U.S.-China International Trade Issues in 2010

By Spencer S. Griffith

Summary: By carefully monitoring both their own export situation and the larger economic and political relationship between the two countries, Chinese exporters can minimize their exposure to possible trade cases.

Trade tensions between the U.S. and China are currently very high and will continue to increase in 2010 for a number of reasons. The U.S. economy is still recovering from the recent recession. Trade cases are historically counter-cyclical, and increase in difficult economic times. Impacted U.S. industries thus will continue to feel competitive pressure from Chinese exporters. Also, the political climate in the U.S. remains tense towards China, as the trade deficit with China continues to increase and the Obama Administration pledges to strictly enforce existing trade agreements and pursue trade remedies towards China. Also, 2010 is a mid-term election year in the U.S., which will further increase the political pressure in the U.S. to address the growing trade tensions with China.

For these reason, U.S. industries will continue to file trade cases against China. In 2008, U.S. industries filed a total of 11 dumping and subsidy cases, and 10 of those were against China. In 2009, U.S. industries filed 15 trade cases, and 13 of those were against China. This trend of increasing trade cases focusing on China should continue in 2010. The Obama Administration will continue to emphasize enforcement as a key pillar of U.S. trade policy. This should translate into additional receptivity in Washington to the filing of trade cases by impacted U.S. industries against China and other countries.

While trade tensions will continue to escalate in 2010, neither government wishes to see a full blown trade war develop. Both governments recognize that the larger bilateral issues between the two countries, including continued efforts to fight the worldwide recession, national security issues in Asia, efforts to rein in Iran's unclear ambitions, climate change, energy, etc., are more important and that trade conflicts should be confined to the trade arena and should not be allowed to bleed over into the larger, bilateral relationship. Looking forward in 2010, a number of areas will continue to create trade tensions between the U.S. and China. As noted above, trade cases by the United States against China likely will continue to increase. Just as important, however, Chinese trade cases against imports from the United States, such as the Chinese cases against U.S. autos and poultry exports filed in 2009, also may continue to increase. The trade case that China initiated against imports of automobiles from the U.S. in 2009 will be concluded in 2010. That case will address the sensitive political issues surrounding the "bailout" funds provided to the U.S. auto industry in the aftermath of the recession. This is the only case in the world challenging the provision of assistance to industries facing bankruptcy in the aftermath of the recent recession. In addition, any additional special safeguard cases filed by U.S. industries against China in the aftermath of the recent U.S. tires decision will further exacerbate recent tensions between the two governments.

Other important trade issues likewise will be addressed in 2010. China recently challenged at the WTO the United States' use of both dumping and subsidy remedies against China, claiming that the U.S. imposition of countervailing duties attacking alleged Chinese subsidies while at the same time treating China as a non-market economy for dumping cases results in an inappropriate "double remedy" to the U.S., inconsistent with the United States.

WTO obligations. The outcome of the WTO Panel in this case will be closely watched by both governments.

The U.S. will continue to request that China modify its recent “indigenous innovations” policy, under which certain preferences were to be provided to domestic enterprises (including foreign-invested firms) attempting to sell goods or services to Chinese government authorities if those enterprises had registered their intellectual property first in China. The United States believes that this policy restricts the ability of foreign enterprises to access government procurements within China. Another area of tension in 2010 will be U.S. concerns over Chinese restrictions on exports of raw materials. The United States in 2009 has filed a WTO case against China in this area, and is expected to continue to press that case forward in 2010. And the U.S. will monitor closely alleged subsidies provided by the Chinese government in the aviation and solar energy sectors.

Rising U.S. exports to China should help to diffuse somewhat trade tensions. U.S. exports to China in recent months have increased to record levels, and are expected to continue to increase in 2010. This recent trend, coupled with China’s continued efforts to “rebalance” its economy to increase domestic consumption and decrease reliance on exports, should help to smooth over trade tensions in the long run going forward.

Given these trade tensions, what can Chinese exporters do to minimize the chances that their export to the U.S. will be subject to potential trade restrictions? First, Chinese exporters should be aware of and continue to monitor overall trade tensions between the two countries. If trade tensions continue to increase, then U.S. industries will be more willing to file cases against China, increasing the risk to Chinese exporters. In addition, Chinese exporters should be mindful of the “red flags” that might signal increased risk of trade cases being filed. For example, a sudden increase in export volume to the U.S. market, or a sudden reduction in imports from China, could signal an increase risk of trade cases. In addition, Chinese exporters should continue to coordinate with their U.S. importers and customers to keep a close eye on market conditions and rumors of threatened trade actions. Finally, Chinese exporters should retain counsel and advisors if they believe a trade action is possible.

In short, while trade tensions will continue to rise in 2010, there is good reason to believe that a larger-scale trade war will not develop.

Spencer S. Griffith has over 25 years of experience in international trade law. He is the Managing Partner of the Beijing office of international law firm Akin Gump Strauss Hauer & Feld LLP.

This article was published in Chinese in the April 2010 edition of *GE Magazine* and is reprinted with permission.

AKIN GUMP
STRAUSS HAUER & FELD LLP
美国艾金·岗波律师事务所