

President Acts on Labor Claim of Market Disruption, Imposes Tariffs on Chinese Tires

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- (j) If it transpires that financial payment messaging data were transmitted which were not requested, the U.S. Treasury Department shall promptly and permanently delete such data . . . ;
- (k) Subject to subparagraph (i), all non-extracted data received prior to 20 July 2007 shall be deleted not later than five (5) years after that date;
- (l) Subject to subparagraph (i), all non-extracted data received on or after 20 July 2007 shall be deleted not later than five (5) years from receipt[.]

....

## ARTICLE 6

### Adequacy

Subject to ongoing compliance with the commitments on privacy and protection of personal data set out in this Agreement, the U.S. Treasury Department is deemed to ensure an adequate level of data protection for the processing of financial payment messaging and related data transferred from the European Union to the United States for purposes of this Agreement.

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## ARTICLE 15

### Final Provisions

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2. This Agreement shall apply provisionally from 1 February 2010, until its entry into force . . . .
3. Unless previously terminated in accordance with Article 14 or by agreement of the Parties, this Agreement shall expire and cease to have effect on 31 October 2010.
4. As soon as the Treaty of Lisbon enters into force, the Parties shall endeavour to conclude a long-term agreement to succeed this Agreement.

## INTERNATIONAL ECONOMIC LAW

### *President Acts on Labor Claim of Market Disruption, Imposes Tariffs on Chinese Tires\**

On September 11, 2009, President Barack Obama issued a proclamation announcing additional customs duties for three years on certain pneumatic rubber tires from the People's Republic of China.<sup>1</sup> These tariffs were imposed pursuant to section 421 of the Trade Act of 1974 (as amended), which provides for measures to address market disruption from imported

\* This item was prepared by Steve Charnovitz of the Board of Editors, to whom the Editor expresses his appreciation.

<sup>1</sup> The White House, Proclamation to Address Market Disruption from Imports of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (Sept. 11, 2009), at [http://www.whitehouse.gov/the\\_press\\_office/Proclamation-Address-Market-Disruption-from-Imports-of-Certain-Passenger-Vehicle-and-Light-Truck-Tires](http://www.whitehouse.gov/the_press_office/Proclamation-Address-Market-Disruption-from-Imports-of-Certain-Passenger-Vehicle-and-Light-Truck-Tires); see Anny Shin, *In Tire Case, Obama Faces First Chinese Trade Policy Test*, WASH. POST, Aug. 7, 2009, at A10.

products.<sup>2</sup> President Obama made his decision following a finding by the U.S. International Trade Commission (USITC) that certain passenger vehicle and light truck tires from China were being imported into the United States in such increased quantities as to cause, or threaten to cause, market disruption to domestic producers of like or directly competitive products.<sup>3</sup> The new, degressive tariffs begin at 35 percent ad valorem in the first year and fall to 23 percent by the third year. The baseline tariff on such tires is 4 percent. The USITC had recommended a three-year tariff increase at a higher level.

The president has discretion as to whether to follow an USITC recommendation for import relief. This China tires case marks the first time that the United States has utilized section 421 to impose tariffs on Chinese exporters.<sup>4</sup> The section 421 market disruption provisions apply only to China and contain less rigorous requirements for imposing import protection than exist in the regular section 201 provisions potentially applicable to all countries that export goods to the United States.<sup>5</sup> Although section 421 import relief diverges from the most-favored-nation principle, this form of import relief is permitted by World Trade Organization rules because, in negotiating its entry into the WTO by accession, China accepted a unique arrangement whereby the United States and other WTO members gained a right to impose a special safeguard against China during China's initial twelve years of WTO membership.<sup>6</sup>

The USITC investigation of imports from China came as a response to a petition from the United Steel, Paper and Forestry, Rubber, Manufacturing Energy, Allied Industrial and Service Workers International Union. Although in past U.S. practice, labor unions or federations have petitioned the U.S. government for section 201 or section 421 relief, in all of the prior cases where a president has granted import relief, the labor petitioners were joined by petitioners from the import-competing industry. Thus, the China tires case is the first instance that a U.S. president has given import relief to an industry solely as a result of a petition from a labor union representing workers in that industry. China was sharply critical of the U.S. action and responded with a series of trade complaints involving U.S. exports to China.<sup>7</sup>

#### INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

##### *United States to Prosecute Five Guantánamo Detainees in Federal Courts and Five Before Military Commissions; Use of Federal Courts Draws Criticism*

In November 2009, the Departments of Justice and State announced that Khalid Shaikh Mohammed and four other Guantánamo Bay detainees implicated in the September 11, 2001, attacks on the United States will be prosecuted in federal district court in Manhattan, whereas five other detainees accused of involvement in the October 2000 attack on the USS

<sup>2</sup> 19 USC §2451.

<sup>3</sup> See U.S. International Trade Commission, Certain Passenger Vehicle and Light Truck Tires from China, Investigation No. TA-421-7, at 1 (July 2009).

<sup>4</sup> Rossella Brevetti, *Lawyers Assess Impact of Decision by Obama to Impose China Tire Safeguard*, Daily Report for Executives (BNA), Sept. 21, 2009, at A-15.

<sup>5</sup> Section 201 of the Trade Act of 1974 is codified at 19 USC §2251.

<sup>6</sup> Sean Murphy, *Contemporary Practice of the United States*, 95 AJIL 145, 146 (2001).

<sup>7</sup> Ariana Eunjung Cha, *U.S. and China in a Snowballing Trade Fight*, WASH. POST, Jan. 4, 2010, at A2.