MANUFACTURING & INDUSTRIAL: OUTLOOK & TRENDS

Learn about trends, opportunities and challenges in the manufacturing and industrial space.

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As the manufacturing sector continues to navigate a dynamic economic and regulatory landscape, the current environment presents both significant opportunities and complex challenges. From strong buyer demand in a competitive M&A market to shifting tariff policies and increased immigration enforcement, manufacturers must balance growth strategies with careful risk management. At the same time, expanded federal incentives such as New Markets Tax Credits create new avenues for investment, while heightened False Claims Act enforcement and a changing NLRB agenda reshape compliance priorities.

***Manufacturing & Industrial: Outlook & Trends* explores these developments and their impact on dealmaking, workforce readiness, trade compliance, and labor relations. Together, these insights highlight key trends and issues impacting the regulatory and operational landscape for manufacturing and industrial companies and offer guidance on how to remain agile and competitive in a rapidly evolving environment.**

Tariffs Update: Court Cases Should Clarify What Is, Is Not Permissible

Contributors: Thad McBride, Faith Dibble, Tris Sebesta

On January 20, in Executive Order 14157, President Trump declared a national emergency under the International Emergency Economic Powers Act (IEEPA) to address threats posed by international cartels. On the same day, he declared a national emergency at the southern border, and expanded that emergency to cover the threat of fentanyl and the "failure" of Canada and China to combat criminals. To respond to these emergencies, Trump imposed tariffs on Canada, China, and Mexico.

In April, again acting under the authority of IEEPA, Trump issued Executive Order 14257 to impose a 10% tariff on "all imports from all trading partners" due to trade deficits that created a threat to the "national security and economy of the United States." He also announced country-specific reciprocal tariffs ranging from 10% to 41% for dozens of countries that went into effect on August 7, though he suspended until November 10 reciprocal tariffs on China.

At least some of these tariffs are now likely to be barred by the courts.

On May 28, in *V.O.S. Selections Inc. v. U.S.*, the U.S. Court of International Trade (CIT) found that Trump could not use IEEPA as legal authority to implement tariffs absent a clearly substantiated national emergency. (The CIT has sole jurisdiction to handle federal civil cases involving international trade matters.) The CIT also reaffirmed that the tariff power lies with Congress. The Federal Circuit granted the Trump administration's motion for an administrative stay, which temporarily reinstated the tariffs, and on July 31, the Federal Circuit heard oral arguments in the matter.

Similarly, on May 29, in *Learning Resources Inc. v. Trump* at the U.S. District Court for the District of Columbia (DDC), plaintiffs argued that IEEPA does not authorize the president to "impose, revoke, pause, reinstate, and adjust tariffs…" Although the government sought to have the case transferred to the CIT, the DDC ruled that the CIT does not have jurisdiction because IEEPA does not authorize the President to impose tariffs - a much broader holding than that issued by the CIT the day before. The tariffs are allowed to remain while the government appeals the case. On June 20, the U.S. Supreme Court declined plaintiffs' petition for expedited review.

Even if the appellate courts uphold the lower courts' decisions, the president will maintain authority to impose tariffs, albeit in a more limited fashion. For example, following an investigation by the Commerce Department, the president is authorized to impose tariffs in accordance with section 232 of the Trade Expansion Act of 1962, and sections 301 and 338 of the Trade Act of 1930. These are the bases on which current automotive, steel, aluminum, and Chinese imports are subject to heightened duties.

Tariffs are not going away anytime soon, but their scope and level may change significantly in the coming weeks.

Increased Focus on FCA Enforcement for Manufacturers

Contributors: Todd Overman, Tris Sebesta

Recent enforcement activity under the False Claims Act (FCA) highlights the Trump administration's continued emphasis on domestic preference laws, notably the Buy American Act (BAA), Build America, Buy America Act (BABA), and the Trade Agreements Act (TAA). With substantial infrastructure funding pouring in from the Infrastructure Investment and Jobs Act (IIJA), contractors can anticipate increased scrutiny and enforcement.

During President Trump's first term, "Buy America" policies took center stage, and these initiatives expanded further under President Biden. Now, in his second term, President Trump has doubled down on his "America First" approach, actively reinforcing domestic preference requirements in federal procurement. The Department of Justice (DOJ) has made clear its intent to use the FCA aggressively to root out procurement fraud.

A clear example emerged in May 2025 when the DOJ announced a $300,000 civil settlement agreement with a Connecticut-based company. The firm had violated the BAA and TAA by selling foreign end products to several government procuring agencies. This case highlights the DOJ's readiness to enforce compliance not just in high-profile cases, but also in routine procurement transactions.

On February 20, 2025, then-Deputy Assistant Attorney General for Commercial Litigation Michael Granston and current Director of the Fraud Section in the Civil Division Jamie Yavelberg highlighted this enforcement priority during their remarks at the Federal Bar Association's Qui Tam Section Conference. Both officials also emphasized that customs fraud, including tariff evasion, would be a primary area of focus, leveraging the FCA as a key tool to address illegal foreign trade practices. Common fraudulent schemes include rerouting products through intermediary countries (re-exportation), mislabeling components to indicate a false country of origin, or undervaluing goods to minimize tariff liabilities. It is probable that these schemes will face rigorous investigation and enforcement.

Penalties under the FCA have also risen. For penalties assessed after July 3, 2025, the minimum penalty per claim increased from $13,946 to $14,308, with the maximum penalty per claim rising from $27,894 to $28,619. These financial penalties, combined with potential treble damages and possible debarment from future federal contracts, underscore the serious consequences contractors and suppliers face for non-compliance.

With settlements and judgments under the FCA exceeding $2.9 billion in fiscal year 2024 alone, contractors should proactively strengthen compliance programs, conduct thorough supply chain due diligence, and certify domestic content accurately.

Preparing Your Workforce for I-9 Audits and ICE Raids

Contributors: Mary Leigh Pirtle, Jimmy Snodgrass

It is impossible for employers in the manufacturing and industrial sectors to ignore the immigration enforcement measures that are prevalent in the current political climate. Employers must prepare their managers and employees for both of these possibilites:

1. A formal audit and inspection.
2. A raid from U.S. Immigration and Customs Enforcement (ICE) to verify compliance with the Immigration Reform and Control Act of 1986 (IRCA).

The IRCA penalizes employers for "knowingly" hiring or continuing to employ undocumented (or unauthorized) workers and places the burden on employers to verify worker authorization through the Form I-9 Employment Eligibility Verification process. While ICE raids are more publicized, it is far more likely that an employer will face a formal I-9 inspection by receiving a "Notice of Inspection" issued by either the Department of Homeland Security/ICE, the Department of Labor and the Department of Justice. In contrast, what is commonly referred to as a "raid," occurs when a federal agent presents an employer with an arrest or search warrant in response to suspected unauthorized activities.

ESTABLISHING INTERNAL PLANS AND POLICIES

Regardless of whether an employer is faced with a Notice of Inspection or a raid, its employees should be prepared and trained to address law enforcement agents. Employers should create an internal communication plan that is distributed and regularly reviewed with their employees, and applied when any law enforcement agents are present.

This internal communication plan should identify a designated representative, or multiple employees, who are knowledgeable about the company's rights and responsibilities when law enforcement is present. Employees should be trained to direct any law enforcement agent to the designated representative(s) and instructed to inform those agents that they do not have the authority to permit access to private areas of the premises or review documentation. Instead, all documents should be reviewed solely by the designated representative(s), with the assistance of legal counsel, to determine what compliance steps are required based on the type of documentation presented.

Generally, only a court-issued warrant will permit an agent access to private areas of a business. For this reason, the internal communication plan should identify which work areas are public vs. private. Private areas should be marked clearly with signage or other barriers to entry. Employees should also be instructed as part of this plan on the importance of respectful and appropriate communications. Finally, employees should be instructed on how to deal with agents who insist on entry despite not presenting the required documentation. If that occurs, employees should document the interaction, including the names of any agents/officers involved, as well as any documents searched, confiscated or copied. Employees also should understand that they should not volunteer information or access to private areas beyond what is permitted by the documentation offered by the agent.

In the case of a Notice of Inspection seeking to audit I-9 files, an employer generally has three business days to gather the requested documentation. Companies are encouraged to regularly audit their Form I-9s and supporting documentation to ensure "good faith" compliance with the IRCA, which will better prepare the organization in response to an inspection request. As a reminder, the IRCA requires a Form I-9 to be executed by both the employee and employer no later than three days after the employee's first workday, and the employer must verify work authorization by examining the required documentation and ensuring that those documents reasonably appear on their face to be genuine and relate to the employee. Form I-9 documentation should be maintained for all current employees during the course of employment, and for at least one year after the date of termination.

EMPLOYER'S OBLIGATION TO COMPLY AND POTENTIAL PENALTIES

Violations of the IRCA can result in both civil penalties and criminal charges for employing unauthorized workers. The IRCA authorizes escalating monetary fines to the employer per unauthorized worker identified and per Form I-9 paperwork violation. A company may also be barred from competing for government contracts in the case of a knowing violation of law. There are several additional statutory provisions for criminal charges to be brought, but as one example, employers that assist in the production and use of false documents to obtain employment eligibility are subject to fines in excess of $10,000 per offense and up to fifteen years imprisonment. Non-owners, such as HR Managers, Plant Managers or Corporate Officers, may also be held liable for playing a role in any falsification of documents.

By implementing policies on preparing for an ICE audit or raid, as well as employment eligibility verification, employers can ensure that they are in compliance with applicable statutory requirements and that their workforce is properly equipped to address any visit from a law enforcement agent.

Challenges and Opportunities for Manufacturers in Today's M&A Environment

Contributor: Frank Pellegrino

In today's M&A environment, manufacturers face strong buyer demand from both private equity and strategic acquirers, but also contend with inflation, supply chain disruptions, labor shortages, high interest rates, and evolving trade policies that complicate deal valuations and execution. To navigate this landscape, sellers must engage in a disciplined, well-prepared process—often beginning six to nine months before going to market—to withstand heightened scrutiny from buyers and lenders, compress deal timelines, and preserve execution certainty.

Deal structures should include protections like working capital collars or locked-box mechanisms to address cost volatility, and seller financing or rollover equity—with appropriate safeguards such as secured notes and tag-along rights—can support pricing while managing post-closing risk. Earn-outs based on objective financial metrics and shorter time frames can help bridge valuation gaps, while representation and warranty insurance, along with capped indemnities and defined survival periods, mitigate exposure to regulatory and supply chain risks. Manufacturers should also plan carefully around tax outcomes and remain agile in response to potential tariffs or trade barriers that could impact future profitability.

For a deeper analysis, see the article by Frank Pellegrino of Bass, Berry & Sims, *"Challenges and Opportunities in Today's M&A Environment,"* available at Industry Today.

How New Markets Tax Credits Can Benefit Manufacturers

Contributor: Michael Bradshaw

For almost twenty-five years, New Markets Tax Credits (NMTCs) have proven to be a valuable tool in promoting economic development throughout the United States. Designed to stimulate private investment in economically distressed and low-income communities, NMTCs generally provide a net subsidy of 15% to 20% for projects in certain designated census tracts. NMTCs have provided gap financing for a variety of worthy development projects including hospitals and other medical facilities, educational institutions, retail and commercial facilities and mixed-use projects. In addition to the aforementioned projects, NMTCs have also been used to finance the construction and expansion of manufacturing and industrial facilities, as well as their operations.

The NMTC program provides a 39% federal tax credit over seven years to investors who fund projects in qualifying census tracts. These credits are distributed through Community Development Entities (CDEs), which channel capital into projects and businesses that generate meaningful community impact.

Typically, financial institutions and other entities with significant federal tax liability purchase the right to receive the 39% credit over the seven-year credit period through the upfront investment of equity, i.e., a QEI or qualified equity investment, into the CDE. The CDE then loans the proceeds of the QEI to the owner of the project or operator of the business, which such loan comes with very borrower-friendly terms and is forgiven at the end of the seven-year compliance period, resulting in a subsidy to the project or business.

The CDEs apply to the federal government for NMTC allocation authority and determine which projects or businesses to grant the subsidy. Obtaining NMTC allocation from a CDE is an extremely competitive process, but manufacturing and industrial facilities in qualified census tracts can be appealing to CDEs looking to unload NMTC allocation, because the NMTC can be used by manufactures not only for the cost to construct a new facility or expand an existing facility, but also to reimburse the manufacturers for the cost of raw materials and inventory looking back for two years prior the date the QEI is made. Indeed, CDEs would be very interested in speaking with manufacturers with facilities in qualified census tracts looking to expand production and add high-paying jobs.

Until recently, developers, CDEs and tax credit investors had to rely on Congress to provide new NMTC allocation authority nearly every year, so there was much uncertainty with the program. However, at least for the near-term, that will no longer be the case, as the recently enacted One Big Beautiful Bill Act provides for ongoing and annual NMTC allocation of $5 billion beginning in 2026. And this permanent extension follows a double allocation round of $10 billion to be awarded to CDEs sometime this fall.

NLRB – Significant Updates in Labor Under Trump Administration

Contributors: Tim Garrett, Hunter Yoches

Savvy manufacturing employers will recall the increased union activity and heavy regulation by the Biden-era National Labor Relations Board (NLRB), which impacted manufacturing over the last years of the Biden administration. The NLRB's prior General Counsel was quite active in numerous areas, as detailed here.

Much has changed with the election of President Donald J. Trump. After his inauguration, President Trump immediately terminated the NLRB's General Counsel at the time, Jennifer Abruzzo. Soon thereafter, the new acting General Counsel rescinded almost all the over-reaching Biden-era NLRB Guidance Memoranda. Noteworthy rescissions include no longer instructing Regional Directors to consider employer surveillance practices as presumptively unlawful, no longer instructing Regional Directors to prosecute employers for non-compete agreements or stay-or-pay agreements, and overturning former restrictions on confidentiality and non-disparagement provisions in severance agreements.

In addition, President Trump terminated NLRB member Gwynne Wilcox. While the legality of that termination remains unsettled in a pending lawsuit, a recent United States Supreme Court ruling likely signals that the Supreme Court will uphold the President's right to terminate Board members, even without cause. Such a finding would be a major shift in the President's ability to shape labor policy immediately upon taking office.

There remains some question about the legality of the prosecutorial structure of the NLRB, which has also been challenged in several lawsuits.

In mid-July, President Trump nominated Scott Mayer, currently chief labor counsel for Boeing, and James Murphy, who served many years as counsel to various Republican members of the NLRB, to vacant seats on the NLRB.

Once these two people are confirmed, the NLRB will once again have a quorum and will be able to conduct business. That business likely will include overturning the Biden-era Board's controversial new structure in a union organizing setting, announced in the case known as **Cemex Construction Materials Pacific LLC (Cemex)**, as well as a ruling prohibiting mandatory "captive audience" or "25th hour" meetings, announced in the case of **Amazon.com Services LLC.**

So, what does this mean for manufacturing? Most likely, over the next few years, the NLRB will not be as aggressive in finding violations of handbook provisions or in severance agreements and will overturn the more favorable rules for union organizing in the Cemex case. Thus, employers can anticipate less aggressive regulation by the Trump-era NLRB.

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About the Bass, Berry & Sims Manufacturing & Industrial Team

With a proud tradition of representing leading manufacturers, Bass, Berry & Sims combines in-depth industry knowledge with comprehensive legal solutions tailored to the unique challenges of today's competitive marketplace. Our experienced attorneys collaborate across various sectors to provide proactive counsel in areas such as contract negotiation, mergers and acquisitions, finance, environmental, and regulatory compliance, among others. We are committed to helping clients navigate the complexities of the manufacturing and industrials industry, ensuring their operations are both efficient and legally sound. More information about the firm's experience in this sector can be found here.

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