

Trade & Manufacturing Alert

Second Annual Conference On The Renaissance Of American Manufacturing

A record crowd of over 320 people attended the Second Annual Conference on the Renaissance of American Manufacturing: Jobs, Trade and the Presidential Election, a one-day conference focusing on solutions to the decline of manufacturing in America and highlighting manufacturing and trade as critical issues for the upcoming presidential and congressional elections. The event, held on March 27th at the National Press Club in Washington DC, was attended by a unique mix of business leaders, policy experts, government officials, congressional staffers, trade association representatives, union representatives, grassroots organizers, and academics.

Moderated by Gilbert B. Kaplan, President of the Committee to Support U.S. Trade Laws and a partner at King & Spalding, the event featured keynote speakers Gene Sperling, Assistant to the President for Economic Policy; Paul Piquado, Assistant Secretary of Commerce; Gordan Brinser, President of SolarWorld Americas; Neal Orringer, Director of Manufacturing at the Department of Defense; and Senator Merkley; Senator Portman; Senator Sessions; and Congressman Garamendi. The Honorable Buddy Roemer, former Governor of Louisiana and presidential candidate, gave remarks during the evening reception.

The driving force behind the conference is the belief that manufacturing is a critical part of the United States' economy and, without a strong manufacturing sector, the United States will not sustain the level of economic success that previous generations enjoyed. Government policy failures and inaction have contributed to the decline of U.S.

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manufacturing and these factors need to be understood and remedied. Transforming trade and manufacturing policies are a critical part of that effort. The Conference featured lively discussion between the panel experts and the audience on the root causes of the decline and the merits of proposed solutions as the country moves toward economic recovery.

A number of proposed solutions emerged during the Conference, including responding to China's overvalued currency, lowering the high corporate tax rate, creating a Secretary of Manufacturing, correcting the lack of a comprehensive manufacturing policy, developing a more aggressive

policy against unfair foreign trade practices, and dealing with intellectual property theft. These issues resonate throughout the economy. As the President and presidential candidates look for a way to address one of the hottest topics in this election, it is evident that the jobs picture will not improve in the United States in a meaningful and sustained way without addressing the decline in manufacturing.

The call to revive the manufacturing sector has been gaining momentum. It was noted at the Conference that the President and the presidential candidates are all talking about manufacturing to some degree. President Obama recently established a special trade enforcement task force, an idea that was included in the Statement of Principles issued in conjunction with the 2010 Conference on the Renaissance of American Manufacturing. Mitt Romney has stated that he will declare China a currency manipulator on his first day in office. Rick Santorum has proposed broad-scale tax benefits for U.S. manufacturers. There are a number of bills in Congress aimed at bringing back manufacturing. Representatives of both Mitt Romney and Rick Santorum spoke at the Conference, namely Grant Aldonas for the Romney Campaign and Diana Furchtgott-Roth for the Santorum campaign. Gene Sperling, Assistant to the President for Economic Policy, and Paul Piquado, Assistant Secretary of Commerce, spoke for the Obama Administration.

The Conference is one of many important conversations that need to take place as this country works towards a resolution of these important manufacturing issues.

Topics addressed during the event included:

- Why We Need Manufacturing in the United States: Can we survive without it?
- Prescriptions for Change: Which solutions would work best?
- Manufacturing: Are the presidential candidates delivering what the people want?

- Manufacturing and the U.S. Jobs Base: What's gone wrong?
- What Do We Need to Do on Trade?
- National Security, Trade Enforcement, and the Decline in U.S. Manufacturing

To view the conference agenda and a full list of speakers, click [HERE](#).

Congress Passes Legislation To Overturn The Federal Circuit's GPX Decision

Lee Smith

President Obama signed into law H.R. 4105 on March 13, 2012, which he said was passed to "help American companies that are facing unfair foreign competition.... Because of subsidies from foreign governments, some of their foreign competitors are selling products at an artificially low price. That needs to stop." H.R. 4105 provides authority for the Commerce Department ("Commerce") to apply the countervailing duty ("CVD") law to imports of merchandise from non-market economies ("NMEs") such as China and Vietnam. The bill was the U.S. Congress' response to the U.S. Court of Appeals for the Federal Circuit ("CAFC") decision in *GPX International Tire Corporation, et al. v. United States* ("GPX"). H.R. 4105 clarifies that U.S. producers being injured by unfair subsidies are authorized to seek relief by initiating a CVD proceeding against countries such as China and Vietnam that are determined to be NMEs by Commerce.

As reported in the [January](#) and [February](#) 2012 editions of the *Trade and Manufacturing Alert*, the CAFC held in *GPX* that the CVD law could not be applied to imports from China, because "Congress legislatively ratified earlier consistent administrative and judicial interpretations that government payments cannot be characterized as 'subsidies' in a non-market economy context, and thus that countervailing duty law does not apply to NME countries." Congress' response in H.R. 4105

makes clear that the CVD law does apply to countries that are treated as NMEs in Commerce's antidumping ("AD") proceedings.

H.R. 4105 has two sections. Section 1 nullifies *GPX* by providing that the CVD law applies to merchandise from an NME country, unless Commerce is unable to "identify and measure subsidies provided by the government of the [NME]." This section retroactively authorizes the use of the CVD law against NMEs from November 20, 2006.

Section 2 goes beyond the holding in *GPX* and implements the decision of the Appellate Body of the World Trade Organization in DS379. As reported in the [April 2011 edition of the *Trade and Manufacturing Alert*](#), the Appellate Body report said that the United States must investigate whether CVDs caused Chinese producers to lower their export prices, thus inflating their AD margins and, if so, the United States must adjust the AD margins to avoid double counting. Accordingly, Section 2 of H.R. 4105 provides for adjustments to AD margins where a countervailable subsidy other than an export subsidy (*i.e.*, domestic subsidy) "has been demonstrated to have reduced the average price of imports" and Commerce can "reasonably estimate the extent to which the countervailable subsidy" has increased the dumping margin. Section 2 applies to proceedings that are initiated on or after the date of H.R. 4105's enactment.

President Obama Establishes The Interagency Trade Enforcement Center

Josh Snead

President Obama signed an Executive Order on February 28 creating the Interagency Trade Enforcement Center ("ITEC"), which Administration officials say will improve the effectiveness of U.S. challenges to unfair trade practices around the world by leveraging and coordinating resources of various federal agencies.

The Executive Order followed the commitment President Obama made in his January State of the Union address to create a "Trade Enforcement Unit," as reported in the [February 2012 edition of the *Trade & Manufacturing Alert*](#).

ITEC will be housed within the office of the U.S. Trade Representative ("USTR"). Its director and deputy director will be appointed by the U.S. Trade Representative and the Secretary of Commerce, respectively. U.S. Trade Representative Ron Kirk stated that the creation of ITEC marks the most significant commitment to trade enforcement since the USTR was created more than 50 years ago. Commerce Department Secretary John Bryson added that ITEC is part of the Commerce Department's commitment to "making it as easy as possible for U.S. businesses to build things here and sell them everywhere." The new Center will address enforcement issues with trading partners throughout the world, according to Administration officials, although they have suggested that trade issues with China will be a major focus.

In addition to USTR and Commerce, agencies involved in ITEC will include the Departments of State, Treasury, Justice, Agriculture, and Homeland Security, as well as the Office of the Director of National Intelligence and any other agencies the President or the U.S. Trade Representative may designate. Agency employees supporting ITEC efforts will include trade lawyers, language-proficient researchers, subject matter and economic analysts, and foreign-based personnel.

The Administration is able to set up ITEC immediately without congressional authorization because it will initially rely exclusively on existing resources of the federal agencies involved. Administration officials stated that they plan to hire leadership and core staff for ITEC by the end of May. Secretary Bryson emphasized that the Administration intends to add more resources in the future. President Obama's proposed fiscal 2013

budget asks Congress to appropriate \$26 million—\$24 million for Commerce and \$2 million for USTR—to support the creation of ITEC, which the Administration hopes will eventually include at least 50 employees.

Trans-Pacific Partnership, Russia Permanent Normalized Trade Relations, And China Trade Are Among Key Elements Of 2012 Trade Policy Agenda

Patrick Togni

USTR released President Obama's annual Trade Policy Agenda for the year on March 1, 2012. USTR is the primary agency responsible for preparation of the Trade Policy Agenda and coordinates its delivery to Congress by March 1 annually. Not surprisingly, U.S. manufacturers are front and center in many of the initiatives covered by the 2012 Trade Policy Agenda. We summarize key elements below.

Trans-Pacific Partnership

The Trade Policy Agenda highlights ongoing negotiations to conclude a Trans-Pacific Partnership ("TPP") between the United States and Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. A fundamental goal of the TPP process is to expand opportunities for American job growth and increased exports throughout the Pacific region. The Trade Policy Agenda also suggests that additional countries may join the TPP negotiations, including Canada, Mexico, the Philippines, and Japan. TPP is intended to go beyond prior trade agreements and include provisions regarding production and distribution chains, greater regulatory harmonization between TPP countries, and assistance to small- and medium-sized enterprises.

Bellwethers for TPP progress in 2012 may include efforts by the Obama Administration to seek necessary Trade Promotion Authority from

Congress, and the success or failure of expanding the number of participants in TPP negotiations beyond those already underway by the United States and the eight other original participants.

Russia World Trade Organization Membership

Negotiations regarding Russia's World Trade Organization ("WTO") membership concluded in 2011. A fundamental component of the Trade Policy Agenda for 2012 will be for the Obama Administration to work with Congress to end application of the so-called Jackson-Vanik Amendment, and to authorize President Obama to extend permanent normal trade relations ("PNTR") to Russia. The Jackson-Vanik amendment imposes conditions on providing most favored nation tariff treatment to Russia, and its cessation is seen as a necessary first step to PNTR legislation and full WTO relations between the United States and Russia. The legislative process could be complicated by geo-political factors, such as the ongoing crisis in Syria. Whether the necessary approvals are secured in Congress by the time Russia is expected to formally accede to the WTO this summer remains an open question.

China Trade

The Trade Policy Agenda also devotes significant attention to the U.S.-China trade relationship. The USTR reaffirmed the policy of holding China accountable to its WTO commitments and emphasized the recent WTO victory concerning Chinese raw materials export restraints and another pending WTO case regarding Chinese export restraints on rare earth metals. In addition, the Trade Policy Agenda reaffirmed the availability of a China-specific transitional safeguard mechanism, known in the United States as Section 421, "to limit increasing imports from China that disrupt or threaten to disrupt" U.S. markets where "China does not agree to take action to remedy or prevent the disruption or threatened disruption." This

remedial tool is available to the United States until December 11, 2013, and import duties imposed by President Obama in a case involving certain passenger vehicles and light truck tires was upheld by WTO dispute panels in 2010 and 2011.

USTR Challenges China's Export Restraints On Rare Earths

Rebecca Woodings

USTR has requested consultations with China at the WTO concerning Chinese export policies for rare earth minerals, tungsten, and molybdenum. In coordinated actions, the European Union and Japan requested consultations with China on the same matter on the same day.

China is a major global producer of rare earths, tungsten, and molybdenum, which are key inputs into many U.S. manufactured goods. Examples cited by USTR include hybrid car batteries, energy-efficient lighting, wind turbines, and advanced electronics products. USTR claims that, by limiting exports, China drives up the cost of these minerals on world markets and keeps prices artificially low in China, thus benefitting Chinese manufacturers. USTR also asserts that China's policies create pressure on industries that need rare earths as manufacturing inputs to move production operations, technologies, and jobs to China.

A request for consultations is the first step in a WTO dispute, although countries frequently resolve differences through consultations. The United States recently won a WTO dispute regarding similar types of Chinese export policies pertaining to a number of other industrial raw materials, as reported in the March 2012 edition of the *Trade and Manufacturing Alert*. Although the WTO Appellate Body report in that dispute is not binding as regards the outcome of the new U.S. request, it would seem to weigh in favor of another U.S. victory. Moreover, the parallel requests by the EU and Japan also lend support to the U.S. action.

The U.S. action drew support from many in Congress. Senate Finance Committee Chairman Max Baucus (D-MT) hailed the request, as did House Ways and Means Chairman Dave Camp (R-MI) and Ways and Means Trade Subcommittee Chairman Kevin Brady (R-TX).

Numerous industry groups also welcomed the U.S. request, particularly highlighting Chinese policies pertaining to rare earths. Rare earths comprise 17 individual elements for which concentrated deposits, *e.g.*, those meriting commercial mining/extraction, are relatively uncommon.

According to the U.S. Geological Survey ("USGS"), China has half of global commercial reserves and accounted for more than 95 percent of global rare earths mining in 2011. The U.S. has some reserves, but had no mining activity during 2010-2011. According to the USGS, China accounted for 79 percent of U.S. imports of rare earths. U.S. imports of rare earths from all sources totaled \$696 million during 2011. The USGS also reported that rare earths are used in the United States to produce catalytic converters, armaments, televisions and flat-panel displays, electronic thermometers, fiber optics, lasers, oxygen sensors, fluorescent lighting, pigments, superconductors, x-ray-intensifying screens, lighter flints, permanent magnets, and rechargeable batteries for electric and hybrid vehicles. Rare earths are also used in glass manufacturing and oil refining. In commenting on market developments in 2011, the USGS observed that, "owing to declining supply, prices for most rare-earth products increased significantly in the third and fourth quarters of 2011."

http://minerals.usgs.gov/minerals/pubs/commodity/rare_earths/#pubs (2012 rare earths Commodity Summary).

Report On U.S. Manufacturing Employment Decline

Rebecca Woodings

The Information Technology and Innovation Foundation (“ITIF”) has released a study examining declines in U.S. manufacturing output and employment during 2000-2009. The report finds that manufacturing employment fell by one-third during the decade of the 2000s with 5.7 million jobs lost. Rob Atkinson, President of ITIF, spoke at The Conference on the Renaissance of American Manufacturing and moderated the panel on Manufacturing and the U.S. Jobs Base. He discussed this very important report.

The ITIF report challenges several theories associated with U.S. manufacturing employment declines. For example, ITIF disputes the magnitude of U.S. manufacturing productivity gains, which have often been cited as one rationale for lost manufacturing jobs. According to the report, 13 of 19 U.S. manufacturing sectors produced less in 2010 than they had in 2000. The largest losses were in the automotive, textile and apparel, metals and minerals, furniture, and paper sectors. Moreover, manufacturing employment declines were widespread; the majority of U.S. states experienced manufacturing job losses in excess of 30 percent during the 2000s. ITIF asserts that overall U.S. manufacturing output fell by 11 percent over the 2000s, even as the U.S. gross domestic product grew by 17 percent during the same period.

As the Report notes, “Manufacturing lost jobs because manufacturing lost output, and it lost output because its ability to compete in global markets--some manipulated by egregious foreign mercantilist policies, others supported by better national competitiveness policies, like lower corporate tax rates--declined significantly.”

The report also disputes the view that manufacturing output is declining in many

advanced industrialized countries. ITIF cites examples of stable or growing manufacturing output in countries including Germany and Korea to rebut the view that manufacturing declines are inevitable in a post-industrial economy.

Finally, ITIF points out that U.S. manufacturing is not part of an “old school” economy. Rather, U.S. manufacturers employ advanced technologies and moderate- to high-skilled workers to produce advanced, high-value products. Nevertheless, the shrinking manufacturing base resulted in U.S. manufacturing capital stock increasing by only 2 percent during the 2000s, far below historic growth rates of 20 to 50 percent per decade.

The report asserts that “poor data and shallow analysis” have served to gloss over the true magnitude and import of recent U.S. manufacturing declines. Also contributing to the declines, in ITIF’s view, have been “[failed] U.S. policies (for example, underinvestment in manufacturing technology support policies and a corporate tax rate that is increasingly uncompetitive)....”

News Of Note

Senator Wyden Releases Report On Environmental Goods

Augustine Lo

On February 28, 2012, Senator Ron Wyden, chairman of the U.S. Senate Finance Committee’s Subcommittee on International Trade, Customs and Global Competitiveness, released a report on U.S. competition with China in the field of “green” products. Titled “Losing the Environmental Goods Economy to China,” the report is part of a series of reports devoted to the subject of U.S. competitiveness in the international trade in “environmental goods.” These reports define “environmental goods and services” to include “goods and services associated with environmental

protection.” Based on a review of statistical information on 43 subcategories under the Harmonized Tariff System, the most recent report states that U.S. exports of green products are under direct threat from Chinese state support for its exports of the same products. The report cites policy directives by the Chinese central government that outline a broad emphasis on propelling Chinese exports of hydropower, wind power, solar energy, and biomass energy products. The report finds that the market share of Chinese exports of these products has generally doubled or tripled in regional markets around the world during 2005-2010. During the same period, U.S. exports of the same products have generally not gained market share or experienced some decrease in market share. In the case of sales within the European Union, Chinese imports grew sevenfold, constituting 21 percent of the market in 2010, while U.S. imports fell from 6 percent to 4 percent of the regional market. The report urges Congress and the Administration to address these trade distortions to ensure a level playing field for American green products.

United States Appeals WTO Dispute Settlement Panel Ruling Against U.S. Country Of Origin Labeling Requirements

Shannon Doyle

On March 23, 2012, the United States notified the WTO’s dispute settlement body that it intends to appeal the WTO ruling against U.S. statutory provisions and regulations establishing mandatory country of origin labeling (“COOL”) for beef and pork. As reported in the [January 2012 edition](#) of the *Trade & Manufacturing Alert*, a WTO dispute settlement panel issued its report in the case *United States--Certain Country of Origin Labelling*

(COOL) Requirements in November 2011.

According to a USTR spokesperson, while the WTO panel confirmed that the United States has the right to adopt mandatory COOL requirements, trade officials were “disappointed” that the panel disagreed with the way that the United States designed its COOL requirements.

Inside US Trade reported that USTR began leaning towards an appeal of the WTO ruling after holding a private meeting in January with stakeholders from consumer, rancher, and meat industry groups. The group failed to reach a consensus on possible legislative changes to the COOL regulations that would bring them into compliance with the dispute settlement panel’s ruling. Appealing allows the Obama administration to avoid politically difficult legislative changes during an election year.

International Trade Alerts Now Available

Commerce Publishes Final Rule Revising Regulations Issued Pursuant To The Foreign-Trade Zones Act

- <http://www.kslaw.com/imageserver/KSPublic/library/publication/ca022912c.pdf>

Five Major Freight Forwarding Companies Debarred By U.S. Government

- <http://www.kslaw.com/imageserver/KSPublic/library/publication/ca022912b.pdf>

Proposed New Rules For In-Bound Transportation Of Imports And Opportunity To Submit Comments

- <http://www.kslaw.com/imageserver/KSPublic/library/publication/ca022312b.pdf>

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