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Trade & Manufacturing Alert

U.S.-China Trade Concerns Highlighted In Report To Congress

T. Augustine Lo

On November 14, 2012, the U.S.-China Economic and Security Review Commission ("USCC") released its annual report to Congress on developments in both bilateral trade relations with the People's Republic of China ("China") and security-related concerns. In its transmittal letter to Congress, the USCC highlights several areas of trade-related issues, namely, the continuing relocation of manufacturing capacity from the U.S. to China; inadequate disclosures by Chinese enterprises that seek access to U.S. capital markets; inadequate protection of intellectual property in China and technological transfers to China; and China's noncompliance with its obligations under the World Trade Organization ("WTO"). The USCC presents 32 recommendations to Congress to address the economic and security concerns discussed in the report.

The USCC recommends that "Congress examine the access of small- and medium-sized enterprises to the remedies contained in the U.S. antidumping and countervailing duty laws" and consider providing state and local governments with standing under those statutes. The report also recommends the enactment of "legislation that would provide a private right of action for domestic producers who suffer injury from antidumping and countervailing duty violations" by Chinese state-owned enterprises that operate in the U.S. In addition, the USCC suggests closer inspection of inbound Chinese investments in the U.S.

With regard to the report's analysis, the USCC discusses in detail the continuing trade tensions between the U.S. and China. The USCC points to the persistent trade deficit with China, which continued its upward trajectory to reach $295.4 billion in 2011. The report also indicates that U.S. exports to China increased 13.1 percent from 2010 to 2011, reaching $103.9 billion in value. The report notes that, while China is aware of the need to rebalance its economic policies toward increased domestic consumption to reduce reliance on export-led growth, China is reluctant to change policies in view of its weakening economic growth.

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The USCC finds that U.S. companies continue to experience difficulties in accessing the Chinese market because of China's restriction of inbound foreign investments and rules that impede foreign competition. To address these obstacles, the U.S. brought several cases against China in recent years in the WTO. For instance, China prevented foreign companies from entering the Chinese market for electronic payments, effectively granting a monopoly to a national champion. The U.S. successfully initiated a case in the WTO, which resulted in a panel decision that ruled against the Chinese measures. China also has used its trade remedy regime to impede U.S. competitors.

The USCC also examines the implications of China's industrial and technological policies in its Twelfth Five-Year Plan covering 2011 to 2015. Under these policies, Chinese central authorities emphasize the development of national champions in designated industries, governmental support for these industries to expand their market shares overseas, and acquisition of foreign technology to manufacture higher-valued products. To implement these plans, China provides generous subsidies and preferential lending that favor state-owned and state-controlled enterprises. The U.S. Department of Commerce has determined that similar subsidies provided to Chinese manufacturers were countervailable. In those cases, Commerce provided relief to U.S. industries that brought successful cases.

With respect to China's official emphasis on technological innovation, the report notes that the lack of financing options for smaller start-ups and inadequate protection of intellectual property impede the development of indigenous innovation. The USCC is concerned that China will resort to "technological mercantilism" by both forcing foreign investors to transfer technology and by engaging in industrial espionage.

Congressional Committee Finds Huawei And ZTE To Be Threats To National Security

Shannon Doyle

On October 8, 2012, the House Permanent Select Committee on Intelligence ("the Committee") published a report declaring two Chinese telecommunication equipment manufacturers, Huawei Technologies Company and ZTE, to be threats to national security.

Huawei was founded in 1988 by Ren Zhengfei, a former officer in the Chinese military. The company recently became the world's largest manufacturer of telecommunication equipment. ZTE is the world's fourth-largest mobile phone manufacturer. ZTE was founded in 1985 by a group of state-owned enterprises associated with China's Ministry of Aerospace. Concerns over Huawei and ZTE's close ties with the Chinese government and military have caused issues for the companies in recent years. Huawei attempted to acquire 3Leaf Systems in 2010, but it withdrew from the purchase following a recommendation by the Committee on Foreign Investment in the United States ("CFIUS") that the deal be unwound because of national security concerns. ZTE faced criticism earlier this year after selling networking equipment to the Government of Iran to be used in a surveillance system that monitors phone and internet communications.

Huawei published an open letter to the U.S. government in February 2011 requesting a full investigation into its corporate operations in order to convince the U.S. government that there should be no security concerns with the company or its equipment. The Committee initiated a formal investigation in November 2011 in order to collect additional evidence, after finding "significant gaps in available information" at the preliminary stage.

The Committee published its report following an eleven month review of both open-source information available on the two companies and a review of classified information. The report claims that Huawei and ZTE "cannot be trusted to be free of foreign state influence." The Committee stated that neither company fully cooperated with the investigation, due to their failure to supply detailed information about their formal relationships or regulatory interactions with Chinese authorities or the role of each company's Chinese Communist Party Committee. According to the Committee, the limited answers provided by Huawei and ZTE were not supported by sufficient internal documentation or other evidence. While the lack of cooperation alone did not prove wrongdoing, it factored into the Committee's decision that "the risk associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national-security interests."

The Committee made several recommendations as a result of its investigation. Notably, the Committee "strongly encouraged" U.S. businesses to consider the "long-term security risks associated with doing business with either ZTE or Huawei" and to seek other vendors for projects. Additionally, the Committee urged Congress to consider passing legislation "to better address the risk posed by telecommunications companies with nation-state ties or otherwise not clearly trusted to build critical infrastructure."

The report has been criticized by some because of the lack of conclusive evidence in the non-confidential portion to tie Huawei or ZTE to any sort of wrongdoing. One critic accused the Committee of using "potential cybersecurity threats…to circumvent the Bill of Rights using 'national security' as an excuse" without considering alternative solutions, such as vulnerability testing all foreign-made equipment. Huawei has strongly objected to the report, calling it "little more than an exercise in China-bashing."

Administration Announces Manufacturing Partnership Grants

Jordan Shepherd

The U.S. manufacturing sector received a $20 million injection of funds in October to spur growth and innovation at the local level. The funding was given to ten public-private partnerships around the country through the Advanced Manufacturing Jobs and Innovation Accelerator Challenge, a competitive grant process supported by a number of federal agencies. The projects are undertaken by "clusters" of local stakeholders including small and large businesses, colleges, and nonprofits. These clusters support local manufacturing and job creation by integrating small producers into larger value chains, helping new companies to utilize new research, giving workers necessary skills to help firms seize business opportunities.

The Advanced Manufacturing Jobs and Innovation Accelerator Challenge was announced in May 2012 as a partnership of six agencies: the Economic Development Administration and the National Institute of Standards and Technology of the U.S. Department of Commerce, the U.S. Department of Energy, the Employment and Training Administration of the U.S. Department of Labor, the U.S. Small Business Administration, and the National Science Foundation. An additional eight federal agencies provide technical assistance to the program.

This support of advanced manufacturing comes as the third round of the Jobs and Innovation Accelerator Challenge. Initiated in 2011 by the Obama Administration, the Challenge has provided over $200 million to promote regional innovation clusters through an interagency Taskforce for the Advancement of Regional Innovation Clusters. This Challenge has helped the economy to add almost 500,000 manufacturing jobs since February 2010.

The ten projects are based in Arizona, California, Michigan, New York, Oklahoma, Oregon, Pennsylvania, Tennessee, and Washington. Each receives from $1.8 to $2.4 million and will directly train 1,000 workers and support 650 companies, according to Commerce's press release. However, the local impacts of the federal grants will multiply through state and local initiatives. For example, the grant to the Rochester Regional Photonics Cluster will be supplemented by $200,000 from the New York government and $700,000 from the partnership organizations. Likewise, the Southeast Michigan project to support an advanced contract manufacturing cluster will receive $500,000 from the Michigan government. In Arizona, indirect impacts are likely in light of the fact that its Aerospace and Defense Region "comprises some 1,200 companies and 55,000 jobs, accounting for about 6 percent of the state's gross domestic product."

Acting U.S. Commerce Secretary Rebecca Blank states that "[a] strong manufacturing base in America is critical to the health of the U.S. economy, and these awards further demonstrate the Obama administration's commitment to keeping this country on the cutting edge of innovation in manufacturing."

Aspen Institute Event Focuses On The Impact Of The Energy Renaissance On U.S. Manufacturing

Gilbert B. Kaplan and Lauren M. Donoghue

On Wednesday, November 28th, The Aspen Institute in Washington, DC, held an event titled "Impact of the Energy Renaissance on U.S. Manufacturing." The event was moderated by Tom Duesterberg, Executive Director of the Aspen Institute's Manufacturing & Society in the 21st Century program, and featured panelists Calvin Dooley, former Congressman from California and President and CEO of the American Chemical Council; Thomas Peterson, Founder and CEO of the Center for Climate Strategies, Inc.; and Harold Sirkin, Senior Partner at The Boston Consulting Group and author of a groundbreaking study on the revival of U.S. manufacturing, based on lowered costs. The participants agreed that increased access to low price supplies of natural gas from shale deposits will have positive impacts on U.S. manufacturers, as well as create jobs and drive economic growth, for years to come. Mr. Sirkin noted succinctly that this low cost gas is a gift, and that "God blessed America again." He also cautioned that we need to be use it wisely.

Much of the panel discussion and audience queries focused on what the federal government can do to make the most of this boom in natural gas production and, conversely, what policies could potentially obstruct progress. There was agreement that one important role government can play to leverage the increase in natural gas production is to help students and workers develop the skills that are needed for jobs in these areas. Mr. Dooley stated that he is not concerned about government regulation impeding progress, but that it is important that businesses have certainty on the regulatory front. Mr. Sirkin reiterated that the natural gas train is rolling down the tracks, and he does not foresee government policies stalling that development.

Not surprisingly, the panel raised concerns about possible environmental impacts of natural gas extraction. Mr. Sirkin noted that if fracking turns out to be a real polluter then government will have to address that problem, but there isn't any evidence that such pollution is a major problem now. Mr. Dooley stated definitively that he does not foresee any serious environmental impacts being discovered down the road because, after all, shale deposit natural gas production is not a new technology - it has been around for decades.

The panel also discussed the issue of U.S. exports rising as a result of increased natural gas production. Mr. Dooley stated that because of the recession it has been hard to normalize some of the export numbers, but it was well noted throughout the event that all industries derive benefit from this increased natural gas production - both as a feedstock for the chemical industry and as an energy source for all manufacturers. It was generally noted that in the U.S., natural gas, which is priced regionally not globally, sells for about one-third the cost of natural gas in Asia and one-half the cost of natural gas in Europe.

The panel also agreed that the U.S. advantage in this area is likely to last for a decade, possibly more, but that the huge economic incentives will inevitably drive other countries into shale deposit natural gas production. A key takeaway is that it is important for business leaders and policymakers to do everything they can to leverage our current competitive advantage while it still exists. We should have ten good years of advantage which could hasten a renaissance of American manufacturing.

News Of Note

China Expands Polysilicon Investigation To The EU

Ben Popeck and Richard Lutz

The Ministry of Commerce of the People's Republic of China ("MOFCOM") initiated antidumping and countervailing duty investigations against the EU on imported solar grade polysilicon, on November 1, 2012. Polysilicon is a key input for the production solar panels. MOFCOM earlier this year initiated similar investigations against the U.S. and Korea. Additionally, on November 5, 2012, China requested WTO consultations with the EU and certain member states regarding domestic content restrictions, German government subsidies, and favorable loans from the European Investment Bank.

These actions by China appear to be in retaliation to trade actions taken the by the EU. As discussed in the October 2012 edition of the Trade & Manufacturing Alert, the EU initiated an antidumping investigation on imports of crystalline silicon photovoltaic modules and key components (i.e., cells and wafers) originating in China on September 6, 2012. On November 8, 2012, the EU also initiated a countervailing duty investigation on the same solar products.

U.S.-Panama TPA Agreement Goes Into Effect

Alex McLamb and Shannon Doyle

The United States-Panama Trade Promotion Agreement ("TPA Agreement") went into effect on October 31, 2012, expanding U.S. manufacturers' access to one of Latin America's fastest growing economies. In a statement, U.S. Trade Representative Ron Kirk emphasized that "Panama will eliminate tariffs and other barriers to U.S. exports, which will promote economic growth, and expand trade between our two countries." He further noted that Panama's strategic location adds to the importance of the TPA Agreement, as roughly two-thirds of the Panama Canal's annual transits are bound to or from U.S. ports. Under the Agreement, 86 percent of U.S. consumer and industrial exports to Panama became duty-free immediately upon implementation. Remaining tariffs will be phased out over the next ten years.

For more information on how the TPA Agreement benefits manufacturers, visit the USTR's website.

Laos Joins The WTO

Erienne Kilgore and T. Augustine Lo

The WTO has formally agreed to Laos joining its ranks by 2013. The Southeast Asian country first applied to become a member of the WTO in 1997. According to Lao Deputy Prime Minister and Foreign Minister Thongloun Sisoulith, Laos has taken strides since then to become a member by "seriously reforming its economy and its institutions." Sisoulith commented on the accession process, stating that "we had to change our way of doing business."

By joining the WTO, Laos has committed to certain obligations that will benefit U.S. manufacturers that export to Laos. As a "least developed country," Laos has committed to:

- "Bound" tariffs for goods for an average of 18.8 percent for all products—19.3 percent on average for agricultural products and 18.7 percent for the rest;
- Increase market access in 10 sectors covering 79 sub-sectors including, but not limited to, business services, construction, private education, hospital services, tourism, and air transport; and
- Protect intellectual property to comply fully with the WTO TRIPS Agreement by December 31, 2016.

WTO Panel Established On China's Duties Against U.S. Autos

Justin Enck and Jeff Telep

The WTO has established a dispute settlement panel regarding import duties levied against U.S. automobiles sold in China. China imposed these duties late in 2011 on vehicles that it claims the U.S. subsidized and sold at less than fair value or "dumped." The duties ranged between 2 and 21.5 percent and affect imports of American-made cars and SUVs valued at more than $3 billion. Although the WTO allows members to impose such duties, the U.S. claims that China's investigation lacks the objectivity and transparency required by the organization's rules. The U.S. also disputes the finding that its imports have injured China's automotive industry, which is a required condition for imposition of duties. Earlier this year, the U.S. won a similar dispute against China before the WTO regarding duties imposed against imports of U.S. grain-oriented flat-rolled steel products, as discussed in the November 2012 edition of the Trade & Manufacturing Alert.

Burma Import Restrictions Lifted

Jane Cohen

On November 16, the U.S. Government waived the nine-year ban on imports from Burma, now authorizing importation into the U.S. of a broad range of Burmese products. Exempted from the waiver are jadeite and rubies mined or extracted from Burma, as well as jewelry containing such gems. Transactions with Burmese persons and entities whose property and interests in property are blocked remain prohibited. In September, the State Department announced the policy change with respect to the import ban because of the political and economic reforms started by President Thein Sein a few years ago. The import ban waiver follows the relaxation of the ban on new investment in Burma and the ban on exportation of financial services to Burma.

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