

THE PRESIDENT'S EXPORT COUNCIL
WASHINGTON, D.C. 20230

March 11, 2011

President of the United States of America
The White House
Washington, DC 20500

Dear Mr. President:

U.S. trade agreements can fairly be characterized as representing the “gold standard” of bilateral and regional agreements. They include binding commitments and enforcement obligations across a broad range of issues ranging from across-the-board tariff eliminations and intellectual property and investment protections to the addressing of standards and regulatory issues in key sectors.

In September, the private sector members of the PEC called for all three pending FTAs to move forward to Congress for swift approval. With the approval of the FTAs, the United States has the opportunity to build on twenty plus years of successful bilateral and regional negotiations. The PEC believes it essential that the Administration and the Congress work together to develop a consensus on trade policy and to deal effectively with 21st century issues and commercial realities. As the Administration works to promote exports, we would strongly encourage the incorporation of disciplines to address current commercial needs in order to establish new market access and promote increased opportunities for American exporters and their workers. The Trans-Pacific Partnership (TPP) negotiations, in particular, provide a critical and immediate opportunity to create a 21st century agreement, that could serve as the vehicle for developing a renewed, broad, bipartisan consensus on the importance of international trade to the U.S. economy.

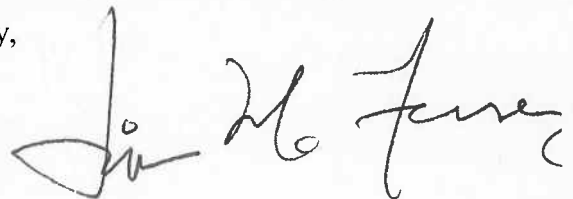
To establish the roadmap for the next generation of U.S. bilateral, regional and multilateral international trade and investment agreements, the following issues should be addressed in the TPP negotiations:

1. Market Access: The TPP must ensure that all members of the TPP commit not only to meaningful market access in their national markets but also establish mechanisms to ensure enforcement of market access commitments.
2. Non-Tariff Barriers: The TPP should strive to eliminate discriminatory standards, discriminatory industry-specific market distorting subsidies, regulatory distortions and other non-tariff barriers that prevent effective access by U.S. goods and services into foreign markets, distort efficient trade flows and add costly and unnecessary delays. The TPP should focus on creating new procedures to promote coherence and convergence, rather than creation of new distortions, in the development of new regulations.
3. Regulatory Coherence: The TPP should focus on facilitating the movement of goods and services among TPP countries by ensuring that they maintain transparent, effective, enforceable and mutually

- coherent regulatory systems which are both risk and science based, adhere to international best practices and assure high levels of collaboration among TPP governments and their stakeholders.
4. Trade and Supply Chain Facilitation: The TPP should establish streamlined, more effective and coherent rules that promote the safe, secure and efficient movement of products from the point of their production across the border to the point of sale.
 5. Strong Intellectual Property Protection: The TPP should provide for state-of-the art-intellectual property protection and enforcement for all products, building off of the provisions in the U.S.-Korea Free Trade Agreement and considering developments in the global economy. The U.S. should strive to ensure that enforcement of intellectual property protection is no less effective than the standards found in U.S. law.
 6. Liberalization of Trade in Services: The TPP should address liberalization of trade in services, as services provide the infrastructure and means by which all commerce operates. Liberalizing trade in services means that services can be delivered more cost effectively, efficiently and flexibly across the whole range of commercial activity and act as an enabler and multiplier across all sectors.
 7. Strong Investment Protection and Access: The TPP should provide for improved access for U.S. investment overseas that helps drive U.S. exports and economic growth, strong legal protections for U.S. investors and their property overseas and access to fair and impartial investor-state arbitration to ensure that investment disciplines and appropriate safeguards are enforced.
 8. Government Procurement: The TPP should ensure transparent and non-discriminatory access to foreign government procurement markets for U.S. suppliers that will help governments make more effective use of limited resources and funds.
 9. Transparency/Corruption: All TPP members should be encouraged to sign-on to the UN Convention against Corruption and establish strong transparency requirements regarding government rulemaking.
 10. Cross-Border Data Transfers: The TPP should provide a framework for the cross-border transfer of data in all manufacturing and service sectors. To be effective, the framework needs to eliminate and prevent the creation of regulatory barriers to cross-border data transfers.
 11. State-Owned and State-Supported Enterprises. State-owned and state-supported enterprises represent a major challenge to U.S. competitiveness internationally. The TPP provides an important instrument to develop more adequate and effective rules governing the operation of SOEs and SSEs so that companies can compete on an equal footing.

PEC members are committed to working closely with the Administration. In addition to these TPP specific initiatives, the PEC has identified a number of areas for focus in the creation of a 21st century trade roadmap. We would recommend ongoing consultation to focus improving our expertise and ability to address areas and recommendations identified in the attached list that presents the most serious 21st century challenges to the competitiveness of American companies and workers.¹

Sincerely,



¹ Please note that this letter has been prepared by the private-sector appointed members of the PEC.

ATTACHMENT: 21st Century Trade Roadmap

Building on the experience of the TPP negotiations, the PEC members are committed to working closely with the Administration. We would recommend ongoing consultation to focus improving our expertise and ability to address areas which present the most serious 21st century challenges to the competitiveness of American companies and workers including:

To help address non-tariff barriers, the federal government must strengthen the interagency process to create a consistent and up-to-date agenda on regulatory issues. The U.S. government should:

- Use USTR's new report on Technical Barriers to Trade to conduct a stock-taking exercise (including public comment and leveraging of expertise of existing advisory committees such as PEC and ITACs) to identify existing non-tariff barriers by country and to identify anticipated trends;
- Develop an action plan to address non-tariff barrier issues in future U.S. bilateral and regional agreements, in agreements negotiated with other countries and in all multilateral negotiations (e.g., WTO or UN process);
- Prioritize, with public comment, key non-tariff barriers and ensure that these are standing principles of negotiations (prioritized against trade-offs for other, dissimilar issues);
- Incorporate an industry consultation process in the inter-agency process so that industry can consistently provide better, technical data on regulatory issues – across the U.S. agency structure;
- Develop and promote incorporation of regulatory coherence principles which should guarantee the independence and impartiality of regulators, and ensure all market participants are subject to the same regulatory scrutiny and control; and
- Tap expertise of multiple agencies for capacity training sessions for trading partners with a focus on regulatory and policy approaches to innovation and exports by sectors such as information and communications technology.

To address supply chain and trade facilitation, the U.S. government should:

- Create cooperative, capacity-building initiatives with other key trading partners. One excellent model is the joint EU-US cooperation on intellectual property. In this effort, the United States works with the EU to leverage joint customs expertise and officials for training sessions with developing country customs officials.
- Develop additional outreach to key developing economies. Such outreach (including the joint approach outlined above) could include training forums on Good Laboratory Practices (GLP) and the promotion of the Global Harmonized System (GHS) classifications.
- Promote and support initiatives like “National Single Window” both in the U.S. and among our trading partners. This initiative works to ensure that all ports of entry within a country treat imports exactly the same, from classification definitions, to tariff allotment, to

registration requirements, rather than the current practice that can produce variable assessments of the same product.

- Develop and implement – through APEC, the OECD or other similar organizations – commitments by countries to assess customs duties based on the value of the carrier medium rather than the intellectual property of the product.

To promote strong intellectual property protection globally, for all products, the U.S. government should:

- Preserve and promote strong data exclusivity requirements for all patent and regulatory submissions in foreign countries, while keeping in place incentives for innovative and affordable drugs to be available in foreign markets;
- Develop appropriate mechanisms to prevent the distribution of illicit content online;
- Promote enforcement mechanisms to combat counterfeiting that incorporate not only judiciary and police enforcers but regulators who have a vested interest to ensure that counterfeit products do not undermine the regulatory approval and standards/safety process;
- Establish the elimination of agricultural-chemical and auto safety components counterfeiting as a priority; and
- Harness the expertise of the U.S. legal field to assist in capacity-building with developing country judges, law enforcement, customs, and legal services.

To create a competitive investment environment that will promote U.S. exports, higher-paying jobs and improved economic growth, the U.S. government should:

- Finalize the model Bilateral Investment Treaty (BIT) review by adopting high standards of protection and dispute settlement no lower than found in the current model;
- Resume BIT negotiations with India, China and Vietnam and explore negotiations with Brazil and Russia;
- Develop and provide safeguards against forced localization issues (i.e., hire requirements, localization of data storage/restriction of flow; local establishment requirements) that restrict open market and competition; and
- Continue to seek the elimination of restrictions on foreign investment in international trade agreements.

To create a non-discriminatory government procurement system, the U.S. government should:

- Accelerate its work to bring other countries, particularly major countries such as China, India and Brazil, into the WTO Government Procurement Agreement to eliminate discrimination against U.S. goods and services;
- Limit expansion of Buy America so that other countries do not use the expansion as a template to expand protectionism against U.S. goods and services; and

- Promote strong and non-discriminatory procurement disciplines by all international organizations, such as the World Bank, and avoid the use of inadequate country-systems that will undermine such standards.

To combat bribery and corruption, the U.S. government should:

- Encourage all the G-20 countries and other key non-OECD parties to join the OECD Convention on Bribery of Public Officials in International Business Transactions;
- Work with trading partner countries to develop enforcement standards to defeat the 'demand' side of bribery; and
- Encourage enforcement of fair, transparent bidding processes, so that individual instances of bribery do not unduly influence government procurement processes.

To facilitate the cross-border transfer of data, the U.S. government should:

- Undertake international initiatives to develop support among trading partners for frameworks to remove and prevent regulatory barriers to cross-border data transfers.

To ensure a strong multilateral system, the U.S. government should:

- Continue to be the trade liberalization leader in the WTO – especially in the Doha Round, insisting on meaningful and balanced gains in market access for agriculture, manufacturing and services; and
- Work with WTO members to reform and refocus the WTO so it can begin to address 21st century issues.