

Trade & Manufacturing Alert

The 2012 Republican And Democratic Party Platforms On International Trade

Patrick Togni

The legendary Will Rogers once said that “the reason political party platforms are so long is that when you straddle anything it takes a long time to explain it.” As to international trade, however, the 2012 national platforms of both Democrats and Republicans packed a substantive punch into just a few short paragraphs between them.

Here are summaries of key planks, areas of dispute between the parties, and other policy areas where differences in the platforms are less pronounced.

The Republican Platform On China

Although the Republican platform heralds international trade as “crucial for our economy,” national Republicans also addressed the “downside” of international trade by labeling China as “the chief offender” of governments using “a variety of unfair means” to impose barriers on access to their markets “while stealing our designs, patents, brands, know-how, and technology.” Through these and other means, China “has built up its economy in part by piggybacking onto Western technological advances.”

The Republican platform also states that China “manipulates its currency to the disadvantage of American exporters” and “subsidizes Chinese companies to give them a commercial advantage.”

The document continues that “full parity in trade with China” will be a requirement of any Republican president, who also will “stand ready to impose countervailing duties if China fails to amend

October 2012

In This Issue

- 01 The 2012 Republican And Democratic Party Platforms On International Trade
- 03 Argentine Protectionism
- 04 Solar Trade Wars Continue To Escalate
- 04 Advocacy Groups Challenge The Validity Of WTO Ruling On Country Of Origin Labeling In U.S. District Court
- 05 News Of Note
 - ITC Personnel Changes
 - Cambodia And U.S. BIT Negotiations
 - APEC Cuts Tariffs On Environmental Goods
- 06 Contacts

its currency policies.” This platform language is not as explicit as a long standing plank of the Romney campaign, which promised that President Romney would issue an executive order on his first day in office that identifies China as a currency manipulator. (Readers of this page will recall our July 2012 discussion of prior unsuccessful attempts by U.S. industries to seek relief from China’s currency policies through the imposition of countervailing duties.)

The Republican platform also addressed the exclusion by China of “American products from government purchases” and “regulations and standards designed to keep out foreign competition.” The platform states that “commercial discrimination will be met in kind” and that “the United States government will end procurement of Chinese goods and services” unless “China abides

by” the World Trade Organization (“WTO”) Government Procurement Agreement.

In addition, a Republican administration would encourage “victimized private firms” to “raise claims in both U.S. courts and at the World Trade Organization.” The Republican platform explains that “the ‘intellectual property’ that drives innovation” in the United States will be protected because Chinese counterfeit goods “will be aggressively kept out of the country” and that “punitive measures will be imposed upon foreign firms that misappropriate American technology and intellectual property.”

Finally, the Republican platform criticizes the Obama Administration’s attempts to address China trade issues as what it characterizes “a virtual surrender.”

The Democratic Platform On China

The Democratic platform conveys a message of an aggressive policy toward China trade issues throughout President Obama’s term “to ensure that American businesses and workers are competing on an even footing” and that “we have not hesitated to take action” where appropriate.

The platform explains that “the Obama administration has brought trade cases against China at twice the rate of the previous administration and recently set up a new Interagency Trade Enforcement Center.” The Interagency Trade Enforcement Center was established by a February 2012 Executive Order to improve the effectiveness of U.S. challenges to unfair trade practices around the world by leveraging and coordinating resources of various federal agencies.

While comparatively less expansive than the Republican platform on China trade, therefore, the Democratic platform appears to focus on a

commitment to protecting American businesses and workers through intensified use of trade remedy tools by the Obama Administration.

The Republican Platform On Trade Agreements

The Republican platform aspires to “restoration of presidential Trade Promotion Authority” to “ensure up or down votes in Congress on any new trade agreements, without meddling by special interests.” Trade Promotion Authority (“TPA”), which was commonly referred to as Fast Track authority through the 1990s, enabled the president to negotiate international trade agreements which could then be presented to Congress for approval. The most recent iteration of TPA expired in July 2007.

The platform discusses the importance of free trade agreements to the U.S. economy “since President Reagan’s trailblazing pact with Israel in 1985” and asserts that “the current Administration’s slowness in completing agreements begun by” President George W. Bush is compounded by a “failure to pursue any new trade agreements with friendly nations.”

The Republican platform also states that “negotiations for a Trans-Pacific Partnership” will be completed under a Republican president and will “open rapidly developing Asian markets to U.S. products.”

The Democratic Platform On Trade Agreements

The Democratic platform also emphasizes the importance of free trade agreements, including agreements signed by President Obama with Colombia, Panama, and South Korea. The platform identifies the ability to “shape the multilateral trading system to reflect the role and responsibility of major emerging markets in the global economy” as “a critical part of the President’s trade agenda.” The Asia-Pacific region, South America, and the

Caribbean are key areas of focus in the Democratic Party's desire "to promote free and fair trade."

As one example of general agreement between the parties, the Democratic platform states that "we are on track to finalize the Trans-Pacific Partnership, a historic high-standard agreement that will address new and emerging trade issues, lower barriers to the free flow of trade and investment, increase exports, and create more American jobs." Although not expressly stated in the platform, the Obama Administration has previously characterized TPA as a "requirement for conclusion" of the Trans-Pacific Partnership negotiations, and "any other ambitions we might have" with regard to international trade agreements.

Unlike the Republican platform, however, Democrats emphasize the importance of "protecting labor rights" and "the environment" as a part of a plan to "significantly boost U.S. exports and support thousands of jobs here at home."

Other Planks Of Note

The Republican platform also briefly addresses the "Reagan Economic Zone," which is described as "a worldwide multilateral agreement among nations committed to the principles of open markets" where "free trade will truly be fair for all concerned."

Finally, the Democratic platform states an intention to move ahead with "open skies' agreements" in the Americas "to expand opportunities for commercial aviation and to bring our people and businesses closer together."

In sum, and perhaps not surprisingly, China trade issues and international trade agreements such as the Trans-Pacific Partnership are the main focus of both parties' national platforms regarding international trade.

Argentine Protectionism

T. Augustine Lo

On August 21, 2012, the United States and Japan both initiated complaints against Argentina at the WTO because of Argentina's use of trade protectionist measures. The two complainant nations took particular exception to Argentina's import licensing requirements that discriminate against foreign imports. On August 27, Mexico initiated its own complaint against Argentina citing the same discriminatory rules. The European Union initiated a similar complaint against Argentina in May 2012.

These complaints generally perceive Argentina's measures as an effort at import substitution, *i.e.*, the displacement of foreign imports with domestically produced goods through the use of laws and governmental measures. Seven of the most recent eleven consultations at the WTO have involved Argentina. In response, Argentina filed complaints at the WTO against the United States on August 31 and September 3 regarding U.S. restrictions on Argentine imports of beef and lemons.

The latest WTO disputes follow a series of actions by President Cristina Fernandez de Kirchner of Argentina that antagonized the country's trading partners worldwide. In May, the Fernandez government seized and nationalized YPF, S.A., a local oil producer that was a subsidiary of Repsol, S.A., a Spanish oil company. There are no indications that Argentina will compensate Repsol for this expropriation. As Argentine relations with Spain, a historic diplomatic ally, deteriorated, the Fernandez government imposed a \$43 million payment in restitution and fines against Telefonica, a Spanish telecommunications firm, for a recent interruption in cellular service.

Argentina has also refused to pay outstanding arbitral awards against it for earlier expropriations of foreign investments within the country. Argentina has lost a number of investment

arbitration cases before the World Bank's International Center for the Settlement of Investment Disputes in which foreign investors brought claims under bilateral investment treaties. In response to Argentina's failure to pay two such awards to U.S. companies, the United States suspended its preferential tariff treatment of Argentine imports under the Generalized Systems of Preferences in May 2012. Under that program, Argentine imports had benefited from \$17 million in reduced import duties in 2011.

Solar Trade Wars Continue To Escalate

Richard Lutz

On September 18, 2012 the Government of India initiated an antidumping case on solar cells (wafer or thin film) originating from the United States, China, Taiwan, and Malaysia. Separately, on September 6, 2012, the European Commission initiated an antidumping duty investigation on imports of crystalline silicon photovoltaic modules and key components (*i.e.*, cells and wafers) originating in the People's Republic of China. These new trade cases follow actions taken by the United States and China.

Earlier this year, the United States imposed preliminary countervailing and antidumping duties on crystalline silicon photovoltaic cells and modules from China. Also, in July of this year, China began its own antidumping and countervailing duty investigations on imported solar grade polysilicon, which is a key component of solar panel construction.

The EU case was filed on behalf of the Germany-based SolarWorld and other anonymous members of EU Prosun group of companies. The group includes over 20 companies representing more than 25 percent of the total European Union production of crystalline silicon photovoltaic modules and key components.

Various sources report that China's exports of solar products to the EU range from \$20-27 billion per year. Likely targets in the European case include Suntech Power Holdings Co., Ltd.; Yingli Green Energy Hold. Co. Ltd.; LDK Solar Co., Ltd.; and Trina Solar Ltd., which are often referred to as tier-1 Chinese solar panel manufacturers because of their size within the industry. If the EU makes an affirmative finding of dumping, provisional duties would be applied no later than July 6, 2013.

Ultimately, the EU case against Chinese producers could prove to have a far greater impact on the Chinese solar module producers than the U.S. proceeding. China's exports of cells and modules to the United States were estimated at \$2.4 billion during 2011, meaning the EU case would potentially cover over five times the value of U.S. sales. In addition, by altering the country of origin of the solar cell component of the solar module, the U.S. Government has provided an opportunity for Chinese producers to continue to sell their solar modules in the United States without being subject to the provisional antidumping and countervailing duties. In contrast, the European Commission could adopt a far more stringent definition of the solar products covered by the scope of their investigation.

Other potential solar-related cases are rumored. The EU may be considering a countervailing duty investigation on the same solar products covered by the antidumping investigation, and China is rumored to be considering retaliation cases against the European Union, targeting European exports of polysilicon and wine.

Advocacy Groups Challenge The Validity Of WTO Ruling On Country Of Origin Labeling In U.S. District Court

Shannon Doyle

On September 1, 2012, advocacy groups filed suit in the United States District Court for the District of Colorado challenging the recent WTO ruling

against U.S. statutory provisions and regulations establishing mandatory country of origin labeling (“COOL”) for meat products. The WTO Appellate Body held in *United States - Certain Country of Origin Labelling (COOL) Requirements* that the COOL requirements are inconsistent with the WTO Agreement on Technical Barriers to Trade. The plaintiffs, Made in the USA Foundation, Ranchers-Cattlemen Action Legal Fund, United Stockgrowers Association, and Melonhead, LLC (a meat and vegetable distributor) have named the United States, the WTO, U.S. Trade Representative Ron Kirk, and U.S. Secretary of Agriculture Tom Vilsack as defendants in their suit. The complaint is available [here](#).

The plaintiffs argue that the WTO’s ruling is invalid because, under the Uruguay Round Agreements Act, conflicts arising between U.S. law and the WTO Appellate Body should be settled according to U.S. law. The plaintiffs also argue that one of the members of the WTO dispute settlement panel that issued the initial ruling on the case had “an obvious conflict of interest” because he is a Mexican national. The plaintiffs are seeking a declaration from the court that the WTO “has no authority to override U.S. law” and that the decision in *United States - Certain Country of Origin Labelling (COOL) Requirements* is invalid. The plaintiffs are also seeking an order instructing Secretary Vilsack to implement and enforce the COOL requirements.

For additional information regarding the COOL requirements and the WTO dispute settlement process, see the [August 2012](#) edition of the Trade and Manufacturing Alert.

News Of Note

ITC Personnel Changes

Mike Szustakowski

On September 11, 2012, Meredith Broadbent was sworn in as a Commissioner of the United States International Trade Commission (“USITC”). Commissioner Broadbent, a Republican, has a distinguished career in international trade matters. During her tenure serving as professional staff House Ways and Means Trade Subcommittee, she played key roles in the development and passage of the North American Free Trade Agreement and the Uruguay Round Agreements. As senior professional staff member on the Republican staff of the committee on Ways and Means, she drafted and managed major portions of the Trade Development Act of 2000, legislation to authorize normal trade relations with China, and the Trade Act of 2002.

Since then, Commissioner Broadbent served as Assistant U.S. Trade Representative of Industry, Market, Access, and Telecommunications, followed by a stint as a Trade Advisor at the Global Business Dialogue. Most recently, she held the William M. Scholl Chair in International Business at the Center for Strategic and International Studies.

Commissioner Broadbent’s term is set to expire on June 16, 2017.

On September 10, 2012, President Barack Obama nominated F. Scott Kieff as a member of the USITC. The nomination is subject to confirmation by the U.S. Senate.

Cambodia And U.S. BIT Negotiations

Taryn Koball Williams

The United States and Cambodia have announced an agreement to begin discussions of a potential bilateral investment treaty (“BIT”) between the two countries. According to United States Trade Representative Ron Kirk, a BIT would “encourage investment by improving investment climates, promoting market-based economic reforms, and strengthening the rule of law.”

The United States and Cambodia are expected to analyze and discuss key similarities and differences in their investment policies and investment agreements and subsequently to share approaches and have discussions based on the U.S. model text for BITs. The United States is Cambodia’s main trading partner. According to Cambodian Economic Minister Cham Prasidh, Cambodia is seeking more investment and trade with the U.S. As noted by Ambassador Kirk, “our decision to explore this possibility highlights progress made by Cambodia in fostering a policy environment that treats private investment in an open, transparent, and non-discriminatory way.”

APEC Cuts Tariffs On Environmental Goods

P. Lee Smith

Leaders of the Asia-Pacific Economic Cooperation Forum (“APEC”) agreed to cut tariffs to five percent or less by 2015 on 54 environmental goods. This marks the first time that trade negotiations have produced a list of environmental goods for tariff cuts. The following core environmental products are covered:

- Renewable and clean energy technologies, such as solar panels and wind turbines;
- Wastewater treatment technologies, such filters and ultraviolet disinfection equipment;
- Air pollution control technologies, such as soot removers and catalytic converters;
- Solid and hazardous waste treatment technologies; and
- Environmental monitoring and assessment equipment.

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

P. Lee Smith
lsmith@kslaw.com
+1 202 626 2940

About King & Spalding

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

The content of this publication and any attachments are not intended to be and should not be relied upon as legal advice. If you are not currently on our International Trade Practice Group mailing list under your own name, and you would like to join to receive our monthly *Trade & Manufacturing Alert* publication and to receive notices of future programs and occasional commentaries on new legal developments in the industry, you can make that request by submitting your full contact information to manufacture@kslaw.com.

© 2012 King & Spalding