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**INTERNATIONAL TRADE &
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President's Landmark Section 421 Decision Triggers Concerns Over China Trade War

The Obama administration's September 11 decision to implement tariffs on surging imports of Chinese passenger vehicle and light truck tires under a statute previously ignored by President George W. Bush has unleashed a torrent of protest from business, economists and political commentators fearing a possible trade war with China. Within 72 hours of the decision, China announced plans to appeal the decision at the World Trade Organization (WTO) and respond with its own trade remedy investigations into U.S. auto parts and chicken products.

The statute President Obama utilized, Section 421 of the Trade Act of 1974, is a China-specific trade remedy provision passed into law in 2000 as part of U.S. approval of China's WTO accession. During China's WTO accession negotiations with the United States, China agreed at Congress's insistence that special procedures for addressing import surges from China be included as part of any agreement. Consequently, Section 421 was added by the U.S.-China Relations Act of 2000.

During the Bush administration, six Section 421 cases were brought on behalf of various domestic industries. In four of those cases, the International Trade Commission (ITC), which decides whether the domestic industry has suffered injury due to "market disruption" caused by surging imports from China and makes remedy recommendations to the president, found injury and recommended specific short-term relief in the form of tariffs, quotas and/or additional trade adjustment assistance to affected U.S. workers. In each instance, President Bush denied relief, claiming it would be contrary to U.S. economic interests. Bush's continued refusal to grant relief effectively chilled the provision's use until President Obama entered office.

The tire case was the first Section 421 proceeding filed during the Obama administration. It was brought by the United Steelworkers Union on behalf of workers at U.S. tire manufacturing facilities without the participation of U.S. tire producers, which either took no position or opposed relief because of Chinese business interests or lack of involvement in the targeted low-end tire segment. Observers viewed this case as the first major trade policy decision of the Obama administration, pitting Obama's campaign promises to "crack down on China" on behalf of aggrieved U.S. workers and their unions—major supporters of his candidacy and key domestic policy initiatives—against his efforts to improve U.S. relations worldwide and his support of free trade policies during the ongoing global financial crisis.

Once it determined that the U.S. tire industry suffered injury due to increased tire imports from China, the ITC recommended that the president impose tariffs on imported Chinese tires of 55 percent the first year, 45 percent the second year and 35 percent the third year. Ultimately, the president chose to impose lower tariffs—35 percent in the first year, 30 percent in the second year

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and 25 percent in the third year. President Obama says he remains committed to “open and free trade” and globalization of the world economy, but an integral part of that commitment is “enforcing trade laws and trade agreements.”

Under Section 421, there is a fairly tight schedule for consideration of a petition. The initial ITC determination, including its remedy recommendation to the president, must be made within 60 days of the petition’s filing. The case then moves to the Office of the U.S. Trade Representative (USTR), which has 55 days to provide its recommendation to the president. The president’s final decision must be made within 10 days of receipt of the USTR’s recommendation.

The imposition of relief against Chinese tires is expected to lead to more Section 421 cases. It has been reported that many such cases had been placed on hold pending the president’s tire case decision. Whether President Obama will be inclined to grant further relief under this provision in the wake of China’s threats of retaliation and the possibility of a widening trade war between the countries remains an open question.

FOR MORE INFORMATION

Please contact **Julia M. McCalmon** or any member of our **International Trade & Customs** practice group for more information.

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