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# TRADE AND JOBS: POLICY AND POLITICAL ISSUES

*By: Richard O. Cunningham\**

## I. INTRODUCTION

Our discussion on jobs and trade comes at an interesting and important juncture. The March 2012 release of jobs data showed that for the third month, the U.S. has added more than 200,000 jobs, yet the March unemployment rate remained at 8.3%.<sup>1</sup> Consumer sentiment – however meaningful that may be – is also up, as is consumer borrowing, which is more significant.<sup>2</sup> In January, the U.S. trade deficit surged to a three-year high.<sup>3</sup> While the market indicators of recovery are positive for now, prospects for bringing manufacturing jobs back to the United States, and even for maintaining such jobs at current levels, present a more somber picture.

I want to begin today by talking a bit about the general direction of U.S. trade policy under the Obama Administration, focusing in particular on the goals of increasing exports and manufacturing jobs. I will analyze the TPP –the Trans-Pacific Part – the trade

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1. News Release, Bureau of Labor Statistics, Employment Situation (April 6, 2012), *available at* [http://www.bls.gov/news.release/archives/empisit\\_03092012.htm](http://www.bls.gov/news.release/archives/empisit_03092012.htm) (stating that employment rose by 227,000 jobs in February and that unemployment in February remained at 8.3%).
2. *See generally* Meera Louis, *Consumer Credit in U.S. Increases by Most in 10 Years*, BLOOMBERG (May 7, 2012, 3:32PM), <http://www.bloomberg.com/news/2012-05-07/consumer-credit-in-u-s-rose-in-march-by-most-in-over-10-years.html> (explaining the reasons for which consumer borrowing and confidence are up); *see also* FED. RESERVE, FEDERAL RESERVE STATISTICAL RELEASE: CONSUMER CREDIT MARCH 2012 (2012) (stating that consumer credit increased during the first quarter of 2012), *available at* <http://www.federalreserve.gov/releases/g19/20120507/g19.pdf>.
3. *U.S. Trade Deficit Surged to 3-Year High in January*, N.Y. TIMES, Mar. 10, 2012, at B6; *see generally* U.S. DEP'T OF COMMERCE, U.S. INTERNATIONAL TRADE IN GOODS AND SERVICES JANUARY 2012 (2012), *available at* <http://www.esa.doc.gov/sites/default/files/ei/documents/2012/March/usinternationaltradeingoodsandservices28january201229.pdf> (stating that the goods and services deficit increased by five billion dollars from January 2011 to January 2012).

negotiation that has largely taken the place of the Doha discussions and that is now portrayed as the main hope for trade liberalization on an international level, though it is only plurilateral, not multilateral. I will talk about the challenges the TPP faces and why it may therefore not be the transformative agreement for U.S. jobs to which the Obama Administration aspires. Finally, I will try to assess what all of this – the U.S.’s trade policy on a domestic and international level – means for U.S. jobs and businesses.

## II. U.S. TRADE POLICY

U.S. trade policy, I am sorry to say, has not, under the current Administration, been the highest priority nor the subject of extensive thinking until recently. The Obama Administration

had not (and some may say it still has not) set a clear national strategy in what it wants to achieve, in terms of taking a disciplined and dedicated approach to identifying what sectors have strategic importance for America in the long term, or how trade policy interplays with business growth and the creation or maintenance of U.S. jobs. The preoccupation with other issues, together with the current U.S. political gridlock, has prevented meaningful addressing of the hard steps the country will need to take in order to reach long run goals. Therefore, until quite recently, trade policy has evolved haphazardly from a combination of focuses on retaining manufacturing jobs, increasing exports, dealing with China on currency and other issues, etc. Part of this lack of priority for trade policy had to do with the country’s emergence from a focus on terrorism, followed by the 2008 recession and a need to take a series of drastic short-term measures to cushion the economic impact.

In simplified terms, the gist of the Administration’s trade policy is this: (1) to meet the President’s National Export Initiative goal of doubling U.S. exports by 2015, particularly by bringing manufacturing back to the U.S.; (2) to jumpstart and encourage exports by using government institutions such as the Export-Import Bank; and (3) to negotiate the TPP to assure U.S. economic presence in the Pacific, achieve some of the concessions and protections that were to be addressed in the Doha Round, and reduce or eliminate barriers existing abroad in customs, regulatory measures, intellectual property (hereinafter “IP”) protection, and other behind-the-border impediments.<sup>4</sup> There are other ambitions of the Obama

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4. *See generally* NAT’L EXP. INITIATIVE, REPORT TO THE PRESIDENT ON THE NATIONAL EXPORT INITIATIVE: THE EXPORT PROMOTION CABINET’S PLAN FOR DOUBLING U.S. EXPORTS IN FIVE YEARS (2010), *available at* [http://www.whitehouse.gov/sites/default/files/nei\\_report\\_9-1610\\_full.pdf](http://www.whitehouse.gov/sites/default/files/nei_report_9-1610_full.pdf) (stating the key factors the U.S. federal government should take in identifying and prioritizing markets in efforts to increase U.S. exports).

Administration – such as revamping the corporate tax law to enhance U.S. competitiveness and keep from losing investment to other countries, and using World Trade Organization (hereinafter “WTO”) litigation to make its major trading partners, especially China, comply with trade obligations. However, for purposes of this presentation, I will focus on three aspects of the current U.S. trade policy.

First, on the national level, the Administration’s National Export Initiative has as its goal the doubling of exports by 2015.<sup>5</sup> This is a program based on the view that, with greater exports, jobs will increase. It may be observed that this strategy relies on a somewhat tenuous connection between export growth and job creation, since U.S. productivity has increased despite the 2008 recession,<sup>6</sup> with the consequence that greater exports, even if they increase U.S. manufacturing activity do not necessarily mean a proportional increase in jobs. However, the focus on exports is probably reasonable, given that it is an area with much potential for growth, especially in light of the fact that U.S. exports as a percentage of GDP were only 11% in 2009.<sup>7</sup> Contrast that with China where exports were 25% of GDP, Canada where exports were 27% of GDP, and Germany where exports were a whopping 41% of GDP.<sup>8</sup> Moreover, given that only 1% of our small and medium-sized businesses are currently exporting, and that half of that 1% export only to one market, typically Mexico or Canada,<sup>9</sup> there is potential for substantial export growth.

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5. *Id.* at 7.

6. See ADAM S. HERSH & CHRISTIAN E. WELLER, CTR. FOR AM. PROGRESS, THE STATE OF AMERICAN PRODUCTIVITY GROWTH QUARTERLY U.S. PRODUCTIVITY AND INNOVATION SNAPSHOT 2 (2011), available at [http://www.americanprogress.org/wpcontent/uploads/issues/2011/08/pdf/productivity\\_snapshot.pdf](http://www.americanprogress.org/wpcontent/uploads/issues/2011/08/pdf/productivity_snapshot.pdf) (stating that U.S. productivity has increased by 6.5 % since the start of the Great Recession in December 2007).

7. *Bureaucratic Obstacles for Small Exporters: Is Our National Export Strategy Working?*, Hearing Before the H. Comm. on Small Bus., 112th Cong. 2 (2011) (statement of Suresh Kumar, Assistant Sec’y and Dir. Gen. of Int’l Trade Admin., Dep’t of Commerce) (emphasizing the Obama Administration’s commitment to helping small exporters as part of the overarching goal of increasing the placement of American products in the global marketplace).

8. *Cf. Exports of Goods and Services (% of GDP)*, THE WORLD BANK, <http://data.worldbank.org/indicator/NE.EXP.GNFS.ZS> (last visited Oct. 7, 2012) (comparing the percentage that exports contributed to the GDPs for China, Canada, and Germany and listing China’s export to GDP percentage for 2009 to be 25%, Canada’s export to GDP percentage to be 27% in 2009, and Germany’s export to GDP percentage to be 42% in 2009).

9. See Memorandum from Sam Graves, Chairman to Members, Committee on Small Business 2 (July 27, 2011), available at <http://smallbusiness>.

The Administration has recently begun to devote serious attention to providing financial and other support to businesses engaged in exports. The Export-Import Bank (hereinafter “Ex-Im”), which provides export-financing assistance to U.S. companies, has identified nine markets and certain industries as areas of strategic importance to the U.S.<sup>10</sup> Those markets do not include China. Boeing has been a leading Ex-Im beneficiary for years, with about 60% of all Ex-Im loans.<sup>11</sup> However, like many trade and competitiveness issues, the Ex-Im program produces political cross-currents. Export financing support to Air India, for example, supporting its purchase of Boeing planes, ended up making Delta abandon certain routes due to the added competition from Air India.<sup>12</sup> It should also be noted that a significant number of Republican members of Congress advocate the abolition of the Export-Import Bank.<sup>13</sup>

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house.gov/uploadedfiles/7-27\_memo.pdf (“In 2008, 281,688 small businesses exported, or about one percent of small businesses.”); *see also* Sudeep Reddy, *Trade Officials Urge Small Businesses to Export*, WALL ST. J. BLOG (Feb. 25, 2011, 11:35AM), <http://blogs.wsj.com/in-charge/2011/02/25/trade-officials-urge-small-businesses-to-export/> (“Only 1% of U.S. companies export, and 58% of those firms export to just one country, typically to Canada or Mexico.”).

10. The nine markets are Brazil, Colombia, India, Indonesia, Mexico, Nigeria, South Africa, Turkey and Vietnam. Authorizations in key industries for fiscal year 2011 were in aircraft/avionics, oil and gas, power generation, construction, agribusiness, renewable energy, medical equipment, and mining, in that order. *See* EXP.-IMP. BANK OF THE U.S., 2011 ANNUAL REPORT 16, 20 (2011), *available at* [http://www.exim.gov/about/library/reports/annualreports/2011/exim\\_2011annualreport.pdf](http://www.exim.gov/about/library/reports/annualreports/2011/exim_2011annualreport.pdf).
11. Press Release, The Pew Charitable Trusts, Pew Analysis Shows More Than 60 Percent of Export-Import Bank Loan Guarantees Benefited Single Company (Nov. 9, 2009), *available at* [http://www.pewtrusts.org/news\\_room\\_detail.aspx?id=55965](http://www.pewtrusts.org/news_room_detail.aspx?id=55965).
12. *See* Air Transp. Ass’n of Am. v. Export-Import Bank of the United States, 2012 U.S. Dist. LEXIS 99389, 2012 WL 2914442 (D.D.C. July 18, 2012) (stating that domestic U.S. airlines sued the Export-Import Bank for approving loans to Air India, adversely affecting the domestic market); *see also* Zachary A. Goldfarb, *Boeing Use of Export-Import Bank Can Fly at Cross Purposes*, THE SEATTLE TIMES (Feb. 22, 2012, 6:56 AM), [http://seattletimes.com/html/business/technology/2017567172\\_exporthimport22.html](http://seattletimes.com/html/business/technology/2017567172_exporthimport22.html).
13. *Cf.* Jonathan Weisman, *House Votes Overwhelmingly to Extend Export-Import Bank*, N.Y. TIMES, May 10, 2012, at B2 (detailing a recent a 330-93 vote in favor of re-authorizing the Export-Import Bank, however all 93 no votes were Republican votes however “a majority of the Republican house majority did vote for reauthorization”).

### III. U.S. TRADE NEGOTIATION: THE TRANS-PACIFIC PARTNERSHIP INITIATIVE

With the Doha Round stalled despite many attempts since 2001 to revive it, there is not – at least for now – much enthusiasm left for Doha. The sad fact is that negotiating stances have become untenable, with developed and developing countries unable to converge on agriculture and non-agricultural market access (hereinafter “NAMA”)<sup>14</sup> concessions. Developed countries – notably the United States and EU – have been unable or unwilling to deal with their domestic constituencies on the issues of agriculture and light manufactures that are important to developing countries. By the same token, the major emerging economies – India, China, Brazil – have resisted negotiations for increased access to their home manufacturing and agricultural sectors.<sup>15</sup> China is reluctant to make more commitments as it felt that it had already made concessions – excessive, in its eyes – in its WTO accession agreement.<sup>16</sup> And, truth be told, some countries are wary of greater liberalization for fear of unleashing more imports from China. The seemingly endless negotiating process further undermined Doha. In 2007, Trade Promotion Authority (“TPA”) expired in the United States, which put the United States in a weakened negotiating position as its

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14. Non-Agricultural Market Access (NAMA) refers to negotiations on manufacturing sectors in the Doha Round of the World Trade Organization (WTO). See *A Simple Guide — NAMA Negotiations*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/markacc\\_e/nama\\_negotiations\\_e.htm](http://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm) (explaining that NAMA refers to negotiations on manufacturing sectors in the Doha Round of the World Trade Organization).
  15. See Stephen Castle, *Global Trade Talks, The Stakes Have Risen*, N.Y. TIMES, July 19, 2008 at B2 (detailing the clout of emerging economies like India, China, and Brazil have altered the balance of power at these trade negotiations and these countries’ concerns of protecting their domestic markets, for instance agricultural, have impacted negotiations); see also IAN F. FERGUSSON, CONG. RESEARCH SERV., RL32060, WORLD TRADE ORGANIZATION NEGOTIATIONS: THE DOHA DEVELOPMENT AGENDA I (2011) (reiterating the importance of emerging markets like India, China, and Brazil and stating these countries have sought protection for their services sectors).
  16. See *China in the WTO: Hearing on Evaluating China’s Role in the World Trade Organization Over the Past Decade Before the U.S. China Econ. & Sec. Review Comm.*, 111th Cong. (2010) (statement of Alan Wm. Wolff, Co-chair, Int’l Trade Practice, Dewey & LeBoeuf (“China is predisposed toward avoiding further liberalization as it has the view, not entirely unfounded, that it engaged in a phenomenal effort of liberalization to join the WTO just nine years ago, and some of its concessions have been phased in even more recently.”)).

trading partners were no longer assured that its Congress would accept negotiated commitments. Then, a series of elections in key countries – the United States in 2008, India in 2009, etc. – posed successive “We can’t get it done this year” objections. This year, there will be a change of president and premier in China and the presidential election in the United States. All of these factors have sapped the political will in major WTO Members. The upshot: a successful Doha Agreement is not foreseeable for at least several years, if at all.

It is not meaningful to dwell on Doha, because the United States has decided, for now, to concentrate on the TPP, which has become the central focus of U.S. trade negotiating policy.<sup>17</sup> The Administration sees the TPP – currently being negotiated with eight other countries: Chile, Singapore, Brunei, New Zealand, Australia, Peru, Vietnam, and Malaysia – as a trade agreement that promises to achieve on a regional basis many of the trade liberalization objectives of Doha and more.<sup>18</sup> The TPP is described as a “gold standard” regional trade agreement.<sup>19</sup> In it, the United States and its negotiating

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17. The United States is also seeking a plurilateral negotiation on services, an initiative that is vehemently opposed by India, China, and numerous other developing countries. This initiative is likely to be delayed by a dispute between the United States and the European Union over whether these plurilateral negotiations should be on an MFN basis (the EU position) or a non-MFN basis (the strong view of the United States). See *The Significance of the Trans-Pacific Partnership for the United States: Hearing on U.S. Trade Strategy: What’s Next for Small Business Exporters? Before the H. Comm. on Small Business*, 112th Cong. 1 (2012) (statement of Dr. Joshua Meltzer, Fellow, Global Econ. & Dev. Program, Brookings Inst.); see also CLAUDE BARFIELD, INT’L ECON. OUTLOOK, THE TRANS-PACIFIC PARTNERSHIP: A MODEL FOR TWENTY-FIRST-CENTURY TRADE AGREEMENTS? 2 (2011) (“With the World Trade Organization (WTO) Doha Round of negotiations facing stalemate or collapse, the Trans-Pacific Partnership Agreement (TPP) will become the single most important U.S. trade initiative after Congress passes the Korea, Colombia, and Panama free trade agreements (FTAs).”).
  18. See IAN F. FERGUSSON ET. AL., CONG. RESEARCH SERV., R42694, THE TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS AND ISSUES FOR CONGRESS Summary, 12 (2012) (“The Trans-Pacific Partnership (TPP) is a proposed regional free trade agreement (FTA) being negotiated among the United States, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. U.S. negotiators and others describe and envision the TPP as a “comprehensive and high-standard” FTA, presumably because they hope it will liberalize trade in nearly all goods and services and include commitments beyond those currently established in the World Trade Organization (WTO).”).
  19. See Ron Kirk, U.S. Trade Representative, Keynote Address at the United States Asia Pacific Council Annual Conference: East-West

partners aim for broad market access gains in services as well as NAMA and agriculture, together with unprecedented levels of investment and IP protection. Once in place, this regional agreement would be open to joinder by other countries.<sup>20</sup> By this process, one might even envision a gradual move to a multilateral agreement by accretion, with the added geopolitical benefit of being a counterweight against China.

The TPP goal is also to become a “WTO-plus” agreement that will deal with many “behind the border” issues including regulatory harmonization, worker rights and trade facilitation.<sup>21</sup> In this aspect of the negotiation, the U.S. hopes to address supply chain issues, coercive extraction of technology, government procurement, IP protection, corruption, the conduct of state-owned entities and exchange rate policies. If one saw in this agenda an oblique challenge to many practices that U.S. firms have encountered in China, one would not be wrong.<sup>22</sup>

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Center’s USAPC Washington Conference (May 6, 2011), *available at* <http://www.eastwestcenter.org/news-center/web-articles/trade-representative-kirk-outlines-asia-focused-trade-agenda-at-east-west-centers-usa-pc-washington-conf> (stating that Ambassador Kirk cited the TPP as the “gold standard” trade accord.); *see also* Patrick B. Fazzone, *The Trans-Pacific Partnership—Towards a Free Trade Agreement of Asia Pacific?*, 43 GEO. J. INT’L L., 695, 696 n.1 (2012) (“The term “gold standard” has been used by the United States to denote a high-quality agreement achieving a high degree of liberalization and covering areas extending beyond the scope of traditional trade agreements.”).

20. *See* NAT’L EXP. INITIATIVE, *supra* note 4, at 13 (stressing the importance of U.S. exports via free trade agreements and identifying new market opportunities for U.S. businesses).
21. *See* ANDREW L. STOLER, INT’L CTR. FOR TRADE & SUSTAINABLE DEV., WTOPLUS ISSUES IN THE MULTILATERAL TRADING SYSTEM, *in* TRADE AND DEVELOPMENT SYMPOSIUM: PERSPECTIVES ON THE MULTILATERAL TRADING SYSTEM: A COLLECTION OF SHORT ESSAYS 2 (2011), *available at* <http://ictsd.org/downloads/2012/02/andrew-stoler-wtoplus-issues-in-the-multilateral-trading-system.pdf> (discussing the need for free trade agreements to tackle “behind the border” issues, beyond just border tariffs, that may hinder the successful implementation of trade programs).
22. *See* Michael Green, *China’s Jitters over Free Trade*, JOONGANG DAILY (Nov. 17, 2011), <http://koreajoongangdaily.joinsmsn.com/news/article/article.aspx?aid=2944246> (stating the tension between the United States and China in addressing barriers to trade); *see also* JAMES MCGREGOR, APCO WORLDWIDE, CHINA’S DRIVE FOR ‘INDIGENOUS INNOVATION’: A WEB OF INDUSTRIAL POLICIES (describing the factors that drive China’s policies that then impact its policies with the United States).



The TPP is without doubt an ambitious initiative, but – in part for that reason – assessment of its prospects is difficult. While progress is certainly being made, there are negotiating hurdles to overcome and latent domestic political problems.

The issue of investor-state protections shows the negotiating complexity of the TPP.<sup>23</sup> Three rounds of negotiations based on the standard U.S. free trade agreement (hereinafter “FTA”) negotiating template have resulted in a largely completed draft investment chapter.<sup>24</sup> The investment section generally follows the 2004 U.S. Model Bilateral Investment Treaty, with a few significant square brackets.<sup>25</sup> If accepted by TPP members, this would mean significantly greater assurance in terms of investor-state protection for companies looking to establish operations in TPP Member Countries. But Australia refuses to include any investor-state dispute mechanism as part of its negotiations.<sup>26</sup> It had excluded this area in its 2004 FTA with the U.S., and, after a recent challenge by Philip Morris to its plain packaging tobacco laws under a bilateral investment treaty (“BIT”) with Hong Kong, Australia has now officially stated that it will no longer agree to *any* investor-state dispute settlement provisions in its FTAs.<sup>27</sup> A TPP with investor-state provisions that

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23. See *Trans-Pacific Partnership Agreement*, KNOWLEDGE ECOLOGY INT’L, <http://keionline.org/tpp> (last visited Oct. 25, 2011) (describing the leaked TPP Intellectual Property Rights chapter that suggests that the final TPP will include these provisions).
24. See Jane Kelsey, *Investment Developments in the Trans-Pacific Partnership Agreement*, INT’L. INST. FOR SUSTAINABLE DEV. (Jan. 12, 2012), <http://www.iisd.org/itn/2012/01/12/investment-developments-in-the-trans-pacific-partnership-agreement/> (“Three rounds of negotiations produced draft texts based on the US FTA template.”); see generally NO ORDINARY DEAL: UNMASKING THE TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT (Jane Kelsey, ed., 2010) (concluding that the TPP is formed on the basis of the U.S. lobby).
25. Kelsey, *supra* note 24 (“The draft investment chapter is largely completed. It generally follows the 2004 US model BIT, with a few significant square brackets.”).
26. See *Australia to Defy U.S. Business Lobby at Trade Talks*, CHI. TRIB. (Mar. 4, 2012), <http://www.thefinancialherald.com/?p=56923> (“Australia’s government on Monday said it would reject a push by the powerful United States business lobby to give companies greater legal rights in trade disputes under a new trans-Pacific trade liberalisation pact.”).
27. See William S. Dodge, *Investor-State Dispute Settlement Between Developed Countries: Reflections on the Australia-United States Free Trade Agreement*, 39 VAND. J. TRANSNAT’L L. 1 (2006) (discussing Australia’s preference not to include investor-state dispute settlement provisions in its FTA’s); see generally Enda Curran, *Tobacco Giants Fail to Stop Australia Plain-Pack Law*, WALL ST. J., Aug. 15, 2012, at

exempts Australia, a developed country at that, would be hard to sell to others.

IP protection also faces negotiating difficulty. The TPP's aim is to raise the level of protection currently possible under the WTO Agreement on Trade-Related Intellectual Property Measures (the "TRIPS Agreement"), and a leaked draft of the current IP Chapter reveals that the following matters are being considered in negotiations: greater copyright protection, greater ease in getting patents, protection for geographical indications and data exclusivity,<sup>28</sup> and disciplines against parallel importation (preventing goods from being imported via a third country to circumvent a TPP Member's IP laws).<sup>29</sup> But some of the less developed TPP participants, such as Vietnam, Brunei and Malaysia are resistant.<sup>30</sup>

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B5 (discussing the Australian Supreme Court's judgment against Philip Morris by implementing plain packaging for cigarettes); *see also* Kyla Tienhaara & Patricia Ranald, *Australia's Rejection of Investor-State Dispute Settlement: Four Potential Contributing Factors*, INT'L INST. FOR SUSTAINABLE DEV. (July 12, 2012), <http://www.iisd.org/itn/2011/07/12/australias-rejection-of-investor-state-dispute-settlement-four-potential-contributing-factors/> ("The Gillard [Australian] Government vowed that it will no longer include provisions on investor-state dispute settlement (ISDS) in bilateral and regional trade agreements. The new policy is justified by reference to the principles of 'no greater rights' for foreign investors and the government's 'right to regulate' to protect the public interest.").

28. *See Trans-Pacific Partnership Agreement supra*, note 23; *see also* INT'L FED'N OF PHARM. MFR. & ASS'N, DATA EXCLUSIVITY: ENCOURAGING DEVELOPMENT OF NEW MEDICINES 5-6 (2011), *available at* [http://www.ifpma.org/fileadmin/content/Publication/IFPMA\\_2011\\_Data\\_Exclusivity\\_\\_En\\_Web.pdf](http://www.ifpma.org/fileadmin/content/Publication/IFPMA_2011_Data_Exclusivity__En_Web.pdf) (describing data exclusivity as the protection of IP where pharmaceutical manufacturers of generic drugs use the clinical trial, efficacy, and safety data of innovator pharmaceutical companies to register generic versions of patented drugs). The TPP draft text provides such protection, but there is an exception where public health is concerned, in accordance with the WTO TRIPS Agreement.
29. *See* Erik Kaine, *IP Protection Standards In TPP Represent The Downside Of the Trans-Pacific Partnership*, FORBES (Jan. 25, 2012, 12:08 PM), <http://www.forbes.com/sites/erikkain/2012/01/25/ip-protection-standards-in-tpp-represent-the-dark-side-of-the-trans-pacific-partnership/> (describing the TPP's focus on enforcing IP rights via the ban on parallel imports).
30. *USTR Officials Travel to Malaysia, Brunei to Discuss TPP IPR Issues*, INSIDE U.S. TRADE (Oct. 3, 2012), [https://wtonestand.com/index.php?option=com\\_ppvuser&view=login&return=aHR0cHM6Ly93dG9uZXdzc3RhbmQuY29tL2NvbXBvbmVudC9vcHRpb24sY29tX3Bwdi9JdGVtaWQsNDQ1L2lkLDI0MDY0NDV](https://wtonestand.com/index.php?option=com_ppvuser&view=login&return=aHR0cHM6Ly93dG9uZXdzc3RhbmQuY29tL2NvbXBvbmVudC9vcHRpb24sY29tX3Bwdi9JdGVtaWQsNDQ1L2lkLDI0MDY0NDV) ("Officials from the Office of the U.S. Trade Representative travelled to Malaysia and Brunei this week in order to discuss objections from those countries to intellectual

Rules governing the conduct of State-Owned Enterprises (“SOEs”) may also prove to be a heavy lift in the TPP negotiations. Based in substantial part on their encounters with China’s policies of state capitalism and “indigenous innovation,” U.S. multinational companies have made the development of SOE rules a prime emphasis in their support for the TPP initiative.<sup>31</sup> Such rules would discipline subsidies, discriminatory procurement practices, compulsory transfers of technology and other aspects of governments’ use of SOEs to further national trade and economic policies. But SOEs are major elements of the economies of several of the TPP nations, including Singapore, Vietnam and Malaysia. Thus, while there is strong support for the U.S. push for SOE rules (from Australia, Chile and New Zealand), this crucial issue remains very much in doubt.

There are also structural aspects of the TPP initiative that are far from fully resolved. One major issue in this category is whether the TPP will become a true, integrated regional FTA. This would mean a single set of trading rules for the entire group of countries including a single, unified set of rules of origin. But many of the TPP countries have pre-existing bilateral FTAs with other TPP countries, each with differing sets of rules of origin. All of those rules of origin have domestic constituencies for whom they were written and to whom they are intensely important. As the negotiations progress, political pressures are building – very much so in the United States – to preserve those pre-existing rules of origin.<sup>32</sup> If that approach prevails, it is not at all clear whether or how the TPP would be constructed as a truly unified regional FTA.

Additionally, TPP negotiating parties envision an active role by stakeholders, and intend on creating a Committee on Regulatory

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property rights (IPR) proposals that the U.S. has tabled in the Trans-Pacific Partnership (TPP) negotiations.”).

31. See MCGREGOR, *supra* note 22 (describing the factors that drive China’s policies that then impact its policies with the U.S.); see generally WILLIAM LAZONICK & YIN LI, THE ACADEMIC-INDUS. RESEARCH NETWORK, CHINA’S PATH TO INDIGENOUS INNOVATION 3 (2012) (describing “SOE” as the Chinese government’s restructuring of its ministries to take over and invest in critical infrastructure); see also WEN JIN YUAN, CTR. FOR STRATEGIC AND INT’L STUDIES, THE TRANS-PACIFIC PARTNERSHIP AND CHINA’S CORRESPONDING STRATEGIES 2-3 (2012) (stating that China sees the U.S. move for the TPP to be in response to China’s rise).
32. WILLIAM H. COOPER, CONG. RESEARCH SERV., RL31356, FREE TRADE AGREEMENTS: IMPACT ON U.S. TRADE AND IMPLICATIONS FOR U.S. TRADE POLICY 15 (2011) (citing international economist Jagdish Bhagwati and his claim that the “rules of origin” (conditions for an FTA’s establishment) in one FTA may not coincide with the rules of origin in many of the other FTA’s and the tariff reductions and other conditions for one FTA will not match the schedule of other FTA’s).

Coherence to oversee the agreement.<sup>33</sup> Since these stakeholders will be those with the financial and organization resources, knowledge, and connections, what this will mean is that companies such as Caterpillar, General Electric, and Wal-Mart will have a seat at the table in terms of how to improve supply chains, resolve behind-the-border and transparency issues, and so on. Lobby groups would also likely be included as stakeholders to press their case for deregulation. This sort of opportunity for input and to get detailed information through a trade regulatory network would be invaluable for large corporations and, eventually, smaller corporations would also benefit from smoother trade transactions. Therefore, in theory, if TPP can really achieve all of the above, business would stand to gain substantively. But it is too early to assume that such a Committee would have a fully pro-business focus. The Obama Administration, after all, is close to organized labor and has important constituencies in the Non-Governmental Organizations (“NGO”) community. It is not unlikely that such groups will be added to ensure “balance” on this Committee.

Another daunting challenge is the issue of “special and differential treatment,” seen by many (especially in the business community) as a serious defect in the multilateral agreements of the WTO. Beginning under the GATT and continuing in the World Trade Organization, developing countries were not required to fully accept the tariff levels and other trade disciplines created in multilateral agreements. Instead, developing countries were either subject to less restrictive disciplines or were given longer time to implement the agreed disciplines.<sup>34</sup> Such “special and differential treatment” concepts, in the

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33. See *Leaked Trans-Pacific FTA Texts Reveal U.S. Undermining Access to Medicine: New Cross-Cutting Limits on Regulation of Goods and Services*, CITIZENS TRADE CAMPAIGN (Oct. 22, 2011), <http://www.citizenstrade.org/ctc/blog/2011/10/22/leaked-trans-pacific-fta-texts-reveal-u-s-undermining-access-to-medicine/> (describing a portion of the leaked TPP that suggests that the final TPP will include a Committee on Regulatory Coherence).

34. See World Trade Organization, Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002) (“We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries.”); see also ROBERT E. HUDEC, CORDELL HULL INST., DEVELOPING COUNTRIES IN THE GATT/WTO LEGAL SYSTEM 12 (1987) (“developing countries have demanded discrimination in their favor under the general rubric of “special and differential treatment” or, more recently, “differential and more favorable treatment”).

view of the U.S. and other developed countries, underlay many of the difficulties of the Doha Round.<sup>35</sup>

At the outset of the TPP negotiations – and in their predecessor, the “P-4”<sup>36</sup> – it was intended that special and differential treatment would not be included.<sup>37</sup> For the U.S., Australia, New Zealand and several other TPP participants, this would be a major accomplishment. However, this task may not be easy; Malaysia and Vietnam, for example, are showing a reluctance to make the same commitments as developed countries on a negative list basis in market access and other areas.

The success of the TPP as a “world class, Doha-plus” agreement may well depend on the make-up of the initial group of signatories. The deadlock in the Doha Round is powerful testimony to the fact that it has become exceedingly difficult to negotiate serious trade liberalization with a very large group of countries.<sup>38</sup> Developing

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35. See generally World Trade Organization, *supra* note 34 (“We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements.”); Cf. Susan C. Schwab, *After Doha: Why the Negotiations Are Doomed and What We Should Do About It*, FOREIGN AFF., May-June 2011, at 104, 109, available at [http://pagines.uab.cat/jbacaria/sites/pagines.uab.cat.jbacaria/files/16\\_Schwab\\_pp104\\_117\\_Blues.pdf](http://pagines.uab.cat/jbacaria/sites/pagines.uab.cat.jbacaria/files/16_Schwab_pp104_117_Blues.pdf) (suggesting that a combination of rigidity in tariff levels and a refusal from the West to open up its markets while demanding such from developing countries was the reason for the Doha Round failure).
36. See generally N.Z. MINISTRY OF FOREIGN AFFAIRS & TRADE, THE NEW ZEALAND-SINGAPORE-CHILE-BRUNEI DARUSSALAM TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP 1 (2005) (“As the first trade agreement to involve several Pacific-rim countries, the Trans-Pacific SEP (also known as ‘P4’) has a strong strategic dimension and will serve to deepen the economic relationships among New Zealand, Brunei Darussalam, Chile and Singapore.”); see IAN F. FERGUSSON & BRUCE VAUGHN, CONG. RESEARCH SERV., R40502, THE TRANS-PACIFIC PARTNERSHIP AGREEMENT 6-7 (2011) (“The TPP among the P-4 countries provides for the complete elimination of tariff lines among Chile, New Zealand, and Singapore, and a 99% liberalization with Brunei, all to be phased out over time.”). The TPP is an outgrowth of, and an effort to expand, the regional trade agreement reached among Chile, Singapore, Brunei, and New Zealand, which has become known as “the P-4.” *Id.*
37. See *TPP Negotiators to Seek Market Access Structure Deal at August Meeting*, INSIDE U.S. TRADE, June 25, 2010, at 1 (stating that the initial TPP was aimed at implementing a uniform market access schedule and not mentioning special or differential treatment).
38. PAUL COLLIER, OXFORD UNIV., WHY THE WTO IS DEADLOCKED: AND WHAT CAN BE DONE ABOUT IT (2005), available at <http://users.ox.ac.uk/~econpco/research/pdfs/WTO-deadlock.pdf> (“The WTO has a larger membership than the GATT, and its remit is much wider. Both differences make it harder to reach agreements, a problem

nations, in particular, feel the need to protect their industries and agricultural sectors from foreign competition until they are ready to compete internationally. China with its system of “state capitalism,” poses special problems, as does Japan with its intricate system of corporate interrelationships. Those who originally developed the TPP initiative were well aware of this. The plan, therefore, was to negotiate initially with a small group of countries. Only after agreement could be reached on a form that the TPP would take – broad and innovative – in negotiations with this limited group of countries, all of which were smaller nations whose desire for access to the U.S. market would make them willing to agree to deep and extensive liberalization of their own markets, would the agreement be opened up for others to join. Then, the agreement would become operational and its obvious success (one hopes) would induce the joinder of other countries that never would have agreed to such sweeping liberalization otherwise.

But, what if other nations, nations that have historically been “tough nuts to crack” in trade liberalization, seek to join in the TPP negotiations before the “gold standard” deal is achieved? Currently, Japan, Canada and Mexico have announced their intention of joining the TPP negotiations.<sup>39</sup> Let me focus on Japan, since it poses particular concerns. On the one hand, Japan’s signaling of its desire to enter the negotiations gives credibility to the TPP, and the political folks at the White House have therefore signaled enthusiasm for Japan’s joinder.<sup>40</sup> But the United States trade negotiators are not

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evident from the lack of progress in the Doha Round to date.”). The WTO now numbers more than 150 Members. *Id.*

39. See Media Release, Austl. Minister for Trade and Competitiveness, Dr. Craig Emerson, Australia Welcomes Japan’s Decision on TPP, (Nov. 11, 2011), available at [http://www.sice.oas.org/TPD/TPP/Negotiations/Japan\\_e.pdf](http://www.sice.oas.org/TPD/TPP/Negotiations/Japan_e.pdf); see also Media Release, Foreign Affairs and Int’l. Trade Can., Minister Fast at APEC, November 10-13, 2011, available at [http://www.sice.oas.org/TPD/TPP/Negotiations/Canada\\_e.pdf](http://www.sice.oas.org/TPD/TPP/Negotiations/Canada_e.pdf) (“Canada conveyed its intent to enter into formal consultations with members of the Trans-Pacific Partnership (TPP) on Canada’s possible participation in negotiations.”); see also Letter from Ambassador Ron Kirk to the Honorable John Boehner, Speaker U.S. House of Representatives (July 9, 2012), available at [http://www.sice.oas.org/TPD/TPP/Negotiations/USTR\\_notification\\_USCongress\\_MEX\\_TP\\_P\\_e.pdf](http://www.sice.oas.org/TPD/TPP/Negotiations/USTR_notification_USCongress_MEX_TP_P_e.pdf).
40. See Press Release, The White House of President Barack Obama, Remarks by President Obama and Prime Minister Noda of Japan at Joint Press Conference (Apr. 30, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/04/30/remarks-president-obama-and-prime-minister-noda-japan-joint-press-confer> (“We instructed our teams to continue our consultation regarding Japan’s interest in joining the Trans-Pacific Partnership, which would benefit both our economies

so sure. Japan's reluctance to make serious concessions in trade liberalization is well-known. In past trade negotiations, it has typically demanded so many exceptions for rice, dairy products, meat, and nearly all agricultural products – not to mention autos and some key industrial sectors – that the trade pacts entered were of limited usefulness.<sup>41</sup> It is also a country known for not being hospitable to foreign businesses, whether in manufacturing or services, in terms of the regulatory laws and obstacles it has in place and in terms of its close-knit, exclusionary corporate relationships. Is Japan amenable to the “gold standard” regime that the TPP seeks? The fact that Japan has stated that its interest in joining TPP is for the purpose of influencing the issues being negotiated raises serious concerns.<sup>42</sup>

The TPP also presents significant political conundrums for the Obama Administration, which is embarked on a policy of stimulating exports while maintaining close political ties with constituencies that see trade issues primarily in terms of protecting U.S. industries and workers from import competition. It may be noted that the first step taken in the National Export Initiative was to strengthen procedures for combating unfair imports.<sup>43</sup>

In some ways, the dilemmas posed by this mixed allegiance are common to all trade liberalization initiatives. The auto sector illustrates the difficulties. It will be recalled that the major impediment that delayed U.S. ratification of the Korea FTA was the insistence of Ford and the United Auto Workers that the agreement be renegotiated, both to increase access to Korea's auto market and to delay the elimination of the United States' auto tariffs.<sup>44</sup> The

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and the region.”); see also Dan Ikenson, *The TPP Trade Negotiations Need More Japan and Less Detroit*, FORBES (May 10, 2012, 3:50 PM), <http://www.forbes.com/sites/danikenson/2012/05/10/the-tpp-trade-negotiations-need-more-japan-and-less-detroit/2/>.

41. See Yuka Hayashi & Tom Barkley, *Japan's Bid to Join Asian Trade Pact Faces a Leery U.S.*, WALL ST. J., Feb. 7, 2012, at A9; See also Sachiko Sakamaki, *Japan Cautious About Concessions Ahead of Trade Accord Talks in Washington*, BLOOMBERG (Feb. 6, 2012, 11:44PM), <http://www.bloomberg.com/news/2012-02-07/japan-cautious-about-concessions-ahead-of-washington-trade-accord-talks.html> (stating Japan has a 778% tariff on rice).
42. See *cf.* Ikenson, *supra*, note 40 (stating that American Automotive Policy Council wants Japan to be excluded from the TPP because of its unyielding tariff barriers but ultimately concluding that the factors in support of Japan joining the TPP more heavily outweigh the criticisms).
43. See NAT'L EXP. INITIATIVE; *supra* note 4, at 2 (stating that the NEI is focused on overcoming unfair trade barriers in other countries).
44. See WILLIAM H. COOPER ET. AL., CONG. RESEARCH SERV., RL34330, THE U.S.-SOUTH KOREA FREE TRADE AGREEMENT (KORUS FTA): PROVISIONS AND IMPLICATIONS (2011) (“Trade in autos and auto parts

presence of Japan in the TPP negotiations would also raise difficult issues in the auto sector.<sup>45</sup> According to the American Automotive Policy Council, for every 200 cars Japan's automotive plants export to the U.S., American counterparts can import only one into Japan.<sup>46</sup> While such a formulation of the issue suggests that the auto industry's emphasis will be on opening other countries' auto markets, the Korea FTA experience suggests strongly that this desire for access will be closely linked to an insistence that U.S. protection against imports be maintained until more and more access concessions are achieved.

There are other lobbies in the U.S. concerned about the implications of the TPP for their own markets. U.S. dairy is worried about New Zealand's interest in gaining market access to the U.S.; the New Zealand company Fonterra has a monopoly on the Kiwi dairy market and 30% of the world market.<sup>47</sup> U.S. tobacco has a

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proved to be among the most difficult issues tackled by U.S. and South Korean negotiators. In December 2010, the United States and South Korea made several significant modifications to commitments contained in the 2007 agreement. These changes included revisions to the automotive provisions, which altered the original tariff elimination schedule for passenger cars and trucks... The United States and South Korea agreed to delay the full elimination of their respective tariffs on passenger cars of 2.5% and 8% until year five after KORUS FTA implementation, rather than remove the tariffs immediately as agreed in 2007.”).

45. *See Opening Up the Pacific*, THE ECONOMIST (Nov. 12, 2011, 7:08 PM), <http://www.economist.com/blogs/banyan/2011/11/free-trade-agreements> (“The other nine TPP countries will have some reservations about letting Japan join the talks... Ford, the carmaker, described Japan as “the world’s most protectionist country[.]” Beef is another sector that was difficult with Korea and, if Japan joins the TPP, will be difficult again. *Id.*”).
46. *Id.* (“[Japan] ships 200 cars to America for every one that is sent to Japan.”).
47. *See, e.g.*, NAT’L MILK PRODUCERS FED’N, NEW REPORT ON NEW ZEALAND’S DAIRY EXPORT MONOPOLY HIGHLIGHTS U.S. CONCERNS ABOUT EXPANDING U.S.-NEW ZEALAND DAIRY TRADE 1-2 (2012) (“However, NMPF has been equally clear about dairy producers’ continued vehement opposition to any expansion of U.S.-New Zealand dairy trade as part of that effort, given New Zealand’s dairy market concentration and its dominating firm’s tremendous global market power. ... New Zealand’s largest company has been provided special privileges by the government that enable it to maintain a roughly 90% market share of the milk produced in New Zealand. This advantageous position has given this single dairy company direct control of more than one third of world dairy trade, without even accounting for the additional sales controlled through its many production and distributor relationships around the world.”).



different concern; it is worried that the Administration is going to put public health priorities ahead of commercial interests and prevent tobacco from being placed on the negotiating table for access into the other countries' markets.<sup>48</sup> Whether and how the Administration achieves a balance between wanting access to other countries' markets and wanting also to be protective of certain U.S. industries is going to pose difficult choices for our negotiators.

All of these political issues relate directly to our issue today: the use of trade policy to create – and to protect – domestic jobs. But there is another, much more basic way in which the TPP negotiations pose an issue that is fundamental to the way we need to think about the relationship today between trade and jobs.

Historically, the paradigm of international trade negotiation was the effort to increase access to foreign markets for domestic firms' – and workers' – exports. The United States would offer access to U.S. markets in return for other countries' opening of their markets to the United States. That is what U.S. industries and workers sought, and that is what our trade negotiators bargained for. The underlying assumption was that such opening of foreign markets would, by increasing U.S. exports, increase U.S. production and U.S. jobs.

Today the world is much more complex. For unions and workers, the traditional paradigm still holds true. But, increasingly, major American businesses have a different business model and seek different goals in trade negotiations. The globalization of capital and technology, together with vastly improved communications and the existence of educated, often low-wage work forces in countries around the world, has diminished major corporations' focus on producing in and exporting from the United States. Instead, companies seek global proliferation of their production and the establishing and improvement of global supply chains. As I will discuss in the next section of this presentation, this poses major issues that must be addressed by any U.S. policy aimed at job creation or retention. But it also poses major questions about the nature of trade negotiations, and those questions lie at the heart of the TPP concept.

I spoke earlier of the “behind the border” issues that are a major element of the concept of the TPP as a “gold standard” trade

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48. Franco Ordonez, *Farmers: Keep Tobacco in Major Trade Pact with Pacific Rim Nations*, THE CHARLOTTE OBSERVER (Feb. 25, 2012), <http://www.charlotteobserver.com/2012/02/25/3045559/farmers-want-tobacco-in-deal.html> (stating U.S. tobacco growers, notably those in North Carolina, export most of the tobacco they grow abroad given the decline of tobacco use in the domestic market, and the growers want to be part of an agreement that would eliminate all tariffs, for imports *and* exports, as currently, Vietnam imposes a 30% tariff and New Zealand imposes a 5% tariff on American tobacco imports, and the U.S. imposes a 40% tariff on tobacco from Vietnam)(emphasis added).

agreement. These are issues such as protection of investments and IP rights, fair labor standards, elimination of onerous regulations. These issues are directed primarily, not at eliminating foreign countries' barriers to imports from the United States, but rather to facilitating and protecting the establishment of operations in the foreign country by U.S. corporations and increasing the safety and efficiency of global supply chains.

These negotiating goals increase economic efficiency and corporate profits. They may also increase U.S. jobs in design, administration, transportation, deal-making, finance and other activities ancillary to trade in goods. It is difficult to argue, however, that achievement of these "behind the border" negotiating goals will increase U.S. *manufacturing* jobs. Indeed, their predominant effect would be to facilitate the *decrease* in American manufacturing jobs by making it easier, safer and more efficient to shift manufacturing jobs to foreign countries where production can take advantage of proximity to growing markets, access to an educated and skilled but cheaper work force, access to raw materials and to incentives provided by foreign governments.

This, I fear, is the political ticking time bomb of the TPP initiative. As the recent experience with the Korea FTA shows, trade agreements are subjected to intense political scrutiny. Such scrutiny may well lead unions, politicians and some U.S. industries to characterize the TPP as an agreement that facilitates off-shoring of production and loss of U.S. manufacturing jobs. Especially today, when the United States is working laboriously – pun intended – through the after-effects of the Great Recession, the new form of "gold standard" trade agreement may face hard sledding.

#### IV. HOW CAN TRADE POLICY FOCUSED ON JOBS THROUGH EXPORTS RECONCILE WITH INDUSTRY PRIORITIES?

How do exports necessarily lead to jobs? President Obama has talked a lot about doubling U.S. exports by 2015.<sup>49</sup> But what is less talked about is that the kind of jobs that will be created from the new exports are not going to be the same as those we lost in recent years. Why? This is because the U.S. must, in exporting, choose to focus on products and services where this country has a comparative advantage and its businesses have a competitive advantage. We have no choice but to do that, since businesses simply cannot be competitive where cost is always a factor and where reliance on domestic labor costs render those businesses non-competitive against foreign rivals making the same product based on lower costs. Those of you in the audience in industry know far better than I the difficulty of

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49. See NAT'L EXP. INITIATIVE, *supra* note 4.

competing on cost, and the difficulty of sustaining that type of competition.

Now, this does not mean that our labor force is fungible. It does mean that the kind of jobs that can be done anywhere are, unfortunately, just those type of jobs. Today, they have gone to China; tomorrow, they will go (and they have started to go) to Vietnam and Bangladesh as China's labor costs get more expensive. For the sake of our own workers, it is in our interest not to focus on these jobs and to focus instead on the kinds of jobs that would not make people have to worry constantly about layoffs.

Let me step back a bit and talk to industry: I know that what you care about is how to stay competitive in this ever-changing marketplace, which increasingly means staying at the cutting edge while being able to access the best human capital and materials you need, through a regulatory framework and infrastructure that allows you to deal with the minimum number of obstacles. I know that, especially for those of you with shareholders, staying profitable, not providing jobs, is your primary concern, and you cannot afford for it not to be your primary concern.

The question is whether it is possible in today's globalized economy to marry industry's priority in staying competitive with the government's focus on jobs. One way to do this is to focus on non-tradable sectors, where the nature of the business is such that it must be done in the United States. That, however, is not my focus; rather, I will address the issue of how we can develop jobs in internationally competitive industries.

The most internationally competitive products and services for the United States are going to be those that are innovative or differentiated, and the jobs created are going to be those that support or enable the production of such goods and services. Although even in the case of outsourced production there will be some new jobs created in marketing, operations, and manufacturing, and across the spectrum that would foreseeably be in the United States, it is important to note that these will be support functions, and that whatever is cost-effective to outsource to other countries will continue to be outsourced due to cost pressures. Therefore, it is not realistic to expect that a trade policy focused on exports is going to allow the bulk of the manufacturing jobs that were lost to be wholly replaced by jobs created to support new exports.

Where jobs will increase will be those needing specialized skills, those requiring creativity, skills not so easy to find abroad, and those desirable in-house. This can already be seen given what jobs are in decline or increase. The jobs with the greatest declines in the U.S. are basic manufacturing and the extracting or processing of raw

materials.<sup>50</sup> The fastest growing industries on the other hand are in technology and healthcare, particularly those in computer or data processing, data hosting, technical consulting, nursing, home care, medical, veterinary, and personal care services.<sup>51</sup>

Another source of job increase will come from innovative manufacturing. Note that this is different from basic manufacturing – the type where the job can be done anywhere. Innovative manufacturing jobs are those where the manufacturing itself is innovative or proprietary such that companies will want to keep them in-house. Some companies have already begun to do this. GE Aviation, for instance, has invested millions of dollars in over 30 sites in the United States, with the latest advanced manufacturing plant being built in Alabama in 2013.<sup>52</sup> Its CEO, Jeff Immelt, believes that

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50. See generally Richard Henderson, *Employment Outlook: 2010–2020 Industry Employment and Output Projections to 2020*, MONTHLY LAB. REV., Jan. 2012, at 77-78, 79, 80. (“The goods-producing sectors, which together comprise agriculture, mining, construction, and manufacturing, are projected to add almost 1.7 million jobs, increasing from 19.8 million to 21.5 million from 2010 to 2020. Although employment is rising in those sectors, employment in the service-providing sectors is increasing more rapidly, so the goods-producing sectors percentage of total employment is projected to fall from 13.9 percent to 13.1 percent during the period... The coal mining and metal ore mining industries are both projected to decrease in employment by 3,100 and 8,300 jobs, respectively... Employment in the manufacturing sector is projected to fall by 73,100, an annual rate of decline of 0.1 percent, down to just under 11.5 million in 2020.”). Basic manufacturing includes manufacturing in textiles, household appliances, paper, rubber, wood products, industrial machinery and car parts. Industries in the extraction or processing of raw materials are those in steel or other metal mining, oil or natural gas. *Id.*
51. *Id.* at 67-68, 74. (“The health care and social assistance sector is projected to have the largest growth... The information sector is projected to have the fastest growth rate in real output for all major sectors, 4.7 percent per year, increasing from nearly \$1.2 trillion in 2010 to almost \$1.9 trillion in 2020... Employment in the computer systems design and related services industry is projected to add 671,300 jobs, to reach an employment level of 2.1 million by 2020, making this industry one of the largest growing ones.”)
52. See generally MICHAEL ETTLINGER AND KATE GORDON, CTR. FOR AM. PROGRESS, THE IMPORTANCE AND PROMISE OF AMERICAN MANUFACTURING: WHY IT MATTERS IF WE MAKE IT IN AMERICA AND WHERE WE STAND TODAY 1 (2011), available at <http://www.americanprogress.org/wpcontent/uploads/issues/2011/04/pdf/manufacturing.pdf> (“Manufacturing is critically important to the American economy... What’s more, U.S.-based manufacturing underpins a broad range of jobs that are quite different from the usual image of manufacturing. These are higher-skill service jobs that include... a broad range of other jobs including basic research and technology

doing so protects its new manufacturing technology.<sup>53</sup> This is an example of how the hidden costs of outsourcing – the loss of proprietary information – have changed the way some companies operate. Other U.S. companies are beginning to find that it is important that their designers design while understanding the process choices involved, which require that production and design be sited together.<sup>54</sup>

The new exports will also need a domestic workforce with the right skillsets. Yet our workforce is increasingly seen as one that is lacking in such skills. No one sees this situation more clearly than industry itself. A study found that, last year, when business executives were deciding where to move existing activities, they chose the United States as a location only 32% of the time.<sup>55</sup> The two most common reasons given for why these activities left the United States were “lower wages elsewhere” and “greater proximity to customers” – which I think you will not find surprising. More unsettling, however, should be that the next big reason given for outsourcing was – to “better access skilled labor.”<sup>56</sup>

At the same time, the McKinsey Global Institute predicts that, by 2020, the United States will need to have created 21 million new

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development, product and process engineering and design, operations and maintenance, transportation, testing, and lab work. Many of these jobs are critical to American technology and innovation leadership.”); See Jeffrey R. Immelt, *The CEO of General Electric on Sparking an American Manufacturing Renewal*, HARV. BUS. REV. (Mar. 2012), <http://hbr.org/2012/03/the-ceo-of-general-electric-on-sparking-an-american-manufacturing-renewal/ar>. Jeffrey R. Immelt is the Chairman and CEO of GE and heads President Obama’s Council on Jobs and Competitiveness. *Id.*

53. Immelt, *supra* note 52.

54. See Gary P. Pisano & Willy C. Shih, *Does America Really Need Manufacturing?*, HARV. BUS. REV. (Mar. 2012), available at <http://hbr.org/2012/03/does-america-really-need-manufacturing/ar/1> (stating that the extent to which product design and manufacturing can be separated is an important variable in deciding whether to physically move production away from R&D); KNOWLEDGE@WHARTON, *OUTSOURCING: NEW PRESSURES TO STAY HOME, OLD REASONS TO GO ABROAD* (2011), available at <http://knowledge.wharton.upenn.edu/articlepdf/2672.pdf?CFID=80353620&CFTOKEN=65486275&jsessionid=a830629582af5bb211e8593632f5c671d2c4> (suggesting that multinationals are re-thinking outsourcing by considering key factors like value-to-cost ratio).

55. Michael E. Porter & Jan. W. Rivkin, *Choosing the United States*, HARV. BUS. REV. (Mar. 2012), <http://hbr.org/2012/03/choosing-the-united-states/ar/1> (suggesting that the U.S. is not winning enough business location decisions).

56. *Id.*

jobs to return to full employment but that there will be 1.5 million too few college graduates to meet demand and 5.9 million people will not have the skills employers need and will therefore be unemployable.<sup>57</sup> Clearly, we are facing a situation where the U.S. workforce needs to be revamped in order to stay competitive.

In concrete terms, if the U.S. workforce is to be revamped, what this will mean is more vocational training, and more postsecondary education in technical and specialized fields. Realistically, this may mean polytechnic training instead of general academic education for some in the workforce. Vocational schools, community colleges, and institutions will need to focus on “applied learning” to fill in talent gaps in manufacturing and service occupations.<sup>58</sup> Of course, our society will continue to need the academically and scientifically educated in innovation, entrepreneurship, and general management, but it will be the skills of those who constitute the majority of the citizenry that will dictate whether the United States will remain an attractive place to locate for companies.

It should also be noted that offshoring will continue. Offshoring continues to be the go-to solution to cut costs, get easier access to the local market, access a lower-cost workforce, access a better infrastructure for logistics, and sometimes to benefit from local tax or financing programs.

In all, a trade policy solely relying on exports is not going to mean the creation of new jobs that people who lost the old jobs can just fill in. The Obama Administration – or whichever administration – is going to have to confront and tackle the hard task of helping American workers re-direct and re-tool ourselves.

While this picture is challenging and even daunting, we should take note that the implication is also that the size of our workforce need not shrink and can actually expand, and we should see it as the growing pains of a sophisticated economy. It is because we have progressed to the highly developed country that we are that we face

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57. JAMES MANYIKA ET AL., MCKINSEY GLOBAL INST., AN ECONOMY THAT WORKS: JOB CREATION AND AMERICA'S FUTURE VI, 5 (2012) (“21 million jobs needed by 2020 to return to full employment...1.5 million estimated shortage of college graduates in the workforce in 2020... 5.9 million more high school dropouts in 2020 than jobs available for workers with that level of education.”).

58. *See, e.g.*, EXEC. OFFICE OF THE PRESIDENT: COUNCIL OF ECON. ADVISERS, PREPARING THE WORKERS OF TODAY FOR THE JOBS OF TOMORROW 20 (2009) (“...one of the more promising curricular innovations that helps to improve student success is “contextualized learning,” in which adults obtain basic skills in the context of occupational training. Not only does this allow the students to progress through the programs more quickly but it also helps to keep them engaged with relevant examples and applications.”).

this situation. Let us not forget that ours is a resilient nation and, and, in a way, this is the very moment for us to take the next step in our development and advancement. We need not look back to the manufacturing that we have outgrown; as the preeminent economy, we need to look forward to what levels and what nature of development we now need to take to retain our preeminence, both together as a nation and individually in our respective industries. If we are to sustain high and rising living standards, it seems natural that we need to take our competitiveness to a different level – one driven by the type of innovation that we have already demonstrated we are quite capable of.