

Business, Trade and Competition

China Bulletin

January 2012

In This Issue...

- China Releases 2012 Tariff Implementation Scheme
- China and the United States Convene 22nd Session of JCCT



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

International Trade

China Releases 2012 Tariff Implementation Scheme

On December 15, 2011, the Tariff Commission under the State Council (**SCTC**) published the 2012 Tariff Implementation Scheme ("**2012 Scheme**"), which includes adjustments (temporary or interim) to import and export tariff rates, conventional tariff rates under preferential trading arrangements, and tariff line items, among others. The Chinese government announces its new tariff scheme for the coming year every December.

According to the 2012 Scheme, China's most-favored-nation (**MFN**) tariff rates and average import tariff rate (i.e., 9.8 percent) for 2012 remain unchanged from those in 2011. The 2012 Scheme, which covers a total of 8,194 tariff items, will take effect on January 1, 2012.

Modifications to duty rates serve as an important policy tool of Chinese government to optimize its trade structure and promote growth. Notably, in the 2012 Scheme the SCTC imposes relatively low temporary import duty rates on 737 tariff lines, compared to 637 tariff lines in 2011. These 737 tariff lines mainly include energy and resource products, key equipment and parts for strategic emerging industries, and agricultural means of production. As these temporary import tariff rates are over 50 percent lower than MFN rates, the move signals the Chinese government's intention of encouraging the import of these products in 2012. This goal corresponds to China's industrial structure upgrade policies under the 12th Five-Year Plan (2011 – 2015). China's export tariff rates will remain unchanged in 2012 from those in 2011. The SCTC will impose export tariffs, temporary export tariffs, or special export tariffs on 363 tariff lines, while continuing to impose temporary export tariff rates on high energy consuming, high polluting and resource-intensive products, such as coal, oil, chemical fertilizers, and ferroalloy. Furthermore, the Chinese government included an additional 217 tariff items to the 2012 Scheme in response to the demand of social and economic development, technology advancement, import and export management, and international trade disputes.

For more information please visit:

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201112/t20111215_615749.html

Please note this link is to a Chinese language website.

White & Case is a leading global law firm with lawyers in 38 offices across 26 countries. Whether in established or emerging markets, White & Case is dedicated to the business priorities and legal needs of its clients.

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

Christopher Corr

Counsel, Beijing
+ 86 10 5912 9618
ccorr@whitecase.com

Patrick Ma

Counsel, Beijing
+ 86 10 5912 9615
pma@whitecase.com

Samuel Scoles

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

Tong Yu

Director, China
International Trade Advisory Services
+ 86 10 5912 9668
ytong@whitecase.com

China and the United States Convene 22nd Session of JCCT

On November 20 – 21, 2011, Chinese Vice Premier Wang Qishan, US Secretary of Commerce John Bryson and US Trade Representative (**USTR**) Ron Kirk, co-chaired the 22nd session of the Joint Commission on Commerce and Trade (**JCCT**) meeting in Chengdu, China. The Chinese delegation included ministers and vice ministers from the Ministry of Agriculture (**MOA**), Ministry of Commerce (**MOFCOM**), Ministry of Foreign Affairs, Ministry of Finance, and National Energy Administration (**NEA**). The US delegation included the US Ambassador to China, the Director of Trade and Development Agency, and officials from the Departments of Agriculture (**USDA**), State, Treasury, Commerce (**DOC**), in addition to USTR officials.

During the meeting the two sides discussed a wide range of trade and investment issues of concern to both the Chinese and US governments. For the US government, these concerns relate to the following issues, *inter alia*: investment, intellectual property right (**IPR**) protection and enforcement, indigenous innovation (particularly as it pertains to government procurement), strategic emerging industries, the energy industry, administrative licensing, standards and conformity assessments, agriculture, health care goods and services, telecommunication goods and services, and travel and tourism. For the Chinese government, these concerns relate to the following issues, *inter alia*: US export controls, China's non-market economy (**NME**) status, US application of trade remedies, and restrictions on Chinese investment in the United States in sensitive sectors.

The two sides reached a number of commitments, agreements, and Memoranda of Understanding (**MOUs**). More specifically, Chinese officials made specific commitments regarding several issues of concern to the US government, including IPR protection and enforcement as well as indigenous innovation, especially in the context of government procurement. More modest progress was made on the issues of standards and conformity assessments, as well as market access in the areas of new energy vehicles (**NEV**), medical devices and tourism. However, talks on issues relating to China's investment restrictions and market access for US agricultural exports resulted in few signs of advancement. We review the main highlights of the 22nd JCCT meeting below.

IPR

■ **New State Council-level IPR Leadership Structure.**

On November 9, 2011, China's State Council Standing Committee announced the establishment of a national IPR Office, seated in MOFCOM, as a new "leading group" to coordinate interagency efforts to tackle IPR infringement

and counterfeiting issues in China. China's State Council confirmed at the JCCT plenary that Vice Premier Wang Qishan will head the new leading group and that the group would make permanent the leadership structure established under the 2010 Special IPR Campaign;

- **Software Legalization.** Vice Premier Wang stated that he will directly oversee the continuation of the software legalization for government agencies program. To date, all central government agencies have completed the inspection and correction of work related to software legalization. Vice Premier Wang specifically committed to ensuring that all 31 provincial level government agencies will complete their respective legalization efforts by mid-2012, and that all Chinese local and municipal level agencies will complete similar work by late 2012;

Also, within the JCCT IPR Working Group, the Parties made commitments to work together on the issues of online counterfeiting, online and library copyright protection, broadcast tariff rates, bad faith trademark filings and patent quality. In addition, Chinese and US government officials tasked the JCCT IPR Working Group with the study of investment, tax and other regulations relating to IPR provisions in order to determine whether government benefits and incentives are linked to similar IPR development requirements.

Indigenous Innovation

- **Government Procurement.** China announced that its State Council has finalized a measure requiring provincial governments, municipalities and autonomous regions to eliminate any catalogues or other measures linking innovation policies to government procurement preferences by December 1, 2011.

Strategic Emerging Industries and New Energy Vehicles

- **Foreign Companies Eligible for Preferential Policies.** China confirmed that it will invest RMB 10 trillion (US\$1.6 trillion) in strategic emerging industries¹ over the next five years. Furthermore, China committed to provide a "fair and level playing field" for all companies in these industries; and
- **New Energy Vehicles (NEVs).** China confirmed that: (i) the Chinese government does not and will not maintain measures that mandate the transfer of technology; (ii) in China's NEV industry, "mastery of core technology" does not require technology transfer; (iii) the Chinese government does not and will not impose any requirements for foreign-invested companies to establish domestic brands in China in order to sell NEVs; and (iv) foreign-invested companies will be eligible for subsidies and preferential programs on an equal basis with their Chinese counterparts and these programs will be implemented in compliance with World Trade Organization (**WTO**) rules.

¹ The seven strategic emerging industries include: (i) energy conservation and environmental protection; (ii) new energy; (iii) new-generation information technology; (iv) biology; (v) high-end equipment manufacturing; (vi) new materials; and (vii) new energy-powered automobile manufacturing. Of the seven industries, innovative sectors are energy efficiency and environmental conservation, next-generation information technology, biotechnology, and new energy vehicles (NEVs).

Energy Industry and Smart Grid Technologies

- **Smart Grid Technologies.** China committed that its Standardization Administration and NEA follow the principles of “openness and transparency” in the development of standards. China confirmed that foreign entities are welcome to participate in China’s smart grid standards technical committees. The two sides welcomed “continued bilateral cooperation” on the issue of smart grid standards.

Standards and Conformity Assessment

- **China Compulsory Certification.** China agreed to conduct technical exchanges with its US counterparts concerning the China Compulsory Certification (CCC) mark, which is China’s principal regime for testing, and certifying the quality, safety, and efficacy of products sold in China. China also welcomes competent foreign participation in its CCC technical experts group.

Agriculture

- **Avian Influenza.** According to the US-China Business Council (USCBC), China confirmed its lifting of Avian Influenza-related bans on poultry products from Arkansas. The two countries agreed to continue technical discussions toward compliance with science-based international standards on the remaining bans on poultry products from four other US states;
- **Market Access Barriers.** According to USCBC, the parties committed to continue ongoing discussion and exchanges in regard to other agricultural products facing market access barriers, including beef and pears; and
- **Five-Year Strategic Plan.** USDA, China’s MOA and General Administration of Quality Supervision, Inspection and Quarantine announced that they are finalizing the framework of a five-year strategic plan focused on food security, food safety and sustainable agriculture, though they did not announce a timeframe for the release of this plan.

Medical Devices

- **Down Classification.** China’s State Food and Drug Administration (SFDA) stated that it has studied lowering the risk classification of x-ray and in-vitro diagnostic (IVD) equipment in accordance with international norms. SFDA committed to issuing a list of x-ray equipment to be placed in a lower category by June 2012 and to also issue a draft catalogue of IVD equipment for public comment by June 2012; and
- **Safety Standards.** SFDA stated that it is conducting in-depth research and drafting transition procedures to facilitate the move to the 3rd edition of IEC 60601-1 safety standards for medical devices, which will be part of SFDA’s 2012 work plan.

Pharmaceuticals

- **Regulatory Data Protection.** Both sides agreed to conduct more in-depth research and exchanges on how China can establish and implement effective regulatory data protection through the revision of relevant legislative instruments; and
- **Anti-Counterfeiting Collaboration.** China announced the establishment of a new Complaint Center for Counterfeit Drugs in order to crack down on the distribution and sale of counterfeit drugs. The Center will facilitate the exchange of information regarding counterfeit drugs in China between the US government, the US pharmaceutical industry and SFDA.

Telecommunications

- **Streamlined Application Process.** As a follow-up to its commitment from the 21st JCCT session in 2010, USCBC reports that China agreed to publish new procedures for applying for network access licenses and radio type approvals via a so-called “one-stop-shop” mechanism by the end of 2011; and
- **Telecommunications Services Catalogue.** China also announced plans to publish a draft of its value-added telecommunications services catalogue for public comment.

Tourism

- **Three Additional Provinces.** The parties agreed to expand the US-China Tourism MOU to include three additional provinces (Henan, Jiangxi and Guizhou), bringing the total number of provinces where Chinese citizens can buy US leisure travel packages to 27.

Transportation

- **Specialty Automotive Products.** MOFCOM and DOC agreed to discuss the market potential within the United States and China for specialty automotive products relating to safety and environmental protection.

Export Control

- **Regime Reform.** The US government is currently in the process of reforming the US export controls system to improve national security and increase commercial opportunities for US firms, but experts note that the benefits are likely to be limited for China due to ongoing security concerns. However, according to USCBC, DOC and MOFCOM signed an agreement at the JCCT to facilitate high-tech trade through export control process improvements such as shortening the review period for certifying end-users in China and promoting the Validated End-User program.

Outlook

Experts note that the 22nd session of the JCCT comes in the context of both increased tension within and attention to the US-China bilateral trading relationship. The November 20 – 21 meeting comes on the heels of the East Asia Summit in Bali, Indonesia, and the Asia Pacific Economic Cooperation (APEC) Leaders Summit in Honolulu, Hawaii, where the United States and China, among other countries, made commitments regarding several issues, including trade in environmental goods and services and innovation policies. In addition, experts note that tensions within the bilateral trading relationship have recently increased due to the October 11, 2011 US Senate passage of the “Currency Exchange Rate Oversight Reform Act of 2011” (S 1619), which aims to address China’s alleged currency manipulation, and the November 8, 2011 DOC initiation of an antidumping and countervailing duty investigation into imports of solar cells from China.

In this context, experts note that the commitments made at the 2011 JCCT were modest, but not unexpectedly so. According to USTR Kirk, US and Chinese government officials participating in the 2011 JCCT “reached agreement on a number of important outcomes, though [US government officials] hoped to accomplish even more”. More specifically, US government officials welcomed commitments made by the Chinese government on the issues of IPR and indigenous innovation, but expressed disappointment

at the lack of progress in the areas of agriculture and investment. Experts note that although Chinese government officials did not secure significant commitments from the US government on their issues of key concern during the session, they often do achieve progress on other issues of concern through the numerous JCCT dialogues and working groups held throughout the year. According to Vice Premier Wang, this type of continued cooperation is crucial because, “[a]s major world economies, China and the United States would make a positive contribution to the world through their own steady development”.

Experts further note that the true success of the 2011 JCCT will be determined by whether or not the verbal commitments made at the meeting are fully implemented over the longer term. In this regard, experts opine that upcoming political transitions in both China and the United States will serve as a hindrance. While the 2012 US Presidential campaign has only recently begun, experts note that current Vice President Xi Jinping will likely become China’s new President in 2012. As both countries prepare for their respective political transitions, experts note that the US and Chinese governments are likely to avoid any actions that could be interpreted by their citizens as a concession to the other country.

The 2011 US-China JCCT Fact Sheet can be viewed at <http://www.commerce.gov/news/fact-sheets/2011/11/21/22nd-us-china-joint-commission-commerce-and-trade-fact-sheet>

Trade Remedy Cases Involving China

Product	Country of Origin	Petitioner Country	Announcement
Amoxicillin trihydrate	China	Mexico	AD & CVD investigations terminated on October 20, 2011
Denim	China	Mexico	AD investigation terminated on October 21, 2011
Certain stainless steel sinks	China	Canada	AD & CVD investigations initiated on October 27, 2011
Certain steel wheel	China	US	AD preliminary determination made on October 27, 2011
Certain Stilbenic Optical Brightening Agents	China, Taiwan	US	AD preliminary determination made on October 28, 2011
Galvanized Steel Wire	China, Mexico	US	AD preliminary determination made on October 28, 2011
Aluminum steel wheel	China	Australia	AD & CVD investigations initiated on November 7, 2011
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules (Solar Cells)	China	US	AD & CVD investigations initiated on November 9, 2011
Round re-fined copper pipe	China	Brazil	AD investigation initiated on November 10, 2011
Cold rolled stainless steamless steel pipe	China	Russia, Belarus, Kazakhstan Customs Union	AD investigation initiated on November 25, 2011
Colorless flat glass	China	Brazil	AD investigation terminated on November 29, 2011
High Pressure Steel Cylinders	China	US	AD preliminary determination made on December 8, 2011
Certain pup joints	China	Canada	AD preliminary determination made on December 12, 2011
Aluminum foil in small rolls	China	EU	AD investigation initiated on December 20, 2011

Business, Trade and Competition at White & Case

Our Firm's business, international trade, antitrust and competition, intellectual property and disputes lawyers help clients manage the risks and maximize the opportunities associated with the increasing regulation of global business and international trade in goods and services. One of the most important services we provide is to monitor legislative proposals worldwide and advise clients on the effects of legislation under multilateral agreements, bilateral agreements and US law. Because we are on top of the ever-shifting trade schemes around the world, our clients can stay out in front of their markets.

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.

Our Firm

White & Case is a leading global law firm with lawyers in 38 offices across 26 countries. We advise on virtually every area of law that affects cross-border business and our knowledge, like our clients' interests, transcends geographic boundaries. Our lawyers are an integral, often long-established part of the business community, giving clients access to local, English and US law capabilities, plus a unique appreciation of the political, economic and geographic environments in which they operate. At the same time, working between offices and cross-jurisdiction is second nature and we have the experience, infrastructure and processes in place to make that happen effortlessly. We work with some of the world's most respected and well-established companies—including two-thirds of the *Global Fortune 100* and half of the *Fortune 500*—as well as start-up visionaries, governments and state-owned entities.

Some of our independent accolades include:

- A formidable firm with very deep resources. It delivers a top quality of both service and work—*Chambers Asia (Asia Pacific Region – International Trade), 2011*
- White & Case can handle any issue with experienced lawyers and a great global network—great depth and high quality around the world—*Chambers Global 2010*
- Top 10 US Firm—*American Lawyer 2010*
- Top International Arbitration Firm—*Chambers Global 2011; Global Arbitration Review 2009*
- Top Tier in Global Project Finance—*Chambers Global 2011*
- Leading Innovative US Firm in M&A, Restructuring, Litigation, Financial Services and Pro Bono and Leading Innovative UK Firm in Financial Services—*Financial Times 2010*

This bulletin is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This bulletin should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This bulletin is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.