

Volume 4 – August 31, 2007

**LATEST TRADE NEWS FROM
WASHINGTON**

Perhaps the best news out of Washington, as the joke goes, is that Congress has been in recess . . . and therefore doing less damage than usual.

Status of Free Trade Agreements and the President's Authority to Negotiate Such Agreements

It appears that Congress will move to ratify Free Trade Agreements (FTAs) with Peru and Panama sometime after returning from its Summer/Labor Day recess.

House Ways and Means Committee Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sandy Levin (D-MI) met with the Peruvian President Alan Garcia in early August, and subsequently declared their satisfaction with Peru's commitments to bring its labor and employment laws into alignment with the obligations of the FTA.

The future remains much more uncertain for the Colombia and South Korea FTAs. Democrats in the House continue to be concerned about Colombia's performance on human rights issues, and the AFL-CIO is steadfastly against both agreements. (See AFL-CIO Executive Council statement:

<http://www.aflcio.org/aboutus/thisistheaficio/ecouncil/ec08072007g.cfm>)

Senate Finance Committee Chairman Max Baucus appears more willing to consider the Colombia and Korea FTAs, though it is unlikely that the Democrat-

controlled chambers will drift too far apart from one another with a Presidential election looming around the corner (and the corner is getting closer with several states, including Michigan, moving their primaries and caucuses to January and February).

Similarly, it is unlikely that the Congress will "reauthorize" Trade Promotion Authority (TPA) prior to the next Presidential election. (As has been previously reported, under TPA, Congress voluntarily agrees to approve/disapprove FTAs *without* any amendments.) Some Democrats have reportedly stated that they support the concept of TPA for the President, "just not this President."

China: Currency Manipulation, Strengthening Existing Trade Remedy Laws, and Import Safety

Prior to its recess, Congress began to consider currency manipulation bills. There are various proposals in both chambers offering different approaches: eliminating "intent" to manipulate as a factor; setting numerical ranges for "fundamentally misaligned" currencies; treating currency manipulation as a countervailable subsidy; and/or proposing that manipulation be factored in to an antidumping methodology.

Both the Senate Finance Committee and the Senate Banking Committee "marked-up" (i.e., amended legislation as introduced) and "passed" currency manipulation measures introduced by their

respective Chairmen and Ranking Minority Members.

In the event that Congress does eventually move forward legislation to the President, it is likely that the final proposal will combine various elements of the measures now pending. The Bush Administration, however, remains very cool to any form of "anti-manipulation" legislation.

In another swipe at China, and to some degree other trading partners, Senate Finance Committee Chairman Max Baucus (D-MT) introduced legislation which, among other things:

- limits the President's discretion NOT to impose safeguard remedies against China after an affirmative recommendation by the U.S. International Trade Commissions (ITC);
- amends Section 701(a)(1) of the Tariff Act of 1930 to clarify that the Commerce Department has the authority to apply countervailing duties to non-market economies like China; and
- creates a Senate-confirmed Chief Enforcement Officer at the Office of the U.S. Trade Representative to investigate and prosecute trade enforcement cases.

In light of several recent incidents of unsafe product imports from China – such as toothpaste, pet food, tires, and toys – Congress and the White

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House are floating proposals to respond to safety concerns.

- For example, Senators Richard Durbin (D-IL) and Sherrod Brown (D-OH) have introduced the *Imported Food Security Act of 2007* which proposes, among other things, to require imported food products to comply with the same safety and inspection criteria as domestic foodstuffs.
- President Bush created an Interagency Working Group on Import Safety chaired by Health and Human Services Secretary Michael Leavitt. The panel will review U.S. product safety procedures and methods, identify how to promote safety steps by U.S. importers, and survey federal, state, and local government authorities and practices regarding import safety. However, in an August 17 press conference, Mr. Leavitt stated that no specific actions would be recommended before the middle of November.
- On July 18, the Senate Committee on Commerce, Science, and Transportation held a “listening session” titled: *The Safety of Chinese Imports: Oversight and Analysis of the Federal Response*.
- The House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection will hold an oversight hearing on lead-tainted children’s products imported from China on Wednesday, September 19, 2007.
- Department of Commerce Secretary Carlos Gutierrez stated on August 23 that the U.S. will raise concerns about the safety of imports from China at the September meeting of the Asia-Pacific Economic Cooperation (APEC).

It may very well be that safety concerns are the impetus for Congressional action against imports from China. While certain Members of Congress may be ideologically predisposed against “protectionist” actions, and others may worry about implications of biting the hand that holds so much U.S. trade debt, it is reasonable to expect substantial coalescence around safety as a legitimate barrier to import trade with China.

Mexican Trucking Issue at a Standstill

In February of this year, the U.S. Department of Transportation (DOT) announced a pilot program that would allow up to 100 Mexican trucking companies to make deliveries in the United States, with certain limitations on types of cargo transmitted. Cross-border trucking was contemplated in the original NAFTA agreement, but the parties have been unable to resolve various safety and inspection issues for more than a decade.

Immediately after the February announcement, critics of cross-border trucking attacked the program asserting, among other things, that too many safety questions remained unanswered.

In the intervening months, the House of Representatives passed two pieces of legislation intended to halt the pilot program, at least until certain safety and reciprocal access issues were satisfied. Neither piece of legislation has yet been approved in the Senate.

Perhaps somewhat unexpectedly, on August 21, the DOT Inspector General, acting pursuant to earlier enacted legislation, issued a report which indicated that hurdles remain before the pilot program could be instituted. These include:

inconsistencies in a database used to check criminal records of Mexican drivers; and an insufficient number of staff at boarder crossings to inspect passenger buses (while the pilot program itself does not include passenger buses, resolution of this problem is a precondition in the earlier legislation to permitting truck crossings).

And, just as this newsletter was being finalized, the International Brotherhood of Teamsters, the Sierra Club, and others, filed an emergency motion in the Ninth Circuit Court of Appeals to stay implementation of the pilot program which, they asserted, DOT would quietly commence on September 1. Upon filing of the motion, the Department of Justice confirmed that, in fact, DOT did intend to start the program on September 1.

Whatever the outcome in the Ninth Circuit, there are many more chapters to be written in this saga.

U.S. Trade Representative Seeks Public Comment Concerning Foreign Trade Barriers

Pursuant to the Trade and Tariff Act of 1984, the Office of the United States Trade Representative (USTR) annually publishes the *National Trade Estimate Report on Foreign Trade Barriers (NTE)*. This report surveys significant foreign barriers to U.S. exports and provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports.

The NTE also serves as a source of information to USTR in connection with its annual identification of countries that deny adequate protection/market access to U.S. intellectual property.

In connection with the 2008 NTE, USTR is seeking public comment

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relating to ten categories of trade barriers, including: tariff barriers; non-tariff barriers, such as standards and testing; “buy national” policies; and barriers to services and investment.

If your company has experienced such barriers and would like to report such to USTR, visit www.ustr.gov, or contact sring@honigman.com

OTHER TRADE NEWS OF NOTE

Japan-ASEAN Free Trade Agreement:

On August 25, Japan and the Association of Southeast Asian Nations (ASEAN) have tentatively signed an FTA under which, among other things, Japan will eliminate duties on ninety percent of imports from the ASEAN countries. The proposed FTA is expected to be ratified in November, and take effect in April 2008.

The ASEAN countries are: Brunei; Cambodia; Indonesia; Laos; Malaysia; Myanmar; Philippines; Singapore; Thailand; and Vietnam.

Foreign Trade Zones

U.S. Foreign-Trade Zones provide world-wide competitiveness strategies to firms throughout the nation. A Foreign-Trade Zone (FTZ) is a site within the United States, in or near a U.S. Customs port of entry, where merchandise is considered to be in international commerce. Zones offer mechanisms for deferring, reducing, or altogether eliminating U.S. Customs duties on imported raw materials, parts, commodities, and components. The FTZ program brings flexible solutions to business, for issues not addressed by other Customs procedures. Exceptions may exist for goods subject to dumping or protective measures. All other federal, state, and local rules and regulations apply.

By far the largest use for FTZ services is in warehousing and distribution. According to the Foreign-Trade Zones

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Board most recent 67th Annual Report to the Congress of the United States, there were 158 FTZ projects active for such purposes in fiscal year 2005. Furthermore, manufacturers utilized FTZ services at their own facilities in more than 100 locations. Together, warehouse, distribution, and manufacturing FTZs accounted for \$23 billion in exports. Approximately 2,500 firms operated under FTZ procedures.

Industries accounting for the most manufacturing activity in FTZs include oil refineries, automotive manufacturers and suppliers, pharmaceutical firms, and the electronic products sectors.

All FTZ activity is subject to public review, and a public process occurs before approval of individual FTZ projects.

Because FTZs are under the supervision of U.S. Customs and Border Protection, but not within their jurisdiction, the usual Customs forms for entry procedures and payment of duty are not required when foreign merchandise is admitted into a FTZ. When the foreign sourced merchandise leaves the FTZ for entry into the domestic commerce for consumption, Customs paperwork is filed. At the time of filing, the importer may choose to pay duty on the original foreign material or the finished product. Typically, the finished product carries a lower duty rate.

In addition to storage and processing, Foreign-Trade Zone users may:

- Avoid fines for improper labeling
- Display and demonstrate products without paying duty on those products

- Return damaged or defective goods prior to payment of duty
- Hold items currently constrained by quota limitations
- Eliminate the cost of temporary import bonds

More detailed information may be found at <http://ia.ita.doc.gov/ftzpage/>

(Eds. note: thank you to Jan Burland of Battle Creek Unlimited for assistance providing the foregoing FTZ information).

About Honigman

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