



# **NEW DEVELOPMENTS IN TRADE REMEDY PROCEEDINGS AGAINST CHINA**

*-- PANEL INTRODUCTION --*

**Presented at Customs & International  
Trade Bar Association (CITBA) Seminar**

**Washington, DC**

John R. Magnus  
TRADEWINS LLC  
February 26, 2008

## **NEW DEVELOPMENTS IN TRADE REMEDY PROCEEDINGS AGAINST CHINA**

### **-- PANEL INTRODUCTION --**

Good afternoon ladies and gentlemen. I'm John Magnus of TRADEWINS LLC -- also of Miller & Chevalier Chartered – and am honored to be here with you today.

As you know, U.S. trade remedy cases are increasingly focusing on goods from China, and the rules are in a state of flux. We have a distinguished panel of experts today to discuss current legal and policy issues related to application of the U.S. trade remedy laws to Chinese products. They will address questions under three general headings:

1. On the Commerce Department's decision to begin applying the countervailing duty (CVD) law to Chinese products:

- Have the *Georgetown Steel* decision and the agency precedents underlying that decision been repudiated, or simply distinguished on the basis of a different fact pattern in a different country?
- Will Commerce's new approach survive judicial review? What about Commerce's decision to exclude alleged currency subsidies from the CVD investigations conducted so far?
- If Commerce is applying the CVD law to Chinese products already, what is the relevance of proposals to extend the law to China legislatively?

2. On the implications of these CVD developments for China-focused antidumping cases, and for countries other than China:

- Does Commerce's conclusion that at least some subsidies can now be confidently identified and measured in China call into question China's status as a "nonmarket economy" for antidumping purposes? What is the relevance in this regard of the 15-year period set out in China's WTO accession agreement?
- Does anything learned so far in China/CVD proceedings provide support for reforms to the NME antidumping methodology applied to China, such as a new "market-oriented enterprise" category? What is driving consideration of the MOE idea?
- For what kinds of domestic subsidies, if any, would there be a risk of "double-counting" if subsidy margins were added to dumping margins developed in a parallel antidumping case handled under the NME/surrogates methodology?

- What are the implications for other exporting countries, such as Vietnam, that are considered NMEs for antidumping purposes but have not yet been held to be subject to CVD investigations?

3. On other, free-standing, proposals to revise the antidumping methodology applied to Chinese products:

- What are the political prospects of, and the policy arguments for and against, a statutory change that would make antidumping calculations more sensitive to “persistent currency misalignment?”

\* \* \*

Our panel includes lawyers from government and private practice. Please join me in welcoming, and get ready to learn from:

- John McInerney, Chief Counsel for Import Administration, USDOC
- Stacy J. Ettinger, Trade Counsel, Office of Sen. Charles Schumer (D-NY)
- Gilbert Kaplan, Esq., King & Spalding LLP
- Matthew McCullough, Esq., Vinson & Elkins LLP