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International Trade Issues Affecting Kansas Manufacturers

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It's no secret that manufacturers are having to navigate uncertain times and unique challenges: historic inflation, supply-chain issues, workforce problems, geopolitical tensions, changing tax policies and more.

Competing with foreign-made goods, which benefit from lower labor and regulatory costs overseas, remains a challenge for domestic manufacturers, especially at a time when businesses are seeking ways to minimize overhead costs. Tariffs imposed by the federal government have certainly produced some protection of domestic industries; however, these costs are largely passed on to consumers and don't always create a competitive advantage through reduced imports.

As Kansas manufacturers compete with foreign competition, here are some items to consider to protect your business and your innovation.

IP Protection

Protecting IP in the trade-related context is crucial to a company's competitive position. Government data shows that the largest transfer of wealth in human history has been China's systematic theft and infringement of American technology over the past 30 years. Practical ways that companies can protect their proprietary technology include: (a) recording their trademarks with U.S. Customs and with authorities in relevant foreign markets; (b) devising a strategy regarding what should be patented versus what should be protected as a trade secret; (c) not entering into foreign joint venture arrangements wherein sensitive technologies or processes can be misappropriated; and (d) utilizing tools, such as Section 337 (administered by the U.S. International Trade Commission) to exclude infringing or otherwise unfairly traded products from the U.S. market.

IP—which can exist in a variety of forms (patents, trademarks, trade secrets and more)—is often the "keys to the kingdom." U.S. manufacturers must be vigilant and creative in protecting this valuable asset.

Supply Chain

It is no surprise that American supply chains have suffered through shortages, port congestion, and delays since the onset of COVID-19. Now, as companies recalibrate operations and move toward more efficient supply chain operations, it is important to be aware of procedural and contractual challenges in re-establishing good supply chain practices.

In June, the federal government took a step towards addressing supply chain challenges by passing the Ocean Reform Act of 2022. One purpose of the Act is essentially to remedy unfair shipping price hikes by allowing the Federal Maritime Commission (FMC) to investigate certain carrier charges.

Though regulations are being established to help remedy supply chain disruptions, it is important to understand contractually what fees and obligations your company may be accountable for. These obligations can arise merely from the day-to-day shipping document agreements such as invoices, purchase orders, and bills of lading. Many companies have taken disputed matters to court or the FMC to determine if charges for demurrage and detention are in fact reasonable.

Even if a company is not importing via ocean carrier, it is beneficial to conduct supply chain vulnerability audits to prepare for this new supply chain landscape. Knowing your vendors, what issues they are facing in their supply chains, and what contractual bounds exist may save companies from uncertainties that surround supply chains at this time.

Reshoring

Many U.S. companies moved their manufacturing operations overseas, especially to China, to save money on labor costs. This practice, known as offshoring, sought to replace high U.S. manufacturing costs with the notoriously cheap labor and related manufacturing costs in China. In recent years, a variety of issues have affected U.S. companies' offshore operations, particularly in China. This includes higher tariffs on imported Chinese goods, human rights abuses (including child and forced labor in Chinese factories), rising geopolitical tensions, intellectual property (IP) theft by Chinese business partners, and supply chain disruptions.

As a response to these issues, American companies have begun in earnest to "reshore" their manufacturing operations—i.e., relocate production back to the United States. While domestic production costs are still higher than many countries commonly used for offshoring, reshoring may still make financial sense for a variety of reasons: (1) local production allows companies to better control their supply chain, leading to higher quality products for consumers while reducing lead times and improving the customer service experience; (2) creation of jobs positively impacts local communities and improves brand perception; (3) stronger protection of IP; and (4) avoidance of hefty import tariffs. Ultimately, from a policy and macroeconomic standpoint, reshoring makes the U.S. stronger and more innovative.

That said, complete reshoring, while inarguably better for the U.S. economy, does not make sense for every company. This helps explain why "ally-shoring" is also an increasing trend, which is when companies re-locate production to countries closer and/or more friendly to the United States (such as Mexico). Either way, it is imperative for companies to proactively assess the extent to which moving certain aspects of their production (or such moves by their suppliers) can enhance the operations and competitive position of their business.

Forced Labor

Forced labor enforcement has been a government priority for decades, but recent changes have undoubtably pushed importers to prioritize this issue further. Alongside the withhold release order ("WRO") scheme which targets imports made with forced labor, importers are now facing enforcement of a new regulation, the Ugyhur Forced Labor Prevention Act ("UFLPA"). This law effectively presumes that goods made in or sent from the Xinjiang region of China are made with forced labor and cannot enter the U.S. without substantial evidence proving otherwise.

Importers should work to become more knowledgeable of where they source components and materials and who their suppliers are, to avoid any import delays or adverse regulatory action. A practical start would be to take a risk-based approach to identifying any direct or indirect connections to China or the Xinjiang region, and then mapping those supply chains from the point of manufacture through to final distribution.

U.S. Customs and Border Protection has identified certain high-priority goods such as cotton and polysilicon that are high on the enforcement list. However, it is important to remember that despite having direct imports of these items, companies could still feel the effects of this new enforcement. For example, cotton or polysilicon from China, which is later used to produce a new, final product, could still be within scope of this law and subject to scrutiny upon import. Importers should review Customs' resources on forced labor enforcement and examine their supply chains to be prepared for any concerns that could arise now or in the future.

Export Controls and Sanctions

Export controls are U.S. laws and regulations that restrict and regulate the release of critical technologies, information, and services to foreign nationals and foreign countries. They exist to protect the U.S.'s national security and to advance foreign policy objectives. In 2021, approximately 9% of Kansas exports were sent to China, generating approximately $1.2 billion. China, not surprisingly, is one of the U.S.'s main targets for export controls and sanctions. Particularly, the Export Administration Regulations (EAR) imposes several restrictions and licensing requirements relating to the shipment of products to China.

For example, the EAR imposes export controls to protect national security interests related to dual-use goods and less-sensitive military items. Any Kansas exporter dealing with such goods must work in tandem with the Bureau of Industry and Security (BIS) to avoid infringing applicable regulations and avoid sanctions. Whenever a new potential business partner in a restricted country like China signals its intention to purchase EAR-regulated goods, Kansas companies should check the BIS' "Know Your Customer" guidance created to aid exporters in identifying possible violations of the EAR. To the extent the exporter has any concerns, they should promptly notify the BIS, which will initiate a process to verify (1) that transactions involving items subject to the EAR are compliant, and (2) that the non-U.S. party to the transaction is a reliable recipient of items subject to the EAR.

Conclusion

Successful navigation of trade-related issues can help U.S. manufacturing companies enhance their long-term competitive position. It is important for manufacturers to stay abreast of issues such as tariffs, export regulations, IP protection and more.

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