

USTR Emphasizes Market Access and Enforcement in Delivering President Obama's 2014 Trade Policy Agenda

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On March 4, United States Trade Representative (USTR) Michael Froman delivered President Obama's 2014 Trade Policy Agenda (the Agenda) to Congress. The Agenda, which must be delivered annually pursuant to the Trade Act of 1974, outlines the Obama Administration's trade policy priorities under five categories, which are discussed below: (1) enforce U.S. trade rights around the world; (2) expand job-supporting U.S. trade; (3) enhance trade and investment relationships with partners worldwide; (4) fight poverty and foster global economic growth through trade and development; and (5) inform the public and develop balanced trade policy from diverse perspectives. According to the Agenda, these trade policy objectives aim to "strategically position American businesses, workers, and consumers at the center of a 21st century global trading system that reflects U.S. values and goals."

Enforce U.S. Trade Rights around the World

The Agenda emphasizes the use of World Trade Organization (WTO) dispute settlement and other means to enforce U.S. rights under trade agreements. According to the Agenda, "holding China accountable to its WTO obligations" will be a top priority in 2014. This includes continued efforts by the Interagency Trade Enforcement Center, created in 2012 to "push further and dig deeper into the complex web of industrial policies and bureaucratic systems of key trading partners like China."

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Practice Areas

International Trade
Trade Policy and Trade Negotiations
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With regard to WTO dispute settlement activities, the Agenda highlights the successful 2013 WTO challenge of China's application of antidumping and countervailing duties to U.S. chicken broiler products, as well as the ongoing dispute regarding China's export restraints on rare earths, tungsten, and molybdenum. In 2014, the Administration intends to continue its WTO challenge of China's imposition of antidumping and countervailing duties on U.S. automobile exports, even though China withdrew these duties soon after the WTO case was initiated. According to the Agenda, the Administration will not only continue to challenge the illegal application of foreign trade remedy laws to U.S. exports, but will also "defend vigorously" the utilization of U.S. trade remedy laws at home.

Expand Job-Supporting U.S. Trade

The Agenda further emphasizes completing or advancing trade negotiations under regional, plurilateral, and multilateral frameworks as a means of expanding market access for U.S. exports. Specifically, the Obama Administration in 2014 will work towards completing the Trans-Pacific Partnership (TPP) agreement, which the Agenda describes as "a next-generation, high-standard trade agreement in the world's fastest growing region." The TPP negotiations currently involve 12 countries representing nearly 40% of global gross domestic product. With regard to trans-Atlantic trade, the Administration will continue to negotiate with the European Union for the Trans-Atlantic Trade and Investment Partnership (T-TIP), building on three rounds of negotiations since the T-TIP's launch in June 2013.

The Agenda further emphasizes continued U.S. participation in two important plurilateral initiatives: the Trade in Services Agreements (TiSA) and the WTO Information Technology Agreement (ITA). In the TiSA negotiations, launched in 2013, the Administration aims to ensure national treatment for U.S. services exports, improve transparency and predictability, and address issues related to the provision of services through electronic channels. With regard to the ITA, the Administration will work to expand the list of information technology products currently covered by the agreement, which entered into force in 1997, in order to keep pace with technological advancements. These agreements have been stalled since late 2013 as a result of China's refusal to agree to a meaningful expansion of product coverage.

In the multilateral sphere, the Administration hopes to build on the momentum of the Trade Facilitation Agreement completed at the Ninth WTO Ministerial Conference in Bali, Indonesia, in December 2013. In addition to implementing the Trade Facilitation Agreement, the Administration will seek opportunities to advance negotiations of new agreements, such as the elimination of tariffs on environmental goods, an objective originally announced in January 2014. According to the Agenda, the United States, with a trade weighted applied tariff of only 1.3%, stands to benefit from such agreements with countries that apply relatively high tariff and non-tariff barriers.

In addition to advancing trade negotiations, the Agenda emphasizes the expansion of global market access for U.S. intellectual property (IP), U.S. manufactured goods, and U.S. agricultural products. According to the Agenda, the Administration's IP efforts will include not only taking action against pirating and counterfeiting, but will also include implementing the Administration's Strategy on Mitigating the Theft of U.S. Trade Secrets. With regard to manufactured goods, the Agenda recognizes that manufactured goods accounted for the

majority of U.S. exports in 2012 and notes the importance of leveling the playing field between state-owned enterprises (SOEs) and private firms in international competition. For agricultural goods, the Agenda emphasizes the application of only science-based sanitary and phytosanitary (SPS) standards to U.S. agricultural products and commits to working with U.S. trade partners to address SPS issues in regional and plurilateral negotiations.

Finally, the Administration intends to address non-tariff barriers (NTBs) and ensure that trade agreements reflect U.S. values. Among the most important NTBs, according to the Agenda, are localization barriers to trade and the increasing participation of SOEs in international competition. Finally, the Agenda emphasizes the use of trade agreements to ensure that U.S. trading partners live up to commitments on labor rights and environmental standards and supports regulatory flexibility to ensure access to medicines for the world's poor in developing countries.

Enhance Trade and Investment Relationships with Partners Worldwide

The Agenda specifies trade policy goals related to the U.S. trade relationships with China, Russia, India, the Americas, Africa and the Middle East, and other regional engagement.

- **China:** The Administration will continue U.S.-China negotiations towards a bilateral investment treaty (BIT) using a negative list approach, including national treatment at the pre-establishment phase. In addition, the Administration will seek progress on China's accession to the WTO Government Procurement Agreement (GPA), focusing on the GPA's applicability to SOEs and sub-central levels of Chinese government. Finally, the Administration will seek improvements to China's protection of intellectual property and implementation of China's previous trade commitments.
- **Russia:** The Administration will continue bilateral dialogue and monitor Russia's implementation of its WTO commitments to ensure that U.S. exports are treated consistently with those commitments.
- **India:** The Administration will continue to seek negotiations for a U.S.-India BIT and will continue bilateral negotiations under the U.S.-India Trade Policy Forum to address issues such as intellectual property protection and trade-restrictive localization barriers.
- **The Americas:** The Administration will build upon existing agreements to deepen trade ties with trading partners in the Americas. With regard to Canada, the Administration will develop a strategy to address North American lumber trade in advance of the expiration of the U.S.-Canada Softwood Lumber Agreement in 2015. The Administration will also work with Brazil to negotiate a solution to the U.S.-Brazil WTO dispute regarding cotton subsidies.
- **Africa and the Middle East:** The Administration will undertake a comprehensive review and reform of the African Growth and Opportunity Act (AGOA) program, which is set to expire in 2015, and will continue to advance President Obama's Trade Africa Initiative through various efforts with the East African Community. The Administration will also seek to complete a trade and investment framework with the West African Economic Community. In the Middle East and North Africa, the Administration will continue to develop President Obama's Middle East and North Africa Trade and Investment Partnership, with a particular focus on trade facilitation, foreign investment, and information and

communication technology services.

- **Regional Engagement:** In 2014, the Administration will participate actively in the Asia-Pacific Economic Cooperation (APEC) forum in pursuit of meaningful trade and investment outcomes in areas such supply chain performance, good regulatory practices, global value chains, intellectual property, environmental goods and services, and innovation. The Administration will also pursue final agreements with the Association of Southeast Asian Nations (ASEAN), improved worker rights under the U.S.-Burma Trade and Investment Framework Agreement, and continued market reforms under the Trade and Investment Framework Agreement with the Central Asian countries.

Fight Poverty and Foster Global Economic Growth through Trade and Development

The Agenda emphasizes the Administration's efforts to use trade to develop economic capacity in poor and developing countries. Specific goals in this regard include using President Obama's Power Africa initiative to help African countries turn resource endowments into global competitiveness; working with Congress to renew authorization of the Generalized System of Preferences program; conducting a comprehensive review and reform of the African Growth and Opportunity Act; monitoring implementation of preferential WTO commitments relating to least developed countries; and working through the APEC Women and the Economy initiative and other international fora to improve women's ability to benefit from trade.

Inform the Public and Develop Balanced Trade Policy from Diverse Perspectives

According to the Agenda, the Administration will continue to consult with Congress, solicit input from congressionally established international trade advisory committees, and seek public comment through Federal Register notices with regard to ongoing negotiations for trade agreements such as the TPP. In addition, the Administration seeks to broaden such outreach in 2014. In February, for example, the Administration announced the creation of a new Public Interest Trade Advisory Committee. Finally, the Administration seeks to strengthen relationships with state and local stakeholders with regard to participation in trade policy formulation.

The full text of President Obama's 2014 Trade Policy Agenda is available at <http://www.ustr.gov/about-us/press-office/reports-and-publications/2014-0>.

Wiley Rein's International Trade Practice is monitoring developments in U.S. trade policy and trade negotiations and is actively advising clients in this regard.