

Regulation of Business, Trade and Competition in China

Welcome to this month's bulletin of updates on the regulation of business, trade and competition in China.



Antitrust & Competition

AML authorities seek outside views on draft AML implementation rules

On December 4, the Anti-Monopoly Bureau under the Ministry of Commerce (MOFCOM) invited legal and economic experts to discuss and comment on draft implementation rules relating to concentration reviews under the Anti-Monopoly Law (AML). This included rules on how the relevant market should be defined in a given case, rules on the calculation of turnover of financial companies, and rules on evidence collection for concentration reviews.

On a related note, the State Administration for Industry and Commerce (SAIC) also invited legal and economic experts to discuss and comment on two new sets of draft procedural regulations relating to AML enforcement, including (i) regulations regarding procedures for conducting investigations and imposing sanctions in connection with violations relating to monopoly agreements and abuse of dominance, and (ii) regulations relating to the enforcement of prohibitions against acts that exclude or restrict competition by abuse of executive power. This is a sign that implementing rules are on the way, and some of these rules may be promulgated within the next few months.

Dispute Resolution

Supreme People's Court releases Interpretation to Protect Parties' Rights in Retrial Applications

On November 30, 2008, the Supreme People's Court released the Supreme People's Court Interpretation of Several Issues Concerning the Procedure for Trial Supervision of the Civil Procedure Law (the "**Retrial Interpretation**"). The purpose of the Retrial Interpretation is to make explicit a party's retrial procedural rights and to standardize trial supervision procedures. The Retrial Interpretation sets forth the following major matters:

1. The procedure for the People's court to accept retrial applications;
2. The trigger events of retrial;
3. Methods of review by court;
4. Division of retrial cases among the superior courts and inferior courts; and
5. Issues relating to new evidence. The Retrial Interpretation took effect on December 1, 2008.

For more information please refer to http://www.chinacourt.org/flwk/show.php?file_id=131689
Please note this link is to a Chinese language website.

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Intellectual Property

United States and Mexico Request WTO Consultations with China over alleged preferential treatment of Chinese “famous brands”

The Office of the United States Trade Representative (USTR) announced that the US has requested World Trade Organization (WTO) dispute settlement consultations with China regarding various programs of the Chinese government, at both the central and local levels, to promote Chinese brands and the worldwide sales of merchandise bearing such brands. The USTR alleges that these Chinese government programs include export subsidies prohibited under WTO rules. The alleged subsidies include cash grants for exports, preferential loans for exporters, research and development funding to create new products for export, as well as payments to lower the cost of export credit insurance. Sectors that allegedly benefit from these programs include household electronic appliances, textiles and apparel, light manufacturing industries, agricultural and food products, metal and chemical products, medicines, health products, and products with high-technology content. The USTR states that the accused subsidies appear to be granted on the condition that the recipients meet certain export performance criteria and violate the WTO Agreement on Subsidies and Countervailing Measures.

International Trade

State Council announces 2009 import and export tariffs

On December 15, 2008, the State Council passed the 2009 Tariff Enforcement Package, which adjusts customs import and export tariff rates for 2009, including most-favored nation (MFN) rates, temporary tariff rates, conventional tariff rates, and preferential tariff rates. In line with its WTO tariff concession obligations, China will lower import duties on five commodities, impose specific or composite duties on 55 items, including frozen poultry, malt beer and petroleum oils, and reduce specific duty rates on 11 types of film products. China will continue the import tariff quota management system on three kinds of fertilizers and on seven kinds of agricultural products, including corn, rice and wheat. Export tariffs under the "Export Tariff Schedule" will remain unchanged. China will also lower import tariff rates in line with tariff reduction and elimination schedules in a number of free trade agreements (FTA) to which China is a signatory party, including with ASEAN, Chile, New Zealand, Pakistan, Singapore and the Asia-Pacific Trade Agreement (APTA).

After the adjustments, the average tariff rate will remain at 9.8 percent, the same level as in 2008. The tariff adjustments reflect the government's policy in 2009 towards supporting agricultural and rural development, promoting high- and new-tech development, encouraging energy conservation and environmental protection, and facilitating development of certain industries, such as textiles, steel, and chemical fertilizers. The changes are effective as of January 1, 2009.

For more information please refer to:
http://gss.mof.gov.cn/guanshui/zhengwuxinxi/zhengcefabu/200812/t20081217_99597.html
Please note this link is to a Chinese language website.

China and US act to enhance food safety cooperation

On November 18, 2008, the Chinese Minister of Health (MOH) Chen Zhu and the US Secretary of Health and Human Services Mike Leavitt co-chaired a meeting in Beijing to discuss Sino-US food safety policies under the theme of "Enhancing Cooperation between Food Safety Inspection Agencies." Minister Zhu briefed on the food safety related work in which the Chinese government is currently engaged. These activities include:

- Preparing for the establishment of a ministerial-level joint conference on food safety supervision and the National Food Safety Science Commission and Consultation Commission. Through the establishment of these bodies, the government will create a multi-agency food safety system coordinated by the MOH.
- Creating a preemptive food safety system and enhancing technical support to ensure food safety.
- Establishing an authoritative system to collect, analyze and release information on food safety. The system will facilitate communication and the exchange of information across governmental agencies, help the government respond to material food safety incidents in a joint manner and provide an authoritative and timely explanation to the public.
- The FDA opened its first overseas office in Beijing on November 19, 2008, and two more offices in Guangzhou and Shanghai on November 20 and 21, respectively. Currently, the FDA's China offices have eight staff members, with four in Beijing, two in Guangzhou and two in Shanghai. The staff includes inspectors and technical experts on regulation, policy, food, medicines and medical devices, and will work with Chinese counterparts to help build capacity and experience and share expertise. The FDA Commissioner stated that these China offices have a mandate to help develop food and drug related standards, conduct on-site inspections of facilities that produce food and drugs for export to the United States, and train local experts to conduct inspections on behalf of the FDA.

- Following the FDA's opening of its three offices in China, it will establish food safety inspection offices in India, the Middle East, Latin America, and Europe to construct a global food safety and inspection network that will help ensure the safety of imported food and drugs at the source. The timeline for China's establishment of an office in the United States remains unclear.

China and US convene fifth Strategic Economic Dialogue in Beijing

US Treasury Secretary Henry Paulson and Chinese Vice Premier Wang Qishan co-chaired the fifth Strategic Economic Dialogue (SED) meeting from December 4 to 5, 2008 in Beijing. The SED, initiated in September 2006, is a high-level forum in which representatives from the two governments meet biannually to discuss "bilateral and global strategic economic issues of common interest and concern." During the fifth SED, the two sides discussed a number of issues, including trade and investment, international economic cooperation, financial services liberalization, food and product safety, and energy and environment, and made the following major achievements:

Investment

The two sides reviewed progress on a proposed US-China Bilateral Investment Treaty (BIT), for which three formal rounds of negotiation have already been held. US and Chinese negotiators are reportedly close to completing a review of the US model BIT. Following this review, Chinese negotiators are expected to provide a response, and the two sides then would work towards producing a bracketed text. The two sides have not set a date for a fourth round of negotiations, but the next round is likely to take place in early 2009.

Food and Product Safety

Food and product safety remained a key issue of concern during the SED talks. The two sides reaffirmed the progress made during the two previous rounds of SED talks and agreed to continue to cooperate on existing initiatives. They also signed a new protocol on cooperation on metrology, standards, and conformity assessment, and established a working group on traditional Chinese medicine, a long-standing area of concern to the Chinese side.

Energy and Environment

Energy and environment is another centerpiece topic of the SED. The two sides reached a consensus on action plans for each of the five goals under the Ten Year Energy and Environment Cooperation Framework. The two sides also agreed to an energy efficiency goal that would seek to improve energy efficiency in buildings, communities and industry and improve consumer recognition of energy efficient products. The United States also expressed its support for China to become a non-OECD member of the International Energy Agency (IEA).

SED's Future

Most observers and analysts agree that high-level bilateral dialogue between the United States and China will continue under the next US Administration; however, much remains unclear about what changes President-elect Barack Obama might make to the two-year old SED. At a minimum, President-elect Obama is likely to change the dialogue's name. The SED is a direct creation of President Bush and a key part of his Administration's economic policy towards China. Changing the SED's name would establish a break between the two Administrations' China policies and allow President-elect Obama to claim ownership of the dialogue process. The Obama Administration might also broaden the dialogue's mandate, although the Obama transition team has offered no concrete details as to what such an expansion might involve. Any expansion would likely depend on what role President-elect Obama views the SED or its successor serving. For its part, China has indicated a strong desire to continue dialogue under the SED or a similar forum. In a congratulatory phone call to President-elect Obama shortly after his election victory, Chinese President Hu Jintao reportedly stated that he hoped the two leaders could elevate the bilateral partnership and strengthen dialogue going forward.

Trade Remedy Cases Involving China

Product	Country of Origin	Petitioner Country	Announcement
Aluminum extrusions	China	Canada	CBSA made preliminary dumping determination and subsidizing investigation on November 17, 2008
Terylene fiber	China, Taiwan India, Indonesia	Argentina	AD investigation initiated on November 18, 2008
MSG	China	EU	EC announced final AD determination on November 27, 2008
Hot-rolled steel products	China, Indonesia, Iran, Japan, Kazakhstan, Malaysia, Philippines, Romania, Russia, South Africa, Saudi Arabia, South Korea, Thailand, Turkey, Ukraine	India	AD investigation initiated on November 28, 2008
Citric acid	China	EU	EC announced preliminary AD determination on December 1, 2008
Tungsten electrodes	China	EU	Partial interim review of AD measures initiated on December 4, 2008
Ring binder mechanisms	China	EU	Expiry review of the AD measures initiated on December 5, 2008
Tow-behind lawn groomers and parts thereof	China	US	DOC announced its affirmative preliminary CVD determination on November 18, 2008
Circular welded carbon quality steel line pipe	China	US	DOC announced its affirmative final CVD determination on November 18, 2008

Business, Trade and Competition at White & Case

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- Ranked Top in Global Bankruptcy 2007—*The Deal*
- Project Finance Team of the Year 2008—*Legal Business*
- Ranked Number One in Global Bank Finance 2007—*Mergermarket Tables*
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