

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

June 10, 2015

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

Dear Mr. President,

On behalf of the private sector members of the President's Export Council, we welcome the efforts by you, your Administration and the United States Congress to make tangible progress advancing the American trade agenda. We especially welcome the progress made to date, and hope for the swift approval of Trade Promotion Authority and the accompanying trade-related bills on Customs reauthorization, the African Growth and Opportunity Act (AGOA) and the existing preference programs. With respect to the multilateral agenda, we commend your Administration for progressing efforts on plurilateral negotiations such as the Trade in Services Agreement (TiSA) and for encouraging full ratification and implementation of the already-concluded Trade Facilitation Agreement as soon as possible. In addition, we urge the Administration to continue to drive efforts to expand the Information Technology Agreement (ITA) and work with all parties to conclude that negotiation this summer.

Building on our earlier recommendations on 21st century trade, and as part of the process of moving forward the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) negotiations, we recommend that the United States Government particularly ensure high standard commitments on emerging trade issues essential to modern commercial activity. In addition to the range of existing issues covered in progressive trade agreements, we urge the Administration to also elevate the following key priorities:

Cross-border Data: We would like to thank the Administration for its continuing efforts to secure and protect innovation and a free and open Internet through Trade Promotion Authority and agreements such as TPP, TTIP, and TiSA. Indeed, the Digital Trade negotiating objective in the TPA legislation is an important and historic milestone – for the first time, it will direct negotiators to create new, 21st century trade disciplines to protect digital trade and ensure American companies can compete on a level playing field globally. Enabling cross-border data flows and prohibiting unnecessary data and server localization requirements will strengthen the global competitiveness of U.S. farmers, manufacturers and service industries, including many small companies that increasingly rely on data to compete globally.

Regulatory Cooperation: Regulatory cooperation is about supporting more efficient, transparent and cost-effective approaches to regulatory management processes between trading partner countries and preventing unnecessary regulatory divergences that create non-tariff barriers and harm economic competitiveness. Establishing principles of regulatory cooperation – at the horizontal and the sectoral level – will significantly reduce non-tariff barriers and ensure more effective market access by large and small companies. Regulatory cooperation would maintain high levels of protection for human health and the environment while promoting resource and cost savings for both governments and industry through more efficient interaction

of different regulatory regimes. This cooperation should be based on the principles of sound science, risk assessment and transparent, fairly adjudicated regulatory procedures.

Intellectual Property Rights: The Department of Commerce has noted that “IP is used everywhere in the economy, and IP rights support innovation and creativity in virtually every U.S. industry.” Further, IP-intensive industries employ about 40 million American workers, account for over one third of GDP, over 60 percent of all merchandise exports and 20 percent of services exports. Many of our trading partners do not provide adequate protection of intellectual property rights, which disadvantages the U.S. IP-intensive industries. The TPA legislation includes important objectives on IP provisions in trade agreements to which we know your Administration is committed.

Investor-State Dispute Settlement (ISDS): In today’s globalized supply chain-driven economy, U.S. companies, large and small, need to invest globally to succeed and create good jobs here at home, whether it is to reach foreign customers or to participate in infrastructure or other projects overseas. Bilateral Investment Treaties (BITs) and investment chapters in free trade agreements are key tools to protect U.S. investors around the world, and provide a neutral, effective and transparent mechanism to resolve disputes that may arise. Achieving strong outcomes that are not weaker than the U.S. Model BIT, reviewed and updated by the Obama Administration, is critical in our negotiations in TPP, TTIP, and in on-going U.S.-China BIT negotiations. But political pressures in Europe and here in the United States demonizing the key arbitration provisions (Investor-State Dispute Settlement or “ISDS”) are rising, especially in TTIP. The United States needs to continue to lead international efforts to ensure strong, investment protection and access that include transparent ISDS provisions that provide a neutral venue and transparent process to protect against violations of core investment protection provided for in the U.S. Model BIT.

Localization Policies: Increasingly governments are looking at localization policies as a means of increasing investment, creating jobs, and stimulating economic growth. But artificial barriers – especially non-commercial limitations on access to inputs, data or other manufacturing requirements – are disincentives to investment, remove countries from global value chains and drive high skilled, high value jobs to other countries. Localization barriers should be opposed in favor of more commercially meaningful incentives for investment.

The issues described above, and the core agenda of trade liberalization, are critical elements of America's leadership on 21st century trade and securing high standards for market access with key trading partners. We thank the Administration for its outstanding work in addressing localization barriers globally, including as part of the investment chapters of the TPP, TTIP and the US-China BIT negotiations. The TPA legislation includes important new disciplines addressing this challenge that will help ensure the ability of U.S. companies to globally compete on a level playing field.¹

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McNerney". The signature is fluid and cursive, with the first name "Jim" being the most prominent.

Jim McNerney

¹ Please note this letter was prepared by the private sector appointed members of the PEC.