NATIONAL ASSOCIATION OF Manufacturers

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Statement for the Record

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Senate Committee on Finance

on "Trade Enforcement: Using Trade Rules to Level the Playing Field for U.S. Companies and Workers"

June 25, 2014

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The National Association of Manufacturers (NAM) is pleased to provide the following statement for record for the Senate Finance Committee's hearing on trade enforcement.

The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributing more than $2.08 trillion to the U.S. economy in 2013 alone.

The NAM has long championed a robust trade policy to grow manufacturing in the United States. At its core, a robust and pro-manufacturing U.S. trade policy should seek to open markets and level the playing field overseas, improve the competitiveness of manufacturers in the United States and ensure the strong enforcement of the rules of the trading system at home and by our trading partners.

Manufacturers in the United States are most successful when our trading partners play by the same basic trade rules, including treating our products on an equal basis in their markets and not providing their own industries with special advantages that tilt the playing field. Trade agreements set the rules of the global economy, without which there would be no rules to enforce globally. Many of the concerns expressed about unfairness in the global marketplace can, in fact, best be addressed by negotiating new agreements with stronger rules. As well, U.S. domestic trade rules provide vital and internationally approved mechanisms to ensure a more level playing field in the U.S. domestic market and should be fully administered and enforced. In short, both trade agreements and domestic trade rules are critical to manufacturers' success in the global economy.

Consider that more than 97 percent of U.S. companies that export are small and medium-sized businesses with less than 500 employees.[1] U.S. employment in trade-related jobs grew six and a half times faster than total employment between 2004 and 2011.[2] Jobs linked to exports pay, on average,

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[1] U.S. Department of Commerce, **U.S. Exporters in 2011: A Statistical Overview**, accessed at http://www.trade.gov/mas/ian/smeoutlook/tg_ian_001925.asp.

[2] Baughman and Francois, **Trade and American Jobs, The Impact of Trade on U.S. and State Level Employment: An Update** (2010), accessed at http://businessroundtable.org/uploads/studies-reports/downloads/Trade_and_American_Jobs.pdf; Business Roundtable, **How the U.S. Economy Benefits from International Trade and Investment**, accessed at

18 percent more than other jobs.[3] According to the Peterson Institute for International Economics, American real incomes are nine percent higher than they would otherwise have been due to more open trade and immigration policies adopted since World War II.[4]

The basic rules of trade[5] are found in three main sources:

1. Agreements covering market access, trade barriers, intellectual property and other issues to which 159 countries have agreed as part of the World Trade Organization (WTO).[6]
2. Stronger and more detailed trade and investment agreement provisions that open markets and level the playing field for America's manufacturers are found in our bilateral and plurilateral free trade agreements[7] and bilateral investment treaties.[8]
3. U.S. laws and regulations that can be used to address unfair actions overseas, including trade remedy rules,[9] safeguard rules, and intellectual property rules.[10]

The Negotiation of New Trade and Investment Agreements Establishes New and Stronger Rules to Open Markets and Level the Playing Field

Trade and investment agreements play an outsized role in providing businesses of all sizes across all 50 states better access to an $11 trillion global market for manufactured goods and to the 95 percent of the world's consumers who live outside our border. By setting the rules of the global trading system,

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http://businessroundtable.org/sites/default/files/legacy/uploads/general/BRT_State_Studies_-_US_Total.pdf.

[3] Riker, **Do Jobs in Exports Still Pay More? And Why?**, U.S. Department of Commerce Manufacturing and Services Brief (July 2010), accessed at http://trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003208.pdf.; see also

[4] Cline, **Trade and Income Distribution: the Debate and New Evidence**, Peterson Institute for International Economics, access at http://www.iie.com/publications/pb/pb.cfm?ResearchID=94.

[5] NAM, **Trade Helps Level the Playing Field and Make Sure Countries Play by the Rules** (August 2013), accessed at http://www.nam.org/~/media/693F214D8FF54C7EA5F5B0C3F51E769C.ashx.

[6] WTO, **WTO Legal Texts**, accessed at http://www.wto.org/english/docs_e/legal_e/legal_e.htm.

[7] USTR, **Free Trade Agreements**, accessed at http://www.ustr.gov/trade-agreements/free-trade-agreements.

[8] USTR, **Bilateral Investment Treaties**, accessed at http://www.ustr.gov/trade-agreements/bilateral-investment-treaties.

[9] **Title 19: Customs Duties: AD/CVD**, accessed at http://www.usitc.gov/trade_remedy/USC-Title_19_1671-1677.htm

[10] **Section 1337. Unfair Practices in Import Trade**, accessed at http://www.gpo.gov/fdsys/pkg/USCODE-2010-title19/html/USCODE-2010-title19-chap4-subtitleII-partII-sec1337.htm.

multilateral, plurilateral and bilateral agreements are a prerequisite to a strong enforcement agenda.

Most of the world's countries have agreed to a basic set of trade rules as part of several agreements under the auspices of the World Trade Organization. The WTO agreements incorporate many important obligations, including commitments by countries:

- Not to discriminate against foreign goods;
- Not to provide unfair subsidies and advantages to their local producers;
- To respect and enforce basic intellectual property rights;
- To limit import tariffs to negotiated levels; and,
- To pay penalties if they refuse to keep their promises.

Efforts to strengthen and expand these rules for all WTO members and eliminate tariffs and other barriers in the "Doha" negotiations have unfortunately stalled.

In addition to the WTO, the United States has negotiated free trade agreements on a bilateral or plurilateral basis. These agreements – referred to as either free trade agreements (FTAs) or trade promotion agreements – eliminate barriers more comprehensively than the WTO agreements and set in place stronger rules to improve the competitiveness of manufacturers in the United States, including rules on the protection of intellectual property and investment and ensuring greater transparency and fair competition. The United States' experience under our FTAs demonstrates that where manufacturers from the United States can compete on a level playing field abroad, they can boost sales and grow their share of foreign markets. America's 20 existing free trade agreement partners account for less than 10 percent of the global economy but purchase nearly half of all U.S. manufactured goods exports.[11] For many states, including Ohio and Texas, that figure is closer to 60 percent.[12] The United States enjoys a nearly $60 billion manufacturing trade surplus with its trade agreement partners, compared with a $508 billion deficit with other countries.

To negotiate the type of comprehensive, high-standard and market-opening trade agreements that have driven export growth and jobs across the country, trade promotion authority (TPA) is absolutely vital.[13] TPA legislation has been in place and was utilized during the negotiation and implementation of the

[11] U.S. Department of Commerce, International Trade Administration, **TradeStats Express**, accessed at http://tse.export.gov/TSE/TSEhome.aspx.
[12] NAM, **U.S. Manufacturing Statistics – Manufacturing and Trade Data by State**, accessed at http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx.
[13] It is sometimes argued that hundreds of trade agreements have been negotiated without TPA. Those agreements are not the type of agreement that opens markets overseas or includes binding and state-of-the art dispute settlement. For example, Trade and Investment Framework Agreements provide a useful opportunity for the United States to engage in economic discussions with foreign governments, but do not obligate either country to open its market or address barriers.

Uruguay Round Agreements creating the WTO and for 13 FTAs negotiated since 1974.[14] Since TPA was put in place most recently in 2002, U.S. manufactured goods exports more than doubled from $623 billion to $1.38 trillion.[15] Those exports support millions of American jobs, including, for example, 212,000 in Michigan, 189,000 in Pennsylvania, 185,000 in New York and 107,000 in New Jersey.[16] In Oregon, Delaware and Maryland, manufacturing accounts for more than 80 percent of all state exports. Full state fact sheets are available at the NAM's website.[17]

Manufacturers welcomed the Bipartisan Congressional Trade Priorities Act of 2014 introduced at the beginning of this year.[18] This legislation sets forth the much-needed Executive-Congressional framework to ensure that both branches of government work to achieve the strongest possible outcomes in our trade agreements. This legislation also provided important updates to the traditional TPA framework, including with respect to priority negotiating issues. From the NAM's perspective, this legislation provides the type of framework needed to secure new, market-opening trade agreements. Action on TPA is vital to ensure that U.S. negotiators can bring home the strongest possible outcomes in the ongoing Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (T-TIP) talks that will set in place new and stronger rules to level the global playing field. The NAM urges this Committee to move TPA to the floor as quickly as possible.

In addition to WTO agreements and FTAs, the United States also negotiates bilateral investment treaties (BITs) that open foreign markets to U.S. investment and ensure that U.S. investments overseas are accorded the same basic rule of law protections already available to all investors, foreign and domestic, in the United States. Those market-opening and core rules are also subject to strong and binding dispute settlement, including the investor-state dispute settlement (ISDS) mechanism that is critical to enforce these agreements. While some may question the value of foreign investment into the United States, the facts are clear. The U.S. Bureau of Economic Analysis' own data show that year-after-year U.S. investment overseas helps drive U.S. exports, research and development (R&D) and capital investment in the United States, producing higher wages for employees of companies that invest

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[14] Of all U.S. market-opening FTAs, only the U.S.-Jordan FTA was implemented without TPA. Notably, the Jordan FTA is much less comprehensive or developed than our other FTAs, and most prominently lacks a state-of-the-art time-limited dispute settlement provisions that are found in the North American Free Trade Agreement and all subsequent FTAs.

[15] U.S. Department of Commerce, International Trade Administration, **TradeStats Express**, accessed at http://tse.export.gov/TSE/TSEhome.aspx.

[16] NAM, **U.S. Manufacturing Statistics – Manufacturing and Trade Data by State**, accessed at http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx.

[17] Id.

[18] NAM, **Statement for the Record for Senate Finance Committee Hearing on "Advancing Congress' Trade Agenda, the Role of Trade Negotiating Authority**," (Jan. 16, 2014, accessed at http://www.nam.org/~/media/CD7BF524D1244FCD82CDB106EEFDE6E4.ashx.

overseas.[19] In the most recent 2010 data, U.S. companies with foreign investments generated about 48 percent of total U.S. goods exports, while accounting for less than a quarter of U.S. private sector output. These companies are also involved in approximately three-quarters of all R&D in the United States. And contrary to claims outsourcing, most goods sold by the foreign subsidiaries of U.S. companies – nearly 90 percent – stay overseas.[20] In short, U.S. investment overseas brings strong benefits back to the U.S. industries, workers and the U.S. economy and our trade and investment agreements should recognize that value by opening up foreign markets and protecting U.S. investment overseas, subject to strong enforcement mechanisms.

Enforcement of Existing Trade and Investment Agreements Is Essential

For our trade and investment agreements to be successful, it is also vital to ensure effective enforcement of the commitments contained in those agreements by our trading partners and the United States.

Enforcing Trade Agreements with our Trading Partners

On the international side, the United States has worked vigorously through successive administrations to address market access barriers and other unfair treatment of U.S. exports. Before agreements first enter into force, the Office of the United States Trade Representative (USTR) works vigorously to ensure the full implementation of commitments. And in most cases, commitments are implemented fully. In cases where they are not, USTR works through the consultation and ultimately the dispute settlement provisions provided in trade agreements to ensure full implementation. Indeed, since the WTO was established nearly two decades ago in 1995, the United States has brought and successfully resolved 70 of the 74 cases that have been concluded.[21] Notably, the United States has brought over 20 percent of the 481 requests for consultation made overall in the WTO.[22] These cases have an important impact on growing manufacturing in the United States. For example, in the past few months, the United States won a very important WTO case that addresses manufacturers' concerns over China's export restrictions on rare earths that

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[19] Barefoot, **U.S. Multinational Companies: Operations of U.S. Parents and their Foreign Affiliates in 2010** (Nov. 2012), accessed at http://www.bea.gov/scb/pdf/2012/11%20November/1112MNCs.pdf.

[20] See, *e.g.*, Slaughter, **How U.S. Multinational Companies Strengthen the U.S. Economy (2010) (Revised Update)**, Published by Business Roundtable and United States Council Foundation. Mataloni, Jr., **Multinational Companies: Operations in 2006**, Published by the Bureau of Economic Analysis (Nov. 2008).

[21] Office of the United States Trade Representative, **Snapshot of WTO Cases Involving the United States** (May 22, 2014), accessed at http://www.ustr.gov/sites/default/files/Snapshot%20May.pdf.

[22] 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.

impeded access to such inputs.[23] With the underlying agreements, such strong dispute settlement outcomes that open markets and ensure fair treatment would not be possible.

Sustained attention is needed to address other governments' failure to implement their trade and investment commitments fully, including where appropriate through the use of WTO and FTA dispute settlement mechanisms. Most recently, the NAM has been hearing significant concerns about the implementation of the Korea-U.S. (KORUS) FTA from our members. Since this agreement came into force over two years ago, many tariffs and barriers have been successfully eliminated, helping to spur new commercial opportunities and growth in U.S. exports and sales to Korea. Those benefits are largely the result of the KORUS FTA. Unfortunately, we have also heard from a wide range of U.S. manufacturing industries that have continued facing serious challenges in South Korea and have indicated that South Korea has failed to implement fully the letter and spirit of the FTA. Among the issues over which the NAM is concerned are new and pending barriers to and penalties on automotive imports that have created a high level of uncertainty and are undermining the ability to execute a coherent business plan; excessive and unnecessary origin verification requirements; the failure to implement fully *de minimis* rules on an MFN basis and without exception (*e.g.*, for e-commerce); lack of full transparency and due process provisions for pharmaceutical and other regulated products; and incomplete implementation of government procurement commitments. More recently, we are seeing an increased misuse of antitrust policies to foster industrial policy, setting a dangerous precedent for the region and in complete disregard of the FTA competition obligations.

The Administration, including most actively USTR, has been working diligently with the government of South Korea to resolve these issues and ensure that Korea's government fully lives up to its KORUS commitments. While a number of serious problems have been resolved as a result of these processes, others have not and in some cases appear to be getting worse. The NAM believes and has communicated to USTR that full consideration of the use of the formal dispute settlement provisions included in the KORUS FTA must now be considered. The non-politicized dispute settlement processes contained in the WTO and in our FTAs are exactly the type of enforcement tool that has prompted strong support from a wide variety of U.S. industries and Congress. The inclusion of these processes in each of the major FTAs that the United States has concluded helps ensure that the commitments made are more than words on paper and that market access and other problems are successfully resolved. It is critical for the United States to continue to demonstrate its commitment to full enforcement of FTA obligations with Korea, as well as to our other trading

[23] USTR, **USTR Helps Win Case Against China, Helps Manufacturers Compete** (March 2014), accessed at http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-wins-victory-in-rare-earths-dispute-with-China.

partners with which the United States has concluded FTAs or other binding and enforceable agreements.

Upholding the United States' International Obligations at Home

Similarly, the United States should uphold its obligations under international agreements and honor remedies imposed when U.S. actions are found to be out of compliance with those obligations. Just as we expect our trading partners to meet the letter of their international obligations, so should the United States.

Currently, the WTO is reviewing modifications to the U.S. Country-of-Origin Labeling (COOL) regulations for meat products, which the WTO had previously found discriminatory and therefore out of compliance with the United States' WTO obligations. If the WTO determines the modified COOL regulations continue to violate our trade obligations pertaining to our two largest export markets (Canada and Mexico), the WTO could authorize those countries to subject an array of U.S. exports to retaliatory tariffs, which would cause serious economic harm to many manufacturers in the United States. To prevent such negative impacts on America's manufacturers, the NAM is calling upon Congress to ensure that the Administration has the authority to act quickly to suspend indefinitely the COOL regulations in regard to meat products if the WTO rules against those regulations.

Enforcement through Investor-State Dispute Settlement (ISDS)

With regard to the enforcement of trade and investment agreements, the NAM also strongly supports the continued inclusion and use as appropriate of ISDS contained in U.S. FTAs and BITs. ISDS is a vital enforcement tool that allows individual investors (whether business or non-profit) to seek enforcement of basic principles – such as non-discrimination, compensation for expropriatory action (*i.e.*, takings) and fair treatment – before a neutral arbitration panel. ISDS is in essence an enforcement mechanism and those seeking a more level playing field for manufacturers in the global economy should support the inclusion of this mechanism in existing and future agreements, including the TPP and T-TIP agreements. Such provisions should be broadly available both for the core investment rules of the underlying agreements, but also with respect to contracts and other investment agreements signed by investors with the foreign government. Proposals to eliminate or modify these core enforcement rules should be rejected as such outcomes undermine rather than strengthen a strong enforcement agenda.

Full and Timely Enforcement of Domestic Trade Rules Is Essential

Domestically, the NAM continues to be a strong supporter of the full and fair enforcement of our trade remedy laws that help manufacturers address

government-subsidized and other unfair competition. These rules too are an essential part of a robust pro-growth and pro-manufacturing trade policy. U.S. trade remedy laws have long been part of the U.S. legal system and are internationally respected mechanisms, authorized by the WTO.

It is vital that both the Department of Commerce and U.S. International Trade Commission exercise their authority to counteract unfair practices overseas. Full, effective, timely and consistent enforcement by the U.S. government of these globally recognized rules is essential to ensure manufacturers get a fair shake in the global economy.

Enforcement of U.S. trade rules must occur during the investigatory and review stages, but these trade rules must also be enforced fully at our border. Too often, we hear stories of manufacturers that have spent significant time and money to utilize the trade remedy rules, only to find importers that are evading these orders. When manufacturers request that Customs and Border Protection (CBP) investigate these cases of evasion, years often pass with no resolution. The Senate Trade Facilitation and Trade Enforcement Act of 2013 (S. 662) includes an important fix to this problem and manufacturers continue to urge this Committee and Congress to move this legislation forward. In particular, the provisions in Title III of S. 662 would help strengthen CBP's authority to enforce antidumping and countervailing duty orders and to investigate effectively alleged evasion of those orders in a time-limited manner. We urge the Committee to expedite action on this important legislation.

Conclusion

In manufacturing communities across America, the gains from trade can and should be increased. The United States achieved a record level of $1.38 trillion in manufactured exports last year, but we can and should do better so that America can expand manufacturing and jobs here at home. To improve the global competitiveness of manufacturers in the United States and grow our manufacturing economy, the NAM urges (i) prompt action on TPA and on new trade and investment agreements to level the playing field globally; and (ii) the full enforcement of those agreements and existing domestic trade rules.

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