



## Highlights in International Trade and Commerce

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The International Law Section of Williams Mullen prepared the following brief descriptions of selected issues in international trade and commerce for general information purposes and use by clients and friends of the firm.

**USTR Requests Information about Eliminating Tariffs on Environmental Goods:** Last week the US Trade Representative (USTR) asked the International Trade Commission (ITC) to study the probable economic effects of reducing the tariff on imported environmental goods and services to zero. Under section 332(g) of the Tariff Act of 1930, the ITC investigates the economic effects of possible regulatory changes at the request of Congress or the Administration. Environmental goods and services reduce, remediate, or prevent pollution or reduce the consumption of energy. In the context of proposed climate change legislation and more aggressive environmental regulation by the Environmental Protection Agency, the demand for environmental goods and services will almost certainly increase. Although duty-free treatment will cut costs for end-users of environmental goods and services, eliminating tariffs may not be in the interests of domestic producers. The Administration and Congress may be expected to use the ITC study as a basis for making policy. Look for future notices from the ITC setting hearing dates and a briefing schedule.

**China Relaxes Indigenous Innovation Policy:** China's Ministry of Science and Technology has apparently relaxed its Indigenous Innovation Policy, but foreign business owners remain concerned. China's Indigenous Innovation Policy is a government procurement policy that favors intellectual property developed in China over foreign products. The original policy excluded from the government procurement process any products and companies that developed intellectual property outside of China. Specifically, the old policy required that, to be eligible for government procurement, products must "have Chinese intellectual property" and be independent of "overseas organizations." Designed to encourage the development of technology within China, the policy violated the World Trade Organization (WTO) Agreement on Government Procurement and raised objections from foreign businesses, the European Union and the USTR. The new policy appears to eliminate the requirement that the product be developed first in China. Under the new policy, products eligible for procurement must be developed by companies that are legal persons in China and that comply with national laws. While foreign-owned businesses have applauded this development as a positive step, concerns remain, particularly with regard to determining whether the Innovation Policy applies to specific products as well as whether the policy will be administered on a consistent basis.

**Treasury Decides Not Yet to Decide About Chinese Rate Manipulation:** On April 3, Secretary Timothy Geithner announced that Treasury will delay publishing its semi-annual report on the

international economic and exchange rate policies of U.S. trading partners. By delaying the release Treasury avoids deciding whether to identify China as a currency manipulator. For years, many observers and lawmakers have contended that China is keeping the value of its currency artificially low relative to the dollar. Over the last several months, Senate and Congressional leaders pushed Treasury to act against China's perceived manipulation. At a House Ways and Means Committee hearing last month, however, a panel of experts warned against pursuing unilateral sanctions or other action against China and argued that such a response would only damage the economies of both nations. In announcing the delayed release of the report, Secretary Geithner appeared to agree, stating that upcoming G-20 Finance Ministers meetings and a Strategic and Economic Dialogue meeting with China this month are the best fora for advancing U.S. interests. However, Ways and Means Committee Chairman Sander Levin seems to favor a more aggressive approach, as he recently stated that, if the issue is not resolved at the G-20 meeting, "the U.S. will act." Meanwhile, Chinese President Hu Jintao recently indicated that China might be willing to reassess its currency policy, but not because of outside pressure. Treasury's ultimate decision, if any, will likely affect importers, exporters and producers, wherever located. Stay tuned.

**Commerce Department to Consider Changing Antidumping System:** The Commerce Department has collected comments from interested parties concerning whether the antidumping duty system used by the United States to discourage importation and sale of foreign-made goods at prices substantially below domestic prices should be changed to conform to the system used by most of the rest of the world. Under the US system, importers pay a deposit equal to the last-determined antidumping duty rate. Then, every year, the past year's imports are subject to a review, which determines the actual amount of dumping. Duties are refunded if particular sales during the year were not dumped. Or, if dumping increased, importers are subject to higher duties. This is known as the "retrospective" system. At its core, the retrospective system takes more time but is ultimately fairer in that importers pay duties based upon the actual prices of their transactions. In a "prospective system," the duty deposits are replaced with fixed duty rates or a fixed benchmark "normal value," to which import prices can be compared. Prospective rates are also generally subject to annual review and can be changed, but once the duty is paid on a given importation, the duty amount will not be increased. The beauty of a prospective system is commercial certainty (and it is easier for Customs to administer). According to a study that the Government Accountability Office did some time ago, the retrospective system is not efficient in terms of collecting the correct amount of duty. Commerce is therefore considering whether to change the system.

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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## Related People

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