



Where Pennsylvania Businesses Go To Grow

Why Principles for 21st Century Trade Agreements?

American producers need fair trade agreements to access growing global markets. Business leaders know that when it comes to business contracts, a fair agreement can lead to success while a bad pact can spell doom.

The same applies to trade agreements. The 21st Century Trade Agreement Principles outlined below set forth the principles of a fair trade agreement

Government efforts to negotiate trade agreements designed for the new global economy are to be applauded. America does not need more post-WWII-style agreements—that world no longer exists.

Congress should fulfill its critically important Constitutional responsibility to direct U.S. trade relations by encoding these principles in the law as the standards for U.S. trade negotiators. Agreements that are not up to these standards should be rejected.

21ST CENTURY TRADE AGREEMENT PRINCIPLES

Trade agreements are business contracts between countries. They involve rights and obligations, concessions and benefits, performance and breach. The United States has stated that it will negotiate “21st Century Trade Agreements,” which presumably will improve upon those of the 20th Century. To benefit America, new trade agreements must include the following principles:

1. Increasing Exports:

Trade agreements must strive to optimize value-added supply chains within the United States—from raw material to finished product—pursuant to a national trade and economic strategy that creates jobs, increases wealth and provides sustained growth. The agreements must also ensure national security by recapturing production necessary to rebuild America’s defense industrial base.

Comments: The United States has lacked a strategy to produce more of what the nation consumes, in both the civilian and defense markets. Conversely, our major trading rivals pursue strategies to ensure persistent trade surpluses and promote the offshoring of U.S. manufacturing. As a result, the United States is losing critical mass of production capacity and skilled workers. The term “optimize value-added supply chains” is intended to establish that the full supply chain has more value than the sum of its parts in terms of increased production, employment, innovation and growth. Trade negotiations should further—and their success should be measured by achievement of—those goals, not just for selected sub-parts but for the supply chain as a whole.

2. Reciprocity:

Trade agreements must ensure that foreign country policies and practices, as well as their tariff and non-tariff barriers, provide fully reciprocal access for U.S. goods and services. The agreements must provide that no new barriers or subsidies outside the scope of the agreement nullify or impair the negotiated concessions.

Comments: Reciprocity is a fundamental tenet of trade law. This principle rejects the proposition that the United States should lead with trade barrier reductions, even without equivalent concessions from the other country, as a strategy to persuade other countries to eventually and voluntarily lower their barriers. The best approach is to extract those concessions during bargaining to ensure fully reciprocal access. Further, past trade agreements have permitted the other country to erect substitute trade barriers, which are not explicitly covered by the terms of the agreement that nullify the benefits of the concessions. Any new agreement must address the problem of substitute barriers or subsidies through explicit, enforceable language.

3. State-Owned Commercial Enterprises:

Trade agreements must encourage the transformation of state-owned and state-controlled commercial enterprises (SOEs) to private sector enterprises. In the interim, trade agreements must ensure that SOEs do not distort the free and fair flow of trade—throughout supply chains—and investment between the countries.

Comments: The growth of state-owned or state-controlled commercial enterprises (collectively SOEs) in global commerce is a substantial and disruptive trade challenge. SOEs are inherently subsidized, ungoverned by and/or resistant to market forces. They crowd out private commerce and are often government policy tools. SOEs should not gain the benefits of new trade agreements or be allowed to disrupt commerce or investment in the private market. By their nature, SOEs disrupt downstream competition, which must be addressed. Trade agreement language should: 1.) deny new preferences to SOEs; and 2.) include provisions—whether duties, quotas or other means—that restrict the impact of SOEs commercial and investment activities.

4. Currency:

Trade agreements must classify prolonged currency undervaluation as a per se violation of the agreement without the need to show injury or intent.

Comments: Fair and market determined exchange rates are fundamental to realizing the benefits of a trade agreement. Persistent currency undervaluation nullifies and impairs concessions obtained through bargaining. General agreement exists that persistent currency undervaluation is a problem, but the approach has been to engage in multilateral, diplomatic negotiations separate from trade negotiations. The diplomatic approach has borne no fruit. This principle makes clear that currency valuation issues must be a part of a trade agreement, and not treated separately.

5. Rules of origin:

Trade agreements must include rules of origin to maximize benefits for U.S.-based supply chains and minimize free ridership by third parties. Further, all products must be labeled or marked as to country(s) of origin as a condition of entry.

Comments: Rules of origin determine whether a product or its components “originate” within a contracting country(s) and thus qualifies for favorable tariff treatment. Without rules of origin, any product could be trans-shipped from third countries without restriction, causing free ridership problems where third countries benefit without negotiation-extracted concessions. Stronger origin rules will tend to benefit supply chains within the United States, while disincentivizing the utilization or trans-shipment of third country products. Rules may vary by product; however, the preservation and/or expansion of the U.S. supply chain should be a substantial governing principle.

6. Enforcement:

Trade agreements must provide effective and timely enforcement mechanisms, including expedited adjudication and provisional remedies. Such provisional remedies must be permitted where the country

deems that a clear breach has occurred that causes or threatens injury, and should be subject to review under the agreements' established dispute settlement mechanisms.

Comments: Effective enforcement is key to political support for trade agreements and the trading system itself. Current enforcement mechanisms are too expensive, time consuming and beyond the means of many affected industries to be effective. The problem is exacerbated by the lack of transparency of the details of other countries' compliance. Provisional remedies would permit a contracting country to take immediate action in applicable cases, while preserving the right of the other country to challenge the provisional action through ordinary dispute settlement mechanisms.

7. Border Adjustable Taxes:

Trade agreements must neutralize the subsidy and tariff impact of the border adjustment of foreign consumption taxes.

Comments: Foreign consumption taxes are charged to U.S. exports, and rebated when foreign companies export to the United States. Because of our reliance upon income taxes, the United States is unable to reciprocate. The result is that U.S. exports are double taxed and foreign imports to the United States are largely untaxed. This is a major cause of offshoring and our persistent trade imbalance. This principle must apply equally to negotiation, performance and enforcement of all trade agreements.

8. Perishable and Cyclical Products:

Trade agreements must include special safeguard mechanisms to address import surges in perishable and seasonal agricultural product markets, including livestock markets.

Comments: The World Trade Organization and past trade promotion authority statutes recognize that producers of perishable and seasonal agricultural products are particularly susceptible to trade surges arising from over-production, adverse weather or other causes. Short shelf life and selling season characteristics result in producers being unable to store the products until prices rise. Immediate and automatic relief based upon price and/or quantity measures are necessary to prevent industry harm.

9. Food and Product Safety and Quality:

Trade agreements must ensure import compliance with existing U.S. food and product safety and quality standards, and must not inhibit changes to or improvements in U.S. standards. The standards must be effectively enforced at U.S. ports.

Comments: Past negotiations have often treated health, quality and safety standards as trade barriers without sufficient regard for important public safety and quality goals. The result has sometimes been downward harmonization of safety and quality measures under a trade facilitation rationale. Enforcement as to imported products should effectively equal enforcement as to domestic products.

10. Temporary vs. Permanent Agreements:

Trade agreements must be subject to renegotiation and renewal. Renewal must not occur if the balance of benefits cannot be restored.

Comments: Trade negotiators agree to language based upon expectations and judgment in pursuit of national goals. However, goals may not be achieved or expectations may not be met. Just as business contracts do not last forever, neither should agreements between countries. Therefore, it is prudent to make such agreements time-limited to ensure that they continue to provide balanced benefits as circumstances change. If a balance does not materialize, the agreement should be renegotiated or discontinued.