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China Issues Its First Industry-Wide Plan To Promote Industrial Transformation And Upgrade Over The Next Five Years

Lingna Yan

The State Council of China recently issued its first mid- and long-term plan for the entire industrial sector, the *Industrial Transformation and Upgrade Plan (2011-2015)*. The *Plan* is an important step, and the highest level guideline, for the Chinese government to carry out the industrial development goals and tasks set out in *China's National Economic and Social Development 12th Five-Year Plan*, covering the period 2011-2015 (*see* the April 2011 issue of the *Trade and Manufacturing Alert*).

The *Plan* indicates that the focus of China's industrial development over the next five years is to transform China's extensive development pattern to a new model driven by technological innovation and domestic demand and consumption, with an emphasis on environmental protection, intelligent manufacturing, and manufacturing services. Additionally, the *Plan* calls for fully optimizing China's industrial, technological, product, and organizational structures, as well as its industrial geographic distribution. The *Plan* continues to emphasize the significance of cultivating and expanding the strategic emerging industries (*i.e.*, energy-saving and environment protection industries, the new-generation information technology industry, the biology industry, the high-end equipment manufacturing industry, the new energy industry, the new materials industry, and the new-energy automotive industry, as reported in the January 2011 *Trade & Manufacturing Alert*), as well as upgrading traditional industries and developing services industries.

Despite the global financial crisis, the *Plan* sets an ambitious target of eight percent annual growth of industrial added value for the entire industrial sector, with strategic emerging industries accounting for fifteen percent of the total added value. The *Plan* mandates increasing support to encouraged industries and projects in order to accomplish this target. Encouraged industries are advanced equipment manufacturing industry, raw materials industries, consumer products industries, electronic information industry, national defense industry, and manufacturing-related service industries. Encouraged projects include independent innovation projects, technological renovation projects, green and low-carbon projects, and brand name cultivation projects. Such support will take the shape of special funds, tax incentives, and preferential financing policies, among others. Following the central government's direction and lead, local governments have formulated various preferential policies to support enterprises within their jurisdictions in order to undertake industrial transformation and upgrade projects to maintain steady and fast industrial development in accordance with the *Plan*. For example, Zhejiang Province gives priorities to key industrial transformation and upgrade projects in allocating industrial-use land. Wuxi City of Jiangsu Province plans to establish a special fund of 10 billion RMB to fund industrial transformation and upgrade projects over the next five years. Shenzhen City of Guangdong Province plans to establish a similar special fund providing no less than 500 million RMB per year to support Shenzhen companies undertaking industrial transformation and upgrade projects, in addition to other subsidy programs.

China Loses Raw Materials Case In World Trade Organization's Appellate Body; Possible Implications For China's Rare Earth Metals Quotas

Josh Snead

The World Trade Organization ("WTO") Appellate Body found that China's export restrictions on a variety of raw materials violate WTO trade rules. The restrictions at issue limit China's exports of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, and zinc. These products are used as inputs in the steel, aluminum, and chemicals industries. The Appellate Body's report, circulated on January 30 and adopted by the WTO's Dispute Settlement Body on February 22, largely affirmed the earlier WTO Panel Report circulated in July 2011. China will enter into negotiations with the complaining parties -- the United States, the European Union, and Mexico -- regarding how it will bring its measures into compliance with the Appellate Body's report, bringing to a close this dispute that began in 2009.

Representatives of both the United States and the European Union commended this ruling, with U.S. Trade Representative Ron Kirk noting that the Chinese export restrictions not only make it more expensive for U.S. manufacturers to obtain the raw materials they need, but also artificially lower input costs for competing Chinese producers.

China's export restrictions on these raw materials include export duties and export quotas. The Panel found that both types of restrictions violate commitments China made upon its accession to the WTO. China did not appeal these findings. Both the Panel and the Appellate Body also rejected China's defenses that these restrictions were nevertheless justified because they are needed to protect human health, conserve exhaustible natural resources, or manage critical shortages of supply. The Appellate Body found that these exceptions are generally not available to China in this context under the terms of its accession.

Speculation abounds that the United States and the European Union might mount a similar WTO challenge to China's export quotas on rare earth metals. Rare earth metals include 17 elements that are used in high-tech products such as hybrid cars, flat panel displays, mobile phones, disk drives, MP3 players, iPods, and various defense technologies. China currently produces more than 95 percent of all rare earth metals. Unlike with the raw materials at issue in the recent Appellate body decision, China also places some restrictions on domestic production on rare earth metals. This fact may strengthen somewhat China's argument that its restrictions are necessary to protect the environment, but it nevertheless appears that the Appellate Body decision could help support a challenge to China's exports restrictions on rare earth metals.

USTR Requests "Credible Real World Cases" Of China Forced Technology Transfer; Outreach Seen As A Prelude To Chinese Vice President Xi Jinpeng's February Visit To Washington

Patrick Togni

Press reports in early February indicated that the National Association of Manufacturers ("NAM") solicited information from member companies regarding "credible real world cases" of forced technology transfer in China. NAM contacted members at the request of the United States Trade Representative ("USTR").

The term "forced technology transfer" describes the pressure to relinquish technology (including trade secrets) that is exerted by the Chinese government and Chinese companies on U.S. companies that seek market access in China, or as a pre-condition to performing certain operations there. Examples of actions to compel technology transfer include action or inaction by the Government of China in government approval processes, or pressure exerted by Chinese business partners directly.

Trade organizations including NAM and other business entities routinely raise Chinese forced technology transfer issues in annual filings to the Special 301 Committee, which is a USTR entity that reports on intellectual property concerns annually. While it is possible that USTR sought information in connection with the annual Special 301 process, observers note that the informal January 27 deadline for submission of information suggested that USTR's request could have instead been tied to preparations for the February 13-17 visit to Washington by Chinese Vice President Xi Jinpeng.

The sensitivity of this issue is shown by the fact that NAM's communication to members stated that commenters need not identify themselves in providing any information to be shared with USTR. Indeed, the communication offered to "sanitize and protect company names."

Press reports indicate that forced technology transfer was on the agenda at a February 14 meeting between Vice President Joe Biden and Chinese Vice President Xi Jinpeng. Later that day, the White House issued a *Joint Fact Sheet on Strengthening U.S.-China Relations*, which stated that "China reiterates that technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese government as a pre-condition for market access."

New Methodology To End Zeroing Practice Announced

Lee Smith

On April 16, the United States Department of Commerce ("Commerce") will discontinue "zeroing" in calculating dumping margins in administrative reviews. This change in practice will be made effective for all preliminary determinations issued after April 16 as a result of WTO Appellate Body reports finding that "zeroing" in antidumping ("AD") investigations and reviews is not consistent with the United States' WTO obligations. The decision to comply with the WTO rulings was the result of consultations across the U.S. government including USTR, relevant congressional committees, and Commerce.

Prior to the WTO Appellate Body's reports, Commerce did not take into account negative AD margins when calculating an exporter's weighted-average AD margin in either investigations or administrative reviews. In other words, Commerce would set the AD margin to zero when a particular exporter's sale was not dumped (when the U.S. price was above the foreign market price), rather than include a negative margin in the weight-averaged margin calculation. Commerce's position was that the WTO agreements did not require it to offset positive AD margins with negative AD margins. Numerous Appellate Body reports contrary to the U.S.'s position, however, forced Commerce to take action. Commerce originally amended its practice only with respect to investigations. This new rule extends Commerce's amended methodology to administrative reviews.

Many practitioners believe that Commerce's change in methodology will hurt the U.S. industries bringing the AD cases in order to seek relief from unfair imports from foreign industries. By offsetting positive AD margins with negative AD margins, AD duties imposed by Commerce will be lower than they otherwise would be under Commerce's zeroing practice. Commerce, however, makes clear in its Final Rule that it will bring its AD calculations into compliance with the Appellate Body's reports in the same way that it did for AD investigations, but doing so does not necessarily mean that it will no longer zero in any case. Rather, Commerce explained that it "does retain the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate." Commerce notes that it has exercised such discretion in a limited number of investigations in which it used a zeroing methodology for certain transaction-specific AD margins for some respondents. Commerce's statements in its Final Rule indicate that it may rely on its broad discretion to use a zeroing methodology in some future administrative reviews, where warranted.

News Of Note

Japan's Interest In Joining Trans-Pacific Partnership

Augustine Lo

In November 2011, Japan expressed interest in joining the Trans-Pacific Partnership ("TPP"), an agreement among countries in the Pacific Rim that seeks to eliminate all tariffs and other barriers against the trade in goods and services among its members. Created in 2005, the TPP is presently comprised of the nine member states of Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam. Malaysia and Singapore recently endorsed Japanese membership.

Recent reports indicate that Japanese and American officials are engaged in discussions regarding Japan's potential entry into the TPP. U.S. concerns primarily revolve around Japan's assistance to its agricultural sector and automobile industry. Chairman Dave Camp (R-MI) of the House Ways and Means Committee; Ranking Member Sander Levin; Chairman Max Baucus (D-MT) of the Senate Finance Committee; and Ranking Member Orrin Hatch (R-UT), jointly expressed their reservations about Japan's admittance into the TPP, specifically citing Japan's barriers against agricultural imports. In view of the strength of the agricultural lobby in Japan, and resistance from the U.S. automobile industry, it appears that significant obstacles remain to U.S. acceptance of Japan as a member of the group.

Commerce Finds Critical Circumstances In Solar Panel Case

Richard Lutz

In January, Commerce made a preliminary determination of critical circumstances in the countervailing duty investigation of crystalline silicon photovoltaic cells and modules from China. The ruling requires Customs to suspend liquidation of all imports of covered products that entered into the United States 90 days prior to an affirmative preliminary determination. Currently, the preliminary determination in the countervailing duty case is scheduled for March 2, 2012, meaning that cash deposits or bonds equal to the preliminary subsidy rates could be required for imports that entered the United States as of December 3, 2011. A source close to the proceeding, however, believes that Customs may not require the additional deposits for entries that precede an affirmative preliminary subsidy determination. The ITC also has to make an affirmative critical circumstances determination before the provisional measures would move back 90 days. The ITC, however, rarely makes affirmative final critical circumstances findings. The ITC final determination on critical circumstances would occur in conjunction with the final injury determination, which, if fully extended, would occur in mid-November 2012.

Congress Resists Trade Agency Restructuring

Rebecca Woodings

On January 13, President Obama announced his reorganization plan for executive branch trade agencies. The President proposed to reorganize USTR, the Small Business Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the U.S. Trade and Development Agency, and much of the Department of Commerce. The President's proposal noted that the six agencies currently have overlapping responsibilities that create redundancies and inefficiencies.

Within hours of the President's announcement, Chairman Dave Camp (R-MI) of the House Ways and Means Committee and Chairman Max Baucus (D-MT) of the Senate Finance Committee issued a joint statement expressing concern about the plan. In particular, they asserted that merging USTR into a larger agency would be detrimental. A number of business associations also have expressed concerns regarding the reorganization proposal.

On the other hand, Representative Charles Rangel (D-NY and former Ways and Means Chairman) as well as House Minority Leader Nancy Pelosi (D-CA) have supported the plan, citing the benefits for small businesses. The proposal also finds support from such sources as Clyde Prestowitz of the Economic Strategy Institute and Alison Acosta Fraser of the Heritage Foundation.

Manufacturing Revival - A Company Profile

Paige Rivas

Marble King, located in Paden City, West Virginia, is one of the last remaining marble producers in the United States. With a daily output of more than 1 million marbles, Marble King operates seven days a week, 365 days a year and uses 4.5 tons of recycled and discarded glass per day.

In an era when children's toys tend toward the electronic, Marble King has successfully diversified its product. Its marbles are used in marble games, board games, decorative vases, spray paint cans, and other industrial applications. Marble King even has incorporated its marbles in an attractive jewelry line.

Unfair trade practices have adversely impacted U.S. marble manufacturers. Beri Fox, President of Marble King, has stated, "China pays no tariff to export marbles to the U.S. The [Chinese] government even subsidizes their costs." As a result, the Chinese marble manufacturers' operating costs are one-third to one-half less than the U.S. manufacturers. "We need a system that operates on balance and fair trade practices," she concluded. "Don't make us climb the mountain. Give us a level playing field."

Ms. Fox is speaking at the Second Annual Conference on the Renaissance of American Manufacturing--Jobs, Trade and the Presidential Election on Tuesday, March 27, 2012 at the National Press Club in Washington, D.C., on the topic What Do We Need To Do On Trade?

Contacts

Gilbert B. Kaplan
gkaplan@kslaw.com
+1 202 661 7981

Jeffrey M. Telep
jtelep@kslaw.com
+1 202 626 2390

Taryn Koball Williams
taryn_williams@kslaw.com
+1 202 661 7895

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