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Trade & Manufacturing Alert

High Level Of U.S. Oil Production Leads To Increased Focus On Exports

Clint Long

Recent news reports present conflicting views on the United States' ranking in world oil production. Some reports say that the United States has become the largest oil producer in the world, surpassing energy-rich countries such as Russia and Saudi Arabia. Other reports recognize the high level of oil production but express doubts that the U.S. has indeed reached first place. Regardless of the United States' actual ranking, the recent and significant boom in U.S. oil production clearly has made the United States an energy powerhouse.

The high level of oil production in the United States has led to an increased focus on exports. Domestic oil producers are seeking export markets, and there are plenty of interested buyers. The European Union, for example, is seeking preferential access to U.S. oil exports in its negotiations with the United States on the Transatlantic Trade and Investment Partnership. U.S. oil producers, however, face a significant barrier to crude oil exports. Since the 1970s, the United States has imposed a ban on exports of crude oil. As explained in the February editions of King & Spalding's *Trade and Manufacturing Alert* and *Energy Newsletter*, the debate on ending the ban is intensifying as U.S. oil production increases.

Recent events suggest that the ban may not be as impenetrable as it has been in practice over the past 40 years. In June, two energy companies—Pioneer Natural Resources and Enterprise Products Partners—received rulings from the Bureau of Industry & Security (BIS) at the U.S. Department of Commerce (Commerce) that permit the companies to export "condensate," a very light form of oil. Condensate is an ideal candidate for export from the United States, in large part because production has skyrocketed during the U.S. energy boom. Until now, however, it was unclear whether BIS would approve an application to export condensate. Companies in South Korea and Japan made the first purchases of approved condensate on July 24, 2014, which, according to news reports, represent the first sales of condensate to Asia in at least 40 years.

Despite the fact that Commerce has said that the rulings do not represent a change in policy, the rulings clearly are good news for U.S. energy producers. What impact these rulings will have on the export ban is unclear, but pressure on the crude

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oil export ban in light of the high level of U.S. oil production is likely to increase.

Oil Country Tubular Goods Orders Are Much More Likely As Domestic Industry Gains From The Department of Commerce's Final Determinations

Brian E. McGill

The high-profile unfair trade cases on oil country tubular goods (OCTG) are nearing completion. The antidumping investigations cover imports from India, the Philippines, Saudi Arabia, Korea, Taiwan, Thailand, Turkey, Ukraine, and Vietnam, while the countervailing duty investigations cover India and Turkey. The Department of Commerce (Commerce) issued final determinations in these investigations on July 10. The International Trade Commission will vote on whether the domestic industry is materially injured by the unfair imports on August 14.

Commerce determined antidumping margins ranging from 2.05 to 9.91 percent for India, 9.89 to 15.75 percent for Korea, 9.88 percent for the Philippines, 2.69 percent for Saudi Arabia; zero to 2.52 percent for Taiwan; 118.32 percent for Thailand; zero to 35.86 percent for Turkey; 24.22 to 11.47 percent for Vietnam; and 6.73 percent for Ukraine. Commerce found countervailing duty rates ranging from 5.67 to 19.11 percent for Indian producers and 2.53 to 15.89 percent for Turkish producers. Despite opposition from the domestic industry, Commerce entered into the antidumping suspension agreement sought by Ukrainian producer Interpipe Group due to continuing unrest in that country.

The most significant gain for the domestic industry in the final Commerce determinations was the increase in antidumping margins applicable to imports from Korea, the source of the largest volume of OCTG imports into the U.S. market. On the other hand, antidumping margins declined for Indian producers to under 10 percent from preliminary margins of 55.37 percent. Moreover, producers in Taiwan and Turkey received final zero margins.

The OCTG cases have been viewed by many as highly politicized. For example, on June 17, the Commerce Assistant Secretary for Enforcement and Compliance met with Korean Deputy Minister for Economic Affairs of the Ministry of Foreign Affairs in Seoul, Korea. Although several topics were discussed, including overall United States-Korea bilateral trade relations, Commerce's antidumping investigation of OCTG imports from Korea was also on the agenda, with Minister Ahn urging Commerce to make an objective analysis notwithstanding the views expressed by many members of Congress. Likewise, Korea's Minister of Trade, Industry and Energy separately requested that Commerce make its final determination in a "fair and objective way." These comments from Korean officials were in reaction to a letter signed by over 150 members of Congress, including the Congressional Steel Caucus Chairman, Rep. Tim Murphy, and Vice-Chairman, Rep. Pete Visclosky, calling for action against unfair imports after Commerce's preliminary determination, which found no unfair pricing by the Korean producers.

Overall, the volume of OCTG imports did not decline following the preliminary Commerce determinations, led by shipments from Korea. But domestic OCTG prices did increase, leading to even greater price disparities between imported and domestic OCTG. Following Commerce's final determinations, there are strong indications that import prices are increasing and the gap in pricing is closing. U.S market prices reached their highest levels in a year and half in July. The benefits to the domestic industry are likely to be concentrated in the premium segment of the market until the high-inventories of commodity OCTG are absorbed. Whether the modest duties on imports from Korea significantly constrain the volume of imports from Korea remains to be seen. Because there is no internal market for OCTG in Korea and the United

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States is the primary export destination for Korean OCTG, in order to maintain production, the Korean producers likely will have to absorb some portion of the duties and slightly increased prices if orders are imposed.

The new cases are important to U.S. production. For example, U.S. Steel announced in early June that it would "indefinitely" idle its pipe plants in McKeesport, Pennsylvania and Bellville, Texas, due in part to unfairly traded tubular products. In addition, Alamo Tube Co. is planning to invest $62.5 million to build a 250,000-ton mill in Texas to produce welded OCTG. This mill is expected to employ more than 200 workers. The future of these facilities is likely to be affected by the outcome of the OCTG cases. The domestic industry had expected to obtain significant benefits from trade relief when it won unfair trade case against China several years ago. But the domestic industry has complained that unfair imports, particularly from Korea, have denied the domestic industry the benefits of the 2010 orders on imports from China. China was the largest import source of OCTG prior to those orders.

Canada recently initiated its own trade cases against OCTG imports from India, Indonesia, the Philippines, South Korea, Taiwan, Thailand, Turkey, Ukraine, and Vietnam based on petitions filed by Evraz, Inc. and Tenaris S.A. The Canadian preliminary injury determination is due September 19, and the preliminary antidumping and countervailing decisions are due October 20. To the extent that the Canadian cases are successful, they will further restrict the options for OCTG exporters because the Canadian cases involve many of the same countries whose imports are being investigated by the United States.

Experts Weigh In On Developments With U.S. Manufacturing Hubs

Lauren M. Donoghue

On July 9, the Brookings Institution held a conference entitled "Regional Manufacturing Hubs: A Path to Innovation," which discussed recent manufacturing policies and their impact on U.S. innovation and job creation. Brookings Trustee and Taco Incorporated CEO John White moderated the event, which included keynote remarks from Jason Miller, Special Assistant to the President for Manufacturing Policy, and panelists from M-7 technologies, America Makes, GlobalFoundries, and UI Labs.

Several years ago, the Obama Administration began developing a plan to create a National Network for Manufacturing Innovation. The concept of the project was to bring together industry and universities to bridge the gap between research and development and product development, while concentrating on ways to rebuild some of the United States' core manufacturing capabilities, including by developing regional "manufacturing hubs." The pilot hub is located in Youngstown, Ohio, and focuses on 3-D printing. President Obama announced additional hubs in Chicago, Detroit, and Raleigh in the State of the Union address earlier this year. During the conference, Mr. Miller stated that a fifth institute, focused on advanced composites, will be announced in the fall.

Mr. Miller acknowledged that the project is still in the early stages, but he emphasized that the Administration is proud of what has been accomplished. He said that the manufacturing hubs are just "one piece of a broader puzzle," but one that is contributing to rebuilding some of the capabilities that have been lost over the years. Importantly, the project is helping to re-create networks that make it more attractive to locate and produce in the United States.

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A common theme that emerged was the virtue of the collaborative nature of these hubs, which bring together universities, business firms, and innovators of various sorts. The hubs have also had a positive effect on the essential task of rebuilding the manufacturing workforce. Mike Garvey, of M-7, noted that one of the great things about the hubs is that they bring about a "reawakening" of skills sets and that curricula in the colleges are now being developed around those skills sets. It was also noted that "geography matters" and thus regional hubs make sense—they enable feedback from design engineers to the shop floor.

All participants agreed that the hubs are working and recommended more of these institutions to support U.S. manufacturing.

WTO Appellate Body Issues Report In China's Challenge To U.S. Trade Laws

Pat Togni

On July 7, the World Trade Organization (WTO) Appellate Body issued its report in *United States – Countervailing and Anti-Dumping Measures on Certain Products from China* (DS 449). This proceeding traces its roots to 2006, when the U.S. Department of Commerce (Commerce) received a petition to initiate a countervailing duty (CVD) investigation on coated free sheet paper (CFS Paper) from China. As part of those proceedings, Commerce published a Notice of Opportunity to Comment on whether the current economic situation in China warranted the application of the U.S. CVD law to a non-market economy (NME). Commerce concluded that it could determine whether China granted a subsidy to a Chinese producer and, consequently, that the CVD law could be applied to imports from China.

In 2007, GPX, one of the respondents in a different CVD investigation on imports of tires from China, filed an appeal in the U.S. Court of International Trade (CIT) challenging Commerce's application of CVD law to China. GPX argued that the U.S. Court of Appeals for the Federal Circuit's 1986 decision in *Georgetown Steel*—which affirmed Commerce's decision not to apply the CVD law to NMEs—prevented the application of the CVD law to any country classified as an NME. The United States successfully defended GPX's challenge in the CIT, which found that Commerce had discretion to apply or not apply the CVD law to NMEs under particular circumstances. GPX appealed the CIT's judgment to the Federal Circuit.

The Federal Circuit ultimately concluded that Commerce could not apply the CVD law to China as long as China was classified as an NME. The Federal Circuit reasoned that, in "amending and reenacting the trade laws in 1988 and 1994, Congress adopted the position that the [CVD] law does not apply to NME countries." By remaining silent about the issue when it subsequently amended the CVD law, the court reasoned, Congress "legislatively ratified" *Georgetown Steel*, which the Federal Circuit interpreted to hold that it is impossible for Commerce to identify subsidies in a country treated as an NME under the AD law. The Federal Circuit's opinion, however, never became final because a "mandate" was not issued. The United States petitioned for rehearing, thus staying the issuance of the mandate until the petition was either granted or denied. While the petition was pending and prior to the issuance of the mandate, Congress enacted legislation overturning the Federal Circuit's decision.

The *GPX Legislation* made explicit that the CVD law was applicable to imports from an NME. The *GPX Legislation* confirmed Commerce's longstanding interpretation of the CVD law. The legislation provided that the CVD law applies to imports from all countries, including NME countries, except where Commerce is unable to identify a subsidy due to the extent of state control. The *GPX Legislation* stated that these provisions were applicable in "all proceedings initiated under [the CVD law] on or after November 20, 2006," which corresponds to the date on which the CFS

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Paper CVD investigation was initiated. Following the passage of the *GPX Legislation*, on May 9, 2012, the Federal Circuit granted the United States' petition for rehearing, acknowledging that Congress "sought to overrule our decision in *GPX*." The court also agreed that *GPX* had been overturned before it had become final. Thus, the Federal Circuit found that the legislation effectively nullified its earlier decision.

On September 17, 2012, China initiated a WTO appeal, challenging (1) the *GPX Legislation*, claiming that the United States was in breach of its obligations under Article X of the GATT because the *GPX Legislation* was not published promptly, was applied retroactively, and did not implement the *GPX* Federal Circuit decision; and (2) the United States' failure to investigate whether double remedies arose from 25 parallel CVD and antidumping (AD) proceedings, initiated during 2006–2012, pursuant to its obligations under Article 19.3 of the Subsidies Agreement.

A WTO Panel in March 2014 rejected China's claims that the *GPX Legislation* violated the United States' WTO obligations under Article X of the GATT. The Panel also found that the United States failed to satisfy its obligation under Article 19.3 of the Agreement on Subsidies and Countervailing Measures, because it did not investigate whether a double remedy results when AD and CVD duties are applied concurrently in NME cases. Both the United States and China appealed aspects of the Panel's ruling.

In a report released on July 7, 2014, the WTO Appellate Body agreed with China that the Panel applied the wrong legal standard in rejecting China's challenge to the *GPX Legislation*. The Appellate Body determined, however, that it could not complete the analysis and apply the correct legal standard based on the Panel's factual findings. Thus, the Appellate Body did not rule that the *GPX Legislation* violates any WTO obligation. The Appellate Body also agreed with China that it had jurisdiction to consider China's double remedies claims.

The Appellate Body does not have the discretion to remand matters back to a panel for further proceedings. Thus, the Appellate Body's reversal of the Panel's ruling will have no effect on the U.S. CVD law. Most observers anticipate, however, that China will file a new challenge to the *GPX Legislation*, asking a new panel to apply the legal standard set forth by the Appellate Body.

Once the Appellate Body report is adopted by the WTO Dispute Settlement Body (DSB), the United States must bring its measures into compliance with the DSB's recommendations and rulings within a "reasonable period of time." To address the DSB's recommendations and rulings on double remedies, the United States will initiate so-called Section 129 proceedings to determine the appropriate steps. We expect that Commerce will re-open the record in each affected case to (1) establish whether or to what degree its measures are offsetting the same subsidies twice by imposing AD duties calculated under its NME methodology concurrently with CVD duties and (2) make any necessary adjustments to the AD rates to eliminate the double remedy.

If Commerce applies the same methodology it has used to implement findings of double remedies violations in past WTO cases, then Commerce will make downward adjustments to the dumping margins to account for the impact of the subsidies on the dumping margin. Commerce's standard practice has been to reduce dumping margins by the extent to which Commerce estimates that input subsidies (as opposed to other types of subsides like loans or tax reductions) reduce export prices and thus inflate dumping margins.

In sum, the July 7 Appellate Body decision will not have any direct impact on the U.S. CVD law, but this case may portend similar challenges by China at the WTO in the future and may result in a

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reduction of dumping margins in some cases previously considered by Commerce.

News of Note

United States Holds First Round Of Negotiations With 13 Trading Partners Toward An Environmental Goods Agreement

Cole Pfeiffer and Jordan Shepherd

On July 8, 2014, the United States and 13 other Members of the World Trade Organization (WTO), including China, launched the first round of negotiations on the Environmental Goods Agreement (EGA) in Geneva, Switzerland. Together these countries have a serious stake in the future of the green energy market, as they account for 86 percent of the global trade in environmental goods. Although outside the auspices of the WTO, these negotiations aim for an agreement to be applied to all WTO Members on a Most-Favored-Nation (MFN) basis. American companies face multiple barriers to fair economic competition in the environmental goods sector, including high tariffs and unfair dumping and subsidization of imported goods, though the negotiations will focus solely on eliminating tariffs. The trade barriers faced by American exporters, however, are not unique as environmental goods have been at the center of trade wars among the United States, China, the European Union, and others.

The focus of the negotiations is to eliminate tariffs, which can be as high as 35 percent, on environmental technologies. While significant progress has been made already in the Asia-Pacific Economic Cooperation context, with promises to cut tariffs on 54 environmental goods to 5 percent or less by 2015, the United States negotiators hope to expand the products list to additional products. The Obama Administration hopes that the negotiations will not only level the playing field for U.S. manufacturers seeking to sell environmental technologies abroad but also help support general U.S. trade and environmental goals.

China Announces Strong Measures To Boost The Integrated Circuit Industry

Lingna Yan

The Chinese Integrated Circuit (IC) industry welcomed the long-anticipated *National Guidelines for the Development and Promotion of the Integrated Circuit Industry* (*Guidelines*), which were issued by China's State Council on June 24. The *Guidelines* set ambitious targets of exceeding 350 billion renminbi (RMB) in sales revenue by 2015 (compared with 250.8 billion RMB in 2013), reaching an annual sales revenue growth rate of over 20 percent by 2020, and reaching "advanced world level" by 2030. To achieve the targets, the *Guidelines* call on both the central and local governments to establish IC industry investment funds, support policy and commercial financial institutions to increase the financing they provide to this industry, and encourage domestic companies to expand abroad. Government officials stated that over 100 billion RMB in government support will be provided to the industry over the next few years.

Export Control Reform Continues To Move Forward

Shannon Doyle Barna

On July 1, the State Department and the Commerce Department published final rules in the *Federal Register* announcing their intent to revise Category XI (Military Electronics) of the State Department's U.S. Munitions List (USML) by shifting specific items to the Commerce Control List (CCL) that no longer warrant a place on the USML. The military electronics transitioned to the CCL include: certain microwave monolithic integrated circuits power amplifiers; certain discrete microwave transistors; certain high frequency surface wave radars; certain application specific integrated circuits and programmable logic devices; certain printed circuit boards and populated circuit card assemblies; certain multichip modules; and certain parts,

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components, accessories, and attachments specially designed for articles controlled by USML Category XI or the articles described above. The final rules will go into effect on December 30, 2014.

Also on July 1, previous revisions to USML Categories IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines), V (Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents), IX (Military Training Equipment), X (Personal Protective Equipment), and XVI (Personal Protective Equipment) became effective. There are only six remaining USML categories to be revised as part of the Export Control Reform initiative.

For more information on export control reform, please see the February 2014 and November 2013 editions of the Trade and Manufacturing Alert and King and Spalding's June 2013 Client Alert.

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