

Informers

Informing, planning and taking action



UNITED STATES CUTTING TOOL INSTITUTE
LEADING THE FUTURE OF THE CUTTING TOOL INDUSTRY

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Please join us for the Fall Institute Meeting in Music City—Nashville!

Our Fall Meeting will provide a great opportunity for you to network and receive updates on the aerospace industry and, of course, the cutting tool forecast. As always, we have scheduled some great networking receptions and activities to make the most of our time in Nashville!

Registration is now open! More information can be found by clicking [here](#).

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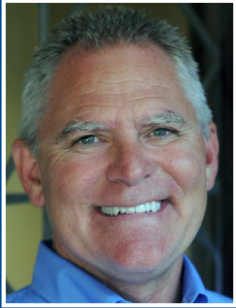
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USCTI President's Message



Phil Kurtz

Dear Fellow USCTI members,

What an interesting six months it's been in the cutting tool industry! Manufacturing is running full throttle, staffing challenges continue to elevate, and now new tariffs, regulations, and the threat of a trade war are looming. As they say, "you have to take the good with the bad." The problem is that the bad is hard to get a handle on and even harder to fix.

Also in the last six months, USCTI has been busy planning for upcoming events and developing programs to support our members. For the latest market update, please plan to attend the joint USCTI/AMT breakfast reception on Thursday, September 13, from 7:30-8:30 a.m. in room W471, West Hall, McCormick Place. Not only will you get a look into what the market will bring for the next few months to help you plan your business, but you will also get a free breakfast! Please contact the Institute office to register.

We are all challenged with staffing issues, and the USCTI Education and Training Committee has a goal to help members recruit, hire, and train team members. They are working hard to create best practice programs and need your help. If it is possible for anyone in your company to volunteer time to help the committee with this program, I am sure it will benefit everyone.

The tariffs, regulations, and potential trade war are creating chaos in the market. I don't think anyone has the answers, but even if someone did, the situation could change quickly. All we can do is ride out the storm. I am not sure when the uncertainty will end, but it cannot be soon enough!

The upcoming IMTS show is one of my favorite industry events (unless I have to work the booth for the entire event). I have attended every IMTS since 1984. I am sure there are many of you who, like me, look forward to seeing the latest and greatest machine tools in action. But my favorite part is catching up with colleagues. For me, it's like going to the local county fair!

Please make sure to mark your calendars to attend our Fall Meeting in Nashville, October 13-15. You can be sure it will be time well spent. As always, you will hear knowledgeable speakers and presentations offering insight into running our businesses in the evolving business climate, and there will be plenty of networking opportunities as we explore Nashville.

Between now and then, grab a couple of well-deserved vacation days before the summer gets away! I look forward to catching up at IMTS or the USCTI Fall Meeting.

See you in Nashville!
Sincerely,

Phil Kurtz
Wetmore Tool & Engineering Company

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Statistics Committee Update

Now that we are past the midpoint for 2018, it is fair to say that this year continues to be very strong for our industry. As of the last market update, we continue to see strong growth. From a committee perspective, our main 2018 deliverable was the addition of the regional view to the quarterly IHS Markit forecast. I hope those of you receiving it are enjoying this enhancement and find it useful in managing your businesses.

IMTS will be here before we know it, and it will be a great time to catch up on new technology, meet your industry peers, and also attend the joint USCTI/AMT breakfast reception. This session should be very informative, and this year, in addition to breakfast, USCTI and AMT are serving up an overview of the cutting tool forecast by IHS Markit and a presentation on "The Impact of Tax Reform" from alliantgroup.

As always, let me remind those of you who are not currently participating in our statistics program that you are missing out on the benefit of receiving the cutting tool forecast. The forecast allows you to have greater market visibility, measure your market share development, and have access to relevant and detailed data on our market.

I hope to see you all in the fall at either IMTS or our Institute meeting.

Johan Israelsson, Statistics Committee Chairman
Sandvik Hyperion



Technical Committee Update

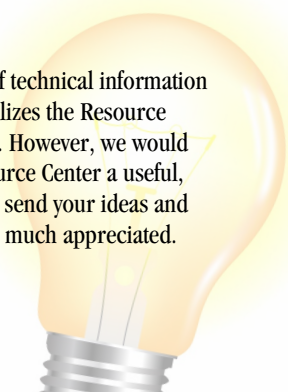
The AIA Aerospace Cutting Tool Working Group published NAS890, STANDARD SHANK CONFIGURATIONS FOR CUTTING TOOLS, on May 31, 2018.

Under the working group, the Carbide End Mill Project Team continues their work to develop a new carbide end mill standard. I hesitate to provide a timeline at this point, but I believe they will have a draft ready for review by the end of this year or maybe early 2019. The team is currently meeting monthly.

Al Choiniere, Technical Committee Chairman
Superion, Inc.

We Need Your Ideas

The USCTI Technical Resource Center is an excellent source for a vast array of technical information on cutting tools, surface coatings, and materials. The Technical Committee utilizes the Resource Center to broadcast additional information and updates on a continuing basis. However, we would love to have further input and ideas from membership to help make the Resource Center a useful, hands-on tool for new cutting tool engineers coming into our industry. Please send your ideas and input to uscti@uscti.com. Additional white papers would be welcome and are much appreciated.



SPRING BUSINESS INDUSTRY OUTLOOK SURVEY RESULTS

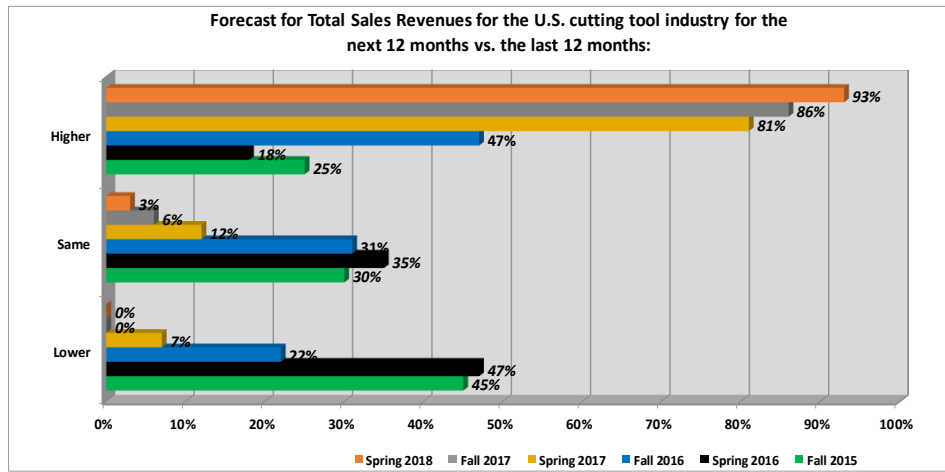
Participation in the spring 2018 survey was down slightly compared to the fall 2017 survey. 93% of respondents thought the forecast for total sales revenues for the next 12 months would be higher than the forecast for the last 12 months. This is a continued positive upward trend since spring 2016. Confidence in sales revenue for the next 12 months compared to the preceding 12 months is extremely high, with 98% stating it is going to be higher.

Comments about the outlook were confident, with one participant noting, "We have had a record first quarter, and all indications are that the next couple of quarters will be very strong." They continued by saying, "...the tariff situation has caused tremendous confusion and angst."

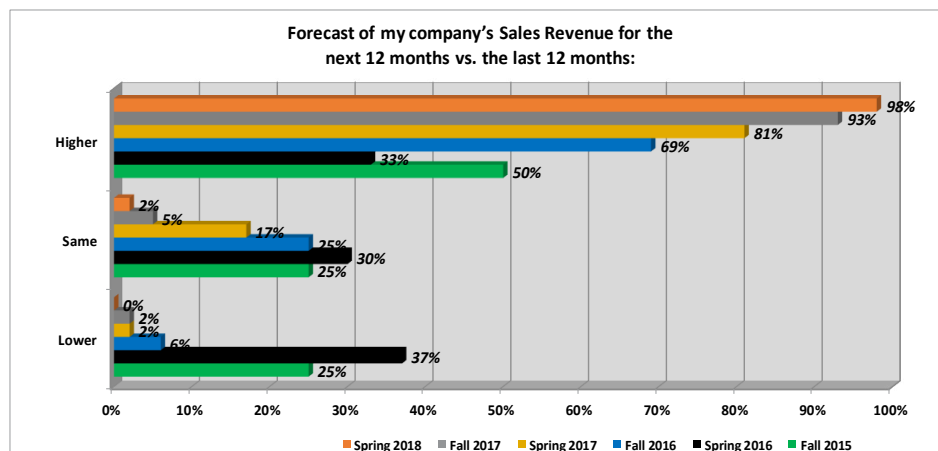
The PowerPoint presentation of the survey results is available to all members through the [USCTI Secure Virtual Office](#).

To access documents referenced in this issue, log on to the [USCTI Secure Virtual Office \(SVO\)](#) using your unique username (email) and password. Passwords are case-sensitive. If you have forgotten your password, click on the "Forgot Password?" link to receive an email with your login information. You may also contact the USCTI office for assistance.

Industry Forecast



Company Forecast



Future Meeting Dates

Be sure to mark your calendar for the upcoming Institute meetings, which are scheduled as follows:

2018 Fall Institute Meeting

October 13-15, 2018
The Westin Nashville
Nashville, Tennessee



2019 World Cutting Tool Conference
USCTI Spring Institute Meeting
June 26-29, 2019
Tegernsee, Bavaria, Germany



SPRING 2018 MEETING RECAP

Our Spring Meeting was held at The Inn & Spa at Loretto in Santa Fe, New Mexico, from May 19-21. As usual, we sent out a survey to all who attended, and we received 46 responses. The Programs Committee uses this information as we look at scheduling future meetings. One item to highlight is it looks like our format of including a keynote speaker along with three industry related speakers or sessions is well received. In addition, we will continue to offer a morning event for spouses on Sunday and a couple of options for activities in the afternoon. We are looking at ways to improve the event app and hope to have those improvements implemented by the Fall Meeting in October.

The most positive feedback we receive after every meeting is about the networking opportunities, and the Spring Meeting was no exception. We will continue to make them a feature. All of our speakers received good marks, but Fredi Lajvardi and Lisa Ryan were the favorites. The most popular afternoon activity was the once-in-a-lifetime white water rafting trip.

Thanks to all of you who attended the meeting!

Mike Stokey, Programs Committee Chairman
Allied Machine & Engineering Corp.

To view recent Institute programs, please visit the USCTI website or click [here](#). To view speaker presentations, please log into the [USCTI Secure Virtual Office](#).

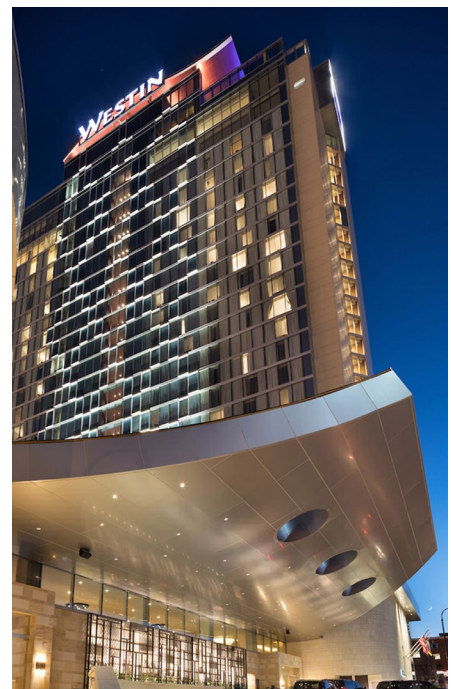
FALL 2018 MEETING PREVIEW

We are really excited about the upcoming Fall Meeting scheduled for October 13-15 at the Westin in Nashville, Tenn. Not only do we have three excellent speakers lined up for you, but we will also be bringing back our round table discussions. This format allows you to submit topics that are creating challenges for your business and get input from others who may have found a solution to those challenges. We are also planning some exciting afternoon activities, including tours of famous local attractions and evening events that will have you dancing in your cowboy boots that you won't want to miss!

We appreciate the feedback we receive from the post-meeting surveys, and because of your feedback, we are looking to expand the networking opportunities for the opening and closing receptions! We are also considering enhancements to the mobile app to aid in the experience.

Please remember, the World Cutting Tool Conference and Spring USCTI Institute Meeting will be held in the beautiful resort town of Tegernsee, Bavaria, Germany, from June 26-29, 2019.

We look forward to seeing you all this October in Nashville!



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DOJ/FTC Focusing on Wage-Fixing and No-Poach Arrangements for Antitrust Violations

Human capital (i.e., skilled labor) has become increasingly vital to the success of business enterprises. But such invaluable capital can also be extremely difficult to attract and retain, as corporate loyalty has become less of a two-way street and the gold ring of opportunity swings by. Most companies have witnessed critical employees jump ship to join competitors or newly trained underestudies put their expensive training to work for rivals who offer not only better and fairer financial rewards, but often a more comfortable and civilized safe haven. Where permitted by state law, agreements between employers and employees can mitigate these inevitably disruptive and sometimes irreparably damaging contingencies. But some companies, finding such “vertical” non-compete agreements ineffective or inadequate, have resorted to “horizontal” arrangements with competitors to essentially cobble opportunistic employees. Aply labeled “no-poach” and “wage-fixing” agreements, the most perilous of these agreements either (a) inhibit companies from recruiting or hiring employees from competitors or (b) collectively set employee wages and terms of employment. Although they are tempting additions or alternatives to sometimes problematic non-compete agreements, these collusive arrangements may soon carry federal criminal penalties.

On January 19, 2018, speaking at a conference hosted by the Antitrust Research Foundation, newly appointed Assistant Attorney General for the Antitrust Division Makan Delrahim declared that the U.S. Department of Justice (DOJ) will be pursuing criminal charges for no-poach and wage-fixing arrangements. Delrahim commented, “We have been very active in [investigating no-poach and wage-fixing agreements]. I think over the coming couple of months, you will see some announcements. And to be honest with you, I’ve been shocked how many of these there are. But they’re real. . . . [W]e are treating those . . . in certain circumstances as criminal.” So how do the antitrust laws apply to these arrangements, and what can human resources professionals expect?

Labor Markets and the Antitrust Laws

Just as the Sherman and Clayton Antitrust Acts regulate anticompetitive conduct in product and service markets, they also apply to anticompetitive conduct in labor markets. As early as 1926, the Supreme Court read § 1 of the Sherman Act to prohibit agreements to collectively set wages. In *Anderson v. Shipowners’ Association of Pacific Coast*, the Court struck down an agreement implemented by membership in “shipowners associations” to fix prices among “substantially all” the owners of merchant vessels “engaged in . . . commerce among the ports of the Pacific Coast and with foreign countries.” Justice Sutherland, writing for the Court, held: “The associations fix the wages which shall be paid the seamen. . . . If the restraint . . . had related to the carriage of goods in interstate and foreign commerce . . . the unlawful restraint would be clear. But ships and those who operate them are instrumentalities of commerce . . . no less than cargoes.”

Since the *Anderson* case, courts have refined the framework for analyzing no-poach and wage-fixing cases. They come in two flavors: naked restraints and ancillary restraints. Naked restraints are separate from or not reasonably necessary to a larger legitimate collaboration between employers. Ancillary restraints, on the other hand, are restrictions that are related to and reasonably necessary for a legitimate, procompetitive collaboration between employers. For example, an agreement not to recruit employees for a limited period after the sale of a subsidiary would be an ancillary restraint. The DOJ’s criminal enforcement initiative appears to focus on naked, not ancillary, restraints.

Naked Restraints: Wage Fixing

In 2007, the DOJ filed a civil complaint against a healthcare association that operated a nursing registry for conspiring to fix nurse wages. While the association had been originally established to monitor the quality of temporary nursing services, the DOJ alleged that the association went a bridge too far and used the registry to impose a uniform wage structure on participating staffing agencies. The association purportedly set wages by soliciting desired rate schedules from its member hospitals and averaging them to formulate a standard schedule. To ensure participation, member hospitals were required to use the registry whenever possible. Any hospital that purchased less than 50% of its temporary nursing requirements through the registry would be expelled from the association. The case was ultimately settled when the parties signed a consent decree (a) requiring the association’s member hospitals to individually negotiate nursing rates and (b) prohibiting the association from mandating use of the registry. The consent decree also required the association to establish an antitrust compliance office and annually file an antitrust compliance report for 10 years from the date of execution of the consent decree. Further, it allowed for DOJ compliance inspections and interviews with the “officers, employees, agents, or other representatives [of the association]” upon written request.

In addition to such explicit wage-fixing agreements, the DOJ and FTC have brought civil enforcement actions against companies for sharing competitively sensitive employment information. In 1994, the DOJ filed an antitrust case against a professional association of HR directors, a trade association of hospitals, and a number of member hospitals under § 1 of the Sherman Act for sharing employee compensation information about acute-care registered nurses. Using the professional and trade associations as conduits, the hospitals purportedly exchanged nonpublic, current, and prospective information about nursing budgets, entry-level RN wages, and raise schedules in an attempt to counteract rising wages resulting from a labor shortage. Each hospital member purportedly used that information to set entry-level RN wages and to schedule raises. The parties settled by entering a consent decree with DOJ oversight prohibiting the sharing of compensation information except when (a) collected by a third party, (b) historic or current (not prospective) in nature, (c) limited to average compensation, and (d) aggregated to prevent identification of its origin. The decree also required that no single hospital’s data comprise more than 25% of the aggregate data.

Naked Restraints: No-Poach Agreements

In 2010 and again in 2012, the DOJ filed civil complaints against technology companies for no-poach agreements. In the 2010 case, two film studios allegedly agreed not to “cold call” each other’s digital animators or to make counteroffers when the other studio made an offer to a candidate. Similarly, in the 2012 case, executives of an online retailer allegedly verbally agreed with executives of a software developer not to proactively recruit each other’s computer engineers and scientists, despite internal correspondence purportedly indicating the companies were desperate to fill positions and identifying the other party to the agreement as having the most competent candidates. The DOJ filed Sherman Act § 1 claims against the parties to both agreements. The cases were settled when the parties entered five-year consent decrees prohibiting further such agreements, requiring the companies to establish internal compliance programs with annual certification requirements, and allowing for DOJ inspections and interviews upon request.

Ancillary Restraints

Although there are potentially numerous types of ancillary restraints, a 2001 group boycott case decided by the Third Circuit provides an example of an ancillary restraint and demonstrates why they are unlikely to face criminal prosecution as new per se antitrust violations. In that case, a parent wireless services provider company agreed to sell its subsidiary telecommunications equipment manufacturer. As a part of the spinoff, the parent company agreed not to hire any employees of the subsidiary for eight months after the sale. The agreement was purportedly necessary to make the sale viable because “one of [the subsidiary’s] most marketable assets was its skilled employees.” Applying the rule of reason to determine whether the hiring restraint was reasonable, the Third Circuit noted “covenants not to compete executed upon the sale of a business to a third party are generally not recognized as antitrust violations” so long as they “are reasonable in scope.” Because the agreement’s “primary purpose . . . was to ensure the successful sale . . . which required workforce continuity,” the Third Circuit held the agreement was reasonable and dismissed the antitrust claim.

Down the Winding Road

Delrahim’s comments to the Antitrust Research Foundation are noteworthy because they signal a continuation by the Trump Administration of an Obama-era criminal enforcement policy targeting anticompetitive employment agreements. In 2016, the DOJ and FTC jointly issued “guidance for human resource professionals” that warned HR professionals that the DOJ could, in its discretion, file criminal charges for no-poach and wage-fixing agreements: “Going forward, the DOJ intends to proceed criminally against naked wage-fixing or no-poaching agreements. These types of agreements eliminate competition in the same irredeemable way as agreements to fix product prices or allocate customers, which have traditionally been criminally investigated and prosecuted as hardcore cartel conduct.”

Until now it was unclear whether the Trump-era DOJ would adopt the Obama-era policy embodied in the 2016 guidance. Delrahim has now clarified that no-poach and wage-fixing collusive agreements will remain a top priority at the Trump DOJ and will be prosecuted under both the civil and criminal antitrust laws. Further, Delrahim apparently intends to treat the Obama-era’s 2016 joint agency guidance as a safe harbor. In Delrahim’s words: “If [wage-fixing and no-poach] activity has not been stopped or continues from the time the [2016 guidance was issued], we will treat that as criminal.” Stay tuned.

Special Thanks To Our 2018 USCTI Meeting Sponsors



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