

WHU Center of Overseas Investment Law

Monthly Events

September 2020

Issue 35

Published on October

Domestic Events

1. On September 4, the Ministry of Commerce announced a preliminary ruling on the investigation into imports of positive propylene alcohol from the United States. The Ministry of Commerce ruled that imports of propylene alcohol from the United States were subsidized, that the domestic positive propylene alcohol industry had suffered material damage, and that there was a causal relationship between the subsidies and material damage, and decided to implement temporary countervailing measures against imports of propylene alcohol from the United States. As of September 9, 2020, when importing propylene alcohol from the United States, import operators shall provide the Customs of the People's Republic of China with a corresponding temporary countervailing duty margin in accordance with the adversary subsidy rate (34.2%-37.7%) of each company determined by the ruling. On September 25, the Ministry of Commerce decided to launch an anti-dumping investigation into imports of PVC originating in the United States.

(<http://www.mofcom.gov.cn/article/ae/ai/202009/20200902998666.shtml>;

<http://www.mofcom.gov.cn/article/ae/ai/202009/20200903004107.shtml>)

2. On September 8, State Councilor and Foreign Minister Wang Yi presented the Global Data Security Initiative at the high-level meeting of the International Symposium on "Seizing Digital Opportunities for Cooperation and Development".

The main contents of the initiative include: First, an objective and rational view of

data security, committed to maintaining global supply chain openness, security and stability. The second is to oppose the use of information technology to destroy critical infrastructure in other countries or to steal important data. Third, take measures to prevent and stop the infringement of personal information. Fourth, enterprises are required to respect local laws and may not be forced to store data generated and obtained abroad within their territory. Fifth, respect for the sovereignty, jurisdiction and management of data of other countries, and may not directly access data located in other countries to enterprises or individuals. Sixth, cross-border data transfer needs of law enforcement should be addressed through mutual legal assistance and other channels. Seventh, information technology products and services supply enterprises should not set up backdo doors in products and services, illegal access to user data. Eighth, information technology enterprises may not use users to rely on products, seeking improper benefits.

(<http://www1.fmprc.gov.cn/web/wjbzhd/t1812947.shtml>)

3. On September 19th, the head of the Foreign Investment Department of the Ministry of Commerce introduced the situation of foreign investment absorption nationwide from January to August 2020, and in January-August, China's total imports and exports amounted to RMB20.05 trillion, down 0.6% YoY. Among them, exports of 11.05 trillion yuan, an increase of 0.8%, imports of 9 trillion yuan, a decline of 2.3%. In terms of international comparison, my import and export performance is also better than the average of the world's major economies. The operation of foreign trade

mainly presents the following characteristics: First, the role of private enterprises "stabilizer" prominent, second, the proportion of exports from emerging markets continues to rise, third, the export-oriented economy of the central and western regions accelerates development, fourth, high-tech, high value-added products export growth is strong, fifth, the industrial base is solid, general trade continues to strengthen, and sixth, cross-border e-commerce and other new industries become a new bright spot of foreign trade growth.

(<http://www.mofcom.gov.cn/article/ae/sjld/202009/20200903000476.shtml>)

4. On September 12, the State Council issued the Notice of the State Council on the Issue of the General Plan of the Beijing, Hunan and Anhui Free Trade Pilot Zones and the Extension of the Regional Programs of the Zhejiang Free Trade Pilot Zone, which clearly established free trade zones in Beijing, Hunan and Anhui provinces and cities. China's free trade test zone from the previous 18 to 21, showing the East-West-North-Central coordination, land and sea co-ordination of the new opening pattern.

(http://www.gov.cn/zhengce/content/2020-09/21/content_5544926.htm)

5. On September 14th, the Customs and Excerlation Committee of the State Council published the list of the first exclusions from tariff-imposed goods of the United States and Canada, and the Announcement of the Committee on Tariffs and Tariffs of the State Council on the First Exclusion List of Tariff Goods Of the United States and

Canada (The Tax Commission Announcement (201) 16 items, excluded for a period of one year, and from 17 September 2020 to 16 September 2021, continue to be exempt from tariffs imposed as a result of the anti-US 301 measures.

(http://www.gov.cn/zhengce/zhengceku/2020-09/15/content_5543541.htm)

6. On September 14, Chinese Minister of Commerce Zhong Shan and German Ambassador to China Ge Ze and EU Ambassador Yu Bai formally signed the Agreement on the Protection and Cooperation of Geographical Indications between the Government of the People's Republic of China and the European Union. Negotiations on the agreement began in 2011 and lasted eight years. The Agreement consists of 14 articles and seven appendixes, which mainly provide for rules for the protection of geographical indications and a list of mutual recognition of geographical indications. The signing of the Agreement will be conducive to the promotion of bilateral trade in geographical indications products and fully reflect the commitment of China and the EU to free and open trade and to support a rules-based multilateral system.

(<http://www.mofcom.gov.cn/article/news/202009/20200903001051.shtml>)

7. On September 16th, the Ministry of Commerce, the National Bureau of Statistics and the State Administration of Foreign Exchange jointly issued the 2019 Statistical Bulletin on China's OFDI, showing that China's OFDI in 2019 mainly showed the following characteristics: First, OFDI flows were the second largest in the world and

the stock remained the third in the world; Fourth, the rapid growth of foreign direct investment by central enterprises and units, with the stock of local enterprises accounting for more than 40%;

(<http://www.mofcom.gov.cn/article/ae/ai/202009/20200903001231.shtml>)

8. On September 18, the 2020 Pan-Pearl River Delta Regional Cooperation Executive Heads Joint Meeting was held in Sanya, Hainan. The participants discussed "sharing opportunities for Hainan Free Trade Port and promoting the joint development of the Pan-Pearl Region" and identified annual priorities such as exerting the radiation effects of the construction of Guangdong, Hong Kong and Macao Bay Area and Hainan Free Trade Port, strengthening the construction of key platforms, strengthening infrastructure connectivity, deepening industrial cooperation, strengthening market integration, jointly promoting the construction of regional ecological civilization and strengthening cooperation in the field of social undertakings.

(<http://www.sanya.gov.cn/fgwsite/ttxw/202009/5f3661cc6e1145429dbdea5351ab6bea.shtml>)

9. On September 18, the General Administration of Market Supervision issued the Guidelines for Antitrust Compliance abroad (Draft for Comments) and solicited opinions publicly. The Guide contains 53 articles, which have no legal effect, and aims to encourage Chinese enterprises to foster a culture of fair competition, guide

Chinese enterprises to establish and strengthen overseas anti-monopoly compliance management systems, guard against anti-monopoly legal risks, and ensure the sustained and healthy development of Chinese enterprises.

(http://www.samr.gov.cn/hd/zjdc/202009/t20200918_321797.html)

10. On September 19th, the Ministry of Commerce promulgated the Regulations on the List of Unreliable Entities (Ministry of Commerce Order No. 4 of 2020), which will review the international economic and trade and related activities of foreign entities, and china may restrict its activities in China if the related activities it engages in endanger China's national sovereignty, security and development interests (see Articles 2 and 10 of the Regulations). There are 14 Articles of the Provisions, which enter into force on the date of promulgation.

(<http://www.mofcom.gov.cn/article/b/c/202009/20200903002593.shtml>)

11. On September 21, Chinese President Xi Jinping delivered an important speech at the 75th anniversary summit of the United Nations. President Xi stressed that in the post-epidemic era, the United Nations should preside over justice, uphold the rule of law, promote cooperation and focus on action, and reiterated that China will always be a practitioner of multilateralism, actively participate in the reform and construction of the global governance system, and promote the building of a shared community of human destiny.

(http://www.xinhuanet.com/politics/leaders/2020-09/22/c_1126522712.ht)

12. On September 21-25, China and the EU held the 32nd round of investment agreement negotiations. In accordance with the September 14 video meeting between the leaders of China, Germany and Europe on the completion of negotiations within the year, the current round of negotiations between the two sides around the text and the remaining issues of the list, made positive progress.

(<http://www.mofcom.gov.cn/article/ae/ai/202009/20200903004243.shtm>)

13. On September 25, the 25th meeting of the Standing Committee of the 15th National People's Congress of Shanghai voted to adopt the Regulations on Foreign Investment in Shanghai, the first local foreign investment regulations, which will come into effect on November 1, 2020. The Regulations are six chapters and 51 articles, which absorb many of Shanghai's beneficial exploration and innovative practices. For example, the Regulations create a special chapter on "Expanding Opening", which clearly expands opening up in all directions, further strengthens the function of opening up the hub portal, and promotes the expansion of opening-up from commodity and factor-flowing opening to institutional openness.

(http://www.gov.cn/xinwen/2020-09/25/content_5547217.htm)

14. On September 25, with the approval of the State Council, the CSRC, the Chinese People's Bank of China and the State Administration of Foreign Exchange issued the Measures for the Administration of Securities and Futures Investment in China by

Qualified Foreign Institutional Investors (QFII) and Rmb Qualified Foreign Institutions (RQFII) Investors, effective November 1, 2020. The revision of the Measures and supporting rules mainly involves the following aspects: First, lowering the entry threshold and facilitating the operation of investment. The QFII, RQFII qualification and system rules will be combined to relax access conditions, simplify application documents, shorten the time limit for examination and approval, implement administrative licensing procedures, remove the limit on the number of entrusted intermediaries, optimize the management of filing matters, and reduce data reporting requirements. Second, steadily and orderly expansion of the scope of investment. QFII, RQFII are allowed to invest in listed securities, private equity funds, financial futures, commodity futures, options, etc. in the national SME share transfer system, and are allowed to participate in bond repurchase, stock exchange financing and margin trading, and securities lending. Third, strengthen continuous supervision. Strengthen cross-market supervision, cross-border supervision and penetrating supervision, strengthen penalties for violations, and refine the regulatory measures applicable to specific violations.

(<http://www.safe.gov.cn/safe/2020/0925/17218.html>)

International Events

1. On September 3, the Australian Department of Foreign Affairs and Trade (DFAT) announced that it would initiate a review of the BIT it was involved in and invited relevant stakeholders to submit their views. The review was addressed to 15 older-generation BITs that entered into force between 1988 and 2009 and involved the other Party, including China, Argentina, etc. DFAT also highlighted a range of elements that may or will be incorporated into the revised BIT, including: (1) the reaffirmation of regulatory powers; (3) Exclude ISDS frivolous claims, (4) allow the rejection of proceedings by investors who do not have substantial business activities in Australia, (5) allow claims to be dismissed at an initial stage to prevent procedural abuse, and (6) restrict institutional options (forum shopping) ;(7) establish detailed rules on the ethics and conflicts of interest of arbitrators.

(<https://www.iareporter.com/articles/australia-invites-submissions-by-stakeholders-as-it-embarks-on-bit-reform-project/>)

2. On September 9th the UK government published an internal market bill that caused controversy over northern Ireland's provisions, which were seen as overriding the Brexit deal. Under the Act, the terms of the Bill shall prevail if they are inconsistent with the terms of the exit agreement in the Brexit agreement or with regard to the special arrangements for Northern Ireland. The EU has questioned whether the bill violates the Brexit deal. European Commission President Jean-Claude Juncker said via

social media that a breach of the agreement would violate international law and undermine trust, and that the UK government's implementation of the agreement was a prerequisite for any future partnership. The British government website said in a statement the same day, the United Kingdom will remain committed to the implementation of the "Brexit" agreement, the internal market bill is designed to ensure that the "Brexit" after the smooth flow of domestic trade in the United Kingdom.

(<https://services.parliament.uk/bills/2019-21/unitedkingdominternalmarket.html>;

<https://baijiahao.baidu.com/s?id=1677422492473081779&wfr=spider&for=pc>)

3. On September 10th the eighth round of future relations talks between the UK and the EU ended with no breakthrough and differences between the two sides in key areas such as level playing field and fisheries remained unresolved. Mr Barnier, the EU's chief negotiator, said the EU had shown flexibility in its efforts to find a solution, but the UK was not involved on some major issues. Bilateral trust and confidence will be key to achieving future relations.

(https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1612)

4. On September 10, HMTX Industries LLC, a U.S. company, and two of its affiliates filed a lawsuit against the U.S. government, the U.S. Trade Representative's Office (USTR), before the U.S. Court of International Trade. Allegations such as HMTX Industries LLC target U.S. tax measures on products from China's 301 List 301. The

plaintiff requested that the defendant's conduct be found to be in violation of the relevant legal provisions of the Trade Act of 1974, the Administrative Procedure Act, and for the refund of the additional duties and interest paid by the plaintiff in response to Listing III. On September 21, HMTX Industries LLC changed its claim to contain the lawsuit against the 301 measure that U.S. adopted to impart tariff on China's goods listed on List 4A.

(<https://www.natlawreview.com/article/latest-development-court-case-challenging-validity-section-301-tariffs-opportunity?amp>)

5. On September 11th Liz Truss, Britain's international trade secretary, and Motegi Toshimitsu, Japan's foreign minister, agreed on a bilateral free trade agreement. It is the first major trade deal signed as an independent trading nation since the UK left the EU and the first time in more than 40 years that the UK has developed a new trade policy independent of the EU. The signing of the free trade agreement will help British companies gain a comparative advantage in export trade with Japan, facilitate Britain's accession to the CPTPP and provide momentum for UK economic growth, the government said in a statement.

(<https://www.gov.uk/government/news/uk-and-japan-agree-historic-free-trade-agreement>)

6. On 12 September, the United Nations Convention on International Reconciliation Agreements resulting from Mediation (the Singapore Mediation Convention) entered

into force, with 53 signatories to date, including China, India and the United States. Six countries have ratified the entry into force: Singapore, Fiji, Qatar, Saudi Arabia, Belarus and Ecuador.

(https://uncitral.un.org/fr/20200912_en)

7. Singapore citizen Goh Chin Soon filed an investment arbitration against China with the International Centre for the Settlement of Investment Disputes (ICSID), which was registered on 16 September (ICSID Case No. ARB/20/34). The dispute in this case was over real estate development, with the economic sector being the construction sector and the document cited by the plaintiffs as the China-Singapore Bilateral Investment Agreement (1985). The case is the sixth known case in which China has become an alleged party to an international investment arbitration. The first five cases are Macro Trading Co., Ltd. v. China (ICSID Case No. ARB/11/15), Jason Yu Song v. China (PCA), Hela Schwarz v. China (ICSID Case No. ARB/17/19), Ansung House v. China (ICSID Case No. ARB/14/25) and Ekran v. China (ICSID Case No. ARB/11/15), the second case filed in China since 2020.

(<https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/34>)

8. On September 15th the World Trade Organisation issued a report by the United States Group of Experts on Tariff Measures on Goods from China (DS543), ruling that the US tariff on imports from China was "on the face of it a violation of GATT Article 11 (most-favoured-nation treatment clause), Article 2, paragraph 1a and sub-b

Panel Report, Para. 8.1)。 The case is the first brought by China over U.S. tariffs since trade frictions broke out between the U.S. and China. (There are three cases, the other two are United States - Tariff Measures on Some Goods from China II (DS565) and United States - Tariff Measures on Some Goods from China III (DS566)). In response to a reporter's question on the ruling, a spokesman for China's Ministry of Commerce said China appreciates the objective and fair ruling made by the expert group and has always firmly supported and maintained the multilateral trading system with the WTO as its core to promote the stable and healthy development of the world economy.

(https://www.wto.org/english/tratop_e/dispu_e/543r_conc_e.pdf;

<http://www.mofcom.gov.cn/article/ae/ag/202009/20200903001422.shtml>)

9. On September 16th China overtook the US as the EU's largest trading partner for the first time in the first seven months of 2020, according to Eurostat. EU imports from China rose 4.9 per cent year-on-year from January to July, while imports from the US fell 11.7 per cent, exports to China fell 1.8 per cent and exports to the US fell 9.9 per cent. At the same time, China maintained its position as the EU's largest source of imports and third largest export market, accounting for 21.9% and 10.3% respectively.

(<http://cacs.mofcom.gov.cn/article/gnwjmdt/sb/zo/202009/166420.htm>)

10. On September 18, the U.S. Department of Commerce issued an order banning downloads of WeChat and Tik Tok apps in the U.S. from 20, which are still available

to existing U.S. users but cannot be updated, and from November 12, Tik Tok will be banned from operating in the U.S. completely unless Tik Tok transfers U.S. operations to U.S. companies and completes transactions. Trump later extended the ban to 27 days. In response to a reporter's question, a spokesman for the Ministry of Commerce said that the U.S. side, without any evidence, "hunted" and crushed the two enterprises for no reason, seriously disrupting the normal business activities of enterprises, undermining the confidence of international investors in the U.S. investment environment and undermining the normal international economic and trade order. China urges the U.S. side to abandon bullying and immediately stop the wrong practices. If the U.S. side is determined, China will take the necessary measures to resolutely safeguard the legitimate rights and interests of Chinese enterprises. 27, the U.S. District Court for the District of Columbia ruled to suspend Tik Tok's order to remove it from the U.S. Mobile App Store.

(<https://www.commerce.gov/news/press-releases/2020/09/commerce-department-prohibits-wechat-and-tiktok-transactions-protect>;

<https://www.commerce.gov/news/press-releases/2020/09/statement-delayed-prohibitions-related-tiktok>;

<http://www.mofcom.gov.cn/article/ae/ag/202009/20200903002575.shtml>)

11. On September 21, U.S. President Donald Trump issued an executive order announcing sanctions and export controls against 27 entities and individuals involved in supporting Iran's nuclear, missile and conventional weapons programs to impose a

new round of sanctions on Iran. Property in the United States will be seized for conventional arms trade with Iran or for technical training and funding of related weapons. As the deadline for the United Nations arms embargo on Iraq under Security Council resolution 2231 (October 18, 2020) approached, the United States began to take measures to try to maintain the arms embargo against Iraq. (<https://www.state.gov/the-united-states-imposes-sweeping-new-sanctions-on-the-islamic-republic-of-iran/>)

12. On September 22nd the G20 trade and investment ministers held a video conference in which they pledged to continue to strengthen coordination and cooperation in mitigating the impact of the new crown outbreak, encourage the international competitiveness of small and medium-sized enterprises, promote the recovery of international trade and investment, and support the necessary reforms to the WTO. The meeting adopted the results documents such as the Riyadh Initiative on the Future of WTO and the G20 Policy Guide to Improving the International Competitiveness of Small and Medium-sized Enterprises.

(https://g20.org/en/media/Documents/G20SS_Communique_TIMM_EN.pdf)

13. The Trade and Development Report 2020, released by the United Nations Conference on Trade and Development (UNCTAD) on 22 September, shows that the global economy is facing a deep recession as a result of the new crown pneumonia outbreak, but the recession may not be as severe as predicted earlier this year. The

global economy is expected to contract by more than 4 per cent this year, global output by more than \$6 trillion, global trade by about a fifth and foreign direct investment by 40 per cent. Developed countries have seen the biggest drop in output, with some seeing double-digit declines this year. Developing countries will suffer severely, with 90 to 120 million people falling into extreme poverty and nearly 300 million facing food security problems. Latin America is likely to be particularly hard hit, with Caribbean economies suffering unprecedented economic losses, but China's economy will remain positive, with growth expected to be 1.3 per cent.

(https://unctad.org/en/PublicationsLibrary/tdr2020_en.pdf)

14. In a speech on September 24th Geoffrey Okamoto, the first vice-president of the International Monetary Fund, said the pace and extent of China's economic recovery had been surprising: real GDP grew by minus 6.8 per cent in the first quarter, compared with positive growth of 3.2 per cent in the second. In addition, all indications are that the recovery in the third quarter is continuing, but it will take time for the outbreak to be completely overcome, requiring the full cooperation of all parties, and China has an important leadership role to play.

(<http://www.oecd.org/dac/financing-sustainable-development/development-finance-topics/private-finance-for-sustainable-development.htm>)

15. On September 28th, Meng's extradition case was re-heard in the High Court of British Columbia, Canada. The trial entered the second stage, in which Meng's

lawyers called for the suspension of the extradition proceedings against Meng on the grounds that the two sides were suspected of "procedural abuse". The procedural abuses filed by Meng's lawyers involve three branches, first, statements by U.S. President Donald Trump and others that the so-called extradition case is a highly politicized political event; The first two branches are accepted by the court, and the third branch will be a major focus of the trial.

(<https://www.cbc.ca/news/canada/british-columbia/meng-wanzhou-huawei-evidence-1.5739876>;

<https://news.cctv.com/2020/09/30/ARTIwPfw5yJ8Ncs1BGZL5lmK200930.shtml>)

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