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In This Issue

"False Statement" Dispute In U.S.-China Trade Remedy Cases

Communications between the United States and China regarding the issue of "questionable" information submitted to the U.S. Department of Commerce by the Chinese government and Chinese companies during antidumping and countervailing duty proceedings have intensified in recent weeks. U.S. law requires submitters of factual information to certify in writing that the information is accurate and complete to the best of the submitter's knowledge. Earlier this year, Commerce strengthened its certification regulations, and the new rule expressly requires signatories to state an awareness of the threat of criminal liability for "individuals who knowingly and willfully make material false statements to the U.S. Government."

The Chinese government strongly objected to the new requirements and asserted, among other things, that both China and its officials are immune from U.S. criminal liability in trade proceedings and that any information submitted by Chinese government officials should be presumed to be accurate. Commerce replied to China's submission and referenced recent cases in which the Chinese government and Chinese companies submitted questionable information. Commerce also concluded that "a motivation for amending the current regulations comes, in part, from recent cases where [Commerce] determined that certain Chinese interested parties, including the government, submitted questionable information during the course of a proceeding."

Of course, submission of "questionable" information may also lead to the calculation of higher antidumping or countervailing duty rates. Thus, multiple tools are being used to deal with the all-too-frequent submission of questionable information by Chinese respondents and the Chinese government in U.S. trade remedy proceedings.

Despite Senate Procedural Agreement, Uncertainty Continues on TAA/FTAs

Senate Majority Leader Harry Reid and Minority Leader Mitch McConnell announced on August 3 a procedural agreement for Senate consideration of legislation to renew the Trade Adjustment Assistance ("TAA") program for workers whose jobs are displaced by imports and to implement the pending Free Trade Agreements ("FTAs") with Colombia, Korea, and Panama. The details of this procedural agreement and its implementation remain unclear. Moreover, there remains a partisan divide regarding expectations as to the ultimate legislative outcome. President Obama and congressional Democrats are insisting that passage of the FTAs be accompanied by passage of TAA renewal, while congressional Republicans are offering only a guaranteed vote on TAA in exchange for the Administration submitting the FTAs under special fast track procedures, with no guarantee that TAA renewal will pass.

The timeframe for moving forward on the FTA/TAA legislative package, regardless of how the legislative procedure is ultimately structured, is also uncertain. This is because of the limited number of legislative days in September and the pressing need for Congress to focus on budget and appropriations issues before expiration of the current fiscal year on September 30. These considerations have led a number of interested observers to speculate that Congress may not vote on TAA and the FTAs until October or even later. On a related matter, Senate confirmation of nominees to several important trade positions in the Commerce Department, Office of the US Trade Representative, and the International Trade Commission also remains uncertain, as 44 Republican senators have pledged to block the confirmation of all Administration nominees to trade-related positions until President Obama submits the pending FTAs to Congress.

Brazilian President Announces Plan To Revive Manufacturing

Brazilian President Dilma Roussef recently announced the Brasil Maior (Bigger Brazil) industrial competitiveness plan that provides new incentives for Brazilian manufacturing. Brasil Maior's slogan, "Innovate to Compete, Compete to Grow," set the tone for the multifaceted plan announced August 2.

In recent years, the Brazilian Real's appreciation has made Brazilian products more expensive on the global market. Brazilian manufacturers also face competition in Brazil from lower cost imports manufactured in countries with weaker currencies. As a result, Brazilian manufacturing has declined, thus prompting this comprehensive response from the Brazilian Government.

Under the plan, the Brazilian government will provide tax cuts to certain industries, increase surveillance of unfair imports, institute a "Buy Brazil" plan for government purchases, and increase manufacturing support available through the Brazilian Development Bank.

From October 2011 through the end of 2012, $US 16 billion in tax cuts will be provided to manufacturers in Brazil. Initially, the tax cuts will be limited to labor-intensive industrial sectors that are suffering from import competition. Exemptions from Brazil's IPI industrial products tax and PIS-Cofins welfare tax will be provided to apparel, shoe, furniture, and software industries. The cuts may be extended to other industries if they successfully increase manufacturing.

In an effort to reduce unfair import competition, Brasil Maior provides for increased actions against imports being sold at "dumped" prices and heavier surveillance of imports, which may be evading existing antidumping orders. An August 6 *Economist* article regarding Brazil's new policies reported that "Chinese manufacturers are rumored to be evading antidumping tariffs by shipping via third countries."

Brasil Maior allows the government to pay a 25 percent premium (over the lowest price) for Brazilian origin products and services that meet certain employment, income generation, and technological innovation standards. The Brazilian Development Bank will offer credit lines for companies investing in innovative technology, loans for industrial sectors most affected by exchange rate appreciation, funding for micro, small, and medium-sized enterprises, and loans for investments that increase professional and technical employment.

Under certain conditions, tax exemptions and other government incentives, such as those instituted under Brasil Maior, may be found inconsistent with World Trade Organization agreements.

China Fails To Increase Its 2011 Quota For Rare Earth Materials

China announced in July that it would extend and further tighten its export quotas on rare earth materials for the second half of 2011. U.S. manufacturers of downstream products will continue to experience high prices for rare earth materials as a result. China's decision to continue its export quotas for rare earth materials, however, has drawn criticism from its trading partners, indicating a possible action at the World Trade Organization.

Rare earth materials are a group of 17 minerals, which are widely used in high-technology products such as hybrid cars, tablet computers, high-performance magnets, and light-emitting-diode phosphors. Rare earth materials also have defense applications. China controls 97 percent of the global rare earth materials' market. In July 2010, China significantly reduced its export quotas on rare earth materials, causing world prices for rare earth materials to greatly increase compared to domestic Chinese prices. This new announcement extends the 2010 quotas and added a new product - ferro-alloys - to the list.

China's export quota on rare earth materials presents a significant trade issue. Export restraints, such as quotas, create competitive disadvantages to foreign producers by artificially increasing the world market price of the restrained materials, while concurrently providing a competitive advantage to domestic producers by lowering the domestic price. This disequilibrium becomes particularly pronounced when the country imposing the export restraints controls a significant portion of the restrained materials and when those materials comprise a significant portion of the downstream product's cost of production.

The announcement comes only weeks after the release of a WTO panel report ruling against China on similar export restrictions for certain other raw materials. When acceding to the WTO, China agreed to eliminate all quantitative export restrictions, including quotas. Although the parallel fact patterns between these two export restraints indicate that China would lose a WTO challenge to these recent export quotas, observers caution against dismissing China's rare earth export quotas outright. In the raw materials case, China's defense on environmental grounds was rejected because, *inter alia*, China failed to prove that it had limited domestic production and consumption in addition to the export disciplines. China, however, has introduced stronger environmental considerations into its legislation because the extraction of rare earth materials is highly polluting, and China has limited domestic production of rare earth materials. Although China may have strengthened its defense, the threshold for an environmental exception from a member's WTO obligations is high.

News of Note

FAA Shutdown Has Significant Impact On Manufacturing Jobs

The Federal Aviation Administration's recent two week partial shut-down forced stop-work orders on more than $7 billion in contracts and temporarily laid off more than 4,000 FAA employees and 70,000 private-sector contractors. The shutdown was a result of Congress' failure to reach an agreement on the funding of the FAA, and in particular over the funding of rural airports. Over 200 airport construction projects were halted during the two week period, leaving many without pay during this time. The government also lost about $30 million a day in uncollected airline ticket taxes after the shutdown began on July 23.

President Obama signed on August 5 a six-week funding extension of the FAA, which will expire on September 16. Congress has until then to come to a long-term agreement on FAA-reauthorization or pass another extension.

Japan Takes Action To Protect Its Businesses From The Rising Value of the Yen

The Japanese Government is trying to minimize the effects of the increasing value of the yen in an attempt to protect the country's economic recovery in the aftermath of the March earthquake and to reverse the decline in Japan's exports. Some experts believe that the surge in the yen after the earthquake was related, in part, to the repatriation of foreign denominated funds by Japanese multinational companies back into the yen to cover costs in Japan. Despite currency intervention actions in March by Japan in conjunction with the Group of Seven countries and in early August by Japan alone, the yen has steadily risen against the dollar, thereby making Japan's exports more expensive overseas and eroding the value of overseas earnings when converted into yen.

The Japanese Government announced on August 24 a package that would aid Japanese businesses in remaining competitive in the face of a strong yen. The two key parts of the package are a $100 billion fund comprised of low interest loans to encourage overseas acquisitions and purchases of foreign natural resources, as well as a new rule requiring major financial institutions to report their currency-trading positions.

Incoming Prime Minister and former Finance Minister Yoshihiko Noda has stated that the government had not ruled out intervening in the currency market, saying: "The government will take resolute action in the foreign-exchange market if necessary."

This is not Japan's first foray into currency intervention. From January 2003 to March 2004, Japan engaged in over 100 interventions in the currency market. In September 2010, Japan conducted a one-day currency intervention.

China Extends Tax Incentives for Investments in Western Regions

On July 27, the Chinese government extended certain tax incentives granted to both domestic and foreign-invested companies invested in China's Western Regions. This action, effective as of January 1, 2011, was announced in the Chinese government's tax notification titled Cai Shui [2011] No. 58 and extends and clarifies the incentives outlined in Cai Shui [2001] No. 202, which expired at the end of last year. According to Cai Shui [2011] No. 58, companies invested in encouraged industries in the Western Regions are entitled to a reduced corporate income tax rate of 15%, compared with the standard rate of 25%, from 2011 to 2020. Companies established prior to December 31, 2010 and engaged in transportation, power, water conservation, postal service, and radio and TV broadcasting industries, may continue to enjoy the "Two Free/Three Half" treatment, *i.e.*, paying no corporate income tax for the first two years and half of the income tax for the following three years. Moreover, imports of equipment for internal use in the encouraged investment projects are exempt from tariffs.

Administration Trade Policy Personnel Update

Former Commerce Secretary Gary Locke was sworn in as U.S. Ambassador to China on August 1st.

President Obama nominated former Edison International CEO John Bryson in May to be the new Secretary of Commerce. In July, Republican Senator James Inhofe of Oklahoma placed a hold on his nomination due, reportedly, to Mr. Bryson's environmental views.

The Senate Finance Committee has a hearing scheduled for September 7 for three other Administration trade nominees: Michael Punke for Deputy U.S. Trade Representative; Paul Piquado for Assistant Secretary of Commerce; and David S. Johanson for a Commissioner of the U.S. International Trade Commission.

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What The Candidates Are Saying…

In This Issue: Congresswoman Michele Bachmann

Congresswoman Michele Bachmann has stated that "[m]y signature legislation would be to change the job climate so that we actually incentivize people to make things in this country again." "That was the greatness of the United States: We made things here, whether it was in a textile center or a precision-manufacturing center."

Manufacturing Revival - A Company Profile

New Balance, the athletic shoe company, is the only U.S. company still manufacturing athletic shoes in the United States. Founded in 1906 and headquartered in Boston, Massachusetts, the company is committed to its American workers and is proof that high quality athletic footwear can be produced competitively in the United States.

In an environment where 99 percent of shoes sold in the United States are imported, New Balance manufactures 25% of its shoes here in the United States and employs approximately 1,000 workers in its five New England factories. It has worked hard to maintain its U.S. facilities by re-investing in the latest technologies and utilizing lean manufacturing in a sector that has largely gone overseas, quite often to Indonesia, Vietnam, and China.

New Balance's commitment has not been without struggle. In 1994, New Balance manufactured as much as 70 percent of its shoes in the United States and now its remaining U.S. facilities could be threatened. One of the company's immediate concerns is the proposed free-trade agreement - the Trans-Pacific Partnership - with Vietnam and other countries. The agreement may eliminate the existing tariff on footwear imported from that country, making Vietnamese sneakers even cheaper than they already are. If that happens, the last remaining U.S. shoe manufacturing facilities could be in jeopardy.

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