

Levin: Chinese Retaliation Threats Have No Legal Basis

by Peter Cohn, with Bill Swindell contributing
Congress Daily
September 15, 2009

China's threats of retaliation over a decision by President Obama to impose additional tariffs on tire imports from that country have no basis under the law, according to a senior Democrat who helped draft the original China "safeguard" provision.

"The Chinese agreed to this provision. ... It was carefully worded. This is a faithful interpretation of the law," House Ways and Means Trade Subcommittee Chairman Sander Levin, D-Mich., said in an interview after the decision.

"I don't see how they can complain to the [World Trade Organization]. The Clinton administration went back to China specifically to negotiate this provision" as part of the 2000 law granting China normal trading status, Levin said. "You can't wave the flag of protectionism on something like this."

Late Friday, the Obama administration announced it was imposing added tariffs for three years on Chinese passenger car and light-truck tires beginning Sept. 26, starting at 35 percent for the first year. That comes on top of existing 4 percent duties, raising the bar significantly for Chinese tire imports.

Chinese officials called the move a "serious act of trade protectionism" and announced they would initiate anti-dumping investigations into U.S. auto and poultry exports, as well as seek consultations at the WTO.

Levin also did not appear worried by the Chinese threats against his home state's auto industry. In a separate statement Monday, Levin said consultation, not unilateral retaliation, was the only acceptable route under WTO rules and that he was confident Obama's move would "withstand WTO scrutiny."

Domestic automakers appeared hopeful a resolution would be worked out. Reports of retaliation "appear to be fairly vague and conflicting at the moment," said Automotive Trade Policy Council President Stephen Collins. The United States exported about \$1 billion worth of motor vehicles to China in 2008, although that figure is projected to be lower this year, according to U.S. trade data.

The National Chicken Council called the Chinese threat unjustified and that it does not "dump" its goods on the Chinese market. The United States exported about \$680 million worth of chicken products to China last year, but as with autos, that figure will likely decline by the end of 2009 due to the global recession.

Critics have said the potential exists for consumer tire prices to increase as a result of the tariffs, but Levin said that should not be the overarching concern. "One has to look at the impact on the

consumer and the impact on businesses and workers who produce as well as the price of consumer goods," Levin said. "Otherwise, we simply say 'manufacturing isn't important.' "

Retailers, footwear manufacturers and others expressed alarm that other domestic interests would respond to the tire ruling by filing their own cases for relief from Chinese imports. American Apparel & Footwear Association President and CEO Kevin Burke said the industry was concerned "additional protectionist measures on these and other products could be easily granted which could result in an international trade war and jeopardize our economic recovery."

In advance of next week's Group of 20 meeting, Obama Monday reiterated that "this administration is committed to pursuing expanded trade and new trade agreements. It is absolutely essential to our economic future."

Addressing the tire decision, Obama said "no trading system will work if we fail to enforce our trade agreements ... We do so not to be provocative or to promote self-defeating protectionism, we do so because enforcing trade agreements is part and parcel of maintaining an open and free trading system."

Levin said rather than an act of protectionism, Obama's tire decision could have a positive effect on the trade agenda. "This was a decision that had to be made, and it does begin to lay out how this administration approaches international trade," he said.

Tim Brightbill, a partner in the international trade practice at Wiley Rein LLP, said while he does not consider the tire decision to be protectionist, the Obama administration might want to demonstrate support for market-opening initiatives as a counterweight to the critics. "I think the Obama administration is trying to thread the needle on trade policy, and they'll continue to seek a third way between unbridled free trade and protectionism," he said.

That does not mean imminent action on pending trade deals with Panama, Colombia and South Korea, Levin cautioned, noting that "each of the FTAs have their own sets of problems that have to be addressed."

Levin said that discussions on rejuvenating the stalled Doha round of global trade talks could resume this fall. Levin also said he would like to see approval this year of trade preferences for Afghanistan and border regions of Pakistan, and that Congress has to act before duty-free benefits under the Andean trade and Generalized System of Preferences programs expire at the end of the year.

Levin also said he wants to move a miscellaneous tariff bill before the year is out, and that prospects have improved with Senate agreement on new lobbyist disclosure requirements for the tariff measure.

In a separate interview, Rep. Joseph Crowley, D-N.Y., chairman of the pro-trade New Democrat Coalition, said Obama made the right call in the tires case, and it could help move the trade agenda forward.

"It says to those that have been reticent about supporting free-trade agreements and those who support them that when we enter these agreements that they are real and that they have teeth

behind them," Crowley said. "I think in some respects it is going to help us in opening an opportunity to have a discussion about free trade within the Congress."