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October 2, 2020

Ms. Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E St. SW
Washington, DC 20436

Re: TPA-105-008, Investigation on the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update

Dear Ms. Barton:

In response to the Federal Register notice (85 FR 36615) published on June 17, 2020, I am writing to submit written comments from the National Association of Manufacturers as the U.S. International Trade Commission undertakes its review of the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Ken Monahan

Comments of the National Association of Manufacturers for the U.S. International Trade Commission Review of the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update

Document Number: 2020-12995

October 2, 2020

The National Association of Manufacturers welcomes the opportunity to provide input to aid in the U.S. International Trade Commission review of the economic impact of trade agreements implemented under trade authorities procedures, as detailed in the *Federal Register* notice launching this investigation.[1]

The NAM is the largest manufacturing association in the United States, representing 14,000 businesses of all sizes in every industrial sector and in all 50 states. More than 90 percent of NAM members are small and medium-sized companies. Manufacturing employs more than 12 million women and men across the United States, accounting for two-thirds of private sector research and development and contributing $2.36 trillion to the U.S. economy annually.

Manufacturers of all sizes must compete in a global economy by selling not only to U.S. customers but also to the billions of consumers outside the United States, supporting U.S. jobs and production. The expansion of manufacturers' global reach through a more open and fairer global trading environment has been pivotal to improving U.S. competitiveness and expanding U.S. manufacturing production to record levels, enabling businesses of all sizes to raise wages and create more high-skilled jobs over the past quarter century. It has also helped propel manufacturing innovation across America, which saves lives, protects the environment and improves the quality of life for millions of Americans.

In order to compete in the global economy and meet the demand for advanced and high-quality consumer and durable manufactured goods, manufacturers in the United States need a more open, predictable, transparent and level playing field. Manufacturers believe that these objectives can best be achieved by pursuing, utilizing and enforcing a robust and revitalized rules-based international trading system that enhances the role of free market forces, promotes respect for the rule of law, raises standards and lowers costs, barriers and market-distorting government intervention.

It is critical that the U.S. government lead in helping to create those rules and to open commercial opportunities in critical markets through the negotiation of comprehensive trade agreements. Trade negotiations that are conducted multilaterally in the World Trade Organization provide one set of rules that are generally applicable to all trade flows, preventing distortions that may arise from more limited forms of liberalization. Small- and medium-sized manufacturers particularly benefit when they can operate under one set of global rules. Bilateral, regional and sector-specific trade agreements also play a critical role in opening markets and improving the competitiveness of manufacturers in the United States.

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[1] Notice of Investigation and Scheduling of a Public Hearing on the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update; Notice of Institution of Investigation and Schedule of a Public Hearing, 85 Fed. Reg. 36,615 (June 17, 2020), accessed at https://www.regulations.gov/contentStreamer?documentId=ITC-2020-0215-0001&contentType=pdf.

Critical Elements of Trade Agreements for Manufacturers

Manufacturers seek comprehensive trade agreements that promote certainty in the global marketplace, open markets for U.S. manufactured goods exports and imports, eliminate unfair barriers and set fairer, stronger and fully enforceable rules.

U.S. Trade Agreement Negotiating Priorities for Manufacturers

Manufacturers prefer comprehensive multilateral, regional and bilateral agreements that address tariff and non-tariff barriers, raise standards and ensure full enforceability through neutral dispute settlement systems. U.S. trade agreements should:

- Reduce tariff and non-tariff barriers to U.S. exports, expand bilateral commercial relations and require adherence to World Trade Organization-plus trade disciplines and trade rules, subject to strong enforcement;
- Establish a strong set of rules that liberalize trade and investment, reflect the realities of modern supply chains, address unchecked trade-distorting practices (including by state-owned and state-influenced enterprises) and protect U.S. property, including intellectual property;
- Advance strong intellectual property rules that set high global standards for intellectual property protection, promote regulatory policies in areas such as pricing and reimbursement that reflect that the value of innovation and advance market access for innovative manufacturing industries;
- Include commitments to liberalize cross-border data flows of information and access to digital products and services while prohibiting related localization requirements, including but not limited to requirements to force the use of local data information infrastructure and storage;
- Prohibit import licensing conditioned on performance requirements or contractual relationships between exporters and domestic distributors—and also require that parties to the agreements notify each other of their import licensing procedures, including any conditions and eligibility requirements, and regularly update these notifications;
- Prevent and reverse the proliferation of unique regulatory and technical standards as trade barriers, including through the inclusion of provisions that promote the adoption of international standards that meet WTO Technical Barriers to Trade standards, market-determined conformity assessment and certification requirements and full national treatment for manufacturers, standards developers and testing and certification bodies in the United States;
- Include sanitary and phytosanitary provisions that promote science-based regulatory practices and transparent, timely and risk-based inspection procedures, subject to full dispute settlement procedures; and
- Include obligations and other disciplines against subsidies or restrictions that have the effect of subsidizing local production at the expense of imports, including non-security-related export restrictions, such as export taxes, and eliminate agricultural export subsidies on goods sold.

Criticality of Trade Agreement Enforcement

Trade agreements negotiated by the United States should include binding dispute settlement procedures and effective compliance with all provisions of such agreements. Signing trade agreements, however, is only the first step in obtaining more open markets. The United States should actively negotiate robust enforcement mechanisms to address problematic policies that may arise after an agreement is made. It should also ensure robust implementation of agreements with follow-up, monitoring, enforcement and periodic review to obtain full benefits.

The United States should ensure that other countries comply with their obligations in trade agreements in the manner and on the timetable set forth in those agreements. This includes making sure that countries are in compliance with all required provisions before the agreement enters into force and that countries meet phased-in obligations. To address emerging issues, manufacturers support ongoing and regular reviews of individual countries' compliance with the agreements.

Manufacturers favor aggressive U.S. government use of trade agreement dispute settlement procedures, in consultation with industry, to obtain improved foreign compliance with bilateral and regional obligations and eliminate unfair trade practices.

Where negotiated, manufacturers support the continued inclusion of robust investor-state dispute settlement systems in U.S. trade agreements and the full implementation of robust ISDS systems to guarantee that investors across sectors have the ability to ensure full compliance and prevent arbitrary, unfair and expropriatory treatment of manufacturers by foreign governments.

Furthermore, manufacturers support improvements in dispute settlement systems under trade agreements to ensure that all reviews and decisions are conducted in a timely manner, recognizing that prompt dispute settlement procedures are needed, particularly with respect to perishable goods.

Full and Timely Enforcement of Domestic Trade Rules is Essential

Manufacturers support the effective domestic enforcement of U.S. trade remedy laws (antidumping, countervailing duty and safeguard laws) in a manner consistent with U.S. international obligations to counteract trade-distorting foreign practices on the part of both market and non-market economies, including circumvention of countervailing duty and antidumping orders. Manufacturers encourage the administration and Congress to work together to ensure the effectiveness and enforcement of U.S. trade laws and the overall competitiveness of the U.S. manufacturing economy.

As the United States negotiates and implements trade agreements, the effectiveness of U.S. trade laws must not be diminished.

Impact of Trade Agreements on Manufacturing in the United States

Trade agreements negotiated by the United States under trade authorities procedures have opened markets and set in place high standards, enabling manufacturers in the United States to participate more fully and compete successfully in the global economy.

WTO Agreements

The negotiation of the post-World War II General Agreement on Tariffs and Trade in 1947 and the Uruguay Round Agreements creating the WTO in 1995 set the baseline rules for most global trade, now covering 164 members. The Uruguay Round Agreements, implemented by the United States under Trade Promotion Authority in 1994, expanded the basic rules of the global trading system and increased the coverage of those rules.

Manufacturers in the United States have long supported the WTO as an engine for fostering global trade liberalization and improving global rules. The WTO has promoted the expansion of global trade and generally improved the competitiveness of manufacturers in the United States. The WTO has implemented numerous meaningful policies since it was established in 1995, from substantial reductions in global tariffs and trade barriers to the adoption and enforcement of stronger and fairer standards to meaningful dispute resolution mechanisms. With more than $35 billion in globally produced manufactured goods crossing borders every day, manufacturers in the United States depend more than any other sector of the U.S. economy on such a robust, open and rules-based global trading system.

A strong, functioning WTO and a modern global trading system are critical for the United States to push back on areas in which our trading partners are not complying with the letter and spirit of their WTO commitments, but the WTO has not kept pace with industry and technological developments or new and pernicious trade-distorting practices. It also has not updated its processes to address systemic issues that require improvement. A productive WTO revitalization and modernization agenda would do the following:

- **Deliver broad trade liberalization**, including through plurilateral and sectoral agreements, which the organization has been largely unable to do in more than 25 years;
- **Modernize the WTO rulebook** to address market-distorting behaviors, updating existing rules and adopting new disciplines in areas such as digital trade, state-led competition, technical barriers to trade and distortive subsidies;
- **Strengthen enforcement of the WTO rulebook**, preventing countries from ignoring core WTO disciplines and flouting core WTO requirements such as trade barrier notifications with seeming impunity; and
- **Improve WTO enforcement tools, particularly the Appellate Body system** to address longstanding concerns with the WTO's dispute settlement system.

Manufacturers in the United States are committed to being allies in that modernization process. Manufacturers' continued growth and success in the United States depend upon fair international trade rules, and strong and quick action is required by policymakers to embrace concrete solutions that will reform, revitalize and modernize the critical WTO system.

Regional and Bilateral Trade Agreements
While global agreements with WTO partners set baseline rules that limit some barriers, U.S. regional and bilateral trade agreements provide much deeper and stronger commitments by our 20 trade agreement partners to eliminate barriers and level the playing field. By eliminating barriers overseas and ensuring our manufacturers and their products are treated fairly, U.S. regional and bilateral trade agreements have propelled substantial quantities of manufacturing exports because manufacturers in the United States succeed when markets are open. For example:

- U.S. manufactured goods exports to Canada and Mexico have more than doubled since the North American Free Trade Agreement entered into force in 1994, from $200 billion in 1993 to $486 billion in 2019;
- U.S. manufactured goods exports to Chile have grown five-fold since the U.S.–Chile Free Trade Agreement entered into force in 2004, from $2.5 billion in 2003 to $13 billion in 2019;
- U.S. manufactured goods exports to Australia increased 78% since the U.S.–Australia Free Trade Agreement entered into force in 2005, from $13 billion in 2004 to $23 billion in 2019;
- U.S. manufactured goods exports to Central America and the Dominican Republic grew from $15 billion in 2005 to $21 billion in three years, reaching $26 billion in 2019; and

- U.S. manufactured exports to Peru increased 43% since the U.S.–Peru Trade Promotion Agreement entered into force in 2009, from $5.6 billion in 2008 to nearly $9 billion in 2014.

New Comprehensive Trade Agreements Are Needed to Combat Unfair Barriers Overseas

Manufacturers face substantial barriers in overseas markets, particularly in those countries with which the United States has not negotiated regional or bilateral trade agreements. Tariff and nontariff barriers cost jobs, growth and economic opportunities for manufacturers and other U.S. industries. Manufacturers in the United States face not only traditional tariff and non-tariff barriers, but also serious and growing challenges of forced localization, intellectual property theft and export bans. They also face higher effective barriers as other countries negotiate trade agreements from which manufacturers in the United States are excluded, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Comprehensive Economic and Trade Agreement between Canada and the European Union and the EU–Japan Economic Partnership Agreement.

Notably, manufacturers in the United States continue to face huge challenges in China, ranging from unfair import and export subsidies and industrial policies to intellectual property theft and market-distorting policies that shield Chinese companies. Manufacturers urge the U.S. government to address the challenges in the U.S.–China economic relationship, including through:

- Full implementation of the substantive commitments in areas of the U.S.–China “phase one” trade deal such as intellectual property and market access; and
- Rapid resumption of negotiations on a robust, comprehensive and enforceable trade agreement with China that addresses the wide range of problematic trade barriers that remain.

Other major emerging economies, such as Brazil and India, maintain overall tariffs three or four times higher than U.S. tariffs and have the ability to raise tariffs even higher whenever they choose. Beyond tariffs, there are a wide range of discriminatory, unfair and distortive barriers that foreign governments put in place to limit access to their markets.

The Office of the United States Trade Representative releases annual reports on the wide variety of barriers and foreign distortions, including a National Trade Estimate Report on global trade barriers, a Special 301 Report on intellectual property rights protection and enforcement overseas and more specific reports on technical barriers to trade in targeted markets. The NAM annually provides an overview of the major barriers our companies face overseas and a wide range of unfair import policies, investment barriers, forced localization barriers, export restrictions and other challenges in the global economy.[2]

Given these continued barriers and despite the trade agreements already negotiated, manufacturers in the United States are looking for new and stronger regional and bilateral trade agreements and sectoral and multilateral agreements that create a more level playing field overseas. Manufacturers are strongly supportive of U.S. trade agreement negotiations with the United Kingdom, Kenya and Japan, as well as the e-commerce negotiations at the WTO, and manufacturers are reviewing other potential trade agreements that would open markets and create greater opportunities for growing manufacturing in the United States.

[2] NAM, Comments on 2020 National Trade Estimate Report on Foreign Trade Barriers (Oct. 31, 2019), accessed at http://documents.nam.org/IEA/NAM_NTE_Comments_2019_Final.pdf.

Conclusion

As manufacturers in the United States lead the nation’s economic recovery and renewal, it is critical that the United States negotiate trade agreements that comprehensively open markets and set in place high standards. Future growth opportunities for the U.S. manufacturing sector will rest in large part on the ability to increase overseas sales. Manufacturers support the continued negotiation of comprehensive, high standard and market-opening trade agreements to advance the goals of our industry to promote free and fair trade and ensure sustained economic growth.