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CLIENT ALERT

Increased Tariffs on Chinese Imports: It's About More Than Tires

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On September 11, 2009, President Obama exercised his authority under section 421 of the Trade Act of 1974 to impose increased tariffs on Chinese tires over a three-year period in response to rapidly increasing imports. This is the first time a President has taken action under Section 421, a "safeguard" provision to deal with import surges from China that was enacted in 2000 as part of legislation paving the way for China to join the World Trade Organization ("WTO"). **The action has important implications that go well beyond trade in tires.** Here are five developments that merit close attention:

(1) The WTO Case: China responded to the tire tariffs by immediately filing a WTO complaint. In prior cases, dispute settlement panels found that the United States breached WTO rules when it imposed safeguards in response to import surges. Will a new panel apply the reasoning of those earlier cases to reach a similar result here? The answer could affect how the United States and other countries respond to future complaints of import surges from China.

(2) U.S. Trade Agenda: Trade policy watchers have noted the lack of a clearly articulated trade agenda by President Obama. There has been some expectation, however, that a demonstration of his willingness to stand up for the interests of those claiming to be harmed by globalization will establish a reservoir of goodwill that will enable him to pursue a more ambitious trade agenda. The weeks ahead should show whether the tires safeguard has had that effect.

(3) U.S.-China Relations: The tires safeguard occurs in the context of a commercial relationship in which the United States and China sometimes are partners and sometimes are adversaries. A possible consequence of the safeguard is that it will make cooperation more difficult. For example, the United States and China have been engaged in discussions relating to a bilateral investment treaty. It will be notable to see whether China's willingness to continue those discussions is affected by the safeguard.

(4) Other 421 Petitions: The unwillingness of the last administration to provide remedies under Section 421 caused some domestic industries to view the provision as a dead letter. The tires tariffs likely will change that perception. As a consequence, companies in other sectors may be more willing to incur the costs associated with filing and supporting their own petitions.

(5) G20 Reaction: At their November 2008 and April 2009 summits, the members of the G20 pledged to refrain from raising new trade and investment barriers. Some may well see the tires tariffs as a breach of that pledge, which could lead to a more general erosion of the pledge. It will be important to see how the United States reconciles the safeguard with the pledge and what example other G20 members take from the U.S. action.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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