

November 2008

## Regulation of Business and Trade in China Bulletin

Welcome to our redesigned monthly update on the regulation of business and trade in China, which covers recent regulatory changes and news pertaining to antitrust and competition, dispute resolution, intellectual property and international trade.

### Antitrust & Competition

#### Inbev's Acquisition of Anheuser-Busch First Deal to Pass China's New AML

On November 18, 2008, the Ministry of Commerce (MOFCOM) approved Inbev NV/SA's acquisition of Anheuser-Busch Companies Inc. subject to certain conditions per announcement No. 95 of 2008. This is the first acquisition deal that has passed MOFCOM's anti-monopoly review since the Anti-Monopoly Law (AML) took effect in August. The decision took place immediately upon announcement.

Inbev announced its move to acquire all equity interests in Anheuser-Busch at US\$70 per share (or USD\$52 billion in aggregate) on July 13, 2008. Inbev, a company listed in Belgium, has operations in over 30 countries in the Americas, Europe and the Asia-Pacific region. Its business operations in China are located mainly in southeast China, including Jiangsu, Zhejiang and Fujian. Anheuser-Busch, which is listed in the US, runs breweries in over 10 countries and sells beer to over 80 countries and territories. Its operations in China are located mainly in northeast China.

Inbev and Anheuser-Busch achieved turnovers of RMB 5.764 billion and RMB 4.49 billion, respectively in 2007, which meet the reporting thresholds as provided under the State Council's *Regulations on the Reporting Thresholds Regarding Grouping of Business Operators*. Thus, according to Article 21 of the AML, both companies are required to report to MOFCOM before the transaction is completed.

On 10 September, Inbev formally filed a reporting application with MOFCOM together with the relevant reporting materials. At the request of MOFCOM, the reporting party also submitted supplementary information on October 17 and 23. MOFCOM examined the materials and found them complete and in compliance with requirements of Article 23 of the AML. In accordance with Article 27 of the AML, MOFCOM examined the proposed acquisition and held a number of seminars, talks and hearings to listen to views and suggestions of relevant governing bodies, local governments, industry associations, competitors and upstream and downstream enterprises. The examination result shows that, from the perspective of geographical market, product market and general competition status, the acquisition of Anheuser-Busch by Inbev would not lead to exclusion and restriction of competition in China's beer market.

- As the Anheuser Busch/InBev involves large-scale acquisitions and the new company will have a considerably large market share and obvious rise in competitiveness, MOFCOM has decided to impose the following additional and restrictive terms to reduce the possible negative impact on future competition in China's beer market.



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If you have questions or comments regarding this bulletin, please contact:

Christopher Corr  
Partner  
+ 86 10 5912 9618  
ccorr@whitecase.com

Patrick Ma  
Associate  
+ 86 21 6132 5907  
pma@whitecase.com

Samuel Scoles  
Regional Director Asia International  
Trade Advisory Services  
+ 65 6347 1527  
sscoles@whitecase.com

Tong Yu  
Director of China Trade and Investment  
Advisory Services  
+ 86 10 5912 9668  
ytong@whitecase.com

- InBev must not increase its stake in Tsingtao Brewery to over 27%, its existing stake therein;
- InBev shall notify MOFCOM on time if there are changes in the owner of controlling interests either in InBev or in its largest shareholder;
- InBev must not increase its stake in Zhujiang Beer to over 28.56%, its existing stake therein;
- InBev must not seek to buy a stake in China Resources Snow Breweries and Yanjing Brewery.

If InBev wants to make any such deals, it must first notify MOFCOM, and any potential deal must not be implemented before MOFCOM's approval is given.

## Dispute Resolution

### China Initiates First Amendment on the State Compensation Law

On October 23, 2008, China's *State Compensation Law* was submitted to the Standing Committee of the 11th National People's Congress (NPC) for the first deliberation, indicating that China's legislature has started official amendment procedures to revise the Law, which has been in effect for over 10 years.

Major breakthroughs have been made in this amendment in terms of compensation procedures and substantive content. The draft:

- Defines compensation for mental injury for the first time, pointing out that individuals have the right to claim for mental injury compensation from the government if they incur mental injury with severe consequences.
- Adds clauses to guarantee compensation payments and stipulates strict procedures specifying the compensation responsibilities of the relevant government authorities and financial departments.
- Provides more channels for payment claims. Applicants have the right to apply to the compensation committee of the people's court for compensation if they have been denied compensation by the relevant government authorities.
- Spells out the burden of proof for both compensation applicants and the relevant government authorities.

For more information please refer to [http://www.npc.gov.cn/npc/xinwen/syxw/2008-10/28/content\\_1455754.htm](http://www.npc.gov.cn/npc/xinwen/syxw/2008-10/28/content_1455754.htm).

### Supreme People's Court Releases Judicial Interpretations Regarding Execution Procedures for the Civil Procedure Law

On November 3, 2008, China's Supreme People's Court released the Interpretations for Several Issues of Execution Procedures for the Application of the Civil Procedure Law ("Interpretations"), which is scheduled to take effect on January 1, 2009, to strengthen the enforceability of legal decisions by the court. The Interpretations contain 40 clauses providing systematic and comprehensive interpretations and regulations on several systems for the application of the revised Civil Procedure Law, which include enforcement measures, jurisdiction of execution, execution remedies, executing institutions, time limits for execution applications, execution notices, enforcees' property declarations, and deterrence mechanisms. The Interpretations specify relevant rules on the basis of Decisions Concerning Amendments to the Civil Procedure Law of the People's Republic of China approved by the Standing Committee of the National People's Congress on October 28, 2007, thus making the decisions more enforceable.

For more information please visit <http://rmfyb.chinacourt.org/public/detail.php?id=123557>.

## Intellectual Property

### WTO Dispute Settlement Panel Issues Preliminary Ruling on One of Two IPR Cases Brought by the US against China

According to news reports, a World Trade Organization (WTO) dispute settlement panel found that China has violated the WTO's agreement on *Trade-Related Aspects of Intellectual Property Rights* (TRIPs) rules by failing to protect works submitted to China for approval and distribution within China. PRC laws afford copyrighted works protection only after they have been approved for distribution within China, so yet-to-be approved US works could be subject to piracy and the copyright owners are without recourse. There are inconsistent reports regarding whether the panel agreed that China's policies on the disposal of counterfeit goods violates TRIPs Article 59, which requires the destruction or non-commercial disposal of such goods. Under current PRC practice, seized counterfeit goods are only destroyed as a last resort on the theory that useful goods should not go to waste. Customs is allowed to sell the seized goods once the infringing elements of the goods have been removed. Finally, the panel reportedly ruled that neither China nor the US succeeded in proving its respective case on whether China is in compliance with the TRIPs requirement to provide criminal penalties where counterfeiting or piracy is committed on a "commercial scale." Specifically, the panel reportedly did not find in

favor of either side as to whether China's use of volume and revenue thresholds in deciding if criminal sanctions should be imposed on counterfeiters and infringers constitutes a violation of TRIPs. The panel's preliminary ruling is not publicly available, but the final ruling is expected to be released in the near future.

### Patent Law Developments

At the recently held Ambassador's IPR Roundtable in Beijing, the Deputy Director General of the new Patent and Coordination Department of the State Intellectual Property Office (SIPO) indicated that the National People's Congress (NPC) Standing Committee will schedule a second reading of the draft amendments to the PRC Patent Law by the end of the year. It is expected that the NPC will pass the legislation - which will be the third amendment to the *PRC Patent Law* since it was first enacted in 1984 and last amended in 2000 - in early 2009. In conjunction with this legislative development, SIPO recently released a draft version of the *Implementing Regulations for the PRC Patent Law* for public comment. In addition, at the beginning of this month, the State Council released draft revisions to the *Patent Examination Manual* for public comment.

### International Trade

#### State Council Issues Regulations on Dairy Product Quality and Safety

On October 9, 2008, the State Council issued the *Regulations on Supervision and Administration of Dairy Product Quality and Safety* ("the Regulations"). The Regulations' release follows the recent discovery of melamine-tainted milk powder in China. The Regulations mainly establish:

- Responsibilities and legal liabilities of government supervisory authorities;
- A recall system to withdraw defective dairy products from market circulation;
- Eligibility requirements for the milk collection stations to engage in the collection and purchase of raw and fresh milk; and
- Procedures to follow to ensure the quality and safety of dairy products, including measures on cattle breeding, the collection and purchase of fresh milk, and the production and distribution of dairy products.

For more information please visit  
[http://www.gov.cn/zwgk/2008-10/10/content\\_1116657.htm](http://www.gov.cn/zwgk/2008-10/10/content_1116657.htm).

#### China Increases Export Rebate Rates for Some Labor-Intensive and High-tech Products

On October 21, 2008, China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly announced an increase in the export rebate rates for 3,486 products from labor intensive industries, including textiles, clothes, toys, ceramics, plastic products, furniture, sewing machines, fanners, as well as hi-tech and high value-added sectors such as tempered glass and anti-AIDS drugs. These items account for 25.8 percent of China's customs duties. With this adjustment, China now has six different rebate rates in effect: 17%, 14%, 13%, 11%, 9%, 5% and zero. The move aims to bolster China's manufacturing sector that has been affected by the financial crisis and enhance competitiveness of domestic export-oriented enterprises, especially small- and medium-sized enterprises. The increase took effect on November 1, 2008.

For more information please visit  
[http://www.gov.cn/gzdt/2008-10/21/content\\_1126710.htm](http://www.gov.cn/gzdt/2008-10/21/content_1126710.htm).

#### China and Singapore Aim to Implement FTA on January 1, 2009

On October 23, 2008, Chinese Minister of Commerce Chen Deming and Singaporean Minister for Trade and Industry Lim Hng Kiang signed the China-Singapore Free Trade Agreement (CSFTA) in Beijing. China and Singapore began formal negotiations for the CSFTA in August 2006 and completed eight rounds of negotiations before reaching the final agreement in September 2008. The newly-signed CSFTA will come into force on January 1, 2009 after both Parties complete their internal ratification procedures.

The CSFTA is a comprehensive agreement, covering trade in goods, rules of origin, customs procedures, trade remedies, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), trade in services, movement of natural persons, investment, and economic cooperation. The two sides also concluded a *Memorandum of Understanding on Bilateral Labor Services Cooperation*, which grants protection to Chinese work permit holders in Singapore, enhances information sharing, and promotes worker and employer education.

Built on the ASEAN-China Free Trade Agreement (ACFTA), the CSFTA includes further liberalization in several sectors. On trade in goods, for example, China and Singapore agreed to accelerate tariff concessions under the ACFTA whereby the tariff elimination schedule of 2010 and 2012 under ACFTA is brought forward to 2009 upon CSFTA's entry into force. In services, the CSFTA further liberalizes market access in hospital and education services:

Singapore will allow China to set up wholly-owned hospitals in Singapore, while China will allow Singapore to establish hospitals in China with a cap of 70 percent foreign ownership. It is also noteworthy that the CSFTA services chapter includes an article dedicated to monopoly services suppliers. Under this article, each Party shall ensure that any monopoly supplier of a service in its territory does not violate that Party's specific commitments in services. This article is also applicable to exclusive services suppliers under certain conditions. Regarding customs procedures, both Parties agreed to recognize third-party invoicing as long as the goods are determined to be originating goods. Such recognition will help many multinational companies and their subsidiaries in invoicing practices. Further, China and Singapore agreed on advance rulings, which enable eligibility determinations on the originating goods prior to importation. Under the agreement, the importing Party will issue a decision on advance ruling applications within sixty days from receiving an application.

For the text of the agreement, please visit [http://www.fta.gov.sg/fta\\_csfta.asp?hl=27](http://www.fta.gov.sg/fta_csfta.asp?hl=27).

### **NPC Conducts Third Review of the Draft Food Safety Law**

On October 24, 2008, the Standing Committee of the National People's Congress (NPC) conducted its third review of the draft *Food Safety Law* ("Draft Law"). The State Council submitted the Draft Law to the NPC for the first review in December 2007. The second review took place in August 2008 whereby the NPC deleted a controversial inspection coding system for food, food additives and other foodstuff-related products. During the third review, the NPC has added several new provisions that:

- Stress the government's role in food recalls and the completion of the food recall system;
- Strengthen supervision on the use and revision of food additive standards;
- Strengthen food safety risk monitoring and evaluation;
- Complete the accident response mechanism, including accident reporting and other responsive measures;
- Abolish the inspection-free system on food and reinforce food inspection; and
- Strengthen the supervision and management of small food workshops and vendors.

Government sources are optimistic that the Food Safety Law will be implemented by the end of 2008.

For more information please visit <http://society.people.com.cn/GB/8223360.html>.

### **China Unveils RMB 4 Trillion Stimulus Plan to Boost Domestic Demand**

On November 5, 2008, the State Council announced an economic stimulus package, the *Ten Measures to Boost Domestic Demand and Promote Economic Growth* ("the Plan"), which will use government funds to finance projects in ten key areas. These areas include (i) housing projects for low-income families; (ii) infrastructure construction in rural areas; (iii) construction of transportation infrastructure, including railways, highways and airports; (iv) development of healthcare and education systems; (v) environmental protection; (vi) support to high- and new-tech industries for technological upgrades and services sector development; (vii) post-earthquake reconstruction; (viii) increase incomes for farmers and urban residents with low income; (ix) transformation of the value added tax (VAT) from the collection of a production VAT to a consumption VAT effective January 1, 2009; and (x) removal of restrictions on the scale of lending by commercial banks and extension of credit within a reasonable range.

To implement the plan, the Chinese government will inject an initial investment of RMB 100 billion (USD 146.4 million) into the domestic economy by the end of 2008 and will spend a total of RMB 4 trillion (USD 586 billion) by the end of 2010, which accounts for 16 percent of China's total economic output in 2007 and total government spending in 2006. The Plan is part of the government's efforts to restore confidence among Chinese consumers, update the country's industrial structure and create a favorable environment for domestic enterprises to survive the economic downturn. A series of other measures are expected to follow. Notably, the Plan also marks a significant shift in the government's macroeconomic policy goals away from restraining excess growth and controlling inflation to stimulating growth.

## Trade Remedy Cases Involving China

Product	Country of Origin	Petitioner Country	Announcement
Rubber products (PVI, TMT, CBS, MBT, PX-13, TDQ)	China	India	Authority announced final AD investigation decision on October 1, 2008
Steel threaded rod	China	US	DOC announced preliminary AD determination on October 2, 2008
Footwear (with uppers of leather)	China, Vietnam	EC	Sunset review initiated on October 3, 2008
Various products	China	Mexico	Authority announced termination of AD duties on 953 items in 15 product categories on October 14, 2008
1-Hydroxyethylidene-1, 1-Diphosphonic Acid	China, India	US	DOC announced preliminary AD determination on October 16, 2008
Frontseating service valves	China	US	DOC announced preliminary AD determination on October 16, 2008
Tile	China	India	AD case initiated on October 17, 2008
Laminate flooring	China, France	Canada	CBSA announced initiation of 3rd AD & CVD re-investigation on October 23, 2008
Bicycle rubber tires	China, Thailand, Indonesia	Argentina	Administrative review initiated on October 27, 2008
Furfuryl alcohol	China	EC	Sunset review initiated on October 30, 2008
Carbon Steel Fastener	China	Argentina	AD case initiated on October 31, 2008
Circular welded carbon quality steel line pipe	China, Korea	US	DOC announced preliminary AD determination on October 31, 2008
Penicillin	China	India	AD case initiated on November 3, 2008
Thermoelectric coolers and warmers	China	Canada	CBSA made final decision on AD & CVD investigations on November 10, 2008
Wood slats	China, Mexico	Canada	CBSA initiated expiry review on November 10, 2008
Hot rolled plate	China, Taiwan, Malaysia	Indonesia	AD case initiated on November 11, 2008
Citric acid and certain citrate salts	China, Canada	US	DOC announced preliminary AD determination on November 13, 2008
Pre- and post-stressing wires and wire strands of non-alloy steel (Psc wires and strands)	China	EC	EC announced imposition of provisional AD duties on November 14, 2008
Candles, tapers and the like	China	EC	EC announced imposition of provisional AD duties on November 14, 2008

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Our clients include a diverse roster of sovereign and private-sector entities, including national governments, manufacturers, exporters, importers and end users. Our insight into global trade laws is deepened by our immersion at the ground level. In China, we have lawyers and analysts in Beijing and Shanghai, working closely with our lawyers and analysts in Bangkok, Brussels, Geneva, Miami, Monterrey, New Delhi, Singapore, Tokyo and Washington, DC.

## Our Firm

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- A Top Ten Global Law Firm—*The American Lawyer*, 2007
- Firm of the Year 2007—*Asian Counsel*
- Top International Law Firm 2008 Vault Guide to the—*Top 100 Law Firms*
- Tier One for International Arbitration—*Chambers Asia*, 2009
- International Arbitration Team of the Year 2007—Chambers USA
- One of the Top Ten Antitrust Law Firms 2007—*Global Competition Review*
- 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*
- One of the Top Ten Law Firms for Global M&A 2007—*Thomson Financial/Bloomberg*
- One of the Top Ten Capital Markets Practices 2007—*Bloomberg*

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