

**Federal Register Comments  
National Association of Manufacturers  
Washington, DC**

**Participation of the United States in the proposed Trans-Pacific Partnership (TPP)  
Free Trade Agreement**

**January 25, 2010**

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM has been a leading advocate for greater free trade in the Asia-Pacific region, and supports U.S. engagement in negotiations to enlarge the existing Trans-Pacific Partnership (TPP) in a way that would benefit American manufacturers.

The existing Trans-Pacific Strategic Economic Partnership Agreement, originally known as the "P4," is a regional trade agreement between Brunei Darussalam, Chile, New Zealand, and Singapore that came into effect in 2005. In September 2008, the United States proposed negotiations to join the Agreement, which would be renamed as the Trans Pacific Partnership Free Trade Agreement (TPP). Two months later, in November 2008, Australia and Peru announced their intention to join the Agreement as well. Vietnam has also indicated strong interest in participating in negotiations. The first negotiations were to take place in March 2009, but the Obama Administration requested a delay as part of a larger overall review of trade policy.

In December 2009, after consultations with Congressional Committees having jurisdiction over international trade, agriculture and foreign relations, President Obama formally notified Congress that he intended to proceed with negotiations in the Trans-Pacific Partnership Free Trade Agreement. President Obama has also indicated that his Administration will continue consultations with relevant committees in Congress on establishment of overall negotiating objectives for the TPP. Given that Trade Promotion Authority (TPA) -- which contained both overall guidance and specific targets with regard to negotiating objectives -- has expired, it will be critical for the Administration to have clear guidance to set its negotiating parameters at the start of TPP.

The NAM has long expressed an interest in a Trans-Pacific trade agreement that would lower trade barriers to U.S. exports, and the TPP seems like the most practical vehicle for achieving this objective. U.S. tariffs and trade barriers are generally quite low, while American producers face high tariffs and other barriers in key Asian countries. A robust Trans-Pacific agreement could significantly level the playing field and help U.S. competitiveness in Asia.

Thus, as the NAM views the TPP, one of the most important objectives we seek is encouraging additional trading partners to sign on in the future, gradually increasing the scope and coverage of the TPP. A great concern of the NAM would be to have a Pacific free trade area formed, but with the United States on the outside, continuing to face high

barriers in the important Asian region. Were such a development to occur, the negative economic consequences on American manufacturing would be severe.

The TPP negotiations, though, must result in a trade agreement with very high standards, containing the best elements of our existing bilateral agreements. The existing P4 text is not, in the NAM's view, a basis for an agreement. Rather, the agreement must be the "gold-standard" type of agreement we have already put into place with our bilateral partners. Since four of the seven nations in question – Australia, Chile, Peru, and Singapore -- already have bilateral free trade agreements with the United States, this should not be a difficult hurdle for them.

The NAM believes in the core importance of ensuring a "gold standard" agreement. The NAM's International Trade Policy Subcommittee most recently met on January 20, 2010, and among other matters agreed the NAM should testify in favor of moving forward on the TPP negotiation. There was a consensus at the meeting, however, that the NAM's support must be conditioned on the highest quality agreement.

The existing agreements we have must not be compromised, and their standard needs to be extended to others. As additional trading partners join the Agreement, however, we recognize there may need to be adjustments in view of either U.S. product sensitivities or those of the individual country – within the framework of seeing the most comprehensive agreement possible.

## **Negotiations**

The very nature of a plurilateral negotiation is complex, and the NAM notes that the process appears particularly complex for the TPP. The structure of the existing P4 agreement is not comprehensive in nature, at least by the standards the United States has used when entering into previous bilateral negotiations. For example, there are no investment provisions in the existing P4 agreement. We would strongly recommend that, at the beginning of the negotiations, the entire group agree on the scope of coverage, the foundation on which each negotiating chapter will be negotiated, and the overall level of ambition to be achieved. We believe that any nation not willing to agree to this at the start of negotiations should be not participate in the negotiations, but instead be given the opportunity to reflect and perhaps join the Agreement at some future point.

One of the most unusual aspects of the TPP negotiations is that the United States already has existing bilateral free trade agreements with several of these nations – Australia (2005), Chile (2004), Peru (2008), and Singapore (2004). While each of these bilateral agreements is comprehensive, they are different in some ways from each other, with unique provisions. Our starting assumption is that these agreements will continue to remain in force and that exporters would be able to choose the better of the provisions of the existing bilateral agreement or the new TPP agreement. We would not want to see any U.S. company in a poorer position because of the TPP. There is precedent for such an arrangement, for example New Zealand's provision that exporters could choose

treatment between the 2001 New Zealand-Singapore agreement or the provisions of the P4 agreement.

### **The Bipartisan Agreement on Trade (“May 10<sup>th</sup> Agreement”)**

An additional wrinkle is that of our existing FTA partners within the TPP group, only the agreement with Peru contains the enforceable labor and environmental provisions that are part of the May 10, 2007 bipartisan agreement on trade. It is NAM’s policy to support the May 10<sup>th</sup> Agreement, with the exception of the IPR provisions relating to pharmaceuticals, which we did not support at the time and still oppose. The NAM would support inclusion of the labor and environmental provisions in the May 10<sup>th</sup> agreement in the TPP, but believes that more stringent labor provisions – such as inclusion of the International Labor Organization’s (ILO) eight “core labor standards” – should not be included as negotiating objectives in the TPP. The fact that the United States has ratified only 2 of the 8 core standards would make their inclusion as a negotiating objective into a serious roadblock for progress and could derail efforts to reach a strong final agreement.

### **Tariffs**

The six countries that will begin negotiating the TPP with the United States accounted in 2008 for \$66.1 billion of U.S. exports of manufactured goods (using the North American Industrial Classification System -- NAICS). Of that, \$63.8 billion, or 96 percent, is already covered by existing free trade agreements with Australia, Chile, Peru, and Singapore. Their tariffs on U.S. manufactured goods are already zero or are on tariff reduction schedules that will bring them to zero at some point.

Of the two remaining countries, Brunei accounted for \$111 million in total U.S. exports in 2008, with \$101 million of that in U.S. manufactured goods exports, and New Zealand accounted for a total of \$2.5 billion in U.S. exports, with \$2.2 billion of that in manufactured goods.

Brunei’s non-agricultural tariffs average only 3.0 percent, though on average they are relatively high in the machinery (7.0 percent), electrical machinery (14.4 percent) and transportation (10.0 percent) sectors. Nevertheless, given the small size of the market, we would not expect large dollar gains in our exports to result from the elimination of these duties. Total U.S. imports from Brunei in 2008 were \$114 million, of which \$73 million were manufactured goods imports.

New Zealand’s tariffs on non-agricultural products average only 3.2 percent, but in some areas its tariffs are high enough to be a hindrance to U.S. exports. These include clothing (16.2 percent), transportation equipment (4.6 percent average, with key autos at 11.7 percent) and machinery (4.1 percent average, but with many items at 7 percent or 10 percent). Given the size of New Zealand’s \$23 billion market for imported manufactured goods and the relatively small present U.S. share of that market – about 10 percent –

elimination of these tariffs could result in significant increases in U.S. manufactured goods exports to New Zealand.

Total U.S. imports from New Zealand totaled \$3.1 billion in 2008, with manufactured goods making up \$2.2 billion of that total, of which 40 percent entered duty-free. The average tariff on the dutiable items was 2.7 percent.

U.S. manufactured goods trade has performed considerably better with countries having free trade agreements with the United States, and having additional trade agreements of a nature that lower foreign tariffs or eliminate them completely will further aid in the growth of U.S. exports.

### **Non-Tariff Barriers**

NAM members are particularly interested in having the TPP agreement eliminate as many existing non-tariff barriers (NTBs) as possible and prevent new ones from emerging. Special attention should be given to ensuring that the Agreement strengthens transparency and accountability in the development of technical regulations, standards and administrative measures that affect trade.

The “Transparency” and “Technical Barriers to Trade” (TBT) chapters of recent FTAs (e.g., CAFTA-DR and the U.S.-Peru Trade Promotion Agreement) provide notable improvements in transparency and TBT disciplines. The NAM believes U.S. negotiators should ensure that the improvements contained in these texts are also included in the TPP agreement. To limit the possibility of future NTBs, the language should require good justification, a sound scientific basis, and a serious and transparent for public comments and consultations for any new technical regulations.

Some NAM members, for example, confront a proliferation of arbitrary sanitary and phytosanitary (SPS) measures in countries around the world that are not based on sound science and that constitute unjustifiable barriers to trade. In many cases, the lack of a scientific basis for SPS measures results in unjustifiable discrimination between similar products. We urge the U.S. Government to obtain an explicit agreement by the TPP governments to strengthen their commitment to the use of sound science, thus constraining the ability to discriminate arbitrarily against imported products.

Manufacturers are also concerned that governments may mandate technical standards that favor local industries. It is vital that governments commit not to mandate standards – particularly technology standards – unless necessary to protect human health, safety, the environment, or related objectives. Standards setting should be consistent with the 2002 decision in the WTO’s Technical Barriers to Trade (TBT) Committee on what constitutes an international standard. Consumers and competition fare best where standards development takes place in a truly voluntary and market-led process, one in which multiple standards compete on the merits, and where companies have the freedom to implement whatever standards best suits their needs and those of their customers.

Government-mandated technology standards, by contrast, risk chilling innovation and “freezing” technology development for new and better standards and solutions.

To avoid this problem, we would also urge the U.S. negotiating team to obtain commitments in this chapter that embody the key commitments set forth in the USG-supported *APEC Technology Choice Principles*, including commitments to: (i) promote voluntary, industry-led standards; (ii) refrain from mandating technology standards unless necessary to protect human health, safety, the environment, and related objectives; and (iii) adopt policies relating to standards and technical regulations that promote technology choice, unfettered competition, and consumer welfare.

## **Investment**

An important goal for U.S. manufacturers in the TPP, as in other free trade agreements, including those we have with potential TPP partners, is to include provisions that ensure effective protection for U.S. investors in partner countries. In all TPP partners, as in other countries, U.S. companies seek to avoid arbitrary, discriminatory, or unreasonable government measures that would undermine the value of their investments.

The TPP agreement should provide for the timely and impartial resolution of investor-state disputes and the application of enforcement mechanisms with adequate incentives for compliance. The dispute resolution procedures should also operate under high standards of openness, thus ensuring a secure, predictable and transparent environment for the settlement of disputes. It is also very important that a TPP investment chapter include ambitious market access or “pre-establishment” provisions to reduce barriers and create real investment opportunities for U.S. companies.

The United States has traditionally set the highest international standards for the protection of U.S. investment, from Chapter 11 of NAFTA and to the most recent Peru FTA. The TPP agreement should seek to include similarly high standards.

## **Intellectual Property Rights (IPR)**

The NAM views intellectual property rights (IPR) protection as one of the most important parts of any trade agreement, for America’s competitiveness and its productivity depend upon innovation and technology which in turn depend upon strong intellectual property protections.

The NAM strongly supports inclusion of state-of-the-art IPR provisions in the agreement. The protection of patents, trademarks, geographic indicators, internet domain names and copyrighted works are particularly important. The NAM also suggests that strong IPR enforcement mechanisms and penalty provisions, particularly the criminalization of end-user piracy and counterfeiting and a guarantee by each nation’s government authority to seize and destroy not only counterfeit goods but also the equipment used to produce them.

The NAM believes that IPR protection for all manufacturing industries is a critical part of any trade agreement, and we are pleased that in successive trade agreements, the IPR chapters have reflected this importance. The entire chain of intellectual property, from research and development, unique manufacturing processes, and protection of final products from counterfeiting, must be robustly protected.

All U.S. manufacturing sectors need strong IPR protections, but this is particularly the case for industries that are research-intensive. As noted earlier, the NAM is concerned that one such industry – pharmaceuticals -- was singled out in the May 2007 Bipartisan Agreement on Trade in a way we believe weakens critical IPR protections for that industry. The NAM believes these specific provisions should not be used as a guideline in the TPP negotiations. Strong IPR protections for American pharmaceutical manufacturers is important issue for the future trade position of the United States, and we encourage negotiators to protect the research, development and unique intellectual processes that occur in the pharmaceutical industry in the United States. This is a major generator of jobs and economic development in America, and it must receive strong protection.

Among the important features for any IPR chapter are strong provisions to criminalize copyright piracy and trademark counterfeiting. Not just the pirated or counterfeited goods need to be destroyed, but also the equipment used to produce them. Importantly, customs enforcement should be provided for goods in transit, including in free trade zones – which in many parts of the world have been hotbeds of distribution of counterfeit goods. Additionally, and very importantly, customs officials should be able to bring about IPR enforcement actions without having to wait for formal complaints from right-holders, who may not even know their goods have been counterfeited.

Copyright protection needs strong attention in any agreement. Anti-circumvention provisions to prohibit removing codes or other devices designed to prevent piracy should be promoted. Government agencies should be required to use only legitimate computer software, setting a positive example for private users.

### **Other Issues**

The NAM also wants a high-standard TPP in other areas as well. These include services market access, trade facilitation and expedited customs processing, electronic commerce, labor and environmental provisions consistent with the May 10, 2007 agreement between the Administration and the Congress, effective dispute settlement provision, and others as well. In the interest of avoiding too detailed an initial comment, the NAM would like to provide its views on these and other aspects of the TPP as the negotiations evolve.

### **Vietnam**

If Vietnam, which currently intends to be an observer, were to join the negotiations, that would pose both opportunities and challenges. Unlike the other trading partners in the TPP, the United States runs a large and growing deficit in trade with

Vietnam. Last year the overall bilateral U.S. deficit with Vietnam was \$10.1 billion, with total exports of \$2.8 billion versus \$12.9 billion in imports. The manufactured goods trade deficit with Vietnam was \$8.2 billion, with \$2.2 billion in U.S. exports and \$10.4 billion in U.S. imports.

Vietnam's participation in the TPP could provide substantial opportunities for rapid gains in U.S. exports. Last year Vietnam imported about \$60 billion from the world. The United States is the 9<sup>th</sup> largest supplier to Vietnam, with a market share of only 3 percent. Vietnam's tariffs are formidable, with non-agricultural tariffs averaging over 15 percent – though these tariffs apparently will come down to an average of about 10 percent when Vietnam fully implements its tariff reduction schedule stemming from its accession to the World Trade Organization in 2007. Its tariffs are particularly high in clothing, electrical machinery, and transportation equipment. Elimination of these tariffs could give U.S. exports a big boost, particularly if other major competitors continued to face Vietnam's full tariffs.

However, tariffs are not the only obstacle to U.S. exports in Vietnam. Its poor intellectual property regime is a serious problem, with the Commerce Department noting that 99 percent of movies, music, software, etc. on sale in Vietnam is pirated and that a wide variety of products sold are counterfeit. Licensing, standards, a variety of regulations, state owned enterprises, a lack of transparency, subsidies and other barriers and distortions exist as well. Vietnam would have to be held to the highest standards in a trade agreement, and would need to demonstrate in a transparent way that the provisions were being implemented.

Additionally, it should be noted that Vietnam's exports to the United States are very concentrated in one sector – apparel. In fact, apparel accounts for two-thirds of U.S. dutiable imports from Vietnam, far overshadowing other imports. With 5 percent of the U.S. import market, Vietnam has become the second-largest apparel supplier to the United States despite an average tariff of 18 percent. Thus if Vietnam were to enter into the TPP negotiations, U.S. negotiators would have to devote particular attention to provisions affecting this industry sector.

## **Conclusion**

To conclude, the NAM is highly supportive of U.S. entry into the TPP negotiations. We view the negotiations as being very complicated and with significant challenges, but with the prospect of helping level the playing field for U.S. manufacturers in Asia. We look forward to working with the Administration in greater detail as the negotiations progress.