NATIONAL ASSOCIATION OF
Manufacturers

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July 31, 2017

Mr. Edward Gresser
Chair of the Trade Policy Staff Committee
United States Trade Representative
600 17th St., NW
Washington, D.C. 20508

Re: USTR-2017-0010; Comments on Administration Review and Report on Trade Agreement Violations and Abuses

Dear Mr. Gresser:

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 review and report on trade agreement violations and abuses, as mandated by Executive Order 13796 of April 29, 2017.

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

Respectfully,

Linda Dempsey

Comments of the National Association of Manufacturers Regarding Administration Review and Report on Trade Agreement Violations and Abuses (Docket USTR 2017-0010)
July 31, 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. 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 to aid in the preparation of the administration's review and report on trade agreement violations and abuses required by Executive Order 13796 (April 29, 2017). The NAM has laid out detailed policy blueprints to provide the administration and Congress with roadmaps to make manufacturing in America stronger through its *Competing to Win* series.[1] These blueprints seek to improve U.S. competitiveness across the economy through a focus on both domestic and international policies. The NAM's *Competing to Win: Trade in Focus* provides an important overview of NAM's priorities for a competitive international trade policy.[2]

This submission is divided into two major sections. The first section examines the operation and impacts on manufacturing in the United States of trade agreements administered by the World Trade Organization (WTO) as well as U.S. free trade agreements (FTAs), Bilateral Investment Treaties (BITs), and U.S. trade preference programs. The second section identifies trade violations and abuses by type of issue and country.

I. Operation and Impact of the WTO, FTAs, BITs and U.S. Preference Programs

A. Operation and Impact of the WTO

The WTO marked its 22nd anniversary on January 1, 2017, although its origins date back to 1947 with the creation of the General Agreement on Tariffs and Trade (GATT) under the Bretton Woods Agreement. The United States was instrumental in the creation of both the GATT and the WTO as a founding member. The United States broadly and the U.S. manufacturing sector in particular have benefitted enormously from the rules-based global trading system that the WTO now represents. Worldwide, the trade liberalization shaped by the GATT and the WTO has been a major engine of global economic growth, contributing directly to U.S. economic success and helping to lift hundreds of millions of people around the world out of poverty over the past six decades. Since the founding of the multilateral trading system and eight successful rounds of trade negotiations, the world economy has grown by more than six-fold and per-capita income worldwide has more than tripled.

[1] The NAM's *Competing to Win* blueprints can be accessed at http://www.nam.org/Data-and-Reports/Competing-to-Win/Competing-to-Win/.
[2] *Competing to Win: Trade in Focus (2016), accessed at* http://www.nam.org/Data-and-Reports/Competing-to-Win/Policy-White-Paper-Trade/.

From the GATT's initial membership of 23 countries in 1947, the WTO has now grown to 164 members, representing 98 percent of world trade. During that time, world trade in goods alone grew from $59 billion in 1947 to nearly $16 trillion in 2015,[3] with similarly strong growth in global GDP.

During that same period, the U.S. economy, standard of living, manufacturing output, exports and trade flows have all grown as direct beneficiaries of the more stable, predictable, pro-growth global economy fostered by the GATT and WTO. Since the establishment of the GATT and the WTO:

- The U.S. economy has expanded enormously, with an increase in U.S. real Gross Domestic Product (GDP) from $1.9 trillion in 1947 to $9.9 trillion in 1994 to $16.6 trillion in 2016 (in 2009 dollars).[4]
- The U.S. standard of living has expanded as well with the growth of per capita real GDP more than doubling from $13,456 in 1947 to $37,597 in 1994, and increasing more than 37 percent more from 1994 to an estimated $51,523 in 2016 (in 2009 dollars).[5]
- U.S. manufacturing output grew more than 16-fold from $74.4 billion in 1947 to $1.22 trillion in 1994, and expanded by more than 78 percent from 1994 to a record output of $2.18 trillion in 2016.[6]
- U.S. goods exports are grew more than 18-fold from $21.6 billion in 1947 to $399 billion in 1994, and more than tripled from 1994 to nearly $1.5 trillion in 2016.[7]
- U.S. manufacturing earnings for production and nonsupervisory workers have grown from $12.03 per hour on average in 1994 to $20.44 in 2016.[8]

The GATT and the WTO have allowed manufacturers in the United States to reach new markets, break down market-distorting barriers, and substantially increase exports to the rest of the world – contributing directly to its manufacturing economy. Notably, the United States today exports more than half of its total manufacturing output, supporting about half – or six million – U.S. manufacturing jobs and contributing directly to the success of local communities. On average, manufacturing jobs pay $81,289 annually, including pay and benefits, higher than the average wages of $63,830 in all nonfarm industries.[9] Jobs associated with exports typically pay more than non-export related jobs, including an 18 percent premium for export-related manufacturing jobs.[10]

The WTO has not just benefited the United States through the establishment of broad, stable rules for trade, but as a platform to push for increasingly more open markets in key sectors. The Uruguay Round Agreements resulted in the reduction of overall average industrial goods tariffs from 9.9 to 6.5 percent, with developed countries reducing tariffs from 6.2 percent to 3.7

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[3] **Source:** WTO, **World Trade Statistical Review 2016**, Table A4 (2016).
[4] **Source:** Bureau of Economic Analysis
[5] Id.
[6] **Source:** Statistical Abstract of the United States (1950); Bureau of Economic Analysis
[7] **Source:** WTO, **World Trade Statistical Review 2016**, Table A4 (2016).
[8] **Source:** Bureau of Labor Statistics
[9] National Association of Manufacturers, Top 20 Facts about Manufacturing, compiled from the Bureau of Economic Analysis and Bureau of Labor Statistics, accessed at http://www.nam.org/Newsroom/Facts-About-Manufacturing/.
[10] D. Riker, "Do Jobs in Export Industries Still Pay More? And if so, Why?" U.S. Department of Commerce (July 2010), accessed at http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003208.pdf

percent, and developing countries reducing tariffs from 8.6 percent to 6.0 percent.[11] Successor WTO agreements on information technology, telecommunications, financial services and trade facilitation have contributed even more by further reducing barriers faced by U.S. exporters. As part of the creation of the WTO, the United States joined the Agreement on Government Procurement (GPA), which has been highly beneficial in opening foreign procurement markets to manufacturers in the United States, helping to grow U.S. manufacturing and jobs. Meanwhile, data from the Federal Procurement Data System shows that only two percent of U.S. procurements went to foreign industries, of which most were performed by U.S.-based affiliates of foreign countries. Sector specific agreements on telecommunications, information technology and financial services lowered other countries' barriers in sectors where the United States is highly competitive, creating new opportunities for U.S. manufacturing and other industries and their workers. The recently completed Trade Facilitation Agreement (TFA) is already reducing red-tape and corruption at borders and requiring U.S.-style transparency, all of which are particularly important for small manufacturers. According to a 2015 study, full implementation of the TFA will cut trade costs by an average of 14.3 percent. The TFA will reduce the time to import goods by more than a day and a half (a reduction of 47 percent of the current average) and reduce the time to export by almost two days (a reduction of 91 percent). Overall, the TFA also has the potential to increase global merchandise exports by nearly $1 trillion.[12]

Manufacturers in the United States have benefitted extensively from the core rules of the WTO that have made substantial progress in creating a more level playing field overseas. These rules have helped to fuel the substantial growth in U.S. manufactured production and exports since 1994 as summarized above.

U.S. imports of manufactured goods have also substantially increased in recent decades, reaching $1.913 trillion in 2016 – though that figure represents a drop from its peak of $1.946 trillion in 2015. U.S. imports of manufactured goods have multiple impacts on the U.S economy and its industries, workers and consumers. In some cases, imports compete directly with manufacturers in the United States, just as U.S. exports compete with manufacturing overseas. Manufacturers in the United States have long supported open markets at home and around the world that allow all players to compete fairly on a level playing field, which helps drive innovation, productivity and stronger manufacturing overall.

In other instances, U.S. manufactured goods imports can provide overall benefits for manufacturers and the economy, by providing necessary inputs to manufacturing processes to boost competitiveness. For example, some imports represent products that are not available or manufactured in the United States. Congress recognized the importance of these imports in the enactment of the American Manufacturing Competitiveness Act of 2016 that provides a process to eliminate for three years U.S. tariffs on imports of products, either finished goods or inputs, not produced or available in the United States. The importation of these non-available raw materials and inputs enables manufacturers in the United States to create high-paying U.S. jobs and produce high-value finished manufactured goods for sale across America and to markets overseas. The NAM opposes government policies that unfairly limit the availability or raise the cost of necessary manufacturing inputs.

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[11] WTO, **Developing Countries and the Uruguay Round: An Overview** (November 1994), accessed at https://docs.wto.org/gattdocs/q/GG/COMTD/W512.PDF.

[12] WTO, **World Trade Report 2015: Speeding Up Trade: Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement** (2015), accessed at https://www.wto.org/english/res_e/publications_e/wtr15_e.htm.

Unfortunately, some import competition is fueled by foreign market-distorting and discriminatory trade practices that create unfair advantages for foreign manufacturing production at the expense of manufacturers, workers and communities in the United States. Under these circumstances, the NAM has long supported robust U.S. government action to address the underlying causes of the distortions through WTO compliance and enforcement of domestic trade rules, including antidumping and countervailing duty rules, and the stronger anti-evasion enforcement provisions that the NAM strongly supported as part of the 2016 Trade Facilitation and Trade Enforcement Act, consistent with international obligations.

Among the most important WTO commitments for manufacturers in the United States to improve U.S. competitiveness and level the playing field are those by WTO members:

- To limit import tariffs to negotiated levels. Successive rounds of negotiations from 1947 onward have dropped the average tariffs that U.S. goods exports face substantially. Overall average tariffs are estimated to have dropped from an estimated 22 percent to less than 5 percent, with major drops of tariff peaks of 100 percent or more in some sectors;[13]
- To respect and enforce basic intellectual property rights;
- Not to discriminate against foreign goods, helping to eliminate many non-tariff barriers that had been used to limit U.S. access to foreign markets;
- Not to impose technical barriers to trade that are otherwise oftentimes used to create technical standards that limit the ability to sell U.S. manufactured goods;
- Not to provide unfair subsidies and advantages to their local producers. and
- To pay penalties or be subjected to trade sanctions if they refuse to keep their promises.

The WTO has not only fostered pro-trade rules, but has created critical enforcement tools that the U.S. has used to halt unfair behavior by other countries. Since the creation of the WTO, successive U.S. administrations have sought to ensure other countries' full compliance through a variety of means, including ensuring full compliance before countries accede to the WTO, working with committees and other cooperative mechanisms to identify concerns and failures to comply. When cooperative activity fails, the WTO provides vitally important and binding dispute settlement rules. This WTO dispute settlement mechanism (DSM) has been used in more than 520 requests for consultations, as developed and developing countries seek to resolve their disputes. While the United States and other countries work extensively to promote full implementation of WTO commitments before taking cases to dispute settlement, the DSM is an important advancement ensuring that countries refusing to meet their commitments either come into compliance or pay a penalty.

Since the creation of the DSM in 1995, the United States has brought more than 100 claims, winning 75 of the 79 cases that have been concluded involving many of our major trading partners, from the European Union, Canada and Mexico to Brazil and India.[14] The United States

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[13] Chad P. Bown and Douglas A. Irwin, *The GATT's Starting Point: Tariff Levels circa 1947*, World Bank, April 2016, accessed at http://documents.worldbank.org/curated/en/935351468193733666/pdf/WPS7649.pdf; World Economic Forum, *The Global Enabling Trade Report 2016*, 2016, accessed at http://www3.weforum.org/docs/WEF_GETR_2016_report.pdf.

[14] "Winning" is defined as cases where the U.S. won on the core issue of a case or was otherwise able to successfully resolve the case. See Office of the United States Trade Representative, **Snapshot of WTO Cases Involving the United States** (Dec. 9, 2015), accessed at https://ustr.gov/sites/default/files/enforcement/spanshot/Snapshot%20Dec9%20fin.pdf.

has been among the world's most active users of WTO cases to defend its interests, bringing about 20 percent of the total requests for consultation made overall in the WTO.[15] These cases have an important impact on growing manufacturing in the United States. For example, the United States has used the WTO dispute settlement mechanism to:

- Stop China's discrimination against U.S. automobile parts;
- Eliminate China's imposition of additional tariffs on U.S. steel exports;
- End China's export bans on raw materials and rare earths;
- Address Argentina's onerous and discriminatory import licensing;
- Stop South Korea's imposition of non-scientific barriers on certain food products; and
- Improve the protection and enforcement of intellectual property rights of U.S. rights-holders in a wide number of countries, from Portugal, Pakistan and Sweden to Brazil, Greece and Denmark.

Though the United States has also been a defendant in more than 151 complaints, it has a much stronger track record than other major countries, winning 40 of the 97 cases. Notably, more than half of all the cases lost (at least 33) have dealt with one area of U.S. trade law: trade remedies and safeguards (including antidumping and countervailing duty procedures).[16] The NAM strongly supports U.S. trade remedy laws and robust use of domestic tools to tackle unfair behavior by other countries. However, losses in this one area of trade law, oftentimes on the same provisions several times, should not undermine the credibility or value of the broader WTO DSM nor negate the substantial benefit that the United States has derived from DSM cases. The NAM welcomes work to address concerns regarding this concentration and efforts to continue to improve the operation of the DSM.

While the WTO has provided enormous benefits for the U.S. economy, manufacturers and their workers, the NAM continues to seek more active U.S. efforts to ensure full compliance by WTO members of all rules, as well as negotiations to lower barriers further, improve market access and adopt stronger rules where the baseline WTO rules do not adequately address the wide variety and growing trade barriers and market-distorting trade practices that manufacturers face in overseas markets.

B. Operation and Impact of U.S. Free Trade Agreements

While global agreements with WTO partners set baseline rules that limit some barriers, the United States' 14 free trade agreements (FTAs)[17] with a total of 20 countries provide much deeper and stronger commitments by countries to level the playing field by eliminating market-distorting trade practices. FTAs require our partner countries to meet higher standards, including:

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[15] Id.; World Trade Organization, **Chronological List of Dispute Cases**, accessed at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm As USTR's snapshot explains, the United States has filed 103 requests for consultation.

[16] One particular antidumping provision, zeroing, alone has been subject to at least 11 of these cases.

[17] The United States has two multi-country FTAs: the North American Free Trade Agreement (NAFTA) with Canada and Mexico (entered into force in 1994), and the Central American-Dominican Republic-U.S. Free Trade Agreement with Costa Rica (2009), Dominican Republic (2007), El Salvador (2006), Guatemala (2006), Honduras (2006) and Nicaragua (2006). The United States also has 12 FTAs with: Australia (2005), Bahrain (2006), Chile (2004), Colombia (2012), Israel (1985), Jordan (2001), Morocco (2006), Oman (2009), Panama (2012), Peru (2009), Singapore (2004) and South Korea (2012).

- Elimination of all manufactured good import tariffs within a certain time (usually within 10 years, but most such tariffs are eliminated immediately);
- Greater access to many key sectors for goods, services and investment, which had previously been closed, including services such as distribution and express shipments that are critical for manufacturers to get products to foreign consumers;
- Elimination of a host of non-tariff barriers that had severely restrained imports from the United States;
- Increased standards for the protection of intellectual property and property invested overseas;
- Improved access to government procurement markets; and
- Agreeing to binding state-to-state and investor-state dispute settlement to ensure full implementation of FTA commitments.

Like basic WTO rules, FTAs include binding enforcement rules to guarantee that if each country's promises are not kept, the United States can impose appropriate penalties or trade sanctions.

By eliminating barriers overseas and ensuring our manufacturers and their products are treated fairly, FTAs 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 have more than tripled to Canada and Mexico since NAFTA entered into force in 1994, increasing from $129 billion in 1993 to $446 billion in 2016;
- U.S. manufactured goods exports to Chile have grown nearly five-fold since the U.S.–Chile Free Trade Agreement entered into force in 2004, from $2.5 billion in 2003 to $11.7 billion in 2016;
- U.S. manufactured goods exports to Australia increased by more than 50 percent since the U.S.–Australia Free Trade Agreement entered into force in 2005, from $13 billion in 2004 to $20.5 billion in 2016; and
- U.S. manufactured goods exports to Central America and the Dominican Republic grew from $14.6 billion in 2005 to $21.2 billion in three years, reaching $24.2 billion in 2016.[18]

Taken together, America's 20 existing trade agreement partners buy nearly half of total U.S. manufactured goods exports, even though they only account for six percent of the world's consumers and less than 10 percent of the global economy. Notably, manufacturing trade with U.S. FTAs partners is largely balanced.

Overall, manufacturing in the United States has grown as new trade agreements have been implemented and opened markets and set in place high-standard rules that improve the competitiveness of the U.S. manufacturing sector.

[18] In actual dollars. Data collected from U.S. Department of Commerce, Trade Stats Express and U.S. International Trade Commission.

C. Operation and Impact of U.S. BITs

U.S. investment overseas brings enormous benefits to the United States, helping to promote the continued growth of U.S. manufacturing and exports, the expansion of U.S. research and development and capital expenditure and higher-paying American jobs.

U.S. companies that invest overseas are some of America's:

- **Largest exporters**, exporting 47 percent of all U.S. manufactured goods sold overseas ($660 billion in 2014). Over 40 percent -- $269 billion worth -- of those manufactured exports are sent to that the overseas operations of American companies to help reach customers for U.S. products in overseas markets.
- **Biggest producers**, accounting for $1.363 trillion or nearly 65 percent of all U.S. private-sector value-added manufacturing output in 2014.
- **Most important innovators**, expending nearly $269 billion on research and development (R&D) in the United States in 2014. Of that, 68 percent (or $183 billion) was expended by manufacturers in the United States.
- **Largest investors** in capital expansion, expending $713.5 billion or 24 percent of all investment in new property, plants and capital equipment in the United States in 2014.
- **Highest paying employers**, paying U.S. manufacturing workers on average $96,030, or about 18 percent more than average U.S. manufacturing wages in 2014.[19]

U.S. investment abroad is primarily focused on reaching foreign customers that U.S. businesses would not otherwise be able to successfully or competitively serve. Foreign investment is often the best way, if not the only way, for American manufacturers and other businesses to compete to reach foreign consumers, allowing them to set up critical distribution networks, to tailor products to the local consumer, and to win sales over their foreign competitors. It should thus come as no surprise that sales of manufactured goods by foreign affiliates are nearly double the sales of manufactured goods by U.S. exporters. Year after year, foreign affiliate manufactured goods sales are almost entirely made to customers outside the United States – some 90 percent of total sales. Many of these sales would not otherwise be made by American companies or would not include substantial U.S. content. Consequently, foreign investment is a powerful tool for manufacturers in the United States to access growing foreign markets.

In some areas, such as energy, natural resource or foreign infrastructure development, foreign investment is the *primary* way American manufacturers can participate and grow opportunities, because that is where the resources and activities must take place. With those investments, manufacturers in the United States also see additional advantages as exports of U.S. manufactured goods are more often included in foreign infrastructure and natural resource development when American companies are invested in those foreign projects.

Investment overseas not only helps spur growth in the United States, but also helps open protected foreign markets and ensure fairer competition. In many foreign markets where investment is restricted, domestic firms are shielded from competition. As a result, those companies raise prices in their home markets without losing sales, and engage in predatory pricing overseas. When American companies are able to invest and sell more successfully in those markets the competition with U.S.-branded products eliminates protected market conditions that would otherwise enable foreign competitors to engage in such unfair trade practices in the United States and third countries.

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[19] Data collected from Bureau of Economic Analysis.

The core protections and enforcement tools that U.S. FTAs and BITs provide manufacturers doing business overseas are critical to ensure that manufacturers in the United States can compete in foreign markets and are protected from by the unfair actions of foreign governments. In the United States, the Takings, Due Process and Equal Protection clauses are a core part of the checks and balances of our system of government to prevent the government from mistreating domestic property owners. Those are precisely the types of provisions that are included in U.S. trade agreements and BITs. The protections afforded in such agreements require the host government (and its state-owned enterprises that exercise governmental authority) to treat investors of the other State in accordance with the following standards:

- **Non-Discrimination:** Accord treatment no less favorable than that accorded domestic or other foreign investors (so-called national treatment and most-favored-nation treatment).
- **Minimum Standard of Treatment:** Provide “fair and equitable treatment” and “full protection and security” as these obligations are understood under customary international law.
- **Expropriation:** Provide prompt, adequate and effective compensation in the event of a direct or indirect expropriation.
- **Transfers:** Permit investors to freely transfer capital into and out of the country.
- **Localization Requirements:** Refrain from imposing localization requirements, such as requirements to source inputs locally, transfer technology or export finished products. (This obligation pertains to ***all*** investors and investments, not just those of the other State.)
- **Nationality Requirements:** Refrain from requiring that senior management of the investor be nationals of the host country.

As a result, trade agreements level the playing field for American companies by providing their overseas investments the same basic protections that their foreign competitors already enjoy in the United States as a matter of domestic law: non-discriminatory treatment, fair and equitable treatment, and the right to receive compensation in the event of expropriation.

To enforce these rules, U.S. agreements authorize investors to bring cases against foreign governments before neutral arbitration panels, or so-called investor-state dispute settlement (ISDS) proceedings. These arbitral panels provide a neutral set of referees to ensure a fair and unbiased outcomes and compensation when foreign governments steal U.S. property, discriminate against U.S. investors or otherwise act in an arbitrary and unfair manner. As the protections in investment agreements mirror those in U.S. law, ISDS does not expose the United States to substantive legal liability beyond what it faces in U.S. courts.

The United States has investment access, protection and enforcement obligations with 56 countries, 40 through BITs and 16 through FTAs.[20] These agreements have been highly beneficial for manufacturers in the United States. While most issues are resolved without formal litigation, U.S. investors have utilized ISDS in more than 145 cases worldwide. By contrast, the United States has faced few cases and won every case. Of the 18 ISDS cases brought and completed against the United States in the 22 years, the United States has won every single case.

[20] Three countries have BITs and FTA investment chapters: Honduras, Morocco and Panama. The U.S.-Australia FTA has an investment chapter, but fails to provide ISDS enforcement.

D. Operation and Impact of U.S. Preference Programs

U.S. preference programs, such as the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI) and the African Growth and Opportunity Act (AGOA), are an important tool of U.S. trade policy that provides duty-free treatment for non-import sensitive products to eligible developing countries. The eligibility requirements for country participants create important incentives for developing countries to respect the key rules of the global trading system in ways that will promote more open markets. In addition, these programs boost manufacturing competitiveness in the United States by eliminating import taxes on non-import-sensitive inputs to manufacturing processes, including raw materials and components, including some inputs not available or produced in the United States. By promoting economic growth in developing economies and promoting fairer trade and higher standards, these programs are important to help manufacturers in the United States expand their sales and exports to these countries, as well.

For example, according to the Trade Act of 1974, as amended[21], the President shall not designate any country a beneficiary developing country under the GSP if eligibility criteria are not met, including whether the country:

- Has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens;
- Has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned;
- Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property; or
- Fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

These programs are vitally important for many U.S. manufacturers and for partner countries. These programs should not, however, be viewed as an entitlement. Recipients' eligibility is regularly reviewed, although the NAM urges that such reviews be undertaken more robustly in ways that incentive countries' fulfillment of each eligibility criteria.

II. Identification of Trade Violations and Abuses

Manufacturers in the United States seek to compete fairly around the world, relying significantly on WTO agreements, FTAs and BITs to eliminate barriers, expand market access and ensure that other countries are implementing their obligations. Trade barriers and foreign market distortions are on the rise around the world, costing jobs, growth and economic opportunity for

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[21] Trade Act of 1974, as amended, 19 U.S.C. § 2462.

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 such as forced localization, intellectual property theft, and export bans. They also face higher effective barriers as other countries negotiate trade agreements that exclude manufacturers in the United States.

These trade barriers and abuses fall into a number of broad categories with which manufacturers must grapple, including import policies, investment barriers and distortions, forced localization barriers, weak intellectual property protection and enforcement, distortive standards and technical regulations, and export policies. The NAM has identified many of these specific challenges in detail in previous reports, including documents that the NAM submitted in October 2016 for the National Trade Estimate report, in February 2017 for the Special 301 report on intellectual property rights, in March 2017 on digital trade, and for the trade deficit report in May 2017.

Addressing these issues requires the United States to leverage all available tools, including:

- Enforcing multilateral, regional and bilateral trade and investment agreements already in force, including by pursuing formal dispute settlement cases where appropriate;
- Securing ambitious, high-standard commitments in ongoing and future trade agreement negotiations to address barriers not adequately covered by existing WTO, FTA and BIT commitments;
- Working towards global implementation of the WTO Trade Facilitation Agreement to eliminate customs and other trade restrictions at the border; and
- Improving and using more effectively existing preference programs while also considering common-sense updates to preference program eligibility criteria.

Import Barriers and Distortive Policies

Manufacturers in the United States face a broad range of discriminatory and onerous import policies around the world. These policies challenge manufacturers of all sizes, but are particularly burdensome for small and medium-sized manufacturers (SMMs) that often have limited capacity and bandwidth to be able to navigate ever-shifting import and customs rules.

These problems include a range of issues, including:

- Excessively high tariffs on imports of manufactured goods imposed by a variety of countries, including both higher duty rates and other taxes and fees tacked on to imports;
- Discriminatory import licensing and auditing schemes, valuation and pricing rules and other protectionist measures designed to boost local production, protect domestic industry and address balance of payments concerns;
- Import bans on various categories of manufactured products;
- The lack of commercially meaningful *de minimis* rules and informal entry treatments for low-value shipments, as well as outdated tax and duty requirements for e-commerce shipments that complicate rather than ease border clearance;
- Insufficient coordination between border and inspection agencies, and inconsistent enforcement between different port locations; and
- Lack of transparency in customs and import rules, including not only calculation of tariff rates and import procedures and import rules but also announcement of sudden changes to import tariffs and policies with little notice.

Investment Barriers and Distortions

As discussed above, overseas investment is critical to expanding U.S. exports and sales to foreign markets and to supporting high-value activities at home. While the United States has an open investment climate, other countries use various laws and regulations to restrict the ability of U.S. firms to invest. These restrictions undermine the ability of manufacturers in the United States to access overseas markets and grow their businesses. These restrictions can include:

- Outright bans on foreign investment in particular sectors;
- Equity caps that force companies to form joint ventures with local companies;
- Cumbersome and non-transparent foreign investment approval processes that provide leverage from governments (and companies) seeking to extract concessions from potential investors;
- Protectionist investment screening processes based on vague definitions of national security, public morals, or public health that promote political decisions that are used to keep markets closed;
- Localization requirements as prerequisites to new or expanded investments; and
- Attempts to undermine critical investor-state dispute settlement processes in free trade agreements (FTAs).

Additional investment challenges are found by manufacturers in countries that do not respect the rules of law or adhere to basic private property protections, such as the sanctity of contracts, fair and non-discriminatory treatment of existing investments, compensation for the seizure of property, and other actions, oftentimes politically motivated, that undermine foreign investment climates.

Forced Localization Barriers

Forced localization barriers, including measures designed to protect, favor or stimulate domestic industries and interests at the expense of goods, services and intellectual property from other countries, are growing challenges around the world, and are proliferating in key emerging markets. Importantly, forced localization measures block trade in strategic and innovation-intensive sectors, undermining hard-won technology and productivity gains that have made the United Nation one of the most competitive producers in the world. A 2013 study by the Peterson Institute for International Economics estimated that the reduction in world trade caused by just one type of forced localization barrier, local content requirements, amounts to $93 billion annually.[22]

Such barriers can violate fundamental national treatment provisions of the GATT and various WTO Agreements, as well as more detailed provisions in U.S. FTAs and BITs. Some of these measures are already the subject of ongoing WTO dispute settlement cases. Forced localization barriers can take a variety of forms, including:

- Broad industrial policies that promote local production through protectionist means
- Local content requirements for products to be sold or procured in the market;
- Expedited approval processes for locally made products that discriminate against imported goods;
- Tax and financial incentives for locally made products;

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[22] Gary Clyde Hufbauer, Jeffrey F. Schott et al., *Local Content Requirements: A Global Problem*, Peterson Institute for International Economics, September 2013.

- Regulatory measures that are designed to block or increase the regulatory burden for high-value U.S. manufactured industries or products; and
- Protectionist policies imposed in the name of cybersecurity (such as encryption rules or cross-border data restrictions) that undermine both foreign technology producers and the array of manufacturers that use them.

Weak Intellectual Property Protection and Enforcement

Innovation drives and supports U.S. global leadership in manufacturing by companies large and small. Recent reports, for example, showed that intellectual property contributes $6.6 trillion to U.S. GDP (40 percent of the economy), and that innovation-intensive industries account for more than half of all U.S. merchandise exports and support at least 45 million U.S. jobs.[23] The ability of innovative manufacturers to protect their intellectual property (IP) around the world is a critical component of their business success and a driver for future innovation. The challenges of protecting innovation and IP, however, are real for companies of all sizes. Innovative manufacturers in the United States benefit from international IP agreements such as the WTO's Agreement Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Office's body of international IP treaties such as the Patent Cooperation Treaty and Madrid Protocol, in addition to U.S. FTAs with stronger IP chapters.

Despite those protections, manufacturers in the United States encounter a growing number of intellectual property enforcement concerns that deny or threaten to deny adequate and effective IP protection and enforcement for manufactured goods. These challenges include:

- Expanded use of compulsory licensing and other actions to undermine global patents beyond the bounds of existing international rules;
- Efforts to restrict patents by adding unique restrictions on patentability;
- Weak enforcement efforts to battle physical and online counterfeiting, piracy, and patent infringement, fed by a lack of meaningful legal deterrents or sufficient enforcement mechanisms;
- Inadequate protection of trade secrets and confidential business information due to incomplete legal frameworks, limited enforcement, and lack of access to evidence and procedural remedies;
- Increasing challenges to legitimate trademark use, including efforts to block or limit the use of trademarks for certain types of products, including plain packaging legislation and marketing bans being applied to or considered for various products;
- Long backlogs for patents and trademarks that delay the ability of manufacturers to protect their property and get products to market; and
- Growing efforts to undermine critical IP protections in international organizations such as the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO).

Standards and Technical Regulations

Unique regulatory and technical standards and conformity assessment requirements can add significantly to the cost of manufacturing exports to countries around the world, serving as effective technical barriers to trade (TBT). The rules are clear: standards, technical regulations and conformity assessment procedures should be applied evenly to both imported and domestic

[23] Antonipillai, Justin and Michelle K. Lee, "Intellectual Property and the U.S. Economy: 2016 Update," September 2016.

goods, must be based on scientific evidence and consider regulatory impact for all stakeholders, and must be developed through transparent processes. The WTO's TBT Agreement and Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) set critical rules to ensure that foreign governments do not develop discriminatory standards, technical regulations, and conformity assessment rules. When they do, the NAM strongly supports robust U.S. efforts to raise these issue at the WTO and to use bilateral and regional agreements to reduce the use of technical standards as trade barriers.

Manufacturers are seeing the proliferation of standards and technical regulations that serve as effective barriers to trade or limit market opportunities for manufacturers in the United States. These include:

- Proactive efforts by individual countries or regional organizations to promote their own standards around the world at the exclusion of U.S. or international standards;
- Inappropriate efforts to limit the definition of "international standard" or references in technical regulations only to specific international standards bodies such as the International Standardization Organization or International Electrotechnical Commission, as such efforts discriminate against private sector-led standards that are used widely around the world;
- Weak adherence to good regulatory practices (including transparency) in the drafting and updating of standards and regulations;
- Development of unique regulatory measures that help to protect local players at the expense of high-value U.S. manufactured products;
- Market access barriers for foreign conformity assessment bodies not in line with the principle of national treatment; and
- Duplicative or onerous testing, certification, and labelling requirements.

Distortive Export Policies

Some governments are increasingly using a variety of non-market based export policies that seek to advantages local producers and expands exports through distortive measures. These policies include:

- Subsidies, including preferential financing, including export financing, to local industries;
- Incentive programs to expand export focus of industries;
- Preferential regulatory rules to lower production costs for local producers compared to foreign competitors;
- Export taxes and restraints, including differential export taxes, oftentimes on raw materials or inputs, that lower production costs for other local producers to improve their competitiveness;
- Currency manipulation that lowers the effective cost of exports compared to other competitors; and
- Broad-based industrial policies that may include some the foregoing policies and other actions that advantage local producers.

These types of actions unfairly tilt the playing field for foreign producers, undermining manufacturers in the United States and their workers. Some of the most distortive practices are those that lead to excess capacity that distorts the foreign market, third countries and the U.S. market.

Countries of Concern

These challenges summarized above are occurring in a wide variety of countries around the world. In some cases, the actions violate existing commitments made by these countries in the WTO, and FTAs and BITS with the United States or are inconsistent with the eligibility requirements of U.S. preference programs. In other cases, international trade and investment agreement rules need to be updated and expanded to address market-distorting practices that existing rules have not fully disciplined.

Figure 1 lists countries with which manufacturers have identified tariff and trade barriers, weak IP protection and enforcement, and other market-distorting practices that harm manufacturers and their workers in the United States.

Trade Barriers and Distortive Practices Negatively Impacting Manufacturers from the United States in FTA Partner Countries, BIT Partner Countries, and other WTO Members

Challenges	FTA Partners	BIT Partners	Other WTO Members	
Import Barriers and Distortive Policies	*Colombia Korea Mexico*	*Argentina Ecuador* Turkey**	*Brazil* China Ghana*+ India**	*Indonesia* Kenya*+ Nigeria*+ Russia*
Investment Barriers and Distortions	*Australia Canada Mexico*	*Ecuador**	*Brazil* China Equatorial Guinea Ghana*+ India* Indonesia* Malaysia*	*New Zealand Nigeria*+ Philippines* Russia Taiwan Venezuela Vietnam*
Forced Localization Barriers	*Colombia Korea Morocco*	*Turkey**	*Algeria* Brazil* China Germany India* Indonesia**	*Malaysia New Zealand Nigeria*+ Russia South Africa*+ Vietnam*
Weak Intellectual Property Protection and Enforcement	*Australia Canada Colombia Dominican Republic Korea Mexico Peru*	*Argentina Ecuador**	*Austria Brazil* China European Union India**	*Indonesia* Russia South Africa*+ Thailand**
Standards and Technical Regulations	*Canada Colombia Costa Rica Korea Mexico Morocco Peru*	*Ecuador* Egypt**	*Brazil* China European Union*	*India* Indonesia* Saudi Arabia*
Distortive Export Policies		*Argentina*	*Brazil* China India**	*Indonesia* Malaysia Russia*

** Country is a beneficiary under the U.S. Generalized System of Preferences (GSP)*
+ Country is a beneficiary under the African Growth and Opportunities Act (AGOA)
None of these countries are beneficiaries under the Caribbean Basin Initiative