The U.S. Aluminum Extrusion Industry: Future Fair Trade Issues And Opportunities in The New Administration

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Agenda:

- Current State of the Industry
- The New Administration
- Fair Trade Effort – Phase 2
- Issues and Opportunities going Forward
Renewal of the China Orders

- On March 10, 2017, the U.S. International Trade Commission voted unanimously to renew the antidumping and countervailing duty orders against China for another five years.

- We successfully defeated several attempts to separate the domestic like product and further weaken the orders.
Current State of the Industry

- U.S. demand is only now recovering to pre-Chinese surge levels.
- U.S. industry profits and cash flow, while improved since the original investigations are still modest even in an improving market.
Apparent U.S. Consumption for Aluminum Extrusions: U.S. Producers', Imports from China, and Nonsubject Import Market Shares

Source: USITC Public Staff Report, Inv. 701-TA-475 and 731-TA-1177 (Review): Certain Aluminum Extrusions from China, February 23, 2017, Table I-1; and from official import statistics using HTS statistical reporting numbers 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090. U.S. shipment data for 2016 has been annualized using January through September 2016 data.
Phase 2 – Issues Facing the Industry and the New Administration

- Transshipment/Circumvention – The Vietnamese, Indonesian, and Malaysian Threat
- China’s Continued Excess Aluminum Capacity
- China Market Economy Status
- NAFTA?
- Boarder Tax?
Trump Administration Trade Politics

- Considered the most “nationalist” Administration since...
- Break with current mainstream Republican orthodoxy, but not Reagan-era Republican orthodoxy
- Trade team of Reagan-era veterans, plus post-WTO China hawk ideology
- Broadly comparable to USW trade politics, but for the modern age
Looking Forward

- Self-initiation of trade remedy investigations in traditional manufacturing sectors – Section 201, AD/CVD, etc.
- Using unused authority – Section 301, Section 232, voluntary restraints, Plaza-like Accords etc.
- Greater scrutiny of foreign investment in the United States, especially from China
- Not only to protect, but also to open foreign markets for U.S. manufacturing and service industries
The Trump Trade Team

- U.S. Trade Representative: Robert Lighthizer
  - Lighthizer’s appointment signals intent to follow through on a more assertive U.S.-China trade policy, but through the established order
    - “China’s economic and political system is fundamentally incompatible with our conception of the WTO”
    - “U.S. policymakers significantly misjudged the incentives for Western businesses to shift their operations to China”
    - “The U.S. government has been very passive in response to Chinese mercantilism” (USCC Testimony, June 9, 2010)
  - Expect assertive and creative use of the system, not disregard of the system
The Trump Trade Team (cont’d)

- Secretary of Commerce: Wilbur Ross
  - Ross’s appointment signals intent to redefine U.S. leverage and renegotiate trade agreements to target certain problem areas
    - “Protectionism is a pejorative term. . . . There’s trade, there’s sensible trade, and there’s dumb trade. We’ve been doing a lot of dumb trade.”
    - “TPP had terrible rules of origin. A majority of a car could come from outside TPP . . . and still get all the benefits of TPP. And if it came in through Mexico, all the benefits of Mexico.”
    - “We are the big market.” (CNBC, Nov. 30, 2016)
  - Expect targeted renegotiation, with the threat of withdrawal and higher tariffs as leverage
The Trump Trade Team (cont’d)

- Director, National Trade Council: Peter Navarro
  - As a newly created group, the NTC’s role is uncertain, but Navarro will advocate for a tougher approach to trade (esp. with China) as a national security issue
    - “What is consistently missing in the national security debate is . . . the critical nexus between the size and quality of one’s manufacturing base and . . . the ability to wage war and militarily deter conflict.” (Huff. Post, Apr. 19, 2016)
  - Navarro (and the NTC) could be a wild card, but expect efforts to sustain U.S. manufacturing by any means necessary...
Defending the Backdoor – Transhipment and Circumvention

Aluminum Extrusions: Top markets for Chinese exports

- All other destination markets
- South Africa
- Australia
- Hong Kong
- Nigeria
- United Kingdom
- Philippines
- Malaysia
- Vietnam
- United States

2011: 1,100,000
2012: 1,200,000
2013: 900,000
2014: 1,300,000
2015: 1,500,000

Chart showing the top markets for Chinese exports in aluminum extrusions from 2011 to 2015, with details on each market's contribution.
The Size of Industry

- Indonesia – 72 total presses
- Malaysia – 78 total presses
- Vietnam – 75 total presses
  - This is a fraction of the size of both the Chinese and U.S. industry’s
  - Yet, on a cumulated basis, these three countries have captured over 2% share of the U.S. market and are growing
Cumulated U.S. Import Penetration (source: U.S. ITC Public Staff Report)
As imports from Vietnam, Indonesia, and Malaysia gained market share, the U.S. industry's operating margin has decreased.

Source: USITC Public Staff Report, Inv. 701-TA-475 and 731-TA-1177 (Review): Certain Aluminum Extrusions from China, February 23, 2017, Table C-1.
As U.S. operating margin decreased, so has U.S. market share

Source: USITC Public Staff Report, Inv. 701-TA-475 and 731-TA-1177 (Review): Certain Aluminum Extrusions from China, February 23, 2017, Table C-1.
Tools to Address the Problem

- **Transhipment** -- Importers of aluminum extrusions from China attempted to evade antidumping and countervailing duties by shipping extrusions through third-countries such as Malaysia and importing them as Malaysian goods.

- **U.S. Customs & Board Protection** – This type of evasion is prosecuted at CBP under the new 2015 Trade Enforcement Act.

- Must file allegation within one year, and develop more evidence than e-mail and BL data. Solicitations are the starting point (not the end).
Trader Solicitations:

- **YueFeng Aluminum Technology Co. Ltd.** states that it usually does “entrepot trade via a third country[,] such as by Malaysia.”

- **Same trader** in separate correspondence, “by carrying trade from third country, mainly {is} through Malaysia transit” and that “the good{s} is equal to imported from Malaysia.”

- **Kentel Service (China) Co., Ltd,** emailed a U.S. purchaser stating that: “we don’t have to pay duties {because} we can ship to Vietnam....If these extrusions would be assembled or packed with other parts in Vietnam then shipped to you, the company who is responsible for assembly/packing just offers related documents of whole products for Customs Clearance, not need to explain where the material or components of product are from.

- If Vietnam is only transfer station for these extrusions, these extrusions will be shipped to {the} U.S. once they arrived Vietnam. You can place order to one Vietnam company if you know them, and then this Vietnam company places order to us. So that the trading relationship in US government system is you and Vietnam, and we will not be involved. Of course, we will not show any {marks} on the products or cartons. Whatever, we think it is not hard to fix as many companies in China also ship the goods to Vietnam first then transfer to {the} US.”
Anticircumvention

- There are four types of anticircumvention petitions:
  - Merchandise completed or assembled in the United States
  - Merchandise completed or assembled in a foreign country
  - Minor alterations of merchandise
  - Later developed merchandise
Minor Alterations

- When products that would otherwise be subject to the scope are “altered in form or appearance in minor respects” they may be included in the scope.

- In this type of review, the Department considers:
  - The overall physical characteristics of the merchandise;
  - The expectations of the ultimate users;
  - The use of the merchandise;
  - The channels of marketing; and
  - The cost of any modifications relative to the total value of the imported product
Later Developed Merchandise

- Even if a product’s physical characteristics are not the same as those described, the Department can still include it if it finds that:
  - The new merchandise has the same general physical characteristics as the earlier product;
  - The expectations of the purchaser of the new product are similar to the old product;
  - The use of both the new and old product is similar;
  - The new product is sold through similar channels of trade as the old product; and
  - The new product is advertised and displayed in similar ways as the old product.

- This is the basis for the Department’s 5050 preliminary determination.
THE ROOT OF THE PROBLEM: CHINA’S EXCESS ALUMINUM CAPACITY
China Has A Massive Amount Of Excess Aluminum Capacity
China Cannot Consume All Of Its Aluminum Production Capacity, Causing Exports Of Semi-Finished Aluminum To Skyrocket

Chinese Aluminum Excess Production
(Production - Consumption + Exports)
Creative Ways of Addressing The Excess Capacity Crisis

- IMF -- China has an industrial debt bubble building and it is concentrated in the industries that are plagued by overcapacity: steel, aluminum, glass, cement, solar, etc.

- U.S. Request for Consultations at the WTO on the “serious prejudice” China’s subsidies provided to its primary aluminum industry are having on the global industry.
  - Japan, Russia, and Canada have requested to join the consultations and the EU is also supportive.

- The new Administration might also use Section 301 as described above.

- The Global Forum at the G20?
China Market Economy Status

- China challenged both the US and EU non-market economy dumping methodologies at the WTO.
- Consultations have been held and China has requested that a panel be established in the EU case and the US request will be next.
- The USTR is requesting assistance from Petitioner counsel, which we will be providing.
- A global effort will be needed to highlight the importance of this issue and its impact on the WTO’s future.
ISSUES AND OPPORTUNITIES
LOOKING FORWARD
NAFTA: What He Said

Donald J. Trump
@realDonaldTrump

I will renegotiate NAFTA. If I can’t make a great deal, we’re going to tear it up. We’re going to get this economy running again. #Debate
A Renegotiated NAFTA

- Threat to “tear it up” is (probably) a negotiating strategy
- Issues like rules of origin and Ch. 19 panel overreach should be revisited to make the agreement more politically durable and beneficial for U.S. manufacturers
- State-owned enterprises
- Digital trade/e-commerce
- Currency?
- Services
- Other opportunities
Border Tax: What He Said

General Motors is sending Mexican made model of Chevy Cruze to U.S. car dealers-tax free across border. Make in U.S.A.or pay big border tax!
Border Tax: Could They Do It?

- Depends how – even without a trade agreement in place there is no obvious legal channel for the President to proclaim higher tariffs on individual companies simply because they offshore.

- Expect the power of the tweet to continue (e.g., Ford, Carrier, etc.)

- But, a generally applicable “VAT-style” or “cash flow” tax on U.S. sales, including imports, is possible to align U.S. tax with foreign tax systems.

- Consider how to adjust supply chains and other strategies.
China: What He Said

5. Instruct the Treasury Secretary to label China a currency manipulator.

6. Instruct the U.S. Trade Representative to bring trade cases against China, both in this country and at the WTO. China's unfair subsidy behavior is prohibited by the terms of its entrance to the WTO.

7. Use every lawful presidential power to remedy trade disputes if China does not stop its illegal activities, including its theft of American trade secrets - including the application of tariffs consistent with Section 201 and 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962.
Yes, but keep in mind: despite the rhetoric, none of these proposals is particularly extreme – “trade war” with China is unlikely.

- There are serious problems that the WTO agreements do not address – Section 301 may provide a remedy
- Expect more WTO/301 cases
- Labeling China a currency manipulator would only trigger negotiations – and Trump recently indicated that he would start negotiations without labeling China a currency manipulator
Section 301

- Grants the President broad authority to remedy unfair trade practices of U.S. trading partners
- Investigations can be commenced either by petition or self-initiation by USTR
- “Mandatory” vs. “discretionary” Section 301: certain actions may require use of WTO dispute settlement, while others may not
- This discretion and ability to take action to address distortions outside of WTO dispute settlement will likely appeal to the new administration and is an avenue they are likely to explore
Thank you – Questions?

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