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Trade Briefs

USTR Releases Report to Congress on China's WTO Compliance

As you may be aware, the United States Trade Representative (“USTR”) released its ninth annual Report to Congress on China’s WTO Compliance. It builds on the previous report of 2009 and notes the progress made in order to get China to fully commit to its obligations outlined in its accession agreement. Below we provide an analysis of this report.

Due to the U.S.-China Relations Act of 2000, USTR is required to report annually on China’s compliance within the WTO. As required in its accession, China was obligated to implement its commitments by December 11, 2006. The report claims that the Chinese government has not taken the necessary steps to comply with all of its obligations. In 2010, there were a number of concerns by the U.S. and other WTO members in regards to the increasing intervention by the Chinese government in the markets and the increasing presence of state-owned enterprises.

The USTR report acknowledges the steps taken by the Chinese government in order to follow through on its WTO obligations. For instance, it points to tariff reductions, the elimination of non-tariff barriers which have discriminated against foreign investors in the past, and the improvement in protecting intellectual property rights. However, USTR argues that China continues to distort trade flows by intervening in the markets and providing overt subsidies as a means of protecting domestic industries. It also highlights the disparity between the central and provincial governments. It states that each operates differently making it even more difficult to address transparency concerns.

Developments in 2010

In 2010, the U.S. and China continued their dialogue through the U.S.-China Strategic and Economic Dialogue (“S&ED”) and the U.S.-China Joint Commission on Commerce and Trade (“JCCT”). President Hu Jintao is scheduled to meet President Obama in January and the Obama administration has been tasked with pressing the Chinese leader on outstanding trade issues.

The report highlights a number of areas where improvements have been made. For example, the U.S. was able to get China to commit itself to protect intellectual property rights (“IPR”) through its software legalization program and by dedicating itself to prevent piracy of academic journals. In addition it agreed to stop providing government procurement preferences for goods which are based on the location where the IPR was developed.

Outside of serious commitments, the U.S. notes that China has agreed to revise its industrial equipment catalogue which tends to discriminate against foreign companies. It has showed willingness to reopen talks on U.S. beef imports and agreed to be more transparent when developing electrical standards.

While progress continues, there are still a number of concerns with intellectual property rights, industrial policy, trading rights, agriculture, and transparency.

Intellectual Property Rights

The WTO Agreement on Trade Related Aspects of Intellectual Property Rights has helped protect IP rights, however, China still has room for improvement in the area of copyright protections. The most immediate concern for the U.S. is the lack of enforcement of IPR by the Chinese government. It is the primary challenge which affects China's compliance in the WTO. The report cites the \$3.5 billion in losses in 2009 to the music and software industries alone. This lack of enforcement has lead USTR to list China under its Priority Watch List. The number mentioned above also reflects lack of improvement in this area from 2009 to 2010. The report claims that the S&ED and the JCCT remain the main venues for addressing these concerns, but it also states that the U.S. is ready and willing to settle this issue through the WTO dispute settlement body if needed.

Industrial Policy

In terms of industrial policy, the USTR report has identified China's policy as being one of the most contentious issues for the United States. It argues that China actively disrupts market access for foreign products in order to product market share for its domestic industries. It claims that the government discriminates against foreign products and suppliers by providing resources and contracts for those companies supporting domestic industries.

USTR points to the indigenous innovation policy to support these claims. It argues that China has used this policy to ensure support for Chinese companies and to promote domestic development. It also restricts foreign investment in a variety of industries and favors those companies which purchase or develop products within China. The report argues that the indigenous innovation policy makes it virtually impossible for foreign companies to compete with domestic ones for government procurement contracts. In addition, the report highlights the continuing use of export restraints which has forced the U.S. to file a WTO case against them. Furthermore, in 2010 China placed export restraints on rare earth materials, which has led some countries to question whether they can rely on China to continue a stable flow of supply.

Trading Rights

In terms of trading rights, USTR states that China continues to restrict the importation and distribution of copyright intensive products such as books, newspapers, journals, and films. However, the U.S. successfully filed a WTO case against China in this area. China has agreed to lift these restrictions in the coming year.

Agriculture

While the U.S. continues to enjoy a trade surplus with China in the agriculture sector, the report claims that China's role in this area raises a number of concerns for the U.S. government. The report states that China continually intervenes in the market through its questionable regulatory regime. It has delayed shipments, most notably on those of poultry, pork, and beef. Despite international guidelines stating absolute safety to trade, China continues to ban imports on U.S. beef. It is expected that the U.S. government will choose to address these issues through the JCCT in 2011.

Transparency

The USTR report identifies transparency as being one of the most important issues in terms of China's WTO compliance. It states China has delayed the implementation of a single official journal for all government ministries. It has yet to adopt an individual journal for published trade related measures and has not implemented a notice and comment procedure for new measures. Establishing such a system would significantly improve transparency.

Developments in 2011

For 2011, it is expected that the Obama administration will continue to pursue dialogue primarily through the S&ED and the JCCT. It is likely that the President will press China to continue the progress made in 2006 onwards. A major concern that may be addressed this year is to reduce the amount of government intervention in the markets. While the U.S. has been relatively successful in getting China to improve transparency, the USTR report states that the U.S. will continue to enforce trade remedy laws and utilize the dispute settlement mechanism within the WTO.

Dumping Watch

Notice of the Fourth Remand Proceeding With Respect to its Affirmative Determination in the Five-Year Review of the Antidumping Duty Order on Ball Bearings from Japan

On January 6, 2010 the International Trade Commission ("ITC") gave notice of its fourth remand proceeding with respect to its affirmative determination in the five-year review of the antidumping duty order on ball bearings from Japan.

The Court of International Trade ("CIT") issued an opinion in *NSK Corp. et al. v. United States* on December 9, 2010 which affirmed-in-part and remanded-in-part the ITC's determinations on imports of the subject merchandise from Japan and the United Kingdom. The CIT affirmed the ITC's findings that the imports would have significant volume and price effects. In regard to the impact by these imports, the CIT remanded the issue to the Commission.

On December 20, 2010 the ITC filed its status report with the CIT and advised that it would not re-open the record. The Court approved the scheduling order submitted by the ITC and directed it to file a fourth remand determination by March 1, 2011.

Final Results of the Expedited Third Five-Year (Sunset) Review of the Antidumping Duty Order for Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea

On January 7, 2010 the Department of Commerce ("DOC") gave notice of the final results of the expedited third five-year (sunset) review of the antidumping duty order for polyethylene terephthalate film ("PET film") from Korea.

The Department first initiated the third sunset review on September 1, 2010 for imports of PET film. On October 1, 2010 the DOC received a notice of intent to participate from the

following domestic producers: DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. None of the respondent parties chose to participate in this review.

The domestic producers argued that revocation of the order was likely to lead to a continuation of dumping because it has continued even after the order was put into place. In addition, they claim that imports of PET film have declined as a result. They also stated that the decline in imports is a direct result of the 2008-2009 recession and argued that dumping is likely to occur as economies improve. The amount of imports decreased from 30,612,759 in 2005 to 19,634,807 in 2009. The Department agreed with petitioners on this claim and stated that the level of imports remain above de minimis levels.

As a result the Department issued the following antidumping margins from the Less Than Fair Value investigation:

Manufacturers/ Exporters	Weighted- Average Margin (%)
SKC Limited	13.92
All Others Korea Rate	21.50

Federal Register Notices

International Trade Administration

[A-570-918] Steel Wire Garment Hangers from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review 76 FR 1134-1135, January 7, 2011.

[A-570-933] Frontseating Service Valves from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Order 76 FR 1135, January 7, 2011.

[A-580-807] Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of the Expedited Third Five-Year (Sunset) Review of the Antidumping Duty Order 76 FR 1135-1136, January 7, 2011.

[A-570-934] 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision and Correction to Notice of Decision of the Court of International Trade Not in Harmony 76 FR 772-773, January 6, 2011.

[A-570-504] Petroleum Wax Candles from the People's Republic of China: Continuation of Antidumping Duty Order 76 FR 773, January 6, 2011.

[A-570-868] Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the New Shipper Review 76 FR 774, January 6, 2011.

[A-201-836] Light-Walled Rectangular Pipe and Tube from Mexico: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review 76 FR 774, January 6, 2011.

[A-570-831] Fresh Garlic from the People’s Republic of China: Extension of Time Limit for the Final Results of the New Shipper Review 76 FR 775, January 6, 2011.

[A-570-900] Diamond Sawblades and Parts Thereof from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review 76 FR 775-776, January 6, 2011.

[A-570-967] Aluminum Extrusions from the People’s Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value 76 FR 323-327, January 4, 2011.

[A-427-801] Ball Bearings and Parts Thereof from France: Partial Rescission of Antidumping Duty Administrative Review 76 FR 327-328, January 4, 2011.

[C-570-971] Multilayered Wood Flooring from the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation 76 FR 92 January 3, 2011.

International Trade Commission

[Investigation No. 731-TA-394-A and 399-A (Second Review)(Fourth Remand)] Ball Bearings from Japan and the United Kingdom; Notice of Remand Proceedings 76 FR 798-799, January 6, 2011.

[Investigation No. 337-TA-754] In the Matter of Certain Handbags, Luggage, Accessories, and Packaging Thereof; Notice of Investigation 76 FR 585-586, January 5, 2011.

[Investigation No. 337-TA-753] Certain Semiconductor Chips and Products Containing Same; Notice of Investigation 76 FR 384-385, January 4, 2011.

[Investigation No. 701-TA-302 and 731-TA-454 (Third Review)] Fresh and Chilled Atlantic Salmon from Norway; Institution of Five-Year Reviews Concerning the Countervailing Duty and Antidumping Duty Orders 76 FR 166-168, January 3, 2011.

[Investigation No. 731-TA-457-A-D] Heavy Forged Hand Tools from China; Institution of Five-Year Reviews 76 FR 168-171, January 3, 2011.

[Investigation No. 731-TA-663 (Third Review)] Paper Clips from China; Institution of Five-Year Reviews 76 FR 171-174, January 3, 2011.

The Week Ahead

- The Senate Finance Committee and the House Committee on Ways and Means will not be holding hearings from January 17-21.
- The ITC will hold a hearing on January 25th on the final phase of the antidumping investigation for Polyvinyl Alcohol from Taiwan