

Trade Promotion Authority Priorities

Opening Markets and Strengthening Global Competitiveness



A robust international trade and investment negotiating agenda is vital to the success of manufacturing in the United States. High-standard, comprehensive and market-opening trade agreements that level the playing field help to grow manufacturing exports and sales around the world and improve the global competitiveness of manufacturers in the United States.

- U.S. manufactured goods exports to our 20 existing free trade agreement partners represented nearly 50 percent of total U.S. manufactured goods exports in 2012, even though those countries represent only nine percent of the world's GDP and six percent of the world population.
- High-standard and comprehensive trade agreements not only open markets by eliminating tariff and non-tariff barriers, they put in place strong rules that ensure greater fairness and competition in foreign markets – from obligations protecting intellectual property and investment to provisions on competition policy, procurement and transparency.

Since 1974, trade agreements have been negotiated most successfully under an executive-congressional framework known as Trade Promotion Authority (TPA). This framework sets forth U.S. trade negotiating objectives, requires substantial Administration consultation and reporting to Congress on the progress of each trade negotiation and provides for congressional review and implementation of completed trade agreements under clear-cut and time-limited procedures.

TPA was last renewed in 2002 and expired in mid-2007. Manufacturers urge the Administration and Congress to prioritize the immediate extension of a durable, broad and long-term TPA so that the United States can truly pursue a robust trade-negotiating agenda that will grow manufacturers' global opportunities and competitiveness.

Importance of TPA Renewal

The National Association of Manufacturers (NAM) believes durable negotiating authority that includes strong provisions on consultation and review by Congress is a fundamental requirement of an effective U.S. negotiating structure to open foreign markets. Renewal of TPA is vital to:

- ***Spur increased U.S. activity and success in negotiating international trade agreements that will open up markets in countries around the world, enhancing the ability of manufacturers in the United States to export and sell our goods.*** Without such authority, the United States will remain on the sidelines as other countries negotiate new agreements that exclude and disadvantage manufacturers in the United States.
- ***Empower U.S. negotiators to achieve strong and enforceable agreements that address key tariff and non-tariff barriers.*** Without this authority, our trading partners have little incentive to make tough decisions or put their best offer on the table.

- ***Provide an effective role for Congress in shaping and reviewing ongoing negotiations.*** A strong TPA will set forth congressionally developed negotiating priorities and provide strong processes for consultations with and input from Congress. Without such authority, Congress lacks a defined role in ongoing negotiations, which delays and complicates the negotiation and adoption of a final agreement.
- ***Ensure the United States can review and implement trade agreements.*** By requiring an up-or-down vote in a time certain, TPA ensures agreements negotiated are reviewed and debated. Without such authority, the United States would be unable to conclude complex agreements with major trading partners because those partners could not be assured that the final agreement would not be altered.

Priority Trade Negotiating Objectives to Grow Manufacturing in the United States

The NAM supports negotiation of high-standard, comprehensive trade agreements at the global, regional and bilateral levels, as well as agreements designed to facilitate trade and open markets in certain sectors where greater liberalization is possible. Negotiations toward high-standard, comprehensive trade agreements should seek to eliminate barriers to investment and to trade in goods and services with no a priori exclusions of products or sectors.

Substantive Negotiating Priorities

Tariff and Other Trade Barriers and Distortions: Manufacturers face significant tariff and non-tariff barriers in overseas markets as well as other distortions that deny full market access and limit global competitiveness. Domestic exporters face higher tariffs than exporters from virtually any other country, with the United States ranking 128 out of 132 countries in terms of the tariffs our exporters face. Non-tariff barriers also limit U.S. goods access overseas. To grow manufacturing through exports and international sales, the full array of overseas barriers and discriminatory distortions be addressed.

Negotiating Objective: The United States should seek the elimination of all foreign tariff and non-tariff barriers and other foreign government policies and practices that directly or indirectly deny full market access for U.S. exports or otherwise distort U.S. trade opportunities, including restrictions or prohibitions on the marketing or promotion of products.

Forced Localization Requirements: Successful high-value manufacturing has become increasingly horizontal, with supplier networks for a single product crossing many borders. But in recent years, governments around the world have increasingly begun implementing “forced localization” policies. By requiring businesses to produce or source a substantial portion of products locally, by weakening intellectual property (IP) protections or by other means, these policies unfairly benefit domestic producers at the expense of manufacturing and jobs in the United States.

Negotiating Objective: The United States should seek strong provisions requiring foreign governments to accord goods and services of the United States no less favorable treatment than like domestic goods and services and provisions prohibiting local content requirements, subsidies conditioned on the use of domestic over imported goods or services and measures that require or favor domestic innovation or that weaken IP protection for the purposes of benefitting a domestic industry or domestic producer.

Most Favored Nation Treatment: Negotiations toward high-standard, comprehensive trade agreements should seek to eliminate barriers to investment and trade in goods and services with no a priori exclusions of products or sectors. However, some foreign governments may seek to exclude one or more products or sectors from liberalization in the negotiations, but then later provide better treatment to other countries. The United States should ensure gains achieved through trade agreements are not undermined by future agreements that those partners may conclude with others.

Negotiating Objective: Should the United States enter into trade agreement negotiations or a trade agreement with a country on the condition that a certain product or industry sector of that country is excluded from liberalization, the United States should seek language in the agreement obligating that country to offer immediately and unconditionally any concessions with respect to that product or sector to the United States that it extends to another partner after the commencement of negotiations with the United States. If the United States accepts that offer, such treatment should be extended to the United States on the same schedule and terms as the other partner.

Trade Facilitation and Customs Enforcement: Manufacturers' ability to export competitively around the world and to obtain needed inputs requires modern customs and border processing systems and functional supply chains. Improvements in customs and trade facilitation will benefit smaller manufacturers in particular by cutting the cost, time and complexity of selling to foreign markets. At the same time, effective customs enforcement measures are needed to combat illicit trafficking, including through free trade zones (FTZs). Every year, illicit trafficking costs governments and legitimate businesses billions of dollars in lost sales and revenue, while contributing to organized criminal enterprises.

Negotiating Objective: The United States should seek provisions to improve customs and border processing operations, support coordination between customs agencies and other entities, reduce differing paperwork requirements, promote fully electronic clearance of imported goods and strengthen intellectual property protections relating to imports, trade enforcement and import-safety programs. It should seek to promote trade facilitation and eliminate barriers that impede the movement of goods throughout the entire supply chain from point of production to delivery to customers. The United States should also seek provisions requiring foreign governments to adopt and maintain laws providing for criminal procedures and deterrent criminal penalties for illicit trafficking (including through FTZs) and to provide for effective enforcement of such laws. It should seek provisions for customs cooperation to combat illicit trafficking.

Regulatory Practices: Differences in regulations and standards increasingly pose barriers to manufacturers, limiting market access and substantially increasing costs in ways that undermine their global competitiveness.

Negotiating Objective: The United States should seek horizontal and vertical provisions in trade agreements that require national treatment regarding standards, technical regulators and conformity assessment procedures and transparent, science-based regulatory processes that allow reasonable opportunities for public input and access by stakeholders. Where possible, the United States should seek to address differences in existing regulations and to limit differences in new regulations that may be developed in the future, including by promoting harmonization, functional equivalence or mutual recognition.

Trade Remedy Rules: The effective enforcement of U.S. trade remedy laws, including antidumping, countervailing duty and safeguard laws, to counteract unfair foreign trade practices, including circumvention of countervailing duty and antidumping orders, is critically important a robust trade agenda that seeks to open markets and make manufacturers in the United States globally competitive.

Negotiating Objective: To promote the competitiveness of our nation's manufacturers in the global economy, the United States should seek to preserve its ability to enforce its trade laws rigorously, including antidumping, countervailing duty and safeguard laws. It should avoid agreements that lessen the effectiveness of such rules. The United States should encourage greater transparency of trade remedies and fair treatment of exporters internationally to help achieve equity in competitive conditions and strengthen international trade disciplines.

Foreign Investment: Foreign investment in the United States helps grow manufacturing. Similarly, U.S. investment overseas is a driver of manufactured goods exports and advances research and development in the United States. Manufacturers face substantial barriers to investment overseas, weak systems for the protection and enforcement of basic property rights and foreign government practices that distort markets, including localization and mandated technology transfer requirements.

Negotiating Objective: The United States should seek to open opportunities for U.S. investors on a nondiscriminatory basis in foreign countries and to ensure protection and neutral dispute settlement for such investors and their investments. Regarding market access, the United States should negotiate agreements with a broad definition of investment and national treatment and most favored nation provisions for new investments and the expansion of investments. On protections, the United States should negotiate strong protections for investment agreements (between a foreign investor and a host state government); the minimum standard of treatment (including fair and equitable treatment and full protection and security); compensation for both direct and indirect expropriations; restrictions on performance requirements (including those related to technology and innovation); provisions enhancing the choice of senior management, transparency and publication of investment laws and regulations; and the free transfer of capital. Each of these core protections and market access provisions, including breaches of investment agreements and the market access provisions of the investment chapter, should be subject to both investor-state and state-to-state dispute settlement.

Services: Opening foreign services markets is also important to manufacturers. Services liberalization helps to lower costs, improve competitiveness and productivity and promote product quality and compliance with international standards. It facilitates market access and sales into foreign markets.

Negotiating Objective: The United States should seek to reduce or eliminate barriers to international trade in services, including regulatory and other barriers, that deny national treatment and market access or that unreasonably restrict the establishment or operations of service suppliers.

Cross-Border Data Flows: Manufacturers increasingly rely on digital data and information flows, global communication networks and cross-border flows of data and information to manage their businesses – from tracking sales, sourcing and pricing options and imports and exports to managing human relations and customers. To compete effectively in the global market, manufacturers must be confident in their ability to maintain and move data and information securely across borders.

Negotiating Objective: The United States should seek to ensure that cross-border data flows are permitted while ensuring IP rights are protected adequately. It should seek to prohibit forced localization requirements that would require the use of local information infrastructure as a condition to conduct or expand business operations.

Fair Competition: Strong rules that foster a pro-competitive and market-driven economy are critical to manufacturers seeking access to foreign markets. Government action that favors national champions or state-related or state-owned enterprises undermines a level playing field and the conditions of competition both in that country and, potentially, in third countries.

Negotiating Objective: The United States should seek provisions to promote fair competition in foreign markets. It should seek provisions that provide for fair, transparent and nondiscriminatory competition policy systems with strong due-process provisions, including opportunities for a hearing, to review and rebut evidence, to cross-examine witnesses and for judicial review and fair procedures in enforcement actions. U.S. negotiators should also seek provisions, including potential private rights of action, to ensure that state-favored, state-related and state-owned enterprises act in accordance with commercial considerations and do not enjoy unfair advantages in their home markets or third country markets.

Intellectual Property: Innovation and strong intellectual property standards and enforcement have propelled the United States to its global leadership position in manufacturing and have helped drive U.S. exports. Yet, the theft and misappropriation of IP rights has become an international epidemic and poses a substantial threat to manufacturers big and small in every sector and in every U.S. state. To be successful at home and abroad, manufacturers require strong protections and enforcement on the wide range of IP rights throughout their production processes, including patents, copyrights, trademarks, test data and trade secrets.

Negotiating Objective: In trade negotiations regarding intellectual property, including bilateral and plurilateral trade agreement negotiations, negotiations in multilateral forums and other trade-related instruments, the negotiating objectives of the United States should reflect standards of protection embodied in U.S. law. In addition, the United States should seek strong disciplines to:

- Protect the rights of trademark holders and the use of common names in international commerce, while providing expedited means to remedy bad faith registrations;
- Protect, value and encourage innovation, including for new and emerging technologies;
- Prohibit unnecessary government requirements to disclose any IP or related confidential data, including trade secrets and source codes, as a condition of licensing, marketing or doing business;
- Require governments to adhere to rigorous and enforceable confidentiality requirements where IP and related data, including test data, are appropriately required by governments, and must ensure that such data cannot be unfairly referenced or relied upon by competitors;
- Strengthen operational collaboration between law enforcement agencies to address the cross-border theft of trade secrets and the cross-border movement of pirated and counterfeit goods; and
- Require deterrent penalties and strong enforcement mechanisms, including through accessible, expeditious and effective civil, administrative and criminal enforcement mechanisms.

Currency: Prolonged undervaluation of currencies confers an artificial advantage on an economy's exports and results in domestic inflationary pressures and the misallocation of capital. The NAM believes that exchange rates should reflect market forces and be determined by the marketplace. Governments should not engage in protracted intervention to counter market forces and maintain misaligned exchange rates for their currencies. U.S. negotiators should be cognizant of the impact a party's monetary policies have on the competitive position of countries with misaligned currencies on products in their home market, in the U.S. market and in the markets of other third countries. The United States should work internationally to examine the trade consequences of significant and unanticipated currency movements.

Negotiating Objective: The United States should seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether and how to develop mechanisms to address circumstances when a foreign government has engaged in a pattern of manipulating its currency to promote a competitive advantage.

Transparency and Anti-Corruption: Strong legal provisions requiring transparency in government procedures, rule-making and decision-making are vital to ensure that manufacturers seeking to export, sell and invest in foreign countries are aware of existing and changing legal requirements and policies and have meaningful opportunities to provide input in the development of policies and rule-making. Consistent application of rules prohibiting government and private sector corrupt practices are also important to ensure a level playing field in foreign markets.

Negotiating Objective: The United States should seek strong provisions on government transparency, including provisions requiring regulatory agencies to provide timely public access to information, notifications and related information regarding administrative rules and procedures in written and electronic form and provisions requiring regulatory agencies to consider stakeholder comments and input. Specific regulatory determinations should be based on fair, reasonable, consistent and nondiscriminatory procedures, rules and criteria, and completed within a reasonable, specified time frame. Manufacturers and other stakeholders should have meaningful opportunities to provide input to government authorities and other regulatory agencies regarding these decisions and a right of appeal to an independent, objective court or administrative body. In addition, the United States should seek to ensure that foreign governments impose and enforce strong standards prohibiting corrupt practices similar to U.S. standards and ensure that such foreign standards do not place U.S. businesses at a competitive disadvantage.

Dispute Settlement and Enforcement: Effective, timely, objective and binding dispute settlement provisions are vital to ensure each agreement obligation is fully enforced. While dispute settlement provisions have been improved in the 15 years, further enhancements are needed to make such provisions more effective in preventing and resolving disputes in today's fast-paced commercial environment.

Negotiating Objective: The United States should seek effective, timely, binding and transparent dispute settlement systems that ensure all obligations made in trade agreements are fully enforced. Improvements in traditional dispute settlement provisions are required to expedite procedures and ensure disputes are resolved in a commercially timely manner as well as to provide stronger enforcement provisions and deterrent penalties related to core trade issues, such as national treatment.

Procedural Priorities

Manufacturers strongly support a TPA framework that promotes a robust U.S. trade negotiating agenda and the implementation of market-opening agreements that advance manufacturers' access in foreign markets. The following provisions are critical for such an outcome:

- Robust consultations between the Administration and Congress;
- Stakeholder involvement before and during negotiations and in the review of completed agreements;
- Independent and reputable economic analyses of the ultimate agreements negotiated; and
- Congressional consideration of finalized agreements that have met the procedural requirements in a defined timeline and without amendment.

Manufacturers also support a strong tariff proclamation authority provision that would provide, subject to robust consultations with Congress and the private sector, the elimination of tariffs on a reciprocal basis where there are international sectoral negotiations and the sectors involved strongly support such tariff elimination endeavors, such as provided for information technology negotiations.

Conclusion

Manufacturers in the United States require a robust trade and investment agenda to increase our access and competitiveness in the global economy. The renewal of a broad and durable TPA framework that prioritizes market access, fair treatment and strong standards is critical to revitalize and implement a trade agenda that will produce economic growth and sustain and grow jobs.