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The Lawyers Making Millions Fighting for the US Steel Industry

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When Suzanne Folsom came in as general counsel of U.S. Steel in 2014, she joined an industry that, she says, "has been managing its decline for a long time." From there she started a campaign to educate government officials and the public of the national security concerns presented by a country without domestic steel manufacturing. And she spent millions of dollars and countless hours of strategy work developing a litigation approach to combat hacking of trade secrets and alleged illegal dumping—that is, foreign steelmakers selling steel for prices that Folsom and others argue undercut U.S. manufacturers and violate international trade laws.

The U.S. steel industry, once a bastion of American wealth from its formation by the likes of Andrew Carnegie and J.P. Morgan, has in more recent years seen bankruptcies and consolidation. Which may account for why the bulk of the union workforce of the largest steel manufacturer, U.S. Steel, parted ways with the Democratic party and voted for Donald Trump in November, Folsom notes.

"The company right now, and the industry, is probably in the best position that it's been in many, many years to be able to leverage the knowledge that it is important to our security that we have steel, and leverage the political climate to show the importance of manufacturing jobs," Folsom says.

U.S. Steel CEO Mario Longhi is on Trump's manufacturing council and Longhi and Folsom have been to the White House in recent months to talk about rebuilding America's infrastructure with American-made steel, Folsom says.

Trump further illustrated his pledge to domestic manufacturing interests by announcing two executive orders aimed at fighting foreign trade abuses a week before Chinese President Xi Jinping was scheduled to visit him in Florida in early April. One called for stricter enforcement of U.S. antidumping laws meant to keep foreign companies from undercutting prices charged by American-based firms.

Of the "tens of millions of dollars" Folsom and other U.S. steel producers spend on outside counsel each year before the World Trade Organization and elsewhere, Folsom says even a win feels somewhat hollow.

"The bad actors have become so sophisticated with circumventing the tariffs that even when you win a case, it doesn't mean it will help you," Folsom says. "You look at these trade cases and for a quarter of a century, trade cases have cost tens of millions a year just for our company. It's laughable. I put 'win' in quotes because what does the win mean?"

Folsom says she is looking for the U.S. government to more aggressively enforce its own trade laws, provide increased resources for border patrol agents and increased resources for the U.S. Department of Commerce, which investigates alleged violations of trade laws.

"A lot of money continues to be spent on law firms defending the industry and on lobbying, but at some point there needs to be a breakthrough because the industry does not have the resources to continue on for another decade spending that kind of money without some relief," Folsom says. "We as a country have to make a decision: Do we want to have this industry or not?"

Law Firm Players

From high-end trade work to lobbying campaigns, a small group of law firms have been paid handsome sums each year by the U.S. steel industry. And while Folsom notes that will have to give at some point, the sector promises to provide a steady pipeline for the immediate future.

When Folsom joined U.S. Steel, she brought on Debbie Shon, who was then head of legal for Ticketmaster Entertainment in China, as vice president of international trade and global public policy. After two years, Shon joined Quinn Emanuel Urquhart & Sullivan as a partner and she and the firm quickly rose to the top of U.S. Steel's outside counsel list.

"She is our main outside counsel for trade issues. She lives, eats and breathes this. She helped me really get on top of these issues for our company," Folsom says of Shon.

The company has also long relied on Skadden, Arps, Slate, Meagher & Flom, although the firm is likely switching out its relationship partner with U.S. Steel: Longtime Skadden partner Robert Lighthizer, the most recent relationship partner, was tapped by President Trump to be the next U.S. trade representative. As of press time, he was still awaiting confirmation. Jeffrey Gerrish, head of Skadden's international trade group, is working closely with U.S. Steel as well.

Mayer Brown corporate and finance and international trade partner Michael "Mickey" Kantor and international trade partner Matthew McConkey also work on behalf of U.S. Steel.

Another major U.S. steel manufacture, AK Steel Corp., often turns to King & Spalding for its outside legal work. The firm's international trade group is headquartered in Washington, D.C., and Geneva, Switzerland, where the WTO is based. King & Spalding says it has experienced significant growth in handling U.S. countervailing duty (antisubsidy) cases against imports from China, including some on behalf of the steel industry.

Regulatory Framework

The U.S. steel industry has lobbied heavily on various manufacturing, trade and tax issues; its "Buy America" campaign has been a prominent mainstay, especially during the 2016 presidential election.

On a parallel track, U.S. Steel moved aggressively on April 26, 2016, to protect itself by bringing a three-pronged case against numerous Chinese steel manufacturers before the U.S. International Trade Commission. In the case, filed under Section 337 of the U.S. Tariff Act of 1930, the company alleged Chinese manufacturers were violating antitrust laws; circumventing trade duties through false labeling and transshipment (shipping goods through a third country); and by engaging in cyber espionage to steal trade secrets regarding the manufacture of high quality steel products.

An ITC administrative law judge terminated the price-fixing investigation early in the proceedings, but the order is up on appeal to the ITC, says Quinn Emanuel's Shon. At press time, oral arguments were scheduled for April 20.

U.S. Steel has said it will continue to vigorously pursue the antitrust and false designation causes of action. But in February, it withdrew the trade secrets claim without prejudice—leaving open the possibility that it will revisit the claim in the future. The company's rationale? It's difficult to prove the cyber-espionage claims under a law enacted long before the internet, or cybersecurity threats, surfaced. In a press release issued about the decision, the company said the law "never contemplated the technological advancements over the past 50 years that have led to the proliferation of cyber theft and other cyber crimes committed against American companies."

Although the industry's efforts to "level the playing field" resonates in the Rust Belt and other states that have experienced significant job losses related to the downsizing and closure of manufacturing plants, some analysts believe that the downstream negative impact of tightly restricted trade with the Chinese will be more damaging to the U.S. economy.

Daniel Pearson, a senior fellow at the Cato Institute who served on the U.S. International Trade Commission from 2003-2013, including two years as its chairman, has high respect for U.S. Steel, particularly for its technical capabilities to produce low-weight, high-strength, corrosion-resistant steel that automakers prefer, for example. For "reputational and liability" reasons, he says, he doesn't expect the Chinese ever to approach the quality of U.S. steel, trade secrets aside. "The Chinese, by and large, can't get there," he says.

Nonetheless, Pearson says he was disappointed when he heard that U.S. Steel had withdrawn its ITC action against Baosteel on the trade secrets claim. "I was hoping they could make that stick," he says.

However, he dismisses the antitrust cause of action as "bogus" and believes that tight protection of domestic steel manufacturing—while helping U.S. Steel and its workers—will ultimately damage the economy by significantly raising steel prices for downstream manufacturers. He doesn't disagree that Chinese production and its government subsidies are unfair, but says, "I think it's unwise to keep imported steel out" or to impose retaliatory tariffs.

"Do we put 30 percent tariffs on everything coming in? You bump up the cost of tennis shoes and T-shirts and it can have a profound effect on people who are not well-to-do, people who spend a higher percentage of their income on Wal-Mart," he says.

Eventually, he says, China's state policy to go into overdrive in its steel production—he says it now produces over half of what the world consumes—does the world a favor, price-wise: "We're looking a gift horse in the mouth."

Pearson understands that the U.S. domestic steel industry would suffer in the short-term, but he believes it is paramount in the long run to keep the trade borders open.

But to Folsom and her colleagues at U.S. Steel, as well as many in the Trump Administration, efforts to protect the domestic manufacturing capabilities aren't just about profit. They're about protecting an iconic American industry.

"This is really a unique time in history for this industry," Folsom says. "The industry has an opportunity to really raise its hand and to say, 'Elected officials, country, we need your support.' It's a vital industry to our country. This is the industry that helps build America."