

December 2, 2015

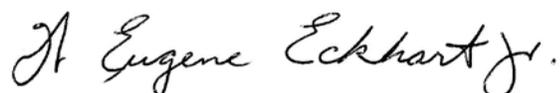
The Honorable Michael Froman
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

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 Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC 2) on the Trans Pacific Partnership (TPP), reflecting a majority and additional advisory opinions on the proposed Agreement.

ITAC 2 congratulates the entire U.S. negotiating team on this historic achievement. Given the complexities of negotiating even a bilateral 21st century trade agreement, tackling a regional agreement with 12 parties with very different levels of development is a monumental achievement. Recognizing that every negotiating team enters such an undertaking with an initial set of objectives that reflect the wants and needs of their constituents, ITAC 2 has reviewed and analyzed the final document and presents a comprehensive list of observations and comments.

Sincerely,

A handwritten signature in black ink that reads "W. Eugene Eckhart, Jr." in a cursive script.

W. Eugene Eckhart, Jr.
Chair
ITAC 2

cc: Trade Advisory Center
Forrest Nielsen, Designated Federal Officer of ITAC 2

The Trans-Pacific Partnership Trade Agreement

Report of the
Industry Trade Advisory Committee on Automotive Equipment and Capital Goods

December 2, 2015

December 2, 2015

Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC 2)

**ITAC 2 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, it 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 negotiation 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 Automotive Equipment and Capital Goods (ITAC 2) hereby submits the following report.

II. Executive Summary of Committee Report

ITAC 2 is comprised of and represented by a wide variety of industrial goods, automotive and automotive equipment manufacturers and stakeholders. Among these sectors, there are dynamics and factors that may impact some differently from others within the group. While most of the opinions reflected in this report are shared by a majority of the ITAC 2 members, there are some comments and perspectives on the TPP that are shared by a subset of the group and are noted as such throughout the report. Accordingly, ITAC 2 comments address the key aspects of the TPP agreement that are important to all of us and we appreciate the opportunity to present both the common and varied views of the members. The capital goods sector considers that the TPP provides for equity and reciprocity. Within the automotive goods sector, there is a wide range of views.

Generally, the manufacturers of capital goods see the TPP as an important milestone in providing market access to additional countries in the Pacific region that historically had been protectionist. Significantly, U.S. manufacturers of electrical equipment will benefit substantially not only by broad tariff reductions and eliminations but by the strong provisions of the Technical Barriers to Trade Chapter that places them on equal footing with competitors in the other party states. Similarly, manufacturers of agricultural equipment are pleased with market openings made available by TPP to the industry and to equipment customers' products, as well as a thoughtful approach to Rules of Origin that will support additional exports of equipment to new and existing FTA-partner countries. Creating a level playing field will be a challenging task that will require vigilance. Non-tariff barriers are prevalent in several countries participating in the TPP, and

currency valuation policies deployed by many countries in the TPP have significantly limited imports and this could remain a problem in the future.

In terms of U.S. automotive equipment manufacturers, while not entirely achieving all of the initial negotiating goals, notable accomplishments were made, including in the areas of tariff reduction schedules, non-tariff measures, and rules of origin. There are however, differences in opinion among ITAC 2 automotive equipment members on the appropriate automotive rules of origin regional value content levels. And there is agreement among automotive manufacturers that the establishment of a macroeconomic authority forum falls short of expectations, but does represent a unique opportunity.

ITAC 2 notes that most of the TPP chapters make provisions for the establishment of councils or committees to facilitate implementation and enforcement of specific parts of the agreement. This is a strong plus to the agreement that provides a formal mechanism to address future issues as they arise.

Enforcement will need the highest level of attention after implementation of TPP commences. ITAC 2 recommends that this will require the necessary staffing, financial, and organizational resources.

ITAC 2 notes that the horizontal chapters, such as Intellectual Property, Transparency and Anti-corruption, and Dispute Settlement, to name a few, provide important and necessary protections and rules that facilitate expanded trade, and the jobs that go with it.

III. Brief Description of the Mandate of ITAC 2

The Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (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 1974 Trade Act (Public Law 93-618), as delegated by Executive Order 11846 of March 27, 1975. 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 Act.

IV. Negotiating Objectives and Priorities of ITAC 2

- Complete and immediate U.S. tariff elimination for products within the scope of ITAC 2, except for TPP parties that are not expected to provide reciprocal market access.
- Complete and immediate TPP partner country tariff elimination for products within the scope of ITAC 2.
- Harmonized customs classifications for traded products.
- Joint initiatives to improve market surveillance, combat counterfeit products, and protect intellectual property rights.
- Prevent regulatory and standards barriers to trade in new and emerging industry sectors,
- Minimize barriers that existing regulations present to trade in compliant products.
- Recognition and implementation of the WTO's definition of an international standard.
- Market-determined conformity assessment and certification requirements.
- Full national treatment for U.S. manufacturers, standards developers, and testing and certification bodies.
- Improved access to foreign government procurements.
- Limitations on foreign government trade distortive practices.

- Strong and enforceable protections to protect private property and investment overseas.

V. Advisory Committee Opinion on the Agreement

ITAC 2 identified the following chapters of the TPP as particularly relevant to our constituency:

National Treatment and Market Access for Goods.

TPP Parties agree to eliminate and reduce tariffs and non-tariff barriers on industrial goods. Most tariff elimination in industrial goods will be implemented immediately, although tariffs on some products will be eliminated over longer timeframes. Based on information released by USTR, 99.9 percent of all transportation equipment and 96.8 percent of all machinery will be immediately duty free in the other TPP markets. For the five new countries with which the United States does not already have FTAs (Brunei, Japan, Malaysia, New Zealand and Vietnam), hereafter the “TPP-five), data from the Commerce Department indicates that 98 percent of all industrial and consumer goods, 99.9 percent of all transportation equipment and 96.9 percent of all machinery will be duty free immediately. However, for automotive products this is misleading, since three of the TPP-five (Brunei, Japan, and New Zealand) are either very small markets or already have zero or nearly zero duties on imports of automotive products. That leaves two of the TPP-five (Malaysia and Vietnam) as the only commercially significant auto markets that have high import tariff levels. In Vietnam and Malaysia only 32% and 74% respectively of automotive products are immediate duty free under TPP. But even then, in both markets, many of the most important motor vehicle tariff categories will not be duty free for 12-13 years.

All of the TPP countries also agree not to use performance requirements (e.g., local content, employment) in order for companies to obtain tariff benefits. In addition, they agree not to impose WTO-inconsistent import and export restrictions and duties, including on remanufactured goods – which will promote recycling of parts into new products.

ITAC 2 notes that the negotiators struck a robust outcome on tariff reduction and elimination that will see roughly 98% of industrial and consumer goods tariffs eliminated immediately upon entry into force with a time-limited schedule to phase out all remaining industrial tariffs. While most tariffs will be eliminated within ten years, it will take 16 years for all industrial tariffs to be eliminated. While ITAC 2 sought a more aggressive timetable for the elimination of foreign tariffs, we recognize that compromises were required in the negotiations and the United States was able to achieve the most critical objective, the full and complete elimination of all foreign industrial tariffs.

ITAC 2 Automotive Equipment members note that the tariff schedule commitments achieved under HTS Chapter 87 are an overall positive outcome, with the following assessments of key outcomes:

The long and back-loaded nature of U.S. passenger and commercial motor vehicle tariff phase-down for imports from Japan is a welcome result. The unusually long tariff phase down period is appropriate given that Japan has for decades been unwilling to open its automotive market to meaningful international competition. This provides Japan with a sufficient transition period to a more open automotive market.

The ten-year phase-down of U.S. passenger and commercial motor vehicle tariffs with the TPP-five (excluding Japan) is concerning as it applies to the 25% tariff on commercial motor vehicles. A much longer transition period for the 25% commercial vehicle tariff would have been preferred.

The Malaysia and Vietnam motor vehicle markets offer important export opportunities for U.S. motor vehicle and automotive parts manufacturers. Although the tariff phase-down commitments are comprehensive, disappointingly the most important vehicle categories will not be completed until 13 years after the agreement is implemented. With regards to auto parts tariffs, Malaysia will open its auto parts market to imports rapidly, but Vietnam will not open its auto parts market for between 3-11 years. In comparison most all U.S. auto parts tariffs are immediate duty free.

In recognition of the increasingly integrated markets that have developed with U.S. FTA partner countries, particularly with Canada and Mexico, ITAC-2 automotive equipment manufacturers encourage the U.S. to coordinate closely with those FTA partner countries on market access issues in future U.S. FTAs, including expansion of the TPP

Rules of Origin and Origin Procedures.

TPP Parties have agreed on a set of rules of origin that define whether a particular good is “originating” and therefore eligible to receive TPP preferential tariff benefits. In general, these rules require goods to be wholly originating or have a specified level of regional value. In some cases, there are other types of specific rules for particular products. Where regional value rules are used, most of the formulas require 45 percent or 40 percent TPP value under the “build down” formula, although some rules are 50 percent or 55 percent. The TPP provides for “accumulation,” so that in general, inputs from one TPP Party are treated the same as materials from any other TPP Party. The TPP Parties also have set rules that ensure businesses can operate more easily across the TPP region. In addition, the chapter requires each Party to provide for competent authorities to develop procedures to verify claims appropriately.

ITAC 2 recommends working closely with industry during implementation to review how this should play out in practice, noting that the complexity of potential scenarios accompanying the modern supply chain will require a sophisticated system to both keep track and ensure enforcement. ITAC 2 also recommends working closely with each of the TPP-five parties as they implement these procedures to ensure that they properly process U.S. exporter certificates of origin without imposing onerous and inappropriate rule of origin requirements to ensure that problems encountered in past trade agreements, most particularly the Korea-U.S. FTA, are avoided.

ITAC 2 Automotive Equipment members welcome the following elements of the product specific automotive rules of origin detailed in Annex 3D, noting their consistency with the automotive provisions in recent U.S. FTAs:

- Requires that to enjoy the preferential tariff benefits of the agreement, motor vehicles must be built within the TPP region;
- Allows the use of the “net cost” method of calculating regional value content (RVC) for motor vehicles without the inclusion of a tracing list;
- Establishes an appropriate RVC differential for each methodology;

- Allows plant averaging for the same motor vehicle model and class produced in the same plant;

ITAC 2 Automotive Equipment members also appreciate that in recognition of the integrated nature of the North American market that the final motor vehicle rule of origin reflects input from Canada and Mexico, and encourages that the U.S. coordinate with Mexico and Canada in this area in future U.S. FTAs.

TPP Appendix 1 to Annex 3D introduces a new feature that adds another level of complexity to automotive rules of origin. ITAC 2 does not endorse this provision, but given that its use is optional, ITAC 2 Automotive Equipment members do not strongly object to its inclusion.

Most ITAC 2 Automotive Equipment members view that the TPP's RVC levels for motor vehicles strikes the right balance between the ability of TPP-based manufacturers that have made significant investments in the TPP region to enjoy the preferential tariff benefits of the TPP and preventing those that have not from enjoying the same benefits. That said, ITAC 2 Automotive Equipment members acknowledge the real concerns raised by some that the automotive rule of origin RVC is not sufficiently strong, particularly for automotive parts.

ITAC 2 Automotive Equipment members therefore urge the United States ensure that the rules of origin are closely monitored and strongly enforced to prevent others from outside the region from unfairly benefiting from the preferential tariff benefits of the TPP.

Technical Barriers to Trade (TBT).

TPP Parties have agreed on transparent, non-discriminatory rules for developing technical regulations, standards and conformity assessment procedures, while preserving TPP Parties' ability to fulfill legitimate objectives. TPP Parties agree to rules that will facilitate the acceptance of the results of conformity assessment procedures from the conformity assessment bodies in the other TPP Parties, making it easier for companies to access TPP markets. Under the TPP, Parties must allow for the public to comment on proposed technical regulations, standards, and conformity assessment procedures to inform their regulatory processes and to ensure traders understand the rules they will need to follow. They also will ensure a reasonable interval between publication of technical regulations and conformity assessment procedures, and their entry into force, so that businesses have sufficient time to meet the new requirements.

ITAC 2 strongly endorses the provisions included in the final text of this chapter and considers that it significantly surpasses the requirements of the WTO TBT Agreement, readily meriting the popular "TBT Plus" moniker.

U.S.-Japan Automotive Trade Side Letters & Appendix on Motor Vehicles.

ITAC 2 Automotive Equipment members note that commitments made by Japan to the United States in the Appendix D and the automotive-related side letters, aimed in large part at addressing the non-tariff barriers U.S. motor vehicle exports face in Japan, marginally improves U.S. automakers access to the Japanese domestic automotive market.

The following commitments by Japan should result in some improvements:

- Increasing the level of openness and transparency of its automotive rule making process;
- Not unduly delaying the introduction of new unregulated technologies;

- Streamlining of and improvements to Japan’s Preferential Handling Procedure (PHP), and agreeing to use PHP in a manner that would provide those that use this process no less preferential treatment, including for financial incentives, than those that use the type approval process;
- Acceptance of a limited number of US FMVSS regulations as no less stringent than Japanese automotive regulations and consideration of the same for additional FMVSS standards in the future;
- Commitments to reduce the barriers to the establishment of automotive distribution centers;
- Establishment of a bilateral committee on motor vehicles that could be used to avoid disputes, and;
- Establishment of an expedited auto-specific dispute settlement process.

However, given the scope of what is covered and the decades long experience in previous agreements with Japan that have taken similar approaches, the view of ITAC 2 Automotive Equipment members is that these commitments will not lead to a substantially larger U.S. presence in the Japanese motor vehicle market.

Malaysia Side Letter on Auto Imports.

Despite a substantial delay, (starting January 1, 2021), ITAC 2 Automotive Equipment members are pleased that in the side letter with Malaysia on auto imports commits Malaysia to:

- Not provide excise tax credits based on “export performance, the use of local content, or local value added;”
- Be fully transparent and consistent with the TPP and the WTO in the event that a new excise duty structure is introduced;
- Accept transaction values provided in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

Malaysia also commits to immediately:

- Not apply any quantitative limit on the importation of originating new motor vehicles from the United States or impose any new charges;
- Consider motor vehicles originating if they qualify in accordance with the applicable rules of origin;

Although ITAC 2 welcomes that the subject of automotive standards was raised in the side letter with Malaysia and that the United States intends to facilitate technical cooperation, and Malaysia commits to “consult” and “engage” with the United States with the view to “increase understanding” and to “consider acceptance,” this commitment falls short of expectations. Without acceptance of U.S. automotive standards, there is a high risk that the aforementioned commitments by Malaysia and efforts to achieve them could be undermined.

Investment.

The United States has in place enforceable investment commitments with several of the TPP countries through existing FTAs with Canada, Chile, Mexico, Peru, and Singapore, and with Vietnam through the U.S.-Vietnam Bilateral Trade Agreement (BTA), although the quality and the scope of commitments differs in each of these instruments. Notably the U.S.-Australia FTA lacks the investor state dispute settlement (ISDS) enforcement mechanism

The TPP investment chapter contains four overall obligations that provide most of the primary protections sought by the Committee and included in the TPA investment objectives and the U.S. Model BIT (although the scope of this protection is limited as discussed below). These protections include:

- A broad definition of “investment;”
- Guarantees of prompt, adequate and effective compensation for expropriations;
- A ban on performance requirements; and,
- Commitments to provide national treatment, most-favored nation treatment, fair and equitable treatment, and full protection and security.

The performance requirement provisions of the TPP Agreement include important new prohibitions against indigenous innovation measures, such as the government purchase, use or preferences for particular technologies, which have not been included in prior agreements, as well as other important provisions to prevent foreign localization requirements. These performance requirement provisions are particularly important to capital equipment manufacturers to ensure that U.S. investors overseas are not mistreated and that the value of their foreign investments provides benefits back to the United States. Some changes were made to the core investment protections from the U.S. Model BIT with respect to the protection on expropriation, the minimum standard of treatment and non-discrimination.

Very importantly, the TPP Agreement includes the ISDS mechanism applying to all TPP countries. ISDS is a vital enforcement tool that provides U.S. investors the ability to challenge arbitrary, discriminatory and unfair government actions against their investments before a transparent and neutral arbitration system. The TPP Agreement also provides that the breach of certain investment contracts related to natural resources, service supply contracts and infrastructure between an investor and the foreign government that are entered into after the entry into force of the TPP can also be adjudicated pursuant to the ISDS provisions of the TPP Agreement. ISDS is an important new addition to the U.S. investment relationship with Australia, since the U.S.-Australia FTA did not include this provision, and with Brunei, Japan, Malaysia, and New Zealand with which the United States does not have an investment agreement. While U.S. investors currently have the ability to use ISDS with respect to Vietnam for certain activities, the TPP Agreement provisions create a broader scope of protection and therefore ISDS enforcement. Section B of the TPP investment chapter provides important transparency and procedural fairness requirements as provided in U.S. FTAs from 2001 onward, with some additional procedural changes related to conflict of interests, burden of proof and further provisions on the dismissal of frivolous claims.

With respect to ensuring access to U.S. investment, the Agreement makes progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in the other TPP countries, except where a reservation has been taken in a particular sector area.

ITAC 2 is, however, disappointed by the following aspects of the TPP Agreement that provide more limited protections than are included in many prior FTAs and had been sought by the Committee. ITAC 2 urges that the following provisions not be included in future agreements.

- Preambular language that fails to explain that that governments are not regulating in the public interest, for example, when they discriminate, expropriate directly or indirectly without compensation, mistreat or engage in unfair and inequitable treatment.

- A modification of minimum standard of treatment (MST) provision that should have reflected the fact that the frustration of investor expectations remains a relevant factor in determining unfair treatment claims, such as in circumstances where a foreign government creates expectations to secure an investment and then changes the rules in an unfair, arbitrary or discriminatory manner.
- Limitation on the use of ISDS for the breach of investment contracts, both for contracts signed before the entry-into-force of the TPP and sectoral exclusions particularly by Mexico. The U.S. Model BIT and recent FTAs, such as with Korea and Peru, provide investors the ability to use ISDS for the breach of contracts related to natural resources, services supply contracts and infrastructure projects between an investor and a government. This is especially important given the high-dollar value and long-term nature of these types of contracts. While investors can use other provisions of the investment chapter to challenge a government action (such as expropriation or MST), the limitations on the investment contract provision are concerning since this provision is oftentimes the clearest way to challenge a government action that is contrary to the contract terms to which it agreed and given that it impacts a wide range and high-value of U.S. investment overseas.
- Temporary safeguard, which limits the strong free transfer provisions of the TPP by allowing Parties to use a temporary safeguard exception. While the provision excludes foreign direct investment and has other useful limitations, this provision is not needed since a broad prudential exception already exists.
- Limitation on ISDS enforcement for other sectors. The TPP Agreement fails to guarantee access to ISDS for any challenge to a tobacco control measure and provides no ISDS enforcement for financial institutions for violations of the TPP Agreement's commitments to national treatment and most-favored nation treatment. Such broad carve-outs are unjustified and undermine respect for ISDS and core protections. ITAC-2 would strongly disfavor any additional exemption being granted to any other country that might accede to the TPP in the future and urges the U.S. Government not to agree to any such reservation.
- Annex I and II include a number of exceptions from the core investment and cross-border trade provisions for particular activities and sectors. For example, with regards to Annex I (Schedule of Malaysia I-MYS-22), it was disappointing that the United States agreed to Malaysia limiting foreign equity to 49 per cent for investment in the manufacture or assembly of motor vehicles other than luxury passenger vehicles with engine capacity of 1,800 c.c. and above and with a road price not less than RM150,000, pick-up trucks, commercial vehicles, and hybrid and electric vehicles. Additionally, there is concern with Malaysia's prohibition on foreigners providing wholesale and distribution services motor vehicles including motorcycles and scooters, passenger cars and commercial vehicles (excluding automotive components and parts of these vehicles.) As well, there is concern about Malaysia's Bumiputera exceptions.

ITAC 2 welcomes the TPP investment provisions that will promote greater access to and a more secure and predictable legal framework for a wide range of U.S. investors in the TPP countries where the U.S. does not have existing enforceable commitments and those advances in investment access and protections in countries where the United States already has enforceable investment provisions. At the same time, ITAC 2 is disappointed by several weaknesses in the TPP investment provisions, especially as regards sectoral limitations on

the use of ISDS, the lack of full investment agreement protection, and temporary safeguard provisions.

Government Procurement.

TPP Parties commit to core disciplines of national treatment and non-discrimination with respect to central level government procurement. They also agree to publish relevant information in a timely manner, to allow sufficient time for suppliers to obtain the tender documentation and submit a bid, to treat tenders fairly and impartially, and to maintain confidentiality of tenders. In addition, the Parties agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. The access provisions of the government procurement chapter only apply to central government procurements and only for entities that are listed by each of the TPP parties. Procurement below specified levels are also excluded. Brunei, Malaysia and Vietnam start with high thresholds, which are phased in over a number of years. Strikingly, Vietnam has 26 years to bring its procurement threshold for goods to the level of the other parties. TPP partners will have access to many lucrative procurement contracts in the United States at the central government level. Any change in sub-central procurement obligations would require a change in the agreement and Congressional implementation. Each Party has taken exceptions from the non-discrimination requirements.

ITAC 2 appreciates the strong new transparency and fairness rules agreed to by the TPP parties, particularly with respect to Brunei, Malaysia, and Vietnam that have not undertaken government procurement obligations with the United States through the World Trade Organization (WTO) Government Procurement Agreement (GPA) or prior FTAs. While the application of procurement rules to these countries represents a major achievement, ITAC 2 is disappointed that: (1) sub-central procurement is not covered, which has been covered by all prior U.S. FTAs with procurement obligations; (2) higher than necessary thresholds for Brunei, Malaysia and Vietnam which will be phased down to the levels of the other parties over long periods, including an excessive 26 years for Vietnam; and (3) exempt certain types of procurements by Malaysia (including set asides and price preferences under its Bumiputera program). ITAC 2 urges the Administration to develop a plan of action to ensure improved government procurement opportunities in Brunei, Malaysia and Vietnam moving forward.

State Owned Enterprises and Designated Monopolies.

TPP Parties recognize the benefit of agreeing on a framework of rules on State Owned Enterprises (SOEs). Parties agree to ensure that their SOEs make commercial purchases and sales on the basis of commercial considerations. They also agree to ensure that their SOEs or designated monopolies do not discriminate against the enterprises, goods, and services of other Parties. TPP Parties agree to share a list of their SOEs with the other TPP Parties and to provide, upon request, additional information about the extent of government ownership or control and the non-commercial assistance they provide to SOEs.

ITAC 2 understands the complex organization of such enterprises across the breadth of the Parties' territories that are aligned with the political reality that exists therein, but also recommends that strong measures be adopted to prevent abuse of the rules as they are currently written and expected to be applied. The Committee supports the inclusion of this chapter and recommends that enforcement mechanisms might need to be further

refined. ITAC 2 is disappointed that Annex 17-D of the SOE chapter provides that the most of the SOE disciplines do not apply to sub-central SOEs operated in all of the TPP countries. ITAC 2 is also disappointed by the positive list approach of this chapter (covering only entities identified by the TPP Parties) and by the fact that several countries have taken very broad sectoral exceptions, particularly Malaysia, Vietnam and Brunei. Foreign SOEs that engage in anti-competitive practices can have detrimental impacts on U.S. manufacturers and ITAC 2 urges that USTR ensure that the SOE obligations of the TPP are vigorously enforced and that SOEs are closely monitored to prevent anti-competitive distortions.

Intellectual Property.

This chapter builds upon the intellectual property (IP) standards already in force in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and international best practices. The TPP includes several general provisions that require all TPP Parties to (1) accede to several major IP conventions; (2) treat IP of the other TPP Parties in a non-discriminatory manner (National Treatment); (3) provide transparency regarding laws and procedures related to IP processes, rulings and laws and (4) establish contact points to promote IP cooperation amongst the Parties. These provisions are particularly relevant to the TPP-five as past U.S. FTAs have included similarly robust IP chapters. On trademarks, it provides protections of brand names and other signs that businesses and individuals use to distinguish their products in the marketplace and provides improved protections for trademark owners to protect their trademarks, including through the development of an electronic trademark application and maintenance system. On patents, the TPP advances general patent protections by improving and clarifying the standards for patent protection in the TRIPS Agreement. The IP chapter limits the grounds for revocation of a patent to those used to determine patentability, as well as fraud, misrepresentation, or inequitable conduct, and provides for patent term restoration. On copyrights, the IP chapter establishes commitments requiring protection for works, performances, and phonograms such as songs, movies, books, and software, and includes effective provisions on technological protection measures and rights management information. On trade secrets, the TPP includes for the first time in any U.S. FTA new provisions requiring TPP Parties to provide for criminal penalties for trade-secret theft.

Finally, TPP Parties agree to provide strong enforcement systems, including, for example, civil procedures, provisional measures, border measures, and criminal procedures and penalties for commercial-scale trademark counterfeiting and copyright or related rights piracy.

ITAC 2 notes that strong IP protections are vitally important to the manufacturing sector generally and to the capital equipment, machinery and transportation sector in particular. Industries in these sectors rely on the full measure of IP rights from patents and trademarks to trade secrets and increasingly copyrights given advances in technology. ITAC 2 views the outcomes of this chapter as generally advancing IP protections for U.S. manufacturers, including those of electrical machinery, capital equipment and automotive industries, including provisions on patents, trademarks, trade secrets and copyrights. ITAC 2 finds that the new trade-secret enforcement rules are highly improved from past FTAs, particularly given technological advances that make trade secret theft more prevalent and damaging. ITAC 2 also recognizes that these provisions will require substantial and ongoing review by the U.S. government

and advises that this chapter will require heightened diligence focusing on the specific actions of each Party as implementation of the TPP gets underway.

Labor.

TPP Parties agree to adopt and maintain in their laws and practices the fundamental labor rights as recognized in the ILO 1998 Declaration, namely freedom of association and the right to collective bargaining; elimination of forced labor; abolition of child labor and a prohibition on the worst forms of child labor; and elimination of discrimination in employment. TPP Parties also agree not to lower labor standards to attract investment and to have laws governing minimum wages, hours of work, and occupational safety and health.

Some ITAC 2 members believe that some labor standards are not precisely defined, which could undermine the effectiveness of the chapter. For example, while countries are required to adopt and maintain laws to provide for a minimum wage, that wage could be set at a level that equates to pennies per hour. Terms such as “may”, “endeavor” and “as appropriate” appear before specific obligations. The concern is that TPP countries with poor labor rights records will take advantage of this latitude to maintain the status quo.

The commitments in the chapter are subject to the dispute settlement procedures laid out in the Dispute Settlement chapter. The Labor chapter also establishes a mechanism for cooperation on labor issues, including opportunities for stakeholder input in identifying areas of cooperation and participation, as appropriate and jointly agreed, in cooperative activities.

The TPP also includes specific provisions for Vietnam to implement over time specific labor commitments, subject to a tariff snapback if Vietnam fails to comply.

ITAC 2 appreciates the work on this chapter but some members have concerns about the practical impact on the ground and the view that enforcement in prior agreements (including those consistent with May 10 provisions) have failed to correct systemic abuse of labor rights, which can create greater competition for U.S. manufacturers by changing the terms of competition. As with other provisions, effective standards also require a significant increase in resources and vigilant attention of U.S. government, particularly given the history of forced labor in both Vietnam and Malaysia.

Regulatory Coherence.

The chapter aims to facilitate regulatory coherence in each TPP country by promoting mechanisms for effective interagency consultation and coordination for agencies. It encourages widely-accepted good regulatory practices, such as impact assessments of proposed regulatory measures, communication of the grounds for the selection of chosen regulatory alternatives and the nature of the regulation being introduced. The chapter also includes provisions to help ensure regulations are written clearly and concisely, that the public has access to information on new regulatory measures, and that existing regulatory measures are periodically reviewed to determine if they remain the most effective means of achieving the desired objective.

ITAC 2 welcomes this new chapter in U.S. FTAs. While the provisions are not generally binding, they require greater transparency and participation in rulemaking and that regulatory rulemaking follows good practices, including with respect to cost-benefit analyses. ITAC 2 notes that implementation of this chapter will require participation of more government agencies from each Party than any other chapter. It has the potential to improve rulemaking processes, advancing government objectives,

while saving industry significant amounts of time and money if the TPP Parties fully implement these provisions, which will likely be a long process given the commitments achieved.

ITAC 2 Automotive Equipment members note that an overlapping web of incompatible foreign motor vehicle regulations currently serves as a major obstacle, often larger barrier than tariffs, to U.S. car and truck exports. The need to reengineer and certify compliance with the primarily European inspired set of rules in force in most markets around the world often makes exporting cars and trucks made in the U.S. economically infeasible.

The U.S. partially addressed that when it negotiated the KORUS FTA, opening the South Korean market to exports of a limited number of American cars and trucks meeting NHTSA safety regulations. This assertiveness mirrored the European Union's negotiating behavior, which requires trade agreement partners to accept motor vehicles engineered to EU standards. Regrettably, the TPP has not carried forward that successful approach.

Chapter 25 of the TPP affirms that all parties have an interest in observing good regulatory practices and ensuring that legitimate regulatory activities do not interfere with trade. The Chapter also establishes a Committee to serve as a forum for promoting regulatory collaboration. The Chapter does not, however, obligate parties to do much more than talk. While dialogue should always be encouraged, its ability to open markets and produce positive commercial outcomes is questionable.

The absence of binding provisions requiring parties to accept motor vehicle imports engineered to U.S. regulatory standards represents a retreat from the longstanding U.S. practice of securing concessions in new agreements that go beyond what had been achieved in prior pacts. As such, this represents a significant missed opportunity.

Transparency and Anti-Corruption.

This chapter requires all TPP Parties, all of whom need to ensure that their laws, regulations, and administrative rulings of general application with respect to any matter covered by the TPP are publicly available. The TPP Parties also agree to adopt or maintain laws criminalizing offering to, or solicitation of, undue advantages by a public official, as well as other acts of corruption affecting international trade or investment. The TPP Parties also commit to enforce effectively their anticorruption laws and regulations. The TPP Parties also agreed to ratify or acceded to the United Nations Convention against Corruption, done at New York, October 31, 2003.

ITAC 2 strongly welcomes this chapter that has the potential of strengthening good governance and addressing the corrosive effects that bribery and corruption can have on the economies of all TPP Parties and that undermine fair commercial opportunities for manufacturers in the United States. ITAC 2 recommends that the U.S. government work closely with the other TPP Parties to ensure full implementation and enforcement of these provisions in a manner consistent with the UN Convention against Corruption and Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris, November 21, 1997, and the Inter-American Convention Against Corruption, done at Caracas, March 29, 1996. It is

important to ITAC 2 members that all governments adhere to and enforce these conventions.

Dispute Settlement.

Under the TPP Agreement, TPP Parties will make every attempt to resolve disputes through cooperation and consultation and encourage the use of alternative dispute resolution mechanisms when appropriate. The dispute settlement mechanism created in this chapter applies across the TPP, with few specific exceptions. The public in each TPP Party will be able to follow proceedings, since submissions made in disputes will be made available to the public, hearings will be open to the public unless the disputing Parties otherwise agree, and the final report presented by panels will also be made available to the public.

Should consultations fail to resolve an issue, Parties may request establishment of a panel, which would be established within 60 days after the date of receipt of a request for consultations or 30 days after the date of receipt of a request related to perishable goods. Panels will be composed of three international trade and subject matter experts independent of the disputing Parties, with procedures available to ensure that a panel can be composed even if a Party fails to appoint a panelist within a set period of time.

To maximize compliance, the Dispute Settlement chapter allows for the use of trade retaliation (e.g., suspension of benefits), if a Party found not to have complied with its obligations fails to bring itself into compliance with its obligations. Before use of trade retaliation, a Party found in violation can negotiate or arbitrate a reasonable period of time in which to remedy the breach.

ITAC 2 supports strong enforcement of the TPP Agreement. Prompt responses to disputes are vital to ensure that the U.S. manufacturing sector is benefitting from the broad range of new market-openings and commitments made in the TPP. ITAC 2 recognizes that additional and vigorous oversight by the U.S. government will be needed to ensure that the TPP Parties live up to their TPP commitments in all chapters, including the chapters specifically highlighted by this report and that the dispute resolution chapter is effective. The United States has typically not pursued formal dispute settlement under FTAs, preferring to achieve greater compliance through consultations or WTO mechanisms. ITAC 2 urges the United States to recognize that full enforcement of the TPP is vital and that the dispute settlement provisions must be used when appropriate. While consultations can oftentimes be effective and provide for a more prompt resolution of a growing dispute, consultations have failed to address fully issues that ITAC 2 has noted in existing FTAs, including the KORUS FTA and others. ITAC 2 therefore recommends stronger consideration of the TPP dispute settlement mechanism when it enters into force.

There are a large number of side letters specific to the automotive sector that contain helpful commitments, but it should be understood that they are not enforceable under the dispute settlement provisions of the agreement. When side letter commitments can be ignored without repercussions, this adds a level of uncertainty.

In addition to these specific chapters ITAC 2 has comments on additional features of the TPP:

Remanufacturing.

During the course of TPP negotiations ITAC 2 stressed the importance of addressing this subject during every briefing from USTR negotiators. While the arcane Rules of Origin for

Remanufactured Goods were not addressed, they remain a key priority for ITAC 2. The Committee notes that the clarifying language that Remanufactured Goods cannot be regulated under provisions regarding “Used Goods” among the TPP signatories is beneficial and follows recommendations made in the APEC Pathfinder Agreement on Remanufactured Goods. The TPP provision will require close enforcement by authorities.

Cross-Border Data Flows.

ITAC 2 notes that U.S. manufacturers are increasingly innovating and making technological advances that make the ability to move data across borders increasingly important. U.S. manufacturers:

- Use digital platforms to reach and service new customers globally;
- Manage global supply chains;
- Build machine to machine technologies (M2M or the Internet of Things) to transfer data remotely between machines. The major applications today include GPS-driven navigation and tracking, providing product usage, yield, performance and maintenance.

U.S. manufacturers and their customers need the ability to move and store data without being impeded by inappropriate restrictions on the ability to move data or requirements to use only local country information technology infrastructure, often called “data localization.” ITAC 2 welcomes the new provisions in the TPP that will allow manufacturers to move data and choose where to store data, without barriers that impede commercial activity. This issue is particularly important to small manufacturers that use internet storefronts to sell to customers around the world. However, some ITAC 2 members are concerned that financial data has been excluded from these protections and recommend that a mechanism be developed to ensure that the free flow of financial data across borders is not impeded.

Macroeconomic Policy Authority Forum.

ITAC 2 Automotive manufacturers note that the Asia-pacific region is home to several countries, including parties to the TPP and others that have expressed interest in joining TPP, that have regularly used exchange rate policies to gain an unfair trade advantage. As such, it was recommended that a strong and enforceable commitment to prohibit currency manipulation be included in the TPP agreement, with the view that without such a commitment a serious threat to the expected benefits of the TPP would persist.

The establishment of a separate macroeconomic policy authority forum among TPP party countries designed to focus on exchange rate policies, transparency and reporting, and consultations coupled with the commitments expected from the yet-to-be-approved Trade Facilitation and Trade Enforcement Act, falls short of the aforementioned recommendations, but could, if handled properly, represent an important opportunity.

Given that to date the U.S. Department of Treasury has been unwilling under the *Semiannual Report on International Economic and Exchange Rate Policies* to push back firmly against countries that have used currency manipulation to gain an unfair trade advantage and harm the U.S. economy, and that the forum could easily become just another occasion for macroeconomic authorities to meet and talk without driving toward any meaningful outcomes or consequence for exercising damaging economic policies, there is a reasonable skepticism that the U.S. will take full advantage of this opportunity.

Alarming, soon after the forum was announced, Japan's Finance Minister publically stated that the Forum will not constrain their currency policies in any way. If this assessment is correct, it is difficult to see how the establishment of this forum represents progress.

Despite these factors, ITAC 2 Automotive manufacturers believe the forum could help mitigate the misuse of exchange rate policies and the adverse economic impact this policy practice has had on the United States, other economies in the region and beyond, but must be convinced by meaningful action that the U.S. is truly committed to changing the status quo.

ITAC 2 Capital Goods manufacturers are pleased with the existing arrangements related to the macroeconomic policy authority, recognizing that trade agreements are not built to accommodate enforceable currency provisions as suggested above. These members acknowledge that that exchange rate policy can be used to gain unfair advantages and recommend that the macroeconomic policy authority be utilized to its fullest potential to address that possibility.

Entry-into-Force.

Given the diversity of the TPP Parties, including in terms of their level of development, the level and complexity of the TPP commitments and past U.S. experiences under FTAs, ITAC 2 strongly urges the United States to engage in a rigorous process, including through consultations with the ITACs and other stakeholders, to ensure that each TPP Party is complying fully with the terms of all chapters of the TPP upon entry into force with that Party. Comprehensive enforcement of this each chapter of the agreement is best ensured by working with each TPP Party as they implement the Agreement, rather than having to pursue consultation or dispute settlement measures after entry-into-force.

Accession of Additional Countries into the TPP.

Chapter 30 of the TPP agreement provides for the accession of other parties to the TPP after it enters into force with the original negotiating countries. Any member of the Asia-Pacific Economic Cooperation (APEC) forum or other countries, as the TPP countries agree, is eligible for accession if that country is "prepared to comply with the obligations set out in the Agreement, subject to such terms and conditions as may be agreed between the State or customs territory and the Parties." The TPP parties are expected to set up procedures for potential accessions.

ITAC 2 understands that the United States government would apply rigorously the Trade Promotion Authority procedures enacted as part of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Pub. L. 114-26)) to any country negotiating entry to the TPP after entry-into-force, including by notifying Congress before negotiations begin, consulting with Congress and stakeholders throughout the negotiation, requiring ITAC and International Trade Commission reports on the final agreement and requiring a Congressional vote before the country joins the TPP. ITAC 2 recommends that in evaluating countries for potential accession to the TPP that the U.S. government conduct an extensive review of the country's compliance with existing trade obligations with the United States (including WTO and FTA obligations as appropriate) to ensure that the country is capable of complying with the standards that the TPP sets. ITAC 2 also strongly advises that the U.S. government ensure that any country that joins the TPP does so based on the strongest possible market access and standards across all chapters of the TPP as they related to the ITAC 2 industry sectors.

V. Membership of the Committee

Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC 2)

Chairman

Mr. W. Eugene Eckhart, Jr.
Senior Director, International Trade
National Electrical Manufacturers
Association (NEMA)

Mr. Gary F. Devlin
Vice President, Quality
and Customer Experience
Cameron International Corporation

Vice-Chairman

Mr. George K. Zauflik
Senior Vice President, Compliance
and Government Relations
Cardone Industries

Mr. Spencer B. Dick
Chief Executive Officer
TigerStop LLC

Ms. Mary K. Burgoon
Market Development Manager
Rockwell Automation

Mr. John T. Disharoon
Director, Market Access
Caterpillar Inc.

Ms. Linda Menghetti Dempsey, Esq.
Vice President, International
Economic Affairs
National Association of Manufacturers

Mr. Thomas M. Egan
Vice President, Industry Services
PMMI

Mr. Stephen V. Gold
President and Chief Executive Officer
Manufacturers Alliance for Productivity
and Innovation

Mr. Steven C. Hughes
Vice President, Supplier Development,
Government Affairs, and Logistics
Centric Parts

Mr. Don A. Gooch
International Business Development
Manager
CST Industries, Inc.

Mr. Stephen Latin-Kasper
Director, Market Data and Research
National Truck Equipment Association

Joseph H. Heckendorn, Esq.
Senior Counsel
Dana Holding Corporation

Mr. Patrick W. McGibbon
Vice President, Industry Intelligence
and Engagement
AMT-The Association for Manufacturing
Technology

Ms. Leslie A. Hennessy
Vice President, New Business
Development
Lovejoy, Inc.

Ms. Leigh S. Merino
Senior Director, Regulatory Affairs
Motor & Equipment Manufacturers
Association

G. Mustafa Mohatarem, Ph.D.
Chief Economist, Public Policy Center
General Motors Corporation

Mr. Joshua P. Nassar
Legislative Director
UAW

Ms. Anku Nath
Senior Manager, International Affairs
Deere & Company

Mr. David Y. Peyton
Federal Representative
Representing Vermeer Corporation

Mr. Michael P. Ralsky
President
GlobalGR LLC
Representing Navistar, Inc.

Ms. Linda M. Spencer
Senior Director, International
and Government Relations
Specialty Equipment Market Association

Mr. Charles D. Uthus
Vice President, International Policy
American Automotive Policy Council

Total Members = 23