

Trans-Pacific Partnership Priorities

Opening Markets and Strengthening Global Competitiveness to Grow Manufacturing in the United States



Striking new high-standard and market-opening trade agreements with other countries is essential to strengthening America's manufacturing edge. Across the United States, manufacturers of all sizes increasingly are turning to trade to expand their customer base, grow their businesses, access critical inputs from overseas and create and sustain jobs here at home. Thanks in substantial part to past trade deals, U.S.-manufactured exports topped \$1.403 trillion in 2014 – the highest level in America's history – and are contributing to the continued growth of manufacturing in the United States, which also reached its highest level ever, with \$2.09 trillion in output in 2014.

The Trans-Pacific Partnership (TPP) negotiations have the potential to create a final agreement that will be a strong catalyst for U.S. manufacturing growth for decades to come if it achieves the ambitious goals on which it was launched and is consistent with the congressionally approved negotiating objectives just enacted as part of Trade Promotion Authority (TPA) legislation.

Expected to cover 40 percent of the global economy, with both developed and developing economies as participants, a market-opening and strong TPP presents an important opportunity to expand manufactured exports and sales among large and growing TPP markets. The right TPP could also be a catalyst to help reverse U.S.-Asian trade trends that have been moving against the United States. For the five TPP nations with which the United States does not already have free trade agreements – Brunei, Japan, Malaysia, New Zealand and Vietnam – cumulative imports from the United States accounted for 8 percent of those countries' total imports in 2013, down from 18 percent in 2000. Meanwhile, China has made major inroads in those markets, increasing its import share to 21 percent in 2013 from 12 percent in 2000. The TPP also will have greater impacts, potentially setting standards for new trade agreements in the Asia Pacific, with Europe and other regions for decades to come.

While the TPP has the potential to create substantial new opportunities and expand U.S. competitiveness globally, manufacturers have been unwavering in their commitment to ensure that the final TPP is the strongest possible agreement that levels the playing field for all, concretely opens all markets, facilitates trade and sets in place strong and enforceable rules for all on issues from intellectual property and investment to e-commerce, data flows and transparency. Before and throughout the negotiations, the NAM has provided detailed comments in letters and in meetings with U.S. and TPP negotiators as to key provisions that a final TPP should include in order to advance the interests of our nation's manufacturers.

As the TPP negotiations enter their final stages, the NAM highlights below the top outcomes that are critical to ensure that any final TPP agreement supports the growth of manufacturing and good-paying manufacturing jobs in the United States.

- **Elimination of Tariff and Other Trade Barriers and Distortions:** U.S. exports of manufactured goods have helped grow U.S.-based manufacturing and support millions of good-paying jobs. Yet, manufacturers face significant tariff and non-tariff barriers in many TPP markets. From up to 75 percent tariffs on some machinery, transportation and capital equipment, 60 percent tariffs on building materials, 50 percent or higher tariffs on food and related products, and 30 percent tariffs or more on chemicals, health

and medical equipment and infrastructure products, high tariffs are substantial barriers to U.S. manufactured goods exports to Vietnam, Malaysia and Brunei. Non-tariff barriers also pose a major and oftentimes greater obstacle to manufacturers' access and sales, particularly in countries such as Japan, Malaysia and Vietnam, but also in other TPP countries, including those that have already negotiated trade agreements with the United States. In particular, discriminatory measures, localization requirements, opaque regulatory systems and other distortive barriers and practices unfairly limit greater access to many TPP markets and undermine improved trade partnerships with these countries.

The final TPP should provide concrete new market access for manufacturers in the U.S. and adhere to the broad range of TPA negotiating objectives in the 2015 legislation that highlight the importance of eliminating tariff, non-tariff, market access and other distortive barriers, including through the elimination of:

- *Foreign tariff barriers on the full range of manufactured goods;*
 - *Foreign non-tariff barriers that limit access of manufactured goods;*
 - *Localization barriers, such as domestic content requirements for commercial sales, subsidies conditioned on the use of domestic goods and services, and measures that favor or require domestic innovation;*
 - *Barriers to U.S. participation in foreign government procurements; and*
 - *Other foreign government policies and practices that directly or indirectly deny full market access for U.S. exports or otherwise distort trade and U.S. trade opportunities, including restrictions or prohibitions on the marketing or promotion of products.*
- **Protection and Enforcement of all Forms of Intellectual Property:** Innovation and strong intellectual property (IP) standards and enforcement have propelled the United States to its global leadership position in manufacturing and have helped drive U.S. exports and support high-paying U.S. jobs. 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. Weak standards in several TPP countries undermine U.S. manufacturing competitiveness and those countries' own ability to grow innovative economies.

The final TPP should provide for high-level protections and enforcement that are consistent with U.S. law of the full range of IP rights for all industries throughout their production processes, including patents, copyrights, trademarks, test data and trade secrets, by:

- *Protecting the rights of trademark holders and the use of common names in international commerce, while providing expedited means to remedy bad faith registrations;*
 - *Protecting, valuing and encouraging innovation, including for new and emerging technologies;*
 - *Prohibiting 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;*
 - *Requiring governments to adhere to rigorous and enforceable confidentiality requirements consistent with U.S. law, where IP and related data, including chemical and biologic pharmaceutical test data, are appropriately required by governments, and must ensure that such data cannot be unfairly referenced or relied upon by competitors;*
 - *Strengthening operational collaboration between law enforcement agencies to address the cross-border theft of trade secrets and the cross-border movement of pirated, smuggled and counterfeit goods; and*
 - *Requiring deterrent penalties and strong enforcement mechanisms, including through accessible, expeditious and effective civil, administrative and criminal enforcement mechanisms, for all forms of IP, including patents, copyrights, trademarks and trade secrets, for all products.*
- **Elimination of Barriers to and Inclusion of Enforceable Protections for Foreign Investment:** Foreign investment in the United States helps grow U.S.-based manufacturing. Similarly, U.S. investment overseas is a driver of manufactured goods exports and advances U.S.-based research and development

and supports higher-paying U.S. jobs. Manufacturers, however, face substantial barriers to investment overseas, including in several TPP countries. Among the ones that are most harmful to manufacturers in the U.S. are restrictions on investment in particular industries, requirements for local partners, non-security based investment reviews, weak systems for the protection and enforcement of basic property rights and foreign government actions and practices that violate basic fairness and property standards or that unfairly distort markets, including localization and mandated technology transfer requirements.

The final TPP should provide for investment access and protection provisions, including the following specific provisions, which should all be subject to neutral investor-state dispute settlement with no product or industry exclusions or new exceptions:

- *Nondiscriminatory for new and expanded investments in the TPP markets and the limitation of non-security based investment screening mechanisms;*
 - *Strong protections for investment agreements (between a foreign investor and a host state government) with full enforcement for the breach of such agreements without sectoral or industry carveouts;*
 - *The minimum standard of treatment (including fair and equitable treatment and full protection and security);*
 - *Prompt, adequate and effective compensation for both direct and indirect expropriations;*
 - *Restrictions on performance requirements (including those related to technology and innovation); and*
 - *Provisions enhancing the choice of senior management, transparency and publication of investment laws and regulations and the free transfer of capital.*
- ***Inclusion of Disciplines to Promote Cross-Border Data Flows and Prohibitions on Localization of Information Technology Infrastructure:*** Manufacturers increasingly rely on digital data and information flows, global communication networks and cross-border flows of data and information to grow and manage their businesses – from creating new sales opportunities through internet storefronts and tracking sales and sourcing to managing a wide variety of human relations functions. To compete effectively in the global market, manufacturers must be confident in their ability to maintain and move data and information securely across borders and to use newer technologies, such as cloud computing, without discriminatory or unnecessary, burdensome restrictions. These issues are particularly important to small businesses that are can use new technologies to reach customers overseas.

The final TPP should ensure that cross-border data flows are permitted, without restriction or local storage/processing requirements for all types of providers, while ensuring IP rights are protected, and prohibit foreign localization requirements that would require the use of local information infrastructure as a condition to conduct or expand business operations.

- ***Promotion of Transparent, Science-Based Regulatory Practices and Standards that Provide for Stakeholder Input:*** For many manufacturers, differences in regulations and standards overseas increasingly represent obstacles to increased exports and overseas sales and substantially increase costs in ways that undermine manufacturers' global competitiveness. The regulatory systems of several TPP nations lack basic transparency provisions and requirements for stakeholder participation, science-based outcomes and cost-benefit analyses of new and expanded regulations.

The final TPP should include provisions to promote transparent, science-based regulatory practices consistent with common fundamental tenets of law that provide for cost-benefit analysis and stakeholder input whenever such rulemaking occurs. The TPP should ensure that TPP partners provide transparent regulatory systems that provide opportunities for stakeholder input, including from other countries, in the development of regulations and time for the governments to consider the comments received. Regulatory changes should be phased in to provide for affected industries to comply and, where required, seek certification. The TPP should also reinforce the importance of using recognized international standards and

create ongoing opportunities for the TPP partners to work together to eliminate or modify duplicative or conflicting standards that undermine trade between the partner countries, ensure that existing systems of conformity assessment are used where possible instead of creating new standards, and eliminate unnecessary regulatory barriers that may arise in the future.

- **Provisions to Promote Fair Competition, including with State-Owned Enterprises:** Strong rules that foster pro-competitive and market-driven economies 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.

The final TPP should include provisions to promote fair competition in foreign markets, including:

- *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; and*
 - *Provisions to address unfair competition and favoritism by or to the benefit of state-owned enterprises and similarly situated enterprises.*
- **Provisions to Facilitate Trade through Improved Customs and Related Operations:** 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. Chokepoints at the border – such as excessive customs mandates, redundant security programs, inadequate infrastructure, and burdensome regulations – reduce the critical predictability of the global supply chain. At the same time, effective customs enforcement measures are needed to combat illicit trafficking, the maintenance of the rule of law and public and national security. The WTO Trade Facilitation Agreement (TFA) has set the bar for predictable, efficient and transparent customs processes and trade facilitation initiatives. While implementation of the TFA will benefit customers and manufacturers, there are additional measures that would help minimize cross-border friction and reduce costs for highly-integrated global supply chains.

The final TPP should include provisions to facilitate trade through improved customs and related operations, including by:

- *Improving customs and border processing operations;*
 - *Supporting coordination between customs agencies, other law enforcement and security agencies and other entities;*
 - *Reducing differing paperwork requirements;*
 - *Promoting fully electronic clearance of imported goods; and*
 - *Strengthening intellectual property protections relating to imports, trade enforcement and import-safety programs.*
 - *Raise the baseline de minimis threshold to allow low-value shipments to cross borders without burdensome customs processing.*
 - *Harmonizing border security processes and cargo security programs.*
- **Dispute Settlement and Enforcement:** Effective, timely, objective and binding dispute settlement provisions are vital to ensure each agreement obligation is fully enforced. A strong and transparent investor-state-dispute settlement (ISDS) mechanism is particularly important to strengthen the enforceability of commitments and the principles of contract sanctity, anti-corruption and protection from arbitrary asset confiscation.

The final TPP should include effective, timely, binding and transparent dispute settlement systems that ensure all obligations made in trade agreements are fully enforced for all products and industries. Expedited procedures and strong penalties are important to ensure the effectiveness of dispute settlement processes. Investor-state dispute settlement (ISDS) is especially important to enable individuals and individual investors to seek redress directly before an equitable international forum free from political influence when the core investment obligations identified above or investment contracts have been violated by the foreign government with respect to individual investments.

Conclusion

Manufacturers in the United States require a robust trade and investment agenda to increase our access and competitiveness in the global economy that will help sustain and grow the most productive manufacturing economy in the world. A final TPP agreement that prioritizes market access, the protection of intellectual property, provisions to enable ecommerce and a level playing field, fair treatment, strong investment protection standards and enforcement is one that will help boost manufacturing and manufacturing jobs throughout the United States.

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The 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.