

Public Comments

**National Association of Manufacturers
Washington, DC**

**Before the
United States Trade Representative**

**Concerning
“Japan’s, Canada’s and Mexico’s Expression of Interest in the Trans-Pacific
Partnership Trade Negotiations”**

Federal Register Notices USTR-2011-0018, USTR-2011-0019, and USTR-2011-0020

January 13, 2012

Introduction

On behalf of the National Association of Manufacturers (NAM), we appreciate the opportunity to provide comments on the expression of interest of Canada, Mexico and Japan in the Trans-Pacific Partnership (TPP) trade negotiations. 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 was an early advocate of the Trans-Pacific Partnership negotiations.

The NAM provided testimony and public comments in response to the 2009 request concerning whether the United States should participate in the TPP negotiations. As we said at the time, “...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.” That remains our view today but there are special concerns and issues to consider in any decision to invite Canada, Mexico or Japan to join the talks. The NAM held a meeting of our members on January 6, 2012, to discuss these issues, and we provide more detail below.

Given that the NAM is a broad-based association, our comments are limited to a general manufacturing viewpoint. We have encouraged individual companies and sectoral trade associations to make their views known regarding the specific issues that concern them with specific countries.

The NAM strongly favors an agreement that would benefit manufacturers and lay the groundwork for an eventual Free Trade Area of the Asia Pacific that is comprehensive, high-quality in its level of obligations, and addresses the trade and investment issues faced by businesses in the 21st century. We want an agreement that takes account of the fact that supply chains are global in nature, that products may cross multiple borders multiple times before they reach their final composition, and that it is no longer possible to look at issues through the 20th century prisms of manufacturing, agriculture, services, investment, or customs as discrete, isolated, unrelated topics. Some of the greatest gains in trade agreements for manufacturers, for instance, may arise from liberalization in services when distribution systems are opened. Similarly,

manufactured goods exports may grow in markets when they can get there faster and cheaper because of new agreement-based trade facilitating measures.

The formal expression of interest in the TPP on the part of Canada, Mexico and Japan in November 2010 is an important development in light of the TPP's high standards for liberalizing trade. We note that, if expanded to include these three countries, a TPP-12 grouping would offer domestic manufacturers access to a market having a Gross Domestic Product and population larger than that of the European Union. U.S. manufactured goods exports to the countries that would comprise the TPP-12 totaled \$497 billion in 2010, or 2.3 times the value of U.S. manufactured goods exports to the European Union.

Support for Canada, Mexico, and Japan

In a widely attended meeting of NAM members on January 6, 2012 regarding the possible expansion of the negotiations to include the "new three" there was widespread support across a variety of industry sectors for adding the three countries to the negotiations. Support for proceeding to open talks with each of the new three was broad-based in the recognition that negotiations provided an opportunity to resolve long-standing concerns with market access barriers. Nevertheless, this meeting elucidated many perspectives and concerns about the pace of expanded negotiations and overall level of ambition that might result from the addition of the new three to the mix, as well as issues specific to each possible new party.

U.S. manufactured goods exports to Japan in 2010 totaled \$48.5 billion, and were up by over seven percent over 2010 according to the latest 2011 figures. U.S. manufactured goods imports from Japan totaled \$116.3 billion in 2010. Japan's non-agricultural tariffs average only 1.2 percent among the lowest in the OECD. Given Japan's low tariffs, the principal gains in market access for exporters would have to come from significant reduction or elimination of non-tariff barriers. Specifically, the USTR's 2011 National Trade Estimate (NTE) report identified the presence of non-tariff barriers in the automotive and automotive parts, medical equipment, pharmaceuticals, blood products, nutritional supplements, and cosmetics sectors. As the TPP negotiations also address investment, we note that our direct investment position in Japan totaled \$16.9 billion in 2009, well behind our investment in Canada and Mexico. There is clearly room for growth in our investment, and given its correlation with attracting exports from parent companies, this could also be another area that could help boost manufactured goods exports.

An unusual aspect 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). Canada and Mexico, if they participate, will add to this unusual mix as we signed the NAFTA Agreement in 1994. While NAFTA remains a groundbreaking agreement, it is time for it to be updated. 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. At the same time, while Canada or Mexico must not be allowed to reduce their level of commitments, there are areas where the NAFTA can be improved.

Our manufactured goods exports to Canada totaled \$219.9 billion in 2010, and in 2011 were up 14 percent over 2010 levels. Manufactured goods imports from Canada totaled \$187.7 billion. The stock of U.S. direct investment in manufacturing in Canada totaled \$65 billion in 2009, the largest destination for U.S. investment globally. Tariffs on U.S. exports to Canada are, of course, at zero, having been eliminated in a Canada-U.S. trade agreement and reiterated in the NAFTA agreement. Intellectual property and other issues remain, however, as noted in the 2011 NTE report.

For Mexico, manufactured goods exports totaled \$147.2 billion, and were up 21 percent in 2011. Imports of manufactured goods totaled \$184.4 billion in 2010. U.S. direct investment in manufacturing in Mexico totaled \$24.4 billion in 2009. As is the case with Canada, tariffs on non-agricultural goods are at zero. NAFTA eliminated them in the last decade. Some non-tariff issues, however, were not fully addressed in the NAFTA agreement. The 2011 NTE report particularly notes customs and intellectual property issues.

The NAM has called on the Administration to negotiate the broadest and deepest agreement, and to work with negotiating partners and domestic stakeholders to address sensitivities and concerns in a way that ultimately ensures the most comprehensive outcome possible. That must apply as well to the addition of these three countries.

The TPP negotiations can not go back to the starting place and begin all over again. Non-tariff barriers will be a prominent part of these negotiations since Canadian and Mexican tariffs on American exports have been eliminated and Japan's tariffs are very low. A key question is how this can be done without delaying the conclusion of the agreement, at least among the original participants.

Principles to govern the addition of countries

Consequently, the NAM believes that in making its determination regarding bringing the new three into the talks, the U.S. Government should be guided by a number of key principles. The NAM believes:

1. Countries must commit to a comprehensive agreement with no *a priori* exclusions.
2. All three must accept text agreed to already by the existing negotiating partners ("original nine") and not reopen those texts, but they can participate in negotiations that are still open.
3. Negotiations must maintain at least the level of ambition as agreed by the original nine in terms of scope, legal obligations and market access.
4. Negotiations must not be delayed or paused to accommodate adding new participants.
5. The original nine should proceed to closure. If negotiations slow down due to the negotiations with new participants, negotiations with the new three should then be concluded later.

6. Negotiations with new participants should proceed on their own tracks and pace; the new participants should not be considered as a bloc for which negotiations must all proceed and conclude at the same time.
7. Countries must be willing to put all trade and investment barriers on the table, especially non-tariff barriers and trade-distorting practices and issues of specific concern to the United States.
8. Canada and Mexico must agree to expand trade and investment commitments beyond NAFTA levels.
9. Canada and Mexico should implement and comply with their existing obligations under NAFTA; there must be no rolling-back of commitments or diminution of provisions committed to previously.
10. Negotiations should conclude in 2012 if possible but substance must determine the timing.

Issues of Concern to Manufacturers

We will not repeat all of our concerns expressed in our 2009 submission, however there are some that warrant reemphasis.

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. It is particularly important that special attention should be given to ensuring that the TPP agreement strengthens transparency and accountability in the development of technical regulations, standards and administrative measures that affect trade.

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 suit 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.

We urge the U.S. negotiating team to negotiate sector-specific commitments that will clarify what principles of transparency, accountability, neutrality, and risk-based assessments and rules governing market approvals and labeling, for example, may mean for particular industries.

Investment

We want to reiterate that an important goal for U.S. manufacturers in the TPP is to achieve strong and effective protection for U.S. investors in partner countries, backed by timely and impartial resolution of investor-state disputes through international arbitration and 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. The United States has traditionally set the highest international standards for the protection of investment, from Chapter 11 of NAFTA to the most recent U.S.-Korea FTA. The TPP agreement must apply these standards, including investor-state dispute settlement to all TPP partners, including Australia and Japan.

Currency

An issue we did not raise in 2009 was currency misalignment. It is undeniable that long-term misalignment of exchange rates has an impact on trade balances, and confers an artificial advantage to an economy's exports. According to the *NAM Official Policy Positions*, "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 exchanges rates for their currencies." While we do not expect a bilateral or plurilateral trade agreement can address this issue, TPP negotiators need to be cognizant of it.

Conclusion

To conclude, the NAM is highly supportive of having Canada, Mexico, and Japan in the TPP negotiations as a means of achieving long-sought trade liberalization and market access. To be sure, on many issues the new three will be advocates for the same high-standards commitments U.S. manufacturers seek. In other areas, there may be difficulties. We view the negotiations as being complicated and with significant challenges, but with the important prospect of helping level the playing field for U.S. manufacturers in Asia.

Of course, as would any company or association, the NAM will reserve its judgment as to its support for a final agreement with both the original nine TPP countries and the three prospective additions until we see the final balance of commitments.

We hope that the consultations with the three governments will address quickly any issues that arise as a result of USTR's request for comments so that the three can join the negotiations as soon as possible in 2012 and truly make the TPP the pathway to a Free Trade Area of the Asia-Pacific.

Thank you for this opportunity to present the NAM's comments.