TITANIUM SUPPLY CHAIN: Regulatory and Legislative Developments
Titanium Supply Chain: Regulatory and Legislative Developments

- Specialty Metals and DOD “Critical Materials” Reorganization (Jeffery A. Green)

- The Material Supply Chain: New Source of Corporate Regulatory Obligations and Risk (Laurence Lasoff)

- Trade Policy Developments Impacting Titanium (Kevin Horgan)
Specialty Metals and DOD “Critical Materials” Reorganization

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History: Definition of “Produced”

- FY2007 NDAA: Berry Amendment & Specialty Metals split (10 USC §2533c & 10 USC §2533b)
- FY2008 NDAA: 2% de minimis exception, COTS exception, National Security exception, market basket/comingling allowed
- DFARS Final Rule (FR Vol. 74, No. 144; 7/29/2009): reinterprets “produced” to include quenching & tempering of armor plate
- FY2009 NDAA Senate Report: clarifies “produced” as melting or “equivalent of melting”
- FY2010 NDAA House Report: Committee believes DFARS definition is inconsistent with the law
- FY2011 NDAA §823: Congress requires DOD to review its rule, taking into consideration Congressional intent

DOD still has not adopted.
Definition of “Produced”

- FY13 NDAA (House) to amend 10 U.S.C. §2533b:
  - **“Produced”:** melted or processed in a manner that results in physical or chemical property changes that are the equivalent of melting.
  - **Does not include finishing processes:** rolling, heat treatment, quenching, tempering, grinding, or shaving

- DOD issued a new proposed rule (24 July 2012)
  - Eliminate the phrase “quenching and tempering” of armor plate
  - Expand application of listed technologies (gas atomization, sputtering, or final consolidation of non-melt derived alloy powder) beyond Ti and Ti alloys

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Report: Titanium Procurement Restrictions

- Pending GAO report (House Rpt 112-479):
  - Congress understands that specialty metals are essential to the production of military aircraft components

- Report to include:
  - Review of foreign manufactures’ markets share of DOD component contracts since FY2005
  - Cost of US-produced titanium compared to foreign titanium since FY2005
  - Number of US manufacturers who stopped producing titanium aircraft components since 2533b enacted
  - Assessment of 2533b’s impact on the component manufacturing industrial base
  - Assessment of domestic component manufacturer’s ability to compete with foreign firms who do not purchase domestically produced titanium
Introduction to “Critical Materials”


- Other lists:
  - DOE “Critical Materials”
  - DLA critical materials warranting risk mitigation
  - Strategic Materials Protection Board “critical materials”

- DLA list also includes:
  - Bauxite
  - Aluminum Oxide
  - Beryl Ore
  - Fluorspar, acid-grade
  - Silicon carbide
  - Beryllium copper master alloy
  - Carbon Fiber (IM-6)
Industrial Base Policy Reorganization

- FY13 NDAA (House) to amend 10 U.S.C. §139:
  - Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy reform:
    - Requires equal priority to OEMs and raw materials producers in industrial base policy recommendations
    - Notes need for reliable sources of specialty metals, armor plate, and rare earth elements
    - Ensure continued reliable critical materials availability from domestic sources and allied nations
  - Strategic Materials Protection Board reform:
    - Co-chaired by DASD-MIBP and the Administrator Defense Logistics Agency – Strategic Materials
    - Requires public comment and posting of report in a public forum

- Not a new “Buy American” provision
National Technology and Industrial Base Strategy

- FY13 NDAA (House) to amend 10 U.S.C. §2501:
  - SECDEF to develop a national security strategy for the national technology and industrial base and ensure industrial base is capable of meeting these objectives

- New objectives:
  - Ensuring reliable sources of materials critical to national security, such as specialty metals, armor plate, and rare earth elements
  - Reducing the presence of counterfeit electronic parts to the maximum extent practicable
Metals Affordability Initiative (MAI)

- **MAI:**
  - A public-private partnership to maintain technological leadership in specialty aerospace metals by improving performance and increasing the affordability of military systems

- **FY13 NDAA (House) increased MAI from $3.9mln to $13.9mln**

- **Program drew scrutiny in the SASC**
Concluding Observations

- Congress is re-engaged on critical materials issues, but
  - Equal emphasis on OEM/OCM & raw materials producers
  - Emphasis on complete supply chain (large business through small/medium sizes)

- Certain materials are “critical”:
  - Armor plate
  - Specialty metals
  - Rare Earths

- However,
  - Short & packed legislative schedule (i.e. “fiscal cliff”)
  - Modifications may occur in Senate
The Material Supply Chain: New Source of Corporate Regulatory Obligations and Risk

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Statement of the Issue

- Supply chain management is no longer simply an issue of inventory control, productivity and distribution efficiency.

- Supply chain management is now driven, in part, by the need to meet a proliferation of new regulatory obligations – some mandatory, some customer driven.

- Failure to comply with these obligations could lead to lost business, public criticism and in some instances, significant penalties.
Even if the regulatory (legal) requirement does not apply directly to your company, your customer may require that you certify compliance to a regulatory requirement since the customer may have to warrant that the supply chain supporting the production of the end product is compliant.
Supply Chain Regulation as a Tool for Achieving Non-commercial Objectives

- National Security: Is the supply chain secure or will it be utilized to undermine our security?

- Environmental: Does the supply chain undermine the environment and preserve our natural resources?

- Public Safety: Does the supply chain result in the production of products that are safe?

- Human Rights: Can regulating the supply chain achieve certain political and human rights objectives?
National Security

- C-TPAT: Voluntary supply chain security program by which importers enter into memoranda of understanding with customs authorities.

- Importers agree to warrant the security of the supply chain back to the factory floor and through the production and shipment process.

- Customs authorities agree to facilitate and expedite entry process for participants.
National Security (cont.)

- Advanced Notification of Entry
- Container Security Initiative
- Partners in Protection (Canadian)

- Export Controls
  - Export Licensing
  - Vigorous Enforcement
  - Mandating Compliance Program
  - Certification of Compliance Programs in Government Contracts
Buy National Requirements

- Specialty Metals Amendment: Flows up and down the supply chain.

- Buy American/Trade Agreement Acts: Contractor will need certifications from suppliers in order to provide valid certifications to government agencies. (Cost of materials/components and manufacturing locations and processes will be elements of determinations.

- Other Buy National requirements (e.g. steel). Do not ignore state requirements.
Protection of the Environment

- Mandatory: Lacey Act: Certification regarding harvesting of plant products. Importer must certify compliance with local, federal and foreign laws. Significant civil and criminal penalties for non-compliance.

- Voluntary: Downstream manufacturers pursuing green marketing claims are increasing burdens on material manufacturers to comply with and certify to green standards.

- Example: Construction: Impose greater material information and documentation requirements to meet green buildings codes and standards.

- Potential future obligations: Need to document carbon footprint.
Public Safety

- Increased burdens on material manufacturers to certify compliance with product safety requirements.

- High performance materials: JETQC (titanium); FAA (superalloys). Mandatory reporting to downstream customers of inclusions uncovered in melt process.

- Contingent liability provisions in supply contracts.
Human Rights: Conflict Minerals

- Dodd-Frank provision requiring all public companies to disclose if their products contain “conflict minerals” (tungsten, tin, tantalum, gold) mined in the Democratic Republic of the Congo (DRC).

- SEC-Reporting Companies must undertake “reasonable inquiries into the source of these materials and if, originating in DRC, must prepare annual reports (third-party audited) and publish on websites.

- Supply chain tracking requirements will impact material manufacturers.

- Special rules for scrap.
Human Rights: California Transparency in Supply Chains

- Applicable to manufacturers doing business in California with more than $100 million global receipts.
- Must publish on their websites detailed disclosure statements of steps taken to eradicate slavery and human trafficking from their supply chains.
- Affected companies will have to perform audits on their supply chains to confirm whether suppliers are complying with policies and prohibitions in this area.
- Will likely result in new certification requirements on upstream suppliers.
Managing the Regulatory Challenges of Supply Chain Management

- Properly classify products and technology to determine whether there are export control issues. Beware of deemed export issues related to technology.

- Read customer certifications: do not assume that they are not applicable to you as an upstream supplier. Engage your customer if there are issues.

- Stay ahead of regulatory developments: rely on your trade associations to keep you informed. Area is highly volatile.
Managing the Regulatory Challenges of Supply Chain Management (cont.)

- Establish an in–house compliance team that includes representatives of your purchasing, logistics, and legal departments.

- Review terms and conditions to ensure that they are up-to-date in terms of evolving compliance requirements, especially where those requirements may impact your obligations and responsibilities with respect to customers and suppliers.
Trade Policy Developments Impacting Titanium

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World Trade Organization

- DOHA Round - Tariff Elimination
- Russian Accession to WTO
  - Enforceable multilateral trade rules
- US-Russia: Permanent Normal Trade Relations (Repeal of Jackson-Vanik)
Russia’s Titanium Valley

- On Dec 16, 2010, Russia established a special economic zone (“SEZ”) referred to as the “Titanium Valley.”
  - Corporate tax for SEZ investors reduced from 20% to 15.5%.
  - Property tax rate for residents reduced from 2.2% to zero.
  - Residents exempt from transport taxes.
  - Residents allowed accelerated depreciation of fixed assets.
  - Ready-made utility connections for gas, heating, power, water and telecommunications at no cost to the residents.
WTO Subsidy Notification

- Russia’s terms of admission to the WTO include the elimination of prohibited subsidy programs.
- Prohibited subsidy programs must be notified to the WTO within 90 days after accession (November 2012).
- Prohibited subsidy programs must be eliminated within three years of the accession date.
Free Trade Agreements

- Not Unilateral Tariff Reduction Like GSP, AGOA, CBERA, ATPA
- FTAs Premised on Mutual Economic Benefit
- Tariff Elimination (Immediate; Staged Reduction)
- Rules of Origin (Tariff Shift; Regional Value Content)
- Existing: NAFTA, CAFTA, Jordan, Singapore, Chile, Colombia, Israel, Morocco, Panama, Australia, Bahrain, Oman, Peru, Korea.
- Re Titanium: Who Cares? – FTA Template!
Korea ↔ U.S. FTA ("KORUS")

- KORUS provided for the immediate elimination of duties on unwrought titanium from Korea (3-15-2012).

- Three year staged elimination of duties on other titanium articles from Korea.

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KORUS Rules of Origin: Tariff Shift

- 8108.20 – 8108.30 (Unwrought titanium, e.g., titanium powders, sponge, ingot)
  - A change to subheading 8108.20 through 8108.30 from any other chapter.

- 8108.90 (Other titanium products, e.g., billets, blooms, slabs, bars, rods, plates, sheets, tubes, pipes, etc.)
  - A change to subheading 8108.90 from any other subheading.

- No Regional Value Content ("RVC") required.
Kazakh → KORUS Connection

- UKTMP and its South Korean JV partner POSCO to produce 7,000 MT of titanium slabs per year.

- Slabs shipped to South Korea for rolling into titanium mill products.

- Titanium mill products from Korea could enter the United States duty free 1/1/2014.
Trans-Pacific Partnership FTA

- TPP adopted by Brunei, Chile, New Zealand and Singapore, effective May 28, 2006.

- Australia, Malaysia, Peru, the United States and Vietnam have been involved for some time in negotiations to join the TPP Group.

- Next Round of negotiations Auckland, New Zealand December 2012.

- Canada and Mexico expected to join talks in October.

- Japan has indicated interest in joining talks.
TPP Features

- Tariff reductions and quota elimination for industrial goods, agricultural products, and textiles as well as rules on intellectual property, technical barriers to trade, labor, and environment.

- Compatible regulatory systems.

- No Expected Impact on Remedies Against Unfair Trade: Antidumping & Countervailing Duties
TPP Impact on Titanium

- Only the United States has a large titanium industry.

- Addition of Japan to the TPP could make all imports of titanium products from Japan duty free in 3 years.

- Liberal rules of origin could allow titanium products from non-TPP countries to undergo minimal processing in a TPP country and become eligible for duty free entry into the United States.
TPP Prospects

- Addition of Canada & Mexico could slow but not derail negotiations.

- Addition of Japan made uncertain by domestic politics.

- Proceeding with all deliberate speed.
Thank you

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