adjustment.

Also, ACES would provide rebates for trade-sensitive industries to offset the costs of carbon permits. However, these rebates may be considered export subsidies under the World Trade Organization (WTO), because their distribution will be limited to certain industries. This limitation would provide a benefit to a specific group and would therefore be prohibited for WTO signatory nations.

The Future of ACES

In general, the media and political commentators have been skeptical of the chances for passage of major climate change legislation. ACES was authored by Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Energy and Environment Subcommittee Chairman Edward Markey (D-MA), two powerful liberal Members of Congress. Waxman and Markey had been working on the bill for months, and many believed that it was too ambitious and too controversial to be introduced this Summer. Healthcare reform was seen as the top priority, and many political observers doubted that the Congress would be able to consider both energy and healthcare at the same time. It was a surprise when it became clear that the House of Representatives would consider the legislation and hold a vote before the Summer recess.

The legislation appears to have some momentum with its passage in the House, but it is not clear where it will go from here. The final vote was close, with 219 in favor and 212 against. 44 Democrats voted against the bill. It is not at all clear that this legislation or any major energy reform legislation will be passed this year.

Now, the legislation will now go to the U.S. Senate, where the debate will start once again and Senators will offer amendments. It is impossible to know how ACES will change, but it is likely that it will change in the more moderate Senate.

President Obama has praised the bill as an important first step. However, President Obama spoke out against border adjustments as part of ACES. Obama said that he does not want to send "protectionist" signals.

Dumping Watch

Chinese Wire Strand AD, CVD Cases Initiated

On June 23, the Department of Commerce (DOC) gave notice that it was initiating antidumping (AD) and countervailing duty (CVD) investigations into prestressed concrete wire strand (PC strand) from China.

AD Case

On May 27, 2009, three domestic companies—the American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Corp.—filed a petition with the DOC alleging that imports of PC strand from China are being or are likely to be sold in the U.S. at less than fair value (LTFV) and that such imports materially injure or threaten to materially injure an industry in the U.S. The DOC decided that the petitioners filed the petition on behalf of the domestic industry and that they have demonstrated sufficient industry support for an AD investigation. Therefore, the DOC will initiate an AD investigation into Chinese PC strand. Based on data provided by the petitioners and a comparison of export price to normal value, the DOC has estimated that the dumping margins for Chinese PC strand are likely to range from 140.16% to 314.59%. By July 13, the International Trade Commission (ITC) will preliminarily determine whether there is a reasonable indication that imports of the subject merchandise materially injure or threaten material injury to a domestic industry. In order to obtain a separate rate, exporters and producers must submit an application within 60 days. The DOC will make its preliminary determinations no later than 140 days after the date of this initiation.

CVD Case

On May 27, 2009, the same three domestic companies filed another petition with the DOC alleging that manufacturers, producers, or exporters of PC strand from China receive countervailable subsidies and that their imports materially injure or threaten to materially injure an industry in the U.S. As in the AD case, the DOC decided that the petitioners filed the petition on behalf of the domestic industry and that they have demonstrated sufficient industry support for a CVD investigation. Therefore, the DOC will initiate a CVD investigation into Chinese PC strand. In its CVD investigation, the DOC will include a number of programs alleged to provide countervailable subsidies: Loan Programs; Government Provision of Goods and Services for Less than Adequate Remuneration (LTAR); Income and Other Direct Taxes; Indirect Tax and Tariff Exemption Programs; Grant Programs; and Preferential Income Tax Subsidies for Foreign Invested Entities (FIEs). The DOC will not include the following programs alleged to benefit producers and exporters of Chinese PC strand: Export Loans; Stamp Tax Exemption and Waiver of Administrative Charges for State-Owned Enterprises (SOEs) Undergoing Mergers or Restructurings; Export Assistance Grants; Provision of Land to SOEs for LTAR; Government Provision of Land at LTAR to Companies Located in Development Zones; Government Restraints on Exports of Wire Rod; Tax Reduction for Enterprises Making Little Profit; and China's Enforced Undervaluation of Its Currency. The DOC will make a decision regarding respondent selection within 20 days. The DOC is now inviting comments regarding Customs and Border Protection (CBP) data and respondent selection, and it will accept such comments over the next 7 days. The ITC was notified of this initiation and within 25 days will preliminarily

determine whether there is reasonable indication that imports of subsidized PC strand are causing or are threatening to cause material injury to a U.S. industry.

Chinese Steel Grating AD, CVD Cases Initiated

On June 25, the DOC gave notice that it was initiating AD and CVD investigations into certain steel grating (CSG) from China.

AD Case

On May 29, 2009, Fisher & Ludlow and Alabama Metal Industries Corporation (AMIC) filed a petition with the DOC alleging that imports of CSG from China are being or are likely to be sold in the U.S. at LTFV and that such imports materially injure or threaten to materially injure an industry in the U.S. The DOC decided that the petitioners filed the petition on behalf of the domestic industry and that they have demonstrated sufficient industry support for an AD investigation. Therefore, the DOC will initiate an AD investigation into Chinese CSG. Based on data provided by the petitioners and a comparison of export price to normal value, the DOC has estimated that the dumping margins for Chinese CSG are likely to range from 134.51% to 145.18%. By July 13, the ITC will preliminarily determine whether there is a reasonable indication that imports of the subject merchandise materially injure or threaten material injury to a domestic industry. In order to obtain a separate rate, exporters and producers must submit an application within 60 days. The DOC will make its preliminary determinations no later than 140 days after the date of this initiation.

CVD Case

On May 29, 2009, the same two domestic companies filed another petition with the DOC alleging that manufacturers, producers, or exporters of CSG from China receive countervailable subsidies and that their imports materially injure or threaten to materially injure an industry in the U.S. As in the AD case, the DOC decided that the petitioners filed the petition on behalf of the domestic industry and that they have demonstrated sufficient industry support for a CVD investigation. Therefore, the DOC will initiate a CVD investigation into Chinese CSG. In its CVD investigation, the DOC will include the following programs alleged to provide countervailable subsidies: Government of China (GOC) Provision of Inputs for Less than Adequate Remuneration (LTAR); GOC Provision of Land-Use Rights to State-Owned Enterprises (SOEs) for LTAR; GOC Income Tax Programs; GOC VAT Programs; GOC Loan Programs; GOC Grant Programs; and Provincial/Municipal Programs. The DOC will not include the following programs alleged to benefit producers and exporters of Chinese CSG: GOC Policy Lending and Directed Credit to Steel Producers; Discounted Loans and Interest Rate Subsidies under the Liaoning Province Framework; Grants to Steel Producers for Environmental Purposes. The DOC will make a decision regarding respondent selection within 20 days of their giving notice of initiation. The DOC is now inviting comments regarding CBP data and respondent selection, and it will accept such comments over the next 7 days. The ITC has been notified of this initiation and within 25 days will preliminarily determine whether there is reasonable indication that imports of subsidized CSG are causing or are threatening to cause material injury to a U.S. industry.

Federal Register Notices

International Trade Administration

[Docket No. 080102004-9266-02; FDMS Docket No. ITA-2009-0002] RIN 0625-AA75 Changes in Procedures for Florence Agreement Program 74 FR 30462-30463, June 26, 2009.

Proposed Information Collection; Comment Request; Advocacy Questionnaire 74 FR 30524, June 26, 2009.

[A-570-865] Rescission and Preliminary Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from The People's Republic of China 74 FR 30525-30527, June 26, 2009.

[A-549-817] Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Notice of Partial Rescission of Antidumping Duty Administrative Review 74 FR 30524-30525, June 26, 2009.

[A-570-947] Certain Steel Grating from the People's Republic of China: Initiation of Antidumping Duty Investigation 74 FR 30273-30278, June 25, 2009.

[C-570-948] Certain Steel Grating From the People's Republic of China: Initiation of Countervailing Duty Investigation 74 FR 30278-30281, June 25, 2009.

Application(s) for Duty-Free Entry of Scientific Instruments 74 FR 30046, June 24, 2009.

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part 74 FR 30052-30054, June 24, 2009. [A-570-822]

Certain Helical Spring Lock Washers from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2007-2008 Antidumping Duty Administrative Review 74 FR 29669-29670, June 23, 2009.

[A-570-945] Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Antidumping Duty Investigation 74 FR 29665-29669, June 23, 2009.

[C-570-946] Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Countervailing Duty Investigation 74 FR 29670-29674, June 23, 2009.

[A-552-801] Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews 74 FR 29473-29474, June 22, 2009.

Manufacturing and Services' Sustainable Manufacturing Initiative; Update 74 FR 29475-29476, June 22, 2009.

International Trade Commission

[Inv. No. 337-TA-565] In the Matter of Certain Ink Cartridges and Components Thereof Consolidated Enforcement Proceeding and Enforcement Proceeding II; Notice of a Commission Determination Not To Review an Enforcement Initial Determination Finding a Violation of Cease and Desist Orders and a Consent Order; Schedule for Filing Written Submissions on Civil Penalties 74 FR 30320-30321, June 25, 2009.

[Investigation No. TA-421-7] Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China; Determination 74 FR 30321, June 25, 2009.

[Investigation No. 337-TA-667 and Investigation No. 337-TA-673] In the Matter of Certain Electronic Devices, Including Handheld Wireless Communications Devices;

Notice of Commission Determination Not To Review an Initial Determination Granting Motion To Amend the Notice of Investigation *74 FR 30321-30322*, June 25, 2009.

[USITC SE-09-018] Government in the Sunshine Act Meeting Notice *74 FR 30110*, June 24, 2009.

[Investigation No. 337-TA-663] In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation *74 FR 29716*, June 23, 2009.

[Inv. No. 337-TA-679] In the Matter of Certain Products Advertised as Containing Creatine Ethyl Ester; Notice of Investigation *74 FR 29717*, June 23, 2009.

The Week Ahead

- On June 29, the ITC will hold a vote on the safeguard investigation into tires from China.
- On June 30, the ITC will hold a hearing on its factfinding investigation into the Caribbean Basin Economic Recovery Act.
- On July 3, the ITC will be closed for the Independence Day holiday.