House Committee on Small Business
"Across Town, Across Oceans: Expanding the Role of Small Business in Global Commerce"

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Chairman Chabot, Ranking Member Velazquez, and Members of the Committee. I am Tim Brightbill, a partner at Wiley Rein LLP and adjunct professor at Georgetown University Law Center. Thank you for the opportunity to testify here today on the important issue of expanding the role of small business in global commerce. (These views are my own, not those of my firm or my clients.)

I have practiced international trade law for 20 years, and my practice has always focused on helping American companies, American industries, and American workers. I work with members of a wide variety of industries – including manufacturers of everything from solar panels to steel to school notebooks to heavy forged hand tools. I also work with many companies that provide products and services both here and abroad. My job is to help these companies grow, to prevent unfair trade practices from harming these companies, and to help eliminate trade barriers overseas.

As this committee is aware, small businesses face enormous challenges in the area of international trade. According to the President's 2015 Trade Agenda, of the 28 million small businesses in the United States, less than 10 percent, or approximately 300,000 of these small businesses export their merchandise to other countries.[1] Equally striking is the fact that of those small businesses that do export, more than half export to only one country – either Canada or

[1] Office of the U.S. Trade Representative, *The President's Trade Agenda: Made in America*, at 19 (Mar. 2015).

Mexico. This demonstrates how small businesses often struggle to overcome steep tariffs, complicated paperwork, fees, and the often significant delays that they face in exporting to other countries. These trade barriers disproportionately affect small businesses that often cannot meet the high costs of compliance.

In the last several years, the U.S. government has taken several steps towards easing such barriers, but there is more to be done. Encouraging and facilitating exports by U.S. small businesses is imperative to allowing American industry to expand and American workers to prosper. I'd like to list just a few areas of priority for this Congress and Administration that are particularly relevant to small businesses:

1) **Trans-Pacific Partnership** – The U.S. government has a potentially important opportunity to create jobs, expand trade and manufacturing, and improve the global rules of international trade in the Trans-Pacific Partnership free-trade negotiations. If approved, the TPP would be the largest U.S. free trade agreement, involving 12 countries and more than 40 percent of global trade.[2] The TPP specifically seeks to promote measures that improve U.S. small businesses' ability to export, such as streamlining customs procedures, eliminating tariff and non-tariff barriers, promoting digital and e-commerce, and developing more transparent regulatory procedures. The TPP provisions are similar to the types of improvements included in the World Trade Organization's recent Agreement on Trade Facilitation. As discussed below, the TFA is intended to make the movement of goods between countries faster, less expensive, and more reliable, as in the TPP.

Two other features of the TPP that could benefit small businesses are the implementation of **common tariffs** (prior to tariff elimination) across countries and the chapter on **express**

[2] Office of the United States Trade Representative, *Overview of the Trans Pacific Partnership*, https://ustr.gov/tpp/overview-of-the-TPP.

delivery services. A serious challenge to the effectiveness of international trade rules is what some have called the "spaghetti bowl" of free trade agreements, each of which has its own rules. This creates uncertainty in the system when different tariffs are imposed on the same products by different countries. Some small businesses don't even bother to claim duty free treatment for their goods due to the complexity of the process. Standard tariffs across TPP countries should reduce this burden.

The TPP will also, for the first time, impose disciplines and requirements on **state-owned enterprises**, which will greatly assist U.S. companies, both large and small, by reducing the need to compete with foreign-government backed entities. While China is a notable example of this problem, SOEs play substantial roles in the economies of TPP countries like Malaysia and Vietnam — as well as Russia, Brazil, India, and many others. When U.S. small businesses export, they should not have to compete with foreign governments, which is why these SOE provisions are potentially so important.

Similarly, many small businesses use express delivery services for their exports, and the TPP includes provisions that should allow greater use of these services. The TPP specifically seeks to enhance such services through expedited procedures that help small businesses gain quick and efficient access to global markets and supply chains.

But, before it can pass the TPP, Congress and the Administration must first pass the **Trade Promotion Authority**, which defines U.S. negotiating objectives and priorities for trade agreement negotiations. As you know, the Senate is currently considering TPA legislation as well as potential amendments, and the House will also do so shortly. And as this debate has taken place in recent weeks, the theme we have heard over and over again is one of enforcement. Specifically, Congress should not approve new trade agreements until we have better ways of

enforcing our existing agreements. Several TPA amendments would go a long way toward improving enforcement for all types of businesses, including small and medium sized enterprises.

First, Congress should approve much-needed trade enforcement measures as part of TPA. U.S. industry has proposed a set of five trade law changes that it views as essential to strengthening the U.S. government's enforcement and administration of the U.S. trade laws, and to ensuring that U.S. trade laws remain an effective tool for domestic companies and their workers to respond to unfair trade practices. These provisions would:

- Enhance the Commerce Department's ability to address non-cooperative foreign parties in trade remedy cases;
- Clarify the injury standard in trade remedy cases;
- Enhance the ability of the Commerce Department to calculate a trade remedy when foreign prices or costs are distorted; and
- Clarify the Commerce Department's authority regarding the selection of which foreign companies to investigate in a trade case.

These changes would benefit all companies who bring trade cases against dumped and subsidized imports, including large and small businesses alike. They were included in the Customs and Trade bill passed by the Senate Finance Committee. They should be included in TPA as well.

Second, Congress should approve the ENFORCE Act legislation to guard against foreign companies who use fraud and evasion to avoid paying trade case duties. Senator Wyden has championed this legislation for years, and again it was included in the Customs and Trade bill passed by the Senate Finance Committee. The ENFORCE Act is preferable to the PROTECT Act, which has also been proposed in the House.

Although the TPP would prove beneficial to small businesses in many respects, there are potential drawbacks as well. First, the opening of the U.S. market to additional foreign competition could harm smaller businesses that are less able to compete than larger or multinational companies. This could also lead to jobs being lost to lower-wage positions in other TPP countries. However, the extent of such harm, if any, is not known, and some experts have stated that because many TPP countries are already free trade partners of the United States, the actual increase in competition may be limited.[3]

Second, opponents of the TPP argue that the agreement, largely negotiated behind closed doors, reflects powerful corporate interests, rather than the interests of small businesses who are less able to influence U.S. trade policy. In fact, while the TPP will contain a separate chapter on small- and medium-enterprises, little is known about the contents of that chapter. The United States Trade Representative has indicated that the TPP will address informational challenges that small businesses have previously raised with regard to the difficulty of actually utilizing free trade agreements, but the specifics remain unknown.[4] And while the Administration is seeking to include a provision for regular reviews of how the TPP is working for small businesses, it is not clear if and/or how the outcome of such reviews will be used to the benefit of these companies.[5]

Third, and perhaps most controversial,[6] are the TPP's Investor-State Dispute Settlement provisions. Under these provisions, U.S. businesses could challenge foreign government policies or actions before independent arbitrators with the authority to order compensation to the

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[3] *See, e.g.*, David Autor, David Dorn & Gordon H. Hanson, *Why Obama's key trade deal with Asia would actually be good for American workers*, Wash. Post (Mar. 12, 2015).

[4] Office of the United States Trade Representative, *Trans-Pacific Partnership: Summary of U.S. Objectives*, https://ustr.gov/tpp/Summary-of-US-objectives.

[5] *See, id.*

[6] *See, e.g.*, Elizabeth Warren, *The Trans-Pacific Partnership clause everyone should oppose*, N.Y. Times (Feb. 25, 2015).

companies, if so warranted. Critics of ISDS argue that it could allow the rollback of U.S. health, safety, and environmental regulations. My personal view is that these concerns are overstated, and there are many ways that ISDS could be beneficial to small- and medium-sized enterprises who invest abroad. These arbitration proceedings are often a cost-effective way for companies to protect their investments abroad from hostile government actions.

2) Transatlantic Trade and Investment Partnership (TTIP): The **Transatlantic Trade and Investment Partnership** is another trade agreement that has the potential to bring substantial benefits to U.S. small businesses. The United States and the European Union have one of the most complex trade and investment relationships, with U.S goods and private services trade with Europe totaling more than $1 trillion in 2013.[7] Nearly 95,000 U.S. small businesses export to the European Union, but the growth in such exports is hampered by the need to comply with European standards, technical regulations, and conformity assessments.[8] Such requirements, coupled with high tariffs and shipping costs, are often prohibitive for small businesses. The TTIP negotiations seek to address these barriers by reducing or eliminating tariffs, promoting duty-free treatment of digital products, promoting compatible regulatory requirements and assessments, and reducing border costs and delays. The TTIP negotiations are in their early stages, so it is still too soon to assess their potential.

3) **Trade in Services Agreement**: The Trade in Services Agreement, being negotiated among 24 countries, seeks to expand global trade opportunities for service industries like telecommunications, financial services, healthcare, and distribution and delivery services.

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[7] Office of the United States Trade Representative, *European Union*, https://ustr.gov/countries-regions/europe-middle-east/europe/european-union.

[8] U.S. International Trade Commission, *U.S. International Trade Commission Releases Report on How T-TIP Will Benefit Small Businesses* (Mar. 28, 2014); U.S. International Trade Commission, *Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, Inv. No. 332-541, USITC Pub. 4455, at 2-2 – 2-7 (Mar. 2014).

Today, barriers to trade in services are often greater than those facing manufactured goods, so TISA could provide small businesses with greater and more affordable access to global markets. Because the United States already runs a large trade surplus on trade in services, TISA should further strengthen U.S. services firms that are looking to expand abroad.

4) **Currency Manipulation** – Currency manipulation continues to be a serious problem that harms all U.S. exporting businesses, large and small. Currently manipulation has resulted in the loss of thousands, if not millions, of U.S. jobs by making imports of certain goods into the United States artificially cheap and by giving foreign-manufactured products an unfair advantage over U.S. products in export markets. The Petersen Institute for International Economics, one of the most respected think tanks in Washington, has previously called currency manipulation "the biggest subsidy of them all,"[9] and despite recent International Monetary Fund statements,[10] many estimates suggest that China's currency is still undervalued by 25% or more. In addition to the millions of lost American jobs, such currency actions by China and more than 20 other countries are estimated to have increased the U.S. trade deficit by $200 billion to $500 billion per year.[11] Yet, the Commerce Department has repeatedly refused to investigate whether currency manipulation is a countervailable subsidy under U.S. trade laws.

U.S free trade agreements currently do not address this serious issue, to the detriment of American companies and workers. Congress now has the opportunity to take two important steps towards stemming this ongoing problem. First, Congress should direct the Commerce Department to investigate currency manipulation as an illegal subsidy. Second, Congress could

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[9] *See* C. Fred Bergsten, *Addressing Currency Manipulation Through Trade Agreements*, Peterson Institute for International Economics (Jan. 2014).

[10] *See* Bonnie Cao & Ye Xie, *IMF Official Says Yuan Nearing Point Where No Longer Undervalued*, Bloomberg Business (Apr. 17, 2015).

[11] C. Fred Bergsten & Joseph E. Gagnon, *Currency Manipulation, the U.S. Economy, and the Global Economic Order*, Peterson Institute of International Economics (Dec. 2012).

establish, as a negotiating objective, that the Administration seek enforceable rules against currency manipulation in all future trade agreements, including the TPP.

5) **World Trade Organization's Agreement on Trade Facilitation** -- This agreement has not yet entered into force, but could benefit many U.S. small businesses by making the movement of goods between countries faster, less expensive, and more reliable. Exporting goods to some countries can be particularly difficult, with delays at the border, substantial paperwork, and steep fees. Under the TFA, WTO members must adopt procedures that (1) allow exporters to submit import documentation even before the arrival of their goods at the port; (2) allow for the release of merchandise even before the final customs duties and fees are determined; (3) allow for expedited procedures for operators with demonstrated records of customs compliance; (4) provide a mechanism for expedited release of merchandise; (5) implement procedures to reduce documentation requirements, and allow for the rapid release and clearance of goods, particularly perishable items; and (6) allow for the temporary admission of certain merchandise intended to be re-exported. Another benefit to small businesses under the TFA is access to expedited shipping channels, increasing access to global supply chains and allowing for more cost-efficient shipping and logistics. Such measures would allow U.S. small businesses increased opportunities and destinations for their products, and the U.S. should urge WTO members to ratify the agreement as quickly as possible.

Thank you for addressing these important issues today, and I would be happy to answer any questions.

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