

Trade & Manufacturing Alert

Beginnings Of An American Manufacturing Renaissance?

In increasing numbers, American companies are reconsidering the benefits of offshoring their production from the United States to other countries. While low labor costs have long been one reason for producing goods overseas, U.S. executives have begun to complain that unforeseen other costs make foreign manufacturing a bad deal. “Fifty percent of original equipment manufacturers find no financial benefit in offshoring,” according to Harry Moser, founder of the Reshoring Initiative (www.reshorennow.org), which helps companies calculate the actual cost of offshoring and then bring production operations back home. “Sixty percent of manufacturers apply only rudimentary total cost models,” Moser says. “They ignore twenty percent of total costs when they offshore, and the missed costs go to overhead, like travel, to the balance sheet, and to opportunity costs when they can’t deliver because the pipeline is too long.” Among other things, shorter supply chains mean less risk, from rising energy costs to counterfeiting to earthquakes and flu epidemics.

Even the benefit of cheap foreign labor is diminishing. According to a recent Boston Consulting Group study, Chinese factory-worker pay increased 69 percent between 2005 and 2010. And those wages are likely to continue growing at a rate of 17 percent per year through 2015, according to the study. This would all but eliminate the labor cost advantage of Chinese production, which is further eroded by the weakening U.S. Dollar and the gradual appreciation of the Yuan in recent years from 8.3 to 6.5 to the dollar.

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These trends have not gone unnoticed by U.S. companies. Last year, General Electric announced it would move production of its new energy-efficient water heaters from China to the United States. Caterpillar announced plans to expand domestic operations with a 600,000 square foot hydraulic excavator factory in Victoria, Texas. Wham-O also brought half of its Hula Hoop and Frisbee manufacturing back from China to California in 2010. An ATM manufacturer, NCR Corporation, decided in late 2009 to bring production back to Columbus, Georgia.

Could this be the beginning of a real American manufacturing renaissance?

China Terminates Wind Power Subsidies; Canada Prepares For WTO Litigation In Defense Of Ontario's Feed-In-Tariff Program

Two renewable energy subsidy programs, one Chinese and the other Canadian, recently have been challenged at the World Trade Organization as being discriminatory and in violation of the WTO Subsidies Agreement. In response, China announced that it was terminating its wind power subsidies program. By contrast, Canada appears to be preparing for litigation in defense of Ontario's Feed-In Tariff ("FIT") program.

Earlier this month following WTO-mandated consultations between China and the United States, China announced that it had formally terminated its Special Fund for Wind Power Manufacturing. Over the last four years, the wind power market in China has grown by more than 100 percent annually. As a result, China's installed capacity now ranks second in the world, ahead of Germany and behind the United States. The Chinese government has implemented a number of subsidy programs supporting wind energy generation in China, including the Special Fund. According to U.S. government estimates, Chinese grants under this program have amounted to several hundred million dollars since 2008. Acting on a Section 301 request by the United Steelworkers, the United States challenged the program as a WTO-prohibited import substitution subsidy since it makes grants to Chinese wind power equipment manufacturers contingent on using domestic parts and components instead of foreign-made parts and components. The termination of the Special Fund does not mean that China will need to stop supporting wind energy production or the manufacturers of wind power equipment. China may well create a similar program in a different form, no longer requiring the use of domestic over imported goods as a condition for obtaining governmental subsidies.

The Canadian province of Ontario's FIT program also has been challenged at the WTO by Japan as discriminating against imported products and as a WTO-inconsistent import substitution subsidy. The program allows producers of renewable energy, such as solar energy, to benefit only if they produce their renewable energy by using 60 percent locally sourced goods and services. Because of these local content requirements, solar energy producers in Ontario must use, for example, Ontario-produced modules and components to receive program benefits.

On June 17, the WTO Dispute Settlement Body heard Japan's complaint for the first time. Next month it will establish a WTO Panel to adjudicate the dispute. If found to be WTO inconsistent, Canada will be required to withdraw the subsidy without delay. If it fails to do so, Japan will be authorized, upon request, to impose trade retaliatory measures on Canadian products.

Important Developments Regarding International Treatment of China's State-Owned Enterprises

The legal and policy debate over the proper treatment of state-owned enterprises in trade remedy investigations, particularly with respect to China, continues with an Appellate Body reversal at the World Trade Organization, a recent European Union determination in a countervailing duty investigation, and ongoing negotiations in the context of the Trans-Pacific Partnership.

The WTO Appellate Body issued an April report in a case brought by China that challenged the final determinations of the U.S. Department of Commerce in four different subsidy investigations. China argued that Commerce incorrectly found in its final determinations that Chinese state-owned enterprises provided subsidized inputs to Chinese exporters. Commerce reasoned that the Chinese state-owned enterprises in question constituted

“public bodies” under the terms of the WTO law because the enterprises were majority-owned by the Government of China and therefore bestowed subsidies on behalf of the government when providing inputs at less than market prices. Although the original WTO panel adjudicating the case agreed with Commerce, the WTO Appellate Body reversed the decision, reasoning instead that majority ownership alone is insufficient to determine if a state-owned enterprise is a “public body.” Rather, Commerce must also determine that the state-owned enterprise acts with government authority and performs government functions in order for it to be considered a “public body.” The WTO Appellate Body decision was criticized by, among others, United States Trade Representative Ron Kirk, who deemed it “overreaching.”

In contrast to the WTO Appellate Body ruling, the European Union issued a final determination in May in its first ever countervailing duty case against China. In its investigation of coated fine paper imports from China, the European Union concluded that the financing of the papermaking industry by Chinese state-owned commercial banks constituted a countervailable subsidy. Similar to the U.S. case, it is expected that the European Union’s determination also will be challenged by China at the WTO.

Meanwhile, the U.S. government continues to prepare a proposal on state-owned enterprises that it expects to table sometime this year in the ongoing negotiations on the Trans-Pacific Partnership – an Asia-Pacific regional trade agreement being negotiated among the United States and eight trading partners. The most recent round of negotiations took place during the week of June 20 in Vietnam and the next session is scheduled for September. The Obama Administration currently is consulting with interested U.S. business and labor groups about the content and language of its expected proposal, which will seek to create a legal framework in which state-owned enterprises do not

enjoy advantages, or disadvantages, over their private sector competitors. Although China is not a participant in the trade agreement negotiations, the final outcome on state-owned enterprises in the negotiations will likely provide an important template for any future negotiations with China on this subject.

News of Note

President Obama Announces A New Job Training Initiative For The Manufacturing Sector

President Obama announced in June a jobs initiative to provide industry-accepted credentials for community-college students seeking jobs in the manufacturing sector. The goal is to provide 500,000 community college students with skills certifications aligned to manufacturers’ hiring needs within the next five years. This announcement followed disappointing job growth statistics in May, a reversal from the steady increase of manufacturing jobs since late last year.

The creation of a nationally recognized certification system is part of the “Skills for America’s Future” program launched in 2010. Under that program, the Obama Administration is partnering with business leaders, community colleges, foundations, and manufacturing associations to bolster the United States’ manufacturing workforce. According to the 2010 Manpower Talent Shortage Survey Results, jobs in the skilled manual trades are among the most difficult to fill, with electricians, carpenters/joiners and welders as the most in-demand employees.

Boeing Contract With India Means Jobs For Long Beach

Boeing and the Government of India announced that they signed a contract for the sale of 10 Boeing C-17 aircraft for \$4.1 billion. The C-17 deal is a significant victory for the Obama Administration after President Obama promised to strengthen trade ties between the United States and India in November 2010. Boeing stated that the C-17 deal ensures that its Long Beach, California facility, which is where the C-17s are produced, would see increased production and secure jobs until 2014. The C-17 deal is seen as a positive turn in Indo-U.S. trade relations after two U.S. companies, Boeing and Lockheed, lost out to their European competitors in a \$10.4 billion deal for combat jets in April.

California Judge Sentences Importer To Jail For Evading Antidumping Duties

In another victory for U.S. manufacturers, a Mexican importer of Chinese steel wire hangers who was convicted of evading U.S. antidumping duties was sentenced to serve almost six years in custody followed by three years of supervised release, and to pay approximately \$8 million in forfeiture and restitution to the U.S. government. The 55-count indictment included conspiracy, entry of goods into the United States by means of false statements, wire fraud, and money laundering. Mr. Arturo Huizar-Velazquez, the owner of Proveedoras de Limpiaduria de Tijuana and Huizar Cleaner de Mexico, imported Chinese-manufactured steel wire hangers into the United States and falsely claimed that they were manufactured in Mexico in violation of both the 2008 Commerce Department antidumping duty order on steel wire hangers from China and the North American Free Trade Agreement. An employee for Mr. Huizer-Velazquez also was convicted and sentenced to time served of

one year in jail and ordered to pay over \$3.5 million in restitution.

U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, both agencies in the Department of Homeland Security, worked on the investigation.

Congressional Consideration of Pending FTAs Now Appears Possible in July

As this issue of the Trade & Manufacturing Alert was going to press, it was reported that the Administration and the Chairmen of the Senate Finance and House Ways and Means Committees had just reached a deal to renew Trade Adjustment Assistance (TAA), the last remaining obstacle to Congressional consideration of three pending Free Trade Agreements (FTAs) - with Korea, Colombia, and Panama. The Administration had insisted that it would not submit implementing legislation for the three FTAs unless such legislation also included provisions to renew TAA, the federal program designed to assist U.S. workers displaced by foreign imports. It remained to be seen if the deal struck between the Administration and the two Chairmen would be accepted by the leadership of both the Senate and the House. If so, it was expected that the implementing legislation for the three FTAs would be submitted by the Administration to Congress under special fast-track procedures, and perhaps even passed, sometime in July.

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