

December 3, 2015

The Honorable Michael B.G. Froman
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Froman:

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Trade Advisory Committee on Forest Products (ITAC 7) on the Trans-Pacific Partnership Trade Agreement reflecting the views of the Committee on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob Handelsman", with a long, sweeping horizontal flourish extending to the right.

Jacob Handelsman, Chair
ITAC #7

The Trans-Pacific Partnership Trade Agreement

Report of the
Industry Trade Advisory Committee on Forest Products

December 3, 2015

December 3, 2015

Industry Trade Advisory Committee on Forest Products (ITAC #7)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the Trans-Pacific Partnership Trade Agreement

I. Purpose of the Committee Report

In accordance with section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and section 135(e)(1) of the Trade Act of 1974, as amended, requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Forest Products hereby submits the following report.

II. Executive Summary of Committee Report

ITAC #7 members reviewed pertinent TPP chapters, including market access (tariff elimination), Technical Barriers to Trade, Sanitary and Phytosanitary, Regulatory Coherence, Environment and several other chapters. A majority of the Committee's members found that this agreement can potentially provide fair and balanced commercial benefits to U.S. traders, if fully implemented. However, ITAC #7 is concerned that many obligations are "fairly soft" or open to interpretation. Therefore, we urge that U.S. trade agencies ensure that all mechanisms intended to implement and legally enforce the TPP Agreement, including those established under individual chapters, be activated fully and that U.S. trade agencies utilize all available tools to force the implementation of TPP commitments and obligations.

ITAC #7 members are concerned that 30 days review time is too limited of a time frame to thoroughly review and provide an opinion on the agreement, especially since the final text for many chapters was not available to cleared advisors until the whole TPP agreement was made public on November 5. We encourage Congress to expand the time frame to 45 days. ITAC #7 members also note that there has been limited engagement by negotiators with ITAC #7 on specific provisions of the agreement. Moreover, the tariff elimination schedules for a number of key TPP Parties were not available until the end of the process and there was limited ability for members not located in the Washington, D.C. area to personally review agreement language.

For ITAC #7 members to provide advice and counsel, it is imperative that we have access to negotiating text in a time frame where our counsel will be most helpful to negotiators.

Appendix I represents additional views of a number of ITAC #7 members regarding the TPP text and the private sector advisory process during the TPP negotiations.

III. Brief Description of the Mandate of ITAC #7

The Industry Trade Advisory Committee on Forest Products (the Committee) was established by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) pursuant to the authority of section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. §2155) (the Trade Act), as delegated by Executive Order 11846, as amended. In establishing the Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135(c)(2)(B) of the Trade Act.

This Committee was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The Committee shall perform such functions and duties and prepare such reports as may be required by section 135 of the Trade Act with respect to the industry trade advisory committees. The Committee advises the Secretary and the USTR concerning the trade matters referred to in section 135(a)(1) of the Trade Act, and is consulted regarding the matters referred to in section 135(a)(2) of the Trade Act. The Committee functions solely as an advisory committee in accordance with the provisions of the FACA, as amended, 5 U.S.C. App., with the exceptions set forth in the Trade Act. In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting its sectors; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of ITAC #7

Tariffs:

ITAC #7 supports comprehensive and balanced trade agreements that lead to the speedy elimination of all tariffs on forest products, including the full range of goods covered by Harmonized System Chapters 44 (wood and wood products), 47 (pulp and recovered paper) and 48 (paper, paperboard and products). ITAC #7 supports bilateral, regional, or multi-lateral trade negotiations that advance the core objective of eliminating tariffs on all forest products. However, to the extent that negotiating partners request staging of their tariff phase-outs on particular forest products, the U.S. should only agree to similar staging periods for the same or other products to ensure reciprocity in market access under the agreement.

With a sustainably managed fiber resource, skilled workforce, efficient mills, and logistics infrastructure, the U.S. forest products industry is highly competitive in the global market. However, the persistence of high tariffs, and particularly tariff escalation, has prevented the realization of this competitive advantage. High tariffs have allowed foreign countries to support the development of forest products industries and secure their domestic or regional market share, while zero or low tariffs in the U.S. allow those competitors free entry into our domestic market.

Tariff escalation, allowing raw or semi-processed materials free entry, while imposing higher tariffs on more processed products is particularly disadvantageous to our most competitive products. Committee members have urged U.S. negotiators to seek immediate elimination of tariffs on all products in the forest products sector.

Non-Tariff Barriers and Other Negotiating Objectives:

Other general trade objectives for the forest products industry include elimination of non-tariff barriers; elimination of capacity-building government subsidies; support for monetary and trade policies that discourage currency manipulation for competitive trade advantage; rules of origin delineation providing for transformation at the four-digit level; international harmonization and mutual recognition of product standards and accreditation procedures; and support for high environmental and forestry management standards and for effective measures to ensure against reduced environmental standards for competitive advantage, particularly associated with illegal logging and trade in forest products harvested from illegal sources.

V. Advisory Committee Opinion on Agreement

The TPP is an important opportunity for U.S. business and industry to grow their markets while providing needed economic benefits to the business and industry of TPP countries, especially countries that have not previously participated in high-standard trade agreements and that could benefit from the market opening, regulatory, environmental, labor, investment, state-owned enterprises, and other commitments that raise standards and contribute to the strengthening of market economies. The TPP also has the potential to streamline trade and investment rules in the region, which will assist integrating economies in the Asia-Pacific region and support U.S. business' participation in regional value chains.

ITAC #7 recognizes that as is the case with any trade agreement between sovereign nations, especially one that is as comprehensive as the TPP and with nations with widely different economic development levels and structures, there are compromises and there are areas where the U.S. did not achieve optimal results. ITAC #7 also notes that many commitments in the TPP are aspirational rather than obligatory in nature and we believe that the full benefits of these commitments only can be achieved through close, ongoing monitoring and vigilance by U.S. trade agencies. To this end, ITAC #7 urges that the U.S. fully utilize the tools provided by individual chapters and the Dispute Settlement chapter to effectively enforce commitments made by TPP Parties to open up their markets and eliminate domestic protectionist measures and policies that can negatively impact U.S. trade and investment.

The following are comments on selected chapters of the TPP text of interest to ITAC #7.

Tariff Commitments

In 2014, U.S. exports of forest products – wood and wood products, wood pulp and paper, paperboard and converted products – to TPP countries amounted to \$16.4 billion, representing about 50% of the industry's exports to all destinations. However, the U.S. already has free trade agreements with Australia, Canada, Chile, Mexico, Peru and Singapore so paper and wood products already enter these countries duty free. In addition, Japan and New Zealand, together with Canada, and the U.S., eliminated their pulp, paper and paperboard tariffs as part of the 1995 Uruguay Round Agreement of multilateral trade negotiation. Therefore, the potential commercial benefit to the U.S. forest products industry will come from the elimination of tariffs

in “new” TPP markets, including paper and wood tariffs in Malaysia and Vietnam and of wood tariffs in Japan and New Zealand. At the same time, U.S. tariffs on wood products will also be phased out.

ITAC #7 believes that the elimination of all tariffs on forest products in “new” TPP markets is an important achievement that will provide commercial opportunities to the U.S. forest products industry. However, those commercial opportunities will be tempered somewhat by the long (more than 5 years) tariff elimination schedule in a number of countries/products, especially Japan’s delay in eliminating tariffs on various value-added wood products for 11 years, as well as maximum annual quotas or ceilings on individual tariff lines. The latter process has not been part of previous multilateral U.S. trade agreements relevant to wood products.

Rules of Origin and Origin (ROO) Procedures

All product specific rules of origin contained in the TPP are based on tariff change criteria (with breakdowns reaching from chapters, headings, subheadings or national tariff item). The rules for Chapters 44, 47 and 48 are based on the tariff shift principle and are similar to the ROO in NAFTA and other U.S. trade agreements.

ITAC #7 supports the ROO for forest products.

Customs Administration and Trade Facilitation

TPP Parties agreed to transparent rules, including publishing their customs laws and regulations, as well as providing for release of goods without unnecessary delay and on bond or ‘payment under protest’ where customs has not yet made a decision on the amount of duties or fees owed. They agree to advance rulings on customs valuation and other matters that will help businesses trade with predictability. To help counter smuggling and duty evasion, the TPP parties agree to provide information to help each other enforce their respective customs laws.

ITAC #7 supports the Customs Administration and Trade Facilitation chapter of the TPP.

Trade Remedies

The Trade Remedies chapter promotes transparency and due process in trade remedy proceedings and reiterates the rights and obligations under the WTO. The agreement allows Parties to apply transitional safeguard measures during a certain period of time if import increases as a result of the tariff cuts implemented under the TPP cause serious injury to a domestic industry. These measures may be maintained for up to two years, with a one year extension, but must be progressively reduced if they last longer than one year. The chapter also sets out rules requiring that a TPP Party applying a transitional safeguard measure provide mutually-agreed compensation.

ITAC #7 supports the text of the Trade Remedies chapter and urges their full utilization by U.S. trade agencies to enforce effective compliance of commitments and obligations made in the TPP Agreement. Also, it is imperative that the agreement not adversely affect the ability of U.S. companies to either secure or retain relief from unfair trade practices under U.S. law as it is currently administered.

Sanitary and Phytosanitary (SPS) Measures

The TPP builds on WTO SPS rules for identifying and managing risks in a manner that is no more trade restrictive than needed. TPP Parties agree to allow the public to comment on proposed SPS measures to inform their decision-making and to ensure traders understand the rules they will need to follow. They agree that import programs are based on the risks associated with importation, and that import checks are carried out without undue delay. The Parties also agree that emergency measures necessary to protect human, animal, or plant life or health may be taken provided that the Party taking them notifies all other TPP Parties and that it will review the scientific basis of that emergency measure within six months and make the results available to any Party on request.

ITAC #7 supports the text of the SPS chapter. We urge that U.S. trade agencies take steps to ensure that the commitments and obligations of the SPS chapter are fully and effectively implemented.

Technical Barriers to Trade (TBT)

The TBT chapter provides for non-discriminatory rules for developing technical regulations, standards and conformity assessment procedures, while preserving TPP Parties' ability to fulfill national objectives. They agree to cooperate to ensure that technical regulations and standards do not create unnecessary barriers to trade. Parties are required to allow for the public to comment on proposed technical regulations, standards, and conformity assessment (CA) procedures to inform their regulatory processes and to ensure traders understand the rules they will need to follow.

ITAC #7 notes that the text provides that each party shall allow others to participate in development of a party's standards and CA procedures by its central government bodies [emphasis added]. It is notable that most North American standards and CA development does not take place within the ambit of a central governmental body and request that North American industry participation be made available through representatives of accredited certification bodies. Of course, every one of the accredited North American non-governmental organizations that do develop standards and CA allow anyone to participate on equal terms as provided in ANSI or Standards Council of Canada procedures. U.S. technical representatives have sought to participate in foreign standards and CA process development by taking advantage of similar wording in the WTO TBT Agreement and seek the opportunity for U.S. industry representatives to participate in the standards drafting process concurrent with local industry.

Article 8.9 Cooperation and Trade Facilitation, 2(b) – Calls for alignment of national standards with relevant international standards. The term “international” standards is not defined in the document. The language is similar to WTO TBT language and has proven highly problematic for U.S. standards developers. Notably the International Standards Organization (ISO) has openly promoted that the intent is a reference only to ISO standards. This was never the intent and has hampered U.S. attempts at broader harmonization. This has been a frequent complaint by U.S. industry.

Investment

The chapter provides the basic investment protections found in other investment-related agreement, including national treatment; most-favored-nation treatment; minimum standard of treatment for investments in accordance with customary international law principles; prohibition of expropriation that is not for public purpose, without due process, or without compensation; prohibition on performance requirement such as local content or technology localization requirements; free transfer of funds related to an investment, subject to exceptions that preserve governments' flexibility to address financial and economic emergencies. The chapter also spells out limited exceptions to the enumerated obligations.

ITAC #7 supports the text in this chapter.

Government Procurement

TPP Parties commit to core disciplines of national treatment and non-discrimination. They also agree to publish relevant information in a timely manner, to allow sufficient time for suppliers to obtain the tender documentation and submit a bid, to treat tenders fairly and impartially, and to maintain confidentiality of tenders. In addition, the Parties agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. Each Party agrees to a positive list of entities and activities that are covered by the chapter, which are listed in annexes.

ITAC #7 supports the text in this chapter.

Competition

TPP Parties agree to adopt or maintain national competition laws that restrict anticompetitive business conduct and work to apply these laws to all commercial activities within their borders. Parties also agree to cooperate, as appropriate, on matters of mutual interest related to competition activities and to agree to obligations on due process and procedural fairness, as well as private rights of action for injury caused by a violation of a Party's national competition law. While TPP parties may consult on concerns related to the chapter, it is not subject to the dispute settlement provisions of the TPP.

ITAC #7 position has no specific opinion on this chapter.

State-Owned Enterprises

The chapter covers large state-owned enterprises (SOEs) that are principally engage in commercial activities. Parties agree to ensure that their SOEs make commercial purchases and sales on the basis of commercial considerations, except when doing so would be inconsistent with any mandate under which an SOE is operating that would require it to provide public services. They also agree to ensure that their SOEs do not discriminate against the enterprises, goods and services of other Parties.

ITAC #7 is pleased that the TPP includes text intended to take steps against the anti-competitive market activities of SOEs. This is a start, although the text is not very firm and there are

exceptions that tend to undermine the effectiveness of the chapter. This chapter will be an important tool in constraining the activities of SOEs in potential new TPP Parties where such entities play a significant role in the economy.

Environment

TPP Parties agree to effectively enforce their environmental laws; and not to weaken environmental laws in order to encourage trade or investment. They also agree to fulfill their obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and to take measures to combat and cooperate to prevent trade in illegally taken forest products. In addition, the Parties agree to promote sustainable forest management, and to protect and conserve wild fauna and flora that they have identified as being at risk in their territories. Concurrent with the commitment to promote conservation and combat the illegal take of, and illegal trade in, wild fauna and flora is the equally important commitment to “promoting the legal trade of such associated products.” Article 20.17 (3)(a).

The Parties commit to provide transparency in environmental decision-making, implementation and enforcement. In addition, the Parties agree to provide opportunities for public input in implementation of the Environment chapter, including through public submissions and public sessions of the Environment Committee established to oversee chapter implementation. The chapter is subject to the dispute settlement procedure laid out in the Dispute Settlement chapter.

The Parties further agree to encourage voluntary environmental initiatives, such as corporate social responsibility programs. Finally, the Parties commit to cooperate to address matters of joint or common interest, including in the areas of conservation and sustainable use of biodiversity, and transition to low-emissions and resilient economies.

ITAC #7 supports the TPP Environment chapter’s overall objective to promote a high level of environmental protection and effective enforcement of environmental laws. In particular, we believe that the chapter provides a strong basis for key forest products consuming, producing, processing and exporting countries in the Asia-Pacific region to work together to reduce deforestation, promote sustainable forestry, and combat illegal logging and associated trade.

To ensure that the commitments and obligations spelled out in the Environment chapter are implemented, U.S. trade agencies need to monitor implementation both at the policy level and on the ground. Also, U.S. trade agencies need to utilize all the enforcement mechanisms provided in the TPP Agreement to ensure that TPP Parties are held to their commitments and obligations in fighting illegal logging and associated trade. In all cases, enforcement efforts should be undertaken by Parties in a manner to provide those affected with appropriate due process so that such cases cannot be criticized as merely a “disguised restriction on trade or investment between Parties.” Article 20.2(3).

ITAC #7 also notes a potentially important tool in the implementation of the Environment chapter identified in the side letter between Malaysia and the U.S. committing Malaysia to establish a National Committee to Coordinate the Implementation of Environmental Chapter. With many environmental issues (e.g., forestry) under the jurisdiction of Malaysian State Governments, the terms of reference for the Committee includes the participation of all Federal

and State Government representatives to deal with such issues as illegal logging. We urge that the U.S. government encourage Malaysia to actively use the new Committee to promote the full adoption of sustainable forest management.

Small and Medium-Sized Enterprises

Complementing the commitments throughout other chapters of the TPP on market access, paperwork reduction, internet access, trade facilitation, express delivery and others, the Small- and Medium-Sized Enterprise (SME) chapter includes commitments by each TPP Party to create a user-friendly websites targeted at SMEs to provide easily accessible information on the TPP and ways small firms can take advantage of it, including description of the provisions of TPP relevant to SMEs; regulations and procedures concerning intellectual property rights; foreign investment regulations; business registration procedures; employment regulations; and taxation information. In addition, the chapter establishes an SMEs Committee that will meet regularly to review how well the TPP is serving SMEs, consider ways to further enhance its benefits, and oversee cooperation or capacity building activities to support SMEs through export counseling, assistance, and training programs for small- and medium-sized enterprises; information sharing; trade finance; and other activities.

ITAC #7 supports the SME chapter.

Regulatory Coherence

The Regulatory Coherence chapter is intended to ensure an open, fair, and predictable regulatory environment for businesses operating in the TPP markets by encouraging transparency, impartiality, and coordination across each government to achieve a coherent regulatory approach. The chapter aims to facilitate regulatory coherence in each TPP country by promoting mechanisms for effective interagency consultation and coordination for agencies. It encourages widely-accepted good regulatory practices, such as impact assessments of proposed regulatory measures, communication of the grounds for the selection of chosen regulatory alternatives and the nature of the regulation being introduced.

The chapter also includes provisions to help ensure regulations are written clearly and concisely, that the public has access to information on new regulatory measures, if possible online, and that existing regulatory measures are periodically reviewed to determine if they remain the most effective means of achieving the desired objective. The chapter establishes a Committee which will give TPP countries, businesses, and civil society continuing opportunities to report on implementation, share experiences on best practices, and consider potential areas for cooperation. The chapter does not affect the rights of TPP Parties to regulate for public health, safety, security, and other public interest reasons.

While not providing new rules as such, regulatory coherence is one of the new trade areas covered in trade agreements. ITAC #7 believes that obligations for regulators to conduct regulatory impact assessments, cost/benefit considerations, and notice and comment provisions are critical to transparency and good regulatory practices. The Committee is concerned, however, that the text in the Regulatory Coherence chapter does not mandate strong obligation on TPP Parties to follow such good regulatory practices and procedures and that it does not include requirements to consider and address the impact of regulations on small businesses.

Dispute Settlement

TPP Parties will make every effort to resolve disputes through cooperation and consultation and encourage the use of alternative dispute resolution mechanisms when appropriate. When this is not possible, TPP Parties aim to have these disputes resolved through impartial, unbiased panels. The TPP dispute settlement mechanism applies across the chapters, with few exceptions. Should consultation fail to resolve an issue, Parties may request the establishment of a panel (specific procedures are spelled out for the creation, constituting and conduct of a panel.) A Party found in violation of its obligations can negotiate or arbitrate a reasonable period of time in which to remedy the violation. The Dispute Settlement chapter allows for the use of trade retaliation (e.g., suspension of benefits) if a Party found to be in non-compliance with its obligations fails to bring itself into compliance.

ITAC #7 supports the Dispute Settlement chapter and urges U.S. trade officials to fully utilize the chapter's provisions to enforce implementation of TPP commitments and obligations.

Currency Manipulation

The text of the TPP agreement was accompanied by a declaration on macroeconomic policies and currency exchange rates. The accord is contained in a document entitled "The Joint Declaration of the Macroeconomic Policy Authorities of Trans-Pacific Partnership Countries." It contains commitments by each TPP member to "foster an exchange rate system that reflects underlying economic fundamentals," "avoid persistent exchange rate misalignments," and "refrain from competitive devaluation." To help keep macroeconomic authorities to the commitments in the side-agreement, the Joint Declaration requires each country to make regular and public disclosures on foreign exchange reserves, intervention in spot and forward currency markets, portfolio capital flows, and other actions. In addition, the Joint Declaration establishes a new consultative mechanism to monitor the exchange-rate and macroeconomic policies of the TPP countries.

ITAC #7 is disappointed that the TPP Currency Manipulation side agreement is not legally enforceable and contains provisions similar to those already in the International Monetary Fund, WTO and other international fora. Nonetheless, ITAC #7 acknowledges that having an international agreement as part of a trade agreement on the premise of avoiding currency manipulation is an important step forward. Also, importantly, countries that want to join the TPP in the future will have to accede to the currency manipulation side agreement as well.

VI. Membership of Committee

Chairman

Jacob Handelsman
Senior Director, International Trade
American Forest and Paper Association

Vice-Chairman

C. Richard Titus
Executive Vice President
Kitchen Cabinet Manufacturers
Association

Michael G. Brummer
President
Michael Brummer & Associates Inc.
Representing Fitzpatrick & Weller, Inc.

Edward G. Elias
President
APA - The Engineered Wood
Association

Robert W. Glowinski
President and Chief Executive Officer
American Wood Council

Robert (Robb) F. Kevers
Director, International Trade Capability
Georgia-Pacific

Cindy L. Squires, Esq.
Executive Director
International Wood Products Association

Appendix I

12/1/15

Additional TPP Process and Substance Concerns

The proposed TPP Agreement is more of a MOU which strives to attain cooperation between the parties rather than a set of binding legal obligations between states. The document is characterized by mitigating language which in our opinion will provide participating states with the cover to avoid compliance with the “intent” of the Agreement. This underlying flaw in conjunction with the way in which this process was conducted makes it difficult to approve the TPP Agreement. In good conscience it is difficult for us as Advisors to approve all that is within the document when we never had an opportunity to present our positions or review any text prior to the presentation of the “final” text of the agreement. Again, the overall manner in which the advisory process was treated through the whole of the TPP negotiations was such that it is challenging in our opinion to credibly approve the document as submitted. This is in no manner an indictment of the effort or intent of those professionals who worked to create the Agreement, but a fundamental disagreement with the way in which the documents were provided to Advisors for review.

Furthermore, if this is to become the model for what the future of multi-lateral trade agreements will look like, then we are concerned that the historical norm (even with its weaknesses) of statutory compliance with tangible consequences will be undermined. The document as written could disadvantage the U.S. in that it allows for national interpretation of rules and obligations and does not in some cases provide clear guidance and penalties.

We are deeply concerned about how the TPP process was conducted. The Administration did not seek input in a timely manner from the ITAC representatives while engaged in the TPP negotiations. Unlike past efforts, there was no seeking of the various (at least of ITAC 7) ITAC’s opinions or positions with regards to specific sector negotiations. No copies of proposed text were made available to those not residing in DC until the whole of the TPP text was made available to the public. It is our concern that approval of the TPP Agreement would be a tacit approval of the process and the manner in which the ITACs were handled, and would therefore serve to undermine the overall ITAC committees’ ability to provide a priori insights to future agreements. This could damage the future effectiveness of the ITAC Advisory process.