

December 3, 2015

Ambassador Michael B.G. Froman
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Froman:

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the International Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14) on the Trans-Pacific Partnership (TPP) Trade Agreement, reflecting consensus opinion on the proposed Agreement.

The International Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14) includes members from across the importing and exporting communities, including related transportation and logistics industries. We focus on issues and opportunities where steps can be taken to improve the flow of goods and services across our borders, reduce unnecessary regulatory barriers, and encourage an international focus on trade facilitation to increase prosperity, growth and job creation.

The Committee wishes to take this opportunity to thank Jason Bernstein-USTR, and John Liuzzi (DFO) and the many others in your offices who have made the extra effort to work with our Committee members to keep them advised of developments during these negotiations. Because of the close coordination, the results in the agreement demonstrate that our views and opinions were heard and taken into consideration. In particular, our 2013 letter to you on the SPS chapter where often SPS and TBT issues act as barriers to customs and trade facilitation for the agricultural and food producing sector.

The members of the Committee support implementation of this free trade agreement as another opportunity for U.S. business and industry to grow their world market while providing needed economic benefits to the business and industry of the member countries. The provisions of this agreement are fair and reciprocal.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. McGovern". The signature is written in a cursive, flowing style.

John P. McGovern
Chairman, International Trade Advisory Committee on Customs Matters and Trade Facilitation
(ITAC 14)

The Trans-Pacific Partnership Trade Agreement

Report of the Industry Trade Advisory Committee on Customs Matters and Trade Facilitation

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Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC14)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the Trans-Pacific Partnership Trade Agreement

I. Purpose of the Committee Report

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e)(1) of the Trade Act of 1974, as amended, requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14) hereby submits the following report.

II. Executive Summary of Committee Report

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as investment, procurement, intellectual property or the agriculture and non-agriculture market access provisions. As with previous such agreements, the Committee found this agreement to be fair and balanced. It provides many benefits to U.S. traders and is consistent with other similar agreements negotiated over the past few years but with much broader coverage. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

III. Mandate of Industry Trade Advisory Committee (ITAC) on Customs Matters and Trade Facilitation

The Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (the Committee) is established by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) pursuant to the authority of section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. §2155) (the Trade Act), as delegated by Executive Order 11846, as amended. In establishing the Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135(c)(2)(B) of the Trade Act. This Committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The Committee functions solely as an advisory committee in accordance with the provisions of the FACA, as amended, 5 U.S.C. App., with the exceptions set forth in the Trade Act.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting its subject area; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC14)

The principal purpose of free trade agreements is to move goods across the parties' borders with as little intrusion on the transaction as possible. Customs agencies are charged with the protection of those borders and the collection of duties, taxes and data.

While a number of areas were negotiated as part of the Trans Pacific Partnership Free Trade agreement that could have customs implications, there were several principal objectives of this Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade.

Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises.

We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with global business "accepted best practices."

V. Advisory Committee Opinion on Agreement

This committee leaves to the sectoral committees commentary on industry specific chapter Rules of Origin. We reviewed the TPP Agreement for transparency, best practices, and equitability.

TPP Agreement, Chapter 3

Section A: Rules of Origin

The committee believes that this section implements best practices from preceding US free trade agreements. In particular, we believe U.S. industries will benefit from the TPP adoption of commercial practices in inventory identification, valuation, cumulation among the agreement members and the environmentally friendly recovery of waste or scrap from used goods as originating.

For some TPP parties, the agreement's Rules of Origin are new or advanced, therefore we strongly encourage the United States to monitor closely each country's implementing regulations, rulings and practices to ensure the expected benefits are realized.

Section B: Origin Procedures

The committee believes that this section implements many best practices from preceding US free trade agreements.

In particular, the adoption of single and uniform procedures among a broad scope of countries is a significant trade facilitation. The language preference provision for certificates of origin in English will be beneficial to US industry.

For some agreement members, the agreement's origin and verification procedures are new or advanced. Therefore implementing regulations, rulings and practices--especially certificate of origin format and verification procedures--will need to be watched closely to ensure the benefits are realized in these countries.

Section C: Other Matters

Article 3.32: Committee on Rules of Origin and Origin Procedures

The provision for a new Committee on Rules of Origin, and Origin Procedure deserves mention. As indicated above, many of the customs benefits for trade in goods result from implementing regulations, rulings, practices which will be new or advanced to some TPP members. We strongly recommend this new committee should meet early and frequently to insure the best possible start for this geographically broad agreement among diverse members. Furthermore, this Committee should endeavor to standardize implementation regulations, rulings and practices across all member countries.

TPP Agreement, Chapter 7

Provisions within Chapter 7 the Sanitary Phyto Sanitary (SPS) Chapter include mechanisms to streamline and make more efficient trade facilitation and customs and borders processes for sensitive food and agriculture products. The requirement for rapid notification to the exporter of record (of no

more than 7 days) when a food and agriculture shipment is delayed at a port of entry—and a defined period to resolve disputed shipments will better facilitate trade of perishable food and agriculture products.

TPP Chapter 5. Customs Administration and Trade Facilitation

The Customs Administration and Trade Facilitation (CATF) chapter could be considered the heart of any trade agreement, as it provides the rules for actually moving goods across borders, that are critical to realizing the benefits of the market-opening measures in the rest of the agreement. The CATF chapter in the TPP builds on previous trade agreements and in general goes beyond them in terms of its comprehensiveness, level of ambition and alignment with modern business practices.

Comments on specific provisions:

- **Article 5.2: Customs Cooperation.** This CATF chapter in the TPP builds on preventing duty evasion, smuggling, and other customs offenses is particularly important in the Asia-Pacific region and will address broader enforcement goals of the United States.
- **Article 5.3: Advance Rulings.** This article provides comprehensive detail on the process for providing advance rulings and a reasonable deadline of 150 days by which a Party must reply to a request for an advance ruling. The provisions to allow the private sector to conduct administrative review of advance rulings and for the Party to make its rulings publically available on a website are particularly strong measures that will improve transparency and provide industry stakeholders with an effective approach to responding to ruling determinations that seem inconsistent or inaccurate.
- **Article 5.4: Response to Requests for Advice or Information.** This article is a new addition not found in earlier trade agreements and will provide a valuable source of information for importers.
- **Article 5.5: Review and Appeal.** This article provides valuable access to both administrative and judicial review opportunities for members of the business community who have received determinations from Parties with which they disagree.
- **Article 5.6: Automation.** By requiring Parties to adopt an automated approach to the receipt and processing of customs data submissions by the trade, this article will provide significant benefits to traders and serve to eliminate much of the paper documentation currently required by some TPP Parties. The focus on adopting global standards such as the World Customs Organization (WCO) Data Model will contribute toward development of single data submissions that will satisfy the requirements of several administrations and thus harmonize regulations in this area. As several of the measures in this section are on a “best endeavor” basis, this Committee recommends the United States commit to tracking progress of TPP members in actually implementing new capabilities.
- **Article 5.7: Express Shipments.** This article directs that Parties will have expedited customs procedures for express shipments and also provides several measures that detail what those procedures should include. Full implementation of this article is necessary to

ensure the express shipment business model is able to operate successfully in an economy and meet the stringent requirements for timeliness the model demands.

- Paragraph 5.7.1(f) provides that “no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party’s law”, but it does not specify what this fixed amount, the so-called “de minimis level”, should be--as the U.S.-Korea trade agreement did, in setting a \$200 *de minimis* value--under which formal entry documents are not required and duties are not assessed. The clause also requires periodic review of the de minimis level to ensure it is aligned with inflation and other factors. This committee encourages the United States to follow closely the progress TPP members make on implementing this clause and conducting the required periodic reviews. Further, this committee recommends the United States should ensure TPP members either have or establish a commercially relevant de minimis level for those shipments where the very small revenue collected does not justify the administrative costs of collecting the funds.
- Paragraph 5.7.2 provides that Parties will “provide a separate and expedited customs procedure that provides the treatment for express shipments” only when they are not providing the treatment described in paragraphs 5.7.1(a) through (f) for all shipments. The committee considers it unlikely that any TPP member will provide the paragraph 1(a) through (f) treatment, such as release of goods within six hours of arrival, for all shipments. Therefore, in implementing the TPP, the committee recommends the United States ensure that Parties are providing the separate and expedited customs procedure for express shipments.
- Language in Article 5.7 is particularly encumbered by language such as “to the extent possible” that only requires Parties to attempt compliance rather than achieve it. We strongly recommend the U.S. Government ensure TPP members genuinely are engaged in best efforts to implement these procedures. Further, we urge the United States to consult regularly with the express shipping industry to gather information on progress for each Party.
- Article 5.8: Penalties
 - This article provides for a harmonized approach to the management and collection of customs-related penalties and is a considerable improvement over the treatment of this subject in previous trade agreements. In particular, the provision requiring no portion of the remuneration of a government official will be based on the percentage of penalties collected, is particularly welcome.
 - The new provision requiring custom administrations consider voluntary disclosure of a breach of customs regulations as a mitigating factor in adjudicating penalties will encourage greater disclosure by the business community, particularly in cases where honest mistakes were made. This committee urges the U.S. Government accept information from the industry stakeholders on cases where such mitigation is not provided when a breach has been voluntarily disclosed, and to engage with TPP members to improve policies in this area.
 - In implementing this provision Governments should consider providing expanded voluntary disclosure relief to trusted trader program participants in the event an error is detected by the Party’s customs administration.

- Article 5.9: Risk Management
 - This provision requiring TPP members to maintain a risk management system that can separate high from low-risk shipments and simplify the clearance of the lower risk goods will, if implemented fully, be a major advance in facilitating the flow of goods across borders where such systems do not exist today.
 - The use of the word “system” in this paragraph implies an automated system, and this committee recommends the United States ensure Parties indeed are adopting automated systems. Inexpensive technology, such as the World Customs Organization Cargo Targeting System, is available to meet this requirement.
- Article 5.10: Release of Goods
 - This article outlines measures for a modern border clearance process, and its complete implementation is a pre-requisite to realizing the full benefits of the tariff reduction and trade facilitation policies provided by the TPP agreement. This committee recommends the United States focus on ensuring the robust implementation of the entire article, but the following paragraphs are a particularly high priority:
 - 2 (b) – Providing the capability for importers to submit and for the government to process advance electronic customs information is critical to meeting the goal of releasing the goods as rapidly as possible upon arrival. Advance information is one component of a risk assessment process that can address security, product safety and smuggling concerns.
 - 2 (c) – Avoiding the requirement to transfer goods to temporary warehouses is an important step in the simplification of the border clearance process. Some countries, including members of other FTA with the United States, are backsliding on this issue by creating temporary clearance warehouses in the air cargo environment.
 - 2 (d) – Separating release of the goods from the final settlement of the financial aspects of the transaction will help prevent bottlenecks at the border. Particularly for trusted industry partners, release of shipments covered by security bonds presents little or no risk that the final duties, taxes and fees will not be paid. This is a new provision not included in earlier trade agreements and it provides a capability that will greatly facilitate trade.
 - The paragraph 5.10.3 measures on the use of a “security”, or a bond, are the first time this critical area has been addressed in a trade agreement and will ensure TPP members adopt harmonized regulations for managing this very important and widespread trade tool.
- Article 5.11: Publication
 - Building on the World Trade Organization’s Trade Facilitation Agreement, the requirement for Parties to make publicly available online its customs laws, regulations, and general administrative procedures and guidelines – in English when possible – will benefit importers and exporters.

VI. Membership of Committee

Chairman

Mr. John P. McGovern
Global Trade Compliance Manager
and Logistics Manager
MKS Instruments, Inc.

Vice-Chairman

Ms. AnnMarie M. Treglia
Global Manager, Government Affairs
and the Environment
Dart Container Corporation

Mr. Nelson H. Balido
Chairman
Border Commerce and Security Council

Susan K. Finston, Esq.
President
Biotechnology Development & Strategy
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Corporate Counsel, DuPont Legal
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Ms. Lauren E. Wilk
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