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Mr. Chris Rosettie
Director, Office of Standards and Investment Policy
Bureau of Industry and Analysis
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Ref: Docket No.: ITA-2017-0007

Dear Mr. Rosettie:

The National Association of Manufacturers (NAM) welcomes this opportunity to provide the following submission to the U.S. Department of Commerce as part of its efforts to seek input from U.S. stakeholders on standards, conformity assessment and regulatory trends and challenges in foreign markets in advance of the Commerce Department's internal summit in March 2018. 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 more than 12 million women and men across the country, contributing more than \$2.17 trillion to the U.S. economy annually. If U.S. manufacturing were a separate country, it would be the ninth-largest economy in the world.

Given the growing competitive challenges that manufacturers in the United States face in a challenging global economy, tackling market-distorting policies and actions by other countries must continue to be a top priority. Such practices often lead to unfair competition in the U.S. market from specific imported products and high barriers to access for U.S. exports in growing foreign markets. To rebuild public confidence in a rules-based trading system and grow an even stronger U.S. manufacturing sector, the U.S. government must redouble its efforts to ensure a level playing field for manufacturers and their workers in the United States through all channels. These tools must include direct engagement with trading partners to eliminate these barriers, robust enforcement of existing trade agreements and domestic trade rules, and the active use of dispute settlement procedures under internationally agreed-upon rules and bilateral and multilateral agreements. Additionally, the U.S. government must take steps to expand concrete opportunities for manufacturers in the United States to sell to the 95 percent of the world's consumers living outside the United States. U.S. manufactured goods exports have more than doubled since the 1990s, reaching \$1.26 trillion in 2016, supporting the growth of a variety of U.S. manufacturing sectors from electrical machinery, capital equipment and medical and scientific instruments to food and computer products to cars, trains and trucks.

Amidst the range of trade barriers facing manufacturers, foreign standards, technical regulations, and testing requirements are increasingly a top concern among many manufacturers in the United States. Manufacturers face growing number of foreign challenges in which such technical requirements are used to block U.S. manufactured goods from sale in foreign markets oftentimes to protect local competitors. [World Trade Organization statistics](#)

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show that notifications of new and revised technical regulations in foreign countries more than doubled between 2006 and 2016. A 2016 [U.S. Department of Commerce analysis](#) found that foreign regulations impact up to [92 percent of U.S. exports](#), or more than \$1.3 trillion in U.S. products sold around the world.

Manufacturers support smart, well-crafted standards, competitive conformity assessment systems, and technical regulations that facilitate market entry, promote innovation and protect the public interest by ensuring safety. When foreign governments adopt these best-in-class standards, they create market opportunities, particularly for small and medium-sized manufacturers that lack the resources to comply with different requirements in each market. Effective conformity assessment systems based on risk assessment and confidence needs ensure fair market competition for manufacturers and create a competitive environment for accredited conformity assessment bodies while upholding a government's responsibility to protect the public interest. Here in the United States, the Administration has put a strong emphasis on domestic regulatory reform to promote regulatory reform and undo burdensome government regulations that negatively impact business.

Many countries, however, are instead promoting new regulations and standards that serve as tools of industrial policy: using unique, duplicative and oftentimes discriminatory standards, technical regulations and conformity assessment requirements to block effective market access for manufactured products and related services. Such practices create distorted, protected markets that provide foreign manufacturers an unfair advantage in competing head-to-head with manufacturers in the United States and around the world. They also being used to block or restrict U.S. exports from sale in foreign markets. Both outcomes make U.S. manufacturing goods and associated services less competitive globally, stunting the growth of U.S. manufacturing and putting U.S. firms and workers at risk.

Additionally, many of our competitors, including those in Europe and China, have launched well-funded efforts to shape both domestic and global standards to benefit their companies, technologies, and standards, while excluding those from the United States. Manufacturers in the United States are challenged by European efforts to limit the definition of an "international standard" to those developed by international standards bodies such as the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and International Telecommunications Union (ITU). In this process, such ISO/IEC/ITU standards are misrepresented as the only "true" international standards, while U.S. standards are characterized incorrectly as being only applicable in the United States. Such efforts discriminate against standards that are used widely around the world and rightfully qualify as international standards under the WTO's Agreement on Technical Barriers to Trade (TBT). These actions limit the access of U.S. manufactured goods sales in affected markets around the world to the detriment of U.S. production and jobs.

To address these barriers, the NAM has long worked with the U.S. government to promote full compliance by all countries with the international rules developed by the World Trade Organization (WTO), including the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), as well as U.S. free trade agreements that bolster these rules. These agreements support the development of national and international standards, technical regulations, and conformity assessment rules that do not discriminate and provide transparency and stakeholder input. Priority markets in which manufacturers in the United States face high or growing barriers include the European Union, Korea, China, India, Mexico, Brazil, and Saudi Arabia. The NAM has regularly cited such challenges with standards, technical regulations, and

conformity assessment procedures in a number of previous submissions, including regular NAM submissions on global trade barriers for the [Office of the U.S. Trade Representative's National Trade Estimate report](#) (see Appendix 1) and inputs for negotiating priorities such as the modernization of the [North America Free Trade Agreement](#) (see Appendix 2).

In an increasingly competitive global market where other governments are strategically using standards and other technical requirements such as conformity assessment as tools of industrial policy, the United States needs a clear strategy of its own to compete. While some work has been done in this direction,¹ a more strategic, focused and active approach is needed to stem the tide of unfair foreign standards activities and technical requirements that are harming the U.S. economy, manufacturers and workers. Manufacturers urge the U.S. government to prioritize and adopt throughout all levels and agencies a new strategic approach that explicitly affirms the U.S. government's unwavering commitment to combat these challenges using all available tools, with specific steps to achieve strategic outcomes.

The WTO TBT Agreement and other tools provided by the international trading system must remain a critical component of a U.S. strategy to address problematic standards and conformity assessment rules. In addition, manufacturers in the United States urge broader efforts to reverse the proliferation of unique regulatory and technical standards that are undermining the competitiveness of manufacturers in the United States. In particular, the NAM strongly supports efforts and initiatives that:

- Require trading partners to enforce fully all international commitments related to standards and conformity assessment, including commitments under the TBT Agreement and under bilateral and regional agreements. Such commitments include requirements that they develop such policies through an open, transparent process; apply those policies fairly to both domestic and foreign products; and provide national treatment to U.S. manufacturers, standards developers, and testing and certification bodies.
- Promote U.S. trade policy goals and tactics such as:
 - Adopting international standards and international schemes that allow for acceptance of test results wherever possible as a means to achieving compliance in the destination markets;
 - Promoting regulatory cooperation activities in key markets, in concert with U.S. manufacturers, that promote mutual recognition and harmonization of regulations to minimize trade, marketing and market entry barriers confronting U.S. manufacturers around the world;
 - Ensuring that the definition of an “international standard” is not just limited to those developed by international bodies such as the International Organization for Standardization (ISO) or International Electrotechnical Commission (IEC), but also private-sector standards that are broadly used around the world; and
 - Actively countering efforts by other countries and regional actors (particularly the EU) to promote the adoption of their technical standards and conformity assessment requirements, efforts that often result in the exclusion of U.S. technical standards and conformity assessment requirements to the detriment of U.S. manufacturing.
- Encourage public-private collaboration in standards development, including cooperation between standards development organizations and government agencies. Such collaboration should recognize the major contributions to industry development and

¹ These include the Department of Commerce's 2004 [Standards and Competitiveness – Coordinating for Results](#) and the American National Standard Institute's [United States Standards Strategy](#).

company flexibility that have been made by voluntary standards developed by industry through trade associations, technical societies, and accredited standards development organizations.

To achieve these critical goals, the NAM and its members strongly urge the International Trade Administration, the broader U.S. Department of Commerce and their interagency counterparts to make standards, conformity assessment procedures, and technical regulations a priority issue with trading partners, and to engage actively with stakeholders on programming and activities that reflect that priority. Such work could include initiatives that:

- Improve both intra- and inter-agency communication and coordination to improve government monitoring and advocacy on standards. Addressing such gaps could include efforts to:
 - Expand and increase the frequency of internal training and coordination for employees working both in the U.S. and in U.S. missions abroad of the importance of these issues and how to effectively advocate,
 - Increase frequency of communication among staff working on standards issues at headquarters, export assistance centers, embassies and consulates to identify and advocate on standards-related issues impacting U.S. companies more effectively,
 - Upgrade and expand the existing Standards Attaché program in priority markets,
 - Dedicate resources to translate problematic technical regulations,
 - Strengthen internal information reporting structures, and
 - Require agencies to coordinate messaging and approaches on these issues.

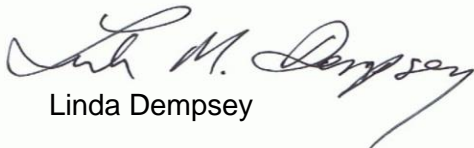
- Develop programs, both within the U.S. Department of Commerce, in concert with other U.S. government agencies such as the U.S. Trade and Development Agency, and in cooperation with private sector actors, to promote government-to-government and public-private interaction involving foreign officials responsible for developing and implementing standards, conformity assessment, and technical regulations. Example programs include:
 - Initiatives under DOC, including both existing programs such as the Standards Attaché Program, NIST's Standards Coordination Program, and manpower provided by other members of the Commercial Officer corps and new and innovative programs to make progress on top issues;
 - Capacity-building programs, including current and recent programs such as the DOC Commercial Law Development Program (CLDP) and Market Development Cooperator Program (MDCP), USTDA programs, USAID's Standards Alliance, and other technical assistance programs, as well as new and innovative capacity-building programs focused more directly on standards and TBT issues; and
 - New information-driven tools to help all stakeholders, both U.S. government officials, industry representatives, and others, not only navigate foreign standards and conformity assessment regimes, but also assess future compliance risk. Such work could build on the U.S. Department of Commerce's June 2016 report on the importance of standards to include new tools to help stakeholders map and analyze "hotspots." Work with both interagency staff and private-sector stakeholders to publicize such tools for manufacturers of all sizes in the U.S.

- Use all channels, including multilateral organizations, bilateral and regional negotiations, commercial dialogues, and best practice exchanges, to promote harmonization of standards and regulatory requirements in ways that benefit manufacturers in the United States. These issues should be set as a clear negotiating priority in ongoing and future trade negotiations and an explicit goal of trade negotiations and dialogues. Other critical tools must include:
 - Bilateral commercial dialogues with key partners (such as China, Brazil, and India);
 - Regulatory dialogues and regulator exchanges (such as the U.S.-Canada Regulatory Cooperation Council); and
 - Multilateral forums such as the G7, G20, APEC, WTO, and World Bank, utilizing both norm-setting and capacity-building exercises.

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The NAM welcomes this opportunity to provide comments and priorities on standards and conformity assessment issues, and looks forward to working with the Department of Commerce only to use all existing tools and to create new strategies and means to address these barriers more effectively so that U.S. manufacturing can continue to grow through access to foreign markets.

Sincerely,



Linda Dempsey

Attachments

- Appendix 1: Excerpt on Standards and Technical Regulations from NAM Submission to the National Trade Estimate Report
- Appendix 2: Excerpt on Standards and Technical Regulations from NAM Public Comments on Negotiating Objectives Regarding Modernization of North American Free Trade Agreement

Appendix 1: Excerpt on Standards and Technical Regulations from NAM Submission to the National Trade Estimate Report²

Submitted October 25, 2017

Unique regulatory and technical standards and conformity assessment requirements can add significantly to the cost of manufacturing exports to countries around the world, often a multiple of the tariff rate actually charged on a product. Too many foreign standards, technical regulations and conformity assessment requirements are being developed and implemented in ways that effectively block market access for manufacturers and their testing and certification service providers in the United States, or require duplicative testing and certification that increase compliance costs and delay market entry. Such practices create distorted, protected markets that give foreign manufacturers an unfair advantage in competing head-to-head with manufacturers in the United States and around the world. They also can be used to block or restrict access to much of the 95 percent of consumers living outside of U.S. borders. Both outcomes make U.S. manufacturing goods and associated services less competitive, stunting the growth of U.S. manufacturing and putting U.S. firms and workers at risk.

The NAM works to prevent and reverse the proliferation of unique regulatory and technical standards as trade barriers by promoting reliance on the WTO's Agreement on Technical Barriers to Trade (TBT), as well as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), as the basis for developing national and international standards, technical regulations, and conformity assessment rules that provide national treatment for conformity assessment bodies. Standards, technical regulations and conformity assessment procedures should be applied evenly to both imported and domestic goods and should be undertaken in a manner that is focused on achieving their objective without spillover effects. They should be based on scientific evidence and consider regulatory impact for all stakeholders. They should be transparent and allow reasonable opportunities for public access to all stakeholders. When national laws, regulations, policies and practices do not conform to these global norms, further action is needed in the WTO and through bilateral and regional agreements to reduce the use of technical standards as trade barriers.

Moreover, manufacturers in the United States are challenged by efforts by the **European Union** and others to limit the definition of an "international standard" to those developed by international standards bodies such as the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC) and International Telecommunications Union (ITU). In this process, such ISO/IEC/ITU standards are misrepresented as the only "true" international standards, while U.S. standards are characterized incorrectly as being only applicable in the United States. Such efforts discriminate directly against standards that are used widely around the world and rightfully qualify as international standards under the TBT Agreement, and serves as part of European efforts to block American products and services from key markets. These approaches also prevent industry from having the needed choice of the standard "best for purpose" from a level playing field of available standards. This approach has impacted manufacturers in a range of markets around the world, including important U.S. markets such as **Saudi Arabia**.

The NAM has concerns with the proliferation of standards and technical regulations that stem from activities undertaken by global institutions designed to influence national regulators to

² Full report can be accessed via the [NAM's website](#).

adopt a particular policy agenda when those regulations serve as effective barriers to trade or limit market opportunities for manufacturers in the United States. While these activities oftentimes start broadly through means such as international conferences and political declarations, the end result is frequently model legislation or technical regulations developed without broad stakeholder input or evidence that are then pushed to the national level. For example, the WHO World Health Assembly in May 2016 passed a controversial resolution³ urging member states to adopt WHO technical guidance to prohibit the marketing of complementary food products for infants and young children.⁴ The WHO technical guidance seeks to deny consumers and health care professionals access to information about milk products designed to meet the specific nutritional needs of young children. NAM members have already seen related draft regulations in markets such as **Hong Kong, Indonesia and Thailand** that appear to target imported products coming from the United States and other countries, and are hearing about growing interest from other countries to adopt similar measures.

In other cases, the proliferation of problematic standards stems from proactive efforts by individual countries or regional organizations to promote their own standards at the exclusion of U.S. or international standards. For example, U.S. automotive safety and environmental standards are being eclipsed in third markets thanks to concerted efforts by other groups, notably the **European Union**, to promote their own standards in lieu of U.S. standards in areas like the automotive industry. These issues have arisen in a range of markets, including **Ecuador, Egypt, Morocco, Colombia, and Peru**.

The NAM is closely monitoring the **European Union's** efforts to expand existing regulatory regimes related to chemicals that reflect a fundamentally different approach to regulating and managing chemical risk (a precautionary "hazard-based approach" that does not consider concentration exposure) than those taken in the United States and other jurisdictions. This approach is reflected in a variety of measures, including the Restrictions on the Use of Hazardous Substances (RoHS) regime and broad regulatory frameworks such as the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). As these regimes expand to include new areas such as endocrine disrupting chemicals (EDCs), nanomaterials and phthalates, these concerns are only increasing. As the NAM has indicated in comments on these measures, broad implementation of such measures not only impacts manufacturers of those substances, but also products in a wide range of industries that use or incorporate those substances, ranging from textiles and cosmetics to machinery and agricultural commodities. Europe's conservative, non-science-based approach thus inadvertently impede the ability to sell or deliver key types of equipment that serve important public purposes. As noted above, regulatory approaches should seek input from all stakeholders and be narrowly tailored to address their objectives. As well, when major changes are made, sufficient transition times should be included especially where new product innovation will be required. While some markets like **Brazil** appear to be incorporating risk-based approaches seen in the United States, other countries are also drafting or considering chemical regulations that either appear to largely incorporate elements of RoHS and REACH (such as **China, Japan, Korea, Laos, Turkey, Ukraine** and the **United Arab Emirates**).

In **Korea**, market access for manufactured products has remained a challenge, despite efforts under the U.S.-Korea Free Trade Agreement to resolve these issues. For example, passenger vehicle and motorcycle manufacturers have been substantially impeded by a lack of

³ World Health Assembly, "[Resolution on ending inappropriate promotion of foods for infants and young children](#)," (WHA69.9), May 28, 2016.

⁴ World Health Assembly, "[Guidance on ending the inappropriate promotion of foods for infants and young children](#)," (A69/7 Add.1), May 13, 2016.

transparency and predictability, and insufficient adherence to good regulatory practice such as periodic reviews of existing regulations and standards. The result has been a steady stream of proposed new and modified regulations that do not align with international norms as well as a lack of resolution on existing issues that serve as non-tariff barriers to imports of these products made in the United States. These and other barriers must be addressed urgently to ensure meaningful access to the Korean market for automobiles and motorcycles, and that KORUS delivers fully on its promise for manufacturers in the United States.

China's National People's Congress (NPC) in September 2017 released an updated draft of the Standardization Law for public comments. The latest draft provides some greater clarity on a few areas raised by manufacturers in the United States, including the categories of standards, which social organizations can develop association standards and penalties for non-compliance with national standards. Manufacturers remain concerned, however, about various provisions in the law. Despite repeated advocacy, this latest draft continues to make no reference to China's WTO TBT obligations, despite the fact that that agreement should reasonably serve as the basis for any signatory's legal and policy frameworks of standardization to ensure harmonization with international practices. Manufacturers are also concerned with self-declaration requirements for enterprise standards that could endanger intellectual property (IP) rights, as they could require companies to disclose proprietary information and antitrust implications of treating enterprise standards the same as collaboratively-developed standards. Other issues impacting manufacturers in China related to continued concerns about the ability of foreign manufacturers to participate in standards-setting processes, fair treatment of patents and royalties in those processes, and continued challenges and costs of the China Compulsory Certification (CCC) system, and sector specific barriers such as troublesome new burdensome requirements for imported food products.

As part of a broader import substitution policy, **Ecuador's** Foreign Trade Committee (COMEX) announced Resolution 116 in December 2013, a document requiring U.S. exporters for some 300 products to obtain Certificates of Recognition through a conformity assessment process that could only be conducted by bodies approved by the Ecuadorian Accreditation Organization. Those rules were never notified to the WTO, and were almost immediately a topic of major concern for the U.S. and other governments. Although EU officials have negotiated an exemption to the rule for products of EU origin, and although COMEX issued a series of resolutions in 2014 removing some of the initial products from the scope of the resolution, significant concerns remain about this resolution and its impact on manufacturers in the United States seeking to export to Ecuador.

India continues to present challenges on a set of standards and technical barriers. These include local testing and certification requirements in a range of sectors such as telecommunications, and requirements from India's Department of Telecommunications for local testing and certification of foreign telecommunications equipment. Although these requirements have yet to be fully implemented (as their implementation continues to be delayed a year at a time due to the continued lack of sufficient domestic capacity to certify), they raise significant concerns for foreign companies and deviate from global norms. More recently, India's Directorate-General for Foreign Trade (DGFT) on September 1 issued new troublesome requirements on imported toys. The notice, which went to effect immediately, requires all toy imports to demonstrate compliance with newly updated Indian toy safety standards IS 9873 and IS 1566 (versus applicable international standards that had been options in the past), using only testing labs in India. The notice applies only to imported products and not to domestically manufactured toys. The Food Safety Standard Authority of India (FSSAI) has taken some steps to address industry concerns related to certification of food products, but some regulatory issues

remain, including non-science based approaches to regulations on processed food and food additives and continued batch-by-batch inspection requirements for imported food products at the port of entry. The NAM encourages the U.S. government to continue to monitor FSSAI's efforts closely to ensure full compliance. Finally, On medical devices, the NAM and its members are concerned with new policies and regulations that continue to apply an outdated, one-size-fits-all regulatory approach to both pharmaceuticals and medical device products, such as the lack of progress on revising the Drug and Cosmetics Act and delays in introducing separate new regulations for medical devices, both of which mean that medical devices continue to be regulated largely as pharmaceutical products despite significant differences between the sectors.

Canada also maintains strict rules to define hazardous waste that crosses its borders that disrupt trade with the United States. Unlike Canadian provincial rules or U.S. federal and state regulations, the Canadian federal government does not provide any exemption to allow empty containers with a *de minimis* level of hazardous waste residue to bypass the substantial paperwork requirements that normally accompany transboundary shipments of hazardous waste. Such policies mean that any containers transiting the border for cleaning have to go through onerous and time-consuming transboundary permitting and cradle-to-grave paperwork tracking requirements, impacting not only makers and end users of chemicals and paints, but downstream industries that use those products as well as hazardous waste cleaning facilities.

Countries around the world are considering or implementing troublesome regulations and policies that are not grounded in sound scientific evidence or international standards and have a direct, negative impact on the ability of manufacturers to export into those markets. Such standards and regulations impact a range of manufacturing industries, including problematic product labels and warnings on food products in countries such as **Canada, Chile, Ecuador, Israel, Peru** and **Uruguay**; unique standards on automotive and motorcycle components in **Indonesia**; and problematic provisions in food safety laws and regulations in **China** and the **Gulf Cooperation Council**.

Many countries require local testing and certification for imported products, as opposed to testing by a laboratory or conformity assessment body certified by an independent international certification body. Such local testing and certification requirements drive up the cost and delay for getting products to market, harming both the growth of those industries as well as choices available to local consumers. These requirements include local testing requirements for information technology equipment in **Brazil** and **India**, for toy products in **India**, local testing requirements for food products in **Ecuador** and the **UAE**, local retesting of ICT hardware after software updates in **Costa Rica** and continued local telecom testing requirements in **Mexico** (due to the stalled implementation of a mutual recognition agreement).

Appendix 2: Excerpt on Standards and Technical Regulations from NAM Public Comments on Negotiating Objectives Regarding Modernization of North American Free Trade Agreement⁵

Submitted June 12, 2017

Raise Standards to U.S. Levels to Ensure Transparent, Science-Based Regulatory Practices that Promote Fairness and Non-Discrimination and Reduce Burdens

FOREIGN TECHNICAL STANDARDS ARE ON THE RISE

Notifications of new and revised technical regulations in foreign countries more than doubled between 2005 and 2015.

Approximately 92 percent of U.S. exports globally may face foreign technical regulations – barriers that have a substantive impact on manufacturers in the United States, particularly small- and medium-sized manufacturers and their ability to support and grow jobs.

Sources: World Trade Organization, [23rd Annual Review of the Implementation and Operation of the TBT Agreement](#); Jeff Okun-Kozlowicki, [Standards and Regulations: Measuring the Link of Goods Trade](#) (June 2016).

To grow exports and access foreign markets, manufacturers in the United States not only need to be able to get their products across borders, they need to get them on foreign shelves for sale. Foreign technical standards, sanitary and phytosanitary requirements, regulations and testing procedures set the “ground rules” for new products seeking to enter the market and for existing products competing for market share. Foreign governments are increasingly limiting access to their markets by developing a growing array of unique foreign, discriminatory, burdensome, non-science/risk-based and non-transparent standards, regulations and conformity assessment procedures. Such standards represent growing obstacles to U.S. exports and substantially increase costs in ways that undermine manufacturers’ global competitiveness. While NAFTA included provisions to address discriminatory and non-transparent technical standards and sanitary and phytosanitary measures, subsequent trade agreements have modernized and strengthened disciplines to restrict the inappropriate use of such standards, regulations and testing requirements.

The Growth of Technical Barriers Depresses U.S. Exports to Foreign Markets

Unique foreign, discriminatory, burdensome, non-science/risk-based and non-transparent standards, regulations and conformity assessment procedures represent growing obstacles to U.S. exports overseas. Moreover, such standards increase significantly the cost of U.S. manufacturing exports to countries around the world, making U.S. manufactured goods less competitive. In some countries, such standards are developed largely to limit access to imports and protect local players. In other cases, the proliferation of problematic standards stems from proactive efforts by individual countries or regional organizations (such as the European Union (EU)) to promote their own standards at the exclusion of international standards developed by

⁵ Full report can be accessed via the [NAM's website](#).

organizations based in the United States, putting products manufactured in the United States at a competitive disadvantage.

Manufacturers in the United States can compete most successfully when standards are developed through a truly voluntary and market-driven process – one in which multiple standards compete on the merits, and where companies have the freedom to implement whatever standards best suit their needs and those of their customers. Conversely, government-mandated standards developed without broad industry input risk undermining innovation by “freezing” technology development in lieu of new and better standards and solutions.

NAFTA’s Regulatory Provisions Need Updates and Improvements to Promote Transparent, Non-Discriminatory, Science-Based Regulatory Practices and Standards

While the NAFTA includes chapters on Technical Barriers to Trade (TBT) (Chapter 9) and Sanitary and Phytosanitary (SPS) Measures (Chapter 7), these chapters have not been updated since the agreement entered into force in 1994, although the growth of burdensome standards is on the rise. Among the key changes that would improve the current agreement for manufacturers are provisions that would:

- **Strengthen provisions that recognize U.S. international standards approach** and make standards procedural commitments subject to dispute resolution.
- **Strengthen the TBT chapter’s horizontal protections, incorporate agreed-upon sector annexes and develop processes to promote cooperation and create new sector-specific annexes** to reduce barriers to U.S. exports and decrease costs.
- **Create a regulatory coherence chapter with binding commitments** to ensure that all parties adopt good regulatory practices.
- **Update SPS chapters to promote science-based regulatory practices, time-limited dispute resolution and facilitate U.S. exports** in a manner that is consistent with common fundamental tenets of law that provide for cost-benefit analysis.