KING & SPALDING

Trade & Manufacturing Alert

Japanese Ministry Of Economy, Trade, And Industry Works To Stop "Hollowing Out" Of Japan's Manufacturing Base

August 2011

In This Issue

Readers of this page may recall our June report on the impact of the earthquake and tsunami on Japanese trade and manufacturing. We now inform you of ongoing efforts by the Japanese Ministry of Economy, Trade and Industry ("METI") to address concerns of overseas relocation of Japanese manufacturing and supply chain operations in key industries. Indeed, the Japanese Government characterized the earthquake and tsunami as a "crisis in the midst of a crisis," because it occurred when Japan already faced economic stagnation.

In a recent survey sent to domestic manufacturing companies, METI found that almost 70 percent of responding firms indicated the possibility of "accelerating" relocation of manufacturing and supply chain operations in full or in part, due to the earthquake and tsunami. The survey also indicated that ongoing power supply disruptions and shortages constitute another important factor in this decision-making process.

Because such swift and potentially irreversible outsourcing could have a substantial impact on the Japanese economy, METI is highlighting several government assistance programs. For example, METI took steps to expand the availability of facility and equipment fund loans offered in collaboration with prefectural governments. The measures include relaxation of loan conditions and ¥16.5 billion for facility and equipment restoration included in the FY 2011 primary supplementary budget. The program also includes funding for installation of energy equipment. Press reports further indicate that METI may examine ways to stimulate the standardization of automotive parts as a way to guard against future supply disruptions in the event of another natural disaster. Some commentators have argued that such a plan would actually harm Japanese auto makers in the long run by lowering barriers to entry in the field and inviting competition on price alone from elsewhere in Asia, especially China.

METI has also begun to examine the impact of Japan's regulatory regime on efforts to address outflows of Japanese manufacturing. For example, relevant government subcommittees are considering modification of the Factory Location Act, which includes certain environmental protection provisions. In doing so, METI noted “the current situation where hollowing out of domestic industries continues to advance,” and that “barriers to the establishment of corporate factories and investments will be reexamined from the viewpoint of promoting a ‘pro-growth’ policy.”

METI’s efforts are consistent with recent policy pronouncements by the Japanese Cabinet, which has expressly identified the risk of “outflows of companies and human resources” as a result of the disaster. The Japanese Cabinet noted its intent to further develop “medium to long-term initiatives” (which it defined as the next three years) to address such outflows. In sum, it is clear that the Japanese Government sees outsourcing as a long-term problem that will require government attention and financial support for years to come.

Procedural Impasse Over The Trade Adjustment Assistance Program Stalls Consideration Of Pending Free Trade Agreements

Passage of the three free trade agreements with Korea, Columbia, and Panama pending before Congress has stalled over an impasse on the Trade Adjustment Assistance program. The Obama Administration and congressional Democrats insist that Congress must renew the trade adjustment assistance program at the same time that it passes implementing legislation for the free trade agreements. The Trade Adjustment Assistance program expired earlier this year, congressional Republicans, on the other hand, want trade adjustment assistance to be considered separately from the free trade agreements. This procedural impasse has not yet been resolved.

Trade adjustment assistance has been an integral part of the U.S. trade agreements program since passage of the Trade Expansion Act of 1962. It was conceived to help workers displaced by imports or the relocation of plants overseas train for jobs in businesses that are more globally competitive. It also augments health and unemployment benefits for these displaced workers. During 2010, almost $1 billion in federal funds were allocated for benefits and services delivered to assist trade-impacted U.S. workers.

The program expired in February and is currently up for renewal. Congress has routinely renewed the program in the past with bipartisan support. As part of the 2009 stimulus legislation passed by the then Democratic-controlled Congress, trade adjustment assistance was expanded to apply to displaced service and agriculture workers in addition to displaced manufacturing workers. Many congressional Republicans argue that renewing the expanded program would be too costly when lawmakers are struggling to reduce the federal deficit.

The current impasse over trade adjustment assistance appears to be more procedural than substantive. Last month, the White House; Senator Max Baucus, the Democratic Chairman of the Senate Finance Committee; and Representative Dave Camp, the Republican Chairman of the House Ways and Means Committee, announced a bipartisan deal to renew trade adjustment assistance, but with fewer benefits. It is estimated that this negotiated, pared-down version of trade adjustment assistance will cost less than $1 billion over the course of the three-year extension.

After this deal was struck, the White House and Senator Baucus insisted that this compromise version of trade adjustment assistance be attached to one of the three non-amendable implementing bills for the free trade agreements. Representative Camp deferred on procedure to the Republican leadership in the House and Senate, which insisted that the negotiated version of trade adjustment assistance be decoupled from the pending free trade agreements and considered by Congress separately. Until this procedural impasse is sorted out, it is unclear how or when Congress will take up either the free trade agreements implementing bills or the renewal of trade adjustment assistance.

The World Trade Organization Rules Against China In Raw Materials Dispute; Ruling Could Serve As Precedent For WTO Challenge Against China On Rare Earth Materials

On July 5, a World Trade Organization dispute settlement panel issued its public findings in response to complaints brought by the United States, the European Union, and Mexico against Chinese export restraints on certain raw materials. The panel found in favor of the complainants on most issues and rejected several defenses raised by China to justify its measures. China has until September 4 to appeal the panel's report to the WTO appellate body.

The dispute concerned four types of export restraints that China imposes on the export of various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc. China is a leading producer of each of these raw materials, which are used to produce everyday items.

The complainants alleged that the export duties and other export restrictions in question violated various provisions of the 1994 General Agreement on Trade and Tariffs as well as certain commitments undertaken by China in its Protocol of Accession to the WTO. Among these commitments was a pledge to eliminate all export duties except for certain products specifically listed in China's Protocol of Accession. China also committed not to apply export quotas.

In ruling in favor of the complainants and rejecting China's defenses, the Panel found that China's actions were inconsistent with WTO rules and that it had failed to fulfill the conditions required to permit export duties and other restrictions. For example, China argued that some of its export duties and quotas were justified because of the need to conserve certain exhaustible natural resources. However, China was unable to demonstrate, as is required under WTO law, that it imposed these restrictions in conjunction with restrictions on domestic production or consumption of the raw materials so as to conserve the raw materials in question. For some of the raw materials, China claimed that its export quotas and duties were necessary for the protection of the health of its citizens, but was unable to demonstrate to the Panel's satisfaction that its export duties and quotas would lead to a reduction of pollution.

This case is being closely watched by governments around the world as it could provide a useful precedent for possible WTO challenges in the future against Chinese export restraints on rare earth minerals. Rare earth materials are 17 minerals used in high-tech manufacturing items including wind turbines, cell phones, and complex weapons systems. China provides 95 percent of the global supply of rare earth minerals and has been recently restraining exports of these minerals.

News of Note

China Lowers Import Tariffs On 33 Commodities

The Customs Tariff Commission of the State Council of China recently announced China's plans to lower or eliminate import tariffs by 0.5 percent to 9 percent for 33 commodities. These tariff reductions cover a variety of items, including textiles, fuels, metals, and high-tech products. The Customs Tariff Commission is responsible for reviewing, determining and interpreting China's tariff measures every year, under the supervision of the State Council. The purpose of this round of tariff reductions was reportedly to boost the imports of high-tech equipment, and the key parts and raw materials that go into high-tech equipment; ease China's trade imbalance; and ensure the smooth development of domestic economy.

U.S. - Mexico Sign Cross-Border Trucking Agreement

U.S. and Mexican authorities signed an agreement regarding cross-border trucking in July. In the 1994 North American Free Trade Agreement (NAFTA), the United States and Mexico had agreed to ease restrictions on the cross-border movement of trucks so as to enable point-to-point truck cargo service from one country into the other. However, the United States had delayed implementation, citing safety concerns. A 2001 ruling by an adjudicatory panel set up under the NAFTA allowed Mexico to retaliate against the United States for the delay, but Mexico did not take action until 2009 when it imposed stiff tariffs on $2.3 billion worth of U.S. imported goods. With the July agreement, Mexico's retaliatory tariffs were halved and ultimately will be eliminated. Business leaders hailed the deal, although there are detractors in Congress, citing the need to establish and fund a driver safety and certification program to accompany the agreement.

President Obama Launches Advanced Manufacturing Partnership

President Obama has launched a new manufacturing initiative called the Advanced Manufacturing Partnership. The initiative brings together industry, universities, and the federal government to invest in emerging technologies. Its goal is to create high-quality manufacturing jobs and enhance U.S. global competitiveness. According to the White House, President Obama has committed more than $500 million to the initiative, including investing in building domestic manufacturing capabilities in critical national security industries; reducing time needed to make advanced materials used in manufacturing products; establishing U.S. leadership in next-generation robotics; increasing the energy efficiency of manufacturing processes; and developing new technologies that will dramatically reduce the time required to design, build, and test manufactured goods.

Manufacturing Revival - A Company Profile

MacNeil Automotive's philosophy is that if your neighbor doesn't have a job, sooner or later you won't have a job either. The producer of WeatherTech® automotive accessories moved its manufacturing to the United States in 2007 when it expanded its manufacturing facilities and relocated its headquarters to Illinois.

David MacNeil, the CEO and founder of MacNeil Automotive, stresses the importance of American manufacturing and believes that the exporting of American jobs must be stopped. MacNeil is doing more than just making the majority of its products here, it also is using American raw materials and machines. To learn more about MacNeil Automotive, click here.

Contacts

Gilbert B. Kaplan	S. Bruce Wilson (Bruce)	Jeffrey M.	Taryn Koball Williams
gkaplan@kslaw.com	bwilson@kslaw.com	Telepjtelep@kslaw.com	taryn_williams@kslaw.com
+1 202 661 7981	+1 202 626 5590	+1 202 626 2390	+1 202 661 7895

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.