



The Innovation Economy for America

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“What challenge do you fear most?” He [Bill Gates] rocked gently back and forth sipping from a can of Diet Coke, and silently pondered the question. When he finally spoke he did not recite the usual litany of prominent foes: Netscape, Sun Microsystems, Oracle, Apple. Nor did he cite the federal government. Instead, he said, “I fear someone in a garage who is devising something completely new.”¹

Google, of course, was the new innovative company that emerged from a garage. The goal of “The Innovation Economy for America” is to ensure that the garage where the next true innovation is created is located in the United States of America.

Introduction

The American Association of Exporters and Importers (AAEI) is proud to release its ideas to create “The Innovation Economy for America.” AAEI is one of the United States oldest and most respected trade associations representing over 300 companies manufacturing, importing, and exporting goods since 1921 – AAEI’s history mirrors the growth, expansion, and change of the American economy over the 20th Century.

AAEI believes that America’s economy is dynamic and vibrant as a result of innovation – whether it is conceptual in developing new products, technological in new applications, or using new business models. It is through innovation that the United States will continue to grow its economy and create wealth by trading with the rest of the world exporting innovative products and services.

“The Innovation Economy for America” is designed to ensure that innovative American companies can grow, create jobs in the United States, and become world-class brands through exporting its products and services to overseas markets. Therefore, AAEI recommends that Congress adopt “The Innovation Economy for America” to manage good outcomes by incorporating these goals into its economic and trade policies in pending legislation:

1. Create an Environment that is Conducive to (and Protects) Innovation

Innovation comes in many forms – new products, technologies, or processes. But at its basic level, innovation is a new idea – often a simple solution to a vexing problem. For example, one of the most revolutionary changes in the international trade industry was the creation of the shipping container (i.e., the “box”). Why? Because it made irregular-shaped cargo into a uniform size allowing the containers to be stacked on the top of a ship using a crane rather than labor-intensive loading in the cargo hold of a ship.

¹ Ken Auletta’s interview with Bill Gates in 1998 for his book *World War 3.0 Microsoft and Its Enemies*, Random House, 2001.

While all intellectual property is based on a new idea, not all new ideas are intellectual property. Nonetheless, it is imperative that every new innovation created in a garage in the United States recognized under our laws as copyright, patent or trademark receive the same intellectual property protection in Boston, Beijing, and Bangalore. In fact, the U.S. International Trade Commission noted that companies in the service sector tend to provide services in other markets through affiliates instead of cross-border export transactions with unaffiliated companies due to uncertainty in intellectual property protection.²

Intellectual property protection affects U.S. innovation as the U.S. International Trade Commission cited a study released by SBA Advocacy noting that:

small firms produce significantly more patents per employee than large firms and that their patents are more technologically important, according to patent impact metrics.^[1] Small firms also have been found to be more profit- and cost-efficient, producing more innovations for a given amount of research and development expenditures.^[1] While both large firms and SMEs undertake innovation that result in technological advances, SMEs can be more efficient in the innovated process.^[1]

See, U.S. International Trade Commission Investigation No. 332-508 "Small and Medium-Size Enterprises: Overview of Participation in U.S. Exports" at 2-11 – 2-12 (January 2010) (footnotes omitted).

The key for lawmakers is how to generate the byproduct of SMEs that innovate - net new jobs. The ITC has cited data that "SMEs accounted for 64.1 percent on average, of net new created per quarter by private sector firms during the approximately 16 years from the third quarter of 1992 to the first quarter of 2009." Most importantly, "38.4 percent of gross job gains occurred in SMEs with fewer than 20 employees" See, U.S. International Trade Commission Investigation No. 332-508 "Small and Medium-Size Enterprises: Overview of Participation in U.S. Exports" at 2-7 (January 2010) (figures omitted). Therefore, policies that help SMEs produce two critical economic outcomes: 1) creation of net new jobs; and 2) efficient development of technologically important innovations.

2. Small and Medium Size Business Enterprises Initiatives and Priorities

- Complete Free Trade Agreements: Congress should immediately initiated action to complete passage of the Colombia, Panama and Korea FTAs. These agreements represent significant opportunities for business growth by SMEs which will inevitably result in a creation of new jobs by SMEs. According to the U.S. International Trade Commission's recent report, our NAFTA partners, Canada and Mexico, were the "largest destination markets for U.S. merchandise exports from firms of all sizes, including SMEs" for 2007.³ Since the primary products exported by SMEs are computer and electrical products, machinery, and chemicals, AAEI

² U.S. International Trade Commission Investigation No. 332-508 "Small and Medium-Size Enterprises: Overview of Participation in U.S. Exports" at 4-1 (January 2010).

³ U.S. International Trade Commission Investigation No. 332-508 "Small and Medium-Size Enterprises: Overview of Participation in U.S. Exports" at ix (January 2010).

believes that expanding FTAs to countries such as Colombia, Panama, and Korea will enable SMEs to access to developing economies which may become quite large for these types of U.S. products.

- Help Small and Medium Size Business Navigate U.S. Export Controls: Our trading partners want to buy high-tech goods, many of which are manufactured by American small and medium size companies. Often these companies do not have the internal trade compliance resources to determine whether they can export their products to certain countries and end-users. AAEI recommends that Congress provide assistance through the U.S. Small Business Administration and the U.S. Department of Commerce to help small and medium size companies export their products to compete in foreign markets. AAEI believes that the government should adopt a mitigation of penalties regime for export control violations similar to that used to assess penalties on U.S. importers as a way to appropriately penalize the violative conduct.
- Export Financing Opportunities for SMEs: Congress needs to ensure that the US Export-Import Bank and Commerce Department Small Business Administration continue to expand working capital loans and export transaction financing loans to SMEs. SMEs engaged in international business need same, or more, federal government financing support that is afforded to the largest US international companies. The availability of export loans and guarantees to SMEs will result in expansion of business and growth of employment for SMEs.

3. Promote Exports

- Enact Drawback Simplification: Drawback allows companies to obtain a refund (up to 99%) of duties, taxes and fees paid on imported components contained in the exported product helps companies recoup some of their original costs in making products for export – which are typically finished products with value added in the United States. The United States' drawback program has been around since 1789 and remains one of the best tools to promote exports, particularly among small and medium size enterprises.
- Streamline Export Controls: Modernizing and simplifying export controls will enhance the national security of the United States while promoting a high-tech economy to support the Nation's war-making capabilities. AAEI believes that the report recently issued by the National Academy of Sciences, "Beyond Fortress America," provides a good first step and road map for streamlining the export control process, which often impedes American companies' ability to compete in the global marketplace – particularly among small and medium size businesses. Some changes can be made by Executive Order to implement the recommendations, and we support the Administration's Export Control Review in restructuring the U.S. export controls process. However, Congress must enact a new export control statute setting a framework for the 21st Century. Furthermore, AAEI believes that steps to ease export controls have an effect on U.S. exporters' intellectual property because, almost without exception, exported products incorporate intellectual property assets that make U.S. goods competitive and attractive in the global market.

4. Lower Transaction Costs for Business⁴

- Pass the Miscellaneous Trade Bill (H.R. 4380): AAEI recommends that Congress enact Miscellaneous Trade Bill in order to keep American companies competitive with foreign companies by permitting duty-free entry of component parts or materials which are incorporated into finished products for export. The items subject to duty suspension provisions contained in the Miscellaneous Tariff Bill do not negatively impact domestically produced product. Moreover, many of the provisions in the bill will benefit many companies and are not an earmark for a specific company.
- Finish the Automated Commercial Environment (ACE) and International Trade Data System (ITDS): It is imperative that the United States eliminate multiple data filings by companies to federal agencies on repetitive shipments, which is waste of both corporate and government resources. AAEI recommends that Congress direct U.S. Customs and Border Protection ("CBP") to speed up the rollout of two critical trade facilitation programs, the Automated Commercial Environment ("ACE") and the International Trade Data System ("ITDS"), which provide real-time trade data to both the government (enhancing compliance and enforcement) and the trade (enhancing clearance). These programs are already funded by user fees assessed on the trade community through the Merchandise Processing Fee ("MPF") at the time of entry. Modernizing CBPs automation systems will contribute to the ability of CBP's to carry out its enforcement responsibilities in monitoring and preventing the import and export of trademark and copyright infringing products.
- Economize Homeland Security Costs: Since 9/11, U.S. corporations have joined numerous voluntary programs, such as the Customs-Trade Partnership Against Terrorism ("C-TPAT") and the Certified Cargo Screening Program ("CCSP"), in which they have expended scarce corporate resources to secure their global supply chain as "multi-year sustaining programs" (i.e., programs which annual require allocation of funds to maintain membership). These companies are also subject to all the supply chain security regulations enacted for all U.S. shippers without regard to their C-TPAT or CCSP status. The government needs to recognize companies voluntarily spending resources by either exempting them from additional security requirements or providing reimbursement (e.g., tax credits) to free up resources spent for redundant regulatory purposes so they can be invested in activities that will create jobs.
- Complete Pending Free Trade Agreements: The United States' trading partners are deeply concerned about the "Buy American" provision

⁴ The ITC noted that "economic research has shown that larger firms export more, as they tend to be less resource-constrained than smaller firms." See, U.S. International Trade Commission Investigation No. 332-508 "Small and Medium-Size Enterprises: Overview of Participation in U.S. Exports" at 2-2 – 2-3 (January 2010). Transaction costs, including corporate compliance programs for all the laws and regulations impacting import and export transactions, restrict SMEs from engaging in international trade as a result of government imposed regulatory requirements. Id. at 2-16.

contained in the American Recovery and Investment Act. AAEI believes that Congress can go a long way toward assuring those trading partners that the United States will not abandon global trade by enacting the free trade agreements already negotiated by the Administration. These pending free trade agreements are Colombia, Korea, and Panama. These agreements are crucial to U.S. companies already trading in these countries and to those who wish to trade with these countries because of the advanced intellectual property protections and enforcement provisions, which are intended to provide strong mechanisms to protect U.S. creativity and innovation.

- Harmonize and Recognize Authorized Economic Operator Programs: The United States has led the world in developing the “trusted trader” concept with both a security and a compliance component based on the strength of a company’s internal controls. U.S. companies operate in multiple countries and it is important that their investment in the United States’ Authorized Economic Operator programs (principally the Customs-Trade Partnership Against Terrorism and the Importer Self-Assessment program) be recognized by other governments. In order to obtain such reciprocity, the United States must enter into “mutual recognition agreements” with other countries. Otherwise, U.S. companies will be forced to waste time, corporate resources and money applying for AEO status in every country it operates.
- Promote International Standards Setting Bodies: Over the past several years, Congress has enacted a series of laws addressing homeland security (Trade Act of 2002, SAFE Port Act of 2006, Implementing the 9/11 Commission Recommendations Act of 2007), product safety (Consumer Product Safety Improvement Act), and environmental laws (Lacey Act Amendments) affecting the global supply chain. All these laws are U.S.-centric which often impose greater regulatory burdens on U.S. companies. However, U.S. companies compete in multiple markets and prefer one international set of standards; otherwise, they spend money simply complying with different country-specific standards. Therefore, Congress should promote the United States participation in international standard setting bodies to reduce the burdens on U.S. companies and ensure high standards apply to all companies in the global marketplace.
- Exclusive Forum for Trade-Related Disputes: Congress will introduce shortly a bill to expand the jurisdiction of the U.S. Court of International Trade, an Article III court, to handle trade security and export matters in addition to its current case load of customs matters, anti-dumping and Trade Adjustment Assistance claims. We believe Congress should pass this bill immediately so that the private sector will have one exclusive tribunal to bring trade-related cases that can be resolved quickly. Trade cases require judges with subject matter expertise and should not be litigated in U.S. district courts which are already overburdened with criminal, civil rights, and bankruptcy cases - all of which may increase with a new Administration and the current economic climate. Additional clarity of jurisdiction is needed when disputes arise due to goods being imported or exported or attempted to be imported or exported and being suspected of violating an intellectual property right. The trade community needs to

know which courts have jurisdiction over cases involving counterfeit and pirated products when such cases arise from a transaction at the border.

- Eliminate and Reduce User Fees: Business is being subjected to a proliferation of and increased user fees assessed for more regulation. Every federal agency which plays a role in the licensing, certification or inspection of imported or exported goods is imposing additional fees or higher amounts for existing fees. We do not dispute the need for the government to recoup costs for services provided to private entities. However, when statutory mandates require additional costs for compliance, Congress simply increases the tax burden on companies that contribute to the U.S. economy. Therefore, we ask Congress to request that the General Accountability Office conduct a study of all the user fees imposed on companies that import, export, and transport goods with recommendations on how to fund necessary government services while reducing or eliminating the myriad user fees assessed by federal agencies.

Conclusion

If the Congress adopts these measures, we believe that the United States will greatly increase the likelihood that the next great company with innovative technology and products will be created in the United States and thrive in the global marketplace.