King & Spalding

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President Obama's State Of The Union: Jobs, Competitiveness, Manufacturing

In his State of the Union speech on January 26, 2011, President Obama made some brief but important remarks on U.S. trade and manufacturing policy. The President emphasized the need for U.S. innovation and competiveness, coupled with an aggressive export strategy, to create much-needed jobs in the United States. He reiterated his goal of doubling U.S. exports by 2014, which the Administration calculates will support 2 million American jobs. The basis for future economic growth and job creation, according to the President, is increased access to global markets for U.S. exports. He cited recently completed agreements with China and India as examples of agreements that will support more than 250,000 jobs in the United States. He also stated that 700,000 American jobs would result from the U.S. free trade agreement with South Korea and urged Congress to pass it as soon as possible. Included on the list of other trade priorities are continued negotiations of the Trans-Pacific Partnership, which was referenced but not directly named, and the pursuit of free trade agreements with Panama and Colombia. The President also emphasized the need to enforce existing trade Agreements. Finally, President Obama addressed his proposal to reorganize the federal government and merge duplicative agencies. To illustrate the need for major governmental reorganization, he stated that there are twelve different agencies that deal with exports. Notably absent, however, was a timeline on when he expects the deals to be completed, as well a plan to address other trade irritants, such as China's currency undervaluation.

Manufacturing And Trade Briefing For New Members Of The House Of Representatives

On Tuesday, February 15, 2011 from 8:30-10:30am, a Congressional Briefing entitled "Manufacturing, Job Creation, and Trade with China" will be held at B-354 Rayburn House Office Building. The Briefing is geared towards new House members and staff, and others interested in manufacturing issues as a follow-up event from the Conference on the Renaissance of American Manufacturing, held in September 2010 at the National Press Club.

The Briefing will include remarks from Tim Murphy (R-PA); Betty Sutton (D-OH); Ralph

Gomory, Former Senior VP IBM, and Professor, NYU Stern School of Business; Tom Sneeringer, Managing Director, Federal Government Affairs, United States Steel; Daniel Slane, Vice Chairman, U.S.-China Economic and Security Review Commission; Gilbert Kaplan, President, CSUSTL, King & Spalding; Bob Lighthizer, former Deputy USTR, Skadden, Arps; and Linda Andros, Legislative Counsel, United Steelworkers; among others.

For more information and to register please email Paige Rivas at privas@kslaw.com.

Obama, Hu Seek To Reduce Trade Tensions, Increase Economic Cooperation

Following meetings between President Obama and President Hu Jintao during the latter's state visit to Washington, the United States and China issued a joint statement on January 19 stating that the two nations are committed to working together to build a "cooperative partnership based on mutual respect and mutual benefit." In the statement, Obama and Hu emphasized "their strong commitment" to engage in across-the-board talks to conclude successfully the World Trade Organization's ("WTO") Doha Development Agenda and also made other commitments designed to reduce trade tensions and promote greater economic cooperation. These included commitments by China to expand access for U.S. manufactured goods, strengthen enforcement of intellectual property rights ("IPRs"), eliminate discrimination against foreign-designed products in its government procurement decisions, and conclude negotiations to join the WTO Agreement on Government Procurement ("GPA").

The meeting between the leaders of the world's two largest economies also put the spotlight on U.S. criticism that China artificially undervalues the yuan, bringing down the cost of Chinese exports and making them more competitive in global markets. Prior to Hu's visit, U.S. Treasury Secretary Geithner said that China must do more to address its undervalued currency and dependence on exports, adding that such a move would help China control inflation. Hu dismissed price stability as a reason for yuan appreciation, noting that Chinese inflation is "moderate and controllable." Hu did not comment publicly about the yuan during his U.S. visit. Chinese officials in Beijing, however, reiterated that China would stick to its policy of gradual exchange rate reform, noting that the yuan has appreciated 3.5 percent since last summer.

Also during Hu's visit, China announced contracts to purchase more than $45 billion of U.S. goods, including jet aircraft, agricultural products, computer products, telecommunication and internet equipment, autos and auto parts, engineering machinery, software, and industrial chemical products. China is the United States' third largest trading partner after Canada and Mexico and imports more than $100 billion of U.S. goods and services annually.

China also agreed to hold accountable those who violate IPRs on the Internet and to strengthen IPR protections in China's libraries. China, which last December pledged to use only licensed software in government ministries and state-owned companies, also agreed to audit and publish a list of those offices to make the new policy and adherence to it more transparent.

Finally, China undertook new commitments to address U.S. complaints about its closed government procurement market and its indigenous innovation policy adopted in 2009 that limited government purchases to products designed in China. China agreed to scrap the policy, pledging that its government procurement decisions in the future would not be based on where the intellectual property for the goods or services being purchased is developed or maintained. In its ongoing negotiations to join the GPA, China also agreed to improve its offer as to which Chinese central and provincial government entities will be subject the obligations of the GPA (and therefore allow foreign companies to compete to supply goods and services to those entities). This offer could pave the way for a conclusion to these negotiations in 2011.

More Help For Export-Related Entrepreneurs And Small Businesses

Building on the President's goal to double U.S. exports by 2015, and in response to the Small Business Jobs Act of 2010 ("Jobs Act"), the U.S. Export-Import Bank ("Ex-Im Bank") recently announced the Small Business Global Access initiative. The initiative aims to double Ex-Im Bank's annual small business export finance program from $4.5 billion to $9 billion, add 5,000 small businesses to its portfolio, and approve at least $30 billion in small business transactions. Ex-Im Bank will hold 20 Global Access forums across the country in 2011 to provide information to small businesses about financing and the benefits of exporting.

The Jobs Act also extends and increases existing Small Business Administration ("SBA") export-related loan programs and creates various new programs designed to support small business job growth.

Additional highlights of the Jobs Act include:

- Extension of three current export-related lending programs administered by the SBA, increasing funding limits: The Export Express loan program (originally created as part of the Recovery Act) becomes permanent, with 90 percent of loans up to $350,000 guaranteed, and 75 percent of loans between $350,000 and $500,000 guaranteed. The law also increases the size of International Trade Loans and Export Working Capital Loans from $2 million to $5 million.

- Establishment of the State Trade and Export Promotion Grant Program ("STEP"): This three-year pilot program provides up to $90 million in competitive grants to states over the next three years in order to carry out various export programs in support of small businesses.

- Increased staff at U.S. Export Assistance Centers and the SBA Office of International Trade: The Jobs Act sets a minimum number of staff for the Export Assistance Centers and establishes an Associate Administrator for International Trade position at the SBA, as well as additional staffing in the Office of International Trade.

- Eight new small business tax cuts, totaling $12 billion in tax relief for small businesses.

- A requirement for the annual publication of a list of all lenders who are making SBA international trade loans, and a report describing programs that could promote exports by rural small businesses.

The Department Of Commerce Proposes To Amend The Foreign Trade Zone Regulations

The Department of Commerce ("Commerce") Foreign Trade Zones Board has published a Proposed Rule that would change the regulations governing Foreign Trade Zones ("FTZs"). FTZs are designated locations within the United States where foreign and domestic merchandise may be entered for storage, exhibition, assembly, manufacture, or other processing prior to formal "entry" into the U.S. customs territory. Payment of duties is not required until the merchandise leaves the FTZ and enters the U.S. customs territory for domestic consumption. In many instances, U.S.

duties can be reduced or avoided on foreign merchandise released from a FTZ if the merchandise is incorporated into a downstream product that is subject to a reduced or zero duty rate. The Commerce FTZ Board approves applications for FTZ status, and it maintains regulations governing the operation of FTZs.

The proposed rule is intended to further the President's National Export Initiative to double exports within five years. The Proposed Rule strives to increase exports by improving flexibility for U.S.-based operations, particularly for circumstances involving exports and strengthening compliance and enforcement.

Several key provisions are included in the Proposed Rule. Among them are provisions that are designed to increase the speed by which FTZs are approved. For example, the Proposed Rule would eliminate the requirement of advance approval from the FTZ Board for the production activities of products that are exported, except in instances where a production input is subject to an antidumping or countervailing duty ("AD/CVD") order, an order pursuant to 19 U.S.C. § 1337 ("Section 337"), or a quantitative restriction ("quota"). For production activities concerning products that will be entered into the customs territory of the United States, advance FTZ Board approval is limited to situations in which there is an inverted tariff; a production input is subject to an AD/CVD order, a Section 337 order, or a quota; or the production activity will result in duty avoidance on scrap/waste. The Proposed Rule would permit approval of the activity on an "interim basis" pending completion of the full FTZ Board review, significantly decreasing the time needed for approval.

The Proposed Rule provides for fines for violations of the FTZ Act or the FTZ regulations. It also includes a provision allowing for the "prior disclosure" of violations of the FTZ Act or the FTZ regulations. Disclosure of a violation to the FTZ Board prior to its discovery could result in a fine reduction.

The public may submit comments on the Proposed Rule, which are due by April 8, 2011.

Status Of Several Important U.S. Trade Programs Remains Uncertain As "Lame Duck" Congress Fails To Act

The status of several important U.S. trade programs remains uncertain as the U.S. Congress failed to come to agreement over the programs during the "lame duck" session late last year. The programs in question - the Generalized System of Preferences ("GSP"), the Andean Trade Preference Act ("ATPA"), and the expanded version of Trade Adjustment Assistance ("TAA") - were all set to expire on December 31, 2010 unless renewed by Congress. While Congress did pass a six-week extension of ATPA and TAA, it allowed GSP to lapse. Congress also failed to enact a much sought after consolidated Miscellaneous Tariff Bill ("MTB"), which would have provided duty-free treatment for many industrial inputs not produced in the United States. While the new Congress is expected to take up these various matters again in early 2011, the legislative outcomes and when they would occur remains unclear.

GSP On December 15, the House of Representatives passed an 18-month extension of GSP as part of the Omnibus Trade Act of 2010 (H.R. 6517). The Senate, however, failed to take up the House-passed bill due to an objection by Senator Sessions (R-AL) in protest over duty-free treatment for sleeping bags from Bangladesh that compete with those of an Alabama producer. As a result, GSP expired on December 31. While any extension for GSP passed by Congress in 2011 likely will make GSP benefits retroactive, as has been done in the past, this is not assured. In the meantime, the U.S. International Trade Commission is accepting public comments with respect to the

2010 Review of Competitive Need Limitation Waivers based on a December 22, 2010 request from the United States Trade Representative ("USTR"). Competitive Need Limitation Waivers are needed to increase the limit of certain imports from specific GSP-eligible countries if the legal requirements are met. By contrast, USTR has stated that it will suspend its ongoing investigations of GSP country and product petitions, including petitions on Competitive Need Limitation Waivers, until GSP is reauthorized

ATPA and TAA The House-passed Omnibus Trade Act of 2010 provided 18-month extensions for ATPA and the expanded version of TAA, but the Senate was willing only to pass an extension of the two programs through February 12, 2011. The amended Senate bill was agreed to by the House and then signed into law by the President. The TAA extension was intended to apply only to the program's expanded provisions relating to the eligibility of service and public sector workers; increased spending caps for training services; simplified enrollment; and a sector partnership grant program for trade-impacted communities. These expanded provisions, passed in 2009 as part of the stimulus bill, were set to expire on December 31, 2010, after which TAA would have reverted to prior funding levels and eligibility requirements. Other portions of TAA would have remained in effect without the need for an extension. Unfortunately, due to an unintended legal drafting error, the entire TAA program will now expire on February 12, 2011, unless renewed. To avoid this result, Congress may act more quickly on TAA than on other trade legislation.

MTB The House-passed Omnibus Trade Act of 2010 also included some 290 "miscellaneous tariff bills" that would have temporarily suspended import duties on inputs or components that are not made domestically. Apparent disagreement among Senate Republicans as to whether MTBs constitute earmarks and therefore violate the Republicans' self-imposed ban on earmarks prevented the highly popular measures from being brought to a Senate vote. It appears that Senate Republicans still need to resolve this matter before any action will be possible on MTBs in the new Congress.

News of Note

Commerce Requests Comments On Proposed Rule To End Zeroing

On December 18, 2010, Commerce requested comments on proposed changes to its current antidumping calculation methodology known as "zeroing" used in annual reviews. "Dumping" occurs where the export price (*i.e.*, the price of the imported article sold in the United States) exceeds the normal value (*i.e.*, the value of the article in the country of exportation). When an antidumping duty order is issued, remedial duties are imposed to compensate for the dumped sales. "Zeroing" is Commerce's practice of ignoring sales comparisons with "negative" dumping margins when calculating the exporter's final weighted-average dumping margin. Remedial duties are based on this average. In response to successful challenges at the WTO, Commerce proposed eliminating zeroing "except where [Commerce] determines that application of a different comparison method is more appropriate." The elimination of zeroing will lead to a significant decrease in dumping margins in annual reviews. Comments are due by February 18, 2011.

Office Of The United States Trade Representative Issues Request For Public Comment On 2011 Special 301 Review

On December 30, 2010, USTR published a request for written submissions from the public relating to USTR's 2011 Special 301 Report. Section 182 of the Trade Act of 1974, commonly referred to as "Special 301," requires USTR to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Countries identified in the annual Special 301 report as Priority Foreign Countries are subject to enforcement proceedings if the issues identified are not resolved through bilateral negotiations. Interested parties should submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements by 5:00 p.m. on February 15, 2011. USTR will hold a public hearing on March 2, 2011, and will publish its 2011 Special 301 Report on or about April 30, 2011.

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