



LTI Newsletter

Bringing you the Latest Developments in U.S. and Chinese Strategic Trade Compliance Policy

Winter 2009 - 2010

An Executive Note

Dear Friends and Partners,

Information security, internet censorship, and cyber security have been hot topics in global policy discussions, but the debate is reaching a boiling point in the U.S.-China discourse. Engagement on these issues hits at many different levels, including private Government-to-Government discussions, public Government remarks, media coverage, industry response, and internet blog debates. It is necessary to reflect upon the history of these discussions to recognize that this is not a new debate. With regular turnover in political leadership, it is difficult to retain institutional memory of the past events that have led us to this point, so we would like to point out how many of these topics are tied together.

Beginning in 1999, China began issuing regulations governing the research, production, sale, use, import and export of encryption products and technology. China's leading Government agency that oversees the issuance of regulations in this area is the State Cryptography Administration (SCA), but many other Chinese security agencies are also involved. Throughout the 2000s, China continued to issue related announcements and regulations about encryption, and the fundamental issue brought forth, primarily by non-Chinese companies doing business in China, was the clear desire of the Chinese Government to control and regulate commercial encryption technology. On encryption, the first flare of resistance from the international community took place after the first issuance of the 1999 regulations. The concerns were eased when the Chinese Government issued a 2000 clarification that the encryption regulations were limited only to products whose "core function" was encryption. Again, in 2003 to 2004, the international business community responded to Chinese Wireless LAN Authentication and Privacy Infrastructure (WAPI) standard requirements with threats of exiting the market. These resisting voices were quieted as China indefinitely delayed implementation. However, the saga continued in 2008 to 2009 with: 1) the revival of the WAPI standards for Government Procurement and mobile phone applications, 2) the announcement of the 13 categories of information security products to require a China Compulsory Certification for Information Security (CCCI) mark starting in May 2010, 3) the creation of new HS codes for encryption products, and 4) many other Government announcements and regulations about Government procurement, indigenous innovation, the China Multi-Level Protection Scheme, and increased customs enforcement of encryption and certification requirements.

As we reflect upon these past incidents of clashing Chinese and international interests in the information technology sector, the stories begin to sound remarkably familiar. In January of this year, Google announced its intentions to abandon the China market if internet censorship and gmail account hacking issues are not resolved. This move was soon thereafter followed by a resounding statement on internet freedom by U.S. Secretary of State, Hilary Clinton. Much like the response to the numerous Chinese encryption regulations, the fundamental disagreement expressed by international businesses and Governments around the world is the degree to which State control over and access to proprietary business information is acceptable.

From the U.S., the remarks on information security and internet freedom have centered around the value to Governments, businesses, and individuals of free internet access where violent and illegal actions are minimized while security of information is maximized. From China, the remarks have centered around State sovereignty and the right of the State to determine how the internet is supervised in the name of protection of those on Chinese soil.

As usual, we at LTI are looking for the positive side, and we reserve some hope that this latest flare-up of the public discourse on internet security and censorship will ease below 100°C and will not result in businesses exiting the China market. We will continue to do our best to minimize the trade disputes and lower the bilateral tensions in the interests of all, and we look to you for support in reaching this goal.

- John, Nina, and Amanda

U.S.-China Trade Developments

Chinese Government Procurement Law Implementation Rule Out for Public Comment

On January 11, 2010, the Legal Affairs Office of State Council (SCLAO) of China posted the draft of the proposed rule entitled “PRC Government Procurement Law Implementation Rule (Request for Comment Draft).” The deadline for public comments is February 5th, 2010. Some of the key points of the proposed rule are detailed below:

- Explanation of the applicability of the Government Procurement Law, clarifying the implication of fiscal funds, defining goods/project/service, and stating that Government Procurement (GP) projects can be excluded from the jurisdiction of the “Tendering and Bidding Law” which became effective in 2000;
- A GP project shall be disclosed to the public on a provincial level (or above) website, and a GP project exceeding RMB 5 million shall be announced on a State Council Finance Department designated media, whereas state secret or commercial secret related projects and information cannot be disclosed;
- Emphasizes the fact that GP shall prefer environmental and energy efficiency related, indigenous innovation products, as well as support small and medium enterprises, less developed areas and minority regions registered enterprises;
- In terms of GP methods, explains the applicable conditions for non-disclosure tendering and bidding, and the specific methods for focal service procurement, computerized GP, and under-public-tendering-threshold GP;
- Specifies GP agencies responsibilities and qualifications;
- Standardizes management of security deposits, and systemizes GP evaluation experts’ requirements; and
- On GP contracts, the draft rule forbids subcontracting preferred policy GP projects, and further legitimized the content/implementation of a GP contract.

LTI will provide more details about the impact of these implementation rules once the final version is issued. In the meantime, please contact LTI if you have any questions.

For more details, please check the Chinese version of the proposed rule, which can be found at the following link: <http://www.chinalaw.gov.cn/article/cazjgg/201001/20100100193904.shtml>.

For the original Chinese version of China's Government Procurement Law, see the following link: <http://www.ccg.gov.cn/zycg/zycgdt/1090706.shtml>

Alibaba.com Offers “Gold Supplier” Member Status to International Suppliers, Program Not Foolproof

In May 2009, Alibaba.com extended its Gold Supplier membership status to international suppliers. The Gold Supplier program was started in 2000 to help shoppers verify the legitimacy of the online vendors. Gold Suppliers undergo verification procedures and are then authorized to display the Gold Supplier icon on their online profiles. Eligibility for Gold Supplier status was extended to Hong Kong suppliers in 2007 and Taiwan suppliers in 2008. However, the Gold Supplier program has not been foolproof. Customers have been scammed by so-called Gold Suppliers, and accusations have arisen that Gold Suppliers are not actually subject to deeper verification procedures but simply pay a higher membership fee. In order to reduce fraud on the site, Alibaba.com publishes “Fraud Cases” on its website with analyses and recommendations for verifying the legitimacy of online vendors and spotting and avoiding online scams.

U.S.-China Joint Commission on Commerce and Trade

On 28-29 October 2009, the 20th meeting of U.S.-China Joint Commission on Commerce and Trade (JCCT) took place in Hangzhou, China. United States Trade Representative Ron Kirk and Commerce Secretary Gary Locke served as co-chairs alongside Chinese Vice Premier Wang Qishan. On the first day of the JCCT, the co-chairs oversaw the signing of a joint venture between U.S. industrial services company Harsco Corporation (70%) and Chinese company Zhejiang Construction Materials and Equipment Company (30%). The joint venture will be located in Hangzhou and will focus on providing scaffolding and support equipment for the construction of transportation infrastructure, chemical and petrochemical plants, and civilian nuclear reactors. On the second day of the JCCT, Chinese officials announced that China intended to retract its H1N1-related ban on imports of U.S. pork and live pigs. Other items of progress included China agreeing to continue efforts to open up its government procurement process, strengthen efforts against Internet piracy, and remove certain restrictions on foreign companies in China's wind energy market. The two sides signed an MoU for the founding of the U.S. China Energy Cooperation Program (ECP), which will seek to develop clean energy solutions in China. The JCCT began in 1983 for the purpose of addressing issues in bilateral trade and increasing economic opportunities between the United States and China.

In late January, Assistant U.S. Trade Representative, Timothy Stratford, and Deputy Assistant Secretary of the U.S. Department of Commerce, Ira Kassoff, visited China to stimulate progress in achieving the goals set out in the JCCT. The ongoing discussions and actions carried out by the working groups will be critical for the success of the next JCCT.

China Announces Indigenous Innovative Product Accreditation Policy for Government Procurement Preferences

On 15 November 2009, China's Ministry of Science and Technology, National Development and Reform Commission, and Ministry of Finance released joint circular (Notice No. 618) announcing the implementation of an “Indigenous Innovation Product Accreditation System” for Chinese government procurement of high-tech products. The system is intended to establish the qualifications and procedures for receiving government procurement preferences, which would include certifying products as indigenously innovated in China. Criteria for qualification would include containing Chinese proprietary intellectual property rights and having the registration of trademarks take place within the territory of China. Shortly after the notice was issued, international industry associations and foreign governments protested that the system would restrict or even exclude foreign products from the Chinese government procurement market, as they would not qualify for certification as indigenous innovation products. Another point of contention

was the short timeline of the program, as companies had until 10 December 2009 to apply.

U.S. President Barack Obama Visits China

From 16 to 19 November 2009, U.S. President Barack Obama made his first official state visit to China. He fielded carefully-worded questions from an audience of 400 Chinese students in Shanghai, including one on Internet censorship, attended a closed meeting with Chinese President Hu Jintao in Beijing, and visited the Great Wall at Badaling. No significant policy initiatives were launched or signed during his visit. A statement released by Presidents Obama and Hu after their private meeting said that the two leaders had agreed to pursue domestic policies in their respective countries to create a more balanced bi-lateral economic relationship. On the U.S. side that means improving the savings rate and reducing debt, and on the Chinese side that means adopting policies to increase domestic demand. Those expecting Obama to push the Chinese for more concrete economic and political gains were largely disappointed with the visit.

Chinese Machinery and Electronics Investment Delegation Visits France

From 26 to 28 November 2009, China's Minister of Commerce Chen Deming led a trade and investment procurement delegation to France to seek contracts in the areas of aviation, nuclear power, transportation, energy production, energy efficiency, environmental protection, agriculture, food processing, communications, and logistics. The delegation was comprised of members of the China Chamber of Commerce for Import and Export of Machinery and Electronic Products. French Finance Minister Christine Lagarde hosted the group at the French Ministry of Economy, Finance and Employment; the delegation signed more than forty contracts with French enterprises during the visit.

China-UK Trade Slumps

Due to a trade slump between China and Great Britain, Chinese Minister Counsellor of the Embassy of China in London Zhang Lirong suggests that Britain ease restrictions on high-tech items to China. In 2008, UK-China trade reached a total volume of USD 45.6 billion. At the close of the third quarter of 2009, UK-China trade had reached USD 31.3 billion.

Green Technology

China Energy Conservation Investment Corporation to Invest in European Solar Energy Projects

At the U.N. Climate Change Conference in Copenhagen, Denmark in December 2009, an executive from the China Energy Conservation Investment Corporation (CECIC), the Chinese state-owned enterprise tasked with developing clean and renewable energy, announced interest in investing Chinese funds in solar energy projects in Spain, Italy, and Germany. According to a *Wall Street Journal* article, CECIC had received a loan of RMB 20 billion (approx. USD 3 billion) from the Export-Import Bank of China to pursue green energy projects overseas. It will use the money to target solar energy projects in these three countries that have stalled due to the global economic crisis and restart them. CECIC has been active in Chinese domestic solar energy projects, such as a 10-megawatt solar utility plant in September 2009, but has to date not yet invested abroad.

At Climate Change Conference in Copenhagen, China Opposes an International Treaty Demanding Emissions Reductions for Developing Countries, United States Proposes Aid with Conditions

On 17 December 2009, Chinese Premier Wen Jiabao arrived at the U.N. Climate Change Conference in Copenhagen, Denmark. Wen advocated for developing countries by expressing opposition to an international treaty that would disproportionately burden developing countries in the reduction of carbon emissions. From China's perspective, since the developed countries have been responsible for the majority of carbon emissions over the past two centuries, the onus is on them now to make the most dramatic cuts in emissions and provide aid to developing countries to reduce their emissions. China currently derives seventy

percent of its energy supply from heavily polluting coal. While U.S. President Barack Obama implied that aid directly to China was unlikely unless China adopted greater levels of transparency and agreed to emissions monitoring, U.S. Secretary of State Hillary Clinton pledged an annual contribution of USD 100 billion to help poor nations handle climate change, also with the condition of transparency.

Chinese Standards and Certification Update

The Standards Administration of China Issues New Circular

A new circular issued by the Standards Administration of China (SAC), “Provisions on the Administration of Formulating and Revising National Standards Involving Patents,” addresses how the patent application process is affected by the formulation and revision of standards. The provisions aim to properly address patent-related issues in national standards, regulate the handling of patents during the formulation and revision of national standards, encourage indigenous innovation, push forward adoption of new technologies in national standards, protect the rights and interests of patent holders and the public, and ensure the effective enforcement of national standards.

SAC began soliciting comments on these provisions as early as 2003, but due to industry opposition, they have been delayed until now. One sticking point in this issue is that the Chinese government leads the standards development process, as opposed to western countries in which industry leads the standards development process. The Chinese government’s involvement in patent issues has been objectionable to certain members of industry, since standards are typically a public issue and patents are typically a private issue.

Chinese Customs Update

Chinese Customs Reports International Trade Trends

On 11 November 2009, Chinese Customs released foreign trade statistics for the period of January through October 2009. According to the data, the total value of foreign trade during that period was USD 1.755 trillion—USD 957.36 billion from exports and USD 798.13 billion from imports. In October 2009, the total value of foreign trade was USD 197.54 billion—USD 110.76 billion from exports and USD 86.78 billion from imports.

From January to October 2009, the European Union was China’s biggest trading partner, with a total trade value of USD 292.42 billion. The United States was China’s second biggest trading partner, with a total trade value of USD 239.36 billion. Japan was China’s third largest trading partner, with a total trade value of USD 182.34 billion.

For specific imported commodities of interest during this period, China imported 34.88 million tons of soybeans, an increase of 13.2% from the same period last year. The average imported price of soybeans was USD 438.1 per ton. China imported 305,000 automobiles, a decline of 10.6% from the same period last year.

U.S.-China Trade in Agriculture

Government Subsidies Set for National Temporary Reserve Grains from Northeast China

China’s National Development and Reform Commission (NDRC), Ministry of Finance (MOF), the State Grain Administration (SGA), and China Agricultural Development Bank (CADB) issued a joint notice in September 2009 on government procurement of grains from Northeast China including the Inner Mongolia Autonomous Region, Liaoning Province, Jilin Province, and Heilongjiang Province. The notice stipulated that the Chinese government would continue the National Temporary Reserve Procurement of grains at the government subsidy prices for corn and soybeans during the period of 1 December 2009 to 30 April 2010. The national procurement subsidy price (acting as a floor price) set for corn from Inner Mongolia and

Liaoning Province was RMB 1,520 per ton and decreased to RMB 1,500 per ton for Jilin Province and RMB 1,480 per ton for Heilongjiang Province, while the subsidy price for soybeans was RMB 3,740 per ton. In the meantime, the Chinese government is to provide Sinograin and some government designated crushing companies with a one-time subsidy of RMB 160 per ton until the market prices for soybeans and corn are higher than the subsidy price for the set period of time.

LTI News

John Larkin and Jeannette Chu Present Best Practices at Export Control Seminar in Shanghai, China

On 4 November 2009, LTI President John Larkin presented at the 2009 Customs and Export Controls Seminar in Shanghai, China. Hosted at the SEMI Office in Shanghai, Larkin talked about best practices for preparing license applications, helpful hints for navigating the license application process, when to seek an end-user statement from MOFCOM, and how internal compliance can serve as a business advantage for companies engaged in high-tech trade. Jeannette Chu, the export control attaché at the U.S. Embassy in Beijing also presented on the VEU program and the needs of U.S. industry, the value of customer screening and internal compliance programs, and U.S.-China cooperation on export controls.

Nina Hsu Earns her Masters of Business Administration Degree

On 22 November 2009, LTI Vice President Nina Hsu graduated from Rutgers University in Beijing with her Masters of Business Administration (MBA) Degree. Rutgers offers the fifteen-month program in Beijing, Shanghai, and Singapore. It is geared towards executives working full-time. Congratulations, Nina!

LTI Says Farewell to Ingrid Lombardo

On December 31, 2009, LTI Washington, D.C. Director, Ingrid Lombardo, completed her last day at LTI and prepared for the next step in her career. After two years of working together on important U.S.-China trade issues, LTI was sad to see Ingrid depart. At the same time, we are happy to know that in her new role, she will carry on in the promotion of stronger and deeper U.S.-China relations by sending American students to study abroad in China. Ingrid is now the China Programs Manager at CET Academic Programs in Washington, D.C. LTI wishes Ingrid the best of luck and great success. We will miss you, Ingrid!

LTI Virginia Office

LTI can now be reached in the United States through the LTI Virginia Office, which is run by Tina Larkin. Tina is LTI's Chief Financial Officer and U.S. Office Director. For LTI assistance in the U.S., Tina may be reached at tlarkin@larkintrade.com or 202-558-6514.

KENTUCKY CORNER

The Latest from the Kentucky China Trade Center

How long does it take to export a horse from the United States to China? Approximately three months. KCTC Director David Snodgrass found this out during his early December 2009 visit to Kentucky. Snodgrass led a delegation of Chinese investors from four horse farms in Beijing. The group purchased nine horses from Kentucky, comprised of eight mares and one stallion. The horses are all of different breeds, none of which are currently present in China.

The process for exporting a horse is as follows. First, it takes thirty to forty-five days to fill out the necessary documentation. Then, the horse goes into quarantine for thirty days in Kentucky. Next, the horse is flown to China. Once arrived, the horse is quarantined for forty-five days before being released to its new home in China.

The KCTC sees huge potential for investment in the equine industry in China. Another area of current focus is in the automotive industry. The KCTC is steering investors towards automotive components and advanced automotive batteries such as those produced by BYD Auto and Foton. If you are interested in investing in the equine or automotive industries, please contact David Snodgrass at dsnodgrass@kentuckychinatrade.com.