

Volume 2 – May 24, 2007

***Opportunity to Propose
Modifications to the Generalized
System of Preferences (GSP)
Program***

By way of brief background, the GSP is intended to foster economic growth in least developed and developing countries by providing preferential duty-free treatment to certain goods from these countries. Today, more than 4,800 products (3,400 for developing countries, an additional 1,400 for least developed countries) are eligible for duty-free treatment from more than 130 “beneficiary” countries – though not all eligible products may necessarily be imported duty-free from all beneficiary countries.

Indeed, under certain circumstances a product from a particular country may lose eligibility – for example if imports of the eligible article from the eligible country exceed 50% of total imports of the product (known as “exceeding competitive need limitation”), or if the beneficiary country becomes “sufficiently competitive” with respect to the article.

The Office of the United State Trade Representative (USTR) recently announced that it is accepting petitions to “modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country”; these petitions are due June 22, 2007. Additionally, petitions may be filed to waive

competitive need limits on specific products from individual beneficiary countries; these are due November 16, 2007.

Bottom line: If your company is not availing itself of GSP, perhaps it is prudent to explore the opportunities; if your company does import from GSP beneficiary countries, it is advisable to check competitive need limitation status.

***Status of Pending Free Trade
Agreements***

As reported in our inaugural newsletter last month, it was uncertain whether Congress would ratify prospective free trade agreements (FTAs) with Colombia, Panama, Peru, and South Korea. Since then, there have been a plethora of developments regarding these FTAs . . . Such that we can confidently observe that ratification remains uncertain.

Facetiousness aside, some Democratic leaders in Congress and the White House have come to agreement on a template or framework for FTAs (though the agreement technically applies only to Peru and Panama). Democrats have insisted that the pending and future FTAs include stronger labor and environmental protections. Toward this end, the White House has agreed to require FTA partners to adopt five basic labor standards, as articulated in a 1998 International Labor

Organization (ILO) Declaration. These include:

- Freedom of association
- Right to collective bargaining
- Elimination of compulsory labor
- Abolition of certain forms of child labor
- Elimination of discrimination

With regard to environmental protections, the FTA partners must agree to adopt laws which will effectively bring their countries into compliance with various “Multilateral Environmental Agreements.”

This framework agreement notwithstanding, certain powerful Members of Congress and constituent interest groups continue to raise red flags about FTAs in general, and specific aspects of each of the four pending FTAs.

Bottom Line: Ratification looks a little more likely today than three weeks ago, but horse trading will continue between and among pro and “less pro” free traders in Congress, the Administration, and affected interest groups. *Companies should explore opportunities to take advantage of liberalized trade with these four countries, but it is premature to enter into contracts upon the presumption that any of the four agreements will be ratified.*

Members of Congress Petition the Administration to Bring WTO Action Against China

A bipartisan group of 42 House members, including Ways and Means Committee Chairman Charles Rangel (D-NY), Trade Subcommittee Chairman Sander Levin (D-MI), Energy and Commerce Committee Chairman John Dingell (D-MI), and Rep. Candice Miller (R-MI), filed a "Section 301" petition with the Office of the United States Trade Representative (USTR), accusing China of manipulating its currency and asserting that such practice "denies and violates international legal rights of the United States, is unjustifiable, and burdens and restricts U.S. commerce."

In a nutshell, under Section 301 of the Trade Act of 1974, USTR may after investigation and under certain circumstances, impose "retaliatory" trade sanctions (typically punitive import tariffs) against countries that deny the U.S. rights and benefits of trade agreements, or otherwise engage in practices which unreasonably burden U.S. commerce.

A bit more on "retaliation" . . . as noted above, the typical retaliatory act, if warranted, is imposing higher import tariffs, up to 100%, on merchandise imported from the offending country – in this case, China. The theory is that such high tariffs will reduce, if not completely choke-off, imports from the country . . . and that affected producers in the country will prevail upon the country's government to reform its unfair practices. Indeed, it is common for USTR to target for retaliatory tariffs products whose producers have particular clout with the subject government or industries

that might otherwise employ large numbers of workers who would be adversely affected if the product were shut out of the U.S. market.

But, of course, the punitive tariffs DO have some adverse impact on U.S. consumers of the goods against which the tariffs are imposed.

Both to minimize the negative impact on U.S. consumers and to maximize the punitive impact on the offending country, USTR typically will create a "revolving" list of merchandise subject to the tariffs. In establishing the list, USTR will seek comment from the public.

It is premature to predict whether USTR will act on this petition, or whether it foreshadows legislation which may be designed to accomplish the same result as the petition. It does seem, however, that the China currency manipulation is not going away in the short term, and bears continued monitoring.

Indeed, just after this article was first drafted, China announced that it will allow its currency to "float" slightly more than it has in the past . . . though likely far short of a range likely to silence critics.

Congressional Hearing and Possible Legislation Concerning Currency Manipulation

On May 9, three Subcommittees of the House of Representatives, including the Committee on Ways and Means, Subcommittee on Trade, Chaired by Rep. Sander Levin (D-MI), held a hearing on *Currency Manipulation and Its Effect on U.S. Business and Workers*.

In his prepared opening statement, Chairman Levin noted that as a result

of the Government of China's intervention in currency markets, China's currency, the reniminbi or RMB, is estimated to be undervalued between 10 and 50 percent. With regard to Japan, Chairman Levin indicated that while direct intervention has not occurred since 2004, the yen has been described by *The Economist* magazine as "perhaps the world's most undervalued currency."

Witnesses at the hearing included G. Mustafa Mohatarem, Ph.D., Chief Economist, General Motors; Thea M. Lee, Policy Director, AFL-CIO; and Stephen S. Roach, Ph.D., Managing Director and Chief Global Economist, Morgan Stanley.

After the hearing, Chairman Levin indicated that he expected legislation to be introduced in the House to address currency manipulation. Such legislation might include amending U.S. law to treat currency manipulation as a foreign government subsidy.

Senator Debbie Stabenow (D-MI) has already authored similar legislation in the Senate.

Antidumping Duties on Stainless Bar from Several European Union Countries and Korea to be Reviewed

The U.S. International Trade Commission (ITC) has determined to conduct full reviews of the outstanding antidumping orders on stainless steel bar imports from France, German, Italy, Korea, and the United Kingdom.

As background, pursuant to the agreement establishing the World Trade Organization, the U.S. agreed to review individual antidumping and antisubsidy duty orders every five

years, to determine *whether revocation of the order would be likely to lead to the continuation or recurrence of dumping/subsidization and material injury (to the domestic industry producing the product) within a reasonably foreseeable time.*

The Department of Commerce investigates whether termination of the order will lead to the practice of dumping; the ITC determines whether revocation will lead to “injury.”

In connection with these reviews, all producers in the subject countries other than Germany have waived an investigation by Commerce of the likelihood of the continuation of dumping, choosing instead to focus efforts and resources on arguing that the domestic steel bar industry will not be materially injured if the orders are terminated.

In investigating whether revocation will lead to the continuation/recurrence of injury, the ITC will issue questionnaires to domestic and foreign producers, importers, and consumers, and will also hold a public hearing.

Beware the Office of Foreign Asset Control (OFAC) and the Bureau of Industry and Security (BIS)

While it is unlikely that many companies intentionally run afoul of the various export laws, doing so may result in the imposition of significant monetary penalties, denial of export privileges and, in extreme cases of willful violation, imprisonment. *If your Company is exporting commercial merchandise which may have some conceivable “dual use” in a military or other “strategic application, or is otherwise exporting to a country*

against whom the U.S. enforces trade sanctions (e.g., Iraq, Iran, Cuba), it is advisable to first determine whether export of the merchandise is prohibited, or requires a license or other pre-approval.

Two recent examples of what can happen: On May 4, BIS which administers the Export Administration Regulations, announced the assessment of a \$220,000 civil penalty against Yamada America, Inc. an Illinois company, in connection with the export of diaphragm pumps to Taiwan, Singapore, Brazil and Ecuador without the required licenses.

In March, Guidant Corporation, Indianapolis, Indiana remitted \$277,017.00 to the Dept. of Treasury to settle allegations of violations of the Iranian Transactions Regulations and Iraqi Sanctions Regulations. Between July 2000 and July 2004, Guidant, either without an OFAC license or outside the scope of its license, sold certain medical equipment which was ultimately resold to Iran and Iraq.

USTR Submits Various Trade Reports to Congress

Pursuant to various trade laws, in recent months, the Office of the United States Trade Representative (USTR) submitted certain reports to Congress which may be of interest to the general public.

On April 2, USTR announced the release of its 2007 National Trade Estimate Report (NTE), which details significant barriers to U.S. trade and investment and the broad array of U.S. actions to reduce and eliminate those barriers. The report may be obtained at:

http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html

In March, USTR released its annual Trade Agenda, which details the Bush Administration’s position on the benefits of trade for U.S. manufacturers, farmers, ranchers, service providers, workers, and consumers; reviews the Administration’s accomplishments of 2006; and lays out its trade agenda for 2007. The report may be obtained at:

http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_Trade_Policy_Agenda/Section_Index.html.

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