NATIONAL ASSOCIATION OF
Manufacturers

Pre-Hearing Statement of
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Before the U.S. International Trade Commission
Hearing on
Investigation No. TPA-105-001 – Trans-Pacific Partnership Agreement:
Likely Impact on the U.S. Economy and on Specific Sectors

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The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing over 14,000 manufacturers small and large in every industrial sector and in all 50 states. NAM members include many companies that trade and compete around the world and in the Asia-Pacific region. The NAM welcomes this opportunity to provide its input to the Commission on the likely impact of the Trans-Pacific Partnership (TPP) agreement on the U.S. economy and the manufacturing sector in particular.

The NAM has long supported a robust international trade and investment negotiating agenda that produces high-quality, enforceable and enforced free trade agreements (FTAs) that help a level the playing field through the reduction and elimination of tariff and non-tariff foreign barriers and the inclusion of strong rules to promote greater fairness and competition in foreign markets — from obligations protecting intellectual property and investment to provisions on competition policy, procurement and transparency. The United States has successfully implemented 14 FTAs with 20 countries that are producing strong outcomes for the U.S. manufacturing sector. U.S. manufactured goods exports to our 20 existing FTA partners represented nearly 50 percent of total U.S. manufactured goods exports in 2012, even though those countries represent only 9 percent of the world's GDP and 6 percent of the world population. As the NAM has detailed to the Commission, such agreements spur expanded U.S. manufacturing exports, improve the global competitiveness of manufacturers in the United States, and sustain and growing high-paying jobs domestically.[1]

The NAM has been actively involved in advocating for comprehensive, high-standard and ambitious market-opening and enforceable commitments in the TPP throughout the entire negotiation consistent with Board-approved NAM policy. Since the TPP was concluded and the text, which is still undergoing legal review, was released publicly, the NAM has actively worked with its membership to evaluate the agreement based on the NAM's objectives and policy. As explained below, the NAM finds that, overall, the TPP agreement will open markets and put manufacturers in the United States in a much stronger position to compete in an important and growing region of the world. It will substantially improve opportunities for the export and sale of U.S. manufactured goods, which means more economic opportunities for manufacturers and their 12 million workers here in the United States.

[1] NAM, Pre-Hearing Statement for the U.S. International Trade Commission Hearing on "Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2016 Report," Nov. 4, 2015, accessed at http://documents.nam.org/IEA/Pre-hearing%20statement%20November%202015-FINAL.pdf.

The Economic and Trade Landscape among the TPP Countries

After more than five years of negotiations, the TPP parties announced conclusion of an agreement that will join the United States in an FTA with 11 other countries. The United States has existing FTAs with six of the nations (TPP-Six): Australia, Canada, Chile, Mexico, Peru and Singapore, but not with the remaining five (TPP-Five): Brunei, Japan, Malaysia, New Zealand and Vietnam.

The TPP will cover about 36 percent of the world economy, including the United States, which has a GDP of $17.4 trillion. The 11 TPP partners have a combined GDP of $10.6 trillion, representing 13.6 percent of global economy and population of more than 490 million foreign consumers. The TPP-Five represent nearly half of the non-U.S. TPP population and more than half of the non-U.S. GDP of all 11 TPP partner economies.

Figure 1: Population, GDP and Value Added from Manufacturing of the TPP Partner Countries

		Population (In Millions) (2014)	GDP (Billions of U.S. Dollars) (2014)	Value-Added Manufacturing Billions of U.S. Dollars (2013)
TPP-Six				
	Australia	23.49	$1,454	$108
	Canada	35.67	$1,787	$184
	Chile	17.81	$258	$29
	Mexico	123.79	$1,283	$213
	Peru	31.40	$203	$29
	Singapore	5.47	$308	$52
	Total	**237.63**	**$5,293**	**$615**
TPP-Five				
	Brunei	0.42	$17	$2
	Japan	127.02	$4,601	$917
	Malaysia	30.40	$327	$75
	New Zealand	4.51	$188	$21
	Vietnam	90.73	$186	$30
	Total	**253.08**	**$5,319**	**$1,045**
TOTAL		**490.71**	**$10,612**	**$1,660**

Source: *World Bank, United Nations*

Of the 12 TPP nations, the United States is the largest manufacturer, with value-added manufacturing output of $2.03 trillion in 2013 — more than all of the TPP nations combined as shown in Figure 1. Japan, which produces the next highest level of value-added manufacturing output, is less than half the level of the United States, and its manufacturing output declined from a peak of $1.09 billion in 2011.

As shown in Figure 2, U.S. manufactured goods trade with these countries already represents 45.5 percent of total U.S. exports of manufactured goods and 35.6 percent of U.S. manufactured goods imports.

Figure 2: U.S. Manufactured Goods Exports, Imports and Balance with TPP Partners and Rest of World, 2014, Millions of U.S. Dollars

	Exports	Imports	Balance
TPP-11	$639,298	$686,850	($47,551)
Rest of World	$762,988	$1,240,176	($477,188)
Total	$1,402,286	$1,927,026	($524,739)
TPP-11 % of U.S. Trade	45.5%	35.6%	9%

Source: *U.S. Commerce Department*

As shown in Figure 3, overall U.S. exports to the TPP-Six where FTAs are in place are more than seven times greater than the TPP-Five, while U.S. imports from the TPP-Six countries are just two and half times greater than imports from the TPP-Five countries.

Figure 3: U.S. Manufactured Goods Exports, Imports and Balance with TPP Partners, 2014, Millions of U.S. Dollars

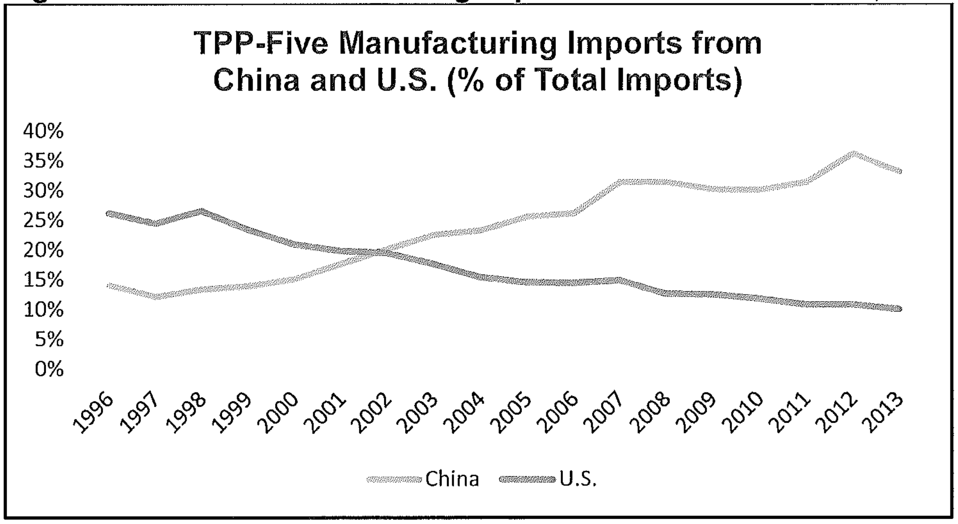
		Exports	Imports	Balance
TPP-Six				
	Australia	$24,467	$9,056	$15,411
	Canada	$271,597	$218,305	$53,292
	Chile	$15,009	$5,449	$9,560
	Mexico	$215,720	$245,666	($29,946)
	Peru	$8,816	$3,971	$4,844
	Singapore	$28,596	$14,295	$14,301
	Total	$564,205	$496,743	$67,462
TPP-Five				
	Brunei	$535	$21	$514
	Japan	$54,645	$129,748	($75,103)
	Malaysia	$12,165	$29,580	($17,415)
	New Zealand	$3,790	$3,442	$348
	Vietnam	$3,958	$27,316	($23,357)
	Total	$75,093	$190,107	($115,013)
Total		$639,298	$686,850	($47,551)

Source: *U.S. Commerce Department*

The United States runs a manufacturing trade surplus overall with TPP-Six countries, while it has a deficit with the TPP-Five countries.

Of significant importance as well is the fact that the United States has been losing market share in the TPP-Five countries over more than a decade. As shown in Figure 4, in 1996 U.S. manufactured goods exports supplied 26 percent of the TPP-Five's cumulative manufactured imports. That share dropped to 10 percent in 2013. Much of this loss in market share has appeared to have been won by China, which has made major inroads in those markets, increasing its import share to 33 percent in 2013 from 14 percent in 1996.

Figure 4: TPP-Five Manufacturing Imports from China and U.S., as a % of Total Imports



Source: *WTO Data*

China's ability to make inroads into these markets appears to be related to the entry-into-force in 2005 of the Association of Southeast Asian Nations (ASEAN)-China Free Trade Agreement and Economic Integration Agreement that covers Brunei, Malaysia and Vietnam among the TPP-Five.[2] Chile has trade agreements in force with each of the TPP-Five.[3] Also, among the TPP-Five countries,[4] the European Union has completed, but not yet brought into force, a trade agreement with Vietnam and is negotiating a trade agreement with the ASEAN nations overall (including Brunei and Malaysia) and a separate agreement with Japan.

Given the projected substantial growth in populations and incomes in the Asia-Pacific region, this loss in market share will continue and represent an increasing missed opportunity if the competitiveness of manufacturers in the United States is not improved.

Likely Impact of the TPP on the U.S. Economy and the U.S. Manufacturing Sector

Overall, the TPP advances manufacturers' objectives to eliminate and reduce market access barriers in each of the TPP countries and to raise standards, including on important issues of non-discrimination, intellectual property and investment protection, digital commerce and transparency, particularly with the TPP-Five countries.

Manufactured Goods Tariffs

The TPP achieves a top goal of manufacturers in the United States — eliminating all foreign tariffs on U.S. manufactured goods exports. Ninety percent of the 11 other TPP countries' tariff lines, covering about 98 percent of the value of current U.S. manufacturing goods exports to these markets, would be provided immediate duty-free (IDF) treatment.

The TPP will substantially increase manufacturers' duty-free access to the TPP-Five countries in particular. Based on the NAM's analysis in Figure 5, 86 percent of the TPP-Five countries' tariff lines would be duty free immediately upon the TPP's entry into force, 91 percent would be duty-free within four years, and 96 percent would be duty-free within ten years.

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[2] See, e.g., WTO China Regional Trade Agreement (RTA) Profile, accessed at http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=156&lang=1&redirect=1.
[3] See, e.g., WTO Chile RTA Profile, accessed at http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=152&lang=1&redirect=1.
[4] Among the TPP-Six nations, the European Union has trade agreements in force with Chile, Mexico and Peru and has completed but not yet implemented agreements with Canada and Singapore.

Figure 5: Percentage of TPP-Five Manufacturing Tariff Lines Duty Free for U.S. Manufactured Goods Exports Under TPP

TPP-Five	Percent IDF Under TPP	Percent Duty Free After Four Years Under TPP	Percent Duty Free After 10 Years Under TPP
Brunei	90%	91%	100%
Japan	95%	95%	95%
Malaysia	83%	86%	93%
New Zealand	94%	94%	100%
Vietnam	69%	89%	93%
Total	**86%**	**91%**	**96%**

Source: *NAM calculations using TPP-Five reported data and TPP tariff schedules*

Overall, substantial tariffs will be eliminated by TPP countries as shown in Figure 6, which breaks down the key manufacturing sectors for which data are available, showing the highest tariff across the TPP-Five countries and percentage of U.S. goods exports which will receive immediate duty free entry by these countries. As a result of the tariff eliminations, manufacturers in the United States will have substantially increased opportunities in the TPP-Five countries.

Figure 6: TPP Sector-Specific Outcomes for U.S. Exports Across the TPP-Five

Manufacturing Sector	Current Maximum Import Tariff	Share of U.S. Goods Exports IDF in TPP-Five Under TPP
Automotive	75%	98.2%
Chemicals	35%	97.2%
Health Care	30%	99.9%
High-Tech Instruments	25%	99.6%
ICT	35%	99.6%
Machinery	59%	96.8%
Textiles and Apparel	100%	92.6%
Transportation Equipment	25%	99.9%

Source: *U.S. Commerce Department*

Based on current trade levels, the TPP would eliminate, over the course of full implementation of the agreement, millions in annual tariffs paid on U.S. manufactured goods exports to the TPP-Five countries.

Tariffs would also be eliminated for all manufactured goods imports into the United States, with the longest phase-out being 30 years. The United States retained longer phase outs for certain manufactured goods, including certain chemicals, textiles and apparel, cutlery, ball bearings, automobiles and light trucks.

Non-Tariff Barriers to Manufactured Goods

The TPP provides for strong new disciplines among the TPP-Five that will address a number of non-tariff measures and increase transparency in import and export procedures for the benefit of manufacturers in the United States. Subject to some exceptions, the TPP countries have generally agreed to a wide number of disciplines to ensure non-discriminatory treatment to the goods of other TPP partners and prohibition on import and export restrictions, including export taxes. The agreement requires the TPP partners to ensure that remanufactured goods will not be treated differently from new goods for purposes of export and import restrictions. The United States also concluded a number of specific annexes and side letters, particularly with Japan and

Malaysia, to provide further transparency and to seek to address some industry specific issues. Overall, the TPP outcomes will put manufacturers in the United States on a stronger competitive footing in the TPP-Five markets in particular.

Technical Barriers to Trade and Sanitary and Phytosanitary Measures

The TPP includes strong provisions to combat technical barriers to trade (TBT) and ensure non-discriminatory and fair application of sanitary and phytosanitary (SPS) measures. The TBT chapter requires that TPP governments use transparent, non-discriminatory procedures for developing technical regulations, standards and conformity assessment procedures, and requires governments to seek public comment and allow sufficient implementation periods for such standards and regulations. In addition, there are important sectoral annexes in the TBT chapter that will impose new disciplines to improve market access for U.S. industries including cosmetics, wine and distilled spirits, information technology and certain food products.

The SPS chapter requires governments not to discriminate arbitrarily in imposing SPS measures and to ensure that their standards either conform to international standards or be based on objective scientific evidence. The chapter provides for the first time in an FTA that import checks are based on actual risk, that checks are conducted without undue delay, and that the importer or manufacturer be properly notified if a product's import is restricted after these checks. Unlike SPS chapters in prior FTAs, this chapter is generally subject to dispute settlement, with one- to two-year transitions for certain provisions.

Digital Trade

The TPP chapters on electronic commerce and telecommunications provide important provisions that will advance the ability of manufacturers in the United States, particularly small manufacturers, to use digital platforms to access more effectively the TPP markets. These chapters provide that the TPP countries, upon full implementation, will provide non-discriminatory access to public telecommunications services, ensure independent regulatory bodies, and prevent suppliers of public telecommunications services from engaging in anti-competitive activities. The chapter also prohibits the imposition of customs duties on electronic transmissions and treat digital products without discrimination.

For the first time in an FTA, the TPP broadly requires countries to allow cross-border transfer of information by electronic means and prohibits localization requirements for computer and information technology facilities. It also prohibits governments from requiring technology transfer or access to source code of software as a condition for sale. The TPP outcomes on electronic commerce and related telecommunications services are stronger than in any prior U.S. FTA and will help prevent the development of new barriers that would impede data flows or require the localization of information technology infrastructure. These outcomes are positive not just for manufacturers of advanced technology, but also for the many manufacturers, including in particular small business, that use new technologies and the internet to create new products and make sales to customers overseas.

Intellectual Property

The TPP agreement includes important intellectual property (IP) rights outcomes that are critical to manufacturers in the United States that rely on IP rights through their production processes, including patents, copyrights, trademarks, test data and trade secrets. The TPP agreement builds upon the IP standards already in force as part of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as well as other international best practices. Among the many major outcomes, the TPP requires each government 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 greater transparency regarding laws and regulations, IP rulings, and regulatory and judicial procedures; and (4) establish contact points to promote IP cooperation among the parties. The agreement also requires TPP countries to maintain strong IP enforcement systems, including civil procedures, border measures, and criminal procedures and penalties. As well, the TPP advances protection for trademarks, patents, copyrights and other forms of IP, including by limiting the grounds for revocation of a patent, requiring the TPP nations to provide patent term restoration for unreasonable delays in approval, and improving trademark registration and usage procedures. On trade secrets, the TPP includes, for the first time in any U.S. FTA, provisions requiring TPP parties to provide criminal penalties for trade-secret theft. On geographical indications, the TPP sets in place strong rules to protect the ability of food manufacturers in the United States to use commonly used, generic names and new procedures to challenge geographic indications included in other multilateral agreements, although the impact of that outcome may be weakened with Vietnam if the European Union's trade agreement comes into force earlier.

The IP outcomes generally advance IP protection and enforcement for all forms of IP in the TPP-Five nations, which had not undertaken high-level IP obligations with the United States. These rules are particularly important for manufacturers in the United States given the international epidemic of IP theft and misappropriation, a substantial threat to manufacturers big and small in every sector and in every U.S. state. The new enforcement rules on trade secrets are particularly important for manufacturers that rely on trade secret protection for everything from product formulas to manufacturing processes.

The TPP's requirement that governments provide either eight years of data protection or five years plus some other procedures for biologic medicines is significantly less than both the U.S. standard of 12 years and the period that biologic manufacturers views as needed to be competitive globally on a sustained basis. There are strong concerns that the TPP outcome will undermine the innovation, manufacturing and jobs this industry produces by providing too weak of a standard. The NAM looks forward to working with Congress, the Administration and the TPP governments to address this important issue.

Investment

The TPP investment chapter provides for new access to the TPP-Five countries, strong protections and access to the vital investor-state dispute settlement (ISDS) enforcement tool for most industries. While making some changes to some of the standards, the TPP investment chapter provides similar levels of protection to past FTA chapters and the Model Bilateral Investment Treaty (BIT), including requiring the TPP governments to provide access by foreign investment on a non-discriminatory basis through commitments to provide national treatment and most-favored nation treatment; guarantees of prompt, adequate and effective compensation for expropriations; fair and equitable treatment; full protection and security; and guarantees to transfer capital in and out of a TPP country. The TPP agreement also includes strong prohibitions against the imposition of foreign government performance requirements that link investment to exports, local purchasing or hiring, or indigenous innovation. The investment chapter also provides access to ISDS for breaches of the underlying agreement and for breaches 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.

The TPP represents a particularly important advancement of ISDS and 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. The inclusion of breach of contract provisions is a new protection for investors in Canada and Mexico, since NAFTA failed to include such a provision. 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.

The TPP agreement provides, however, TPP nations the ability to exclude from ISDS enforcement a broad set of regulatory control measures related to one industry and its supply chain, without any requirement that those provisions are necessary or even appropriate to promote public welfare. Given that ISDS enforces only the most basic non-discrimination, fairness and property rules, similar to the U.S. Constitution and U.S. laws for which no similar exception is provided, there are strong concerns about this outcome and the NAM will work with the Administration, Congress and the TPP governments to address this important issue.

Customs Administration and Trade Facilitation

The TPP agreement will improve customs operations among the TPP countries, helping to improve trade flows by reducing delays and unnecessary red tape, particularly the TPP-Five that have not previously undertaken these commitments. In particular, the TPP will advance manufacturers' goals to promote quicker processing through customs agencies and simplified and more transparent documentation requirements – helping companies of all sizes, and particularly small businesses, to access more easily TPP markets. This is also the first U.S. FTA to include disciplines on the imposition of customs penalties, which will help ensure that exporters are not unfairly charged inappropriate or excessive penalties. The TPP also requires government cooperation to prevent duty evasion, smuggling, transshipment and other customs offenses that will address manufacturers' broader enforcement goals and reduce illicit activity that harms U.S. manufacturers.

Transparency and Anti-Corruption

This TPP agreement includes a strong chapter to require transparency and stronger anti-corruption activities by the TPP governments that is very important to manufacturers across all industries. Consistent with U.S. law, the TPP will require the TPP governments to ensure that their laws, regulations and administrative rulings of general application with respect to any matter covered by the TPP are published publicly in a prompt manner, to seek input and, to the extent possible, will allow for a reasonable time between publication and implementation. It also requires governments to maintain provisions for judicial or quasi-judicial review of decisions.

With respect to anti-corruption, the TPP includes new provisions requiring countries to adopt or maintain and effectively enforce laws criminalizing bribery and corruption of public officials, as well as other acts of corruption affecting international trade or investment.

Government Procurement

The TPP agreement provides important new transparency, fairness and non-discrimination rules for government procurements at the central government level undertaken by Brunei, Malaysia, and Vietnam. (The United States already has similar reciprocal relationships with the TPP-Six and Japan through either existing trade agreements or the WTO Agreement on Government Procurement). The new access provided to these government procurement markets will expand opportunities to U.S. manufactured goods exports significantly and represents a significant step forward given many developing countries' reluctance to engage in more reciprocal government procurement obligations.

Services

The TPP agreement provides important new non-discriminatory access and prohibitions on localization barriers for many U.S. services industries. By advancing access for U.S. service providers in the TPP-Five countries, the TPP agreement will also aid manufacturers in the United States that export to and invest in these countries. Of particular importance for small exporters are the express delivery outcomes that will provide greater competition in the delivery of products into each of the TPP countries and limit unfair measures by foreign postal monopolies. Greater access for conformity assessment and distribution activities, as well as professional and financial services, are also important to manufacturers that rely on U.S. services in many cases.

Competition Policy

Similar to previous U.S. FTAs, the TPP agreement will advance fair competition in the TPP countries, particularly the TPP-Five, by requiring each TPP nation to adopt or maintain and enforce competition policy rules in a transparent manner that provides for a fair process for affected companies. These rules are important to reduce anti-competitive conduct in local markets and to prevent the abuse of competition policy systems in a discriminatory manner that will aid manufacturers in the United States that are doing business in these TPP markets.

State-Owned Enterprises

The TPP agreement includes for the first time ever in an FTA an entire chapter related to disciplines on state-owned enterprises (SOEs). Building off of commitments in the U.S-Singapore FTA, this chapter seeks to reduce unfair market distortions by requiring that covered SOEs at the central government level act "in accordance with commercial considerations" in the purchase or sale of goods or services and not discriminate. The TPP also prohibits non-commercial assistance by or to SOEs and requires greater transparency of SOEs. Overall, the TPP SOE outcomes provide an important step towards building strong disciplines on market-distorting activities of SOEs.

Dispute Settlement

The TPP provides binding, time-limited and transparent state-to-state dispute settlement for most key obligations in the TPP. Such dispute settlement mechanisms are a critical feature of U.S. trade agreements for manufacturers in the United States to ensure that U.S. trading partners implement fully the commitments made.

Conclusion

Overall, the TPP agreement will substantially open the TPP markets to U.S. manufactured goods exports, create a more level playing field in a part of the world where manufacturers are losing market share and set higher than status quo standards that will benefit many broad U.S. manufacturing sectors. These outcomes will provide manufacturers in the United States with important new opportunities to increase sales and exports in the growing Asia-Pacific region, particularly with those countries where the United States does not currently have FTAs. It will also be important for the administration and congressional leaders to work closely with industry to address remaining barriers, to raise standards, to promote the rule of law and to further level the playing field for all.