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US Trade Agenda – 2017

The Executive Director would like to call your attention to the U.S. trade agenda announced by President Trump during his State-of-the-Union speech before Congress. It provides some interesting insights as to what the priorities of his Administration will be and set the framework for international negotiations.

NATIONAL TRADE POLICY AGENDA FOR 2017

I. INTRODUCTION

Pursuant to 19 U.S.C. § 2213(a)(1)(B), we hereby submit the President's National Trade Policy Agenda for 2017. This submission is normally prepared under the direction of the United States Trade Representative ("USTR"). In fact, U.S. law provides that the USTR shall have "primary responsibility for developing" United States international trade policy. 19 U.S.C. § 2171(c)(1)(A). U.S. law also provides that the USTR shall "act as the principal spokesman of the President on international trade." 19 U.S.C. § 2171(c)(1)(E). Accordingly, we intend to submit a more detailed report on the President's Trade Policy Agenda after the Senate has confirmed a USTR, and that USTR has had a full opportunity to participate in developing such a report. In the meantime, and in order to comply with the statutory deadline of March 1, *see* 19 U.S.C. § 2213(a), we hereby submit this statement of the trade policy agenda for 2017.¹

II. THE TRADE POLICY OBJECTIVES AND PRIORITIES OF THE UNITED STATES FOR 2017, AND REASONS THEREFOR

A. Key Principles and Objectives of the Trump Administration's Trade Policy

In 2016, voters in both major parties rejected U.S. trade policy as formulated over the last generation, and called for a fundamental change in direction. The American people grew frustrated with our prior trade policy not because they have ceased to believe in free trade and open markets, but because they rejected the way in which the framework of rules governing international trade operates. President Trump has called for a new approach, and the Trump Administration will deliver on that promise.

¹ At this time, the Trump Administration is not proposing legislation with respect to the objectives or priorities outlined in this statement. *See* 19 U.S.C. § 2213(a)(3)(A)(iii).

The overarching purpose of our trade policy – the guiding principle behind all of our actions in this key area – will be to expand trade in a way that is freer and fairer for all Americans. Every action we take with respect to trade will be designed to increase our economic growth, promote job creation in the United States, promote reciprocity with our trading partners, strengthen our manufacturing base and our ability to defend ourselves, and expand our agricultural and other exports. As a general matter, we believe that these goals can be best accomplished by focusing on bilateral negotiations rather than multilateral negotiations – and by renegotiating and revising trade deals when our goals are not being met. Finally, we reject the notion that the United States can strengthen its geopolitical position by adopting trade measures that make American workers, farmers, ranchers, and businesses less competitive in global markets.

In addition to these basic principles, we will focus on the following key objectives:

- Ensuring that U.S. workers and businesses have a fair opportunity to compete for business – both in this market and in other key markets around the world.
- Breaking down unfair trade barriers in other markets that block U.S. exports, including exports of agricultural goods.
- Maintaining a balanced policy that looks out for the interests of all segments of the U.S. economy, including manufacturing, agriculture, and services.
- Ensuring that U.S. owners of intellectual property have a full and fair opportunity to use and profit from that property.
- Strictly enforcing U.S. trade laws to prevent the U.S. market from being distorted by dumped and/or subsidized imports that harm domestic industries and workers.
- Resisting efforts by other countries – or international bodies like the World Trade Organization (“WTO”) – to weaken the rights and benefits of, or increase the obligations under, the various trade agreements to which the United States is a party.
- Updating current trade agreements as necessary to reflect changing times and market conditions.

- Ensuring that the United States has the economic strength and manufacturing base necessary to maintain – and improve – our national security.
- Strongly advocating for all U.S. workers, farmers, ranchers, and businesses – to assure the fairest possible treatment of American interests in the U.S. market and in other markets around the world.

B. Top Priorities and Reasons Therefor

To achieve the objectives described above, the Trump Administration has identified four major priorities: (1) defend U.S. national sovereignty over trade policy; (2) strictly enforce U.S. trade laws; (3) use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services, and protect U.S. intellectual property rights; and (4) negotiate new and better trade deals with countries in key markets around the world. Each of these priorities – and the reasons they are so important – are discussed in greater detail below.

1. Defending Our National Sovereignty Over Trade Policy

In November 1994, Congress approved the Uruguay Round Agreements Act, thereby paving the way for the United States' entry into the WTO. The WTO Agreement contains provisions to ensure that, if a country lost a dispute at the WTO and failed to bring its measure into compliance with WTO rules, to provide compensation, or otherwise to reach a mutually satisfactory solution, the complaining countries would have the right to be automatically authorized to retaliate by imposing trade sanctions on the losing country.

The anchor for this new dispute settlement system was an agreement known as the Understanding on Rules and Procedures Governing the Settlement of Disputes, often called the Dispute Settlement Understanding (“DSU”). The core provision of the DSU was the express legal requirement that the WTO, through its findings and recommendations, could not “add to or diminish the rights or obligations” of the United States, or other countries. This requirement was so critical that it was included not once, but twice in the text of the DSU, once in Article 3 as a

specific direction to the WTO's Dispute Settlement Body in adopting its recommendations, and once in Article 19 as a specific direction to WTO panels and the Appellate Body in setting out their findings and recommendations to be adopted by the DSB. The Clinton Administration and Congress both made clear that this language was essential to winning American support for the DSU.

At the time, the American people were assured that, by the express terms of the DSU itself, this dispute settlement process would not alter the terms of what the United States had agreed to, and what Congress thereafter expressly approved when it passed the Uruguay Round Agreements Act. In other words, the United States entered into written agreements that contained rules on a range of matter such as trade-related intellectual property rights, import licensing, sanitary and phytosanitary standards, antidumping, technical standards, subsidies and countervailing duties, investment measures, and safeguards. The United States also entered into the DSU, which contained a clear and express legal limitation that the WTO could not add to U.S. obligations or diminish U.S. rights under those agreements. By insisting on and negotiating the express terms of these agreements, the United States established clear and firm parameters for the role of the WTO in regulating trade among sovereign nations.

Given this history, it is important to recall also that Congress had made clear that Americans are subject only to U.S. law – not to WTO decisions. The Uruguay Round Agreements Act states that, if a WTO dispute settlement report “is adverse to the United States, [the U.S. Trade Representative shall] consult with the appropriate congressional committees concerning whether to implement the report’s recommendation and, if so, the manner of such implementation and the period of time needed for such implementation,” confirming that these WTO reports are not binding or self-executing. 19 U.S.C. § 3533(f). The Uruguay Round

Agreements Act also specifically provides that “No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.” 19 U.S.C. § 3512(a)(1). In other words, even if a WTO dispute settlement panel – or the WTO Appellate Body – rules against the United States, such a ruling does not automatically lead to a change in U.S. law or practice. Ever since the United States won its independence, it has been a basic principle of our country that American citizens are subject only to laws and regulations made by the U.S. government – not rulings made by foreign governments or international bodies. This principle remains true today. Accordingly, the Trump Administration will aggressively defend American sovereignty over matters of trade policy.

2. Strictly Enforcing U.S. Trade Laws

For decades, Congress has maintained a series of laws designed to prevent the U.S. market from being distorted by unfair practices such as injuriously dumped or subsidized imports, or by harmful surges of imports. These laws have been a critical aspect of the bargain between the U.S. government and American workers, farmers, ranchers, and businesses that has long supported the free and fair trade system in this country. These laws and the practices that they address have also reflected the core principles and legal rights of the multilateral trading system since its founding in 1947 with the General Agreement on Tariffs and Trade (“GATT”). It is notable that Article VI of the GATT in the strongest language possible, states that injurious dumping “is to be condemned.” It is well past time that this and other textual foundations relating to remedies against unfair trade practices be recognized.

Consistent with the strong textual foundation in the GATT and WTO Agreement, Title VII of the Tariff Act of 1930 provides the United States with the authority to impose

antidumping (“AD”) and countervailing duties (“CVD”) on imports that are either “dumped” (sold at less than their fair value) or subsidized – if such imports cause or threaten material injury to a domestic industry. The AD/CVD laws are fully consistent with our WTO obligations – and, indeed, the WTO agreements specifically provide for such laws. For decades, domestic producers have had the right to file cases seeking AD and/or CVD relief. The U.S. Department of Commerce also has the right to self-initiate such cases if circumstances warrant.

Other long-standing laws address other situations in which government action may be appropriate. Under Section 201 of the Trade Act of 1974, the President may impose relief if increasing imports are a substantial cause of serious injury to a domestic industry. This “safeguard” provision, used most recently by President George W. Bush in response to a harmful surge of steel imports, can be a vital tool for industries needing temporary relief from imports to become more competitive. USTR has the authority to ask for a safeguard investigation in the appropriate circumstances.

Section 301 of the Trade Act of 1974 authorizes the USTR to take appropriate action in response to foreign actions that violate an international trade agreement or is unjustifiable, or unreasonable or discriminatory, and burdens or restricts United States commerce. Investigations leading to these important actions may be initiated pursuant to requests by private U.S. workers and businesses or a determination by the USTR. Properly used, section 301 can be a powerful lever to encourage foreign countries to adopt more market-friendly policies.

The Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, which was submitted by the Clinton Administration and approved by Congress, makes clear the central role that section 301 was intended to have following the implementation of the Uruguay Round Agreements in 1995: “The Administration expects that as a result of the

Uruguay Round agreements in general, and the Dispute Settlement Understanding in particular, section 301 will be even more effective than it has been in the past in addressing foreign unfair trade barriers.”

The Trump Administration believes that it is essential to both the United States and the world trading system that all U.S. trade laws be strictly and effectively enforced. We strongly support true market-based competition – and we welcome the partnership of any country that agrees with us. Unfortunately, however, large portions of the global economy do not reflect market forces. Important sectors of the global economy, and significant markets around the world, are distorted by foreign government subsidies, theft of intellectual property, currency manipulation, state-owned enterprises, and numerous other unfair practices.

The Trump Administration will not tolerate these unfair trade practices that harm American workers, farmers, ranchers, and businesses. These practices lower living standards for *all* Americans by distorting U.S. and global markets and preventing resources from being allocated in the most efficient manner. These practices distort *global* efficiencies by preventing developing or emerging economies from competing against larger non-market based rivals that drive them from markets before they can even get a foothold. And, when the WTO adopts interpretations of WTO agreements that effectively hamstring the ability of the United States and other WTO Members to respond effectively to these real-world unfair trade practices using remedies expressly allowed under WTO rules, those activist interpretations, untethered from economic realities, undermine confidence in the trading system. None of these outcomes is in the interest of the United States or a healthy global economy. Accordingly, the Trump Administration will act aggressively as needed to discourage this type of behavior – and encourage true market competition.

3. Using Leverage to Open Foreign Markets

The Trump Administration believes that U.S. workers, farmers, ranchers, and businesses should have a free and fair chance to compete around the world. Such access would obviously be good for the U.S. economy, as Americans would have larger and more competitive markets in which to sell their goods and services. Indeed, exports – including agricultural exports – are an important and essential aspect of the U.S. economy. Exports already support millions of high-paying jobs for American citizens, and we want to see them grow. At the same time, increased market access for American goods and services will also help the global economy, as everyone benefits from a system that rewards hard work and innovation.

Unfortunately, U.S. exports face significant barriers in many markets. The causes of market obstruction and closure are numerous. In some instances, foreign currencies have been manipulated in a manner that makes U.S. goods and services artificially expensive. In others, foreign producers benefit from subsidies that give them an unfair advantage over their U.S. competitors. In still others, foreign countries use technical barriers – such as unnecessary regulations on particular items – to limit competition. These are only a few examples of the tactics used to block or impede the competitiveness of U.S. exports.

For decades, the U.S. government has engaged in efforts to break down such barriers and open foreign markets to U.S. competition. The Trump Administration recognizes that such efforts are inherently difficult, as foreign governments often have strong political reasons to protect certain industries in their home markets. However, the *status quo* is unsustainable – for too long Americans have lost business to other countries, in part because our businesses and workers are not being given a fair opportunity to compete abroad.

There are at least two fundamental challenges that we must finally address. The first challenge is that the WTO rules, and those of some bilateral and plurilateral trade agreements, are often written with the implicit understanding that countries implementing those rules are based fundamentally on free-market principles. In a world in which there are several large countries that do not adhere to the free-market principles in the organization of their economic systems, the drafting, implementation, and application of trading rules must find ways to adjust.

The second challenge is that WTO rules, and those of bilateral and plurilateral trade agreements, are often written with the implicit understanding that countries implementing those rules have legal and regulatory systems that are fundamentally transparent. In practice, transparent systems are critical to the functioning of trade rules because transparency enables businesses and other governments to understand the rules of the road, and prepare effective diplomatic or legal challenges to those rules when they are not in conformity with international obligations. Once again, the world in which we find ourselves is one in which there are a number of major countries that do not fundamentally operate according to transparent legal and regulatory norms. These countries make it difficult for the global trading system to hold them accountable. The inability of the system to hold those countries accountable in turn leads to a loss of confidence in the system.

It is time for a more aggressive approach. The Trump Administration will use all possible leverage – including, if necessary, applying the principle of reciprocity to countries that refuse to open their markets – to encourage other countries to give U.S. producers fair access to their markets. The purpose of this effort is to ensure that more markets are truly open to American goods and services and to enhance, rather than restrict, global trade and competition.

Such a policy will help grow the global economy by breaking down long-standing trade barriers and promoting increased competition.

4. Negotiating New and Better Trade Deals

Since the late 1980's, the United States has entered into a wide variety of trade deals, including the North American Free Trade Agreement, the Uruguay Round Agreements that created the WTO, China's entry into the WTO, and a series of so-called "free trade agreements," including one with South Korea. Together, these and other agreements have created a framework for globalization that establishes the rules and conditions that govern U.S. trade and investment. For years, Americans have been promised that this system would lead to stronger economic growth and greater opportunities for U.S. workers and businesses. And, in fact, this system has generated substantial benefits to some American workers, farmers, ranchers, and businesses – particularly in the form of increased export opportunities.

Unfortunately, a review of what has happened since 2000 – the last full year before China joined the WTO – shows that the results of this system have not lived up to expectations.

Indeed, they portray a very different reality:

- In 2000, the U.S. trade deficit in manufactured goods was \$317 billion. Last year, it was \$648 billion – an increase of 100 percent.
- Our trade deficit in goods and services with China soared from \$81.9 billion in 2000 to almost \$334 billion in 2015 (the last year for which such data are available), an increase of more than 300 percent.
- Of course, a rising trade deficit may be consistent with a stronger economy. However, that has not been the experience of the typical American household. In 2000, U.S. real median household income (in 2015 dollars) was \$57,790. In 2015 (the most recent year for which data are available), it was \$56,516. In other words, despite the recovery since the financial crisis, median household income in the United States remains lower today than it was 16 years ago.
- In January 2000, there were 17,284,000 manufacturing jobs in the United States – a figure roughly in line with the total number of U.S. manufacturing jobs going back

several decades. In January 2017, there were only 12,341,000 manufacturing jobs in the United States – a loss of almost 5 million jobs.

- In the 16 years before China joined the WTO – from 1984 to 2000 – U.S. industrial production grew by almost 71 percent. In the period from 2000 to 2016, U.S. industrial production grew by less than 9 percent.
- In 2000, the United States accounted for 30.6 percent of world gross domestic product (“GDP”), while China accounted for 3.6 percent. Last year, the United States accounted for 24.7 percent of world GDP, while China accounted for 15.1 percent.
- These figures are even more dramatic if we measure GDP on a purchasing power parity (“PPP”) basis, which is designed to account for differing costs of living in different countries. Under this measure, the U.S. share of global GDP fell from 20.7 percent in 2000 to only 15.6 percent in 2016. Meanwhile, China’s share grew from 7.5 percent to 17.9 percent.

These are alarming results. They reflect numerous problems with U.S. policy other than trade – and the Trump Administration is committed to taking all possible steps to create a more vibrant, and more competitive, economy. We intend to work with the Congress to lower taxes, reduce regulations, increase funding for infrastructure, and take other steps to stimulate U.S. economic growth. At the same time, these figures indicate that while the current global trading system has been great for China, a giant economy that does not act on the basis of market principles, the United States (and many other countries) that practice market-based capitalism have struggled over the last 16 years.

There are significant reasons to be concerned with other major agreements as well. For years now, the United States has run massive trade deficits in goods with our trading partners in the North American Free Trade Agreement (“NAFTA”). In 2016, for example, our combined trade deficit in goods with Canada and Mexico was more than \$74 billion. As long ago as 2008, both Barack Obama and Hillary Clinton called for the United States to renegotiate NAFTA – and to withdraw from NAFTA if such renegotiations were unsuccessful.

Further, the largest trade deal implemented during the Obama Administration – our free trade agreement with South Korea – has coincided with a dramatic increase in our trade deficit with that country. From 2011 (the last full year before the U.S.-Korea FTA went into effect) to 2016, the total value of U.S. goods exported to South Korea fell by \$1.2 billion. Meanwhile, U.S. imports of goods from South Korea grew by more than \$13 billion. As a result, our trade deficit in goods with South Korea more than doubled. Needless to say, this is not the outcome the American people expected from that agreement.

Plainly, the time has come for a major review of how we approach trade agreements. For decades now, the United States has signed one major trade deal after another – and, as shown above, the results have often not lived up to expectations. The Trump Administration believes in free and fair trade, and we are looking forward to developing deeper trading relationships with international partners who share that belief. But, going forward, we will tend to focus on bilateral negotiations, we will hold our trading partners to much higher standards of fairness, and we will not hesitate to use all possible legal measures in response to trading partners that continue to engage in unfair activities.

III. NEXT STEPS

The Trump Administration has already begun making progress on the objectives and priorities described above.² By withdrawing from the Trans-Pacific Partnership (“TPP”), the President sent a clear signal that the United States would take a new approach to trade issues, and paved the way for potential bilateral talks with the former TPP countries. The President has begun his consultations with Congress on the ways in which future trade agreements can work

² According to 19 U.S.C. § 2213(a)(3)(A)(iv), the President should report on “the progress that was made *during the preceding year* in achieving” the trade policy objectives and priorities discussed above. Since the Trump Administration did not take office until January 20, 2017, our statement is limited to progress since that date.

for all Americans more effectively than they have in the past. The President has also put together a strong team of officials who are committed to defending America's national sovereignty, enforcing U.S. trade laws, and using American leverage to open markets for our goods and services. We expect significantly more activity on all of these fronts in the near future.

IV. CONCLUSION

For more than 20 years, the United States government has been committed to trade policies that emphasized multilateral agreements and international dispute settlement mechanisms. The hope was that by giving up some of our willingness to act independently, we could obtain better treatment for U.S. workers, farmers, ranchers, and businesses. Instead, we find that in too many instances, Americans have been put at an unfair disadvantage in global markets. Under these circumstances, it is time for a new trade policy that defends American sovereignty, enforces U.S. trade laws, uses American leverage to open markets abroad, and negotiates new trade agreements that are fairer and more effective both for the United States and for the world trading system, particularly those countries committed to a market-based economy. The Trump Administration is committed to this policy to increase the wages of American workers, give our farmers, ranchers, and agricultural businesses a better chance to grow their exports, strengthen American competitiveness in both goods and services, and provide all Americans with a better and fairer chance to improve their standard of living.