

Committee To Support U.S. Trade Laws

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Office of the United States Trade Representative (USTR)
600 17th Street NW Washington, DC 20508

Submitted Electronically via Federal eRulemaking Portal (<http://www.regulations.gov>)

Re: Docket No. USTR-2018-0034 Comments in Response on Negotiating Objectives for a U.S.-Japan Trade Agreement

This statement is submitted by the Committee to Support U.S. Trade Laws (CSUSTL) in response to USTR's request for comments on negotiating objectives for a proposed U.S.-Japan Trade Agreement.

CSUSTL is an organization of companies, trade associations, labor unions, law firms and individuals committed to preserving and enhancing U.S. trade laws and supporting trade policies that benefit the United States-based productive economy. CSUSTL's members span multiple sectors, including manufacturing, technology, agriculture, mining, energy, and services. Our products and services involve valuable raw materials, agricultural products, technologically sophisticated consumer goods, commodity items, and highly developed manufactures. We are dedicated to ensuring that the laws against unfair trade are not weakened through legislation or policy decisions in Washington, DC, in international negotiations, or through dispute settlement at the World Trade Organization (WTO) and elsewhere.

We believe that a bilateral agreement with Japan is an important opportunity to continue in strengthening U.S. trade remedy laws as an effective tool for domestic companies and their workers to address unfair trade practices. Businesses and workers and communities in nearly every state in the country have in the past or currently depend on enforcement of our fair trade laws to address market distortions by foreign competitors and foreign governments. They depend on the trade laws to ensure that they can compete fairly and on an equal footing against those who dump to gain advantage in the U.S. market, or who benefit from unfair government subsidies. Effective trade remedy laws are essential for a robust U.S. economy, and ensuring manufacturing and agricultural jobs in America, fair wages for our workers and vibrant local communities. Improvements that are necessary to the proper enforcement of this set of laws should be included as a priority in the U.S. negotiating position.

OBJECTIVES:

We ask that USTR maintain our trade remedy laws and not include revisions to the trade remedy laws themselves in any negotiations with Japan. CSUSTL does support seeking improvements necessary to the enforcement of these laws through customs cooperation to ensure fair trade is secured for US businesses and workers when trade remedy relief is warranted. The following items are important to CSUSTL members and are offered for your consideration.

State-Owned Enterprise Rules

CSUSTL members strongly support the inclusion of a chapter on rules for State-owned enterprises (SOEs) in the proposed U.S. – Japan trade agreement. Such chapters should be no less comprehensive and enforceable than the SOE Chapter 22 in the current United States-Mexico-Canada Agreement (USMCA). Currently, both Japan and the EU have SOE discipline provisions under their EU-Japan Economic Partnership Agreement (EU-Japan EPA). Therefore, both entities should be willing to expand coverage and disciplines to the new USMCA standard. Doing so will help to ensure that SOEs are not provided discriminatory privileges and that companies that are not state owned or controlled will have a more level playing field in the respective domestic and in global markets. CSUSTL would not be supportive of an SOE chapter that does not include the definition and enforcement provisions for SOEs found in the USMCA. In addition, where SOEs exist in a member and contribute to global excess capacity through addition of capacity not justified by economic conditions, the U.S. should ensure that negotiated rules provide for the prompt elimination of the excess capacity by the SOEs.

Customs Enforcement

Key factors included in a prospective trade agreement between parties should ensure that disciplines are adopted to ensure open and fair movement of trade. Paramount to trade facilitation is the ability of each country to use existing customs enforcement tools to challenge fraud, circumvention and evasion practices. Parties should agree to administer customs procedures in a transparent manner that facilitates the importation, exportation, and transit of goods, and supports compliance with its law while ensuring that all enforcement tools are provided to address customs anomalies. Further, the agreement should provide parties with the framework for legal review and an established process for inquiries, appeals and dialogue in which to address issues related to potential or real customs offenses.

Currency Manipulation

CSUSTL members strongly support the inclusion of a chapter on currency manipulation in the proposed U.S. – Japan trade agreement. Such chapter should be no less comprehensive and enforceable than the the Macroeconomic and Exchange Rate Chapter in the current United States-Mexico-Canada Agreement (USMCA). In the past there have been concerns about possible currency manipulation by Japan. Any such undervaluation of currency both spurs exports and undermines the effectiveness of trade remedies by understating a true normal value.

For some CSUSTL members the following issues are also important.

FTA Rules of Origin

A fundamental goal for the United States in any Free-Trade Agreement is to incentivize the sourcing of goods and materials in the United States, thereby creating a supply chain that promotes U.S. manufacturing, exports and jobs. One way to accomplish this objective is to negotiate preferential rules of origin that increase the value added or regional value content required to qualify goods for the tariff preferences (duty-free treatment) available under the Agreement. If these rules are too liberal or are not adequately enforced, non-parties to the Agreement will be able to take advantage of the Agreement's preferences by shipping products to the U.S. duty-free that are minimally transformed in the countries who are parties to the Agreement and subject to these

preferential rules. Weak or poorly enforced rules of origin will also deprive U.S. manufacturers of export opportunities in the countries who are parties to the Agreement.

The recently negotiated United States, Mexico, and Canada Agreement (USMCA) provides an example of how stronger rules of origin could promote U.S. manufacturing and jobs. The USMCA has significantly revised the rules of origin applicable to passenger vehicles, light trucks, and auto parts. This revision to the rules of origin will provide greater incentives to source goods and materials in the United States and North America by: (1) increasing the regional value content requirement for passenger vehicles from 62.5% to 75%; (2) requiring vehicle producers to purchase at least 70% of their steel and aluminum in North America in order to qualify their products for preferential treatment under the USMCA; and (3) requiring that certain automotive “core parts” (e.g. engines, transmission, bodies) originate in North America based on a 75% regional content requirement for those parts. These rules should ensure that only producers using significant North American parts and materials receive preferential tariff benefits. The principles underlying the renegotiation of the NAFTA automotive rules should be a fundamental element of any future Free Trade Agreement negotiated by the U.S., specifically the need to incentivize the purchase of U.S. materials and goods by the partners to the Agreement.

Government Procurement

CSUSTL believes that procurement market access obligations should be truly reciprocal. The United States’ procurement market access concessions under trade agreements have been both exceptionally significant and unparalleled. Over decades, the United States has, through international trade agreements, granted foreign suppliers access to its government procurement markets, ceding much of these markets to foreign producers at the expense of U.S. manufacturers. The United States has free trade agreements with twenty countries, most of which include market access obligations with regard to government procurement. Under the WTO Agreement on Government Procurement (GPA), the U.S. grants procurement market access to 46 WTO members, including the 28 countries that comprise the European Union.

Unfortunately, the United States’ significant procurement market access commitments have not resulted in quantitatively reciprocal market access concessions from our trading partners. The U.S. Government Accountability Office (GAO) recently concluded in its report, *United States Reporting Opening More Opportunities to Foreign Firms Than Other Countries, but Better Data Are Needed*, GAO-17-168 (Feb. 2017), that the extent of negotiated procurement market access for U.S. goods is a mere fraction of the access to U.S. procurement markets the United States has granted its trading partners. Put another way, the GAO determined that under the GPA, the United States opened far more of its government procurements to foreign firms than did the other parties to the GPA - twice as much as the next five largest GPA parties combined (the EU, Japan, South Korea, Norway and Canada) even though total U.S. procurement is less. CSUSTL members support achieving reciprocal opportunities for US companies in the Japanese market as Japanese companies currently have in the United States.

At the same time, we urge U.S. negotiators to maintain reservations from market access obligations for Federal-Aid infrastructure assistance. In limited cases, discrete federal-aid infrastructure assistance spending has been reserved by the United States from trade agreement procurement market access obligations. As a result of these reservations, where applied, the limited Buy America laws applicable to this taxpayer-finance infrastructure spending are not impaired by an agreement’s procurement market access requirements. But Buy America laws do not apply to all taxpayer-financed procurement of public works infrastructure. In fact, these procurement

preference laws only apply to a fraction of all federal-aid infrastructure spending. Billions of U.S. tax dollars are spent annually through federal assistance programs that are subject to no domestic procurement preference laws at all. These procurement markets – funded with U.S. tax dollars – are completely unfettered. The products of any nation are eligible for these taxpayer-financed markets.

Federal-aid public works infrastructure spending can be a potent economic stimulus. These markets must remain reserved from U.S. trade agreement obligations and must be subject to strong Buy America requirements and robust origin standards.

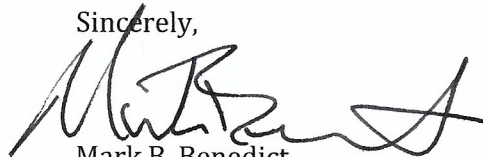
Inclusion of Non-Tariff Barrier provisions in the proposed U.S.—Japan FTA

As USTR is aware, certain Japanese technical requirements and certification procedures can make it extremely difficult for U.S. producers to export products to Japan. The complex regulatory environment in Japan often acts as a barrier for U.S. exporters to enter the Japanese market. As such, CSUSTL strongly supports the inclusion of provisions on technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) in the proposed U.S.—Japan trade agreement. Such chapters should be no less comprehensive than the SPS provisions in chapter 9 and the TBT provisions in chapter 11 of the USMCA. Beyond those provisions, however, CSUSTL would also support specific areas to be addressed such as the non-tariff barriers that arise out of the administration of a VAT rebate regime. Typically, these types of VAT rebate regimes function as TBT expressly favor domestic input suppliers and providing domestic exporters of downstream products in those nations with unfair advantages while creating an implicit tariff on U.S. exporters of similar upstream inputs.

CONCLUSION:

On behalf of our members, CSUSTL appreciates the opportunity to provide USTR with our organization's comments on the proposed U.S.-Japan Trade Agreement, and commend the Administration in its efforts toward achieving a bilateral agreement. We recognize that there are many difficult issues surrounding a potential trade agreement between the two nations. We urge U.S. negotiators to pursue an agreement that strengthens and improves the effectiveness of existing U.S. trade remedy laws, and allows them to be enforced vigorously.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark B. Benedict', with a stylized flourish at the end.

Mark B. Benedict
President