

21st Century Trade Agreement Principles

Trade agreements are business contracts between countries. They involve rights and obligations, concessions and benefits, performance and breach. The United States has stated that it will negotiate “21st Century Trade Agreements” which presumably will improve upon those of the 20th Century. New trade agreements must include the following principles to benefit America.

1. **Balanced Trade:** Trade agreements must contribute to a national goal of achieving a manageable balance of trade over time.

Comments: Sustained net exports are needed to offset the cumulative trade deficits of recent decades to ultimately achieve a long term, manageable trade balance. This is a results oriented, quantitative goal. Trade agreement negotiations focused upon procedural, tariff and subsidy concessions often ignore trade balance outcomes. Further, an “export only” goal ignores the net trade balance. The U.S. national interest lies in reducing and eliminating its currently massive trade deficit and resulting foreign indebtedness.

2. **National Trade, Economic and Security Strategy:** Trade agreements must strive to optimize value added supply chains within the U.S. - from raw material to finished product - pursuant to a national trade and economic strategy that creates jobs, wealth and sustained growth. The agreements must also ensure national security by recapturing production necessary to rebuild America’s defense industrial base.

Comments: The U.S. has tended to pursue trade liberalization as an end in itself. Instead, trade negotiations should be conducted to further a national trade, economic and security strategy. The U.S. has lacked a strategy to produce more of what the nation consumes, in both the civilian and defense markets. Conversely, our major trading rivals pursue strategies to ensure persistent trade surpluses and promote the offshoring of U.S. manufacturing. As a result, the U.S. is losing critical mass of production capacity and skilled workers. The term “optimize value added supply chains” is intended to establish that the full supply chain has more value than the sum of its parts in terms of increased production, employment, innovation and growth. Trade negotiations should further - and their success should be measured by achievement of - those goals not just for selected sub-parts but for the supply chain as a whole.

3. **Reciprocity:** Trade agreements must ensure that foreign country policies and practices as well as their tariff and non-tariff barriers provide fully reciprocal access for U.S. goods and services. The agreements must provide that no new barriers or subsidies outside the scope of the agreement nullify or impair the concessions bargained for.

Comments: Reciprocity is a fundamental tenet of trade law. This principle rejects the proposition that the U.S. should lead with trade barrier reductions, even without equivalent concessions from the other country, as a strategy to persuade other countries to eventually and voluntarily lower their barriers. The best approach is to extract those concessions during bargaining to ensure fully reciprocal access. Further,

past trade agreements have permitted the other country to erect substitute trade barriers, which are not explicitly covered by the terms of the agreement, that nullify the benefits of the concessions. Any new agreement must address the problem of substitute barriers or subsidies through explicit, enforceable language.

- 4. State Owned Commercial Enterprises:** Trade agreements must encourage the transformation of state owned and state controlled commercial enterprises (SOEs) to private sector enterprises. In the interim, trade agreements must ensure that SOEs do not distort the free and fair flow of trade - throughout supply chains - and investment between the countries.

Comments: The growth of state owned or state controlled commercial enterprises (collectively SOEs) in global commerce is a substantial and disruptive trade challenge. SOEs are inherently subsidized, ungoverned by and/or resistant to market forces. They crowd out private commerce and are often government policy tools. SOEs should not gain the benefits of new trade agreements or be allowed to disrupt commerce or investment in the private market. By their nature, SOEs disrupt downstream competition, which must be addressed. Trade agreement language should (1) deny new preferences to SOEs and (2) include provisions - whether duties, quotas or other means - that restrict the impact of SOE's commercial and investment activities.

- 5. Currency:** Trade agreements must classify prolonged currency undervaluation as a per se violation of the agreement without the need to show injury or intent.

Comments: Fair and market determined exchange rates are fundamental to realizing the benefits of a trade agreement. Persistent currency undervaluation nullifies and impairs concessions obtained through bargaining. General agreement exists that persistent currency undervaluation is a problem, but the approach has been to engage in multilateral, diplomatic negotiations separate from trade negotiations. The diplomatic approach has borne no fruit. This principle makes clear that currency valuation issues must be a part of a trade agreement, and not treated separately.

- 6. Rules of origin:** Trade agreements must include rules of origin to maximize benefits for U.S. based supply chains and minimize free ridership by third parties. Further, all products must be labeled or marked as to country(s) of origin as a condition of entry.

Comments: Rules of origin determine whether a product or its components "originate" within a contracting country(s) and thus qualifies for favorable tariff treatment. Without rules of origin, any product could be trans-shipped from third countries without restriction, causing a free ridership problems where third countries benefit without negotiation-extracted concessions. Stronger origin rules will tend to benefit supply chains within the U.S. while disincentivizing the utilization or trans-shipment of third country products. Rules may vary by product; however, the

preservation and/or expansion of the U.S. supply chain should be a substantial governing principle.

- 7. Enforcement:** Trade agreements must provide effective and timely enforcement mechanisms, including expedited adjudication and provisional remedies. Such provisional remedies must be permitted where the country deems that a clear breach has occurred which causes or threatens injury, and should be subject to review under the agreements' established dispute settlement mechanisms.

Comments: Effective enforcement is key to political support for trade agreements and the trading system itself. Current enforcement mechanisms are too expensive, time consuming and beyond the means of many affected industries to be effective. The problem is exacerbated by the lack of transparency of the details of other countries' compliance. Provisional remedies would permit a contracting country to take immediate action in applicable cases, while preserving the right of the other country to challenge the provisional action through ordinary dispute settlement mechanisms.

- 8. Border Adjustable Taxes:** Trade agreements must neutralize the subsidy and tariff impact of the border adjustment of foreign consumption taxes.

Comments: Foreign consumption (direct) taxes are charged to U.S. exports, and they are rebated when foreign companies export to the U.S. Because of our reliance upon income (indirect) taxes, the U.S. is unable to reciprocate. The result is that U.S. exports are double taxed and foreign imports to the U.S. are largely untaxed. This is a major cause of offshoring and our persistent trade imbalance. This principle must apply equally to negotiation, performance and enforcement of all trade agreements.

- 9. Perishable and Cyclical Products:** Trade agreements must include special safeguard mechanisms to address import surges in perishable and seasonal agricultural product markets, including livestock markets.

Comments: The WTO and past trade promotion authority statutes recognize that producers of perishable and seasonal agricultural products are particularly susceptible to trade surges arising from over-production, adverse weather or other causes. Short shelf life and/or short selling season characteristics result in producers unable to store the products until prices rise. Immediate and automatic relief based upon price and/or quantity measures are necessary to prevent irreparable industry harm in these sectors.

- 10. Food and Product Safety and Quality:** Trade agreements must ensure import compliance with existing U.S. food and product safety and quality standards and must not inhibit changes to or improvements in U.S. standards. The standards must be effectively enforced at U.S. ports.

Comments: Past negotiations have often treated health, quality and safety standards as trade barriers without sufficient regard for important public safety and quality goals. The result has sometimes been downward harmonization of safety and quality measures under a trade facilitation rationale. Enforcement as to imported products should effectively equal enforcement as to domestic products.

11. Domestic Procurement: Trade agreements must preserve the ability of federal, state and local governments to favor domestic producers in government, or government funded, procurement.

Comments: Domestic taxpayers, globally, expect their tax dollars to be spent on domestic production. Government procurement is, in large part, a policy tool rather than true free market commerce. The federal, state and local governments of the United States are, collectively, the biggest consumers in the world. True reciprocity cannot exist because there is a mismatch in the size of - and transparency of - government procurement markets.

12. Temporary vs. Permanent Agreements: Trade agreements must be sunsetted, subject to renegotiation and renewal. Renewal must not occur if the balance of benefits cannot be restored.

Comments: Trade negotiators agree to language based upon expectations and judgment in pursuit of national goals. However, goals may not be achieved or expectations may not be met. Just as business contracts do not last forever, neither should agreements between countries. Therefore, it is prudent to make such agreements time-limited to ensure that they continue to provide balanced benefits as circumstances change. If a balance does not materialize, the agreement should be renegotiated or discontinued.

13. Labor: Trade agreements must include enforceable labor provisions to ensure that lax labor standards and enforcement by contracting countries do not result in hidden subsidies to the detriment of U.S.-based workers and producers.

Comments: Fair labor standards will simultaneously improve U.S. competitiveness and increase worker prosperity in other countries, enabling them to become consumers of U.S. goods. In the 2002 Trade Promotion Authority (TPA) statute, Congress instructed trade negotiators to pursue goals including: “to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO...and an understanding of the relationship between trade and worker rights”. Congress further defined those core labor standards as: “(A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”