Highlights in Internaltional Trade and Commerce

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Foreign-Trade Zones Board Prohibits AD/CVD Silicon From Subzone In approving applications to establish foreign trade zone (FTZ) subzones in Kentucky and Washington, the FTZ Board (the Board) recently took the unusual step of prohibiting the admission of silicon metal subject to anti-dumping (AD) or countervailing duty (CVD) orders. When considering applications, the Board is required by regulation to consider "whether the approval is consistent with trade policy and programs, and whether its net economic impact is positive." In this case, the Board decided that the admission of silicon subject to AD/CVD orders would, even after payment of AD/CVD duties, threaten the viability of domestic production of silicon. As a result of AD/CVD orders, the US price of silicon has increased, and US production of silicon, previously dormant, has restarted. The Board noted that other producers were preparing similar applications to the two applications it had already received and concluded that the cumulative effect of the admission of AD/CVD silicon would be detrimental to domestic silicon production. Notably, the effect of the decision is that U.S. processors will be subject to AD/CVD duties on imports of silicon metal even when they intend to export the finished product. Comments on the decision are due July 12.

Customs Reauthorization Bill Receives Generally Positive Reviews, with Some Areas of Concern The Customs Facilitation and Reauthorization Act of 2009 (the Act), introduced last August and currently in Committee, has received generally positive reviews from the trade community, yet there are some concerns. On the whole, the Act's goals of "reprioritizing" Customs and Border Protection's (CBP's) mission to improve trade facilitation without lessening the focus on national security is seen as a positive step. Observers have praised the Act's establishment of new commercial enforcement practices to target imports most likely to violate U.S. intellectual property and safety laws, for example, because non-compliant imports hurt the trade community as a whole. However, two provisions in the Act are of particular concern to the trade community. First, the Act would repeal section 343(a) of the Trade Act of 2002, which prohibits CBP from using information collected for security purposes for commercial enforcement. Some brokers and importers are concerned that the differing standards for liability and accompanying penalties associated with security and commercial enforcement, as well as the fact that the Importer of Record often does not prepare advance security information, increases the risk that CBP's use of security data for commercial enforcement may compromise the Act's goals of both ensuring security and facilitating trade. Second, the Act will simplify the process by which parties can make claims for drawback (or refund of duties) on merchandise exported after having previously been imported. While this is a positive development, parties using customs brokers to facilitate drawback claims—especially claims in which the importer and exporter are different parties—must continue to exercise caution and ensure that all information submitted by the broker to CBP is accurate or else they will face penalties. These items represent but a few of the changes contemplated by the Act. Stay tuned, as HIGHLIGHTS will continue to monitor the Act and provide updates as the legislation develops.

China Revalues Currency, Senators Remain Unimpressed
Following months of pressure from Senate and Congressional leaders (see HIGHLIGHTS, 4-23-10), China announced late last month that it would revalue its currency. However, amidst concerns that rapid fluctuation of the yuan would destabilize the economy and lead to adverse social consequences, China's central bank quickly clarified that any change in the valuation of the yuan would be gradual. Despite China's decision to allow a more flexible currency, Senators Schumer and Baucus remain skeptical and promised at a recent Senate Finance Committee hearing to continue to pursue legislation that would lead to restrictions on Chinese imports. Valuation of the yuan is a significant trade issue between the United States and China. Many Americans think that, by pegging the yuan to the dollar, the Chinese government has undervalued the yuan, allowing Chinese manufacturers to sell goods in the United States at an artificially low price. China's leaders believe that currency stability is the key to China's economic growth and also to social stability, especially in light of recent strikes and suicides in manufacturing plants, which are indicators of growing labor unrest. Ultimately, some experts believe that allowing the yuan to rise against the dollar may lead to positive results, giving the Chinese people greater purchasing power and perhaps easing some of the industrial unrest. Allowing the yuan to rise would also be a step towards transitioning the economy away from its current dependence on exports and toward a more balanced model. However, any reform of China's currency will be done slowly, cautiously and on China's own terms.

New HTS Numbers Go Into Effect
New Harmonized Tariff Schedule (HTS) numbers went into effect July 1. The International Trade Commission (ITC) revises HTS numbers twice a year, usually in January and July. Generally the ITC makes its revisions in response to requests from the trade community. The updated HTS is available here http://www.usitc.gov/tata/hts/bychapter/index.htm, and archived HTS numbers are available here http://www.usitc.gov/tata/hts/archive/index.htm.If you have any questions concerning the subject matter addressed above, please feel free to contact any of the attorneys listed on the left.

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