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Mr. Douglas M. Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20503

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Dear Chairman Bell:

The National Association of Manufacturers (NAM) welcomes this opportunity to provide comments regarding the 2014 *National Trade Estimate Report on Foreign Trade Barriers*. The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributing more than \$1.8 trillion to the U.S. economy annually.

Trade barriers are on the rise around the world, costing jobs, growth and economic opportunity. According to one recent study, governments have introduced nearly 700 new protectionist measures since 2008. Nearly all of those measures remain in force. As explained further below, manufacturers in the United States face not only traditional trade and investment restrictions, but also the serious and growing challenges of forced localization, intellectual property theft, and export bans. In all these areas, G20 countries are leading offenders.

To address and eliminate these barriers, the United States must leverage all available tools. It must secure ambitious, high-standard commitments in ongoing trade agreement negotiations – particularly in areas like intellectual property, cross-border data flows and investment. It must forge global coalitions in forums like the G20 and APEC and aggressively pursue dispute settlement cases, where appropriate. It must sharpen existing tools and consider common sense updates to preference program eligibility criteria.

1. Import Policies

Many countries continue to impose excessively high tariffs on imports of manufactured goods. **Argentina, Brazil and India** all maintain average applied tariffs that are at least three times higher than equivalent U.S. rates, according to data compiled by the WTO. Indian tariffs can range as high as 75 percent for automobiles and motorcycles and 300 percent for textiles. Brazil raised tariffs on some 100 products in October 2012. Expanding and bringing additional countries into the WTO Information Technology Agreement would deliver significant benefits.

High tariffs are often just one of many import barriers manufacturers face in overseas markets. For example, **Argentina** maintains a wide array of protectionist measures designed to

boost local production, protect domestic industry and address balance of payments concerns. These measures appear to violate Argentina's obligations under the General Agreement on Tariffs and Trade (GATT) and the WTO Agreements on Customs Valuation, Import Licensing Procedures, Technical Barriers to Trade and Trade Related Investment Measures.

To benefit a few local companies, Argentina bans the importation of many processed foods, including ketchup, tomato sauces, fruit and vegetable juices, chocolates, olive oil, canned corn, potato chips, bacon and biscuits. Through an arbitrary and non-transparent reference pricing regime, it delays and adds significantly to the cost of importing competitive products with invoice prices less than the "reference values" for those products determined by government authorities.

For those products that are permitted to enter Argentine commerce, importers must seek advance approval, both from the national tax agency and, separately, from the Secretary for Domestic Commerce. In addition, as many as 4,000 products are subject to non-automatic import licensing procedures entering the country, including electronics, certain fabrics, foodstuffs, paper products and bicycles and bicycle parts. These licenses generally are not granted within the 60-day period required by the WTO.

In **Brazil**, importers not only face high duties, but also a series of cascading taxes and additional fees that can increase the cost of imported goods to end consumers by as much as 60 percent or more. Even where imported goods do not compete directly with domestic products, these cascading taxes and fees can weaken aggregate demand and limit access to technology and equipment by Brazilian consumers. They can needlessly add to the complexity and challenge of doing business.

Colombia has long required importers of certain trucks either to demonstrate that one truck was scrapped for each imported truck or to pay a corresponding fee. Earlier this year, the Colombian government abruptly amended its "scrappage" regime and eliminated the fee option without notice to importers or the WTO. This move has harmed overseas manufacturers who supply more than 90 percent of Colombia's truck market. It appears to violate provisions of the GATT and the WTO Agreement on Technical Barriers to Trade.

2. Investment Barriers

Overseas investment is critical to expanding U.S. exports and sales to foreign markets. In 2010 (the last year for which data are available), businesses with foreign investments accounted for less than a quarter of U.S. private sector output, but generated about 45 percent of total U.S. goods exports. The vast majority of sales by overseas subsidiaries of U.S. companies, which equaled about \$3.7 trillion that same year, were destined for other foreign markets.

While the United States has a very open investment climate, other countries restrict the ability of U.S. firms to invest through a variety of laws and regulations. These restrictions undermine the ability of manufacturers in the United States to access overseas markets and grow their businesses. Some countries, such as **China**, prohibit foreign investment in some sectors and limit participation in others to a certain equity percentage. Manufacturers are seeking an end to these barriers through the U.S.-China Bilateral Investment Treaty negotiations.

Other countries with which the United States is negotiating investment commitments also maintain substantial barriers that need to be eliminated to address competitive imbalances.

For example, **Canada** and **Australia** maintain non-national security-based investment screening mechanisms. **Malaysia** prevents overseas individuals and firms from acquiring more than a 70 percent stake in local businesses. **Mexico** and **Vietnam** limit foreign investment in many sectors.

India maintains substantial barriers to investments, including performance requirements that limit investment based on requirements for local production or sourcing. Other countries, such as **Ecuador** and **Venezuela**, have taken measures against foreign investors in ways that undermine their investment climates. Additional countries where manufacturers are interested in seeking reductions in investment restrictions include Brazil, Equatorial Guinea, Ghana, Indonesia, Nigeria, the Philippines and Russia.

3. Forced Localization Barriers

Forced localization barriers, including measures designed to protect, favor or stimulate domestic industries, services providers and/or intellectual property at the expense of goods, services and/or intellectual property from other countries, are proliferating in key emerging markets. These barriers appear to violate fundamental national treatment provisions of the GATT and various WTO Agreements. Some are already the subject of ongoing WTO dispute settlement cases.

Forced localization poses a serious and growing threat to manufacturing and jobs in the United States, blocking trade in strategic and innovation-intensive sectors and undermining hard-won technology and productivity gains that have made our nation one of the most competitive producers in the world. A recent analysis by the Peterson Institute for International Economics estimated that the reduction in world trade caused by just one type of forced localization barrier, local content requirements, amounts to \$93 billion annually.

India's growing array of forced localization barriers poses a particularly serious unfair competitive challenge to manufacturers in the United States. These barriers add to the cost and complexity of exporting to one of the most protectionist countries in the world and are contributing to a widening merchandise trade deficit that already stands at more than \$18 billion. India is the third largest economy in the world, according to the World Bank, but scores last among G20 countries on the Bank's Ease of Doing Business index.

Guided by a manufacturing policy issued in late 2011, India is systematically forcing the local production of everything from information technology and clean energy equipment to medicines and medical devices. Over the last two years, it has announced a Preferential Market Access (PMA) policy that would require certain computers and electronics sold in India to be produced there. It has classified some telecommunications products "security sensitive" for the purpose of requiring domestic production.

To benefit domestic generic drug companies that rely on the United States market for as much as 60 percent of their global sales, India has denied, revoked or compulsory licensed well over a dozen innovative cancer, diabetes and glaucoma medicines. A number of these medicines were dispensed free of charge or at significantly reduced prices. India bans imports of remanufactured medical devices, but permits the sale of devices remanufactured domestically.

In the energy sector, India requires solar energy developers to use solar modules and cells manufactured domestically. India currently is considering forced localization rules for

power generation that would require developers of so-called “ultra mega power projects” to source from a few local companies. The United States has rightly challenged India’s solar energy local content requirements in the WTO. It should consider similar action if India moves ahead with similar rules for power projects.

To address the threat of India’s discriminatory forced localization policies on manufacturing and jobs in the United States, the NAM and 16 other leading business associations representing nearly every sector of the U.S. economy have united to form the Alliance for Fair Trade with India (AFTI) (<http://aftindia.org>). AFTI is working with Congress, the Administration and partners around the world to end India’s unfair policies and to ensure they are not repeated in the future.

Russia maintains forced localization barriers in the medicines and telecommunications sectors. It discriminates against U.S. medicines exporters in favor of domestic producers through a national reimbursement system that gives Russian companies a 15 percent price preference and allows only domestic companies to request annual adjustment of registered prices. The government reserves certain telecommunications opportunities only for equipment made in Russia by majority-owned Russian firms.

China continues to discriminate against imports of automotive, steel, telecommunications and other products through investment restrictions, subsidies and *de facto* local sourcing and technology transfer requirements. Many other emerging markets are watching and learning from these discriminatory barriers, including **Indonesia** and **South Africa**. If allowed to stand, NAM members are concerned that they may well spread quickly to other sectors and countries.

After eliminating forced localization barriers in the ICT sector in the early 1990s, **Brazil** is considering a significant step backward. The Brazilian Congress currently is debating a local data storage requirement that would require all data relating to Brazilian operations of both domestic and international companies, as well as Brazilian citizens, to be stored in Brazil. Such a requirement would impose steep costs and other challenges on data storage providers and the many manufacturers who rely on them.

Many other countries already restrict cross-border data flows. **China**, **India** and **Malaysia** maintain data residency laws that force businesses to store data they collect in those markets on local servers. China also is considering draft rules that would require Internet-based mapping applications and services to locate data servers there. **Indonesia** has also put in place rules to require the use of local data centers and servers. To comply with tax laws, companies operating in **New Zealand** must store business records in local data centers.

Several countries require local testing to approve telecommunications products for import and marketing. Rather than allow testing by any lab certified by an independent certification body, regardless of location, these countries mandate testing by designated local facilities. Such trade barriers impose additional time and expense for manufacturers. Countries with local testing requirements include **Brazil**, **China**, **Korea**, **Russia** and **Taiwan**. **Mexico** is considering such requirements.

4. Lack of Intellectual Property Protection and Enforcement

Manufacturers of agricultural chemicals, auto parts, consumer goods, machinery, medicines, software and a wide array of other products continue to face the persistent threat of

counterfeiting and piracy in and from **China, Russia** and other emerging markets. Fakes increasingly are marketed via online auction sites based in China and distributed worldwide. They are manufactured in and transit through foreign trade zones. They continue to cause serious economic damage and present significant health and safety risks for consumers.

In these countries and elsewhere, lax enforcement and the absence of deterrent penalties encourages and enables counterfeiting and piracy. NAM members are concerned that administrative fines for intellectual property infringement in **China** are too low and used too infrequently. High value and volume thresholds must be met to initiate criminal prosecution and civil damages are often inadequate. As a result, counterfeiters and pirates have come to see fines merely as a cost of doing business.

To help meet this challenge and stop unfair competition from the use of stolen intellectual property, the NAM has joined more than a dozen other business associations and some 275 manufacturers across the country to form the National Alliance for Jobs and Innovation (NAJI) (<http://naji.org>). By addressing the unfair cost advantage that results when foreign manufacturers use pirated software and other stolen intellectual property, NAJI hopes to increase awareness and ensure a level playing field for businesses in the United States.

Despite recent progress in addressing **China's** indigenous innovation strategy in bilateral forums, NAM members continue to face unwarranted requests from government entities for certain technology, intellectual property or confidential information in connection with importation, and approval of investments, licenses and permits. For example, China is requiring importers of certain chemical formulations to supply proprietary information, including the name and percentage of each specific monomer, as a condition of customs clearance.

Protection of undisclosed test and other data remains a serious problem in **Russia** and **India**. Neither country effectively protects against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. Lack of effective trade secrets protection and enforcement is a growing challenge in many markets. Strong trade secrets commitments must be a top priority in Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership negotiations.

Australia has enacted legislation and regulations prohibiting the use of trademarks on tobacco products or “anywhere on the retail packaging of tobacco products”. This measure harms the use of all types of trademarks and appears to violate Australia’s commitments under multiple articles of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. NAM members are concerned that the destruction of trademark rights in the tobacco context will have ramifications globally across other industries, including food and beverages.

5. Export Restrictions

Many countries seek to restrict or limit the export of strategic natural resources necessary for the production of a wide range of manufactured goods. These restrictions are severing longstanding supply chains and driving up costs, with serious competitive implications for businesses in the United States and around the world. To give their own domestic industries an unfair commercial advantage, **China, Indonesia, India, Russia** and other countries have imposed damaging quantitative restrictions or taxes on certain minerals and ores.

China has imposed export restrictions on both raw materials and rare earths. Both have been the subject of WTO challenges brought by the United States and other countries. After

clear findings by the WTO Appellate Body that China's export taxes and quotas on raw materials violated core international trade rules, China announced that it had eliminated these measures. But China's export duties, quotas, export price requirements and licensing regime for rare earths continue to pose similar problems, which a WTO panel currently is reviewing.

Indonesia implemented an export ban on unprocessed mineral ores in May 2012, with the goal of driving investment and growing in domestic refining capacity. While companies with business licenses to build smelters were exempted temporarily (but taxed 20 percent on their exports), the ban will apply to all exports by January 2014. There are some indications that the government may be moving to relax the ban, which the United States should urge be done as soon as possible.

India maintains trade distorting export taxes on a variety of iron ore products. It has increased those taxes in recent years, harming manufacturers in the United States. **Russia** maintains export duties on a wide range of products, including scrap metals, hydrocarbons and agricultural products.

Other countries, including **Argentina**, **Brazil**, **Indonesia** and **Malaysia**, charge differential export taxes on value-added agricultural products and other goods. These taxes can act as an export subsidy for value-added products and create competitive advantages for local downstream processors of the taxed product, limiting U.S. exports and sales.

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The NAM welcomes this opportunity to comment and looks forward to working with the Trade Policy Staff Committee agencies to address these and other trade barriers in overseas markets.

Sincerely,



Linda M. Dempsey