UNITED STATES MANUFACTURING COUNCIL

October 15, 2014

The Honorable Penny Pritzker
Secretary of Commerce
United States Department of Commerce
Washington, DC 20230

Dear Madam Secretary:

The Manufacturing Council (Council) offers the following policy recommendations to support the growth of U.S. manufacturing exports.

While the United States is the world's largest manufacturer, accounting for about 21 percent of all manufacturing production in the world, the U.S. manufacturing industry on average exports only half of what other major manufacturing economies do, according to a recent analysis by the National Association of Manufacturers[1].

There is no proverbial silver bullet. The Administration must take a multifaceted approach to promoting the exports of the U.S. manufacturing sector, with a particular focus on small- and medium-sized enterprises (SMEs).

The U.S. manufacturing sector is diverse – from large multinational firms with complex global supply chains to small businesses with only a few customers abroad. While 97 percent of all U.S. exporters are SMEs, they typically export to only one or two countries.

Thus, the Department of Commerce, in concert with other federal government agencies, needs to fulfill a variety of needs for various types of businesses. From providing export financing to eliminating market access barriers abroad, the U.S. manufacturing sector needs a level playing field in international markets in order to compete and innovate on a global basis.

Since the global economic downturn in 2007-2008, many governments have implemented tariff and non-tariff barriers and provided incentives to local producers in ways that prejudice U.S. exporters. This Council therefore recommends that the Department of Commerce, the Administration and Congress work in concert to:

I. Increase the number of existing exporting companies by maintaining or expanding current promotion assistance programs by the Department of Commerce

[1] http://www.nam.org/~/media/FDD7F13666F84C3BA7C814982A8E8469/US_Exports_Half_as_Much_of_its_Manufacturing_Production_as_Other_Countries_Do.pdf

II. Clarify and harmonize the methodology to determine U.S. origin
III. Negotiate new, and update and enforce existing, free trade agreements in ways that address the competitive challenges of the 21st century
IV. Reauthorize and increase the budget allocated to the U.S. Export-Import Bank
V. Link the Manufacturing Extension Partnership (MEP) ExporTech Program to the Department of Commerce Export Assistance Programs

To keep U.S.-based industry on globally competitive footing, this Council requests that you and your counterparts in the Administration carefully consider the recommendations below, which we believe will support American industrial competitiveness and jobs.

Sincerely,

Mark Chandler
Chair, Tax Policy and Export
Growth Subcommittee

Steve Braig
Vice-Chair, Tax Policy and
Export Growth Subcommittee

Mike Laszkiewicz
Chair, Manufacturing Council

Mary E. Isbister

Mary Isbister
Vice-Chair, Manufacturing Council

I. Increase the Number of Exporting Companies by Maintaining or Expanding Current Promotion Assistance Programs by the Department of Commerce

Currently, the federal government (and many states, as well) has a number of resources to assist SMEs in expanding and increasing their exports. Among these are the services of the International Trade Administration (ITA) within the Department of Commerce, such as the Gold Key and similar services, and access to the Small Business Administration (SBA) Export Program, and Export-Import Bank financing. Unfortunately, many SMEs are not aware of, nor do they use, these many excellent programs. Furthermore, historically these services have been quite cost effective for SMEs.

Regrettably, there has been a fair amount of recent discussion and at least one proposal to raise the cost of these services to a level that would make access to and use of them by SMEs extremely challenging. These negative proposals run contrary to the various export enhancement initiatives that the Secretary and the Administration are pushing hard to implement.

Thus, the Council strongly recommends that the Department of Commerce maintain the current fee structure for its services. Moreover, the Council also recommends that the Secretary take the lead to create an active, coordinated information program, including a clear consistent message, relevant facts, and access to information locations, services available and related information, in order to put the word out to SMEs across the country about the opportunities, benefits and support of exporting.

II. Clarify and Harmonize Methodology to Determine U.S. Origin

There is robust debate in the international trade community about how to measure and analyze trade with respect to global value chains. The Council encourages the Department of Commerce to lead this debate, given its ramifications to the political support necessary to execute a robust trade policy agenda, including its impact on American jobs and economic growth. For example, the World Trade Organization (WTO) and the Organization of Economic Cooperation and Development (OECD) have launched the Made in the World (MIWI) initiative[2] which quantifies in greater detail where economic "value add" is taking place for any given product or service.

The rules of origin governing finance-related programs and non-preferential rules of origin (NPROO) need to be harmonized and updated to reflect the realities of today's global supply chain.

To determine the amount of U.S. content, the Council recommends that the U.S. government change the methodology to determine origin by allowing for an average amount of U.S. value added content to be calculated over an entire product line, as opposed to today's methodology which calculates on a per product or per project basis. For example, capital investments, licensing and operating expenses associated with U.S.-based research, development and test of a product line should be included in content determinations as U.S. value add. We believe that a U.S. value add calculation over an entire product line will not only reflect the U.S. economic activity more accurately, but we also believe this approach would also increase U.S. exports by enabling them to secure export financing and other government benefits that promote U.S. exports.

---

[2] See http://www.wto.org/english/res_e/statis_e/miwi_e/miwi_e.htm

In addition to finance-related origin determinations, we believe that NPROO should also be harmonized. Existing NPROO – including tariff shift, value add, and specific manufacturing activity – approaches are overly complex and difficult to administer.

The Council calls upon the Department of Commerce to work with the Trade Policy Staff Committee (TPSC) and the International Trade Advisory Committees (ITACs) to revise the U.S. position on origin methodologies, particularly given the complexity of this important area and the number of stakeholders who need to be taken into account.

III. Negotiate New, and Update and Enforce Existing, Free Trade Agreements

A. Work with Congress to Secure Passage of Trade Promotion Authority

Trade Promotion Authority (TPA) is a partnership between the President and Congress that facilitates the negotiation and implementation of U.S. trade agreements. Since the 1930's, such authority has been critical to the opening of new markets for American companies and workers and helps ensure a rules-based system for two-way trade. However, TPA and its negotiating objectives were last enacted in 2002 and lapsed in 2007. Since TPA and its negotiating objectives were written more than a decade ago, many new issues and challenges to doing business in the global marketplace have emerged. By reenacting TPA with updated negotiating objectives, Congress can help strategically address such issues across the range of U.S. trade negotiations being pursued: the Trans Pacific Partnership (TPP) between the United States and Asia-Pacific region; the Transatlantic Trade and Investment Partnership (T-TIP) between the United States and European Union; the Trade in Services Agreement (TiSA) to liberalize trade in services globally, as well as in future trade negotiations.

B. Enter into Trade Negotiations with Brazil and India

As the United States considers candidates for future trade agreements, it should target nations that have large consumer markets, but that have shielded these markets with unfair and outdated trade barriers. Two such countries are India and Brazil. Together India and Brazil have a population that exceeds 1.4 billion people, and they possess the third and seventh largest economies respectively in the world. Yet access to these markets is often hindered due to high tariffs and archaic non-tariff barriers.

The United States should seek reciprocal arrangements with these countries that dismantle the mechanisms that prevent the ability of U.S. manufacturers to have legitimate export opportunities to their markets. These countries have benefited from growing export activity, driven by an expanding and prosperous global economy in recent decades. It is time for countries that have significantly benefited through global exporting to accept the responsibility of providing reasonable access to their home markets. The United States should seek arrangements that will create a long overdue leveling of the trade relationship with such countries. This balancing should be designed to grant U.S. manufacturers the same level of market access that Indian and Brazilian exporters enjoy in the United States.

C. Increase Enforcement of Existing Trade Agreements, especially IP Protection and Subsidized State-Owned Manufacturing

The Office of the United States Trade Representative (USTR), the Department of Commerce, and the Interagency Trade Enforcement Center (ITEC) must work jointly to aggressively enforce trade agreements to ensure that U.S. manufacturers realize the maximum benefit available to them under FTAs. In the absence of strong enforcement, fraud and abuse proliferate.

Intellectual Property Rights

American manufacturing companies' intellectual property (i.e., their patents, trademarks, trade secrets, mask works, and copyrights) is increasingly tied directly to their overall value. The United States should work to reform and harmonize the global patent and trademark system in a way that improves global intellectual property rights protection and enforcement, and educates developing nations on the importance of enforcing intellectual property rights rules. Additionally, the U.S. Government should employ greater coordination and cooperation with our trading partners to prevent intellectual property rights erosion and enhance intellectual property rights enforcement. In ongoing and future trade agreement negotiations, the United States should seek full implementation of WTO provisions and expansion of protections to safeguard trade secrets and other proprietary information as a condition of market access.

State-Owned Enterprises

The United States should work with trading partners to create greater transparency and disciplines, if necessary, on state-owned and state-supported enterprises that may unfairly compete with private enterprise. As Alan Wolff, senior counsel at McKenna, Long and Aldridge and chairman of the National Foreign Trade Council wrote in his paper to the OECD entitled "The State and its Enterprises: Competition from State-Owned Enterprises and the Role of International Trade Agreements" notes:

> Despite a lot of good work in the OECD and in other international fora, the field of dealing with SOEs [State-Owned Enterprises] is still a new one. Were it not, there would be by now, prior to the advent of the TPP [Trans Pacific Partnership] negotiations, have been a binding SOE code of conduct seeking to curb market distortions. Instead, an arduous process was begun in the TPP negotiations to craft a binding SOE code of conduct; to identify the conduct that is to be expected of state-owned enterprises (e.g., transparency) and that which is to be discouraged if not proscribed (e.g., sales and purchasing that is not in accordance with commercial considerations). The resulting agreement will address both government treatment of SOEs and the activities of the SOEs themselves[3].

The Council believes that pursuing such common sense, binding disciplines in trade agreements will help to limit the competitive distortions posed by many SOEs and subsequently, help to increase U.S. exports of products and services.

Commercial engagement with state-owned enterprises can also pose serious risk and uncertainty to U.S. exporters with respect to applicability of the Foreign Corrupt Practices Act (FCPA). Routine business interactions in the private sector can be serious infractions when dealing with

[3] Wolff, Alan Wm., "The State and its Enterprises: Competition from State-Owned Enterprises and the Role of International Trade Agreements," paper presented to the Organization for Economic Cooperation and Development (OECD), Paris, France, June 19, 2014, at page 16.

public sector entities. Since SOEs are, by definition, a hybrid type of organization, many companies take a conservative view, but the statute is unclear.

We understand that the Department of Justice has expanded prosecutions in this area, and the business community would benefit from the Department of Commerce leading an interagency discussion about how the business community needs clear rules on the scope of the FCPA in this area by explaining how the U.S. business community should interpret the recent Court of Appeal opinion in *United States v. Esquenazi*. The U.S. business community takes its FCPA obligations seriously and would appreciate the Commerce Department's help to minimize confusion and maximize compliance.

USTR Enforcement
It is essential that the Department of Commerce and the USTR have adequate resources to enforce existing trade agreements on behalf of American businesses, farmers and workers. While the Obama Administration established the ITEC, which is an important institutional step forward by creating an interagency approach to trade enforcement, the ITEC's activities are not well funded and have in fact stripped much-needed funds from Commerce and USTR's existing and contracted budget. We urge the Department of Commerce to work with the interagency to ensure that adequate funding is sought in the budget process with Congress to fund trade agreement enforcement, in particular.

D. Promote Change to Test Reporting in English, French or Spanish

Many developed economy governments require that conformity assessment test reports be submitted in the local language, such as Japanese, placing a costly burden of translation on exporters, particularly SMEs.

The United States should propose a change in the WTO Agreement on Technical Barriers to Trade (TBT) or in the TBT Chapters of its free trade agreements, that would require a developed country Member to accept conformity assessment documentation in English, French or Spanish, if requested by another Member, under Articles 5, 6, and 7. There are similar provisions in Article 10 of the current TBT, which provide for developed country Members to provide information about notifications in English, French or Spanish, when requested by another Member (see TBT Articles 10.5 and 10.9).

E. Negotiate Free Trade Agreements with Rules of Origin Requirements that Promote U.S. Manufacturing Interests

While trade agreements that eliminate tariffs and other barriers are designed to expand commercial activity, it is critical that pending preference arrangements – such as the TPP, and the Transatlantic Trade and Investment Partnership (TTIP) – be constructed in a manner that not only incentivizes import activity and consumption, but also stimulates domestic production, manufacturing investment, and exports.

One key to achieving balanced trade agreements is to ensure that they contain logical origin rules that set a sound basis for determining which products qualify for tariff preferences. Weak and often difficult to enforce rules of origin simply transfer the benefits of trade agreements to manufacturers and nations that are not even party to a particular arrangement. Free trade arrangements, such as TPP, TTIP, and AGOA, must require a reasonable and significant level of production to take place in the free trade arena. Failure to do so creates a free rider effect for players from outside the free trade region.

In that the United States is granting lucrative duty free access to its market through these proposals, the U.S. Government must insist on origin requirements that help to drive U.S. production and exporting.

F. The African Growth and Opportunity Act (AGOA) Should be Modernized and Renewed

AGOA is an important centerpiece to the Administration's economic engagement with Sub-Saharan Africa. With AGOA set to expire at the end of 2015, the Council would like to see the Administration engage with Congress to consider expanding and renewing AGOA. For example, the Progressive Economy's Ed Gresser recently wrote a paper entitled *Africa 2.0*[4], offering constructive and useful suggestions about how the tariff waivers provided under the current AGOA can be complemented with other policies to expand U.S.-Africa economic ties. For example, the paper suggests:

1. Support universal low-cost online access through Internet dialogues under the AGOA Ministerials, capacity-building in regulatory policy and public-private partnerships;
2. Encourage the free international flow of data through agreements and dialogues;
3. Support development of secure online payment systems and other financial innovations;
4. Encourage the spread of high-speed Internet access and the use of smartphones and other devices, including by encouraging African governments to eliminate tariffs on IT goods such as smartphones, computers and telecommunications equipment;
5. Support trade-facilitation implementation through [supply chain] capacity building;
6. Waive U.S. fees and charges on small *de minimis* shipments of African goods.

The Council believes that by modernizing and renewing AGOA, U.S. and African exporters will benefit from increased opportunities in product and services markets in our respective economies.

IV. Reauthorize Export-Import Bank of the United States

Opponents of the Export-Import Bank of the United States (Ex-Im Bank) have mischaracterized it as a form of corporate welfare for large corporations that has lived out its usefulness. This Council strongly disagrees and is pleased to see that the Congress has reauthorized the Ex-Im Bank for nine months.

Many SMEs have successfully increased exports of American made products across the globe much with the help of the Ex-Im Bank and the Small Business Administration. The risk taken by businesses selling work into other nations is partially mitigated by the capital backing of the Ex-Im Bank. Both directly and indirectly, the fact that the U.S. Government is assisting U.S. businesses in expanding into other markets affords a SME a necessary support structure that is consistent with the OECD Export Credit Arrangement and permitted under WTO rules.

[4] See http://progressive-economy.org/files/2014/07/AGOA-2.0.pdf

While Congress failed to act to reauthorize the Ex-Im Bank, competitive industry players in other countries are securing government-backed funding, which is often a prerequisite for an exporter to be chosen in a large infrastructure deal.

Ex-Im Bank professionals are knowledgeable of the needs and efforts involved in working with various markets. Below is evidence of their support for SME exports:

> With support from the Ex-Im Bank, the A. Zahner Company (Zahner) is building a public aquarium for display and teaching people in Brazil about the ocean. Called Acquario Ceara, it is currently under construction in Fortaleza, Brazil. Ex-Im Bank has extended credit to the government of the State of Ceara with loan repayment guaranteed by the federal Government of Brazil. International Concept Management, Inc. (ICM) of Grand Junction, Colorado, is the contractor hired by the State and benefits directly from the credit extended to the State of Ceara. Payments will be made directly to ICM through an intermediary bank utilizing Ex-Im Bank funds. ICM has hired Zahner to assist in a portion of the project. Zahner is engineering the surface form and manufacturing the surface skin of perhaps one of the most incredible architectural projects in the Americas. ICM will be hiring at least 25 small U.S. firms to work on this international project. It has been estimated that hundreds of jobs will be supported or created by this project here in the United States.
>
> Zahner recently was awarded the engineering and manufacture of the cladding on the Australian Embassy in Jakarta. This project will provide 40 man-years of work for high skilled metal workers and engineers in Texas and Kansas City. Zahner contacted the Ex-Im Bank and discussed what options were available and what issues the company should be aware of in working with Indonesia. Ex-Im Bank provided extensive, valuable information Zahner used in its negotiations. Zahner acquired credit through the SBA, because the company's local bank was more familiar with this entity; however, Zahner gained valuable information from the officials at the Ex-Im Bank that is not readily available to SMEs.
>
> Another firm, Western Forms, Inc. of Kansas City, engineers, manufactures and supplies custom engineered formwork to projects around the world[5]. Ex-Im Bank has supported Western Forms sales totaling $13,000,000 during the last seven years. These sales created ten full-time employees for the seven-year period or a total of 70 worker years of employment. The positions were in both Western Forms manufacturing and engineering departments. Western Forms needs Ex-Im Bank support for short term and medium term credit. Its plan for the coming year is to finance equipment totaling $5,000,000 with support from Ex-Im Bank for $4,000,000. This will further enhance its capacity and employ more people in the engineering and manufacturing process.
>
> Taylor Forge Engineered Systems, Inc. of Paola, Kansas engineers and fabricates equipment used in the oil and gas industries. These are massive steel assemblies designed by highly skilled engineers and custom fabricated and welded by skilled union craftsmen. One example is the Exxon RasGas Project in QatarGas LNG in Qatar and in Papua New Guinea. Exxon obtained financing from the Ex-Im Bank for these projects. This led to a

[5] Quote from Dan Ward on Ex-Im Bank website at http://www.exim.gov/about/whatwedo/successstories/Missouri-Company-Discovers-New-Export-Opportunities-with-Ex-Im-Bank-Insurance.cfm

five- to seven-year project for Taylor Forge in which it received over $150 million in orders that resulted in more than 100 man-years of work for highly paid American workers.

These are just a few examples of how SMEs, many family owned companies, benefit from the existence of the Ex-Im Bank. The support is required by SMEs like International Concepts Management, Western Forms, Taylor Forge and Zahner. They rely on Ex-Im Bank to help manage the risk of extending credit to buyers outside the United States. With a growing percentage of sales coming from foreign markets, this support is not optional, it is mandatory.

The credit extended by the Ex-Im Bank may appear at first to go to large corporations, but the requirements of U.S. manufacture directly benefits SMEs and the employment of many people in the U.S. workforce. Non-renewal of the Ex-Im Bank charter would have been tragic and short-sighted. It would have made it significantly more difficult for SME manufacturing companies to compete and survive in this highly competitive environment. To show the world that U.S. manufactured products are not just equal to but better than any other similar product, the support of the Ex-Im Bank is necessary.

We ask you and the Administration to support the ongoing reauthorization of the charter of the Export-Import Bank of the United States. It is not corporate welfare, but a tool used by many U.S.-based SMEs to successfully compete on the world stage.

V. Increase the Manufacturing Extension Partnership's Focus on Exports

The National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (MEP) works with SME U.S. manufacturers to help them create and retain jobs, increase profits, and save time and money. MEP's state and regional centers facilitate and accelerate the transfer of manufacturing technology in partnership with industry, universities and educational institutions, state government, NIST, and other federal research laboratories and agencies.

The current strategic goals of the MEP are to enhance competitiveness, champion manufacturing, support partnerships, and develop capabilities. We recommend that the MEP explicitly include increasing export opportunities for SME manufacturers to the programs strategic goals and implementation plan. In increasing MEP's focus on exports, and emphasis is recommended in expanding the number of MEP centers that are participating in the MEP ExporTech program. To date, 29 states are participating in ExporTech, leaving room for expansion of the program. The second area of emphasis is in expanding the breadth of the program. The ExporTech program is currently a three-session workshop in which participants learn about export strategy and mechanics, best practices, and development of an export growth plan. Once a manufacturer completes their growth plan, the program ends. Expanding the program to provide proactive follow-up support during the execution of growth plans will increase the likelihood of a successful implementation.

Create an integrated support roadmap
When SME U.S. manufacturers enter the global marketplace, the support that they receive is ad-hoc in nature. While individual programs provide valuable insights and education, manufacturers are left to determine which programs to use, how the programs tie together, and how to deal with contradicting information. The development of an integrated export support

roadmap is recommended to assist manufacturers in charting their course through the programs and support that is available to them. Additionally, the Department of Commerce should strive to better integrate export related programs and activities taking place under MEP, the Small Business Administration, and U.S. Commercial Services. Whenever possible, local centers from these programs should partner together to ensure that resources are made available to SMEs in the most effective and efficient manner possible. Furthermore, at the local level, offices from these organizations should work to coordinate with state and city level organizations to form a more tightly integrated export ecosystem that SME manufacturers can rely upon for consistent and integrated support.