

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, Committee on Small Business
From: Committee Staff
Date: April 11, 2018
Re: Hearing: "The State of Trade for America's Small Businesses"

On April 11, 2018 at 11:00 am, the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building to examine the State Trade and Export Promotion (STEP) Grant Program and the federal government's overall efforts to increase small business exports. Additionally, the Committee will explore recent trade policy developments and their impact on America's small exporters. The Committee will receive testimony exploring how proposed changes to the tariff schedule and stronger enforcement strategies will affect American manufacturers and service-oriented small businesses.

I. Background

Increasing small business exports continues to be a top priority for both United States lawmakers and the federal government. While nearly 300,000 small businesses are currently exporting to foreign markets, many small businesses face significant challenges in getting their goods and services abroad. To broaden markets and strengthen small businesses' competitive advantage and operations, the United States has a variety of trade agreements in place. These policies are negotiated to: reduce both tariff and non-tariff barriers¹ in foreign markets; create new market opportunities for domestic exporters; and strengthen trade enforcement and intellectual property protection (IP). Examples of these policies include free trade agreements (FTAs), bilateral investment treaties (BIT), trade preference programs, and multilateral trade agreements. These agreements play a critical role in determining whether a small business is able to compete in the global market, because small firms have limited resources and personnel to comply with foreign requirements that act as trade barriers.

International trade policy affects nearly every type of small business. Whether a business directly exports an agricultural commodity, imports a component part, or sells foreign merchandise, global trade influences its operations and competitiveness. International trade in goods and services amounted to around \$5.2 trillion dollars in 2017.² Exports accounted for nearly \$2.4 trillion and have more than doubled since 2003.³ According to the United States International Trade Administration (ITA), those

¹ Non-tariff barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights. <https://ustr.gov/sites/default/files/2014%20NTE%20Report%20on%20FTB.pdf>.

² <http://www.census.gov/foreign-trade/statistics/historical/gands.pdf>.

³ *Id.*

exports helped support nearly 10.7 million jobs, including about 4.4 million jobs in services related exports.⁴

The Office of the United States Trade Representative's Office (USTR) is responsible for developing and coordinating international trade, commodity and direct investment policy, and overseeing negotiations with other countries.⁵ Within USTR, the Office of Small Business, Market Access and Industrial Competitiveness is responsible for the development of policy relating to tariff and non-tariff barriers affecting industrial goods, including negotiation, implementation, monitoring and enforcement of bilateral, regional, plurilateral and multilateral trade agreements.⁶

The Small Business Administration (SBA) is also required to perform several functions to support small businesses navigating the obstacles to engaging in international trade. Although the SBA conducts outreach efforts, its primary activities include counseling and training, provided mainly through nonfederal partner entities called Small Business Development Centers (SBDCs). In addition to the counseling provided by SBDCs, the Office of International Trade (OIT) provides advice to small businesses seeking financial assistance to "fill market gaps that arise because private sector is unable to provide adequate credit to support certain export transactions with greater real or perceived risk."⁷ OIT also explains to small businesses the availability of export finance products offered through other agencies or entities such as those offered by the United States Export Import Bank (Ex-Im). Finally, the OIT is responsible for representing the SBA on the Trade Promotion Coordinating Committee (TPCC) to aid in the implementation of the National Export Initiative (NEI).

Additionally, the Small Business Jobs Act of 2010 authorized the State Trade and Export Promotion (STEP) grant program to both increase the number of small businesses that export and raise the value of existing small business exporters.⁸ This program authorized a three-year pilot program to award grants to states to execute export programs that assist eligible small business concerns in a variety of export activities.⁹ In the Trade Facilitation and Trade Enforcement (TFTE) Act of 2015,¹⁰ the State Trade and Expansion Program replaced the pilot STEP grant program.¹¹ The TFTE also required a report to the House Small Business Committee by the Office of Inspector General on the use of funds provided to small business concerns through the STEP grant program.¹²

II. Background on International Trade and Small Businesses

⁴ ITA, JOBS SUPPORTED BY STATE EXPORTS, 2017 iii (2017) [hereinafter "ITA Export Jobs"], available at https://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_005558.pdf.

⁵ <https://ustr.gov/about-us/about-ustr>.

⁶ <https://ustr.gov/about-us/organization>.

⁷ SBA, FY 2017 CONGRESSIONAL BUDGET JUSTIFICATION 73 (2016) [hereinafter "SBA FY 2017 BUDGET"], available at https://www.sba.gov/sites/default/files/FY17-CBJ_FY15-APR.pdf. OIT has no regulatory role with respect to international trade loans available from SBA private lending partners. Such lending is overseen by SBA's Office of Capital Access.

⁸ 15 U.S.C. § 1207(b).

⁹ OIG, EVALUATION REPORT, REVIEW OF SBA'S STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM (2017) (17-11) [hereinafter "OIG Evaluation Report"], available at https://www.sba.gov/sites/default/files/oig/SBA_OIG_Report_17-11.pdf?utm_medium=email&utm_source=govdelivery. Export promotion activities are considered to be: participation in a foreign trade mission; a foreign market sales trip; a subscription to services provided by the United States Department of Commerce; the payment of website translation fees; the design of international marketing media; a trade show exhibition; participation in training workshops; or any other export initiative determined appropriate by the Associate Administrator for SBA OIT.

¹⁰ Pub. L. No. 114-125 § 503.

¹¹ *Id.*

¹² OIG Evaluation Report, *supra* note 8, at 3.

The foundation of trade agreements and policies begins with the World Trade Organization (WTO). Originally called the General Agreement on Tariffs and Trade, the WTO was created to serve as the international trade organization to deal with the rules of trade between nations at a global level.¹³ In 2016, Afghanistan completed the accession processes, bringing the WTO's total membership to 164 countries.¹⁴

The WTO is specifically intended to operate as a forum to reduce tariff and non-tariff barriers, enhance transparency, remove discriminatory practices, strengthen protection of IP, and establish a process to settle trade disputes through consultation and tariff remedies.

Currently, the United States has FTAs with 20 countries.¹⁵ 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.

Small businesses face a variety of trade barriers that limit their ability to compete in the export market, including higher tariffs, anti-competitive technical standards, and complex export controls that hamper international trade. Given the limited resources, it becomes tedious for small businesses to navigate the tariff and non-tariff barriers established from country to country in order to export goods and services. As a result, small businesses rely heavily on negotiated free trade agreements to lower tariffs, remove non-tariff barriers, and streamline the process of conducting international trade.

The most recent data from the Bureau of the Census identified nearly 295,000 small exporters in 2015, which accounts for nearly 98 percent of all exporters.¹⁶ The International Trade Commission (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.¹⁷ Despite the fact that the majority of United States exporters are small businesses, small firms only comprise of 33 percent of the United States economy's exporting value.¹⁸

III. Section 301 of the Trade Act of 1974 and Recent Actions

Sections 301 through 310 of the Trade Act of 1974, as amended, is one of the principal statutory means by which the United States enforces its rights under trade agreements and addresses "unfair" foreign barriers to American exports.¹⁹ Section 301 sets procedures and timetables for actions based on the type of trade barrier(s) addressed and the cases can be initiated either through a petition filed by an interested party with the USTR or self-initiated by the USTR.²⁰ At the onset of a Section 301 investigation, the USTR must seek a negotiated settlement with the foreign country concerned. For cases involving trade agreements, the USTR is required to utilize the formal dispute proceedings specified by the agreement.²¹

¹³ https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm.

¹⁴ WORLD TRADE ORGANIZATION, ANNUAL REPORT 2 (2017), available at https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep17_e.pdf.

¹⁵ 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>.

¹⁶ <https://www.commerce.gov/news/blog/2017/05/small-and-medium-sized-enterprises-reaching-new-markets>.

¹⁷ ITC, SMALL AND MEDIUM-SIZED ENTERPRISES: CHARACTERISTICS AND PERFORMANCE xi (2010), available at <http://www.usitc.gov/publications/332/pub4189.pdf>.

¹⁸ <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf>.

¹⁹ 19 U.S.C. §§ 2411.

²⁰ CONGRESSIONAL RESEARCH SERVICE, ENFORCING U.S. TRADE LAWS: SECTION 301 AND CHINA (2018), available at <http://www.crs.gov/reports/pdf/IF10708>.

²¹ *Id.*

On April 3, the USTR “released a list of proposed products that may be subjected to additional tariffs of 25 percent ad valorem, in accordance with President Trump’s March 22 Presidential Memorandum directing action pursuant to Section 301 of the Trade Act of 1974.”²² The White House’s March 22 Presidential Memorandum, it determined that China’s use of technology transfers, theft of intellectual property and ongoing predatory trade practices were unreasonable or discriminatory and a burden to U.S. commerce.²³

Ambassador Robert Lighthizer stated that USTR would be enforcing and defending U.S trade laws and that it would use all available tools to defend America’s national interests and national security– including Section 301 of the Trade Act of 1974.²⁴ Ambassador Lighthizer also said that the USTR is aggressively defending trade laws in litigation at the WTO.²⁵

USTR has provided a public comment period on the proposed product list.²⁶ Written comments are due May 11, 2018, and post-hearing rebuttal comments are due May 22, 2018.²⁷ USTR will also hold a public hearing with respect to the proposed product list on May 15, 2018.²⁸ The due date for filing a request to appear at the hearing and a summary of expected testimony is due April 23, 2018.²⁹

VI. Conclusion

Engagement in international trade is a cornerstone of a strong and expanding 21st century economy. The United States is currently taking comprehensive steps to increase small business exports. The most significant is the USTR’s efforts to enforce existing trade agreements. This hearing will examine how proposed changes to the tariff schedule and stronger enforcement strategies will impact small American manufacturers and service-oriented small businesses.

²² <https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=17179887630>.

²³ Presidential Memorandum on Actions by the United States Related to the Section 301 Investigation of China’s Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation, 52 Fed. Reg. 13099 (March 22, 2018).

²⁴ *U.S. Trade Policy Agenda: Hearing Before the H. Comm. on Ways and Means*, 115th Cong. (2017) (Statement of Hon. Robert E. Lighthizer, Ambassador, USTR), available at <https://waysandmeans.house.gov/wp-content/uploads/2018/03/Lighthizer-Ways-and-Means-Testimony-March-2018.pdf>.

²⁵ *Id.*

²⁶ <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/section-301-fact-sheet>

²⁷ Baker McKenzie, *US-Section 301 Update: USTR Releases Proposed List of Chinese Products Subject to Additional Tariffs*, LEXOLOGY (2018), available at <https://www.lexology.com/library/detail.aspx?g=e8105036-41a9-41a7-9c8f-8b88580ea005>

²⁸ *Id.*

²⁹ *Id.*