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**MEMO**

To: Patricia Campos & Anna Gomez
Obama USTR Transition Team
From: Auggie Tantillo
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Subject: AMTAC USTR Transition Recommendations

Thank you for this opportunity to provide input to the Obama Transition Team responsible for the United States Trade Representative's Office (USTR). Our submission is divided into two sections. The first section deals with structural issues within the USTR's office, while the second outlines critical policy issues from our perspective.

The American Manufacturing Trade Action Coalition (AMTAC) is a trade association founded by domestic manufacturers who are committed to maintaining production in the United States. Our objective is to seek the establishment of trade policy and other measures designed to stabilize the U.S. industrial base and thus preserve and create U.S. manufacturing jobs. AMTAC represents a wide range of industrial sectors including tool and die, chemical, furniture, mold makers, metal products, packaging products, corrugated containers, lumber producers, and textile and apparel producers.

## Section I – Agency Structure

### Enforcement

The office of the USTR suffers from a woeful lack of resources and policy focus committed to trade enforcement activities. The USTR has traditionally, and to an extreme degree over the past eight years, dedicated its resources to the negotiation of new agreements, while relegating enforcement to little more than an afterthought. There is no deputy-level position for enforcement; instead all enforcement activities are carried out by the Office of the General Counsel.

USTR's dominant emphasis on negotiating has created an agency mentality that condones ignoring controversial enforcement issues that might derail ongoing negotiations. Consequently, many in domestic industry question whether USTR can legitimately carry out both responsibilities. In fact, the negligence of the past Administration in this area was so severe that AMTAC called for the removal of enforcement activities from USTR in order to reassign this function to a completely separate agency, such as the Department of Justice.

This lopsided approach has led to a proliferation of Free Trade Agreements (FTAs) along with a sizable emphasis on the World Trade Organization (WTO) Doha Round, with little attention as to whether the rights of U.S. manufacturing and service providers are being violated in the international trading arena.

**Recommendation:** The USTR's office should undertake a major redistribution of resources to at least evenly divide internal resources between agreement negotiation and enforcement. The new US Trade Representative should be an individual with a significant enforcement background. A new position – Deputy US Trade Representative for Enforcement should be established to ensure that a coordinated and effective plan of enforcement is developed and carried through. Under this new Deputy, an office for industry relations should be established. This office would serve as a conduit for domestic industry and labor to submit complaints regarding unfair trading practices.

Adoption of these steps would signal to domestic industry and labor groups, as well as our international trading partners, that the United States is finally prepared to fully exercise it rights under our various international trade agreements.

**Textile Negotiator**

Throughout the history of the USTR's office, the individual assigned to negotiate textile agreements has traditionally been granted Ambassadorial rank. Ambassadorial status had been assigned to this position because of the global importance of the textile sector in terms of employment and development, along with the fact that it has played a critical role in our own national economy. In addition, textiles and apparel are generally the leading export of manufactured commodities for virtually all developing countries. As evidence, the United States imported over $96 billion worth of textiles and apparel in 2007 alone.

The Bush Administration broke a long-standing tradition by failing to submit their chief textile negotiator to the Senate for confirmation as an Ambassador. The downgrading of this position has had at least two adverse ramifications. First, it gave international trading partners the perception that textile and apparel issues were a low priority for the Bush Administration. Second, it created unnecessary protocol complications. Since textile trade issues are critical to numerous countries, these matters are often handled at a high level (in some cases at the Ministerial level) by many foreign governments. Textile related trade talks were often hampered by the question of whether the U.S. textile negotiator was of sufficient rank to meet with his or her counterpart.

**Recommendation:** Designate Ambassadorial status to the position of Chief Textile Negotiator under the Obama Administration, and submit that individual to the U.S. Senate for confirmation.

**Industry Trade Advisory Committee (ITAC)**

The U.S. government formally solicits private sector advice on trade policy issues through a system of industry specific advisory committees known as ITACs. Applications to serve on a specific ITAC are vetted by the USTR's office and Department of Commerce.

The ITAC system has been rendered dysfunctional by the sizeable and growing presence of committee members that have shifted the majority of their production offshore. Almost all ITACs are now dominated by mutli-national corporations that often promote the interest of their offshore production at the expense of any remaining U.S. production. In fact, it is apparent that numerous ITAC members no longer have any true U.S. production and instead are simply importers. As a result, ITACs often submit advice on policy issues that is contrary to the interest of U.S producers and workers.

**Recommendation:** The U.S. Trade Representative should support establishment of a domestic production litmus test for ITAC membership. As a general rule, the domestic producers ITAC should consist of companies that produce more in the United States than they import. Specifically, companies should produce in the United States at least 50 percent of what they sell to the U.S. market in order to maintain ITAC membership. Companies with less than 50 percent domestic production in relation to total U.S. sales should be assigned to an "Importers Trade Advisory Committee."

**Committee for the Implementation of Textile Agreements (CITA)**

CITA is an inter-agency committee responsible for the supervision and administration of all textile agreements and programs. CITA is chaired by the Department of Commerce with the USTR, State, Labor and Treasury Departments also serving as voting members of the committee. U.S. Customs & Border Protection (CBP) is an advisor to CITA but not a formal voting member.

When CITA was formed in the early 1970's, Customs was not originally named a member of the Committee since it was at that time a division of the Treasury Department. As a result, the Treasury representative on the Committee also spoke for Customs. Obviously, Customs is no longer housed at Treasury and is now a division of the Department of Homeland Security.

Customs is the government's resident expert on whether the specific terms of a trade agreement or preference arrangement are actually enforceable. As the sheer volume of textile imports have grown, along with the complexity of existing textile agreements and preference programs, the role of the U.S. Customs Service has significantly expanded. Yet, Customs has no formal voice in the formulation of textile trade policy and agreement implementation issues because they do not have membership on CITA.

**Recommendation:** The U.S. Trade Representative should support the addition of the U.S. CBP as a full voting member of CITA. If there is opposition to expanding Committee membership, CBP should be added as a replacement to the Treasury Department.

## Section II - Key Trade Policy Reforms

The United States is engulfed in its most severe economic and financial crisis since the Great Depression. A key lesson policymakers must learn from this disaster is that a country cannot borrow its way to sustained prosperity; economic stability and growth depend on wealth creation. The central wealth-creating segment of the U.S. economy is manufacturing.

Yet, the U.S. manufacturing base is hampered in its ability to respond to this crisis because it has experienced dramatic declines in nearly every economic indicator over the last 10 years, including the loss of 4.3 million jobs and a 75 percent decline in output growth. Furthermore, manufacturing output is down 5.5 percent for October 2008 compared to January 2008. We believe that the declines in manufacturing are directly tied to an outdated and flawed trade policy that has forced even highly competitive and efficient U.S. producers either offshore or out of business altogether. In addition, U.S. trade policies have created an environment where worker wages have been virtually stagnant since the late 1970s. These flawed policies are also endangering critical benefits such as retirement and health care for an entire generation of U.S. workers and their families. Without immediate fundamental change, America's standard of living is at risk.

With the right policy initiatives the manufacturing sector can function as an engine of growth to rebuild our economy and usher in more prosperous times. The starting point for such reform is the need to construct a fully reciprocal, fair and transparent trade policy. A rational trade policy will once again allow our manufacturing sector to serve as the stimulus to the U.S. economy that it has been historically, triggering new investment and encouraging research and innovation. A reinvigorated manufacturing sector will enable the U.S. economy to add critical middle class jobs, while also strengthening our national security. We have reached a tipping point where vital trade policy reforms are needed to ensure the viability of our distressed manufacturing sector, which is the essential element necessary to grow the economy out of recession.

**<u>Key Objective: Eliminate the U.S. Trade Deficit</u>**

The U.S. trade deficit is a major cause of today's financial crisis. Our chronic, massive trade deficit serves as a substantial drag on our gross domestic product while undermining critical middle-class jobs and fostering a debt-driven economy dangerously dependent upon foreign borrowing. Yet, a generation of policy makers in Washington has virtually ignored our skyrocketing trade deficit and the corrupting impact it has on our national economy.

As a result, consistent annual trade deficits of nearly three-quarters of a trillion dollars equate to a massive transfer of America's wealth. For this reason, many of our chief economic leaders and thinkers, from Warren Buffet to Martin Feldstein, have expressed the view that our trade deficit is unsustainable and must be reversed.

Contrary to popular belief, it should be noted that the largest contributor to the U.S. trade deficit actually is manufactured goods, not energy. Overall, we have accumulated a deficit of $4.6 trillion since 2001 with $3.4 trillion, or 74 percent, of that total in manufactured goods.[1] In 2007 alone, the United States ran an astounding $499 billion deficit in manufactured goods. There is no reason why a country with the resources and industrial capacity of the United States should be relegated to the sidelines by running huge deficits in nearly every major manufacturing sector including vehicles, electronics, textiles, computers, furniture, steel, and even "advanced technology products."

The anti-competitive policies crippling U.S. manufacturers in the U.S. market and diminishing our export opportunities abroad must be identified and reversed.

**Recommendation: As a first matter of business, President Obama should commit to erasing the U.S. trade deficit by the end of his first term.** To accomplish this goal, the Obama Administration should adopt a comprehensive national strategy that includes the following policy mandates:

**<u>Eliminating the Value Added Tax Disadvantage</u>**

Nearly every major U.S. trading partner (149 countries total) operates a value-added tax (VAT) or similar border-adjusted tax system. Of America's seventeen "free trade partners," only Bahrain and Oman do not have a VAT or equivalent border-adjusted tax system. Because these countries rebate the VAT paid by their producers on exports and impose a VAT on imports (the average rate worldwide is 15.5 percent), they simultaneously heavily subsidize exports and erect a

[1] 2001 through September 2008.

massive trade barrier to imports. On the other hand, the United States operates no VAT or similar border tax system. This places U.S. producers at a severe competitive disadvantage.

**Foreign value-added taxes rebated on exports and assessed on imports resulted in a $474 billion dollar "border tax" disadvantage to U.S. producers and service providers in 2007**. Normally, the GATT/WTO trading regime would ban rebates of national taxes on exported manufactured goods as an impermissible subsidy as it does with rebates of U.S. corporate income taxes upon export. Operating under a Marshall Plan mentality shortly after World War II, however, the United States agreed to a “loophole” that allowed the assessment of these border taxes and their rebates to be permissible within the GATT/WTO system.

AMTAC believes the VAT disadvantage is the greatest contributing factor to the $4.6 trillion in U.S. foreign trade deficits racked up since 2001.

In response to growing industry concerns that noted the blatant unfairness of the VAT loophole, Congress has repeatedly instructed the Executive Branch to negotiate a remedy to the VAT inequity through the GATT/WTO. For example, the Trade Act of 1974, the Trade Act of 1988, and the Trade Promotion Authority (TPA) passed in 2002 all directed the President to revise WTO rules relating to VAT systems as a principle negotiating objective. To date, the Executive Branch has ignored these directives. In addition to the TPA language, legislation titled the Border Tax Equity Act (HR 2600), which AMTAC strongly supports, was introduced in the 110th Congress to negate the VAT disadvantage to U.S. producers.

**Recommendation:** The Obama Administration need not wait for Congress to pass additional legislation as the intent in relation to the VAT disadvantage is clear at this point. USTR immediately should move to make the elimination of the VAT inequity a top priority and incorporate it into any Doha Round agreement that may be reached. USTR should also include a VAT remedy in negotiating any future bilateral free trade agreements and work to revise our existing agreements to eliminate the VAT disadvantage for U.S. producers and service providers.

## Reframing the Free Trade Agreement Model

**The U.S. trade deficit with our free trade partners totaled nearly $188 billion in 2007 alone with almost $88 billion, or 47 percent, of the total deficit attributable to manufactured products. In addition, over the lifetime or our existing FTAs, the United States has run a cumulative $1.75 trillion deficit with our free trade partners.** [2]

As a first step to remedying this problem, the United States must undertake an extensive and unbiased analysis of our current international trade agreements. The analysis should help determine how our various agreements are affecting key issues such as GDP growth, the trade deficit, worker wages and the impact on industries essential to our national defense production base.

It is critical that government policy makers fully understand which aspects of our current arrangements are benefiting the U.S. economy and which are detrimental. This will help to define a more pragmatic, economically sound trade agreement model, while at the same time

[2] Trade deficit figures calculated from U.S. International Trade Commission statistics for Domestic Exports FAS minus Imports for Consumption Value.

preventing the replication of provisions that have proven harmful to domestic companies, workers and the economy as a whole.

The current free trade agreement model adopted by the U.S. government is extensively flawed. For the most part, it simply benefits multi-national corporations who are anxious to shift production out of the Untied States to countries that maintain weak or non-existent labor, environmental and safety standards. These countries are quite capable of producing low-cost goods for duty free export to the United States but have virtually no ability to consume American-made finished products. Many agreements also include third-party loopholes that give further preferential access to the U.S. market for component parts made in countries like China. By providing free access to the U.S. market for producers from low labor cost regions or mercantilist economies, these agreements are fueling the record U.S. trade deficit and undermining our manufacturing base.

Believing that they are a continuation of the flawed existing model, AMTAC opposes the pending free trade agreements with Korea, Colombia, and Panama. In addition to market considerations, we oppose the Colombia agreement due to rampant suppression of basic labor rights in that country.

**Recommendation**: The Obama Administration should conduct an extensive trade agreement review to determine the basis for a new agreement model that produces sustainable economic benefit for U.S. workers and the overall economy. This new FTA model should enhance mutually beneficial trading partnerships with countries such as the United Kingdom, Germany, Italy, and Japan that not only can produce goods for export but can also purchase a significant amount of U.S. products in return.

## Restructuring the WTO Doha Round

The United States must demand full reciprocity from our trading partners as a basic tenet of any new WTO agreement. As it currently stands the average U.S. bound tariff for industrial products is 3 percent, while the average worldwide WTO bound tariff for these same products is 30 percent.[3] Moreover, in 2007, the average trade-weighted U.S. tariff was actually 1.3 percent. Clearly the United States should not make any additional tariff concessions until other WTO members come down to our level.

Furthermore, countries under the WTO system are allowed to self-designate their economic status and thereby shield themselves from significant obligations. For example, India and China claim to be "developing nations" for the purposes of the WTO and thus argue that they should not be required to make concessions similar to developed nations, like the United States. This flawed system allows export superpowers like China and India to masquerade as developing countries and reap the benefits of greater access to key international markets while continuing to protect their home markets.

As a result, if the Doha Round is concluded, there is little doubt that it will be detrimental for U.S. manufacturers and their workers. The latest negotiating text which nearly produced an agreement in June 2008 mandates a very specific and harmful outcome for U.S. industry through drastic, non-reciprocal tariff cuts and numerous provisions granting "special and differential" treatment for developing countries including China. In short, the United States will once again be

[3] Statement of Senator Charles Grassley at Senate Finance Hearing on WTO negotiations 10/27/2005

required to make massive market-opening concessions while the vast majority of our WTO trading partners will be allowed to maintain relatively insulated markets from our exports.

**Recommendation**: U.S. negotiators should be tasked with communicating that the United States will provide increased access to the U.S. market only on the condition that there is full reciprocity on the part of other WTO members. Furthermore, USTR should work to eliminate the ability of WTO countries to self-designate their development status. This practice undermines the integrity and functionality of the WTO by allowing countries such as China and India to claim special concessions as developing countries even though they dominate global markets in many key product sectors.

**Addressing Currency Manipulation**

The United States should combat the illegal, mercantilist practice of prolonged currency misalignment, beginning with the passage of legislation to make currency misalignment actionable under U.S. trade law. A few countries, most notably China, peg or purposely undervalue their currencies' value in relation to the U.S. dollar. For example, it is estimated that China's currency is pegged at least 15 to 40 percent below its actual value as compared to the U.S. dollar. Absent this peg, the massive $250+ billion U.S. trade deficit with China should trigger a natural free market reaction of raising the value of the Chinese yuan in relation to the U.S. dollar. Such a rise would increase the cost of U.S. imports from China and lower the cost of U.S. exports to China, thus partially correcting the trade imbalance.

China, however, steadfastly has refused to float its currency freely on the market, handicapping U.S. producers versus their Chinese competitors and preventing a much-needed solution to this unfair trade practice. AMTAC strongly supports anti-currency manipulation legislation such as H.R. 2942, the Ryan-Hunter Currency Reform for Fair Trade Act of 2007, and S. 796, the Bunning-Stabenow-Bayh Fair Currency Act of 2007, cosponsored by President-elect Obama. Both would discourage currency manipulation/misalignment by making it actionable under U.S. countervailing duty law.

**Recommendation**: The Obama Administration should support legislation that would make currency manipulation an actionable subsidy under U.S. countervailing duty law.

**Strengthen Buy American Provisions Including the Berry Amendment**

All government national security agencies should have reasonable buy-American purchase requirements to ensure that the United States is never dependent on foreign producers for materials vital to our national defense.

Domestic procurement mandates, however, are prohibited under the WTO Agreement on Government Procurement (GPA) unless specifically exempted for national security purposes. For example, the United States and other WTO members are allowed an exemption under the GPA for agencies critical to national security. This exemption makes U.S. Defense Department buy-American provisions, such as the Berry Amendment, allowable under the WTO GPA. While it is well within the U.S. government's rights to exempt the Department of Homeland Security (DHS) as a whole from the GPA, to date, the United States has chosen to only exempt the Coast Guard and Transportation Security Administration (TSA) within DHS.

**Recommendation:** USTR should notify the WTO that it is exempting the entire Department of Homeland Security from the GPA so that reasonable buy-American procurement provisions can apply to other agencies including Customs and Border Protection, Secret Service, and FEMA.

**Support Customs First Sale Rule Change**

In early 2008, the U.S. Bureau of Customs and Border Protection (CBP) gave notice of its plans to change the way it appraises imported merchandise per the conclusions of the WTO Technical Committee on Customs Valuation.

Specifically, Customs is proposing a new interpretation of the phrase "sold for exportation to the United States." When there is a series of sales that take place prior to importation, Customs has allowed importers to claim the "first sale" as the basis for the price. By claiming first sale, importers can then present a lower value for the product and thus reduce the basis for any applicable tariffs to be collected. Under the proposed change, the "last sale" would form the basis for appraisal of the product, thus raising the basis for assessing duty. According to the WTO, virtually all countries use a "last sale" system, except for the United States.

There are several practical benefits that would be garnered from this change. A "last sale" arrangement would more accurately define the value of imported merchandize by assessing tariffs on the actual cost of the product as it enters the United States. By eliminating the "first sale" valuation system, a significant loophole, exploited by importers in an effort to avoid appropriate duty assessments, would be closed.

In addition, the "last sale" to the U.S. importer is much easier to verify as it involves a U.S. company and not overseas transactions involving foreign intermediaries. This change would streamline Customs procedures and substantially improve enforcement. Finally, adopting a last sale valuation arrangement would result in greater revenue collections for the U.S. Treasury.

Under pressure from importing interests, the 2008 Farm Bill included a sense of Congress provision recommending that the Customs valuation change be postponed until 2011. As a result, Customs has not moved on this issue.

**Recommendation:** The Obama Administration should immediately adopt a last sale Customs valuation policy for imports.

**In conclusion,** all of the structural and policy proposals listed in our submission are reasonable and pragmatic. They are simply designed to help establish a fair international trading environment for U.S. producers, with a proper and effective focus on enforcement. The creation of such an environment is absolutely critical to the revitalization of our nation's manufacturing base.

Despite the hardships it has faced, the health of U.S. manufacturing can be restored if the United States fixes its broken trade policy. Only the strongest and most efficient U.S. manufacturers have been able to survive in the hostile competitive atmosphere of the last several years. These companies will be well placed to ramp up new investment, reclaim lost market share, and add employment if the U.S. government removes trade policy obstacles impeding their success.