WRITTEN SUBMISSON OF THE NATIONAL FOREIGN TRADE COUNCIL

Comments in Response to Executive Order Regarding

Trade Agreements Violations and Abuses

Docket Number USTR-2017-0010

July 31, 2017

These comments are submitted by the National Foreign Trade Council (NFTC) to assist the Office of the United States Trade Representative (USTR) and the U.S. Department of Commerce (DOC) in conducting the performance reviews mandated by Executive Order 13796. Pursuant to a Federal Register notice, published on June 29, 2017 (FR Notice), interested persons have been asked to submit comments regarding these reviews.

Introduction

NFTC is dedicated to making America more competitive in the global economy by ensuring the adoption of forward-looking tax and trade policies, by strengthening global rules and by opening foreign markets to U.S. products and services. Our strong support for these objectives, and our belief that their fulfillment is essential to our members' success in a globalized economy, have been unwavering for decades. We therefore believe that it is critical to provide policymakers in the Administration with our clear views about the role that trade and tax policies play in unleashing a new era of U.S. competitiveness.

NFTC represents more than 200 companies and our membership spans the breadth of the national economy. It includes sectors such as energy products, capital goods, transportation, consumer goods, technology, healthcare products, services, e-commerce and retailing. Our companies account for more than $3 trillion in total sales worldwide, employ over five million Americans and produce a large share of our nation's total exports. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership.

Analysis

The comments solicited by this FR Notice are a result of Executive Order 13796, issued on April 29, 2017, in which the President requested USTR, DOC and other federal agencies to conduct performance reviews of all bilateral, plurilateral and multilateral trade and investment agreements to which the United States is a party. In addition, the performance reviews are to cover trade relations with countries governed by the rules of the World Trade Organization (WTO) with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods.[1] Specifically, the FR Notice asks for information regarding whether there have been violations of the existing agreements or programs and, conversely, what benefits or opportunities have been created by these agreements and programs.

In conducting these performance reviews, we urge USTR and DOC to consider the wealth of detailed information already available which addresses these issues. Principal among these is a report prepared by the ITC last year, which essentially conducted a similar exercise while also cataloguing other previous studies done to assess the value of U.S. trade agreements. Section 105(f)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) required the U.S. International Trade Commission (ITC) to submit a report to the House Ways & Means Committee and the Senate Finance Committee on the economic impact on the United States of all existing free trade agreements entered into after January 1, 1984 as well as the Uruguay Round Agreements entered into under the context of the WTO. This report, entitled "Economic Impact of Trade Agreements Implemented Under

[1] As defined in the FR Notice, these countries are China, the European Union, India, Indonesia, Japan, Malaysia, Switzerland, Taiwan, Thailand and Vietnam.

Trade Authorities Procedures" (ITC 2016 Report) was made public in June 2016.[2] In compiling the report, the ITC relied upon publicly available data, interviews with industry and a public hearing process. Based on this data, the report found that "U.S. bilateral and regional trade agreements have expanded bilateral trade flows with partner countries by 26.3 percent on average across the traded goods and services sectors" and that such agreements had a positive effect on both U.S. aggregate trade, U.S. real gross domestic product and U.S. employment.[3] Further, the report concluded that "trade agreements have affected not only trade but also others aspects of the U.S. economy, with results including higher aggregate employment, lower prices, and greater consumer choice" while acknowledging that trade did have some negative effects on production and employment in certain sectors.[4]

Uruguay Round Agreements

In many ways, the most significant of the trade agreements being reviewed in this performance review process are the Uruguay Round Agreements (URAs). These agreements were negotiated to replace and expand upon the General Agreement on Tariffs and Trade (GATT) and they serve as the cornerstone agreements of the WTO. The URAs are of particular importance to the world trading system for two reasons – first, because they represent the most developed multilateral trade agreements of the post-World War II era and second, because they have served as a foundation for further liberalization efforts since the WTO was established in 1995. As noted by the ITC:

> "[T]he URAs triggered a significant restructuring of the global trade environment. Encompassing 123 different countries, the URAs replaced quantitative restrictions on trade with agricultural goods with tariff equivalents…instituted frameworks on trade in intellectual property, trade in services, and FDI; established the WTO as a means of oversight; and laid the foundation for product-specific agreements…"[5]

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[2] The ITC 2016 Report can be found at https://www.usitc.gov/publications/332/pub4614.pdf.
[3] ITC 2016 Report at 18 and 121-128.
[4] Id. at 19.
[5] Id. at 247-248.

Upon reviewing the academic literature assessing the impact of joining the WTO system, the ITC found strong support for the conclusion that the likely effect of joining the WTO system, and agreeing to abide by its core agreements, is strongly positive, in terms of increased trade flows, for those countries who are members.[6]

In terms of the ten countries referenced in the FR Notice with whom the U.S. does not have a free trade agreement but only has a WTO relationship (see footnote 1 above), any prioritizing of the U.S. trade partners would place China, India, Japan and the European Union ("EU") higher on the list with regard to barriers than either Canada or Mexico, our North American Free Trade Agreement (NAFTA) partners. This does not suggest that the barriers faced in Mexico and Canada are less significant, but it does mean that the existing commitments of these two countries under the NAFTA agreement have addressed many barriers, and that, in the case of major trade partners with which we have no such agreement, the degree and magnitude of barriers is much greater. Tariff levels are a case in point, but this also applies to many non-tariff restrictions. While concerns remain with our NAFTA partners, and while we hope efforts to strengthen the North American trade relationship will address those concerns, a robust effort will be needed to prioritize our objectives in these non-FTA relationships and seek negotiations to address our concerns.

In light of the need for effective economic diplomacy to tackle barriers in non-FTA markets, it is imperative for the Administration to consult with U.S. exporters and producers as it plans a path forward. NFTC, along with many of our member companies, were actively engaged during negotiation of the Trans-Pacific Partnership (TPP) in identifying systemic barriers in several countries of concern in these performance reviews, especially Japan, Malaysia and Vietnam. TPP contained commitments from all three countries which would have substantially reduced the level and scope of barriers we face in those markets. It will be important to seek

[6] Id. at 249.

alternate avenues for addressing barriers in these markets, building on progress already made with these countries through the WTO and other arrangements.

There is also a need to focus on the longstanding and persistent barriers we face in the EU, particularly considering the halt in progress to conclude the Transatlantic Trade and Investment Partnership (TTIP). Notwithstanding the fact that the US-EU trade and investment relationship is one of the most open and vibrant in the world, there are still a number of unresolved issues. We look to working with the Administration's ideas for engaging the EU bilaterally and through other negotiating forums such as the Trade in Services Agreement.

Finally, we emphasize the significant problems U.S. exporters and investors face in China, which is an important and complicated market for American businesses. The Administration must balance efforts to encourage the healthy growth many American companies have enjoyed in exports to China while also finding leverage to address a growing list of concerns that the United States and other countries have with Chinese trade and regulatory policies. The lack of progress – and in many cases policy reversals – in the adoption of fair and non-discriminatory rules and policies by the current Chinese authorities in areas such as subsidies, state-owned enterprises, technology, intellectual property protection, services and agriculture are major causes for concern. The TPP agreement would have created a powerful new normative force in the Asia-Pacific region to help move Chinese policymakers in a more responsible direction. With TPP off the table, it is now imperative to outline a policy direction with respect to China and other trading partners in the Asia-Pacific that will help achieve similar results.

Plurilateral Agreements

Additional agreements negotiated under the auspices of the WTO, known as "plurilateral" agreements, have allowed like-minded countries to establish trade disciplines in emerging areas with the goal of eventually encouraging a greater number of countries to join those agreements. Of particular importance to NFTC members are the Information Technology

Agreement (ITA), the Government Procurement Agreement (GPA) and the Trade Facilitation Agreement (TFA). The ITA is a prime example of a trade agreement that lowers tariff barriers, creates benefits and opportunities for U.S. exporters and American workers, and promotes the rate of innovation in the United States. The original version of the ITA was completed in 1996 as a plurilateral agreement to eliminate tariffs on certain information and communications technology (ICT) products. The agreement covers a wide range of high technology products, including computers and computer peripheral equipment, telecommunication equipment, semiconductors, semiconductor manufacturing and testing equipment, computer software, and computer-based analytical instruments. Initially accepted by 29 members of the WTO, the agreement currently includes 82 participants and covers over 97 percent of world trade in information technology products.[7] The United States and its ITA partner countries recently agreed to update and expand the agreement to ensure that it keeps pace with rapidly evolving technologies.

The ITA is one of the most commercially successful of the WTO's trade agreements. From 1996, when the agreement was signed, to 2015, total trade in ITA listed goods has increased from $1.2 trillion to more than $5 trillion – an increase of an average 9.3 percent per annum.[8] And as the WTO has observed, "the ITA is not only about eliminating duties and expanding trade, it is also about stimulating innovation."[9] Indeed, the ITA's biggest return has been through its "multiplier effect" on the rest of the economy. Only 20% of the economic benefits of technology come from technology production, with the other 80% coming from technology use.[10] By zeroing out tariffs on ICT goods, the ITA effectively gives consumers and businesses a significant tax break on those goods, incentivizing the mass adoption and diffusion

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[7] WTO, Information Technology Agreement, https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm.
[8] ITIF, How Joining the Information Technology Agreement Spurs Growth in Developing Nations, at 5 (May 2017).
[9] WTO, 20 Years of the Information Technology Agreement, at 4.
[10] ITIF, Boosting Exports, Jobs, and Economic Growth by Expanding the ITA, at 3-4 (March 2012).

of technology, increasing productivity, and improving the quality of goods, services and innovation.

A primary example of these benefits of the ITA for U.S. exports is trade in semiconductors – the largest category of products covered by the ITA in terms of value.[11] According to the Semiconductor Industry Association (SIA), the U.S. semiconductor industry directly employs 250,000 workers and supports approximately 1 million indirect jobs in the United States.[12] Over 80% of U.S. semiconductors are exported, and the semiconductor industry is one of the United States' largest exporters, with U.S.-based companies holding a 50 percent share of the global market.[13] By facilitating this trade – tariff savings from the original ITA for semiconductors alone was worth $3 billion – the ITA has helped maintain U.S. leadership in a critical industrial sector that is key to U.S. competitiveness around the world.[14]

While the United States has a sizable trade deficit overall in electronics, this does not diminish the importance of the ITA to U.S. companies, for the reasons described herein. Reapplication of import duties on electronics products would place a significant tax burden on American companies, organizations and individuals that use ICT to accelerate their own productivity, growth, competitive advantage and connectedness. Through the use of low-cost, productivity-enhancing ICT, America's technology companies have become some of the most highly-valued companies in the world. Indeed, of the top ten companies listed on the American Stock Exchange, Apple, Alphabet (Google) and Microsoft are the top three, with Amazon and Facebook amongst the top ten.[15] America's ICT sector is not on its knees economically, despite the trade deficit, and its success is in no small part due to the ITA – both as a domestic tax cut

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[11] Source: WTO.
[12] SIA, Semiconductors, Building America's Innovation Economy, http://www.semiconductors.org/clientuploads/Resources/SIA-OneSheet-Draft4.pdf.
[13] Id.
[14] SIA, Expansion of the Information Technology Agreement (March 2012).
[15] See, Top Ten US Companies by Market Capitalization, CNBC, March 7, 2017, accessed on 7/17/2017 at http://www.cnbc.com/2017/03/08/the-top-10-us-companies-by-market-capitalization.html#slide=11

on productivity-enhancing ICT products that fuel innovation, and as foreign tax cuts that have fueled demand for American ICT products and services.

In 2012, a subset of ITA participants launched negotiations to significantly expand the product coverage of the ITA. The United States and 50 other WTO Members announced the completion of the negotiations in 2015. The new agreement – referred to as "ITA Expansion" – commits the parties to eliminate import duties on an additional 201 high-tech products, including advanced semiconductors, high-tech medical devices, global positioning systems, software media, and high-tech ICT testing instrumentation. The WTO estimates that the total global trade in ICT products covered by ITA Expansion is approximately $1.3 trillion, accounting for approximately 10 percent of world trade in goods. It also estimates that 95.4 percent of the participants' imports of these products will benefit from duty-free treatment by 2019.

Furthermore, industry estimates that the elimination of tariffs on the goods covered by ITA Expansion will increase annual global gross domestic product by an estimated $190 billion. The Office of the U.S. Trade Representative has stated that ITA Expansion will eliminate tariffs on more than $180 billion in annual American technology exports to key markets around the world. Other sources predict that ITA Expansion will increase U.S. exports by $2.8 billion, increase revenues of U.S. ICT firms by $10 billion and support creation of approximately 60,000 U.S. jobs.[16] It will also benefit investors and traders around the world by improving predictability and certainty – as many of the products covered by ITA Expansion were previously not subject to tariff commitments, or were subject to the potential imposition of tariffs at rates that were substantially higher than those applied in practice.[17]

The GPA is another agreement that has created significant opportunities for American firms to increase their exports of goods and services to foreign markets. The GPA is a

[16] ITIF, Boosting Exports, Jobs, and Economic Growth by Expanding the ITA, at 5 (March 2012).
[17] WTO, Information Technology Agreement—an explanation, https://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm.

plurilateral agreement that includes 47 members (including the EU and its Member States) and covers approximately $1 trillion in annual trade.[18] A 2014 amendment to the agreement (the revised GPA) expanded these opportunities for U.S. companies by an additional $80-$100 billion annually. According to the WTO, government procurement typically accounts for 10-15 percent of a country's GDP.[19] The primary purpose of the GPA is to provide access to this important segment of the global market, and also to improve good governance, transparency and integrity in procurement markets. The United States has historically encouraged all WTO Members to participate in the GPA, and the expansion of the agreement's membership is a principal negotiating objective under trade promotion authority (TPA).[20] Several countries are currently negotiating their accession to the agreement.[21]

The principal benefit of the GPA for U.S. companies is the access it provides to foreign government procurement contracts and the national treatment and non-discrimination that it guarantees with respect to the goods, services and construction services that the agreement covers. As a result of these provisions, for covered procurements, U.S. exporters are shielded from domestic preferences and discriminatory purchasing requirements that foreign governments could otherwise use to unfairly favor their own suppliers. And, in addition to the benefits U.S. exporters realize from the GPA rules themselves, they also benefit from the

[18] USTR, United States Welcomes new Opportunities for U.S. Suppliers Under Revised WTO Government Procurement Agreement (April 2014). A more recent WTO publication included a higher estimate of $1.7 trillion per year. WTO, Government Procurement Agreement, Opening markets and promoting good governance (2015).
[19] See, e.g., https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm.
[20] See Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), section 102(b)(13)(B).
[21] Ten WTO Members are in the process of acceding to the GPA (Albania; Australia; China; Georgia; Jordan; Kyrgyz Republic; Oman; Russian Federation; Tajikistan; and the former Yugoslav Republic of Macedonia). The process has slow in some cases, however. China, for example, committed in 2001 to commence its negotiations "as soon as possible," but its proposed commitments have lacked ambition and have not been acceptable to the existing GPA members. Five other WTO members undertook commitments in their WTO accession protocols to initiate accession (Afghanistan, Kazakhstan, Mongolia, Saudi Arabia and Seychelles).

equivalent rules in U.S. FTAs, as the procurement chapters in most U.S. FTAs incorporate many GPA provisions.[22]

The TFA is another plurilateral agreement which shows how trade policy, done creatively and on a multilateral basis, can lead to benefits for businesses, both large and small, in the world economy. The TFA dates to December 2013, when WTO members concluded negotiations of the agreement as part of a WTO Ministerial Conference. As a technical matter, the TFA was added as an Annex to an existing WTO agreement but could not become applicable (or "enter into force") until two-thirds of the WTO members had completed their domestic procedures to adopt it (known as "ratification"). That TFA reached that benchmark in early 2017 and entered into force on February 22, 2017.

The main goal of the TFA is to streamline procedures for the movement of goods across borders, including release and clearance of packages through customs. As a practical matter, this means that implementation of the agreement will reduce the costs and time it takes for businesses to import and export products. It is estimated that the TFA will lead to one trillion dollars in global export gains once it is fully implemented and that complete implementation will cut trade costs by an average of 14.3 percent.[23] The agreement contains important procedural safeguards for importers, such as the guarantee of access to advance customs rulings and publication of information on border fees and charges. The TFA also provides mechanisms for cooperation between customs authorities and other appropriate regulators on trade issues to allow for more harmonized approaches to border issues. Importantly, it contains commitments regarding technical assistance and capacity building, allowing less developed economies eager to implement its provisions to move to the head of the line for donor agency assistance. Finally,

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[22] Steve Woolcock and Jean Heilman Greir, Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, at 26 (Feb. 2015) (noting that the United States and the EU have effectively exported the GPA framework of rules to many other countries via FTA negotiations).
[23]WTO, World Trade Report 2015, Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement, at 73 (October 2015). https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf .

it encourages the participation of small businesses in the global trading system – the very businesses that often encounter the most frustration and cost when trying to participate in the global economy.

Bilateral Agreements

Complementing these multilateral and plurilateral efforts, the U.S. has entered into regional and bilateral FTA agreements. As noted in the ITC 2016 Report, the FTA agreements have provided a means for the U.S. to get binding commitments in areas – including investment, labor and the environment – that are not covered by multilateral or plurilateral agreements.[24] Further, the FTAs have been drafted to establish precedents for later agreement, with, in many cases, later-in-time FTAs building on the achievements of older ones.[25] From an economic perspective, there is a significant body of literature which supports the proposition that bilateral trade agreements to which the U.S. is a party have increased overall trade flows between the trading partners.[26]

The most significant FTA to which the U.S. is a party – NAFTA -- has been an enormous success. Canada and Mexico are now our two largest export markets and, in aggregate, pay $600 billion annually for American goods and services. U.S. exports have increased by more than 350 percent in real terms since the agreement entered into force and North American integration of our production platforms has helped our industries compete more effectively with producers in Asia and Europe. U.S. transportation companies have a huge stake in the vast movement of goods between our three markets. U.S. farmers and ranchers now export close to $40 billion to Canada and Mexico each year. U.S. banks, insurance companies and accounting firms have made huge gains in selling to both Canada and Mexico, leaving the U.S. with a $34 billion surplus in the services trade with our NAFTA partners. Finally, American consumers

[24]ITC 2016 Report at 20.
[25]Id. at 37 (data in report reveals that U.S. FTAs have "evolved markedly during the last 30 years, frequently becoming broader, stronger and more transparent over time," often evolving from URA baseline obligations).
[26] Id. at 253-255; 261-264.

benefit form a much wider array of goods available at lower prices due to the tariff-free borders shared by the three countries. See Written Comments Regarding NAFTA Negotiations, Docket No. USTR-2017-0006, filed by NFTC (June 12, 2017); Testimony of Ambassador Rufus Yerxa, Docket No. USTR-2017-0006, filed by NFTC (June 29, 2017).

The FTAs to which the U.S. is a party also share another common element – that of strengthening our economic and political ties with strategic allies. In the case of NAFTA, there is significant evidence to show that the agreement has helped Mexico flourish both economically and politically in the 23 years since the agreement was signed. It is undeniable that one of NAFTA's most important benefits is the existence of a more prosperous, stable and democratic neighbor on our southern border than was the case prior to the agreement. Similarly, in the case of many of other FTA partners, the benefits of having an FTA in force with those countries has allowed the U.S. to further cement important strategic relationships in Central and South America (with Chile, Peru, Colombia, Panama and the DR-CAFTA countries), the MidEast (with Israel, Jordan, Oman, Morocco and Bahrain) and the Asian-Pacific region (with Korea, Australia and Singapore). While there is no question that, in the case of each of these trading partners, trade barriers continue to exist, the agreements provide a mechanism for working towards removal of trade-restrictive measures on an ongoing basis.

Thank you for the opportunity to present our comments. If you have any questions regarding our comments, please contact Rufus Yerxa, President of the NFTC, at (202) 887-0278.