

Business, Trade and Competition

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

International Trade

MOFCOM Announces Preliminary Results of Foreign Trade Barrier Investigation against US Subsidies for Renewable Energy Industry

On May 24, 2012, China's Ministry of Commerce (**MOFCOM**) published Notice No. 26 [2012] announcing the preliminary results of the foreign trade barrier investigation against US government policy support and subsidies for the renewable energy industry in several US states.

The China Chamber of Commerce for Import and Export of Machinery and Electronic Products and the New Energy Chamber of the All-China Federation of Industry & Commerce filed a petition on October 24, 2011 and initiated a formal investigation on November 25, 2011. The investigation covered products, equipment and accessories related to wind energy, solar energy, water energy, and other types of renewable energy.

In the preliminary results, MOFCOM concluded that the following six US subsidy programs constituted prohibited subsidies as defined under the countervailing rules of the World Trade Organization (**WTO**):

- State of Washington: Renewable Energy Cost Recovery Incentive Program
- State of Massachusetts: Commonwealth Solar II
- State of Ohio: Ohio Wind Production and Manufacturing Incentive Program
- State of New Jersey: Renewable Energy Incentive Program
- State of New Jersey: Renewable Energy Manufacturer's Incentive Program
- State of California: Self-Generation Incentive Program

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Interested parties can submit comments regarding the preliminary results to MOFCOM within 20 days from the date of the announcement. A definitive decision will be made no later than August 25, 2012. In the case of a definitive decision, MOFCOM will either hold bilateral consultations with the US government, or request for a settlement mechanism before the WTO, or take any other proper measures, according to circumstances.

For more information please visit:

<http://gpj.mofcom.gov.cn/accessory/201205/1337843190515.pdf>

Please note this link is to a Chinese language website.

China Launches FTA Negotiations with South Korea; Trilateral Negotiations with Japan Expected Later in 2012

China and South Korea launched bilateral free trade agreement (**CKFTA**) negotiations on May 2, 2012 and held the first round of negotiations on May 14, 2012 in Beijing. During the inaugural round, the two sides set the rules and principles for the negotiations, discussed the scope and coverage of the agreement, and established a Trade Negotiating Committee to formulate the modalities and coordinate the negotiations.

The CKFTA will cover trade in goods, services and investment. Negotiations will be carried out in two stages to safeguard respective sensitive sectors—the first stage focusing on the negotiation modalities and priorities, and the second stage consisting of actual negotiations on the draft text. The parties aim to grant WTO-plus concessions for trade in goods and trade in services liberalization and establish “normal” and “sensitive” tracks for trade in goods. According to a Joint Ministerial Statement, the sensitive track may include “sensitive” and “highly sensitive” lists and other possible treatment, such as longer phase-out periods, partial reductions and exclusions for certain products. Such lists are fairly commonplace in FTAs between China, Korea and their trading partners. According to officials involved in the negotiations, Korea is seeking to list agricultural and fisheries products as sensitive or highly-sensitive items, while China is focusing on automobiles, petroleum and machinery products.

Similar to previous FTAs that South Korea has concluded, including with ASEAN,¹ the European Free Trade Association (**EFTA**)² and Singapore, China and South Korea also agreed to apply favorable tariff concessions under the CKFTA for products produced

in outward processing zones (**OPZs**), including the Kaesong Industrial Complex located in North Korea. The Kaesong Industrial Complex was not recognized as an OPZ in Korea’s FTAs with the European Union or the United States, although Korean Peninsula OPZ committees are scheduled to be formed to discuss possible consideration under these FTAs in July 2012 and March 2013, respectively.

In a related development on May 13, 2012, China, Japan and Korea announced their intention to launch trilateral FTA negotiations within 2012. The announcement came at the heels of the signing of a trilateral investment agreement by the three parties to promote and protect mutual investments. Since May 2010, the parties have held seven joint study group (**JSG**) meetings on the potential trilateral FTA and finalized a feasibility study report in December 2011.

The parties agreed that the proposed trilateral FTA would not only boost economic prosperity in the three countries, but also contribute to the development of regional FTA initiatives, including the Regional Comprehensive Economic Partnership (**RCEP**) Agreement,³ the East Asia Free Trade Agreement (**EAFTA**),⁴ and the Comprehensive Economic Partnership for East Asia (**CEPEA**).⁵ In addition, the parties agreed to expand their trade settlements in local currencies to boost financial cooperation in East Asia and enhance cooperation on environmental protection and the recycling economy, among other areas, to realize sustainable development in the region.

While all three parties recognize the potential benefits from the trilateral FTA, particularly in light of the sluggish economic situation in European and American markets, they also aware of a number of challenges. Unsurprisingly, similar to the bilateral CKFTA, agriculture is likely to be the bottleneck issue for South Korea and Japan, while for China the treatment of petrochemicals, automobiles, steel, and machinery could slow progress in the negotiations. Political disputes, particularly between China and Japan, could also hamper progress.

Still, in light of the recent launch of the CKFTA negotiations as well as the uncertainty surrounding Japan’s potential participation in the Trans Pacific Partnership Agreement (**TPP**), the CJKFTA process may yet gain sufficient momentum.

1 ASEAN comprises Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

2 EFTA comprises Iceland, Liechtenstein, Norway and Switzerland.

3 Proposed in 2011, the RCEP is envisaged to combine ASEAN+1 FTAs into a single regional FTA. Membership would be open and inclusive, giving priority to current ASEAN FTA partners.

4 Proposed in 2001, the EAFTA is a region-wide proposal among ASEAN members, China, Japan and Korea, i.e., ASEAN+3.

5 Proposed in 2006, the CEPEA is a proposal for trade cooperation among the ten ASEAN members, Australia, China, India, Japan, Korea, and New Zealand, i.e., ASEAN+6.

US and China Hold Fourth Strategic & Economic Dialogue

Chinese and US officials met in Beijing in early May for the fourth Strategic and Economic Dialogue (**S&ED**). This marked the last S&ED under the current Obama and Hu Administrations. Despite the political transition underway in China as well as the presidential and legislative election campaigns ongoing in the United States, both sides were able to make significant commitments within the context of the S&ED. According to Treasury Secretary Geithner, the United States focused its discussions with China on creating a level playing field for US companies in China and implementing the next generation of China's economic reforms.

Both sides committed to scheduling the seventh and subsequent negotiating rounds toward the completion of a US-China Bilateral Investment Treaty (**BIT**). This decision follows the April 2012 US government announcement that it completed its review of the model BIT. Negotiations toward a US-China BIT started in 2008, but were placed on hold when the Obama Administration began its review of the model BIT in 2009.

China also committed to respond to requests from the United States and other parties to the WTO Government Procurement Agreement (**GPA**) regarding China's most recent offer to join the GPA. China further committed to submitting a revised comprehensive offer to join the GPA by late 2012. In a related development, China plans to issue the *Implementation Regulations for the Government Procurement Law* and the final *Administrative Measures for the Government Procurement of Domestic Products* as early as possible.

As a follow-up to the commitment Vice President Xi made in February 2012 that technology transfer and technology cooperation be decided by businesses independently and not be used as a pre-condition for market access, China agreed to hold intensive discussions regarding the implementation of this commitment. China also reportedly agreed to afford intellectual property rights (**IPR**) owned or developed in other countries the same treatment as that afforded to IPR developed in China.

With respect to export controls, the United States committed to giving full consideration to China's request for fair treatment as it completes the reform of the US export control system as well as make efforts to facilitate high-tech exports to China for civilian end-users and end-uses. The United States also committed to amending its controls on certain dual-use items to implement changes in the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* to facilitate exports to most countries, including China. In an effort to

continue their cooperation on export controls, the two sides will hold the US-China High-Tech Trade Seminar in China in the near-term to discuss measures facilitating high-tech and strategic trade.

The next S&ED is scheduled to take place in the United States in 2013.

For more information please visit:

<http://www.treasury.gov/press-center/press-releases/Pages/tg1567.aspx>.

Taiwan Plans to Establish Free Economic Zones to Accelerate Trade Liberalization

On May 20, 2012, Taiwan's President Ma Ying-jeou asserted in the inauguration speech for his second term that the government would accelerate trade liberalization by eliminating trade and investment barriers and by establishing free economic zones (**FEZs**). According to Taiwanese officials, these FEZs will be set up based on the existing five free trade zones (**FTZ**).⁶ For example, Kaohsiung Port, one of the FEZs and Taiwan's biggest international harbor, will grant a number of duty exemptions and reductions, streamline customs clearance procedures for the import of production means and raw materials, and allow processing and re-export of imported products. President Ma also disclosed that the government plans to invest an additional NTD 200 billion (to the already allocated NTD 370 billion) to support the establishment of the Kaohsiung FEZ through a number of projects, such as enlarging Kaohsiung's Software Zone and promoting the development of a medical equipment industrial cluster.

During his inauguration speech, President Ma also stressed the importance of developing bilateral and multilateral trade relationships. He called for accelerating follow-up talks under the existing cross-straits Economic Cooperation Framework Agreement (**ECFA**) and expediting negotiations on economic cooperation agreements and investment agreements with receptive trading partners, such as Singapore, Japan and New Zealand. Taiwan has taken a number of steps in recent years to develop these bilateral trade relationships, including holding negotiations for the Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (**ASTEP**) in May 2011; signing an investment agreement with Japan in September 2011; and launching a feasibility study on an economic cooperation agreement (**ECA**) with New Zealand in October 2011.

Taiwan's Council for Economic Planning and Development is expected to finalize the FEZ plans in the coming months.

⁶ The five free trade zones are Keelung Port FTZ, Taipei Port FTZ, Su-ao Port FTZ, Taichung Port FTZ, and Kaohsiung Port FTZ.

Hong Kong Signals Interest in Joining ASEAN-China Free Trade Area

In early March 2012, Dr. Jonathan Choi Koon-shum, a Member of the National Committee of the Chinese People's Political Consultative Party (**CPPCC**) and the Chairman of the Chinese General Chamber of Commerce (**Hong Kong**), submitted a proposal regarding Hong Kong's possible accession to the ASEAN-China Free Trade Area (**ACFTA**) during the 5th Session of the 11th CPPCC. This follows a number of closed door meetings over the past several months among officials from Hong Kong, Mainland China and ASEAN on the accession issue. The topic last surfaced in the public sphere during the Preparatory Meeting of the ASEAN-China FTA Joint Committee (**ACFTA-JC**) in October 2011, where senior officials from the Hong Kong Trade and Industry Department (**HKTID**) delivered a presentation on Hong Kong's interest in joining the ACFTA. ASEAN's Secretary-General has reportedly called for consultants to study the implications of accession under the auspices of the Asian Development Bank (**ADB**). According to sources, the ASEAN Economic Ministers (**AEM**) could make a final decision on Hong Kong's accession to the ACFTA during the 44th AEM Meeting in August 2012.

Hong Kong's accession to the ACFTA could result in a number of benefits for both Hong Kong and ASEAN members. Given its strategic position as a business and financial center for the region, Hong Kong could enhance its role as trade facilitator between Mainland China and ASEAN countries by joining the ACFTA. In particular, Hong Kong's accession would allow for the further development of the re-export trade between Hong Kong and ASEAN, which increased at an average annual rate of 8 percent from 2006-2010 and reached 10.2 percent growth in 2011.

According to HKTID, Hong Kong's accession would also benefit ASEAN members by virtue of Hong Kong being, *inter alia*: (i) a free port and logistics hub; (ii) a leader in international financial services; and (iii) a top recipient and provider of foreign direct investment (**FDI**). Support for Hong Kong's accession to the ACFTA was expressed by Chinese Vice-Premier Li Keqiang on behalf of the Chinese central government during his visit to Hong Kong in August 2011.

The biggest hurdle to Hong Kong's accession to ACFTA is likely to be the lack of an open accession clause under the *Framework Agreement on China-ASEAN Comprehensive Economic Cooperation* ("**Framework Agreement**") signed and agreed upon at the 6th China-ASEAN Summit in November 2002. As a result, the process by which Hong Kong would accede to the Agreement, should the parties support such an action, is not predetermined. Moreover, some ASEAN Members have reportedly raised some interesting views regarding Hong Kong's potential accession. During the September 2011 Davos meeting in Dalian, China, for example, former Singaporean Foreign Minister George Yeo commented that the manner in which Hong Kong joins the ACFTA could hamper the accession process. He opined that accession would be a more likely outcome should Hong Kong join ACFTA as one part of China rather than as a different political entity, i.e., a "Separate Customs Territory." Some analysts contend that this rhetoric indicates Singapore's hesitation regarding Hong Kong's interest in acceding to the ACFTA, as Hong Kong and Singapore are strong competitors in financial services. Singapore has strived to establish a leading role in financial services within ASEAN by leading the call to launch the ASEAN Exchanges⁷ in April 2011 with five other ASEAN members, namely Thailand, Malaysia, Vietnam, Indonesia, and the Philippines. If Hong Kong accedes to the ACFTA, Singapore's current strong position in the financial services sector may be challenged.

7 The ASEAN Exchanges, a collaboration of seven stock exchanges in ASEAN, is comprised of Bursa Malaysia, Hanoi Stock Exchange, Ho Chi Minh Stock Exchange, Indonesia Stock Exchange, The Philippine Stock Exchange Inc., Singapore Exchange, and The Stock Exchange of Thailand.

Trade Remedy Cases Involving China from January to May, 2012

Product	Country of Origin	Petitioner Country	Announcement
Children's jackets	China	Argentina	AD definitive decision made on January 3, 2012
Petroleum casing pipes	China	Columbia	AD duty imposed since January 5, 2012
Tires	China	Peru	AD duty expired since January 18, 2012
Utility scale wind towers	China, Vietnam	US	AD & CVD investigations initiated on January 19, 2012
Steel wire garment hangers	Taiwan, Vietnam	US	AD investigation initiated on January 19, 2012
Tableware and kitchenware	China	EU	AD investigation initiated on February 16, 2012
Malleable tube fittings (threaded tube or pipe cast fittings, of malleable cast iron)	China, Philippines, Thailand	EU	AD investigation initiated on February 16, 2012
Certain copper tube fittings	China	Canada	Definitive decision of AD & CVD expiry review made on February 17, 2012
Organic coated steel products	China	EU	CVD investigation initiated on February 22, 2012
Graphite electrode	China	Mexico	AD definitive decision made on March 1, 2012
Children's bicycles	China	Mexico	AD investigation initiated on March 5, 2012
Austenitic stainless circular welding tubes	China	Brazil	AD investigation initiated on March 7, 2012
Tungsten electrodes	China	EU	AD expiry review initiated on March 9, 2012
Bicycles	China	EU	AD interim review initiated on March 9, 2012
Microwave ovens	China	Argentina	AD expiry review initiated on March 12, 2012
Certain steel wheels	China	US	AD definitive decision made on March 19, 2012
Stilbenic optical brightening agents	China	US	AD definitive decision made on March 20, 2012
Galvanized steel wire	China, Mexico	US	AD & CVD definitive decisions made on March 20, 2012
Crystalline silicon photovoltaic cells	China	US	CVD provisional decision made on March 20, 2012
Drawn stainless steel sinks	China	US	AD & CVD investigations initiated on March 22, 2012
Sodium cyclamate	China	EU	AD proceeding terminated on April 5, 2012
Flat seizing austenitic 304 stainless steel & cold rolled ferrite 430 stainless steel products	China, Finland, Germany, South Korea, South Africa, Taiwan, US, Vietnam	Brazil	AD investigation initiated on April 13, 2012
Strawberries	China	EU	AD duty expired since April 17, 2012
Oxalic acid	China	EU	AD definitive decision made on April 18, 2012
Flat seizing silicon steel	China	Brazil	AD investigation initiated on April 19, 2012

Product	Country of Origin	Petitioner Country	Announcement
Coated paper and cardboard	China, Austria, Finland, US	Argentina	AD provisional decision made on April 20, 2012
Stainless washing tanks	China	Canada	AD & CVD definitive decisions made on April 24, 2012
Tartaric acid	China	EU	Definitive decision of AD expiry review made on April 24, 2012
PET	China, India, South Korea, Thailand, Taiwan	Argentina	AD investigation initiated on April 25, 2012
Ironing boards	China	EU	AD expiry review initiated on April 25, 2012
Bicycles	China	EU	CVD investigation initiated on April 27, 2012
High pressure steel cylinders	China	US	AD & CVD definitive decision made on May 1, 2012
Flat seizing steel plate	Australia, China, Russia, South Korea, South Africa, Ukraine	Brazil	AD investigation initiated on May 3, 2012
Aluminum radiators	China	EU	AD provisional decision made on May 11, 2012
Crystalline silicon photovoltaic cells	China	US	AD provisional decision made on May 17, 2012
Glass fiber fabrics (woven and/or stitched)	China	EU	AD proceeding terminated on May 22, 2012

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

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- Top International Arbitration Firm—*Chambers Global 2011; Global Arbitration Review 2009*
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