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Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To:	Members, Subcommittee on Agriculture, Energy and Trade
From:	Committee Staff
Date:	February 26, 2013
Re:	Hearing: Small Business Trade Agenda: Opportunities in the 113th Congress

The Subcommittee on Agriculture, Energy and Trade of the Committee on Small Business will meet for a hearing titled, "Small Business Trade Agenda: Opportunities in the 113th Congress." The hearing is scheduled to begin at 10:00 A.M. on February 28, 2013 in room 2360 of the Rayburn House Office Building. The hearing will provide an opportunity for the Subcommittee to hear directly from small businesses on the optimal procedures for increasing exports and creating jobs in the United States.

I. International Trade and Small Businesses

Nearly every small business is affected by international trade. Whether it directly exports a product, imports a component part, or sells foreign merchandise, global trade influences its business operations and competitiveness. According to United States Census data, total international trade in goods and services was roughly $4.9 trillion dollars in 2012, up from $2.5 trillion in 2000.[1] Of that total, exports accounted for nearly $2.2 trillion, a new all-time high.[2] According to the International Trade Commission (ITC), those exports helped support nearly 10 million jobs, including about 4 million small business jobs.[3] In addition to those firms that are directly involved in international trade, numerous other small firms benefit from increased international trade opportunities, including: component providers to manufacturers that export; banks that provide export financing; or retailers that import goods for sale to American consumers.

The most recent data from the Bureau of the Census identified 286,661 small business exporters in 2010, which accounts for nearly 98 percent of all exporters.[4] The ITC calculated that small businesses who exported averaged a 37 percent revenue growth from 2005-2009 compared to a decline of seven percent for non-exporting firms.[5] Despite the available growth opportunities, the majority of small businesses in the United States do not export. Currently, only one percent of small businesses (27.5 million) export.[6]

[1] http://www.census.gov/foreign-trade/Press-Release/current_press_release/.
[2] *Id.*
[3] UNITED STATES INTERNATIONAL TRADE COMMISSION, SMALL AND MEDIUM-SIZED ENTERPRISES: CHARACTERISTICS AND PERFORMANCE xiv (2010), *available at* http://www.usitc.gov/publications/332/pub4189.pdf (hereinafter "ITC Characteristics and Performance").
[4] BUREAU OF THE CENSUS, PROFILE OF U.S. EXPORTING COMPANIES 2008-2009 Exh. 1(a) (2011), *available at* http://www.census.gov/foreign-trade/Press-Release/edb/2009/edbrel.pdf (hereinafter "Census Export Profile").
[5] ITC Characteristics and Performance, *supra* note 3, at xi.
[6] This number was calculated by dividing the list of identified exporters (286,661) by the total estimated number of small businesses. http://www.sba.gov/sites/default/files/sbfaq.pdf.

The limited participation may result from a variety of trade barriers that constrain their ability to compete in the export market. These barriers include higher tariffs, anti-competitive technical standards, and complex domestic rules regulating international trade.[7] Given the often limited personnel resources[8] available to small businesses, it becomes difficult, if not impossible, for small businesses to navigate the tariff and non-tariff barriers established across the globe in order to export goods and services. To reduce trade barriers, the international community has developed the World Trade Organization (WTO). In addition, individual countries, including the United States, negotiate bilateral and multilateral trade agreements that seek more open international trade.

II. Background on International Trade Agreements

The foundation of trade agreements and policies begins with the WTO. Originally called the General Agreement on Tariffs and Trade (GATT), the WTO was created to serve as the post-World War II international trade organization to help govern and facilitate international trade.[9] The WTO consists of 153 member countries, which represent almost 95 percent of the total value in international trade.[10] It provides a framework to reduce tariff and non-tariff barriers, enhances transparency, removes discriminatory practices, strengthens protection of intellectual property (IP), and establishes a process to settle trade disputes through consultation and tariff remedies. The countries that are members of the WTO have been negotiating new provisions through the Doha Round[11] since 2001, but currently there is no clear path to its conclusion.[12]

As the negotiations continue, the United States and other nations have moved forward with other efforts to reduce trade barriers through the negotiations of bilateral and multilateral trade agreements outside of the WTO framework. Examples of these policies include free trade agreements (FTA), bilateral investment treaties, trade preference programs, and multilateral trade agreements.

Currently, the United States has FTAs with 20 countries.[13] The specifics of the individual agreements vary, but they all aim to reduce tariff and non-tariff barriers, thereby improving the likelihood of increased trade between the countries. In addition, the United States Trade Representative (USTR) is currently negotiating another multilateral FTA denominated as the Trans-Pacific Partnership (TPP), consisting of eleven nations near the Pacific Rim.[14]

III. Key Barriers for Small Business Exporters

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[7] One of the most burdensome domestic regulations is the process of obtaining a federal export license. The federal government requires certain products and services (e.g., computer chips, high tech software, defense equipment, consulting services, and more) to obtain export licenses before engaging in trade with certain countries. The export of certain items is monitored and regulated to protect national security and intellectual property. To obtain a license, small businesses must navigate multiple federal agencies that can take months to complete. This burden and time consuming process may harm the ability of the small business to complete their export sale. http://www.bis.doc.gov/licensing/exportingbasics.htm.

[8] Census Export Profile, *supra* note 4, at 9.

[9] http://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm.

[10] WORLD TRADE ORGANIZATION, ANNUAL REPORT 7 (2012), *available at* http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep12_e.pdf (hereinafter "WTO Report").

[11] Doha Round is a common reference for the ongoing WTO negotiation that was launched in Doha, Qatar in 2001.

[12] *Id.* at 22. The main barriers to the conclusion of the Doha Round involve persistent differences between developed and developing countries regarding agricultural subsidies, non-tariff barriers, and protection of domestic service industries.

[13] The countries are: Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, Dominican Republic, El Salvador, Honduras, Nicaragua, Guatemala, Costa Rica, Oman, Peru, South Korea, Panama, and Colombia. http://www.ustr.gov/trade-agreements/free-trade-agreements.

[14] The TPP negotiations currently include Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Other countries have requested joining the negotiations including Canada, Japan, Mexico and China. http://www.ustr.gov/tpp.

Even with multilateral and bilateral trade agreements in place, small businesses still face a number of obstacles and barriers that limit their export potential. The most commonly reported barriers to trade stated by small businesses were: disparate education resources and lack of access to information; regulatory burdens and problems navigating federal agencies; access to export financing; and knowledge around foreign market, customs and regulations.[15]

The ITC study reported that both tariff and non-tariff barriers disproportionately affect small businesses' ability to export, because these impediments do not discriminate based on the size of the firm.[16] Unlike large firms, small businesses have a limited amount of resources available to navigate the variety of obstacles in the export process. Of the identified small business exporters, 45 percent have less than 20 employees and 68 percent have less than 100 employees.

A. Education and Access to Information

The complexity and confusion of the international trade process represents a key hurdle that deters many small businesses from allocating their time and resources to exporting. Many small firms do not understand where to start or are unaware of the compliance and paperwork requirements. Moreover, many small firms have stated that the trade information provided by the federal government can be either hard to find or overabundant, therefore making it difficult to find a solution to their concern.[17]

B. Regulatory Burdens

Exporters, both large and small, face a number of federal regulations and procedural requirements that consume extensive time and resources. The most burdensome regulations include the United States export control process, fees and license requirements[18] administered by the United States Food and Drug Administration (FDA) within the United States Department of Health and Human Services, United States Customs' protocol,[19] and higher shipping costs.[20]

C. Lack of Access to Capital

Access to export capital is vital for small businesses, as most do not have the monetary resources to finance foreign sales opportunities.[21] However, many small businesses have stated their difficulty in obtaining financing due to the size of their business, size of their sales, processing time of the federal agencies, or access to a local participating bank.[22] The Small Business Administration (SBA),[23] Export-Import Bank of the United States

[15] ITC Characteristics and Performance, *supra* note 3, at 6-2.
[16] *Id.*
[17] *Id.* at 6-3.
[18] Many firms are required to obtain an export certificate from the FDA that certifies the product was manufactured and marketed to meet specific federal regulations. A certificate is often required by foreign countries before that product can enter the country to demonstrate the product is safe. The FDA has multiple types of certificates and requirements based on the type of food product. http://www.fda.gov/RegulatoryInformation/Guidances/ucm125789.htm.
[19] The United States Customs and Border Protection is responsible for monitoring that all goods entering and exiting the United States comply with all laws and regulations without regard to which federal agency promulgates a restriction on exports or imports. http://www.cbp.gov/xp/cgov/trade/basic_trade/export_docs/export_licenses.xml.
[20] ITC Characteristics and Performance, *supra* note 3, at 6-4.
[21] Many small domestic producers do not have the amount of capital necessary to manufacture large quantities of goods as a result of an international transaction. Therefore, many seek working capital loans to finance the increase in capacity needed to satisfy the international customer. Moreover, many small firms new to exporting will seek insurance and protection to ensure their transaction is fulfilled which requires additional financial resources.
[22] *Id.* at 6-3.
[23] The SBA offers three different finance programs, through participating lenders, for small businesses. The SBA Export Express Program provides financing up to $500,000 for basic export needs. The Export Working Capital Loan program

(EXIM),[24] and the Overseas Private Investment Corporation (OPIC) all provide various types of export financing, including working capital, loan guarantees and insurance coverage. Despite these federal programs, small businesses have cited problems regarding the lack of communication and harmonization among these financing agencies as yet another barrier to initiating international trade opportunities.[25]

D. Foreign Market, Languages and Regulations

Even if small businesses overcome various hurdles already denominated, the uncertainty about the operation of foreign markets, languages and cultures, and compliance with other countries regulations also impose serious complications to small business involvement in international trade.[26] Many small businesses stated the costs of understanding foreign compliance is too costly to absorb and they are unable to hire personnel dedicated to navigating the regulations.[27] As a result of these difficulties, 58 percent of small businesses export to only one market, and 83 percent export to between one to four countries.[28]

IV. Policy Initiatives for 113th Congress

There are a broad variety of trade initiatives that policymakers may consider in the 113th Congress. Some include: the TPP trade agreement, the Transatlantic Trade and Investment Partnership (TTIP), the reauthorization of Trade Promotion Authority (TPA), trade agency reorganization, Customs reauthorization, and ongoing WTO negotiations regarding services and information technology. If implemented, all of these efforts would reduce tariff and non-tariff barriers for small businesses located in the United States and increase the probability that they will take advantage of international markets.

A. TPP

The TPP is a regional (multilateral) FTA being negotiated among Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, Canada, Mexico and the United States.[29] The TPP framework builds off the goals of traditional trade agreements to reduce tariff and non-tariff barriers, strengthen IP protection, and provide fair labor standards. The TPP also will include new language to harmonize regulatory systems and protect digital technologies.[30]

USTR recently completed the 15th round of TPP negotiations, with the next round scheduled for early March 2013.[31] This agreement will help more small businesses enter or expand their exports in the rapidly growing Asia-Pacific market. Exports of goods to the TPP countries totaled $895 billion in 2011 or 60 percent of total United States exports.[32] Finalization of the TPP by easing barriers for small business could see that total increase.

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provides up to $5 million to fund export transactions. Finally, the International Trade Loan Program provides up to $5 million to expand into new export markets. http://www.sba.gov/content/financing-your-small-business-exports-foreign-investments-or-projects.

[24] EXIM is the official export credit agency of the United States. Its mission is to provide financial support for the exports of United States goods and services. They provide working capital guarantees, export credit insurance, and loan guarantees. http://www.exim.gov/about/.

[25] ITC Characteristics and Performance, *supra* note 3, at 6-3.

[26] *Id.*

[27] *Id.* at 6-5.

[28] Census Export Profile, *supra* note 4, at 5.

[29] http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/united-states-trans-pacific-partnership .

[30] *Id.*

[31] *Id.*

[32] *Id.*

B. TTIP

In the 2013 State of the Union address, President Obama announced his plans to launch negotiations on the TTIP with the European Union (EU).[33] Bilateral trade between the United States and EU accounts for one-third of the world's total trade in goods and services, and nearly half of the global gross domestic product.[34] The aim of the agreement is to increase the $459 billion in United States exports to the EU, which is estimated to support 2.4 million jobs in the United States.[35] If the terms of the TTIP are negotiated correctly, some of the increase should redound to small businesses.

C. TPA

TPA, also known as fast-track, allows the President to negotiate trade agreements with foreign countries; then have them considered by Congress with a simple up-or-down vote without amendments or other regular legislative order. TPA was created by the Trade Act of 1974 to provide the President flexibility in negotiating trade agreements; and this fast-track authority has been renewed multiple times.[36] The latest TPA expired on July 1, 2007.

Absent TPA, approval of any negotiated trade agreements must go through the normal legislative process and be subject to amendments. Amendments undermine the terms of the agreement reached between the countries when they negotiated the trade pact. Other countries, naturally, would be chary about entering into an agreement subject to legislative alteration.[37]

D. Trade Agency Reorganization

In January 2012, President Obama announced his plan to reorganize multiple federal agencies to promote competiveness, exports and American business.[38] The plan would consolidate the Department of Commerce, SBA, USTR, EXIM, OPIC, and the United States Trade and Development Agency into one new department.[39] Such reorganization could potentially eliminate the problem that small businesses face in obtaining advice from disparate federal agencies concerning their involvement in the export market. However, the plan requires Congressional approval, and some members of Congress have expressed strong reservations about it.[40]

E. Customs Reauthorization

Improving trade facilitation and combatting illegal trade remains a priority for policymakers and small businesses. There are opportunities to streamline the overall process by reducing duplicative documentation

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[33] http://www.ustr.gov/about-us/press-office/fact-sheets/2013/february/US-EU-TTIP.
[34] *Id.*
[35] *Id.*
[36] The original practice of TPA started in the 1930s through the Reciprocal Trade Agreements Act of 1934 which was enacted in response to the high tariffs enacted in the Smoot-Hawley Tariff Act of 1930. Since then, TPA has been renewed multiple times. The most recent TPA was enacted by the Trade Act of 2002, Pub. L. No. 107-210, Div. B, § § 2101-13, 116 Stat. 933, 993-1022.
[37] Legislative procedures exist in the United States House and Senate that can limit or foreclose amendments. However, such procedures are disfavored because it undermines open debate that is the hallmark of the American legislative process.
[38] http://www.whitehouse.gov/the-press-office/2012/01/13/government-reorganization-fact-sheet.
[39] *Id.*
[40] Both Senate Finance Chairman Max Baucus (D-MT) and House Ways and Means Chairman Dave Camp (R-MI) have voiced concerns about including USTR in the reorganization plan, as it may interfere with USTR's mission to open new markets and create new jobs. http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=275042.

requirements, raising the import de minimis standard,[41] reduce processing delays, and strengthen United States Customs and Border Protection's (CBP) ability to fight illegal trade. Streamlining the customs process will help small businesses expedite their trade, stay more competitive in the global market, and incentivize new entrants into international trade.

Possible legislation for the 113th Congress could mirror the Customs Trade Facilitation and Enforcement Act of 2012 (H.R. 6642). The bill aimed to provide direction for CBP to allocate resources, streamline the trade process, improve enforcement capabilities, and provide transparency and accountability around CBP's core mission.

F. WTO Negotiations Regarding Services and Information Technology

With no clear path for the completion of the Doha Round, the USTR has stated[42] its intention to start separate negotiations on the International Services Agreement (ISA) and the Information Technology Agreement (ITA). Both proposals would require congressional approval before full implementation.

The ISA is a separate agreement being negotiated by a group of WTO countries[43] designed to remove trade barriers for service exporters. The ISA framework is based on the foundation of the WTO General Agreement on Trade in Services,[44] while updating the agreement to reflect the rapid expansion in services, resulting from new innovative services and technologies, including Internet-based services, such as cloud computing. The United States is the largest exporter of services, accounting for over $600 billion in 2011.[45] Modernizing this agreement should provide new export opportunities and IP protection for a variety of small businesses.

The USTR also is negotiating an update to the 1996 ITA. The ITA was designed to reduce tariffs and protect IP for certain information technology products.[46] The current list of products has not been updated since 1997 and does not reflect the growth of innovative technology products of the 21st century,[47] such as tablets and other wireless devices. Updating the list of eligible products will create new export opportunities for small technology companies.

V. Conclusion

As has been demonstrated, trade policy can provide additional incentives for small businesses to increase their involvement in international trade. This hearing will offer an opportunity for members of the Subcommittee to

[41] The Tariff Act of 1930 and subsequent amendments thereto authorizes the Secretary of Treasury to waive the collection of duties and taxes of goods that are valued at less than $200. 19 U.S.C. §1321 (a). De minimis is generally defined as a minimal dollar amount (or percentage of a good) that will not disproportionately impact the revenue of the Treasury or country of origin of the product. *Id.* at § 1321 (b). The Customs Trade Facilitation and Enforcement Act of 2012 (H.R. 6642) proposed raising the de minimis value to $800, thereby allowing more goods to enter duty free without the adhering to the formal Customs entry process.

[42] http://www.ustr.gov/sites/default/files/01152013%20ARK%20letter%20to%20Speaker%20Boehner_0.pdf.

[43] Participating countries are: Australia, Canada, Colombia, Costa Rica, European Union, Hong Kong China, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, Republic of Korea, Switzerland, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Turkey.

[44] http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm.

[45] http://www.ustr.gov/trade-topics/services-investment/services.

[46] Products include: computers and computer peripheral equipment, electronic components including semiconductors, computer software, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. http://www.ustr.gov/trade-topics/industry-manufacturing/industry-initiatives/information-technology.

[47] *Id.*

examine the issues facing small business exporters and obtain specific policy recommendations that will lead to growth in exports by small businesses.