

November 2009

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.



International Trade

China and United States Convene 20th Session of JCCT

On October 28-29, 2009, Chinese Vice Premier Wang Qishan and US Secretary of Commerce Gary Locke and United States Trade Representative (**USTR**) Ron Kirk co-chaired the 20th JCCT meeting in Hangzhou, China. China's delegation included ministers and vice-ministers from the Ministry of Commerce, Ministry of Agriculture, National Energy Bureau, General Administration of Quality Supervision, Inspection and Quarantine (**AQSIQ**), Ministry of Environment and the Ministry of Industry and Information Technology (**MIIT**). The US delegation included the US Ambassador to China, the Acting Director of the US Trade and Development Agency, and officials from the Departments of Commerce, Treasury and State in addition to USTR officials.

During the meeting, the two sides discussed a wide range of trade and investment issues, including agriculture, distribution services, energy and environment, export control, government procurement, health care, IPR, product safety, travel and tourism, among others, and signed a number of agreements to increase dialogue and strengthen cooperation to address these issues. The discussions yielded concrete outcomes in agriculture and government procurement. We review the main highlights of the 20th JCCT meeting below.

Agriculture

The two sides exchanged technical and scientific information on agricultural issues and sought better cooperation and coordination on agriculture. China announced its intent to reopen the Chinese market to US pork products and live swine after imposing restrictions on these products in May 2009 due to the outbreak of the H1N1 flu virus. The United States placed a high priority on US pork access to China during the JCCT meetings; consequently, China's announcement was seen as a major highlight for the United States at this JCCT meeting. The United States announced its plan to review China's food safety law and inspect poultry plants before allowing imports of Chinese poultry products, and to find solutions to address China's concerns on the inspection and quarantine of Chinese agricultural products. Both sides also briefly discussed China's avian influenza-related restriction on US poultry and China's ban on US beef. Both sides signed a Memorandum of Understanding (**MOU**) on Cooperation in Agriculture, which renews the Joint Committee on Cooperation in Agriculture and creates more opportunities for bilateral cooperation on agriculture.

Distribution Services

Both sides agreed to hold a global distribution services forum to address growing travel distribution services in China, including computer reservation system technology. China is still in the process of concluding its licensing procedures for certain qualified direct-selling services companies.

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Energy and Environment

China agreed to remove its 70 percent local content requirement on wind turbines. Both sides signed an MOU supporting the launch of a China-US Energy Cooperation Program (**ECP**). Both sides also agreed to hold the second China-US Environmental Industries Forum in October 2010, a second China-US E-Scrap Recycling Summit in May 2010, and a green building standards seminar by March 2010.

Export Control and Investment

Export controls have always been a top agenda item for China at the JCCT, and at this JCCT meeting, the United States expressed its willingness to cooperate with China on reforming its export control regime and finding solutions to address China's concerns on US export controls and the investment environment for Chinese enterprises. The United States welcomed investments from Chinese enterprises and committed to grant fair treatment to Chinese enterprises, including state-owned enterprises (**SOEs**). Both sides signed an MOU on Intent to Promote Bilateral Investment.

Government Procurement

China committed to issue rules to require that products produced by foreign invested enterprises (**FIEs**) in China are treated as domestic products, thereby making FIEs eligible to participate in government procurement. China also committed to submit a revised offer "as early as possible" in 2010 to join the World Trade Organization (**WTO**) Government Procurement Agreement (**GPA**). China became a GPA observer upon its WTO accession in 2001 and submitted its initial offer in December 2007. Both sides agreed to establish a multi-agency working group to discuss issues on government procurement and purchases made by SOEs.

Health Care

China made several key commitments on medical devices and pledged to consider and accept overseas testing results and approvals. China designated the PRC State Food and Drug Administration (**SFDA**) as the regulator for medical devices recalls. China also committed to adopt a risk-based approach that will not require clinical trials for all medical devices, consider accepting overseas results of clinical trials in application for local trial exemption, accept prior approval documents issued by foreign countries to satisfy any prior approval registration requirements, and consider exempting local test on samples of products if manufacturers demonstrate compliance with international standards and provide sound scientific evidence.

For pharmaceuticals, China committed to further strengthen its supervision and implementation of active pharmaceutical ingredients (**APIs**) and counterfeit pharmaceuticals by: (i)

establishing a Drug Master File System; (ii) imposing record-keeping requirements for API manufacturers and sellers; and (iii) regulating unregistered Chinese companies advertising and marketing APIs at foreign trade show and on the Internet. China also appointed the SFDA as the only contact point for China's interagency efforts to fight counterfeit drugs, and shared information of such interagency efforts with the US Food and Drug Administration (**FDA**). Both sides also agreed to continue discussions on pharmaceutical data protection.

IPR

China agreed to impose maximum administrative penalties on internet IPR infringement and announced the launch of a four-month campaign to clamp down on Internet piracy. China also agreed to work with the United States to address US concerns relating to online music distribution. The IPR working group identified the current initiatives undertaken by both countries on key issues, including China's promotion of software legalization of enterprises, information exchanges on measures for promoting software legalization and the provision of opportunities for interested parties to comment on China's new Patent Law and its implementing regulations. Both sides also agreed to hold seminars and/or form a task force under the JCCT IPR Working Group to exchange information on dealing with "bad faith" trademark registration.

Product Safety

Both sides touched upon product safety issues and agreed to hold a government-to-government exchange of information on dietary supplement regulations by March 31, 2010. China confirmed that China's Compulsory Certification (**CCC**) testing and certification rules issued on April 29, 2009 for 13 categories of information security products only apply to products procured by Chinese government agencies. In addition, China agreed to establish a dialogue with the United States on the global practice of trade in information security products.

Travel and Tourism

Both sides agreed to implement Phase II of the MOU on Travel, which would allow 12 more Chinese provinces or cities to organize US-bound leisure travel from China, increasing the total locations to 21. Both sides also agreed to hold a high-level meeting of the JCCT Tourism Working Group in January 2010 to sign a program of work to enhance travel under the MOU. In addition, both sides agreed to launch a new Vice Minister-level dialogue with China's MIIT on industrial policies in 2010, continue dialogue on China's Anti-Monopoly Law and hold the China-US Legal Exchange in 2010, and convene a meeting as early as possible to discuss China's market economy status.

Outlook

The 20th JCCT offered a good opportunity for both sides to communicate their bilateral trade and investment concerns and establish mechanisms to increase dialogue and strengthen cooperation to address these concerns. In terms of concrete steps forward, the 20th JCCT made important progress on agriculture, energy and government procurement. Nonetheless, several bilateral concerns remain unresolved, such as China's restrictions on online sales of foreign music, China's value-added tax rebates on exports and market access into China's telecommunications market. US and Chinese officials will likely work on these issues and others "behind-the-scenes" over the next year in order to bring them up at the next JCCT which is scheduled to take place in the United States in 2010.

China Issues Opinions to Promote Sustainable Development of Auto Exports

On October 23, 2009, the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Finance, the General Administration of Customs, and the Administration of Quality Supervision, Inspection and Quarantine jointly released *the Opinions on Promoting Sustainable and Sound Development of Export of China's Automobile Products* (the "**Opinions**"). The Opinions present the current status of China's auto industry, set forth goals for further development and specify measures to achieve those goals. Auto exports have become an important component of China's auto industry and a key driver for the growth of foreign trade in China. The Chinese government formulated the Opinions with the view to sustain auto and auto parts exports amid the global economy downturn.

The Opinions set forth the development goals of auto industry by 2020, which include: (i) average annual growth in exports of auto

and auto parts to reach 10 percent from 2009 to 2011; (ii) exports of auto and auto parts to reach US\$85 billion by 2015 with average annual growth of 20 percent; and (iii) exports of auto and auto parts to take up 10 percent of global volume by 2020. The Opinions also promote five major structural changes in the auto and auto parts exports, including changes in: product structure, market structure, trade structure, enterprise structure and after-sale service structure.

In order to achieve these goals and structural changes, the Opinions set forth specific measures for the auto enterprises that include: (i) accelerating the building of national auto and auto parts export base; (ii) utilizing financial tools to boost international competitiveness; (iii) strengthening independent innovation and optimize export product structure; (iv) enhancing IPR protection and actively responding to trade frictions; (v) further exploring international markets; and (vi) improving service provision.

Since the global financial crisis, China's auto product exports have suffered losses. According to the China Association of Automobile Manufacturers (**CAAM**), in the first ten months of 2009, Chinese auto exports totaled 248,600 units, a 54.54 percent year-on-year decline. Analysts from CAAM opined that the auto export decline may continue in the short-term. Other than impacts from the global financial crisis, high tariff rates and technical barriers to trade have also contributed to China's export decline. Consequently, the Chinese government has been undertaking efforts to sustain the development of its auto industry, support auto and auto parts exports in a sustainable way and encourage technological upgrades. The Opinions are a part of these efforts and observers expect the implementing rules of the Opinions to be issued shortly.

Further information can be found at
<http://www.mofcom.gov.cn/aarticle/b/e/200911/20091106612077.html?3666378988=1391974186>

Please note this link is to a Chinese language website.

Trade Remedy Cases Involving China

Product	Country of Origin	Petitioner Country	Announcement
Magnesium powder	China	Brazil	AD sunset review initiated on October 9, 2009
BOPP film	China, Argentina, Chile, Ecuador, Peru, US	Brazil	AD investigation terminated since October 13, 2009
Electric heater	China	Argentina	AD investigation initiated on October 19, 2009
Waterproof footwear and bottoms of rubber and plastic	China	Canada	AD re-investigation initiated on October 21, 2009
Pipe fitting	China	Argentina	AD measure became effective since October 24, 2009
Certain mattress innerspring units	China	Canada	AD final determination made on October 26, 2009
Stainless dishware	China	Argentina	AD measure became effective since October 26, 2009
Prestressed concrete steel wire strand	China	US	AD preliminary determination made on October 27, 2009
Steel grating	China	US	CVD preliminary determination made on October 27, 2009
Switch voltage regulator	China	Argentina	AD investigation initiated on October 29, 2009
Juice extractor	China	Colombia	AD investigation initiated in earlier November, 2009
Aluminum extruded section	China	Australia	AD preliminary determination made on November 2, 2009
Steel pipe	China	Argentina	AD investigation initiated on November 2, 2009
Synthetic fiber fabric	China	Brazil	AD investigation initiated on November 3, 2009
Wire decking	China	US	CVD preliminary determination made on November 3, 2009
Oil country tubular goods (OCTG)	China	US	AD preliminary determination made on November 5, 2009
Copper pipe fittings	China	Canada	AD re-investigation initiated on November 12, 2009

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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 business and 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 advisors in Brussels, Geneva, Miami, Monterrey, New Delhi, Singapore, Tokyo and Washington, DC.

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- Asia Restructuring Deal of the Year 2009—*International Finance Law Review*
- Best Leveraged Financing 2008—*FinanceAsia*
- India M&A Deal of the Year 2008—*India Business Law Journal*
- Named a Top Global Arbitration Firm 2008—*Global Arbitration Review*
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