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VIA WWW.REGULATIONS.GOV

Yvonne Jamison
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Comments on the Proposed Transatlantic Trade and Investment Partnership Agreement

Dear Ms. Jamison:

These comments are submitted on behalf of the 36 member companies of the Steel Manufacturers Association ("SMA"), which operate 130 steel plants and employ approximately 60,000 people in North America. They are in response to the request from the Office of the United States Trade Representative ("USTR") for comments on the proposed Transatlantic Trade and Investment Partnership ("TTIP") agreement negotiations with the European Union ("EU").[a]

I. Introduction

SMA recognizes that the EU member countries constitute a large, important economy and U.S. trading partner, and that strengthening the U.S.-EU trade relationship through the proposed TTIP agreement could help to establish stronger global international trading rules and provide significant benefits for U.S. manufacturers and exporters. SMA urges USTR to negotiate the agreement in such a manner as to ensure that the United States will realize those benefits. In particular, SMA emphasizes the importance of the negotiating objectives outlined below.

II. Specific Negotiating Priorities for the TTIP Agreement

A. Disciplines on State-Owned Enterprises

As the United States-European Union High Level Working Group on Jobs and Growth ("HLWG") recognized, recent years have seen the introduction of "new forms of anticompetitive policy and behavior" in the global trading landscape, including in the form of "subsidies and other privileges granted to state-owned enterprises" ("SOEs").[b] The U.S.-EU HLWG thus

[a] *See Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement*, 78 Fed. Reg. 19,566 (USTR Apr. 1, 2013).

[b] *Final Report of the High Level Working Group on Jobs and Growth* (Feb. 11, 2013) at 5-6, available at http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg.

recommended that the TTIP seek to reach agreement on rules, principles or modes of cooperation with regard to SOEs and other enterprises that benefit from special government-granted rights.[c] USTR's letter notifying the Speaker of the U.S. House of Representatives of the intent to enter into the TTIP negotiations also noted that an objective of the negotiations is "to establish appropriate, globally relevant disciplines on state trading enterprises, state-owned enterprises, and designated monopolies, such as disciplines that promote transparency and reduce trade distortions." SMA fully supports this TTIP negotiating objective.

SOEs and state-supported enterprises ("SSEs") often receive subsidies from their governments, including cash grants, below-market financing and other support, even in the worst economic conditions. Subsidized and otherwise advantaged by their home governments, SOEs and SSEs may not operate on market principles and therefore could introduce anti-competitive behavior and other market distortions. As a result, SMA believes that the TTIP should include strong and enforceable disciplines on SOEs/SSEs. In particular, the agreement should include a requirement that SOEs/SSEs operate and make investments solely in accordance with commercial considerations, rather than to advance government objectives, as well as a provision to ensure that SOEs/SSEs do not receive subsidies and/or other benefits from their governments that unfairly advantage them in competition with U.S. industries. The enforceability of such provisions should be guaranteed through available dispute settlement procedures.

Especially given the precedent it could set for international trade agreements, strong and enforceable SOE disciplines in the TTIP are essential. Unless this issue is effectively addressed, any TTIP agreement could put U.S. companies at a significant and unfair disadvantage vis-a-vis state-owned competitors.

B. Government Procurement

The U.S.-EU HLWG Final Report, as well as the EU's draft mandate authorizing the opening of negotiations on the TTIP,[d] indicate that the agreement will attempt to expand access to government procurement opportunities on the basis of national treatment. While SMA is generally in favor of expanded access to procurement markets, both the United States and the EU are members of the WTO Agreement on Government Procurement ("GPA"), and SMA submits that the GPA, rather than the TTIP, is the proper forum in which to address any changes to international trade rules related to public procurement. In particular, the TTIP should in no way jeopardize the ability of the United States to maintain certain long-standing "Buy American" requirements[e] in its public procurement.

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[c] *Id.*

[d] *Recommendation for a Council Decision Authorising the Opening of Negotiations on a Comprehensive Trade and Investment Agreement, Called the Transatlantic Trade and Investment Partnership, Between the European Union and the United States of America* (Mar. 12, 2013), available from www.insidetrade.com.

[e] These "Buy American" requirements include Buy America requirements attached to grants made to the states by the Federal Highway Administration ("FHWA") and the Federal Transit Administration ("FTA") for federal highway and transit related projects, the Buy American Act of 1933, which creates a preference for "domestic end products" over foreign products in most federal government procurement and in construction contracts awarded by the federal government, and the Buy American provision contained in section 1605 of the American Recovery and Reinvestment Act ("Recovery Act").

Existing Buy American policies provide critical incentives for companies to invest in American manufacturing, maximizing American jobs in the iron and steel industries, as well as throughout the entire steelmaking supply chain. Strong and effective Buy America policies are especially important at a time when our country faces severe economic challenges, including staggering unemployment.

The Buy American provisions are fully consistent with U.S. obligations under international law. The United States has exempted a number of procurement categories from its GPA commitments at the federal level, including mass transit and highway projects (*i.e.*, federal grants from the Federal Highway Administration and the Federal Transit Administration to the states). These reservations should not be subject to negotiation under the TTIP.

C. Currency Manipulation

Many governments intentionally undervalue their currency, to the detriment of U.S. exports and jobs. Currency manipulation has resulted in the loss of thousands, perhaps millions, of U.S. jobs by making imports of certain goods into the United States artificially cheap and giving foreign-manufactured products an unfair advantage over U.S. products in export markets. Because of the precedent the TTIP agreement will likely set for free trade agreements worldwide, USTR should use the TTIP as a forum to address governmental intervention in currency valuation, and include strong disciplines against such trade-distorting practices in the TTIP.

D. Value-Added Taxes

The EU relies principally on a value-added tax ("VAT") system, as opposed to the U.S. income tax system. The VAT – a general, broadly based consumption tax assessed on the value added to goods and services – applies to most goods and services that are bought and sold for use or consumption within the EU. Exporters of goods and services from the EU receive a rebate of the VAT and thus effectively pay no VAT on their exports.[f] U.S. exports to the EU, however, are subject to the European VAT upon their entry into the EU, and U.S. exporters receive no corresponding rebate of the income tax paid in the United States – *i.e.*, U.S. exporters essentially are taxed twice on the same goods.

The VAT system thus hinders U.S. exports to the EU, while providing incentives for EU countries to export to the United States. EU Members have consistently raised their VAT rates in recent years to advantage their exporters; for example, France recently announced that it will raise its VAT rate to 20 percent in January 2014.[g] While VAT systems like those employed in the EU are currently permitted under WTO rules, USTR should pursue this important issue in the TTIP negotiations in order to remove this trade distortion and level the playing field between U.S. and EU exporters.

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[f] *See* European Commission, Taxation and Customs Union, *General Overview*, available at http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/ ("For the purpose of exports between the {EU} and non-member countries, no VAT is charged on the transaction and the VAT already paid on the inputs of the good for export is deducted - this is an exemption with the right to deduct the input VAT… There is thus no residual VAT contained in the export price. However, as far as imports are concerned, VAT must be paid at the moment the goods are imported so they are immediately placed on the same footing as equivalent goods produced in the {EU}").

[g] *See France to raise VAT to fund company tax breaks*, BBC News (Nov. 6, 2012).

III. Additional Negotiating Priorities for the TTIP Agreement

SMA also urges USTR to maintain its focus and emphasis in the TTIP negotiations on these additional key objectives:

- eliminating tariffs and non-tariff barriers to trade, including certain restrictive certification requirements imposed by the EU on imports of steel products;
- maintaining the strength and effectiveness of U.S. trade remedy laws;
- ensuring firm and effective rules of origin; and
- ensuring that labor and environmental negotiations do not result in unfair disadvantages for U.S. manufacturers.

IV. Conclusion

The proposed TTIP agreement could help to establish stronger global international trading rules and promote U.S. competitiveness, jobs, and exports. SMA appreciates this opportunity to provide comments on U.S. interests and priorities with regard to the TTIP agreement negotiations, and urges USTR to pursue the aforementioned objectives in negotiating the proposed agreement, for the reasons discussed above.

Sincerely,

Thomas A. Danjczek
President
Steel Manufacturers Association