

# Trade & Manufacturing Alert

## DOE Accepting Comments On Liquid Natural Gas Export Study

*Stephen Jones*

The boom in U.S. natural gas production from shale deposits has important implications for U.S. trade policy. The rapidly increasing supply of natural gas is resulting in lower prices for consumers and increasing the competitiveness of U.S. manufacturing. Lower domestic prices are causing gas producers to seek business in export markets, however, where prices are higher. There is growing tension between consumers' desire for low prices and producers' desire for increased profitability.

Under the Natural Gas Act of 1938, the Department of Energy ("DOE") approves applications to export liquid natural gas ("LNG") only if they are in the public interest. By statute, exports to countries with which the United States has a Free Trade Agreement are deemed to be in the public interest and are approved. Proposed non-FTA exports must be reviewed, however, and DOE has the authority to impose restrictions on such exports. Fifteen license applications to export liquid natural gas are currently pending before DOE. DOE's authority to restrict exports raises significant issues regarding compliance with World Trade Organization ("WTO") rules.

A recent study by NERA Consulting commissioned by DOE considered the macroeconomic impact of LNG exports and concluded that "benefits that come from export expansion more than outweigh the losses from reduced capital and wage income to U.S. consumers, and hence LNG exports have net economic benefits in spite of higher domestic natural gas prices." In a Federal Register notice published on December 11, 2012 (77 Fed. Reg.

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73,627), DOE stated that it will accept public comments on the NERA study for 45 days after the official notice was published, or until January 24, 2013. DOE will then accept reply comments for an additional 30 days, or until February 25, 2013.

## Positive Developments Improve The Business Case For Returning Manufacturing To The United States

Pat Togni

Encouraging reports regarding what could become an intensifying renewal of manufacturing in the United States are beginning to emerge after decades of decline. This development suggests a strong business case for substantial growth of domestic manufacturing, with higher profits, lower prices for consumers, and improved efficiencies throughout the production process. The reports also offer a refreshing level of candor regarding the effects of outsourcing felt by at least some U.S. manufacturers over the years.

A recent article by Charles Fishman in *The Atlantic* entitled "[The Insourcing Boom](#)" tells the story of the resuscitation of General Electric's Appliance Park, in Louisville, Kentucky. Once the home of GE's appliance division, Appliance Park was on the auction block as recently as 2008, with many buildings across the large campus idled. Now, the company is investing \$800 million to spur an ongoing renaissance of GE's domestic appliance manufacturing operations there, which are reported to account for 55 percent of GE's \$5 billion appliance revenues today. As a result, GE forecasts that 75 percent of its appliance revenues will be generated by domestically produced goods by 2014.

GE officials cited the high degree of teamwork that is possible when stakeholders from across the spectrum of *idea-to-production-to-market* are able to work in the same location. Importantly, GE officials also identified the absence of similar communication in its legacy outsourcing operations in China.

In particular, GE's new domestic production strategy has sparked collaboration between engineers, line workers, and sales personnel to create efficiencies in the production process that

translate into reduced materials and labor costs. These savings ensure growing profits while passing lower prices on to the consumer. For example, refinements to the domestic design and manufacturing process of the GeoSpring water heater translated into a five-fold reduction in labor hours as compared to China. Streamlined logistics and reduced transportation costs offer additional benefits to domestic manufacturers.

In addition to the direct financial benefits, returning to domestic production also addresses several hidden costs faced by U.S. companies when manufacturing abroad. In particular, the Fishman article details an over-emphasis on foreign labor costs that may have not fully appreciated "the corrosion of quality and decline of innovation." These concerns are magnified as labor rates, particularly in China, are increasing at a much faster pace than in the United States. At a more fundamental level, this renewed focus on domestic production is better equipped to deal with what Fishman calls "the newfound impatience of the product lifecycle itself." Products change more rapidly than ever before, and the United States offers advantages for maximizing the use of proprietary technology and a more skilled workforce.

Another critical factor relates to the monetization and protection of a company's intellectual property through domestic manufacturing. In the words of Fishman, "Your factory is really a laboratory — and the R&D that can happen there, if you pay attention, is worth a lot more to the bottom line than the cost savings of cheap labor in someone else's factory."

GE is no outlier in returning manufacturing operations to the United States. Other press reports indicate that products ranging from Wham-O Frisbees to Apple Mac computers are (or soon will be) manufactured domestically after foreign sojourns. While some commentators suggest that at least some portion of this development is

attributable to PR or political expediency, there is evidence that the business case for such a shift is compelling and growing. Moreover, external events such as the ongoing complications between U.S. and Chinese regulators regarding access to corporate audit documents may constitute further justification for a fresh look at the pros and cons of bringing manufacturing jobs back to the United States.

## **Stainless Steel Sinks Industry Sees Benefits Of Relief From Unfair Imports From China**

*Brian McGill*

Significant preliminary antidumping (“AD”) duties were imposed on imports of drawn stainless steel sinks from China on September 27, 2012, with cash deposit rates ranging from 54.25 percent to 76.53 percent. These margins had an immediate impact on the volume of imports from China.

The monthly average volume of stainless steel sinks from China in 2012 was 326,000 units. Imports from China dropped to only 127,000 units in October 2012, which represents a decline of 61 percent from the monthly average. It is anticipated that import volume in November will indicate a further substantial decrease, as importers of Chinese stainless steel sinks become more aware of their obligation to deposit duties to offset unfair pricing in the U.S. market. Because Chinese stainless steel sinks represented almost 60 percent of total shipments in the U.S. market in 2011, the decline in imports from China should translate in significant gains in production, sales, and eventually employment for the four remaining U.S. producers - Elkay Manufacturing, Franke Consumer Products, Just Manufacturing, and Moen Incorporated.

Unfair imports of stainless steel sinks from China increased by 57 percent from 2009 to 2011, even though U.S. demand increased only 7.4 percent during this period. Moreover, even though U.S. demand was increasing, U.S. producers’ production,

sales, operating income, and employment were all decreasing. The Chinese sinks were able to gain market share and take sales from the domestic industry due to pervasive underselling. These trends threatened to put the domestic drawn stainless steel sink industry completely out of business. With the imposition of preliminary duties, it is anticipated that all these trends will be reversed, and the U.S. manufacturers will be able to increase production and employment, creating good paying manufacturing jobs.

The Department of Commerce will publish its final AD and countervailing duty (“CVD”) margins in February 2013. The International Trade Commission (“Commission”) will make its final material injury determination in March 2013.

## **Trade Disputes With Argentina Lead To U.S., E.U., Japanese Request For WTO Panel**

*T. Augustine Lo*

On December 6, 2012, the United States, the European Union, and Japan formally requested the establishment of a WTO panel to resolve their simmering trade disputes with Argentina. According to Ambassador Ron Kirk, the U.S. Trade Representative, “Argentina’s persistent use of import restrictions broadly impacts all U.S. exporters of goods to Argentina.” E.U. Trade Commissioner Karel De Gucht said, “It is the E.U.’s last resort to see Argentina’s unfair trade practices lifted and free and fair trade re-established according to the WTO rules to which Argentina has subscribed.” Japan similarly cited its inability to achieve satisfactory resolution of the disputes through consultations.

As reported in the October 2012 Trade & Manufacturing Alert, Argentina has adopted policies and administrative measures regarding foreign trade that increased tensions with its trading partners. These policies include licensing

requirements that impeded imports, nationalization of Spanish interests in a domestic oil producer, and refusal to honor international arbitration awards that grant relief to foreign companies from Argentina's actions against their interests. Earlier last year, the United States, the European Union, Japan, and Mexico all lodged complaints against Argentina at the WTO for such practices.

The U.S. request alleges that Argentina has erected barriers against imports that violate Article XI:1 of the General Agreement on Tariffs and Trade. In its press release, the Office of the U.S. Trade Representative summarized the allegations:

“Since 2008, Argentina has greatly expanded the list of products subject to non-automatic import licensing requirements . . . for approximately 600 eight-digit tariff lines in Argentina's goods schedule. In February 2012, Argentina adopted an additional licensing requirement that applies to all imports of goods into the country. . . . In conjunction with these licensing requirements, Argentina has adopted informal trade balancing requirements and other schemes, whereby companies seeking to obtain authorization to import products must agree to export goods of an equal or greater value, make investments in Argentina, lower prices of imported goods, and/or refrain from repatriating profits.”

On December 5, Argentina fired back with its own WTO complaints against the United States, the European Union, and Spain, accusing them of imposing trade barriers against Argentine imports. Argentina's complaints coincided with the joint U.S., E.U., and Japanese requests for a WTO panel. On December 14, Mexico announced its intention to withdraw its complaint against Argentina after the two countries reached an agreement over Mexican automobile imports.

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## News Of Note

### **Toyo Ink Settles Duty Evasion False Claims Act Case For \$45 Million**

*P. Lee Smith*

Toyo Ink settled allegations that it violated the False Claims Act by agreeing to pay \$45 million, plus interest. The Justice Department alleged that Toyo Ink knowingly misrepresented, or caused to be misrepresented, the country of origin on documents presented to U.S. Customs and Border Protection to avoid paying AD and CVD cash deposits on imports of the colorant carbazole violet pigment number 23 (“CVP-23”) between April 2002 and March 2010.

Under the False Claims Act, private citizens can sue on behalf of the United States and share in any recovery. John Dickson, president of a domestic producer of CVP-23, initially filed this whistleblower lawsuit under the False Claims Act. The Justice Department joined this lawsuit after Mr. Dickson's initial allegation. Because of his actions, Mr. Dickson will receive \$7,875,000 as his share of the government's recovery.

### **Russia And Moldova Granted PNTR Status**

*Ben Popeck and Shannon Doyle*

On December 14, 2012, President Obama signed legislation granting Russia and Moldova permanent normal trade relations (“PNTR”) status following strong bipartisan support in the House and Senate. Countries that have PNTR status are granted all of the trade advantages, such as low tariffs, that any other PNTR country receives. Russia and Moldova had been denied PNTR status since the Cold War under the Jackson-Vanik Amendment. The increased trade liberalization will allow the U.S. to benefit from lower tariffs and manage trade disputes with Russia in the WTO, if necessary. U.S. Trade



Representative Ron Kirk says that American businesses will have “better access to the growing Russian market on the same terms as their global competitors,” while emphasizing that “the United States will have WTO procedures available to help ensure that Russia abides by its commitments.” The U.S. trade deficit with Russia was \$26.3 billion in 2011.

## **WTO Arbitrator Sets Compliance Deadline In COOL Dispute**

*Alex McLamb and Shannon Doyle*

On December 4, 2012, a WTO arbitrator set a deadline of May 23, 2012 for the United States to bring its country-of-origin labeling (“COOL”) requirements for beef, lamb, pork, chicken, goat, and other perishable agricultural commodities into compliance with WTO rules. This dispute was discussed in the following editions of the Trade & Manufacturing Alert: [January 2012](#), [April 2012](#), and [August 2012](#). The U.S. had requested until January 2014 to comply. The arbitrator determined that ten months following the WTO Appellate Body’s June 2012 ruling constituted a “reasonable period of time” for coming into compliance. Should the U.S. fail to meet the deadline, Mexico and Canada likely will pursue more legal proceedings at the WTO, which could result in retaliatory trade restrictions.

In related news, the American advocacy groups [challenging the WTO ruling](#) recently amended their complaint at the United States District Court for the District of Colorado. The [amended complaint](#) includes a new cause of action against the U.S. Secretary of Agriculture for failing to follow the agency’s rulemaking procedures. The original complaint argued that the WTO’s ruling was 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.

## **Commission Votes Affirmative In U.S. Solar Case**

*Richard Lutz*

The Commission determined in a 6-0 affirmative vote on November 7, 2012 that the U.S. solar panel industry was materially injured from the Chinese imports. On December 7, 2012, Commerce published AD and CVD orders on Crystalline Silicon Photovoltaic Cells from China. As a result of the orders, imports of Chinese solar panels from the identified producers will be required to continue to post cash deposits of 18 to 29 percent in AD duties and 15 to 16 percent in CVD duties. Pursuant to its normal practice Commerce will determine the final assessment duty rate for these entries at the end of the first administrative review.

## **China Issues 2013 Tariff Schedules**

*Lingna Yan*

China issued its yearly tariff schedules for 2013 on December 10, 2012, which will take effect on January 1, 2013. In the 2013 export tariff schedule, China repealed the export duties on certain coke, fluorspar, magnesium, manganese, silicon metal, and zinc products. The export duties on these products were challenged by the United States, Mexico, and the European Union under the WTO dispute settlement system and were found inconsistent with WTO rules. China agreed to implement the WTO rules by the end of this year.

In addition, China lowered the import duties for 784 commodities for 2013 through a provisional import tariff schedule. These commodities include certain agriculture products, mineral products, chemical products, machinery, and mechanical appliances.

## **AD Investigation On Silica Bricks From China Initiated**

*Erienne Kilgore and Josh Snead*

Commerce initiated an AD investigation on silica bricks and shapes from the People’s Republic of

China on December 6, 2012. Silica bricks are a type of refractory brick for high temperature insulation used to line refractory furnace roofs. Silica bricks are commonly used in glass refractories. Petitioner, Utah Refractories Corporation, had filed a petition in November requesting the imposition of AD duties on these products. The value of 2011 U.S. imports of silica bricks from China was approximately \$43 million.

AD investigations are initiated to determine whether an imported product is being sold in the United States at a less than fair value and whether such imports are injuring or threatening to injure U.S. producers of “like products.” Commerce stated when announcing initiation of this investigation that the AD law is in place to “address the market distorting effects caused by injurious dumping of imports into the United States.”

After reviewing the petition, Commerce concluded that the Petitioner demonstrated significant domestic industry support for the petition. The Commission made an affirmative preliminary determination on injury on December 28, 2012. Commerce and the Commission will proceed to investigate the allegations in the petition.

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## U.S., E.U. Commit To Small Business Trade Promotion

*Justin Enck and Josh Snead*

The United States and European Union signed a memorandum of understanding (“MOU”) concerning cooperation on small and medium-sized enterprises (“SMEs”) on December 3, 2012. The MOU establishes a working group tasked with promoting cooperative efforts between SMEs in the U.S. and E.U., including joint trade shows, networking events, and promotion of small business partnering opportunities. According to Deputy U.S. Trade Representative Miriam Sapiro, SME exports accounted for \$380 billion or roughly a third of the value of all U.S. exports in 2010. Because they have fewer resources than larger enterprises, SMEs are disproportionately affected by foreign testing and certification requirements and often struggle to effectively enforce their intellectual property rights abroad. The MOU expresses a shared commitment to expanding the involvement of smaller enterprises in foreign trade by helping SMEs overcome obstacles to trade, while fostering the exchange of information and networking among SMEs on both sides of the Atlantic.