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Vice President
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Mr. John Liuzzi
Director, Office Trade Negotiations
and Compliance
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Ms. Dawn Shackleford
Assistant USTR for WTO and
Multilateral Affairs
Office of the United States Trade Representative
600 17th St. NW
Washington, D.C. 20508

Re: ITA-2017-0006; Comments on Costs and Benefits to U.S. Industry of U.S. International Government Procurement Obligations

Dear Mr. Liuzzi and Ms. Shackleford:

In accordance with the *Federal Register* notice regarding the above-captioned docket, the National Association of Manufacturers submits these comments to aid in the preparation of the administration's development of its report on the costs and benefits to U.S. industry of U.S. international procurement obligations, as mandated by the President's Executive Order on Buy American and Hire American of April 18, 2017.

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

Respectfully,

Linda Dempsey

Comments of the National Association of Manufacturers Regarding
Costs and Benefits to U.S. Industry of U.S. International Government Procurement Administration
(Docket ITA-2017-0006)
September 18, 2017

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing over 14,000 manufacturers small and large in every industrial sector and in all 50 states. More than 90 percent of the NAM's membership is made up of small-and medium-sized companies. Manufacturing employs more than 12 million women and men across the country, contributing more than $2.17 trillion to the U.S. economy annually. If U.S. manufacturing were a separate country, it would be the ninth-largest economy in the world.

The NAM welcomes the opportunity to provide input on the importance to manufacturers of U.S. international government procurement obligations to aid in the preparation of the administration's report to the President on Buy American and Hire American (April 18, 2017). NAM members are large participants in both U.S. and foreign government procurements.

Government procurement represents a significant share of the gross domestic product (GDP) of most economies around the world. The World Trade Organization (WTO) estimates on average that countries spend about 10 to 15 percent of GDP on government procurements.

In a number of countries, particularly the United States, access to government procurements is subject to multiple restrictions that restrict access of companies of that country producing goods and services in that country. Given the much larger size of and growth in the global market, manufacturers in the United States have long sought to increase their ability to compete on a fair and equal basis in foreign government procurements.

I. Coverage of U.S. Government Procurements under International Agreements

In 1981, the United States joined 27 other countries to bring into force the 1981 Code on Government Procurement (1981 Code), as part of the Tokyo round of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). The 1981 Code represented the first international agreement to open government procurement by the members that signed it. The 1981 Code required non-discriminatory procurements to be conducted by all signatories on a reciprocal basis with respect only to central government entities specifically identified by each party.

The 1981 Code was replaced by the WTO Agreement on Government Procurement (GPA), which was negotiated in parallel to Uruguay Round talks that culminated in the establishment of the WTO in 1994. The GPA entered into force in 1996 and was updated in 2014. In general, the GPA requires the United States and the 46 other WTO members to:

- *Provide non-discriminatory and most-favored nation (MFN) treatment* to the products, services and suppliers of the other parties for procurements by covered entities, above specified dollar thresholds, with exceptions permitted. Currently, only U.S. central-level

procurements over $191,000 for goods and services and $7,358,000 for construction services are covered. For covered U.S. states, only procurements over $522,000 for goods and services and $7,358,000 for constructions services are covered.

- *Cover central and sub-central entities*. The United States has identified federal government entities subject to the GPA requirements and 37 states have also accepted the GPA commitments, subject to a number of exceptions.
- *Adhere to transparent, fair tendering procedures*: The GPA requires parties to follow certain basic procedural requirements to guarantee full access, fairness and non-discriminatory treatment in bidding on government contracts, reflecting many of the procedural requirements already required under U.S. law.
- *Provide transparent access to procurement rules*, similar to U.S. legal requirements for U.S. procurements.

The United States has also negotiated reciprocal government agreements that include very similar requirements with 19 countries through free trade agreements (FTAs), including 15 countries that are not signatories to the GPA.[1]

In both the GPA and U.S. FTAs with reciprocal procurement chapters, the United States has maintained many of its existing exclusions to foreign procurement, including:

- Procurements that the U.S. Congress has set aside for small or minority-owned businesses through the Small Business Act of 1953 which cover about one-quarter of all federal U.S. procurements;
- State and local procurements that are subject to the Buy America Act, which requires the use of U.S.-produced iron, steel and manufactured goods in federally funded projects administered by the Federal Highway Administration, the Federal Transit Administration and the Federal Railroad Administration for the High-Speed Rail Program, and similar requirements under the Federal Aviation Administration; and
- The Berry Amendment, which imposes a 100 percent American origin requirement for Defense Department purchases of textiles, clothing, food, specialty metals and hand and measuring tools.

Indeed, the United States has waived only two domestic purchasing requirements in order to comply with the GPA and its FTA procurement obligations and only for specified agencies above certain thresholds.

II. Operation of International Government Procurement Agreements for U.S. Manufacturers

The NAM has heard from its members that the GPA and the government procurements chapters in FTAs, such as the North American Free Trade Agreement (NAFTA), have been highly beneficial in opening foreign procurement markets to U.S. manufacturers, helping to support U.S. production and good-paying jobs. In general, the United States has successfully been able to open the same types of foreign government agencies and entities for purchases of the same types of goods and services. The 61 foreign countries that have opened their

[1] These 15 additional countries are: Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Panama and Peru.

procurement to U.S. manufacturers and other suppliers have a combined GDP of more than $41 trillion. Based on typical estimates of the size of government procurement markets, these market openings create a market of $4 to $6.2 trillion, much bigger than annual U.S. government procurement, which was valued at approximately $488 billion in 2016 based on data from the Federal Procurement Data System.

U.S. companies both large and small, operating in a wide variety of sectors, report new sales and exports as a result of access to foreign procurement markets guaranteed by the GPA, NAFTA and other trade agreements, including procurements administered by foreign state-owned entities (SOEs). NAM members from manufacturers of water and wastewater and other infrastructure equipment, energy, medical devices, pharmaceuticals and chemicals to information and communications technology and transportation and capital equipment products have been able to use these agreements to gain access to foreign government procurements in ways that grow manufacturing production and U.S. exports that support good-paying jobs in the United States. These industries and their workers benefit directly from the access to foreign procurement markets, including the access to procurements by SOEs, which are oftentimes large consumers of energy, medical devices and pharmaceuticals, infrastructure equipment and other products and services on which industries in the United States seek to compete. For example, many hospitals overseas are run by the government or state-owned enterprises that conduct their purchases through procurements. Without these agreements, manufacturers in the United States of medical devices and medicines would lack the reciprocal access needed to be able to even compete for sales.

Manufacturers in the United States continue to seek:

- The expansion of the GPA to include additional WTO members (including but not limited to current GPA observer countries[2] and any other countries that have expressed an interest in negotiating government procurement chapters in FTAs); and
- Comparable reciprocal obligations in new FTAs, to provide manufacturers in the United States with even greater opportunities in additional foreign markets.

As well, a significant advantage of the United States being a party to government procurement agreements is the ability to work with foreign governments to promote and provide training on modern procurement practices. One particular issue of high importance to manufacturers in the United States is that foreign countries should be using best value and lifecycle methodologies in evaluating bids than the first-cost only methodology. The lifecycle methodology, which agencies such as the U.S. Trade and Development Agency promotes, encourages the adoption of foreign procurement policies and decisions that take into account all relevant costs of goods and services over their entire lifecycle. Procurement based on the total cost of ownership improves procurement outcomes that provide the best quality, value and overall savings to the government procurer, while also ensuring fair opportunities for manufacturers in the United States that are unfairly discriminated against when countries focus only on the initial cost of a product.[3]

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[2] WTO members with observer status in the GPA Committee include 24 countries with which the United States does not currently have an FTA: Albania, Argentina, Bahrain, Cameroon, China, Georgia, India, Indonesia, Kazakhstan, Kyrgyz Republic, Macedonia, Malaysia, Mongolia, Oman, Panama, Pakistan, Russia, Saudi Arabia, Seychelles, Sri Lanka, Tajikistan, Thailand, Turkey and Vietnam.

[3] The U.S. Trade and Development Agency runs the Global Procurement Initiative (GPI), which is dedicated to assisting public officials in emerging economies to better understand the total cost of

Manufacturers in the United States are also more competitive with FTAs with procurement chapters and other provisions, such as obligations to eliminate border tariffs and improve acceptance and recognition of U.S. standards. For example, manufacturers in the United States face tariffs and standards and regulatory barriers in GPA members in Europe and elsewhere where the United States does not have FTAs, making exports from the United States less competitive.

Comprehensive data are not available as government procurement reporting by foreign countries is more limited than in other areas (such as trade statistics or wage and employment data) as recently explained by the U.S. Government Accountability Office (GAO).[4] In addition to reviewing some of the major data limitations, the GAO also proceeded to try to analyze the comparability of U.S. and foreign procurement openings. Its findings regarding comparability are, however, flawed given that the GAO did not fully compare the procurement actually covered by the parties on the same basis. It included in its analysis, for example, most U.S. state procurement (overstating as well the extent to which such procurement is open to foreign suppliers), while not having comparable data by which to compare with U.S. trading partners. The analysis also mistakenly focused on the size individual procurement openings, as opposed to whether the parties were offering comparable access to the same types of entities, goods and services.[5]

Meanwhile, data from the Federal Procurement Data System[6] show that foreign entities have been only awarded a small portion of U.S. federal procurements, reflecting both the competitiveness of U.S. industry and significant exceptions that the United States retained as part of its international commitments. Over the last five years, U.S. government procurements totaled nearly $2.35 trillion on more than 85 million contracts, of which about three percent of the value of the total contracts and less than one percent of the contracts were won by foreign industries, with most contracts won by U.S.-based affiliates of foreign countries. Of that small number of contracts won by foreign suppliers, nearly 90 percent of the procurements were Department of Defense contracts that were won and fulfilled by the U.S. affiliates of British or other European firms.

Conclusion

The opening of foreign procurement markets through reciprocal international agreements, such as the GPA, NAFTA and other FTAs, has provided important benefits to U.S. manufacturers, enabling them to increase production and exports and support and grow good-paying jobs.

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ownership of goods and services for infrastructure projects. For more information on the GPI, see here: https://www.ustda.gov/program/global-procurement-initiative-0.

[4] U.S. Government Accountability Office, **United States Reported Opening More Opportunities to Foreign Firms than Other Countries, but Better Data Are Needed** (Feb. 2017), accessed at https://www.gao.gov/products/GAO-17-168.

[5] Further deficiencies in the GAO's analysis include that "GAO also pointed out deficiencies in the reporting of other GPA parties, likely leading to significant understatements in their reported procurement. For example, Japan does not report any procurement statistics for its Other Entities, even though it covers 114 entities in that category, in comparison to the 10 entities that the U.S. covers. Moreover, a number of Japan's Other Entities have functions that are comparable to agencies that the U.S. includes in its federal entity list. Another deficiency is Canada's omission of any procurement by its provinces and Other Entities." Jean Grier, **GAO Report: Valid Criticisms, Questionable Comparison** (Feb. 2017), accessed at http://trade.djaghe.com/?p=3820.

[6] Federal Procurement Data System accessed at https://www.fpds.gov/fpdsng_cms/index.php/en/.

Those agreements should remain in force and similar agreements should cover other countries to expand the global opportunities for U.S. manufacturers to compete in the global economy. As well, combining such reciprocal procurement opportunities with other market-opening provisions of FTAs, including duty elimination and the acceptance and recognition of U.S. standards, will improve the competitiveness of U.S. manufacturing.