

GUIDELINES FOR CONSULTATION AND ENGAGEMENT OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

I. INTRODUCTION

Through trade policy, the Obama Administration is focused on expanding opportunities to export more Made-in-America products, support jobs at home, and create economic growth by opening overseas markets and leveling the playing field for American workers and businesses. Consultation and engagement is vital to ensuring that trade policy reflects American interests and American values. As we work to open markets to support more American jobs, an important part of that work is keeping the public, Congress, and stakeholders engaged and informed.

President Obama believes that broad participation, congressional engagement, and an open, public debate enhance the outcomes achieved in trade policy. As a result, the Obama Administration has taken unprecedented steps to increase transparency and diversify the voices involved in America's trade policy. The Office of the United States Trade Representative ("USTR") is always looking for new ways to engage the public and seek views to help inform and guide trade policy, consistent with our ability to deliver the maximum possible benefits of trade to the American people. We seek to put our objectives front and center, work hand-in-hand with Congress, participate in a robust public conversation, and engage with a more diverse array of stakeholders than ever before.

Earlier this year, Congress passed the Bipartisan Congressional Trade Priorities and Accountability Act ("the Trade Priorities Act"). The Trade Priorities Act established new and expanded consultation requirements throughout the trade negotiation process for agreements submitted to Congress under its procedures. As part of that process, USTR, in consultation with the chairs and ranking members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives ("the Committees on Finance and Ways and Means"), is required to develop written guidelines for consultations with Congress, the public, and advisory committees regarding negotiations conducted under the Trade Priorities Act.

The guidelines described in this document are established to assure the useful and timely exchange of information regarding trade policy and to implement the consultation requirements of the Trade Priorities Act. Some of these guidelines reflect practices already in place; others are new. Going forward, USTR will review these guidelines and update them as necessary, in coordination with the Committees on Finance and Ways and Means.

Chief Transparency Officer

Pursuant to the Trade Priorities Act, USTR appoints an agency official to serve as the Chief Transparency Officer to advise on transparency policy, ensure consistent transparency practices, consult with Congress on transparency policy, and engage and assist the public in understanding trade negotiations. The Chief Transparency Officer will play an active role in developing and implementing these guidelines and ensuring that

policies and practices in negotiations are consistent with these guidelines. The Chief Transparency Officer will also identify opportunities to further transparency, collaboration, and public engagement, particularly in areas where additional transparency may be required.

II. GUIDELINES FOR ENGAGEMENT WITH CONGRESS

Both the executive and legislative branches of government have important constitutional roles in matters affecting trade with other nations. Article I of the Constitution grants to Congress the power to regulate commerce with foreign nations. Article II grants to the President the power to conduct relations with other nations and to execute the laws of the United States. Though their roles are distinct, the Administration and Congress share the goal of concluding trade agreements that support the creation of jobs and economic opportunities for American workers, businesses, farmers, and ranchers by creating and expanding markets for U.S. goods and services overseas, leveling the playing field, and enhancing access to goods and services for the American consumer. To achieve this goal, it is necessary for the executive and legislative branches to consult regularly and to coordinate closely regarding trade policy.

In the Trade Priorities Act, Congress has provided guidance to the Administration for the negotiation of trade agreements covered by the Trade Priorities Act. Congress and the Administration also consult before and during the course of trade negotiations. The Administration provides detailed briefings, including classified briefings, to Congress, and engages in consultations with Congress regarding trade negotiations. These steps help confirm that the Administration is on track to achieve the negotiating objectives established by the Trade Priorities Act to ensure that trade agreements being negotiated by the executive branch will receive the support of Congress when submitted for approval in implementing legislation under the Trade Priorities Act.

The guidelines for engagement with Congress are established to assure useful and timely exchange of information as required by sections 104(a)(3)(A) and 104(c)(3)(A) of the Trade Priorities Act. These guidelines are not intended to replace USTR's direct consultations with the Committees on Finance and Ways and Means. Rather, the guidelines supplement the committee-based consultative process and facilitate the closest practicable coordination with Congress.

Consultation with Congress

Congressional Views Taken into Account

The Administration gives great weight to the views of Congress in developing approaches to negotiations and strives to incorporate these views to the greatest extent possible. Understanding that perspectives within the Congress may vary significantly, the Administration takes into account all views received from Members of Congress.

Consultations with Congress are intended to enable:

- USTR, in conjunction with other relevant agencies, to convey detailed information about the status of pending and future negotiations, such as explanations of U.S. negotiating positions, how those positions reflect congressional negotiating objectives set out in the Trade Priorities Act, approaches to the negotiations and expectations for how the iterative process of negotiations might develop;
- Members of Congress to comment and provide input on U.S. negotiating positions and efforts to achieve negotiating objectives set out in the Trade Priorities Act;
- USTR to adjust U.S. negotiating positions and strategies, as appropriate, in light of congressional input; and
- USTR to provide detailed information to Congress about measures taken or to be taken by trading partners to comply with provisions of a trade agreement and for Members of Congress to share their views regarding those measures.

Briefings for Members of Congress

USTR will provide, upon request from any Member of Congress, timely, detailed briefings responsive to their concerns regarding negotiating objectives, the status of ongoing trade negotiations, or the nature of any changes in the laws of the United States or the administration of those laws that may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under that agreement. USTR will conduct briefings in the offices of Members of Congress or other mutually agreed location, subject to House or Senate security protocols established by the respective Sergeant at Arms of the House and Senate, and the executive branch, regarding the handling of classified information.

Prior to entry into force of a trade agreement with a trading partner, USTR will consult with Members of Congress regarding measures taken or to be taken by that trading partner to implement provisions of the trade agreement. USTR will also consult regularly on trading partner compliance with provisions of a trade agreement after entry into force.

Consultations with Congressional Committees

In formulating and adjusting U.S. negotiating positions with respect to the negotiating objectives found in the Trade Priorities Act, USTR will consult with relevant congressional committees. USTR will seek input from the Committees on Finance and Ways and Means on U.S. text proposals before sharing them with other parties outside the executive branch, including stakeholders and negotiating partners. During key negotiating meetings, USTR will consult intensively with the Committees on Finance and Ways and Means. USTR will consult with other committees whose jurisdiction is affected by pending

or future negotiations on the status of the particular matter over which the relevant committee has legislative jurisdiction.

Prior to entry into force of a trade agreement with a trading partner, USTR will consult with the Committees on Finance and Ways and Means regarding measures taken or to be taken by that trading partner to implement provisions of the trade agreement. In addition, USTR will also consult regularly on trading partner compliance with provisions of a trade agreement after entry into force.

Consultations with the House and Senate Advisory Groups on Negotiations and Designated Congressional Advisers

USTR will consult with the Committees on Finance and Ways and Means and the House and Senate Advisory Groups on Negotiations in connection with providing statutorily required notices of intent to initiate negotiations for a trade agreement or enter into a trade agreement. USTR will provide regular briefings throughout negotiations to Members of Congress who have been designated congressional advisers in accordance with section 104(b)(1)(A) or (B) of the Trade Priorities Act as well as additional briefings, upon the request of the House and Senate Advisory Groups or a majority of their respective members, on pending and future trade agreement negotiations and major compliance and enforcement issues. USTR will also meet upon request with Members of the House and Senate Advisory Groups in periods between meetings.

Prior to entry into force of a trade agreement with a trading partner, USTR will consult with the House and Senate Advisory Groups on Negotiations regarding measures taken or to be taken by that trading partner to implement provisions of the trade agreement. In addition, USTR will also consult regularly on trading partner compliance with provisions of a trade agreement after entry into force.

Congressional Access to Negotiating Text

U.S. Proposals and Consolidated Text

USTR will make U.S. text proposals and consolidated text available to:

- All Members of Congress;
- Relevant professional staff of the Committees on Finance and Ways and Means with an appropriate security clearance;
- Professional committee staff with an appropriate security clearance from other committees interested in reviewing text relevant to that committee's jurisdiction;
- Any personal office staffer with an appropriate clearance of a Member of the Committees on Finance and Ways and Means; and

- Any personal office staffer with an appropriate security clearance accompanying his or her Member of Congress.

Confidentiality

USTR will work with the Committees on Finance and Ways and Means and House and Senate security offices to assure proper handling of classified and trade-sensitive documents and compliance with legal requirements.

During the current coronavirus pandemic, remote access will be available to the Members and congressional staff described above through a secure website. Remote access will be subject to periodic review.¹

Congressional Accreditation at Negotiating Rounds

Members of Congress can play an important role during negotiating rounds in providing advice to negotiators to ensure that outcomes reflect congressional negotiating objectives; as well as in reinforcing U.S. negotiating positions and priorities with our trading partners. To facilitate this work, USTR will accredit the following individuals:

- Members of the House Advisory Group on Negotiations;
- Members of the Senate Advisory Group on Negotiations;
- Any Member of Congress who has been designated a congressional adviser on trade policy and negotiations by the Speaker of the House (after consultation with the chairman and ranking member of the Ways and Means Committee and the chairman and ranking member of the committee from which the Member will be selected) or the President pro tempore of the Senate (after consultation with chairman and ranking member of the Finance Committee and the chairman and ranking member of the committee from which the Member will be selected); and
- Up to three professional committee staff members with an appropriate security clearance as designated by each of the full committee chairs and ranking members of the Senate Committee on Finance and House Committee on Ways and Means.

III. GUIDELINES FOR PUBLIC ENGAGEMENT

A well-informed and engaged American public is critical to the formulation and implementation of a high-standards trade policy that unlocks economic opportunity for the American people, supports well-paying jobs, advances key economic priorities, and strengthens our national security. The Administration's objective is to provide for timely

¹ Paragraph added August 14, 2020.

disclosure of information in forms that the public can readily find and use and to provide timely opportunities for public input. At the same time, the United States must maintain an appropriate level of confidentiality during negotiations to create the conditions necessary for negotiators to communicate with a high degree of candor and creativity and to execute on the most effective negotiating strategies. To create a sustained level of openness, the Administration strives to incorporate the values of transparency, participation, and collaboration into the work of trade negotiations.

The guidelines for public engagement are established to assure useful and timely exchange of information as required by sections 104(d)(1) of the Trade Priorities Act, which established new and expanded requirements for openness and transparency of U.S. trade negotiations.

Consultations with the public are intended to:

- Expand the public consultation process throughout the trade negotiating process;
- Facilitate transparency;
- Encourage public participation; and
- Promote collaboration in the negotiation process.

Facilitating Public Transparency

Informational Releases

USTR will release timely information directly to the public and through the media regarding developments in trade policy and will make detailed information available online. This release of information will occur through press releases, fact sheets, blogs, newsletters, reports, social media, in-person briefings, and via conference calls. USTR's press releases will be transmitted to both domestic and foreign press and made publicly available. USTR will release schedules of upcoming events and engagements, including negotiating rounds, on a regular basis.

Reports

USTR will produce a number of reports on an annual basis, including a detailed year-in-review annual report, as well as a comprehensive, forward-looking report laying out the President's Trade Agenda. USTR will also release on a regular basis a detailed strategic plan on the agency's overall mission, goals, and objectives. In addition, USTR will prepare a wide variety of substantive reports on topics ranging from cataloguing barriers to U.S. exports to intellectual property rights enforcement.

USTR is also required to prepare and submit to Congress reports regarding environmental, employment, and labor aspects of trade agreements conducted under the Trade Priorities Act. These reports will be submitted to Congress no later than at the time the President submits to Congress a copy of the final legal text of an agreement pursuant to section 106(a)(1)(E). To the maximum extent possible, these reports will promptly be made available to the public.

Timeline for Publishing Trade Agreements

Consistent with the timeline established in the Trade Priorities Act, no fewer than 60 days before the President signs a trade agreement, USTR will make the text of such an agreement available online to ensure that the American people have ample opportunity to review it.

Summaries of Negotiating Objectives

At least 30 days before initiating negotiations for a trade agreement, USTR will publish a detailed and comprehensive summary of the specific objectives with respect to the negotiations and a description of how the agreement, if successfully concluded, will further those objectives and benefit the United States. To the extent possible, USTR will seek to publish the initial summary prior to the public hearing concerning initiation of a trade agreement, such that the public is given adequate opportunity to address the summary in statements provided during the hearing. USTR will regularly update these summaries.

Press Availabilities

USTR will hold press availabilities to answer questions and provide updates regarding the status of trade negotiations.

Encouraging Public Participation & Promoting Collaboration in the Negotiating Process

Public Views Taken Into Account

Providing interested persons the chance to present their views on ongoing and future trade negotiations is an important opportunity to receive public input and shape U.S. negotiating positions to reflect that input. USTR will issue *Federal Register* notices for every trade agreement under negotiation encouraging interested members of the public to submit comments, recommendations, or concerns they may have to inform U.S. positions and strategies in that negotiation. USTR will also solicit comments from the public in connection with a proposed trade agreement through the *Federal Register*, and both the notice and all non-confidential comments received will be made available electronically on the Federal Register web site.

USTR will solicit additional public comment as needed if significant new issues arise in connection with a trade negotiation. In the event that a party later seeks to join the

negotiations, USTR will separately solicit comment from the public and hold a public hearing on whether to initiate negotiations with that trading partner.

Public Hearings on Negotiations and Other Trade Priorities

To maximize public input and exchange, USTR will arrange and host public hearings. These hearings will serve as a forum for receipt of public comments by senior USTR officials and for meaningful exchanges of views.

Public Stakeholder Events

USTR will hold public stakeholder briefing events that will create a forum for diverse groups of stakeholders and the public to meet directly with the USTR negotiators responsible for the agreement under negotiation. During these meetings stakeholders can make proposals, give critiques, and hear responses from U.S. negotiators. USTR will organize stakeholder engagement events in order to increase opportunities for senior USTR officials to hear stakeholder views.

Enhanced Digital Media Outreach

USTR will provide a content-rich website that is enhanced and updated to ensure flexible site growth and expansion, enabling users to follow trade policy news and updates, as well as to share their questions and stories. Going forward, USTR will conduct enhanced online engagement through an increased social media presence, new websites platforms for engagement and dialogue with the public about specific trade agreements and initiatives, and other activities. USTR will supplement its public engagement on trade negotiations in Washington, D.C. with opportunities for public comment in states and localities outside Washington making use of the tools available on the Internet for social media, multimedia, and interactive engagement.

Schedules of Upcoming Events

Information about events in which USTR senior officials are participating will be released to the public by USTR. This information will include dates, locations, media coverage details, and points of contact within USTR to answer questions about each event.

IV. GUIDELINES FOR ENGAGEMENT WITH ADVISORY COMMITTEES

The trade advisory committee system was established by Congress in 1974 (19 U.S.C. 2155) to institutionalize domestic input into trade negotiations to ensure that U.S. trade policy and trade negotiating objectives reflect the interests and views of U.S. stakeholders, including public and private sector interests. Advisory committee members represent the full span of interests including manufacturing; agriculture; digital trade; intellectual property; services; small businesses; labor; environmental, consumer and public health organizations; and state and local government.

Trade advisory committees have made valuable contributions to U.S. trade policy and serve as a unique forum for discussions of trade issues and to bring candid advice and outside input into government decision-making. Because advisory committee members provide expert, outside advice, they help increase the accountability of trade negotiations to stakeholders and the public. Stakeholder engagement helps ensure that differing viewpoints are heard during trade negotiations and, in doing so, strengthens the U.S. negotiating position.

The guidelines for engagement with advisory committees are established to assure useful and timely exchange of information as required by section 104(e)(1) of the Trade Priorities Act, which reinforces the priority Congress places on consultation with congressionally-established trade advisory committees and requires USTR to enhance its coordination with those committees.

Consultation with Advisory Committees

Advisory Committee Views Taken into Account

USTR consults closely with trade advisory committees throughout trade negotiations. USTR carefully considers these interests and views, which often vary significantly, as it develops and adjusts its negotiating positions. To maximize the effectiveness of the trade advisory committee system established by Congress, USTR will enhance its coordination with advisory committees, individually and in groups, to obtain meaningful feedback on trade policy.

Understanding that perspectives may vary significantly both among and within the various advisory committees, USTR takes all views received from advisory committees into account in formulating trade policy. Although no individual stakeholder has an assurance that their viewpoint will dominate others or prevail in the negotiations, all stakeholders are heard as we seek to craft a trade policy with the overall interests of the U.S. economy and American workers in mind.

Consultations with advisory committees are intended to enable:

- Trade advisory committee members to provide timely input as the United States is developing initial proposals in a negotiation and to provide input and comments on adjustments to U.S. proposals made in response to developments in a negotiation;
- USTR, in conjunction with other relevant agencies, to convey detailed information about the status of ongoing and future negotiations, including, but not limited to, explanations of U.S. negotiating positions, approaches to the negotiations, negotiation dynamics, and expectations for how the iterative process of negotiations might develop;
- USTR to consider input of trade advisory committee members and adjust U.S. negotiating positions as appropriate;

- Members of Congress to have informed discussions with advisory committee members on matters relating to trade negotiations; and
- Advisory committee members to be well prepared to write reports on completed trade agreements, as required by law.

Briefings for Trade Advisory Committee Members

USTR, in conjunction with other relevant agencies, will regularly brief trade advisory committees regarding ongoing and future negotiations. Such briefings will be responsive to the particular interests of the committees and sufficiently detailed to ensure the advisors have a strong understanding of the status of the negotiations.

USTR will also hold timely, in-depth, and comprehensive briefings open to trade advisory committee members to ensure that advisors are provided periodic updates on the status of negotiations.

Advisory Committee Access to Negotiating Text

U.S. Proposals

To facilitate input from trade advisory committee members, USTR will make U.S. proposals available to all trade advisory committee members to solicit their feedback and to respond to that feedback. USTR will endeavor to share U.S. proposals for feedback in advance of sharing them with negotiating partners.

Consolidated Text

To facilitate the submission of the statutorily-required advisory committee reports to Congress, USTR will make the consolidated text of the agreement available to advisory committee members at an appropriate time.

Confidentiality

Advisors are required to hold an appropriate security clearance. USTR will work with other relevant agencies to assure proper handling of classified and trade-sensitive documents and compliance with legal requirements.

Advisory Committee Administration

USTR manages the advisory committee system, in collaboration with the U.S. Departments of Agriculture, Commerce, and Labor, to ensure compliance with legal requirements. The advisory committee system includes the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), five policy advisory committees, and 22 technical advisory committees in the areas of industry (ITACs) and agriculture (ATACs). Each committee provides advice based on the perspective of its specific area.

Advisory Committee Charters

Charters for the advisory committees are filed with the Committees on Finance and Ways and Means. Significant changes to membership criteria for the advisory committees are published in the *Federal Register*.

The President's Advisory Committee on Trade Policy and Negotiations

Members of the President's Advisory Committee for Trade Policy and Negotiations are appointed by the President of the United States. Members of other committees are appointed by the U.S. Trade Representative in conjunction with other Cabinet officers.

Policy and Technical Advisory Committees

The policy advisory committees focus on the environment (Trade and Environment Policy Advisory Committee), labor (Labor Advisory Committee for Trade Negotiations and Trade Policy), agriculture (Agricultural Policy Advisory Committee), Africa (Trade Advisory Committee for Africa), and state and local issues (Intergovernmental Policy Advisory Committee).

Each technical advisory committee represents a specific sector, commodity group, or functional area and provides technical advice concerning the effect that trade policy decisions may have on its respective sector or set of issues.

The 16 ITACs focus on: Aerospace Equipment; Automotive Equipment and Capital Goods; Chemicals, Pharmaceuticals, Health/Science Products and Services; Consumer Goods; Distribution Services; Energy and Energy Services; Forest Products; Information and Communication Technologies Services and Electronic Commerce; Non-Ferrous Metals and Building Materials; Services and Finance Industries; Small and Minority Business; Steel; Textiles and Clothing; Customs Matters and Trade Facilitation; Intellectual Property Rights; and Standards and Technical Trade Barriers.

The six ATACs focus on: Animals and Animal Products; Fruits and Vegetables; Grains, Feed, and Oilseeds; Processed Foods; Sweeteners and Sweetener Products; and Tobacco, Cotton, Peanuts, and Planting Seeds.

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