

March 23, 2015

Dear Representative/Senator:

The undersigned organizations, dedicated to government openness, scientific integrity and accountability, write to urge that any trade authority legislation must establish new obligations for executive transparency, including public access to trade agreement texts, which would initiate a new era of openness and public discourse surrounding trade negotiations.

As Congress contemplates whether or how to delegate its constitutional authority over trade policy to the Obama administration, we understand that a Fast Track trade authority bill is expected soon and that it may include revised provisions around transparency in trade negotiations. If the trade authority bill is to actually increase transparency, then it must go much further than simply codifying past practices. At a minimum, any trade authority legislation should mandate that in order for a trade agreement to be granted expedited consideration in Congress, both U.S. draft textual proposals and the consolidated bracketed negotiating texts must be made public at regular intervals during the negotiating process. Trade negotiations such as the Trans-Pacific Partnership (TPP) that have not met these transparency standards should not receive any Fast Track treatment.

Greater transparency is essential because these negotiations are of unprecedented scope with respect to both the subject matter and the countries potentially involved. The current TPP partners sum up to 40 percent of world GDP and the proposed “docking” mechanism could allow other countries to join.

The subject matter now being negotiated extends significantly beyond tariffs and other traditional trade matters. As the United States will be obliged to bring existing and future domestic policies into compliance with the international norms established in the pact, this process would establish policies binding on future U.S. Congresses and state legislatures on numerous non-trade subjects currently under the jurisdiction of these domestic legislative bodies.

In February 2012, many of our organizations [wrote to President Obama](#) to urge him to increase the transparency of the Trans-Pacific Partnership (TPP) Free Trade Agreement (FTA) negotiating process.ⁱ At that time, we pointed out that, without any public access to even the most fundamental draft agreement texts and other documents, important policy decisions that may significantly affect the way we live our lives by limiting our public protections were being made by executive branch trade officials.

We pointed out that, in contrast to the Administration’s commitment to creating an “unprecedented level of openness in Government” and its launch of the Open Government Partnership, multiple aspects of the TPP FTA negotiations process utterly fail to meet the most basic standards of transparency. We called on the Administration to, at a minimum, provide access at regular intervals to the draft composite negotiating texts of the pact’s various chapters for all congressional staff, the public, and the press.

Unfortunately, more than three years later, this practice has not been adopted in the context of TPP FTA talks. Indeed, the talks have gone even further underground. Even the already insufficient process of formal stakeholder engagement at the negotiating rounds has not occurred since August of 2013, despite at least eight chief negotiators’ meetings, 16 intersessional meetings, four ministerial-level meetings, and multiple attempts to conclude the talks. Now the need to release the text is even more urgent, as the most recent mid-2015 deadline is imminent.

Even for U.S. Members of Congress with exclusive constitutional authority over trade, it took years of demands to manage to convince the U.S. Trade Representative (USTR) to allow them to see draft TPP texts. To date, this access remains very time limited and they are not permitted to have any cleared staff or experts with them, take notes, or talk about what they have seen.

While this degree of secrecy vis-à-vis Congress represents a rollback in transparency in trade negotiations relative to the practices of past administrations, if the trade authority bill is to actually increase transparency, then it must go much further than simply codifying past practices. For instance, if a Fast Track bill were to formalize access to draft trade agreement text only for congressional staff *with security clearances*, it would newly create a statutory requirement that trade texts be subject to treatment under the national security classification system. Currently, there is no such legal requirement. Similarly, if the Fast Track bill simply formalizes the past practice of providing Members of Congress access to texts in a secure reading room, this would not promote the values of transparency that is supposedly a centerpiece of this government.

The U.S. government, at a minimum should make public both U.S. draft textual proposals and the consolidated bracketed negotiating texts at regular intervals during the negotiating process, in all future negotiations of this sort, including immediately with the European Union. The goals of a transparent, collaborative, and participatory government with empowered citizens, as well as a “high-standard, 21st century” agreement that advances the health, safety, enterprise and creativity of the American public, require no less.

The current TPP negotiations have been ongoing for more than five years and this transparency standard has not been followed, however, so it would be inconceivable that, if a completed TPP is brought to Congress, it should receive any Fast Track treatment.

Sincerely,

American Library Association
Association of College & Research Libraries
Association of Research Libraries
Center for Effective Government
Center for Media and Democracy
Center for Science and Democracy, Union of
Concerned Scientists
Citizens for Responsibility and Ethics in
Washington (CREW)
Defending Dissent Foundation
Food & Water Watch

Government Accountability Project
Knowledge Ecology International
Liberty Coalition
OpenTheGovernment.org
Project Censored
Public Citizen
Rural Coalition/Coalición Rural
Special Libraries Association
Sunlight Foundation
U.S. Public Interest Research Group (PIRG)
Washington Coalition for Open Government

¹ The secretive TPP negotiations have shut out of the process small business, civil society and other stakeholders who have a direct and long-term interest in the outcome of these negotiations. Yet, under the trade advisory system, representatives from over 500 business interests have direct access and thus, unlike the public, have the ability to influence an agreement that could have an enormous impact on the public in a myriad of ways.

These include patent and copyright, land use, food and product standards, natural resources, professional licensing, government procurement, financial practices, healthcare, energy, telecommunications, and other service sector regulations, and more. Indeed, these texts will affect the cost of prescription drugs, the state of our environment, and our government’s ability to protect the public from tainted food, defective products, safe drugs, and will touch every American family. The enforceability and permanence of such binding rules, with later changes to an adopted pact requiring agreement by all signatory countries, necessitates maximal transparency and extreme care on the front end.